



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

I JUDICIARY

Independence

Priebe published its second expert report

Towards the end of the month, the expert group of the European Committee, led by Reinhardt Priebe, published the second report on the systemic problems with the rule of law in the Republic of Macedonia.

In this report they welcomed the reforms initiated in the area of the judiciary, at the same time emphasizing the need of inclusiveness and transparency in the process. Furthermore, the report also indicates the necessity of adequate planning, as well as the need to avoid unnecessary delays in the long-awaited reforms.

The experts pointed out once again that the control and abuse of the judicial system by a small number of judges on powerful positions has not ceased, and that they have continued to bring pressure on their more junior colleagues and have continued to use their power to appoint, evaluate, discipline and dismiss their colleagues from lower ranks by pressuring them in order to achieve certain political goals.

The report points out that it is necessary to reform the procedures for disciplining and evaluating judges, but at the same time laid out a positive remark that despite the abuses noted in a small number of judges, the majority of judges do administer justice honestly and fairly. In that sense, it was emphasized that although the new authorities are authorized, but also obliged to take certain actions against those judges who have abused their position, a general re-election of judges is not recommended because the behavior of some judges can in no way be considered something universal, and a “purge” of the judiciary could be politically abused. Hence, they call for full respect for the principle of separation of powers, whereby the judges who are under political influence would be subjected to effective ethical and professional rules, and wherever there is evidence and reasonable suspicion of crimes committed by the judges, applicable procedures should ensue, whereby they would be given a permanent ban on exercising law.

The report also extensively addresses the Judicial Council, stating that the Council does not fulfill its duties to ensure the independence of the judiciary, and it carries a great responsibility for the inadequate assignment of cases. The experts also expressed concern over the fact that the position of the council members as regular full-time officials causes the judges to lose touch with their judicial colleagues and the profession. It is noted that no measures were taken by the Council to re-commence the disciplinary



proceedings which lead to the dismissal of certain judges, as well as measures for implementation of the judgments of the European Court of Human Rights, which established violation of Article 6 of the European Convention due to unfairness of proceedings.

While the Judicial Council's model is left to be defined in the Judicial Reform Strategy, the expert group proposes, in principle, an in-depth re-examination of its role and consideration of the possibility of responsibility for its members. At the same time, it restates that the existing system of measuring and evaluating the performance of judges based on quantitative criteria is to be replaced by a new system that will focus on the quality of justice, which would reduce the possibility of manipulation, while the dismissal of judges would be the last measure which would be ordered only in exceptionally serious cases.¹

Re-evaluation of the work of court presidents

The Judicial Council of the Republic of Macedonia informed the public that at the continuation of the 262nd Session held on 20 September 2017, decisions were made on the submitted requests for re-evaluation of the work of the Presidents for 2015 and 2016. The Judicial Council excluded the public when deciding on the evaluation.²

Impartiality

Necessary re-evaluation of the ACMIS system - recommended in the second Priebe Report

In the aforementioned second expert report of the Priebe group, the experts expressed their doubts about the credibility of the ACMIS system for assignment of cases, with particular emphasis on its functioning in the Primary Court Skopje 1. According to them, there is a possibility that it has been manipulated in several ways, as follows: 1) redistribution of "ineligible" judges in other departments when sensitive subjects were to be assigned; 2) taking a sick leave or other types of leaves during the period of assignment of such cases by judges who wanted to avoid pressures; 3) the possibility that the differences in the proceedings conducted under the old and new LCPs had been taken advantage of in order to manipulate the system, and 4) abuse of the system through direct access of authorized persons, such as the presidents of the courts. Considering that there has never been a thorough oversight over the functioning of the ACMIS system, the expert group proposes to proceed with such oversight, without political interference, and, if

¹ https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/2017.09.14_seg_report_on_systemic_rol_issues_for_publication.pdf

² http://sud.mk/wps/portal/ssrm/sud/vesti/90a377ec-4d35-4bb7-975b-8635d4dd0597/lut/p/z1/tVPRbtMwFP0WHvLo2Int2OEtMLqQ0JVpBBQ_VHbipmZLnCVesvH1uBIS6gotaOAXy9I55557zzUUcA1FKOdTS2dsK-8uxDJrkkBPH36ANfXKQoywmeXX_8FBFG4JdDwGW04h6wypN0PovzHENxmv8ZCijK1nVuB4vBjtpmtmsADQ9VgDpbatfKAI16cCZAKZKYMVOCUmEKiFIMplwqWBNMK1JViKZsL9eVpolFingsZZmAVEmP3goUSIU5wCiNK8ViFKsj-8f-9vbRb06GfvBPAMS58YlzcShxvGEF1AY1YRT2YQo5BGmOOYJJTHhLn2CWat77uGotdb3es-fOh9sDvnuuF1gAI0TVNYW1vf6bc0TYB-RdnZwcH1IRIWvnn209lqPmPe2bulZvw6vvpN76YxGTzBvbd_4Xbr5y2y8wLMKz-Y3i15Y4bT8Ff2_8uyF8otzy-VzNF_v70Xmf5htnX70Ef6LL-Z14375dun3o5NuB0y7tXD9R9SuyRuOnwy43S4dVbRuNhdvrcCxGL_5S6inKXv1Hb5HYgg!/dz/d5/L2dBISeVz0FBIS9nQSEh/?urile=wcm%3Apath%3A%2Fsovet_mk%2Fsud%2Fpocetna%2Fvesti%2F90a377ec-4d35-4bb7-975b-8635d4dd0597



necessary, with the participation of international institutions and representatives, the purpose of the oversight being to determine possible illegal acts.

