



## Monthly brief on the monitoring of Chapter 23 – Judiciary, Fights against Corruption and Fundamental Rights - December 2017 -

### I JUDICIARY

#### Judicial reform

##### Changes in the members of the Council on Judicial Reform

After the withdrawal of prof. Dr. Gordan Kalajdziev, in December 2017, other members of the Council for Judicial Reform, including Professor Mirjana Najcevska, proceeded to withdraw. They expressed their dissatisfaction with the fact that there was no genuine involvement of the members in the process of conception of the reforms and legal solutions, important initiatives were rejected without argumentation and the Council met relatively rarely, as well as that mainly issues of choice of the Ministry of Justice were served on the agenda.<sup>1</sup> At the same time, they stressed that this body was established only to cover up for the fact that the real decisions were made elsewhere and that it served to paint a false picture that a certain expert team had an impact on the reform processes<sup>2</sup>. Some of the resignations followed after the members of the Council scheduled a working meeting at their own initiative on December 19 in order to define the future functioning of the Council. Professor Frchkoski joined in the criticism stating his belief that a bureaucratic group that wants to lead the reforms was formed, which did not possess the capacity to handle the task at hand, which resulted in a public perception of an attempt at fake reforms.<sup>3</sup> In the wake of these events, the Justice Minister Saljii and his Deputy Ristovski withdrew from the Council in order to unblock the work of this body.<sup>4</sup>

##### The report of the work of the working group inspecting the ACMIS system presented

Justice Minister Bilen Saljii presented the report on the insight into the functionality of the ACMIS system for case assignment and supervision over the implementation of the provisions of the Court Rules of Procedure. This inspection was the result of the report by the Priebe Expert Group that cited serious indications of system abuse and was conducted in October and November 2017 covering the Primary Court Skopje 1 Skopje, the Skopje Court of Appeals and the Supreme Court. The inspection was carried out by a working group consisting of experts from the Ministry of Justice, judges and information

<sup>1</sup> <http://www.libertas.mk/kalajdhiev-sovetot-za-reformi-vo-pravo/>

<sup>2</sup> <https://goo.gl/osLN45>

<sup>3</sup> <http://24vesti.mk/frchkoski-nema-da-dozvolime-diktat-za-pravosudnite-reformi>

<sup>4</sup> <https://goo.gl/rgCLAT>



technology experts. The subject of inspection were the procedures for the functioning of ACMIS, the annual schedule of judges, the procedure for excluding judges from automatic assignment and reassignment of cases, as well as all decisions on non-automated assignment of cases.

The Working Group found inconsistency in the implementation of the law and the Court Rules of Procedure, as well as in the use of the ACMIS in the Primary Court Skopje 1 and in the Supreme Court, while the Court of Appeals Skopje regularly implements the legal and secondary legislation, and the ACMIS system is also implemented and regularly used, apart from the area of the court administration. Other inconsistencies were also noted in each of the courts separately, which refer to the irregular adoption of an Annual Plan, the failure to form a working body and absence of internal procedures for management of the reassignment of cases in courts, excluding judges from the automatic case assignment by drafting a written decision with an order and without explaining the reasons, neglecting the principle of specialization of judges, manual reassignment of cases by a written decision by the President of the Court, reassignment of cases by name from one to another specific judge, which was not done through ACMIS, and so on.<sup>5</sup>

## Independence

### The new State Public Prosecutor Joveski was sworn in at the Assembly

On December 25, 2017, the newly elected public prosecutor, Ljubomir Joveski, was ceremoniously sworn in in front of the Speaker of the Parliament, Talat Xhaferi.<sup>6</sup> Joveski was elected at the third attempt of the MPs, after previously the Parliament twice unsuccessfully attempted to put the election of a new public prosecutor up for vote, but failed to elect one due to an insufficient number of votes. In the first ballot, 59 members were “in favour”, and one had “abstained”, and considering that in the repeated attempt, there were 60 votes “in favour”, the Speaker of Parliament announced a break in order to secure the necessary quorum.

### Reaction of the Association of Judges in relation to the election of judges

The Steering Committee of the Association of Judges of the Republic of Macedonia, at its session held on 20.12.2017, discussed the current situation in the judiciary, with emphasis on the last election of judges and presidents of courts, as well as the latest procedures initiated by the Council for Determining the Facts against Judges. Regarding the election and promotion of judges, the SC called on the Judicial Council of the Republic of Macedonia to respect the legal norms and established principles in the election and promotion of judges and to explain the decisions it has adopted in order to increase the transparency in the work of the Council. At the same time, the Association of Judges in its statement stressed that they did not delve into the competences of the Council Determining the Facts, but called on them to respect

