

MONITOR:

IMPLEMENTATION OF URGENT REFORM PRIORITIES

Period: 21.10-06.11.2015

Implementation of the Political Agreement

Implementation of the Political Agreement entered a critical phase. The Agreement signatories stumbled on mandates of ministers and deputy ministers. Consequently, this has contributed to the stalemate of negotiations on other key issues, including electoral code which was previously agreed. The facilitator Vanhoutte changed the negotiation format with bilateral meetings which culminated in a final agreement on 5 November.

The international factor has become louder in its demands for implementation of the agreement, by stressing that this would affect the recommendation to open negotiations with the EU. Ambassadors of USA, France, Italy, the United Kingdom and Germany gathered in front of the Government of the Republic of Macedonia to express their concerns about the standstill in the political development. This time, they publicly called upon VMRO-DPMNE and Gruevski to demonstrate engagement in the implementation of the agreement, as well as constructiveness, good will and urgency, in order to implement the necessary reforms quickly. Regarding SDUM, they called to continue to fulfil their obligations arising from the political agreement, including the commitment not to publish any further wiretap material.¹ In addition to the ambassadors, the same message came from official Berlin.² These views were accompanied also by the European Parliament "Progressives".³ Howitt, former rapporteur for Macedonia, pointed out that it is too late for a positive recommendation as last year's, thereby indicating conditionality to the recommendation.⁴

Half an hour after the ambassadors' reaction, Prime Minister Gruevski published his position on his Twitter account, stating that "the people will decide about the future of Macedonia".⁵

This time, the pressure has been fruitful. In the evening of 5 November, the negotiating team of the political parties agreed upon new Law on Government, Electoral Code, Law on "wiretaps", Law on whistleblowers and the Parliamentary committee of inquiry into the wiretap scandal. Prominent party members from the SDUM will become part of the transitional government.⁶ The date for elections remains the same.

The opposition ministers will have the right to intervene in ministries' human resources policy, however on every appointed official from SDUM there will be a counterpart from VMRO-DPMNE. Deputy Ministers will have veto powers regarding elections since the first day in office, and in case of different interpretation, State Electoral Commission (SEC) will be in charge to resolve the issue(s).

Law on "wiretaps", named as Law on privacy protection, will apply only on illegal material recorded during the period 2008/2001, but it did not provide any penalties for using already published telephone calls. Ban on publication refers only to materials which threaten the privacy, but not on materials of public interest. Opinion by the Venice Commission will be required and the implementation of the law will start after six months. Law on whistleblowers will protect the collaborators of justice within the state institutions including the private companies and will be implemented on every other base might be in this position.

¹ The reaction is available on the website of the British Embassy: <https://www.gov.uk/government/world-location-news/joint-statement-on-political-crisis-in-macedonia>.

² The reaction is available on the website of the German Embassy:

http://www.skopje.diplo.de/Vertretung/skopje/mk/_pr/Presse2015/Pressemitteilungen/Reichel-Okt2015.html

³ Representatives of the Progressive Socialists and Democrats in the European Parliament, Gianni Pittella (Group President), Richard Howitt and Kurt Fleckenstein, visited Macedonia on 4 November in order to participate in a public debate entitled "Challenges and expectations of the current political situation and European perspectives", organized by the Foundation "Friedrich Ebert" - Skopje Office, in cooperation with "Progress Institute". During the visit, the delegation Pittella-Howitt met with Zoran Zaev, and also held a meeting with Foreign Minister Nikola Popovski, composed of Pittella-Fleckenstein.

⁴ Howitt: Przhino Agreement is breached. Telma. 04.11.2015. Available on: <http://www.telma.com.mk/vesti/hovit-dogovorot-od-przhino-e-prekrshen>.

⁵ Gruevski: The people of Macedonia decide about its future. Website of the Government of the Republic of Macedonia. 23.10.2015. Available at: <http://vlada.mk/node/11346?language=en-gb>.

⁶ Oliver Spasovski as Minister of interior, Frosina Remenski as Minister of labor and social policy, Kire Naumov as deputy Minister of finance, Aleksandar Kiracovski as deputy Minister of information society and administration and Ljupcho Nikolovski as deputy Minister of agriculture.

Nevertheless, the laws were not publically available. It was announced that they will be in parliamentary procedure “as soon as possible”, indicating Monday as the working group of the parties still need to precise some “technical details on the procedures”.

