



Monthly brief on the monitoring of Chapter 23 - Judiciary, Fight against Corruption and Fundamental Rights -August 2017-

I JUDICIARY

Independence

The President of the Council of Public Prosecutors, Petar Anevski, resigns

Mr. Petar Anevski handed his resignation from the position of President of the Council of Public Prosecutors due to personal and family reasons. He assumed office in 2014 for the first time, and he was elected for a second term in September 2016. The Helsinki Committee for Human Rights reacted back then, as the Law does not allow for a re-election. However, at the time, Mr. Anevski interpreted the law as allowing him to get re-elected because he was serving a second mandate as a member of the council. Anevski said that the reasons for his resignation were personal. At the same session, the Council elected Liljana Spasovska, the deputy of the former Public Prosecutor, Mr. Marko Zvrlevski, as acting Public Prosecutor of the Republic of Macedonia.¹

The immunities of the judges accused in the “Titanik 2” Case, revoked

At its 261 session, the Judicial Council of the Republic of Macedonia made decisions to revoke the immunity of the five judges from the Administrative Court accused in “Titanik 2”, the case conducted by SPP on the election irregularities from the local elections in 2013.

The Judicial Council informed that decisions were adopted for the termination of the judicial office of Abdula Limani, Judge in the Skopje Court of Appeals and Jagotka Denkovska, Judge in the Primary Court Kumanovo because they turned 64 years of age.²

¹ <http://telma.com.mk/vesti/anevski-podnese-ostavka-od-lichni-prichini>

² http://sud.mk/wps/portal/ssrm/sud/vesti/ab9c85ab-4e0c-4a33-92cd-63179dbaf8c4!/ut/p/z1/tZNbT8lwGIZ_Cxe7bNpt3dpeTmUQ5CDBCesN6bYOKu4A1Hn49ZbExAARNGhvmibv93zvdvjkcAZ5KRq1EFpVpXgy75j7c7-DMaK3qE97NwwFEXbD8d29jQmG031Bxx5RIxhFPuuGThS5kJ-Of4Ac8rTUtV7CeFs1Us-LIYW2z5mF6iqVuhQWauRWKwuJhKXUEwnAEqUAC9cFzEkz4Ls2YVvicpriHa5OVQZjiROWYw8D7DAKcM4IELbrA0ySlOaEOVnGDu0f-9vZR9-cAH3GnxDwc-3j51LwfcZxh2PjgXwJrt2QGEHb9gl6diZdY7JR8gVGZbUpzEgnv2yRARxkOCgitC_McBo_9P4XTy7E987N2Pwh9bhe88AselVq-arh7C823XCdzeB6sDB2hV4CveYVnP0otC6igrpvCqzyQdvFca95vxqC3dWX06DV-



Impartiality

The Court of Appeals in Skopje adopted a decision to accept “the bombs” as evidence in the criminal proceedings – however, the Supreme Court will still debate on whether they will be used as such

On 4 August 2017, the Court of Appeals Skopje, adopted a decision upholding the appeal of the Public Prosecutor's Office for Prosecution of Crimes Related or Associated with the Content of the Illegal Interception of Communications Skopje and repealed the decision adopted by the Primary Court Skopje 1, Skopje according to which the wiretapped materials proposed as evidence for the case related to the events in the Municipality of Centar, were removed from the case files.

Pursuant to this decision, the evidence obtained from the wiretapped materials may be used as evidence in the criminal proceedings.³

With this decision, the Court of Appeals practically allowed for the bombs to be treated as evidence in criminal proceedings, after the Primary Court Skopje 1 had ruled them out in December 2016.

The Supreme Court to debate whether “the bombs” may be used as evidence, despite the decision of the Skopje Court of Appeals

However, it is yet to be seen how the Supreme Court will further proceed in the light of its President, Jovo Vangelovski's statement, who sticks to the idea to debate on the abstract submitted by him in order for the Supreme Court to adopt a general legal opinion on whether the “bombs” by the opposition may be used as evidence in court proceedings. Vangelovski stated that the ruling of the Court of Appeals on the exclusion of the evidence in the “Violence” Case in the Municipality of Centar only refers to a specific case, as it is a repealing decision rather than a decision on merits.

Vangelovski emphasized that the general session of the Supreme Court debates on the legal issues at hand broadly, and not in relation to this particular case, but that it would take the decision of the Skopje Court of Appeals into consideration. The public is soon to be informed about the continuation of the session.