<sup>5</sup> [http://www.pravda.gov.mk/novost\\_detail.asp?lang=mak&id=1416](http://www.pravda.gov.mk/novost_detail.asp?lang=mak&id=1416)

<sup>6</sup> [https://www.sobranie.mk/2016-2020-srm-ns\\_article-svecena-izjava-na-novoizbraniot-drzaven-javen-obvinitel.nspix](https://www.sobranie.mk/2016-2020-srm-ns_article-svecena-izjava-na-novoizbraniot-drzaven-javen-obvinitel.nspix)



the procedures and to preserve the presumption of innocence in their actions and communication with the public.<sup>7</sup>

### **Impartiality and responsibility**

#### **The Judicial Council establishes unethical and unprofessional work of Judge Mitrinovski for the second time**

The Judicial Council once again dismissed Judge Jordan Mitrinovski from the Court of Appeals, for whom the Court in Strasbourg ruled that the procedure for his dismissal in 2011 was not legal. The Judicial Council informed that after the end of the 270th session, the 269th session continued, and that under item 5 of the agenda, a decision was adopted determining unprofessional and unethical performance of the judicial office by Jordan Mitrinovski, in accordance with Article 75, paragraph 1, indent 2v, and Article 74 paragraph 1 indent 2 of the Law on Courts.<sup>8</sup>

In fact, the Trial Chamber acted on the instructions of the European Court of Human Rights and, upon the request of the applicant, reiterated the procedure because the Court in Strasbourg assessed that the petitioner for the dismissal of Mr. Mitrinovski, the President of the Supreme Court, Jovo Vangelovski, also took part in the voting as a member the council and thereby, the decision to dismiss Mitrinovski was biased. Otherwise, in this composition of the Judicial Council, the President of the Supreme Court is also a member of the council by line of duty and participates in the work of the council, but he did not attend the session.<sup>9</sup>

#### **Precautionary measures for the suspects accused in “Monstrum”**

On 01.12.2017, the Supreme Court adopted a decision on the case “Monster”, imposing other precautionary measures to the defendants AI, FA, H.A. and S.Lj. i.e. a ban on leaving their place of residence or accommodation, as well as regular calls to the Primary Court Skopje 1 twice a week, and the defendants were immediately released.<sup>10</sup> Given that the lower court judgments were abolished in late November, the Supreme Court found that these preventive measures would ensure the presence of defendants over the course of the proceedings.<sup>11</sup>

#### **Public session of the Supreme Court on the case which ended with a life sentence**

On 4.12. 2017, starting at 11 am, the Supreme Court held a public session on the case Vkzh2 no.10 / 2017, which was established upon an appeal against judgment KZH-81/17 adopted by the Bitola Court of

<sup>7</sup> <http://www.akademik.mk/uo-na-zdruzhenieto-na-sudii-sudskiot-sovet-da-gi-pochituva-zakonskite-normi-pri-izborot-i-unapreduvaneto-na-sudiite/>

<sup>8</sup> <https://goo.gl/cZvZJP>

<sup>9</sup> <http://www.sudstvo.mk/2017/12/29/митриновски-разрешен-по-втор-пат/>

<sup>10</sup> <https://goo.gl/DxcPPy>

<sup>11</sup> <https://goo.gl/JWZ21k>



Appeals confirming the first instance judgment of the Basic Court Ohrid K.br.123/16 by which the defendant in this case was sentenced to life imprisonment regarding the murder that was committed in Ohrid on 21.08.2014.<sup>12</sup>

### **The detention of several suspects from the Assembly raid from 27 April 2017 extended**

On 27.12.2017, the Criminal Council of the Organized Crime and Corruption Unit of the Basic Court Skopje 1 acting on the proposal of the Public Prosecutor's Office for Prosecuting Organized Crime and Corruption (PPOPOCC) adopted a decision to extend the measure of detention and the measure of house arrest of 23 persons, related to the events of the Assembly of the Republic of Macedonia that took place on 27 April, for extension of the measure of house detention of four people, and accepted the prosecution's proposal for lifting the detention measure and ordering house arrest for two other defendants.<sup>13</sup> At the same time, on 25.12.2017 a judge of the preliminary procedure ordered detention of four people, after the court was informed that these persons were not available to the prosecution authorities.<sup>14</sup>

Acting on the appeals filed against the detention orders, i.e. the house detention ordered by the judge in the preliminary proceedings, which were included in the respective proposals of the PPOPOCC, the Criminal Council of the Primary Court Skopje 1 adopted several decisions as follows:

- on 12.12.2017 - a decision by which the decisions of the preliminary proceedings judge on determining detention for one person and house arrest for another person were fully confirmed<sup>15</sup>;
- on 07.12.2017 - a decision by which the decisions of the judge in the preliminary proceedings approving the proposal for detention of two persons, as well as the measure of house arrest for two other persons, were confirmed in full<sup>16</sup>;
- six persons were summoned on December 5, 2017 covered with the proposal of the prosecution, and following their pleas, the judge of the preliminary proceedings adopted the decisions by which he accepted the proposal of the prosecution for three persons, and ordered 30 days of detention for them, while he ordered house arrest against the other two persons. Only one proposal for detention was rejected, and the person got house arrest<sup>17</sup>;
- on 01.12.2017 - a decision was adopted by which the Criminal Council of the Primary Court Skopje 1 accepted the complaints of the PPOPOCC and revised the decisions of the judge in the preliminary proceedings in a manner that accepted the proposal for determining the measure of detention and two suspects were detained in duration 30 days, while the public will be

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<sup>12</sup> <https://goo.gl/V8ucWL>

<sup>13</sup> <https://goo.gl/pmmN75>

<sup>14</sup> <https://goo.gl/SMgYF5>

<sup>15</sup> <https://goo.gl/4LHdtT>

<sup>16</sup> <https://goo.gl/BipaVd>

<sup>17</sup> <https://goo.gl/33hB5B>



additionally notified about the other appeals filed against the decisions of the judge in the preliminary proceedings.<sup>18</sup>

### **Professionalism, competence and efficiency**

#### **The President of the Criminal Court set the new annual schedule of the judges**

On December 20, 2017, the new President of the Basic Court Skopje 1 distribute the new annual schedule to the judges of the court, according to which the experienced staff, who two years ago were sent to the department for misdemeanors without any explanation, are now back to prosecute cases of organized crime and adult criminals.

Judge Ognen Stavrev, with more than 20 years judicial experience, will be working on cases of organized crime, after two years ago he was deployed by Panchevski to prosecute traffic offenses, and other experienced judges will work on cases of organized crime such as Dobrila Kacarska, Vladimir Tufegich, Dzeneta Bektovic, Goran Boshevski, along with several new judges who have not yet served as judges in cases of organized crime.

With this new annual schedule, the former court president Vladimir Pancevski, along with the former acting president of the court Tatjana Mihajlovska, and Monika Bakchovanska and Lidija Petrovska who previously tried in some of the cases submitted by SPP have been redeployed to the misdemeanor section.

With the new schedule there are some sound expectations of more efficient proceedings.<sup>19</sup>

#### **The open call for admission of public prosecutors to AJP annulled**

At the session held on 11.12.2017, the Steering Committee of the Academy for Judges and Public Prosecutors adopted a decision for annulment of the Academy's Open Call for admission of 60 trainees for initial training - candidates for public prosecutors, published in the Official Gazette no. 163 from 30.08.2016 and in the daily newspapers "Lajm" and "Nova Makedonija".<sup>20</sup>

#### **The Judicial Council announced open calls for presidents of courts and paid a visit to the Court in Krushevo**

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<sup>18</sup> <https://goo.gl/by2e3o>

<sup>19</sup> <https://goo.gl/Ujtsou>

<sup>20</sup> <http://www.jpacademy.gov.mk/novosti/10444>



The Judicial Council published open calls for the election of presidents of the Skopje Court of Appeals and the Primary Court Debar, one judge in the Supreme Court and the Skopje Court of Appeals, both for the area of criminal law.<sup>21</sup>

On 6.12.2017 a working group composed of members of the Judicial Council visited the Primary Court Krushevo, where they inspected the work of the judges with regards to the compliance with the legal deadlines for undertaking procedural actions, as well as the adoption, publishing and drafting of decisions; establishing possible delays in the work of the judges, as well as reasons for those delay; the situation with the old cases; the workload of the judges according to the working schedule and they also had a talk with the judges in order to encourage them to immediately inform the Judicial Council about any possible cases of political or other kinds of pressure.<sup>22</sup>

## II FIGHT AGAINST CORRUPTION

### Press conference of the Special Public Prosecutor's Office

At the press conference organized on 19.12.2017, the special public prosecutor Katica Janeva expressed confidence that measures will be taken towards full implementation of the Strategy for Reform of the Judicial Sector in practice and that in the near future it will act in accordance with the deadlines foreseen in the LCP and CC, as well as that appropriate legal solutions will be adopted that will create conditions after the expiration of the mandate prescribed by the law, in 2020, the SPP to be transformed and merge with the PPRM as an independent institution acting on the cases within its jurisdiction and pursuing high profile corruption crimes. It was also pointed out that another case in point of the work of the SPP in the past period is the case law established by the decisions of the Skopje Court of Appeals confirming that the recordings resulting from the illegal interception of communications constitute evidence, as well as the approval of most of the charges filed by the SPP. Otherwise, the SPP is preparing a Rulebook and other acts for the founding of an investigative center that has already been informally and successfully functioning throughout this past period, as well as a Rulebook and procedure for implementation of the amendments to the Law on Witness Protection, which is already in assembly procedure.<sup>23</sup>

