



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

I JUDICIARY

Independence

The appeal of Supreme Court Judge Lidija Nedelkova rejected

The former president of the Supreme Court, Lidija Nedelkova, will not be a member of the Criminal Council of the Court that will decide whether the decision for detention of businessman Sead Kochan was lawful after the appeal against her deployment to another department was rejected at the General Session of the Supreme Court. Nedelkova appealed against the decision of the President of the Supreme Court Jovo Vangelovski to have her deployed to the department for trial within a reasonable time. Judge Snezhana Bajlozova, whose primary expertise are civil proceedings, was deployed at judge Nedelkova's former position. Now there are no longer any obstacles on the way of the Supreme Court in scheduling a public session to decide whether the detention decisions adopted by the lower instance courts are lawful and whether the case on Mr. Kochan's detention will be taken back before a judge in a preliminary procedure to review the decision.

17 appeals of judges from the Primary Court Skopje 1 against their redeployment declined

The Supreme Court rejected all 17 appeals by the judges from the Primary Court Skopje 1 who were not satisfied with the redeployment by the acting president Stojanche Ribarev. The deployment of Mr. Ribarev stirred some controversy in public due to the degrading of judges with a decade-long experience in criminal matters by redeploying them to lower positions, along with judges who had granted SPO their search warrants and approved their appeals. These redeployments are the flipside of the promotion of judges who were protagonists in the wiretapped talks, and also familiar to the public as obstructers of the work of SPO. Ribarev adopted the contested redeployment, after the deployment of his predecessor Tatjana Mihajlov was recently annulled by the Supreme Court which adopted seven out of the eight appeals of the redeployed judges.¹

The Judicial Council deployed 7 judges from the Courts of Appeals from inside the country to the Court of Appeals in Skopje for a period of 3 months

¹http://www.sud.mk/wps/portal/vsrm/sud/vesti/9e27d8d8-bf1b-4851-b431-88de1f016814!/ut/p/z1/rVLJbslwEP2aHC2PQ5bhaBBLaSlqgSbxBWUft8QJYKDI62tOIVqVUNG5jfSWeaNHQB2pUPFBLmMtKxWvzR4Jb-ENHAFwHh5w-twB3gMfZ200PNpcAkw6AMVI_kvVFCRKl3rFY3qfbKW6aJ8s2C3zyyoqzTXKrbgkO-0tKcd236GGZKkYAlx0GUkcVqMIGY5K4B5yJyzXp3KjEZxoYomgOf74ZfhYPiiCRIZC_LYjLs-8DnPeZyfln3PzwIPMjnatqW5qXT_-YYPjD4VulkXujw0X56Z13o_yoqSOMhPJ1sxHcNKVSON_XNPYXqhhezvujpfm3liviFRFRcOrqHU5L7H1QdSp80gG3QSPs6IMcPcJJsCYWA!!/dz/d5/L2dBISevZ0FBIS9nQSEh/?urile=wcm%3Apath%3A%2Fpublic_mk%2Fsud%2Fpoce_tna%2Fvesti%2F9e27d8d8-bf1b-4851-b431-88de1f016814





At its 251st session, the Judicial Council adopted a decision for temporary redeployment of seven judges from the Courts of Appeals from the interior of the country to perform their judicial duty the Court of Appeals in Skopje. Three judges from the Court of Appeals in Bitola, three judges from the Court of Appeals in Gostivar and one judge from the Court of Appeals in Shtip will perform their judicial duties in the Court of Appeals in Skopje. This is a temporary redeployment with a duration of only 3 months.²

Impartiality

Supreme Court – SPO's request for exclusion of Court's President Vangelovski rejected

At a General Session, the Supreme Court adopted a decision to reject SPO's request to exclude the Court's President Jovo Vangelovski from adopting a decision on the request for protection of the lawfulness by Zvrlevski's prosecution. SPO submitted a request for Vangelovski's exclusion as the Court President can be heard in the wiretapped conversations talking to former Minister of Transport and Communications, Mile Janakieski, which, according to SPO brings into question his impartiality. Vangelovski labeled the request as flippant. According to this decision Vangelovski stays in the Criminal Council that will decide on the lawfulness of Sead Kochane's detention.

