

MONITOR:

IMPLEMENTATION OF URGENT REFORM PRIORITIES

Period: 09-20.11.2015

Implementation of the Political Agreement

At its session held on November 9th, the Parliament adopted the agreed package of legislation¹ and passed the Decision to establish a Parliamentary committee of inquiry into the wiretap scandal.

The ministers and deputy ministers proposed by SDUM, as well as deputy ministers from the ranks of VMRO-DPMNE were approved by the Parliament on November 11th. This was a significant step in the process of establishing a transitional government that should prepare the April elections.² In addition, the current Prime Minister should submit his resignation 100 days prior to the elections and a new Prime Minister proposed by VMRO-DPMNE should be appointed as a head of this government.

Media reforms are still on the negotiating agenda for implementation of the Agreement. According to the 2015 EC Report on the Republic of Macedonia, backsliding has been noted in the areas of the judiciary, freedom of expression, and financial discipline. Also in this Report, the Commission has stressed the need for completion of the Ohrid Framework Agreement review process in enhancing social cohesion.³

Activating the recommendation to start accession negotiations has been conditioned **upon full implementation of the Political Agreement and significant progress in the implementation of the Urgent Reform Priorities**; an issue to be revisited by the Commission immediately after the April elections. The Urgent Reform Priorities are listed as recommendations to overcome critical issues, particularly regarding political criteria and Chapter 23 – Judiciary and Fundamental Rights.

Rule of Law and Judiciary

Judiciary

The Special Public Prosecutor submitted a request to the Public Prosecutor's Office for providing data on number of cases started by the Public Prosecution which are under her scope of work, as well as on the appointment of public prosecution's offices and the numbers under which they have been registered. The Public Prosecutor Office respected the 8 days legal deadline⁴, and on November 19th announced that data on 35 cases have been submitted.⁵ The 'Puch' case is not among them.⁶ Special Public Prosecutor met with Nina Suomalainen, the Head of OSCE Mission, who expressed her support.

Due to the repeated absence of Zoran Zaev at the fifth hearing of the '**Puch**' case, held on November 13th, the Judge ordered apprehension for the next hearing.⁷ Zaev's position remains the same for not appearing on the court's hearings, if by then Special Public Prosecutor does not take the case 'Puch' Zoran Zaev will not appear at the scheduled hearing.⁸ In addition, Zaev will be tried for bribe according to the Decision passed by the Council for Evaluation of the Prosecution Act in the Basic Court Skopje 1 Skopje.⁹

¹ Law on Whistle-blowers; Law on Amendments to the Criminal Code; Law on Amendments to the Law on the Government of the Republic of Macedonia; Law on Privacy Protection; Law on Amendments to the Electoral Code.

² According to the Political Agreement, the current Government will submit its official resignation to the Parliament in due time to allow for inauguration of a new Government on 15th January 2016, i.e. 100 days prior to the parliamentary elections to be held on 24th April 2016. The new ministers and deputies will remain in their positions in the new Government as well.

³ The first phase of the OFA review was conducted in 2012. The second phase, which is implemented with the support of OSCE and the European Institute of Peace has started in September 2015. Six (6) working groups to analyze different parts of the OFA were established and in the period 3.11/20.11.2015 thematic consultations were held for all six thematic areas of the OFA (equitable representation, antidiscrimination, smaller communities, decentralization, use of languages and education).

⁴ Article 11, Paragraph 2 of the Law on Public Prosecutor's Office for prosecuting crime related and arising from the content of the illegal interception of communication: (2) Upon written request by the Public Prosecutor's Office, offices of the Public Prosecutor are obliged, within 8 days, to submit any case they are prosecuting, in order to decide if a case is under the competence of the Special Public Prosecutor, according to her/his authority set out in this Law.

⁵ Announcement. Website of PPORM. 19.11.2015. Available on: <http://jorm.gov.mk/?p=2324>.

⁶ Monitoring activities of the Helsinki Committee of Human Rights in the Republic of Macedonia.

⁷ Monitoring activities of the Coalition 'All for Fair Trial'.

⁸ Public announcement. Website of SDUM. 12.11.2015. Available on: <http://www.sdsm.org.mk/default.aspx?mId=55&aId=2&articleId=12733>.

⁹ Public announcement. Website of the Basic Court Skopje 1 Skopje. 18.11.2015. Available on: <http://www.osskopje1.mk/Novosti.aspx?novost=429>.