### New investigations opened by the Special Public Prosecution

At the same press conference, the Special Public Prosecution also reported on the preliminary proceedings it had taken over from the Public Prosecutor's Office and the Organized Crime Prosecution on the cases related to the "Skopje 2014" project. The "Aktor" case and the illegal construction of the Kosmos facility, for which, within the deadline of 8 days, decisions have been made to go under the

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<sup>21</sup> <https://goo.gl/C5Kr4D>

<sup>22</sup> <https://goo.gl/G4KEhx>

<sup>23</sup> <http://www.jonsk.mk/?p=1478>



jurisdiction of SPP and they have been merged with old cases or re-started as new preliminary proceedings conducted in the SPP. At the same time, the public was informed about the opening of seven new investigations, as after several months of extensive pre-investigative actions orders for conducting investigative proceedings against several persons we issued, as follows:

- 1) The “Foreign Services” case, where an investigation has been opened against two persons, then chiefs of the Department of Operational Techniques under SIA, on grounds of reasonable suspicion that they have committed the crime of Abuse of Official Position and Authority referred to in Article 353, paragraph 5v, paragraph 1 of the Criminal Code, one of whom is an instigator, and the other one as a direct enforcer, in connection with a public procurement of certain technical equipment to be used by SIA;
- 2) “Drumarina”, where the investigation was initiated due to reasonable suspicion that the suspect, then a Member of Parliament in the Assembly, committed the criminal act of Fraud in the Service from Article 355, paragraphs 3 and 1 of the Criminal Code, regarding the use of the right to reimbursement of travel expenses for business trips with one’s own vehicle during her term as MP in the Assembly of the Republic of Macedonia from June 25, 2011 to December 16, 2015;
- 3) “Rentgen”, the investigation was initiated because of reasonable doubt that in 2012, in the procedure for public procurement of X-ray apparatus and other radiological services in four health institutions, the then Minister of Health committed the crime of Abuse of Official Position and Authorization from Article 353 paragraph 5v, paragraph 1 of the CC.
- 4) “Producer”, the investigation was started due to reasonable suspicion that in the period from 2009 to 2012, the then Minister of Agriculture, Forestry and Water Economy by abusing his official position and authority, contrary to the Law on Public Procurements, committed a criminal act Abuse of the Official Position and Authorization referred to in Article 353, paragraph 5v.v., in paragraph 1 of the Criminal Code, by making a contract for business cooperation with a company that occurred as a producer of a TV show without conducting a public procurement procedure.
- 5) “Leaders”, this investigation was started due to a telephone conversation that was publicly aired the so-called “ bombs” and refers to the arrangement for a “policy” of demolishing the possibly illegally built objects between two leaders of political parties, establishing a suspicion that the crime of Illegal building under Article 244 of the Criminal Code has been committed.
- 6) “Tarifa 2”, a case concerning a reasonable suspicion of abuse of official position in the implementation of the ERP software in PUC “ELEM”, where the investigation is conducted against one person, which has already been charged in the Tarifa case, but this time on grounds of reasonable suspicion that he has committed another criminal offense of Abuse of Official Position and Authority referred to in Article 353, paragraph 5v, with para. 4 v with para 1 vv. With Article 45 from the CC.
- 7) “Transporter 2” an investigation which comes as a continuation of the insight into the illegal actions with the transport of pupils in Bitola, which is conducted against ten suspected persons, including the former mayor of Bitola and the former municipal secretary, as well as five authorized persons from the carriers, that the “Transporter” indictment was approved for, with the difference that three primary school principals were not included in the previous investigation. They suspect that they have committed or were accomplices in the crime of Abuse of Official



Position and Authorization referred to in Article 353, paragraph 5, v.v. with paragraph 1 of the Criminal Code.<sup>24</sup>

### **The indictments for “Tenderi” and “Titanik 3” approved**

On 13.12. 2017, the SPP informed the public that on 11.12. 2017, the Indictment Evaluation Council of the Primary Court Skopje 1 approved the indictment for the case known under the name “Titanic 3”, which was filed on 29 June 2017.<sup>25</sup>

On December 26, 2017, the Indictment Evaluation Committee of the Primary Court Skopje 1 approved SPP’s indictment in the case labeled as “Tenderi” in which the former Minister of Culture Elizabeta Kancevska Mileska and three members of the commission for procurement from the Ministry are suspects, and after the approval of the indictment the case will be electronically assigned to a judge for further procedure in accordance with the ACMIS system.<sup>26</sup>