The Supreme Court postponed the public hearing on the “Mostrum” Case once again

The Supreme Court of the Republic of Macedonia once again postponed the public hearing on the case of the multiple murders at Smilkovo Lake, because the conditions to hold the public hearing had not been met. More specifically, the Court reported that it received notice from one of the prisons that they had no opportunity to transport one of the defendants from the penitentiary institution.³

The public hearing was previously postponed several times, with various excuses such as sudden sick leaves of judges and the like. The hearing was scheduled for October 3, 2017.

Igor Jug who is suspected of being the leader of the group of thugs in the Assembly on 24 April 2017 got apprehended

In the center of Kumanovo, Igor Jug, one of the thugs who stormed into Parliament on April 27th this year, was arrested, after being out of reach to the law enforcement authorities for a certain period of time. He was detained for taking part in the bloody events in the Macedonian Parliament on “Bloody Thursday” when he was dressed in a black shirt with the sign of the Croatian Pro-Ustasha organization “HOS”.

The information was confirmed by the Ministry of Interior, which also informed the arrest was requested by the Public Prosecutor's Office on May 16 in connection to the events from the raid of the Parliament⁴.

Otherwise, Igor Jug is suspected of the crime “participation in a mob that will prevent an official person while performing official duty” punishable under Article 384, paragraph 1 of the Criminal Code of the Republic of Macedonia.

Several days before his arrest, the Serbian intelligence officer Goran Zivalevic, who was also in the Assembly during the raid on 27th April, singled Igor Jug out as the man who was supposed to kill SDSM leader Zoran Zaev.

³ http://www.sud.mk/wps/portal/vsrm/sud/vesti/2cd7b8a6-da7c-43b2-9a74-56f9c37e8bec!/ut/p/z1/rVJdT8lwFP01e2x6HWPtHgsZllpEYcL6QrquQJV1g5Wh_nrLk4lGwOB9u8n5uOfmYI7nmBvR6JWwujRi4_aUh4uwHwRA7-CeTp46wGlgdBoxgJig2SlAvweYn-Y_Y465NLaya5xW-2yj5aJ49aDe5x5UpVTWCA8aVVvtgS9zklERolwQiYJW5qNikAC1w2UkW0TRTMmjXiV1jtOLOLNzAY_3wy_DwPH5OUjqLMiXxXjQI8CS-KbN6KM_Zu6HjVYHnJhyV7iXT_6YYPDD4VuIYftKh5Pyk9vwSvnhuY64EuqX7ZYz15TSWpVm8xfqkE_d2o01q5e4Vdl22WJZ5fRK2KpKcTdT2Q-Og-o383oYbosZrT-BHnt5Vkl!/dz/d5/L2dBISEvZ0FBIS9nQSEh/?urile=wcm%3Apath%3A%2Fpublic_mk%2Fsud%2Fpocetna%2Fvesti%2F2cd7b8a6-da7c-43b2-9a74-56f9c37e8bec

⁴ <http://fokus.mk/vfrnhymvr-potvr-di-deka-igor-jane-e-uapsen/>



The Criminal Court imposed detention to the Mayor of Pustec, Edmond Temelko

The Primary Court Skopje 1 announced that the Criminal Council of the Department for Organized Crime and Corruption under the said court, acting on SPO's proposal to impose detention against the accused Edmond Temelko, in a public hearing held on 25 September 2017, immediately upon the receipt of the motion in court, adopted a decision that upheld SPO's proposal and ordered the defendant to be detained for 30 days from the date of his apprehension and deprivation of liberty, due to the reasons provided for in Article 165, paragraph 1 i. 1 of the LCP.⁵

He was already detained once, but then released by the Court. On July 21 2017 the Court of Appeals decided to revoke Temelko's passport and imposed an obligation on him to call in the Criminal Court once a week. Some media broadcasted information that the Interior Ministry has already apprehended Temelko, but there has been no official confirmation from the Ministry regarding this.

Temelko is one of the suspects of the Special Public Prosecutor's Office for criminal acts against the elections and voting. In the "Titanic" Case, the SPO initiated an investigative procedure for a series of electoral irregularities (criminal association, violation of the right to vote, violation of the voters' freedom to choose, destruction of electoral material and abuse of funds for the election program) related to the 2013 local elections. In February 2013, when the case was presented to the public, Prosecutor Fatime Fetaj said that the persons involved in the investigation had used their influence and created a criminal group that committed crimes at the local and national levels to ensure the victory of a certain political party in the elections.

The Criminal Court rejected Gruevski's and Mijalkov's requests to have their passports back

The Criminal Council of the Organized Crime and Corruption Department under the Primary Court Skopje 1 rejected former Prime Minister Nikola Gruevski's request to have his passport back, as ungrounded. Gruevski remains without a passport and has a ban on taking out a new travel document for the purpose of crossing the state border, and is also temporarily deprived of his diplomatic passport.