The Supreme Court reviews the competence of the Public Prosecutor's Office of RM to submit a request for protection of the lawfulness of SPO's cases

The Supreme Court continued with its General Session where it rejected SPO's request for Vangelovski's exemption, Nedelkova's appeals and the appeals of the judges from the Primary Court Skopje 1. The Court informed that at its extended session it will review the abstracts on the legal issues of "Competence to submit a request for protection of legality" and "Whether evidence obtained in an illegal manner can be used as evidence in court."³ Near the end of March, the Public Prosecutor's Office of RM submitted a request for protection of the lawfulness of the decision of the judge in the preliminary proceedings to impose the measure of detention of businessman Sead Kochan. This raised the legal dilemma of whether this prosecution has the competence to submit extraordinary legal remedies on SPO's cases. Upon reviewing President Vangelovski's report, a total of 19 judges voted, 10 of whom were in favour of PPO's competence to submit extraordinary legal

²http://sud.mk/wps/portal/ssrm/sud/vesti/a76076d6-d253-4d9a-9416-9cd30517266a/!ut/p/z1/tZNdT8lwFIZ_ixe7bNpuXbtdTmUQ5EOCE9YbUtcOKu4DqPPj11sEwNEOKBNk6bJe57z9pxTyOEu8II0ei6MrkrxZO8ppzPaJgQFN6gXdK9DFCXEI0e3d5gwAie7gjYeBIYwTGjYidOk8SA_Hn8POeRZaWqzqOmmapSZFUsHbZ6lg-

³http://www.sud.mk/wps/portal/vsrm/sud/vesti/02694bcd-d266-4658-9c93-0ee376c3328c/!ut/p/z1/rVJNT8JAEP01PW5mbMt2e1xIAVEkWiP0L6RsC6zSbYGlqL_e5WSiETA4t0nex7zJAwFTEDpr1DlZqtLZ2u6poDPa831kd3jP4qc28ggDNg45YhTA5BSg10UQp_nPIEBIbWqzgrTez9dKzspXB3f73MG6koXRmYNsTPKQXRp6M9ITnKXUuLTFiOhDD2CReEFVHqey-RRr5Yqh_Qi9ORcwOP9-MtwthXxDpJai-DLYtTvBsiT6KbF2aM74vaHjSoOkOhqW9qXx39M0P_h8C3EoHWlw0n5-JZeKT841xFbQvWy2Qhum1JpU7wZmP5LVaywux12hkt7b2ZWROIFBdOLqHWZIMx7J_qj_UB6nTk7jBflhO0-ARGHlaE!/dz/d5/L2dBISEvZOFBIS9nQSEh/?urile=wcm%3Apath%3A%2Fpublic_mk%2Fsud%2Fpocetna%2Fvesti%2F02694bcd-d266-4658-9c93-0ee376c3328c





remedies on SPO's cases. However, this does not constitute the necessary quorum of 50% + 1 judge out of a total of 21 judges.

PPO Skopje has initiated proceedings against 15 participants in the violent riots in the Assembly

The Primary Prosecutor's Office informed the public that up to the moment when the press-release was sent, they had identified fifteen persons involved in the riots that took place in the Assembly of the Republic of Macedonia. PPO say that they were acting on criminal charges submitted by Mol. They questioned a large number of people, some of whom were members of the police. ⁴ PPO informs that after collecting the relevant evidence, they started proceedings against fifteen persons involved in the riots in the Assembly of RM on grounds of reasonable suspicions that they had committed the crime – "Participation in a mob preventing an official person in performing his/her official duties" in accordance to Article 384 of the Criminal Code. The Prosecution added that seven of those people have been deprived of liberty. The competent public prosecutor, considering that the legal grounds have been met, proposed the measure of detention for the fourteen suspects to the judge in the preliminary proceedings. Precautions were proposed for one person. PPO assures that the investigation of the prosecution continues in the direction of full clarification of the criminal event. ⁵

II STRUGGLE AGAINST CORRUPTION

SPO is running financial investigation of a large number of physical and legal entities

SPO informed that they are running preliminary proceedings which have the goal of conducting financial investigations of a large number of physical and legal entities. The goal of these preliminary proceedings, according to SPO, is to inspect the assets of all the people for whom there are ongoing proceedings and their overall financial operators. The inspection of assets involves detailed inspection into the entire property that the persons may own, both real estate and movable property. SPO urges the state institutions to take measures that would prevent public announcement of data on the preliminary proceedings, which, according to the legal regulations, are secret. The prosecution reminded that it is impermissible for the state institutions to allow the people that there are ongoing inspections on, to gain insight into the type and character of inspections that this PO is conducting in accordance with the legal competences and regulations. ⁶

A meeting between SPO's prosecutors and the managers of "Makedonski Telekom"