### **The trial for “Potkup” sent back to first instance proceedings**

On December 28, 2017, the Skopje Court of Appeals, after the public session on the case “Potkup” was held where the current Prime Minister Zoran Zaev was the defendant, issued a decision abolishing the first instance decision and returning the case to the first instance court again. In fact, in the course of the proceedings and the decision on the proposal of the defense for separation of evidence obtained with special investigative measures, set at a hearing for the main hearing, the first instance court acted contrary to the legal procedure when, at the proposal of the defense for which there was no consent of the parties, instead of having the decision be adopted by the Council that was in session, the decision was made outside the hearing for the main hearing by the president of the council, whereby the president overstepped the authorization laid down by law.<sup>27</sup>

### **The dates for the hearings for “Tenk” and “Trezor” set**

The Trial Chambers under the Primary Court Skopje 1 that are acting on the “Tenk” and “Trezor” cases initiated upon the approval of the indictments submitted by SPP, have set the dates for the main hearings for 30.01.2018 for the “Tenk” case and 05.02.2018, for the case “Trezor”, and notifications to the parties in the proceedings have been sent.<sup>28</sup>

### **Workshop on unlawfully gained property benefits**

<sup>24</sup> <http://www.jonsk.mk/?p=1490>

<sup>25</sup> <http://www.jonsk.mk/?p=1478>

<sup>26</sup> <https://goo.gl/45Qizu>

<sup>27</sup> <https://goo.gl/UYZyfX>

<sup>28</sup> <https://goo.gl/veEhRN>



On 27.12. 2017, “Network 23 +” held an expert workshop on dealing with unlawfully obtained property benefits. Slagjana Taseva discussed at the workshop as an expert, as well as participants from the SPP, the Ministry of Interior, judges and civil society organizations working in this area. The prosecutor Lence Ristovska shared the experiences of the SPP in the search for the unlawfully obtained property benefits and its confiscation. The novelties foreseen in the draft strategy on financial investigations and property confiscation were also discussed at the workshop.<sup>29</sup>

## ONGOING COURT PROCEEDINGS

**“Nikola Todorov” (C-1834/17)** – the damaged party is the former Minister of Health, and the person Ljupco Stojanovski from Veles is charged with the criminal act Murder from Article 123 paragraph 1 vv with Article 19 and Unauthorized Production, Holding, Mediation and Trade with Weapons or Explosives from Article 396 paragraph 1 of the CC and was already in detention. Prior to the commencement of the main hearing, the attorney of the defendant requested the judge to be replaced, due to suspicion of bias and non-objectivity, which was rejected by the court. At the main hearing, the submitted an objection to the expert insight and a requested the evidence to be rejected, since the specialists who prepared the expert reports were not at all in the register of authorized experts and for that reason it was impermissible to have them prepare the expert evidence, which was presented as evidence in the procedure . After a brief pause, the judge ruled that the defense’s objection was grounded and it was concluded that at the time of the findings, the experts’ licenses had expired. The Trial Chamber decided the new expert report to be prepared by the PHI “Psychiatric Hospital Skopje” for the hearing scheduled for January 22, 2018, from which it should be determined whether the defendant was sane and aware of the consequences when he committed the crime and whether he had psychic disorders.

**“Trust” Case – C - 1459/17-** The hearing from 14.12.2017 continued with the evidentiary proceedings, during which a witness/expert in the field of finances proposed by the SPP was examined, and he was examined directly by the public prosecutor, whereby he was cross-examined by the attorney of the primary defendant.

**“Trista” Case – C – 40/17-** the defendant is charged with misuse of the official position when purchasing vehicles for the Ministry of Interior, and the hearing scheduled for December 1, 2017 was again postponed due to the time needed to analyze the submitted medical documentation for the defendant. At the next hearing scheduled for 28.12.2017, the public (according to the legal provisions) was excluded due to the hearing of an expert (who also submitted an expert report) regarding the defendant's health condition and his ability to follow the hearing. The court allowed the presence of representatives of the expert public in accordance with Article 355 of the LCP during the hearing of the expert. After the expert witness gave his opinion that the defendant was capable of following the hearing, the other representatives of the public were invited back into the courtroom. Considering the fact that a member of the Trial Chamber

<sup>29</sup> <http://www.merc.org.mk/aktivnost/38/rabotilnica-za-nelegalno-steknata-imotna-korist>



has been transferred to another sector according to the annual schedule of PC Skopje 1, the hearing was postponed and it will continue on 19. 02. 2018, with the presentation of the introductory speeches before the new members of the Trial Chamber.

The two hearings scheduled for the **“Total” Case – C – 1493/17** where Dragan Pavlovikj Latas occurs as a defendant, were postponed. The hearing from 05.12.2017 was postponed due to the absence of the representatives of the legal entities accused in this case, while the hearing from 07.12.2017 was postponed due to the court’s lack of equipment for audio and visual recording. The next hearing has been scheduled for 09.02.2018.