The decision, as announced by the Court, was adopted at a closed session, and the rejected parties have the right to appeal against this decision to the Skopje Court of Appeals within 3 days.⁶

⁵ http://www.sud.mk/wps/portal/oskopje1/sud/vesti/9deab79e-33e5-47b4-bb97-67bd8b090c7f!/ut/p/z1/rVJdT8lwFP01e2x6hbF2j4UMEEWiMMf6QtqtgyrrBpSh_nrLk4lGwOB9u8n5uOfmYl7nmBvR6KWwujji7faUB4tg4PtA7-CeTp-6wClgdBYygljg5BRg0AfMT_OfMcc8M7a2K5zWe7nW2aJ89WC3zz2oq0xZlzo1M5qD8JcCUIChdpt1UE-kT6SMiQoiDKnEkLISHHUqzOd4_QidHIu4PF--GUYOD4_B0mdBfmymAz7BFgc3XQYfWxNmPtho9UBx6balu7l0z8mGP5w-BZi1LnS4aT89Da4Un50riOuhPpls-HMNaUyVr1ZPP-Xqijh1nbcGy_dvcKukDZFhecXUesyLmn7HZmP7gMa9CQ9zloyobtPglwbYA!!/dz/d5/L2dBISEvZ0FBIS9nQSEh/?uril=wcm%3Apath%3A%2Fpublic_mk%2Fsud%2Fpocetna%2Fvesti%2F9deab79e-33e5-47b4-bb97-67bd8b090c7f

⁶ http://www.sud.mk/wps/portal/oskopje1/sud/vesti/a989cceb-90ec-4747-9a51-e3d889b003ca!/ut/p/z1/rVJdT8lwFP01e2x6YYO1j4UMEEWiA8f6QrpSoMq6AWUov97yZKJxYPC-3eR83HNzMMczl2o9EpYXRixcXvK2_N2PwiA3MMDiZ87wCilyYQgCjESR2g3wPM6_kvMGMujs3tGqfllDtoOc_fPNgfFh6UhVTWCA8qtbfaA0EJIVJliiKSKAiDEFHRaiDlLwihGYAvxVmvIHqB06vQyaWA5_vhl2Hg-



The criminal court also rejected the plea to return the passport to the former director of the secret police, Sasho Mijalkov. The court assessed his request as ungrounded as well.

With this decision of the Court, the precautionary measures - Mijalkov to call in Court once a week, as well as the temporary seizure of the passport in order to prevent him from crossing the state border and the ban on being issued a new travel or other document, remain in force.

The SPO demanded Gruevski's detention for the Titanic case, but the Primary Court Skopje 1 ordered precautionary measures. Mijalkov and Gruevski are the lead suspects in the "Target – Tvrdina" Case.

The Criminal Court excluded the wiretapped calls from the evidence in "Tolik", "Tenderi" and "Tortura" as illegally obtained and unusable in the proceedings

The Evaluation Committee for the Indictment Act of the Primary Court Skopje 1, which acts ex officio in the assessment of SPO's indictment in the "Tenderi" Case, acting on the request for exclusion of the unlawfully obtained evidence from the case files, attached to the appeal against the decision, adopted a decision to exclude the evidence from the telephone calls from the case files as evidence obtained in an unlawful manner and by violating of the rights and freedoms set forth in the Constitution of the Republic of Macedonia.

The Council adopted the same decision with the same rationale at the proposal of the defense in the cases "Toplik" and "Tortura" as well⁷.

The Court of Appeals Skopje allowed the wiretapped talks to be used as evidence in the "Trista" Case

The Criminal Council of the Skopje Court of Appeal said that after the session held on September 18, 2017, and in connection with the case known to the public as "Trista", the Criminal Council of the Skopje Court of Appeals established after the filing of an indictment against the accused Gj.P. from S, adopted a decision to uphold the appeal of the Special Public Prosecutor's Office.⁸

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HbyGGrRsdauXju_aN8sNLHXEI1K_bLWuEuKYWx6t3i2b9UxQk3d6PuaOXuFXaNtFkWeHYVtcynOfE_kDI1HIG_m5HjZJK
nZP8JHIdogq!!/dz/d5/L2dBIS9nQSEh/?uril=wcm%3Apath%3A%2Fpublic_mk%2Fsud%2Fpocetna%2Fvesti
%2Fa989cceb-90ec-4747-9a51-e3d889b003ca](http://www.sud.mk/wps/portal/oskopje1/sud/vesti/a989cceb-90ec-4747-9a51-e3d889b003ca)

⁷ [http://www.sud.mk/wps/portal/oskopje1/sud/vesti/a989cceb-90ec-4747-9a51-e3d889b003ca!
/ut/p/z1/rVJdT8lwFP01e2x6YYO1j4UMEEWiA8f6QrpSoMq6AWUov97yZKJxYPC-3eR83HNzMMczl2o9EpYXRixcXvK2_N2PwiA3MMDiZ87wCilyYQyGcJESR2g3wPM6_kvMGmujS3tGqflldtoOc_fPNgfFh6UhVTWCA8qtbfaA0EJIVJliiKSKAiDEFHRaiDILwihGYAvxVmvIHqB06vQyaWA5_vhI2Hg-PwSJHUW4ZfFeNALgU2jRouRp-aYuR9WWWh3x1BS73L08_mOCwQ-
HbyGGrRsdauXju_aN8sNLHXEI1K_bLWuEuKYWx6t3i2b9UxQk3d6PuaOXuFXaNtFkWeHYVtcynOfE_kDI1HIG_m5HjZJK
nZP8JHIdogq!!/dz/d5/L2dBIS9nQSEh/?uril=wcm%3Apath%3A%2Fpublic_mk%2Fsud%2Fpocetna%2Fvesti
%2Fa989cceb-90ec-4747-9a51-e3d889b003ca](http://www.sud.mk/wps/portal/oskopje1/sud/vesti/a989cceb-90ec-4747-9a51-e3d889b003ca!/ut/p/z1/rVJdT8lwFP01e2x6YYO1j4UMEEWiA8f6QrpSoMq6AWUov97yZKJxYPC-3eR83HNzMMczl2o9EpYXRixcXvK2_N2PwiA3MMDiZ87wCilyYQyGcJESR2g3wPM6_kvMGmujS3tGqflldtoOc_fPNgfFh6UhVTWCA8qtbfaA0EJIVJliiKSKAiDEFHRaiDILwihGYAvxVmvIHqB06vQyaWA5_vhI2Hg-PwSJHUW4ZfFeNALgU2jRouRp-aYuR9WWWh3x1BS73L08_mOCwQ-
HbyGGrRsdauXju_aN8sNLHXEI1K_bLWuEuKYWx6t3i2b9UxQk3d6PuaOXuFXaNtFkWeHYVtcynOfE_kDI1HIG_m5HjZJK
nZP8JHIdogq!!/dz/d5/L2dBIS9nQSEh/?uril=wcm%3Apath%3A%2Fpublic_mk%2Fsud%2Fpocetna%2Fvesti
%2Fa989cceb-90ec-4747-9a51-e3d889b003ca)

