



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

I JUDICIARY

Independence

The Primary Public Prosecution for organized crime and corruption informed that in the proceedings under the pre-investigative case established in relation to the **events in the Assembly of the Republic of Macedonia from 27 April 2017, they started summoning citizens in order to collect the necessary information.**

According to PPP, in the upcoming period the team of public prosecutors working on this case will be continually inviting people in order to collect the necessary information and will also proceed to undertake action to collect written notifications, evidence and study them.¹ On 01.06.2017, a **delegation of the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe** had a meeting with Zoran Karadzovski, - the President of the Judicial Council of the Republic of Macedonia, where they discussed the latest development after the Parliamentary Elections and the implementation of Resolution 1949 (2013) on the post-monitoring dialogue with the Republic of Macedonia, as well as the progress with regards to the collaboration with the Council of Europe on recommendation 2022 (2013) with special emphasis on the judicial system and the urgent reform priorities.

Under the project Network 23+, SPPMD from Kavadarci prepared an analysis on the implementation of the Law on Determining the Type and Amount of Penalty².

This analysis pinpoints the weaknesses and flaws arising from the speedy adoption of the Law on Determining the Type and Amount of Penalty with regards to the independence of the judiciary, the constitutionally guaranteed principle of division of power, the free judicial conviction and the principles on determining the sanctions. More particularly, they noted: uneven practice of judicial determining of penalty in the different courts; applying more lenient penalties to more serious crimes, whereas there is a stricter penalty policy for lighter crimes. The study concludes that the consequences of this law increasingly serve towards **turning the law into an instrument serving political purposes, instead of unifying the penalty policy.**³

¹ <http://jorm.gov.mk/?p=4119>

² **Analysis of implementation of the Law on Determining the Type and Amount of Penalty in the Primary Courts Tetovo, Veles, Kochani and Kavadarci**, Prof. D-r Gordana Lazhetic-Buzharovska and Prof. D-r Lazar Nanev

³ The Commission for Equalization of the Penalty Policy also criticized this law and indicated the need for its change in the annual report on the work of the Commission for 2016.





The authors of the analysis propose abolishing this law, indicating two possible ways to proceed with it. The first one is by amending Article 39, paragraph 3 from the Criminal Code which would annul the grounds for implementation of this law. The second way is by submitting an initiative to the Constitutional Court of the Republic of Macedonia by emphasizing its collision with Article 8 from the Constitution (rule of law and division of power); non-compliance with the Constitution of the Republic of Macedonia under Article 98 according to which the courts are independent; and Article 101 when it comes to the obligation of the Supreme Court of the Republic of Macedonia, as the highest court, to provide uniformity in the implementation of the laws on the part of the different courts.

The report on the work of the Judicial Budget Council and the Execution of the Judicial Budget for 2016 was submitted to the Assembly of the Republic of Macedonia.⁴

The report emphasizes that the budget approved for 2016 was not sufficient to satisfy the needs of the judicial power, whereby the beneficiary units of the judicial power were unable to complete a certain number of obligations which are legally guaranteed. The analysis conducted by the Association of Financial Workers – AFW under the Network 23+ Project examines the problem of financing the judicial power in detail⁵. The Law on the Judicial Budget adopted in 2003 stipulated that starting from 01.01.2004 the funds for the judicial power should be a minimum of 0.8% of the Gross Domestic Product of RM. Taking into account that this amount was not achieved in the course of the separate budget years, certain changes and amendments to the Law on the Judicial Budget were made in 2010, the provisions of which should have started to apply as of 1 January 2011. These legal changes stipulated a gradual annual increase in the funds allocated to the judicial power, which were to reach the legally established amount of 0.8% from the GDP in 2015. However, according to the conducted analysis it can be concluded that the level of planned/realized funds does not exceed 0.38% of the GDP. According to the Report of AFW, an ideal judicial budget would be one that would not amount to less than 0.5% of the Budget of the RM⁶.