At the hearing held on 20.12.2017, in the **“Sopot” Case – COC 53/10**, a witness was heard whose examination was conducted by the president of the council ruling in this case. His statement in the previous proceedings from 2003 was used as evidence in this case and at the hearing he said that he had been coerced to give that statement after a few days of abuse by official persons. The next hearing was scheduled for 06.02.2018, and witnesses connected to this case proposed by SPP will be invited.

In the **“Mariglen” Case C – 1271/16**, the trial from 12.12.2017 was postponed due to the absence of the PP, while the trial from 25.12.2017 was rescheduled for 25.01.2018.

**“Target - Tvrdina” - COC - 47 / 17** - the trial was immediately adjourned for 17.01.2018, because the defendants submitted a list of evidence in a single copy, as well as due to the absence of one of the lawyers of one of the defendants who duly submitted a request for postponement due to his previously scheduled engagement in another court case.

The judge who conducted the **“Levica” Case C-986/16** was absent due to professional reasons and therefore the hearing was rescheduled for 25.01.2018.

In the **“Pavle Bogoevski” Case - K-1526/16**, the trial was adjourned due to the absence of the PPO and the defendant and it will continue on 25.01.2018.

**In the “Bozinovski” Case - COC-79/16**, the witness proposed by the defense was serving a prison sentence in the Idrizovo Penitentiary, but when the court representatives turned to the institution to bring the witness, they were informed that the person was released for a weekend off and since then he did not return to Idrizovo (the person is on the run). The hearing was postponed for 11.01.2018.

**“Traektorija” - COC-52/17** - At the hearing on 06.12.2017, one of the defendants stressed that they insisted that the hearing be recorded audio-visually, as is in fact stipulated by Article 374 of the LCP, after which the hearing was adjourned for 18.12.2017. The reasons for the postponement were not available to the public, because the court did not publicly explain why the hearing was postponed, although from



the statements of the attorney given publicly, it appears that it was postponed due to lack of technical conditions for its recording.

Before the start of the next hearing on December 18, 2017, only the prosecutors and the defendants with their attorneys were allowed to enter the courtroom, and the main hearing did not begin because the defense requested postponement as no stenographic record was kept, and the cameras were not directly connected to the ACMIS. The court rejected this request as unfounded. Then the defenders reacted because they had not received all the evidence from the SPP, nor the audio recordings offered as evidence, but received transcripts that did not include all the conversations proposed as evidence, which led to a general debate between the parties in the proceedings as to how and when the evidence should be submitted to the opposing party. Considering the fact that the courtroom where the trial was held and the cameras that recorded the hearing were reserved by another judge for another case that was due to begin, the court postponed the hearing for 26.12.2017 when it was postponed again for 31.01.2018 due to the absence of one of the defendants.

In the **“Tarifa” Case - COC-51/17**, in which three persons are charged for the criminal offense of Abuse of Official Position and Authority, at the first session of the main hearing on 19.12.2017 apart from pleading guilty plea and the counsel on the defendants' rights, introductory speeches were also given by the SPP and the defense attorneys. The SPP had a brief presentation of the offence and the corruption, and read the indictment, while the keynote speech of the defense was a hybrid with closing arguments, as the attorneys of the defense also presented their take on the evidence and the allegations of the SPP. The representative of the SPP reacted when the defense attorney noted that a large part of the evidence submitted by SPP was not translated into Macedonian, which was confirmed by the judge. None of the parties in the proceedings presented their “case theory” in their introductory speeches. After giving the introductory speech, the hearing was adjourned and it will continue on 26.01.2017 with the stage of evidentiary proceedings.

The hearing on the **“Opština Centar” Case C-1904/16** was postponed because courtroom no. 1 (which is the only courtroom that has the capacity to accommodate the parties in the procedure and the public), and at the same time the equipment for recording the hearing had already been reserved by another judge for another case (K-1834/17), although there is only one defendant in that case. The next hearing on 27.12.2017 was postponed for 02.02.2018. The trial for this case will be restarted because the judge has been redeployed to another department with the new annual schedule in the Primary Court Skopje 1 Skopje.

The hearing on the case **“Potkup” – COC 62-16** from 25.12.2017 was postponed because the case is still the Court of Appeals in the appeals proceedings against the decision of the Primary Court Skopje 1 with regards to the separation of evidence. The hearing will continue on 29.01.2018.