⁸ [http://www.sud.mk/wps/portal/asskopje/sud/vesti/07942c21-c9fb-44ae-992a-5c03637e3ba6!
/ut/p/z1/rVLJbslWEP2aHC0PWWZ2jQSyIpagNKYkvyDEJuCVOICa0fH3NqVkrAhWd20hvmTd6mOEEM8VbueJaVopvzJ4yf-EPXRfIPTyQ6LkLtA8BmYUuOb_g-TnAcACYnee_YlaZULrWa5zW-2wjxJ8s6DZLy2oK5FrS1o80ZLCyAIXVvYHSTCikOuy3MUHjzHngDhd4Lcybh_0quFXOLOkvt8UsDT_fDLUDB8dgmSGo_vgy2I6GgRA437Ho-](http://www.sud.mk/wps/portal/asskopje/sud/vesti/07942c21-c9fb-44ae-992a-5c03637e3ba6!/ut/p/z1/rVLJbslWEP2aHC0PWWZ2jQSyIpagNKYkvyDEJuCVOICa0fH3NqVkrAhWd20hvmTd6mOEEM8VbueJaVopvzJ4yf-EPXRfIPTyQ6LkLtA8BmYUuOb_g-TnAcACYnee_YlaZULrWa5zW-2wjxJ8s6DZLy2oK5FrS1o80ZLCyAIXVvYHSTCikOuy3MUHjzHngDhd4Lcybh_0quFXOLOkvt8UsDT_fDLUDB8dgmSGo_vgy2I6GgRA437Ho-)



The wiretapped talks that the public had no opportunity to hear so far, will serve as evidence in the trial for the “Trista” case. The Skopje Court of Appeals made a merit-based decision and decided to reject the motion by the accused Gj.P. by S. to exclude the audio records from a telephone contact from the case files as evidence obtained in an unlawful manner, on the grounds that the said evidence is evidence obtained in a lawful manner and that as such it can be used as evidence in the criminal proceedings in question. This also altered the decision of the Primary Court Skopje 1 Skopje according to which the said evidence was excluded from the case file as evidence obtained in an unlawful manner.

This is the second time that the Court of Appeals decides in favour of SPO’s request for the conversations from the bombs to be used as evidence. Just two months ago, the judges from this court accepted the bombs as evidence in the case known as “Slaps in the Municipality of Centar” in which the former Prime Minister Nikola Gruevski was accused that through his fellow-party member Mile Janakievski he ordered violence against the Mayor of Centar during the protests in 2013. The opposition VMRO-DPMNE then reacted that the Court of Appeals must have succumbed to political pressure from the new government, while the court explained that accepting the bombs is not something new and there is already established court practice on this. As an example they used the “Spy” Case in which illegally obtained materials were used as evidence in court hearings.

Competence

The Fourth and Fifth Meetings of the Council for Reform in the Judiciary Sector Held

At the fourth expert meeting, the members of the Council gave their final and specific remarks aimed at improving the content of the Draft Strategy and the Action Plan and recommended that the Working Group and the Ministry of Justice start with their public presentation in order to acquaint the wider public with these draft documents and provide space for proposals, remarks and amendments by all stakeholders in the process of finalization.

The Council recommended that after the completion of these activities, the procedure for adopting the Draft-Strategy with the Action Plan be continued in a transparent and inclusive manner.

The Judicial Reform Council also raised several important issues aimed at restoring the citizens’ justice, and in the upcoming period they will propose serious measures and actions to the Government of the Republic of Macedonia, in order to restore the citizens’ trust in the justice system.⁹

At the fifth meeting, the Draft Law on Pardons, the Draft Law on Amending the Law on the Judicial Council of the Republic of Macedonia and the Draft-Law on the Abolition of the Law on the Council for Establishing the Facts and Initiating a Procedure for Determining Responsibility of a Judge were considered. The Council accepted the idea of adopting these laws and concluded that the Law on Pardons should be