⁴ http://www.vsrn.mk/wps/wcm/connect/ssrm/149e8bec-e8aa-4b66-a040-1fc68a8dd89c/lzvestaj+za+rabotata+na+SSRM+2015.pdf?MOD=AJPERES&CACHEID=ROOTWORKSPACE.Z18_L8CC1J41L0B520APQFKICD0CR4-149e8bec-e8aa-4b66-a040-1fc68a8dd89c-kZvrQCW

⁵ http://www.merc.org.mk/Files/Write/Documents/01238/mk/Analiza_ZFR.pdf

⁶ Report on the established situation, practices and recommendations for improved funding of the court in the Republic of Macedonia – second analysis, *Association of Financial Workers*, Veles, March 2017





Impartiality

The acting President of the Criminal Court Stojanche Ribarev ruled to **exempt Judge Bahchovanovska from the “Trust” and “Total” cases** that are to be given an assessment on the charges filed by SPP, at her own request. The reasons for the exemption are unknown to the public, apart from the fact that judge Bahchovanovska is the spouse of Vladimir Bahchovanovski, a high-ranking official in VMRO-DPMNE and Director of the State Lottery. Instead of Bahchovanovska, the assessment of the charges on the “Trust” case will be provided by Judge Marjan Grubisha, while that of “Total” by judge Dragan Nikolovski.⁷

Responsibility

The Government submitted a proposal for dismissal of the public prosecutor of the Republic of Macedonia Marko Zvrlevski.

The reasons given in the explanation state that “The proposal for dismissal of Marko Zvrlevski from the office of Public Prosecutor of the Republic of Macedonia, prior to the expiry of his mandate, is due to his unlawful, untimely and insufficiently professional work. Furthermore, with his actions and conduct the

⁷ <http://www.mkd.mk/makedonija/sudijkata-bahchovanska-nema-da-gi-ocenuva-obvinenijata-za-trust-i-total>





appointed prosecutor showed that he is not capable to uphold this office, as he failed to press charges for criminal proceedings in cases stipulated by the law, thus discrediting the reputation of the office”.⁸

The Council of Public Prosecutors accepted the government’s proposal for dismissal of the state public prosecutor, Marko Zvrlevski with a majority of votes (8 in favour and 1 against). After discussing for two hours the President of the Council, Petar Anevski, announced the decision, but refused to provide the reasons behind it.⁹ Until a new State Public Prosecutor is elected, this office will be taken by Dzhelal Bajrami as acting State Prosecutor.

Professionalism, expertise

On 12.06.2017, **the Judicial Council of the Republic of Macedonia held a working meeting with French experts**, where they exchanged opinions and experiences in relation to the Law on the Academy for Judges and Public Prosecutors, as well as the possibility to implement the experiences of the National School of Master's Degrees in the Republic of France.

II FIGHT AGAINST CORRUPTION

State Commission for Prevention of Corruption

The Commission on Political System and Inter-Community Relations reviewed the Annual Report on the Work of the State Commission for Prevention of Corruption in 2016 on a total of 4 sessions in the course of June. Both, the parliamentarians and the representatives of civil society organizations attending the session voiced their criticism for the work of SCPC.

The Platform of Civil Society Organizations Combating Corruption urged the Commission for Political System and Inter-Community Relations to adopt a Conclusion that will propose to the Parliament not to adopt the Annual Report on the work of the State Commission for Prevention of Corruption (SCPC) for 2016.¹⁰

The Platform of Civil Society organizations combatting corruption believes that although in its structure the Annual Report provides a response to the implementation of the SCPC competencies, it does not provide a comprehensive overview of the activities that were or were not undertaken in 2016 in accordance with the competencies stipulated in The Law on Prevention of Corruption, the Law on Prevention of Conflict of Interest, the Law on Protection of Whistle-blowers and the Electoral Code.

One of the key objections that directly affects the civil sector is that the Annual Report does not include and outline the case where the SCPC requested competent action to be taken by the Public Prosecutor's

⁸ <http://sobranie.mk/downloaddocument.aspx?id=1cf11842-ce21-4ea4-ab3f-108ec70c7989&t=pdf>

⁹ http://www.24vesti.mk/sovetot-na-javni-obviniteli-go-privati-predlogot-za-razreshuvanje-na-zvrlevski?quicktabs_popularna_sodrzina=2

¹⁰ http://www.soros.org.mk/CMS/Files/Documents/Dopis_do_Sobranieto_Platoforma.pdf





Office of the Republic of Macedonia, the Public Revenue Office (PRO) and the Financial Intelligence Directorate against 21 associations and foundations and one political party.