⁴ <http://jorm.gov.mk/?p=4002>

⁵ <http://jorm.gov.mk/?p=4006>

⁶ <http://www.jonsk.mk/2017/04/04/%D0%B2%D0%BE-%D1%82%D0%B5%D0%BA-%D1%81%D0%B5-%D0%BF%D1%80%D0%BE%D0%B2%D0%B5%D1%80%D0%BA%D0%B8-%D0%BF%D0%BE%D0%B2%D1%80%D0%B7%D0%B0%D0%BD%D0%B8-%D1%81%D0%BE-%D1%84%D0%B8%D0%BD%D0%B0%D0%BD%D1%81%D0%B8/>





SPO informed that on the premises of “Makedonski Telekom” a working meeting at a higher level was held with representatives of this company in order to find a solution to the cases that are of interest to this Public Prosecutor's Office. The Prosecution say they expect the established cooperation to continue in the upcoming period.⁷ Previously, certain media reported that “Makedonski Telekom” did not cooperate with SPO, while that the other mobile operators VIP and ONE (that have now merged into a single operator) did, but that Telekom had refused to be a part of SPO’s investigation. “Makedonski Telekom” controls the biggest chunk of the mobile telephony market in the Republic of Macedonia.

COURT PROCEEDINGS OF GREATER IMPORTANCE

“BRIBERY” (Potkup)

On 03.04.30117, the main hearing on the “Bribery” case, where the accused is the leader of SDSM, Zoran Zaev, for the crime of “Accepting Bribery”, was to be held. The hearing was postponed because the attorneys of the defense informed the court that the prosecution did not submit the evidence based on which they were to prepare their defense, although in accordance with the Law on Criminal Proceedings, they were supposed to be served the evidence along with the indictment. For this purpose, the judge ordered the prosecution to submit its evidence to the defense, in order for them to prepare their defense. The next hearing is scheduled for 04.05.2017.

ZORAN BOZHINOVSKI

The hearing scheduled for 26.04.2017 for the trial of the case COC-79/16 where journalist Zoran Bozhinovski occurs as the defendant for the crimes of “Criminal Association” and “Espionage”, was postponed. The reason for the postponement is the unavailability of the law enforcement of the witness/damaged party in this case. The Court had information that the witness was in Belgrade, but it was bound to address the Higher Court in Belgrade in writing. The defense kept the same stand as before and demanded from the court to enable a conference call for his examination. This proposal of the defense was approved by the court. The next hearing is scheduled for 26.05.2017 at 11.00 am.

“DIVO NASELJE” (Wild Settlement)

The hearing on the case COC. NO.127/15, dubbed as “Divo naselje” in public, were open to the public in the course of this month while the defendants were questioned and examined. Only one more of the 37 defendants is left to be examined in court. At the hearing held on 25.04.2017, six of the defendants withdrew the proposal for their examination in court. The hearing scheduled for 27.04.2017 was not held at the request of the defense attorneys in the proceedings, with the explanation that they needed more time to submit a supplement to the evidence along with an explanation. The next hearing was scheduled for 05.05.2017. The litigation in this case runs in accordance with the Law on Criminal Proceedings and without any violation thereof. In this case, the

⁷ <http://www.jonsk.mk/2017/04/24/%D0%BE%D0%B4%D1%80%D0%B6%D0%B0%D0%BD%D0%B0-%D1%80%D0%B0%D0%B1%D0%BE%D1%82%D0%BD%D0%B0-%D1%81%D1%80%D0%B5%D0%B4%D0%B1%D0%B0/>





accused are on trial for the crimes of "Terrorism" and "Terrorist organization". The upcoming hearings on this case are scheduled for 5, 9, 11, 15, 17, 19, 23, 29 and 31 May 2017.

"ERASMUS"

The trial scheduled for 18.04.2017 on the "Erasmus" case, where six people, professors and demonstrators from the Economic Faculty from Skopje, are accused of the crimes "Accepting bribery", "Accepting reward for unlawful influence", "Misuse of official position and authority" and "Giving bribe", was also postponed. The reason for this was the absence of one of the defendants. The next hearing is scheduled for 26.05.2017, at 10 am.

PAVLE BOGOEVSKI K-1526/16

The hearing of the protester from the Colorful Revolution and MP after the elections from 11 December 2016, Pavle Bogoevski, was also postponed. No action in the proceedings was taken as the public prosecutor called to inform the court that he would not attend the hearing due to other obligations, and the defendant himself was also not present at the scheduled hearing. Consequently, the hearing was not held, and the court only informed about the date of the next hearing – 29.05.2017 at 10 am.