[TjnlLzw1bmBxyraleal0d_TDD64fAtxNi70eGsfHTn3yg_vtQRUOL5ut0yappSKZ2_a5z8S1WMsL2b9CYrcy_XayRVUeHkKmpdxiVxPpA6dh_RsJeRw6wo56T5BLLdCx4!/dz/d5/L2dBISEvZ0FBIS9nQSEh/?urile=wcm%3Apath%3A%2Fpublic_mk%2Fsud%2Fpocetna%2Fvesti%2F07942c21-c9fb-44ae-992a-5c03637e3ba6](http://www.pravda.gov.mk/TjnlLzw1bmBxyraleal0d_TDD64fAtxNi70eGsfHTn3yg_vtQRUOL5ut0yappSKZ2_a5z8S1WMsL2b9CYrcy_XayRVUeHkKmpdxiVxPpA6dh_RsJeRw6wo56T5BLLdCx4!/dz/d5/L2dBISEvZ0FBIS9nQSEh/?urile=wcm%3Apath%3A%2Fpublic_mk%2Fsud%2Fpocetna%2Fvesti%2F07942c21-c9fb-44ae-992a-5c03637e3ba6)

⁹ http://www.pravda.gov.mk/novost_detail.asp?lang=mak&id=1383



reviewed by the Council since it is still in public consideration and further changes based on possible comments and suggestions could not be excluded.

Within the framework of the meeting of the members of the Council for Judicial Reform, the issue of the so-called “political trials” was raised. The deliberations of the members of the Council were aimed at adopting a regulation that would regulate this issue as well as lead to a solution on the manner of determining whether a case of criminal prosecution would be subject to reopening of the trial.¹⁰

A public presentation of the Draft-Strategy for Reform of the Judicial Sector with the Action Plan for the period 2017-2021 was held

The working group drafting the Strategy for Reform of the Judicial Sector within the Ministry of Justice held a working meeting in Ohrid where the draft strategy for reform of the judiciary sector was presented together with the Action Plan.¹¹

Minister Saliji stressed that the Government had reached a firm decision and political consensus on implementing resolute judicial reforms. The President of the Working Group, Prof. Dr. Ana Pavlovska-Daneva presented the core of the Draft Strategy, emphasizing the key and specific guidelines for the reform of the judicial sector. Moreover, independence and impartiality, advancing the quality of the institutions that constitute the justice sector; responsibility, efficiency and transparency were listed as guiding principles in the creation of this strategic document.

II FIGHT AGAINST CORRUPTION

SPO published the fourth report on its work

The Special Public Prosecutor's Office (SPO) published the fourth report on its work, which informs that as many as 142 new pre-trial proceedings were registered over the past six months, 49 of which were initiated on their own initiative, while 93 cases were established based on reports by other submitters. According to the statistics presented, at the moment the prosecutors are working on a total of 99 pre-investigative procedures.¹²

According to the report, the new pre-investigative procedures relate to the unlawful interception of communications, as well as irregularities in relation to media financing, abuse of funds for election campaign financing, misuse of public procurement procedures, tax evasion, money laundering, various corruptive actions and various abuses of official position and powers and financial investigations. It should be borne in mind that some of the procedures were initiated before this reporting period, and some of them reached the stage of investigation in this period.

¹⁰ http://www.pravda.gov.mk/novost_detail.asp?lang=mak&id=1392

¹¹ http://www.pravda.gov.mk/novost_detail.asp?lang=mak&id=1384

¹² <http://www.jonsk.mk/wp-content/uploads/2017/09/%D0%98%D0%97%D0%92%D0%95%D0%A8%D0%A2%D0%90%D0%88-15.09.2017.pdf>



In the report, the Special Public Prosecutor Katica Janeva emphasized that they will continue to work actively in the upcoming period. She emphasized that SPO's goal is to open new investigations and take legal action aimed at investigating the crimes which are under their jurisdiction. Apart from this, there will also be emphasis on listening to and processing the audio files and initiating new pre-investigative procedures.

Janeva also reminded that during the reporting period 18 indictments in 19 cases were submitted, against a total of 120 persons.

Start of the review process of the implementation of the United Nations Convention against Corruption - Second cycle

The Ministry of Justice informed that the process of reviewing the implementation of the United Nations Convention against Corruption (Second Cycle), which will cover Chapters II "Preventive Measures" and V "Property Refund", has commenced. The process, according to the Ministry, starts to be implemented by performing a self-assessment on September 18, 2017. In this context, the Ministry encouraged interested individuals and organizations to get informed about the activities within the process through the process coordinator in the Republic of Macedonia.¹³

ONGOING JUDICIAL PROCEEDINGS

"Divo Naselje" - COC 127/15

Over the course of September, a total of six hearings were held from the case with the working title "Divo Naselje" (on 14, 18, 20, 22, 26 and 28.09.2017). The hearings in September continued with the closing arguments. At the hearing on 28 September 2017, the closing arguments were completed, while the hearing for announcement of the verdict has been scheduled for October 17, 2017.

COC-95/16 – Separate procedure "Divo Naselje"

At the hearing held on 11 September 2017, the Public Prosecutor's Office and the Defense offered additional evidence. Material evidence was proposed by the PPO (a CD from the police action and forensic expertise on the injuries of the killed), while the defense proposed hearings of witnesses (members of the Ministry of Interior present during the escape of the defendant and several politicians). The hearing scheduled for 21 September was postponed.

At the hearing held on 27 September, the court adopted a decision to accept the additional evidence proposed by PPO, and rejected the evidence proposed by the defense as there were no indications that the proposed witnesses had information of significance for the event. Then the court made a decision to

¹³ http://www.pravda.gov.mk/novost_detail.asp?lang=mak&id=1389



proceed and present the classified evidence (the CD from the police action), which entailed required exclusion of the public. The terms for the closing argument are yet to be set.