Proceedings on cases from the Special Public Prosecutor’s Office

The SPP filed charges one day prior to the expiry of its deadline and sought custody for leading politicians. The Special Public Prosecutor's Office filed charges against 94 natural persons and 7 legal entities for a series of criminal offenses revealed in the wiretapped conversations. A total of 17 indictments have been filed, and taking into consideration that there are three cases that proceedings have already been started for, the total number of filed indictments is 20¹¹.

From the investigations announced so far, no indictments have been filed for the cases of “Talir” and “Table”, while “Target” and “Tvrđina” have been merged into one. Janeva said that there hadn’t been enough time to finish the investigation on the first case, as it was impossible to investigate eight years of illegal party financing within a single month. With regards to “Tabla”, the prosecution informed that they were still working on it, and that other people, high officials, have been additionally implicated. Janeva informed that “for the time being” there are no indictments for high-ranking officials from the ruling DUI.¹²

There is no political agreement to extend the deadline of the Special Public Prosecutor's Office to press charges, due to the obstruction of VMRO-DPMNE. The Special Prosecutor's Office said they would continue with their investigations, because according to the law their period of action is 5 years. The SPP has not managed to hear 55 per cent of the conversations, and not all of the ones that have been listened to, have been analyzed.¹³

When it comes to taking over the authority over the case “Monstrum”, Prosecutor Janeva accused the Council of Public Prosecutors of being “uncooperative” which is why it was impossible to carry out inspection into the case and establish whether SPP is in charge of it.¹⁴

¹¹ <http://www.jonsk.mk/2017/06/29/%D0%B8%D0%B7%D1%98%D0%B0%D0%B2%D0%B0-%D0%BE%D0%B4-%D0%BF%D1%80%D0%B5%D1%81-%D0%BA%D0%BE%D0%BD%D1%84%D0%B5%D1%80%D0%B5%D0%BD%D1%86%D0%B8%D1%98%D0%B0%D1%82%D0%B0-%D0%BD%D0%B0-%D1%81%D0%BF%D0%B5%D1%86/>

¹² <http://rsm.mk/web/%D0%BD%D0%B5%D0%BC%D0%B0-%D0%BD%D0%B8%D1%82%D1%83-%D0%B5%D0%B4%D0%BD%D0%BE-0%D0%BE%D0%B1%D0%B2%D0%B8%D0%BD%D0%B5%D0%BD%D0%B8%D0%B5-%D0%BF%D1%80%D0%BE%D1%82%D0%B8%D0%B2-%D0%B4%D1%83%D0%B8/>

¹³ <http://www.jonsk.mk/2017/06/29/%D0%B8%D0%B7%D1%98%D0%B0%D0%B2%D0%B0-%D0%BE%D0%B4-%D0%BF%D1%80%D0%B5%D1%81-%D0%BA%D0%BE%D0%BD%D1%84%D0%B5%D1%80%D0%B5%D0%BD%D1%86%D0%B8%D1%98%D0%B0%D1%82%D0%B0-%D0%BD%D0%B0-%D1%81%D0%BF%D0%B5%D1%86/>

¹⁴ <http://meta.mk/sjo-podnese-17-obvinenija-talir-ke-pocheka/>





The cases under the titles of “**Total**”, “**Trevnik**”, “**Tifani**”, “**Titanik**”, and “**Tortura**” were assigned to Judge Monika Bahchovanovska through automatic case distribution¹⁵.

The cases which are under the jurisdiction of the Department for Organized Crime were assigned to the following judges (also by means of automatic case distribution):

- The “**Tarifa**” case to Judge Lidija Petkovska; the “**Trezor**” and “**Tenk**” cases to judge Goran Boshevski; the “**Titanik-2**” case to Judge Verka Petkovska; the “**Toplik**” case to Judge Lenka Davitkovska; the “**Tenderi**” to Judge Ivica Stefanovski and the “**TNT**” and “**Traektorija**” cases to Judge Tatjana Mihajlova. Certain doubts emerged among the public about the “randomness” of in the case distribution through the ACCMIS system.