The new Rules of Procedure of the **Judicial Council of RM** were published on November 17th on the website of the Judicial Council.¹⁰ These Rules of Procedure regulate the manner of work of the Council, including appointment of its members, president and deputy president; appointment of judges, court presidents and juror judges; termination of office and dismissal; deciding upon immunity and arrestment of a judge; evaluation of the work of a judge or a Court President, and other issues related to the Council authority.¹¹ The Judicial Council had a meeting with the Venice Commission delegation on November 13th, regarding new (draft) modifications to the legislation on disciplinary responsibility of judges.¹² One day prior, the legislation on disciplinary responsibility, in particular the establishment of a Council for Determining the Facts and Initiating a Procedure for Determining the Responsibility of a Judge, was also discussed at the meeting of the Venice Commission delegation and representatives of the civil society.¹³

The **European Court of Human Rights** passed a judgment in the case of Hajrulahu vs. the Republic of Macedonia, by which it determines that the state is responsible for violation of Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, referring to prohibition of torture.¹⁴ The **Bureau for Representation of RM before the ECHR** in cooperation with the Academy for Judges and Public Prosecutors held a workshop on November 10th regarding a repetition of a procedure following a judgement by ECHR.

The **Academy for Judges and Public Prosecutors** published an announcement for admission of 30 new participants in the inception training, to become candidates for judges and public prosecutors.¹⁵ The issue on the lack of staff in the offices of the Public Prosecution was raised previously, in the process of the selection of Special Public Prosecutor's team members.

Interception of Communication

According to the **Decision on establishing a Parliamentary committee of inquiry into the wiretap scandal**, this committee should determine the chronology of events and circumstances, the political responsibility related to wire-tapping and the content of the published material. The Parliamentary Committee should also draft recommendations for prevention of illegal interception of communication and increasing transparency of state and government institutions.

Upon a proposal by the Commission on Election and Appointment Issues, the Parliament appointed the members of the Parliamentary committee¹⁶ on November 17th. The meeting of the Commission on Election and Appointment Issues was previously cancelled due to failure of VMRO-DPMNE and DUI to propose members.

Lustration

A request for access to public information has been submitted to the Commission on Verification of Facts regarding the correct number of proposals on initiated procedure, however, there has not been any feedback yet¹⁷.

Electoral Reform

The **amendments to the Electoral Code** integrate agreed reforms in the working group for implementation of Przhino Agreement.¹⁸

Two new provisions are added to prohibit use of office premises, office equipment and office vehicles of state bodies for the purpose of the electoral campaign, including prohibition of pressure or attempt to pressure and intimidate voters or members of their families or their close relatives.

From the beginning of the election process until they are completed, budget funds cannot be used in terms of starting construction works and payment of salaries, pensions, social benefits and other transfers which are not

¹⁰ Rules of Procedure of the Judicial Court of RM, adopted on October 30th. Available on:

<http://www.ssrn.mk/docs/akti/%D0%94%D0%95%D0%9B%D0%9E%D0%92%D0%9D%D0%98%D0%9A%20%D0%97%D0%90%20%D0%A0%D0%90%D0%91%D0%9E%D0%A2%20%D0%90%D0%9D%D0%90%20%D0%A1%D0%A1%D0%A0%D0%9C%2030%2010%202015.pdf>

¹¹ Monitoring activities of the Human Rights Institute. The Rules of Procedure shall be additionally analysed.

¹² Meeting of the Judicial Council and a delegation of the Venice Commission. Website of JCRM. 13.11.2015. Available at: <http://www.ssrn.mk/Novosti.aspx?novost=363>.

¹³ The meeting was also attended by Margarita Caca Nikolovska, President of the Human Rights Institute.

¹⁴ The Judgment is available on: [http://hudoc.echr.coe.int/eng#{"sort":\["kupdate Descending"\],"documentcollectionid2":\["GRANDCHAMBER","CHAMBER"\],"itemid":\["001-158137"\]}](http://hudoc.echr.coe.int/eng#{)

¹⁵ Public call for admission of participants in inception training at the 'Pavel Shatev' Academy for Judges and Public Prosecutors. Website of AJPP. Published on 18.11.2015 (published in the Official Gazette on 9.11.2015.). Available at: <http://www.jpacademy.gov.mk/novosti/-----30---->

¹⁶ Petre Shilegov was appointed as President, Goran Misovski as Vice-President; Antonio Miloshoski, Silvana Boneva, Krsto Mukoski, Pavle Sazdov, Dimitar Stevanandzia, Liljana Zatoroska, Magdalena Manaskova, Vladanka Avirovik, Tomislav Tuntev, Vasko Kovachevski, Talat Xaferi, Ejup Rustemi and Roza Topuzova-Kareva were appointed as members of the Commission.