“Pavle” C-1525/16

At the hearing held on September 1, 2017, a representative from the damaged party, the Ministry of Culture submitted a new expert statement on the damage incurred which estimates the damage to 15,600 MKD. Due to the absence of the public prosecutor, as well as a representative of the State Attorney's Office, the hearing was postponed for October 2 at 09:30 am.

“Rover” - C-2454/15

The hearing from 6 September 2017 was postponed for 15 November 2017, due to the absence of the public prosecutor in the proceedings, as well as the absence of one of the defendants”.

“Tvrđina-2” – C - 1905/16

The hearing scheduled for 26 September 2017 was postponed as the court had not been notified by Mol that the defendant is on the run, that is, he is inaccessible to the law enforcement authorities. The next hearing was scheduled for October 2, 2017.

“Municipality of Centar” C 1904/16

The hearing scheduled for 28 September 2017 for the case with the working title “Municipality of Centar” was immediately postponed due to the fact that some of the defendants were not present at the trial. The next hearing was scheduled for November 20, 2017.

III FUNDAMENTAL RIGHTS

1. Freedom of expression and media pluralism

The trend of targeting media workers continued in September as well. The vehicle of Viki Klincharova, journalist of the weekly magazine Focus, was damaged by an unknown perpetrator along the whole right side with a sharp object.¹⁴ She emphasized that for years back she had received insults, slander and threats from persons who had violated the law, and which she had exposed in the media, and more recently she was the target of verbal threats, insults and slander by a person with a criminal record for her text published in Focus. “I reported the case twice to the police within three days. When I called the police station for the second time in, the Duty Officer told me that they had not yet contacted the reported person after the first report, since the previous day was holiday. She also stressed what the police officer on duty said to her: “It's a threat when they come at you with a knife or a gun, and not if they write something to you on Facebook”. The journalist said that this attitude led her to mistrust the institutions. “I cannot say with certainty whether the same person is involved in this case, whether he damaged my car, but the fact is that he managed to start a real witch hunt on social media against me, supported by

¹⁴ <http://fokus.mk/oshteten-avtomobilot-na-novinarka-vo-fokus/>



his relatives, but also friends and relatives of people who have violated the law and that we have written about, and whose offences were duly recorded in the daily bulletins of the Ministry of Interior”.

The AJM condemned this act as a direct attack on the freedom of speech and the right to information, and stressed that the best prevention of future attacks on journalists was the establishment of an effective institutional mechanism for the harsh punishment of the attackers. Over the past six years, AJM has registered over 50 attacks on journalists, and none of the perpetrators have been punished.¹⁵

The election campaign for local elections started on September 25, 2017. The Agency for Audio and Audiovisual Media Services, sent a letter informing the broadcasters that it will continue monitoring the election media presentation, in accordance with the provisions of the Electoral Code applied during the election campaign.¹⁶ This letter includes a detailed list of the obligations of the broadcasters covering the local elections in this period of the election process.

The fourth ten-day monitoring report on media coverage for the period from 6 to 15 September 2017, by the Agency for Audio and Audiovisual Media Services, shows that most televisions and broadcasters adhere to the professional standards, some of them taking a critical position towards the government. However, in the reporting period, a deviation from these standards was spotted in several broadcasters. It is stated that “The first program of the Macedonian Radio Television - MRT 1, when informing about the political parties, fully focuses on the two major parties – the one from the opposition and the ruling one, and offers nearly no information on the other parties / independent candidates, who also prepared candidate lists and had other activities. The mode of reporting of TV Alfa and TV Nova in turn indicates a violation of the principle of objective and impartial presentation of events with equal treatment of different views and opinions, and elements that indicate possible connection of editorial policies have been observed - especially in how they address the issue of migrants, the departure of foreign investors from Macedonia, the publication of the alleged MCIC poll, which they have denied conducting, etc.”¹⁷

Towards the end of the month, several civil society organizations (Eurothink - Center for European Strategies, NGO Infocentar, Transparency Macedonia and the Helsinki Committee for Human Rights) presented the third monitoring report on the work of the Agency for Audio and Audiovisual Media Services (AVMU) and the Agency for Electronic Communications (AEC), within the project “Monitoring Performance, Effectiveness, Transparency and Responsibility of Media Regulators - PROformance Watch”. This third quarterly report refers to the work of AVMS and AEK in the period April - June 2017 and is prepared on the basis of the “Monitoring Matrix for the work of AVMU and AEK”, 1 created in consultation with the two regulatory bodies and published in January 2017.

During the presentation, among other things, it was pointed out that the AVMS maintains a solid level of transparency and accountability, but that the need for full political and partisan independence of AVMS has emerged as an extremely important and crucial issue in this quarter as well. In that sense, it was

¹⁵ <http://znm.org.mk/?p=3733>

¹⁶ http://trinity.mk:53000/wpcontent/uploads/2017/09/lzvestuvanje_do_radiodifuzeri_monitoring_vo_izborna_kampanja.pdf

¹⁷ http://trinity.mk:53000/wp-content/uploads/2017/09/lzvestaj_od_monitoring_za_period_od_6-15_septemvri_2017_godina.pdf



emphasized that with the Reform Plan 3-6-9 the Government encompassed AVMU i.e. announced changes in the legislation on the election of members of its Council based on merit.¹⁸

At the same time, the report noted the existence of differences in the recognition of hate speech between the AVMS, the Public Prosecutor's Office and the Commission for Protection against Discrimination (CPAD), like in the case of the news stories of Sitel TV during the parliamentary elections in 2016. In fact, what was deemed hate speech by AVMU, was just a political campaign according to CPAD.¹⁹