The Primary Court Skopje 1 approved SPP’s indictment on the “Transporter” case which is conducted against 21 persons, while the first defendant is the Mayor of Bitola, Vladimir Taleski. The case was assigned to Judge Lidija Petrovska.¹⁶

The Skopje Court of Appeals accepted SPP’s appeal on the decision for bail instead of detention for the businessman Sead Kocan and brought the case for re-examination to the Criminal Court - Primary Court Skopje I Skopje.¹⁷ The court assessed that the offered guarantee did not include all the necessary evidence pertinent to lawful decision-making on the proposal that would serve to determine the grounds for the offered guarantee. Kochan is the primary suspect in the "Trust" Case for forgery of tender documentation

¹⁵ <http://bit.ly/2tQLoKX>

¹⁶ http://sud.mk/wps/portal/osskopje1/sud/vesti/81fa6b31-2093-4bad-b34c-09de584d39de/!ut/p/z1/rVLLbSlwEPwWDjkGb0ggpjC8SgFoRyoxBeUh_OAxA6JSUq_vkY9VEItUFFfLfszszuziyhal8rdKolcmQjupurt0M6mM7QswM8wwfPXRyB9sPGISwD6NlPdAgwHgOhl_huiiPpc5jJGTn7w0sTfZDsNyK0gQS58JrmrQcVKmWiAjdDteKaht6Br6pbnBrpnWr4O3YC1sRWY6j7p5X4SIOcm9QqawVP_8MshoPj0GmSMaJQK7ytNwj0TR4gWLGQFK5qHqN3HUuYPGmhQ13VTIOVO5FtmNE85_MSJRSnR-hyLHGXF_rYyGw1slMu-0Sb4pTUjalZVwmq05KLIVDPzPyY1gvMKZ2GN23dWuCG_f-rcKT--tosq6mS7310iNIJwyd5Vyv-ykkq4VUx7UzXD3JWxnvBQoPVN1DxbZtg86vxjwla6M67qehFmPQ8fzTQjicYndWLN2w!!/dz/d5/L2dBISEvZ0FBIS9nQSEh/?urile=wcm%3Apath%3A%2Fpublic_mk%2Fsud%2Fpocetna%2Fvesti%2F81fa6b31-2093-4bad-b34c-09de584d39de

¹⁷ http://www.vsrn.mk/wps/portal/asskopje/sud/vesti/b70351a2-c91b-4bd2-87c9-cbde21c2bece/!ut/p/z1/rVJNU8lwEP0tHnos2bZai7fl8GGFYRQqmgvTpKGttklpAxV_vWE8ODIKOJjbZt57u-tloKWilhwI8ahSqUIM10HpL1qD5pN8B5g5E2f7gD3wPVmHQzQc9HiFGDQB0RO858RQYQJVagEBcWWZilb5a8GVNVlgElyrkRowI5XKjWAuuC0rNA2WceiZpNGtum5rGMMyGnHbYjbljB_0CpZGKlglvThn8DA_PlwaD45B_ERITNJ9PEgipejEj17zkZWNb6u9EqaK6NcCAug4bsZRxxhtM5gb8RElkpdDyOxIF2of75WMy7LuA5z2rhh1He4L1onYpr9FcyDLXk0z_GNMQjjscleW3ruxwUn56375S3j93iDro9GWzIvifoxSKv-mM_-UetbBdjrtjvcEiVImZirVEy4uoRT7PPWdvivcRX5iBv6vr2TrvUm_vZDG-ufkAhv9YIA!!/dz/d5/L2dBISEvZ0FBIS9nQSEh/?urile=wcm%3Apath%3A%2Fpublic_mk%2Fsud%2Fpocetna%2Fvesti%2Fb70351a2-c91b-4bd2-87c9-cbde21c2bece





for a tender by ELEM worth 17 million EUR. The suspect was on the run for two months after the Criminal Chamber of the Criminal Court issued an order for his detention.