### III FUNDAMENTAL RIGHTS

#### Ombudsman



Acting upon the submitted complaint to the Ombudsman by the Parliamentary Group of VMRO-DPMNE and the Coalition “For a Better Macedonia” which stated that the Constitution and the legal procedures were grossly violated when on 28.11.2017 armed police offices deprived three MPs of freedom, the Ombudsman addressed to the Ministry of Interior with a request for explanations, information and evidence on the actions of the police in the apprehension of the MPs, whereby a team of the Ombudsman’s office paid a visit to the Skopje Prison where apart from insight into the documentation they also spoke with the detainees, as well as with the officials.<sup>30</sup>

Based on all the actions undertaken, the Ombudsman established that during the arrest of the MPs and their deprivation of liberty on 28.11.2017 the right to parliamentary immunity stipulated by Article 64 of the Constitution, and Articles 53-59 of the Rules of Procedure of the Assembly were violated because the police officers did not comply with the legal detention procedures provided for in Article 19 of the Rulebook on the Manner of Performing Police Affairs, which stipulates an obligation for the police officer, upon the verification of the authenticity of the documents proving the status of immunity of the person, to immediately stop the apprehension process and notify his/her immediate superior officer. According to the Ombudsman, in addition to the right to parliamentary immunity, the principle of presumption of innocence was also violated in this specific case, as the MPs were apprehended in the Court in handcuffs, whereby they were released after a longer stay, and the measure of detention was imposed a few days later, after the Parliament decided to deprive them of their parliamentary immunity.

Considering that the actions of the police officers were contrary to the regulations for performing police affairs, the Ombudsman submitted a Recommendation to the Minister of Internal Affairs to conduct a full procedure to examine the manner of acting of the police officers on 28.11.2017, to determine responsibility and sanction the violators of the rights of MPs. At the same time, the Ombudsman appealed to the Primary Court Skopje 1 to respect the right to immunity when adopting court decisions, because, as it was stated, this was not the first time that the trial court had violated the right to immunity.

## Discrimination

Over the course of December, a case of discrimination based on religion and religious belief was registered. Namely, a person from the Islamic faith who is wearing a hijab addressed the Helsinki Committee for Human Rights of the Republic of Macedonia, saying that she had been discriminated against by a professor at one of the faculties at the University “St. Cyril and Methodius”, who when intercepting her in one of the corridors at the faculty warned her that if she went to take the forthcoming exam on his course wearing a hijab, she would not be allowed to do so. Worried that she might be unable to take the exam because of what the professor told her, she decided to talk to the Dean of the Faculty

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<sup>30</sup>[http://ombudsman.mk/mk/novosti\\_i\\_nastani/241452/informacija\\_za\\_prezemenite\\_merki\\_i\\_konstatiranite\\_sost\\_ojbi\\_od\\_postapuvanjeto\\_po\\_pretstavkite\\_vo\\_.aspx](http://ombudsman.mk/mk/novosti_i_nastani/241452/informacija_za_prezemenite_merki_i_konstatiranite_sost_ojbi_od_postapuvanjeto_po_pretstavkite_vo_.aspx)



who only confirmed the professor's statement that she was required to take the hijab off if she wanted to take the exam.

This case is an example of a limitation to the right to free expression of the Islamic faith and only confirms the discriminatory practice of the faculty. With his action in this case, the faculty, through the Professor and the Dean committed direct discrimination against the student on the basis of religion and religious belief contrary to the Constitution of the Republic of Macedonia, which guarantees equality to the citizens in the exercise of their freedoms and rights, Article 3 of the Law on Prevention and Protection against Discrimination which stipulates that religion or religious belief could be grounds for discrimination, as well as Article 7 of the Law on Higher Education which stipulates that “the Citizens of the Republic of Macedonia have, under equal conditions, the right to education at higher education institutions in the Republic of Macedonia”.

Another case of discrimination was registered in December, after the Helsinki Committee received a report from parents of a disabled child who had been operated due to the cancer, otherwise a protégé in the Special Institution in Demir Kapija, stating that their son was discriminated against on the basis of his disability by a doctor from the Clinic of Radiology and Oncology, where he should have been prescribed a postoperative therapy due to deteriorating health. The Doctor refused to examine the patient with a disability twice, thereby directly discriminating and violating the applicable normative framework. The first time the protégé was taken to the Clinic in October by two nurses employed at the Special Institute Demir Kapija, whereby the doctor did not admit and examine the protégé, and made a report solely based on the insights from the medical documentation the nurses had brought, where she stated that the patient has severe mental retardation, is non communicable and nonverbal, and due to those difficulties and his general health condition, any further treatment is counter indicated. And then, at the second visit to the doctor by the parents of the protégé, she once again refused to admit him for an examination with a scan explanation that he should be treated elsewhere and that they should not come to her any more.