2. Discrimination

The Ombudsperson established discrimination based on gender, sex, health, disability and religion in the textbook on “Civil Education” for the 8th grade. In the submitted complaint by the Anti-Discrimination Network regarding discriminatory content in the textbook, it is stated that through the content of one of the lessons in the textbook an attempt is made to explain women's rights through a religious standpoint, with a quotation which imposes the women's obedience to the husband, which, in addition to being discriminatory on grounds of religion and religious conviction, encourages and promotes discrimination against women and gender biases. In addition, this constitutes a violation of the principle of secularity in education, since religious texts are presented as legitimate sources of information on women's rights, which discriminate on grounds of religion and religious beliefs against women and students belonging to other religions or who are not religious.²⁰ After the procedure establishing discrimination was conducted, the Ombudsperson submitted a Recommendation on the manner of acting on the concurrent violations with specific instructions for actions to be taken by the line ministry. The Ministry of Education and Science accepted the recommendations of the Ombudsman and decided to withdraw the disputed textbook.²¹ The Helsinki Committee, which initiated the case, welcomed the Ombudsperson's opinion and the decision of the Minister of Education to withdraw the textbook from circulation, and appealed for this practice to continue in future for all textbooks containing discriminatory content.

During September, a case was reported in which the director of the elementary school “Bratstvo i edinstvo” from Ohrid banned two sisters – eighth grade students to attend classes because they were wearing a head scarf. The Ombudsperson reacted by condemning this action of the Ministry of Education which gave written permission to the director of the elementary school “Bratstvo I edinstvo” from Ohrid to ban the girls from attending classes and urged the school to allow them to attend school. The Ombudsperson's reaction pointed to the need for consistent compliance with the laws and obligatory implementation of the ratified international acts as an integral part of our legal order and stated that “the Constitution of the Republic of Macedonia and the European Convention on Human Rights envisage and allow freedom of religion and freedom of expression of religion, and according to the Convention on the Rights of the Child, the freedom to manifest the religion may only be regulated with the limitations provided for by law, and such restrictions are not stipulated in the Law on Primary Education and other

¹⁸ <http://eurothink.mk/news/MLBQK7cCq57am35Mq>

¹⁹ The integral text of the report is available here: <http://eurothink.mk/gridfs/data/id/c1a0cb9ec3fbc51e998d9947>

²⁰ <http://mhc.org.mk/announcements/631?locale=mk#.Wd1kl2iCzIU>

²¹ <http://mhc.org.mk/announcements/633?locale=mk#.WdluZ2iCzIU>



positive legal regulations”.²² The Ministry of Education and Science promptly reacted stating that their letter sent to the school principal was misinterpreted. The announcement states that the letter (sent after the student's parents turned to the MES for an opinion on the case) does not allow the school principal to forbid the students from attending classes because they wear headscarves but only indicates the obligatory nature of primary education and the competence and responsibility of the school principal when it comes to exercising the rights and obligations of students.²³

3. Closed institutions

On the initiative of the Helsinki Committee for Human Rights of the Republic of Macedonia, on September 11, 2017, the Executive Director of the Helsinki Committee, Uranija Pirovska, the Ombudsman, Ixhet Memeti and the Prime Minister Zoran Zaev together with a delegation from the relevant ministries in the Government of the Republic of Macedonia, including the head of the Directorate for Execution of Sanctions under the Ministry of Justice, Jovica Stojanovic, paid a visit to the Idrizovo Penitentiary Correctional Facility in order to inspect the situation in the largest prison in the country.

During the visit, the Executive Director of the Helsinki Committee for Human Rights, Uranija Pirovska, highlighted several aspects of the poor functioning of this penitentiary institution and of the overall prison system in the country, such as corruption, but also said that the management of the prisons should be entrusted to professionals.²⁴

The Ombudsman, for his part, stated that for twelve years in line he has been alarming and demanding solutions to improve the catastrophic conditions in the prisons, and that the ongoing practice of adopting action plans has proven to be a poor decision that has not yielded the required results because there is no improvement in the facilities and conditions, the health system is devastated and there is lack of professional staff. He also stressed that the prisons have a dysfunctional system of re-socialization which, instead of providing the desired results, creates returnees, and turns the juveniles into adult criminals, which replace the educational-penitentiary institutions for penitentiary-correctional institutions. He stressed that: “The conditions in prisons are detrimental to human dignity. The Republic of Macedonia is not at the bottom, I would say that it is below the bottom when it comes to the conditions and treatment of convicted persons. Therefore, I hope that in the upcoming period, all the segments of the prison system will start to be improved with a serious approach”.²⁵

After the visit, Prime Minister Zoran Zaev said he was ashamed to be the prime minister of a country whose prisons have inhuman and substandard conditions which are under any human dignity and that he will try, with the help of the media, to provoke a debate in the public sphere in order for these conditions

²² <http://www.slobodenpecat.mk/hronika/ohrid-direktorot-im-zabranil-na-osmooddelenki-da-posetuvaat-nastava-shamija/>

²³ <https://www.slobodenpecat.mk/drustvo/mon-pogreshno-protolkuvan-dopisot-za-shamiite-vo-uchilishtata/>