SPP submitted a request to the Supreme Court for the protection of the legality on the “Talir” case which is related to the financing of the biggest opposition party VMRO-DPMNE.¹⁸ In it, they request from the Supreme Court to establish unlawfulness in the decision of the Criminal Chamber of the Primary Court Skopje I – Skopje, which rejected the request to provide the origin of some of the property of VMRO-DPMNE. SPP emphasize that with the request to protect the legality they also indicate the necessity for interpretation of the Law on Financing Political Parties in accordance with the international standards, based on which this law was adopted in the first place, as well as the circumstance that the restrictive interpretation of the said law is contrary to the efforts for prevention of corruption as a necessary prerequisite for the building of a democratic society and compliance with the principle of the rule of law.

The third RPL submitted, which is related to the only person convicted in the “Puch” case, Zvonko Kostovski, has not yet been placed on the agenda because the case is in the Council of Public Prosecutors and not all of the records concerning this case have been submitted to the Supreme Court yet.

III FUNDAMENTAL RIGHTS

Freedom of expression and media pluralism

The Agency for Audio and Audio-Visual Services (AVMU) continued with the drafting of the Operational Strategy of the AVMS, as well as with the supervision of the broadcasters. In the course of June, a control supervision of 15 broadcasters was conducted in order to monitor the implementation of the obligations set out in the radio or TV broadcasting license, as well as the implementation of the program concept. “Through the conducted control supervision, it was concluded that all the above-mentioned broadcasters acted in accordance with the legal provisions”¹⁹.

The agency also reacted in connection to the attack on the TV crew of “24 Vesti” TV in Shtip while they were preparing a story on the suspicious building extension of the Shopping Center in Stip, which is continuously followed by controversies.²⁰ By condemning and reminding of previous attacks on media workers, the Agency emphasized that “the safety of media professionals should never be endangered”.

¹⁸<http://www.jonsk.mk/2017/06/16/%D0%BF%D0%BE%D0%B4%D0%BD%D0%B5%D1%81%D0%B5%D0%BD%D0%BE-%D0%B1%D0%B0%D1%80%D0%B0%D1%9A%D0%B5-%D0%B7%D0%B0-%D0%B7%D0%B0%D1%88%D1%82%D0%B8%D1%82%D0%B0-%D0%BD%D0%B0-%D0%B7%D0%B0%D0%BA%D0%BE%D0%BD%D0%B8/>

¹⁹ http://www.avmu.mk/index.php?option=com_content&view=article&id=3295%3A-15-&catid=103%3Astari-info-srd-srd&lang=mk

²⁰ <http://24vesti.mk/napadnata-ekipata-na-tv-24-vo-shtip>





The Agency once again urged the stakeholders to enable uninterrupted work of the media and media workers, drawing due attention to the conditions under which they can carry out their professional duties with dignity.

Fight against discrimination

The Ombudsman submitted an initiative to the Ministry of Labour and Social Policy for an amendment to the Law on Protection of Children, in order to change the legal solution which discriminates on grounds of sex and treats the parents in an unequal manner – in the cases when the mother does not meet the conditions for an allowance for a third child, this right can be exercised by the father as the other parent.”²¹

On 19.05. 2017, acting upon a complaint by the Helsinki Committee for Human Rights of the Republic of Macedonia, the Commission for Protection against Discrimination adopted an opinion that established direct multiple discrimination. A job advertisement published by Glam Hotel in Skopje, required “a female person aged 30 to 45 years to work in the hotel kitchen - serving breakfast (buffet)”. This announcement disabled access to the workplace for men, thus directly discriminating on grounds of sex, and at the same time disabled access to the workplace to women younger than 30 years and older than 45 years, which constitutes direct discrimination on grounds of age”.²²

²¹ <http://sdk.mk/index.php/makedonija/tatkovtsite-se-diskriminirani-oti-nemaat-pravo-na-pari-za-treto-dete-predupredi-narodniot-pravobranitel/>

²² <http://mhc.org.mk/announcements/594#.WVxBNhWGNdh>