It is worth reminding that the former Judge in the European Court of Human Rights and Freedoms in Strasbourg, Mirjana Lazarova-Trajkovska, at the invitation of the President of the Court, Jovo Vangelovski,

[gCWRYHn/dz/d5/L2dBISEvZ0FBIS9nQSEh/?uril=wcm%3Apath%3A%2Fsovet_mk%2Fsud%2Fpocetna%2Fvesti%2Fa%2Fb9c85ab-4e0c-4a33-92cd-63179dbaf8c4](http://www.vsrn.mk/dz/d5/L2dBISEvZ0FBIS9nQSEh/?uril=wcm%3Apath%3A%2Fsovet_mk%2Fsud%2Fpocetna%2Fvesti%2Fa%2Fb9c85ab-4e0c-4a33-92cd-63179dbaf8c4)

³ http://www.vsrn.mk/wps/portal/asskopje/sud/vesti/6e2965c9-7142-4157-b2f9-0b35e4d3fdc5!/ut/p/z1/rVLLUsJAEPwWDzmGHfLG20rxMEJRCgiZC5XH5qHJbkiWRP6l_JgSSlg4d5mq7tnumcQQWtEmN9kiS8yZvxc1h6xNtbIMMB5glkzf7oDPADbWfQwwMBGq1OA0RAQOc1_RgSRkilSpMgrd0GehZviVYF6FylQ8pAKSiVQ0FpkClhU61lm2FPtrqGpRte01UCLeyoEukmNSI-i0DzoiWEWle8i9Oqcwcp88MvDIPnkHMRfJMI58JkmZoHuJlhUNKYVrTq7Sn6nQpT1rQIKtG3bSThPctoJeaHAT5SU1wKtvYORJ33YXz5m46ENeDnomth51GZYLqrJaluWjFeFnGT-x5jGcNzhKCnXvLLDSfn5vXWlvHvuEGXQWjXtT2XQpS9SNWMr-uLtCU1e9luCzaXzJmgb3I9_3LKZbEsHH2vsvcJXame27Tli76gbPX8wTf3HwAnllTkg!!/dz/d5/L2dBISEvZ0FBIS9nQSEh/?uril=wcm%3Apath%3A%2Fpublic_mk%2Fsud%2Fpocetna%2Fvesti%2F6e2965c9-7142-4157-b2f9-0b35e4d3fdc5



in May 2017 handed over 35 copies of judgments of the European Court of Human Rights to the Supreme Court judges, according to which unlawfully obtained materials may serve as evidence in court proceedings. “The Court cannot take the role of a legislator and govern this matter, but we need to allow for an individualization of each of the cases, individual approach to each case” said Lazarova-Trajkovska back then.⁴

Responsibility

The former Public Prosecutor Mr. Marko Zvrlevski dismissed

On 17 August, 2017, the Public Prosecutor Mr. Marko Zvrlevski was dismissed, after the voting of the Assembly of the Republic of Macedonia, whereby the majority of MPs voted in favour, in the absence of the parliamentary opposition led by VMRO-DPMNE. Immediately afterwards, at the proposal of the Government, a request was submitted to the Assembly to open the call for a new public prosecutor. It was certain that the acting Public Prosecutor of the Republic of Macedonia, who will temporarily assume office until the election of the new Public Prosecutor, will come from the lines of the existing public prosecutors. Despite the fact that the Council of Public Prosecutors of the Republic of Macedonia was to appoint the acting Public Prosecutor, right before the session when the new acting Public Prosecutor was to be elected, the Council’s President, Mr. Petar Anevski, submitted his resignation from office. Mr. Anevski’s resignation did not hinder the appointing of the Ms. Liljana Spasovska as acting Public Prosecutor of the Republic of Macedonia. Prosecutor Spasovska is familiar to the public from the “Monstrum” Case, when she was the prosecutor at the public hearing held after the appeals of the defendants in this case who were sentenced to lifetime imprisonment. Back then she asked for the next hearing to be postponed until all the facts, including the evidence that the Special Public Prosecution had at disposal, were obtained.⁵

Criminal charges against Jovo Vangelovski and the judges from the “Tvrдина” Case

The “Zelena lupa” [T.N. Green Magnifying Glass] Association submitted criminal charges to the Public Prosecution Prosecuting Organized Crime and Corruption, as well as initiatives to seek responsibility before the Council Determining the Fact, against the judges for whom there is reasonable suspicion that they have allowed for the escape of the defendants Goran Grujovski and Nikola Boshkovski.