"COC-95/16"

The case filed under number COC-95/16 refers to the separate proceedings against one of the defendants for involvement in the Kumanovo events from 9 May 2015, popular among the public as "Divo Naselje". The defendant is charged with the crimes of "Terrorism" and "Terrorist organization". The hearing from 28.04.2017 was also open to the public where the proceedings are in the stage when the public prosecution presents its material and written evidence. In order to summon witnesses in this proceeding, the hearing was postponed for 10.05.2017, at 10.00 am. The upcoming hearings are scheduled for 22, 26 and 30.05, all at 10.00 am.

DR. No. 08-12/4 – case before the Judicial Council of the Republic of Macedonia

This is a case for dismissal of the judge and former President of the Court of Appeals in Skopje, Jordan Mitrinovski, who had started proceedings before the European Court of Human Rights where a violation of Article 6 of the ECHR was established. Based on this judgment, the Judicial Council decided to repeat the dismissal proceedings, although the former judge has now retired. Before the start of the hearing, the Judicial Council consisting of 5 members informed that the defendant of the former President of the Court of Appeals, Jordan Mitrinovski, had submitted a request for postponement of the hearing, with the explanation that he was not able to attend it due to the private reasons. The submitter of this motion, the President of the Supreme Court Jovo Vangelovski, was also present. The defendant said to the court that he would like to have his defendant in the preliminary proceedings also be present, but that he could also defend himself if necessary. He did not know why the session was scheduled and what the Judicial Council had to decide on. He mentioned to the Court that he has some questions that he would submit via the Court Archive, so





that the judges could get acquainted with them. As there were no conditions to proceed, the hearing was postponed for 11.05.2017 at 10.00 am.

III. FUNDAMENTAL RIGHTS

Rule of law – Violence in the Assembly of the Republic of Macedonia

On 27 April, the public gathering of the initiative “For a United Macedonia” ended up with an open use of force, causing general danger and jeopardizing the security, i.e. the physical and psychological integrity of the members of parliament from several parliamentary groups, some of the police officers who were trying to defend the Parliament Building and, above all, the lives of the MPs. This violent outburst during the gathering of the initiative “For a United Macedonia” was the culmination of the nationalistic and other exclusionary rhetoric, the discriminatory speech and hate speech that prevailed since the start of the gatherings of this initiative, but also permeated the public statements of the leader and members of VMRO-DPMNE.

The violent storming into the Assembly of the Republic of Macedonia by the mob in which masked people could be observed along with public officials such as mayors or directors of public enterprises, had a clear purpose and violated a line of legal provisions from several laws (Law on Police, Law on Public Gatherings, Criminal Code) and the Constitution. The effects of this violent break-in into the Parliament building were interpreted by the Helsinki Committee as: “According to the Criminal Code, violence committed by a group over several citizens which causes a feeling of insecurity, jeopardy or fear in the public, is a serious crime. It is obvious that the police officers not taking action is due to an unlawful order or abuse of official position. Both the perpetrators and their superiors are to be held responsible for this.”⁸

Since the police failed to uphold and perform its professional duty, at the press-conference held on 28 April, the Minister of Interior, Agim Nuhui, indicated that some of the structures of the Ministry of Interior will also have to take responsibility as they failed to do their job. When speaking about his inability to communicate with the manager of the Operational Headquarters of Mol, Mitko Chavkov, so that an adequate intervention could ensue, Minister Nuhui emphasized that “unfortunately, it is obvious that there is great political influence over the structures of Mol” and that consequently “some of the Mol employees, instead of respecting the law and pursuing their professional tasks and duties, act on the orders issued by political centers, which is to be most harshly condemned and must be sanctioned.”⁹ According to Nuhui, Mol, through the mechanisms of internal control, will seek responsibility from all those who had not acted in line with their legal authorizations including the members and management of the Operational Headquarters.