This treatment constitutes a violation of the constitutional prohibition of discrimination, as well as the Law on Prevention and Protection against Discrimination, the Law on Patient Protection, which stipulates that health services are permanently accessible and accessible to all patients equally and without discrimination and in several articles explicitly prohibits discrimination on patients on any grounds. The Law on Health Case also stipulates the principle of fairness which is exercised by prohibiting any discrimination in the provision of healthcare based on the type of illness, psychological or physical disability, as well as Article 20 of the Law on Mental Health, which prohibits discrimination based on sex, language, religion, political or other belief, national or social background, kinship, property and social standing or any other status of a person with a mental illness. According to Article 8 of the said law, “A person with mental illness is entitled to the same approach in their care, treatment and rehabilitation, as any other person suffering from other diseases”. In addition, a violation was also established in the Medical Deontology Code of the Doctors’ Chamber of Macedonia, which stipulates that in the performance of their medical duties doctors will not allow to be affected by any differences due to age, sex, nationality, race, political affiliation, sexual orientation, disability and social and economic standing, and that doctors are bound to perform their profession conscientiously, accurately and responsibly,



regardless of age, sex, religion, nationality, race, political affiliation, sexual orientation, disability and socio-economic standing and his/her personal relationship with the patient and his/her family. At the same time, the patient's treatment in this case is contrary to the European Charter of Patients' Rights, according to which each individual has the right to access the health services necessary for his or her health, and healthcare must guarantee equal access for all, without discrimination on any grounds. At the same time, Article 417 of the Criminal Code of the Republic of Macedonia stipulated punishment for racial and other types of discrimination, lists mental or physical disability as grounds for discrimination, while Article 208 of the Criminal Code stipulated punishment for non-provision of medical assistance by a doctor or another medical professional.

Within the project “Network 23+”, a research on previous experiences and initiatives in providing accessibility and inclusiveness of the courts in Macedonia which was conducted by the Association “Open the windows”, was launched.

Regarding the external accessibility of the courts, from the findings of the survey it can be concluded that as many as 28% of the courts answered that they do not have access ramps, or that their entry ramps do not correspond to the needs of persons with disabilities, 13% are placed on the ground floor, while 59% of the courts have access ramps adapted for independent use by persons with disabilities.

The internal adaptation of courts to the needs of persons with disabilities is at an unsatisfactory level, given that only 2 courts in the country have a toilet for persons with disabilities, only 4 courts have an internal elevator, and none of them has a tactile pathway, or signs in the Braille Alphabet. At the same time, it should be noted that in 14 courts (44%) a companion for visually impaired persons has been provided, while in only 8 (25%) there is an interpreter in sign language. In order to facilitate communication and support to the persons with disabilities, 81% of the courts have appointed a contact person for issues and services related to people with disabilities.

On the basis of the obtained data and in accordance with the Law on Prevention and Protection against Discrimination, which in Article 8, item 2 states that “Discrimination of persons with mental and physical disabilities occurs even in those cases where no measures to eliminate the restrictions have been implemented, i.e. there is no adaptation of the infrastructure and space, use of publicly available resources, or participation in public and social life”, the report concludes that persons with disabilities face discrimination due to the lack of adequate conditions and accessibility on their path to achieving access to justice.<sup>31</sup>

### **Protection of privacy and communications**

The Constitutional Court by a majority of votes decided to initiate a procedure following the initiative for assessment of the constitutionality of Article 175 of the Law on Interception of Communications. Judge

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<sup>31</sup> [www.merc.org.mk/Files/Write/00001/Files/Network23/studies/Pristapnost-i-inkluzivnost-na-sudovite-vo-Makedonija.pdf](http://www.merc.org.mk/Files/Write/00001/Files/Network23/studies/Pristapnost-i-inkluzivnost-na-sudovite-vo-Makedonija.pdf)



Rapporteur Vangelina Markudova proposed the court to institute proceedings because this article did not stipulate the specific cases in which a deviation from the constitutionally guaranteed right to privacy and inviolability of communications could be justified. The article stipulates that the telecommunication operators must provide “all the necessary technical conditions to enable interception of communications in their networks” for the authority in charge, i.e. SIA, at their own expense. To the majority of the constitutional judges, this article is disputable because it enables unrestricted interception of communications by the SIA without adequate control, i.e. Articles 168 and 175, do not precisely stipulate the conditions under which the interception of communications is allowed.

Previously, this initiative was on the agenda of Constitutional Court, but the hearing was adjourned due to the extensive materials. The court will prepare the decision by July 5th at the latest and then deliver it to the Parliament, which has a deadline of 30 days to respond to the court. The initiative for the assessment of the constitutionality of this article was filed in 2015, after SDSM began publishing the wiretapped materials. The disputed articles 175 and 176 were also part of the Priebe Report according to which the SIA should not have direct access to the technical equipment that allows communication signal reflection.<sup>32</sup>

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<sup>32</sup> <http://www.sudstvo.mk/2017/06/22/неограниченото-следење-на-комуникац/>