Apart from the charges against the judges who were in charge of conducting the “Tvrдина” Case criminal charges were also pressed against judges Lenka Davitkovska, Tatjana Mihajlova and Dijana Gruevska from the Primary Court Skopje 1, Liljana Shopova, Safet Kadriu and Cvetanka Perikj from the Court of Appeals in Skopje, as well as against the judges Jovo Vangelovski, Faik Arslani, Risto Katavenoski and Xhemail Saiti from the Supreme Court. According to this Association, all the charges refer to misuse of official position, with the intention to provide benefit to others.⁶

Professionalism, competence and efficiency

⁴ <http://makfax.com.mk/daily-news/вангеловски-не-се-откажува-и-покрај-од/>

⁵ <http://www.pravdiko.mk/obvinitelkata-liljana-spasovska-ke-go-menuva-zvrlevski-do-izborite/>

⁶ <http://a1on.mk/archives/775355>



An indictment submitted against the person who attacked Radmila Shekerinska in the Assembly

The Primary Public Prosecution – Skopje, regarding the events in the Assembly of the Republic of Macedonia which took place on 27 April 2017, informed that an investigative procedure has been conducted against one person for committing the crime of “Violence” from Article 386, para 6, with regards to Articles 3 and 1 from the Criminal Code, which according to paragraph 6, is punishable with a prison sentence with a duration between 3 and 10 years.

The Primary Public Prosecution informed that after completing the investigative procedure, they submitted an indictment against the suspect to the Primary Court Skopje 1, in which they accuse the suspect of committing the act of cruel violence amidst the events in the Legislative Home, pulling Ms. Radmila Shekjerinska, an MP in the Macedonian Parliament, by the hair. The damaged suffered severe bodily injury from the act.

This indictment comes some time after several people who participated in the attacks were already brought to court.⁷

The investigation on the “Bloody Thursday” expands

The Prosecution for Organized Crime which is conducting the investigation on the “Krvav четvrtok” [T.N. Bloody Thursday] from 27 April will extend the investigation in order to determine whether the Serbian intelligence officer, Goran Zhivaljevic and the Security Counselor of the President, Sinisha Aleksovski, were also part of the organization of the events in the assembly.

This was confirmed by Prosecutor Vilma Ruskovska, who is part of the team of prosecutors conducting the investigation, who said that these are initial indicators which may be corroborated, but may also not be proved. According to her, “Zivaljevich’s presence in the Assembly in itself is a diplomatic scandal, and constitutes the crime of participating in a crowd”.

The extension of the investigation was welcomed by President Ivanov’s Cabinet, in a statement that they expect “an answer from the prosecution on Mr. Zhivaljevich’s role in the developments in the Assembly. The public must know who had sent him, what he had undertaken, who he was with and whether he had the clearance from a competence state body to enter the Assembly on the critical day”.⁸

The second meeting of the Council for Reforms in the Judiciary and the second working meeting for the drafting of the Strategy held

The second meeting of the Council for Reforms in the Judiciary took place in the Ministry of Justice, attended by the majority of its members. The Draft-strategy for reform of the judiciary sector was presented by the President of the working group Prof. Dr. Ana Pavlovska Daneva, while the Minister of Justice called on the members of the Council to give their opinions and remarks. The draft-strategy was welcomed as a good strategic document, taking into account most of the shortcomings of the justice system and proposing specific draft-measures.

⁷ <http://jorm.gov.mk/?p=4184>

⁸ <http://vesti.mk/read/news/13922563/4802161/istraga-za-zhivaljeviki-i-aleksovski>



Copies of the Draft-Law amending the Law on the Judicial Council of the Republic of Macedonia and the Law Revoking the Law on the Council Determining the Facts and Initiating Procedure to Determine Responsibility of Judges were handed out at the meeting, and it was announced that the Council would present its opinion thereof, at its next session.⁹

On 29 August 2017, a working meeting was held for the purpose of drafting the Strategy. The President of the working group, Dr. Pavlovska Daneva, gave a brief presentation on the Draft-Strategy for Reform of the Justice System, during which she indicated that the remarks and suggestions of the members of the working group, submitted in the early stage of preparation, were taken into consideration in the drafting. Furthermore, she pointed out that some of these remarks were introduced into the Draft-Strategy and the Action Plan, while some of them will be introduced in the future legal solutions.