¹⁷ Request submitted by the Human Rights Institute on November 2nd.

¹⁸ The following was reported on in the previous briefs: the manner of election of MPs from the diaspora, registration of voters, political advertising at the public broadcasting service and private media, and the composition of the State Election Commission.

defined as regular. In the 20 day period prior to the start of the election campaign until their finalization, there will be moratorium on subsidies, except for the regular monthly payments, and on public events regarding construction or launching of new public facilities.

The Voters list will be kept by the State Election Commission who is the sole institution competent for its update based on checks and statistical analysis, cross-referencing various databases and records, unlimited on-spot checks and other proper and acknowledged revision methods.

Regarding equitable gender representation, at least 40% of the candidates belong to the less represented gender, as following: at least one position of three belongs to the less represented gender, and in addition, at least one position of in every ten places.

The electoral campaign must not be financed from budget funds, or from funds of public enterprises and public institutions. Free-of-charge service provision shall also be considered as donation. A participant in the electoral campaign may spend no more than 180 MKD per listed voter in the electoral district, while financial report shall be submitted to the State Audit Office.

On November 16th the Parliament passed a Decision to publish a call for appointment of a president and members of the State Election Commission.¹⁹

Depoliticisation of the Public Administration

On November 12th, the current **Minister of Interior**, Oliver Spasovski, sent a telegram to the employees that “all powers delegated by interior ministers who had previously run the Ministry of Interior shall not be valid”. The content of the telegram was originally reported by pro-government media, with headlines pointing to *chaos in the Ministry of Interior*, including breach of the security system and paralysis of the police.²⁰ VMRO-DPMNE accused that this measure means politicisation of the Ministry of Interior²¹. On this, Spasovski posted refute on the Mol website.²²

Upon stepping into the position of **Minister of Labour and Social Policy**, Frosina Tashevska Remenski encouraged the employees to report any kind of pressure, illegal action or request from superiors to commit illegal acts. The additional Deputy Minister, Dime Spasov, sent his own letter to call on employees not to proceed according to the announcement sent by the new Minister, since it was deemed illegal and was “brutal attempt for politicisation of the institutions and violation of the rights and freedoms of citizens”.

According to the **amendments to the Electoral Code**, political parties that will participate in the election process will sign Code on Fair Elections by which they will unambiguously oblige themselves not to pressure or make attempts to pressure employees of the public and state administration, including companies and enterprises with state capital.

Media

The **Association of Journalists** (ZNM) considers the EC Report regarding freedom of expression to be most critical, but the most realistic so far.²³ The **Macedonian Association of Journalists** (MAN), however, considers the Report to be partial, subjective and unilateral.²⁴

Immediately before the meeting with the political parties, a meeting with a wide range of participants was held, in order to hear positions from the wider media sphere and non-governmental organisations. According to the statement by the facilitator Vanhoutte, media reform refers to: elimination of violence against journalists, free access to information, avoiding defamation charges, re-examination of political and government advertising, media self-regulation by means of an ethical council and changes in the work of the Agency for Audio and Audio-Visual Services, the Macedonian Information Agency and the Public Broadcasting Service. The only political parties who attended the debate were SDUM and DPA. The deadline for an agreement was prolonged for a week, until November 27th.

According to the modifications of the Electoral Code²⁵, the **Agency for Audio and Audio-Visual Services** sent a press release stating that no advertisements funded by the State Budget, municipal budgets or the budget of

¹⁹ Available at: <http://www.sobranie.mk/materialdetails.nsp?materialId=d7698074-2202-4ae8-9c11-8f09c678dc14>.

²⁰ One of the first to react was the former Interior Minister, Gordana Jankulovska, who warned that “state functions are brought into question” at her tweeter profile.

²¹ SDUM barely lasted out for two days, and has already demonstrated how it will politicise the Ministry of Interior. Website of VMRO-DPMNE. 13.11.2015. Available at: <http://vmro-dpmne.org.mk/?p=28328>.

²² Refute regarding the telegram. Website of the Mol. 11.13.2015. Available on: <http://www.mvr.gov.mk/vesti/807>.

²³ ZNM: EC Report is criticizing, but realistic. Website of ZNM. 12.11.2015. Available at: <http://www.znm.org.mk/drupal-7.7/mk/node/927>.