According to the balance, a total of 109 people were hurt, including citizens, 22 police officers and about ten MPs¹⁰. The leader of the biggest opposition party SDSM, Zoran Zaev, emphasized that “The

⁸ <http://mhc.org.mk/announcements/576#.WQxgrNJ97IU>

⁹ <http://www.mvr.gov.mk/vest/4048>

¹⁰ <http://a1on.mk/archives/733061>





violence against the new, legitimately elected citizens' representatives was instigated by Nikola Gruevski, Gjorgje Ivanov Trajko Veljanoski, Mitko Chavkov and a group of their associates (...) What happened last night is not the wrongdoing of a few angry individuals. This violence is the result of the last outbursts of power of the declining regime that has been violating the Constitution and democracy in this country for more than 10 years. That is why yesterday's events in Parliament were a test to Macedonia and all its citizens".¹¹

Freedom of expression and media pluralism

Regarding the developments from 27 April, with particular emphasis on the attacks of certain journalists and news crews, such as the ones on Biljana Sekulovska from Nova TV, the reporters from Telma TV and Radio Free Europe, the Agency for Audio and Audiovisual Media Services most harshly condemned the violence over the journalists and news crews. As the Agency stated: "In such tense moments, it is of utmost importance to make it possible for media professionals to efficiently and safely do their job. They are there to inform the public about the ongoing social and political events and therefore, any violence against them is unacceptable and constitutes a direct attack on the freedom of expression"¹² The Agency appealed to the Broadcasters to "strictly adhere to the professional principles of their activity" and reminded them that they need to report in an objective and unbiased manner, giving space to all relevant standpoints that they will treat in an equal manner, provide equal treatment to all standpoints during the ongoing debates and informative shows the purpose of which is to provide an analytical outline of current affairs, and that the journalists must make sure that neither they, nor their guests use discriminatory speech that incites hatred, insults, defamation or disinformation.¹³

Ombudsman

The office of the Ombudsman also reacted to the events from 27 April by harshly condemning them, as well as emphasizing that the police had virtually no reaction at all and failed to prevent the mob from storming into the Assembly, which resulted in the injuries of the MPs from the parliamentary majority, as well as reporters. Concerning this, the office of the Ombudsman informed: "There is no place for violence in a democratic country. What is now necessary is to enable the structuring of the institutions, because legitimacy is obtained through elections, and not violence. The Ombudsman calls for common sense, especially among the leaders of political parties who need to make a step

¹¹ <http://www.sdsm.org.mk/News.aspx?idNews=8995&lng=1&cat=1>

¹² http://avmu.mk/index.php?option=com_content&view=article&id=3234%3A2017-04-28-09-25-08&catid=88%3Asoopstenija-media&Itemid=313&lang=mk

¹³ http://avmu.mk/index.php?option=com_content&view=article&id=3208%3A2017-04-10-13-50-09&catid=88%3Asoopstenija-media&Itemid=313&lang=mk





forward right now and urge for calming down. At the same time, the Ombudsman appeals to the citizens not to succumb to provocations".¹⁴

Freedom of Assembly

Under the motto "United for Children and Adults with Special Needs", a group of citizens led by the "United Hearts" Association, started an initiative to give voice to the children and adults with special needs, as well as raise the public awareness about the lives of these people. The initiative focused on politicians, regardless of which political party they belong to, urging them to unite in resolving this exceptionally important and burning issue of the people with special needs and their families. The parents of children with special needs organized a peaceful gathering on 20 April, timely and properly reporting their gathering to the police (PS Centar), which was to involve setting up of tents in front of the Assembly of the Republic of Macedonia.

In spite of this, during the gathering, in an attempt to prevent or hinder the public assembly (Art. 155 of the Criminal Code), according to the observers of the Helsinki Committee for Human Rights of the Republic of Macedonia, "representatives of the City of Skopje visited the gathering and proceeded to remove the banners placed on the monument opposite the Parliament with an explanation that the organizers had not obtained permission from the City of Skopje to place banners on the monuments. Since none of the participants had been informed that such a permission is necessary, their response was that they would immediately obtain the required permission because they did not want to cause any problems. While everyone at the protest talked to the representatives of the City of Skopje, an unfamiliar person showed up and started forcibly removing the tents set opposite the Parliament in the park "Zhena borec" (Woman fighter). The person was stopped in doing so by the attendees, and he was asked to identify himself and explain why he was forcibly removing the tents. The thug refused to identify himself, nor did he explain his reasons, and only said that they should remove the tents, or he would remove them himself. After a brief altercation, he left. Although there were police officers standing nearby, none of them responded when they were called on by those attending the gathering."¹⁵

¹⁴ <http://sdk.mk/index.php/glasno-za-ombudsmanot/narodniot-pravobranitel-bara-politsijata-da-go-sprechi-nasilstvoto-vo-sobranieto/>

¹⁵ <http://mhc.org.mk/announcements/569#.WQxrFNJ97IU>