The participant supported the proposed solutions and gave additional suggestions and proposals on the content of the Draft-Strategy.¹⁰

ONGOING JUDICIAL PROCEEDINGS

„Divo Naselje” - COC 127/15

At the hearing held on 30 August 2017, on the Divo Naselje Case, the defense proceeded with its closing argument. In their closing argument they emphasized that it was indisputably established that the defendants had not committed the crime.

At the next hearing on 31.08.2017, the defendants and their attorneys proceeded with their closing arguments. A total of eight defendants gave their closing arguments. The court informed the attendees that the upcoming September sessions were scheduled for 12, 14, 18, 20, 22, 26 and 28 September 2017.

“ERASMUS” – COC 115/16

The trial from 29 August 2017 was closed to the public, as it involved the examination of a protected witness. At the same time, the hearing was postponed for the September.

II FIGHT AGAINST CORRUPTION

The Anti-Corruption Commission initiated proceedings for disciplinary liability, suspension and dismissal after announcing the elections

At its session held on 29 August 2017, the State Commission for Prevention of Corruption (SCPC) unanimously decided to initiate procedures for three complaints against the General Secretariat of the

⁹ http://www.justice.gov.mk/novost_detail.asp?lang=mak&id=1381

¹⁰ http://www.justice.gov.mk/novost_detail.asp?lang=mak&id=1382



Government and the Employment Agency of the City of Skopje for initiating disciplinary proceedings, suspension and dismissal after the announcement of the local elections.

In the three cases, the Commission concluded that there were grounds for initiating proceedings and announced that it would submit requests to the General Secretariat and to the Employment Agency in order to obtain appropriate documentation - as President Igor Tanturovski said - as early as possible, and not later than in 15 days. According to him, thirty-two employees in the Government filed an objection against the General Secretariat of the Government.¹¹

According to the Anti-Corruption Commission, Zvrlevski's dismissal is unlawful

At the session held on 15 August 2017, the State Commission for Prevention of Corruption took the position that the termination of the employment of the public prosecutor Marko Zvrlevski was not lawful, taking into consideration that during the elections - in this case the local ones - it is not allowed to employ or dismiss a person in state or public institutions.

The Anticorruption Commission members unanimously concluded that Zvrlevski should not be replaced at a time when elections have already been announced, because it violates the Electoral Code.

At the same time, their opinion was submitted to the Parliamentary Committee immediately after the end of the session of the Commission. According to the President of the Commission, Igor Tanturovski, this opinion is identical to the opinions given by the Commission so far in similar situations, and is in accordance with Article 8 of the Electoral Code, which is quite clear.

The members of the Anti-Corruption Commission gave their opinion one week after VMRO-DPMNE asked them to provide an interpretation on the application of Article 8, which prohibits procedures for recruiting new persons or termination of employment of state officials in the period after the elections have been announced.

The opposition party asked for the hearing on Zvrlevski's dismissal to be stopped until the Committee takes its stand.¹²

In relation to this, the President of the Assembly, Talat Xhaferi pointed out that the opinion of the Anti-Corruption Commission is irrelevant to the work of the Assembly, and that the Committee, as part of the Executive Power may not give any recommendations to the Legislature.¹³

III FUNDAMENTAL RIGHTS

Freedom of expression and media pluralism

Over the course of the month of August, the violence against media workers continued in the case of an attack of the team of reporters from Nova TV, as well as an incident with the team from the Internet Portal

¹¹ <http://www.libertas.mk/antikoruptsiska-povede-postapki-za-di/>

¹² <https://vistina.mk/?p=522568>

¹³ <http://vecer.mk/makedonija/antikorupciska-razreshuvanje-to-na-zvrlevski-bi-bilo-nezakonsko>



Kurir. In the second case, Kurir's cameraperson was removed from a public session of the State Election Committee.

During the first event, which happened on August 23, the team of reporters from Nova TV were attacked by one person, being perceived as a "politically hostile" media outlet which resulted in obstructing the media workers in their efforts to inform the public. Regarding this case, the Primary Public Prosecutor's Office - Skopje prepared a case, and orders and instructions were issued by the appointed prosecutor in order to determine the identity of the perpetrator and to fully clarify the event, followed by a meritorious public prosecutor's decision.¹⁴