²⁴ MAN: EC Report regarding the media is partial. Telma. 10.11.2015. Available at: <http://www.telma.com.mk/vesti/manizveshtajot-na-ek-vo-delot-na-mediumite-e-pristrasen>. MAN does not have its own website.

the City of Skopje, or of any other persons that have been legally entrusted with exercising public authority, may be published/broadcast.²⁶ Following this announcement, on November 13th, the Public Broadcasting Service stopped airing government advertisements and campaigns financed from the budget funds. Taking into account the fact that the modifications to the Electoral Code came into force on November 10th, the announcement and the decision were late by two and three days, respectively. Broadcasters, print media, and electronic media, as well as persons related to them, may not in any way fund or give donations to political parties.

Media organisations reacted to the modifications to the Electoral Code that proposed increased fines for media and extend the scope to internet portals, and have demanded to be included into the negotiating process. Otherwise, they have announced protests in front of the Parliamentary Club, as well as boycott on the decisions from the negotiations and the elections.²⁷

On November 17th, the MRTV management presented the **Code of Ethics of the Public Broadcasting Service**, in the presence of professional associations, the Media Agency and the facilitator Vanhoutte. The Code was criticised by ZNM as being a political solution.

²⁵ Article 83 of the Law on Modifying and Amending the Electoral Code: From the date this Law comes into force, until the day of the early general elections to be held on April 24, 2016, broadcasters, print media and electronic media (internet-portals) may not air, or publish advertisements financed by the Budget of the Republic of Macedonia, or the municipal budgets and the budget of the City of Skopje and of any other persons that have been legally entrusted with exercising public authority.

²⁶ Press release. Agency on Audio and Audio-Visual Media Services. Website of AVMS. 12.11.2015. Available at:

http://avmu.mk/index.php?option=com_content&view=article&id=2473%3A2015-11-12-14-56-22&catid=88%3Asoopstenija-media&Itemid=313&lang=mk.

²⁷ Media organization: Fines for media in the Electoral Code are scandalous. Nova TV. 20.11.2015. Available at:

<http://novatv.mk/index.php?naviq=8&cat=2&vest=25689>.

REACTIONS

Again we have been sent a reaction (at our e-mail address on 10.11.2015) by the spokesperson of the Supreme Court of the Republic of Macedonia; the full text of the reaction is presented below.

At the same time, we would like to express our satisfaction that the mentioned speech of the Supreme Court President was published on the website of the Court, and all interested readers may read the entire speech.²⁸

The text of the reaction:

“Dear,

We would like to thank you on your ‘Monitor: Implementation of Urgent Reform Priorities’ Report for the period 21.10.2015-06.11.2015, sent by e-mail on 09.11.2015 at 18:00.

In the explanation to your report you again clarify that Network 23 – network of non-governmental organisations, established in July 2015, has currently been working on monitoring the urgent reform priorities, supported by the Kingdom of the Netherlands, and has prepared **its reports on evidence based research and advocacy**.

Regarding the section on “Rule of Law and Judiciary”, at page 3 of your report, it is stated that “In her official address, the President Lidija Nedelkova stated that despite the fact that the judiciary in Macedonia has been facing certain problems and weaknesses that must be overcome, the public perception of the judiciary is increasingly based on random criticism **by and through the media**.”

In this context, it is unacceptable to us for the report to contain the text “by and through the media”, since this was not a part of the speech of the President of the Supreme Court of the Republic of Macedonia at the Solemn Academy on October 29th, 2015, and at no times whatsoever the word media was mentioned, or the context of the speech referred to any random criticism by and through the media.

We would like to point out again, that personal opinion and self-wilful comments may not constitute grounds on which you can make this report you have claimed is evidence based research and advocacy.

The speech of the President of the Supreme Court of the Republic of Macedonia, Lidija Nedelkova, is available on the website of the Supreme Court ‘www.vrsm.mk’, in the section on public announcements, as part of the announcement on the Solemn Academy on the occasion of the 70th anniversary of the Supreme Court of the Republic of Macedonia, held on October 29, 2015. Therefore, we are submitting this text as our Comment we request to be taken into account”.

²⁸ Available on: http://www.vrsm.mk/cms/FCKEditor_Upload/File/%D0%93%D0%BE%D0%B2%D0%BE%D1%80-70%20%D0%B3%D0%BE%D0%B4%D0%B8%D0%BD%D0%B8.pdf.