²⁴ <http://www.mhc.org.mk/announcements/632?locale=mk#.WdIvLWiCzIU>

²⁵ http://ombudsman.mk/MK/aktivnosti/241424/narodniot_pravobranitel_g_idzhet_metei_premierot_g_zoran_zaev_i_izvrshniot_direktor_na_helsinshkiot_.aspx



to urgently improve. He added that as one of the options, (which is only aimed at reducing the overcrowding of the facilities under “Izdizovo”), a debate had already started within the institutions for pardon of some of the convicts through a model of abolishing 30% of the total sentence, but also through other models addressing crimes where permitted, however excluding severe forms of crime, pedophilia and crimes against humanity. The prime minister added that some parts of the prison have to be demolished as their renovation is not possible. When asked by the media what happened to the loan (of 46 million euros) taken from the European Investment Bank 7-8 years ago to build a new prison in Idrizovo, the Prime Minister gave the floor to the architect who was supposed to build the new prison. She noted that the renovation began as late as 2014 and according to her, only a few percent of all facilities have started to be renovated or completed, while the bulk of the ruined prison is still untouched.²⁶

Ten days later, on September 21, 2017, representatives of the Helsinki Committee paid a visit to the psychiatric hospital “Skopje” in Bardovci, where they also visited the homeless person Muharem Demirov. On that occasion, the Helsinki Committee expressed serious concern over Demirov's health, because, despite having been diagnosed with gangrene on both legs for more than three and a half months, he has been inadequately placed in this psychiatric institution.

Namely, despite the promise of the Minister of Health given on 5 June 2017 that the patient Muharem Demirov will be appropriately hospitalized at the PHI Clinic of Thoracic Vascular Surgery and will be placed in an emergency program for appropriate intervention, and after the intervention will be post-operatively located in the PHI Gerontology Institute “13 November”, where full recovery would be enabled, on June 8, 2017, he was inadequately hospitalized in Bardovci without surgery and without any conditions for adequate health care. It is especially important that the person Muharem Demirov has no psychological disorders and hence he cannot be further held in the PHI Psychiatric Hospital “Skopje”.²⁷

4. Measures against racism and xenophobia

During the month of September, the public debate on the topic of refugees continued, followed by a high level of xenophobic hate speech towards refugees, equating them with terrorists, using offensive and humiliating messages in order to call for prevention of their settlement in the country. In the speeches of the top leadership of VMRO-DPMNE, including its president Nikola Gruevski, communication experts recognized indirect xenophobic and discriminatory messages in relation to migrants.²⁸ In one of his speeches, the leader of the opposition VMRO-DPMNE pointed out that instead of a new factory that would hire people from Macedonia, the government made a plan to integrate migrants in the educational process, instead of creating conditions for opening new jobs for young people, they made a strategy for finding employment solutions for migrants. Several civil initiatives were initiated, aimed at collecting signatures of citizens against settlement of migrants, which incessantly encouraged and provoked hate speech. In addition, decisions were taken to hold a referendum (which was scheduled to take place on

²⁶ <https://sdk.mk/index.php/makedonija/se-sramam-shto-sum-premier-na-zemja-vakvi-zatvori-kazha-zaev-po-uidot-vo-idrizovo/>

²⁷ <http://www.mhc.org.mk/announcements/639?locale=mk#.WdVxl7puJPZ>

²⁸ <https://www.slobodnaevropa.mk/a/28719864.html>



the day of local elections, October 15) in Kocani, Shtip, Gevgelija, Kavadarci, Negotino, Veles, Bitola, Prilep, Radovish, Ohrid and the Skopje municipalities Gazi Baba, Aerodrom and Karposh, where citizens would declare themselves in favour of or against the settlement and integration of refugees in these municipalities.

Although the initiation of civic initiatives and calling for a referendum to examine the citizens' opinions are democratic and legally valid mechanisms, it is necessary for them not to incite or encourage hatred towards a particular target group, in this case refugees.²⁹ That is why the Helsinki Committee warned that the continued spreading and incitement of hate speech towards refugees can easily lead to committing hate crimes and reminded that from the beginning of 2015 to the present, the Committee has registered 34 crimes of hatred committed against refugees or migrants on the territory of the Republic of Macedonia.

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The Minister of Labor and Social Policy Mila Carovska attended the session of the Council of the Municipality of Bitola, where she emphasized that the political party of VMRO-DPMNE is spreading xenophobia and fake news. She said that no apartments will be built for refugees in the Republic of Macedonia, and she asked VMRO-DPMNE to show the alleged document in which the Government took on an obligation to spend finances or draft project documents for construction of apartments, adding that “this strategy does not apply to migrants, on the contrary, the resolution adopted by the Parliament of the Republic of Macedonia on migrants was voted by the majority of VMRO-DPMNE”. She stressed that the referendum is a democratic right and that she believed in the citizens expressing their will on important issues in a referendum, but said that this issue was false.³¹

However, the State Inspectorate for Local Self-Government made a decision to stop the organizing of the local referendums in the municipalities on the issue of the migrants on the day of the local elections, October 15, and to initiate a procedure before the Constitutional Court for determining the legality. The State Election Commission asked the 12 municipalities to stop the activities for preparation and organization of local referendums for migrants until the Constitutional Court's ruling on this issue has been announced.³²

²⁹ <http://www.mhc.org.mk/announcements/630?locale=mk#.Wdlu-WiCzIU>

³⁰ <http://www.zlostorstvaodomraza.mk/reports#>

³¹ <http://faktor.mk/carovska-se-pojavi-na-sednica-na-sovet-vo-bitola-nitu-kje-se-naseluvaat-begalci-nitu-kje-se-gradat-stanovi>

³² <http://fokus.mk/dik-ne-mozhe-referendum-i-lokalni-izbori-vo-ist-den/>