On the occasion of the attack, the Ministry of Interior noted that they remain "firm in their intention to terminate the previous practice of unpunished attacks and obstruction of journalists while doing their work." After they undertook measures and activities in relation to this event, SIA Skopje discovered the identity the attacker. It was concluded that he was A.B. (38) from Skopje, who first attacked one journalist (with violent behavior, knocking the phone that he was recording with out of his hand, dragging him and twisting his arm) and then proceeded to attack the other journalist, that is, the cameraperson (by hitting the camera that he was shooting with), while they were on official duty - covering a civil initiative for collecting signatures against the construction of refugee camps. Against the person, according to the Ministry of Interior, an appropriate complaint will be submitted to the competent Public Prosecutor's Office in Skopje, in relation to the reasonable suspicion that he committed the criminal act of "violence".¹⁵

Apart from the Association of Journalists of Macedonia which condemned this incident against the team of reporters from Nova TV, the Agency for Audio and Audio-Visual Media Service (AVMS) also condemned both this one, and the incident with Kurir's cameraperson.¹⁶

In addition to its other activities, the AVMS also started monitoring the broadcasters' reporting on the local elections in 2017, and a letter was sent to all broadcasters informing them in detail about the obligations arising from the Electoral Code that they are bound to adhere to until the commencement of the election campaign, where it was also announced that special trainings will be held for this purpose. The AVMS also reminded that starting from the day when the elections are announced, the deadline of five days, during which all the television and radio stations that will broadcast paid political advertising during the election campaign should determine and submit their price lists to the Agency, the State Election Commission, the State Audit Office and the State Commission for Prevention of Corruption, runs.

On 22 August 2017, the first Report on the Monitoring of the Media Coverage of the Local Elections 2017 for the period from 7 to 16 August 2016 was published, which shows that the broadcasters, in their news blocks, generally abide by the professional journalistic standards. "In most of the media, there is a notable

¹⁴<http://www.pravdiko.mk/ojo-skopje-postapuva-za-rasvetluvane-na-napadot-vrz-ekipata-na-nova-tv/>

¹⁵<http://www.mvr.gov.mk/vest/4629>

¹⁶http://www.avmu.mk/index.php?option=com_content&view=article&id=3343%3A2017-08-17-14-10-38&catid=88%3Asoopstenija-media&Itemid=313&lang=mk;
http://www.avmu.mk/index.php?option=com_content&view=article&id=3350%3A2017-08-24-13-05-24&catid=88%3Asoopstenija-media&Itemid=313&lang=mk



propensity to try and provide several differing points of view on the issues and topics they are covering. A small number of media outlets are an exception to this, where there is a notable tendency to broadcast the standpoints of subjects who share the same view on certain topics.”¹⁷

Ombudsman

Given that the local elections were announced in August, several institutions of the system engaged in monitoring the pre-election and election process.

The Ombudsman, Mr. Memeti, informed that the communication among the bodies and institutions that are monitored by his office has significantly improved, but also that, in spite of the legal changes which were undertaken, due to lack of capacities and non-compliance with the legal regulations, their practical application has been prevented.

In this regard, the Ombudsman particularly complained to the OSCE Mission in the Republic of Macedonia that there is a lack of funds for conducting the monitoring. He pointed out that due to lack of staff, the monitoring of the election process, as well as the opening of the free telephone line for the upcoming local elections, is at stake.¹⁸

Discrimination

The post on the social networks by the team of the 31st International Athletic Marathon which involved the participants' prizes, and the different prize amounts depending on whether the winners were male or female¹⁹, caused a multitude of public reactions. The Helsinki Committee for Human Rights of the Republic of Macedonia reacted against the decision of the International Athletic Marathon Ohrid to have the award funds for male runners be approximately twice higher than those for female runners. This was characterized as a classic case of direct discrimination on grounds of sex that contravened with the principles of the sporting competition, which is ensuring equality of all participants.²⁰

After the reactions, the organizing team of the International Athletic Marathon issued an apology, accompanied by a correction in the awarded amounts that became equal for both male and female participants.

¹⁷http://www.avmu.mk/index.php?option=com_content&view=article&id=3349%3A-2017-&catid=88%3Asoopstenija-media&Itemid=313&lang=mk; The report on the media coverage is available here: http://www.avmu.mk/images/lzvestaj_od_monitoring_7-16_avgust_2017.pdf

¹⁸<http://sdk.mk/index.php/makedonija/narodniot-pravobranitel-se-pozhali-na-obse-deka-nema-pari-za-monitoring-na-lokalnite-izbori/>

¹⁹<https://www.facebook.com/reflektor.mk/photos/a.1322313007845255.1073741828.1322190011190888/1420319931377895/?type=3&theater>

²⁰http://mhc.org.mk/announcements/620?locale=mk#.Wa_CH1EjHIU