European Commission encouraged the parties “to make the necessary remaining steps in view of implementing the commitments of the June/July agreement...which is also relevant in the context of the upcoming progress report”.⁷

Rule of Law and Judiciary

Judiciary

The deadline of 35 days to provide funds for the **Special Public Prosecutor’s Office** has passed. Yet, the Parliament, unanimously and without a debate, approved the 63.420.428 denar budget proposed by Janeva for the last quarter of 2015. The Council of Public Prosecutors changed its previous decision and appointed additional five public prosecutors that will work together with the seven previously appointed prosecutors in Janeva’s team. Appointed prosecutors will be able to choose two investigators and two associates. Newly established Special Public Prosecutor’s office, located in the former premises of the Agency for Youth and Sports, announced that it will start to work from 9 November (Monday).⁸

The **Appellate Court Skopje** declared itself incompetent to decide upon appeals of district public prosecutors against decisions of a judge in a previous procedure by which intercepted communication materials published by the opposition were rejected as evidence. This decision is in accord with the Law on Criminal Procedure which prescribes that a first instance court with a judicial panel of three judges is competent to decide upon appeals against decisions of a judge in a previous procedure. It appears that the judge in the previous procedure provided a wrong legal advice regarding the court in charge for the prosecutor’s appeals at this phase. The case has been returned to the Basic Court Skopje 1 Skopje.⁹ The Basic Court rejected the appeals as unfounded and confirmed the decision of the judge of preliminary procedure.¹⁰

At a session held on 30 October, the **Judicial Council** determined that due to the annual summer holidays, courts have a large number of backlog cases. A new Rules of Procedure was adopted, on grounds of which the Judicial Council should develop new internal working procedures. Regarding the published call for appointment of two members of the Council to determine facts and to initiate a procedure to determine the responsibility of a judge from the ranks of retired university professors from law faculties at universities in the Republic of Macedonia, the procedure has been completed, to be followed by a psychological test, after which the candidates will be announced.¹¹ But on 4 November, a call for appointment of a Council member among the members of the communities that are not majority in the country was re-published.¹² On a demand for greater transparency of the procedure, the Selection Committee called on protection of the candidate’s integrity. The Constitutional Court rejected the initiative for assessing the constitutionality and legality of the provision which foresees that only retired persons can be candidates for Council members.

On 29 October, the **Supreme Court of the Republic of Macedonia** marked its 70 year anniversary. 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. Therefore, the Supreme Court President called for ending the negative comments and the public persecution against the judiciary.¹³

Since it was founded in 2012, the **Inter-sectorial Commission for Implementation of Decisions of the European Court of Human Rights** has held ten sessions to discuss implementation of many judgments of the ECHR

⁷ EC: Parties to make the necessary remaining steps in June/July agreement implementation. MIA. 06.11.2015. Available on: <http://www.mia.mk/en/Inside/RenderSingleNews/401/132881647>.

⁸ Monitoring activities of the Helsinki Committee of Human Rights.

⁹ Monitoring activities of the Helsinki Committee of Human Rights.

¹⁰ Public announcement. Web site of the Basic Court Skopje 1 Skopje. 04.11.2015. Available on: <http://www.osskopje1.mk/Novosti.aspx?novost=427>.

¹¹ No announcements from the session held on 30 October 2015 have been published on the website of the Judicial Council. The Human Rights Institute regularly monitors sessions of the Judicial Council.

¹² Call for appointment of a Council member to determine the facts and initiate a procedure for determination of responsibility of a judge. Website of the Judicial Council. 04.11.2015 year. Available on: <http://www.ssrn.mk/Novosti.aspx?novost=361>.

¹³ Monitoring activities of the Helsinki Committee of Human Rights

against RM, with regards to undertaking proper individual and general measures. The Bureau for Representation of RM before the ECHR has regularly implemented only ECHR decisions regarding payment of just-satisfaction, deriving from judgments or decisions of the court (made on grounds of amicable settlement or unilateral declaration) in the foreseen deadline. At the beginning of 2015, the Bureau and the Committee of Ministers jointly made a plan for submission of action plans/reports about judgments against the Republic of Macedonia of improving communication with the Committee on execution and closure of cases that have already been executed. This year, until now, three cases against RM have been fully closed and a total of 14 action plans/reports have been submitted.¹⁴

The proposed 2016 budget, entered into a parliamentary procedure, envisages for the basic budget of the **Academy for Judges and Public Prosecutors** to be 41.403.000,00 denars, an increase compared to 2015 when the budget was 31.293.000,00 and to 2014 when it was 34.946.000,00 denars.¹⁵ However, the 2014 budget rebalance left the Academy short of 4.477.000,00 denars according to their 2014 Report.¹⁶

The 2016 proposed budget envisaged for judiciary reform programme, led by the Ministry of Justice, in order to improve both judicial efficiency and effectiveness, and business climate. It also proposes strengthening of judicial capacities and the capacities of the ministries to implement a strategy for judiciary reform, the related legislation, and the judicial infrastructure. It allocates 74.650.000,00 denars for this reform, divided by categories for purchasing furniture, equipment, and machines, as well as for construction works, without any mention of trainings.

Interception of Communication

Upon an invitation by the ASCI (Administration for Security and Counter-Intelligence), members of the Parliamentary Oversight Commission monitoring the work of the intelligence agencies visited the premises of the secret police. However, instead of restoring trust in this institution, the meeting was followed by members' mutual accusations. Hari Lokvenec, the Commission's Chair, stated that the visit failed to provide the answers, but rather resulted in scant information. The Supreme Court has given a negative reply to the question if it had ordered interception of communication since 2007. According to Lokvenec, there is a discord in the number of court orders for 2014 published by the Public Prosecutor's Office and the number of court orders for the same year recorded by the ASCI. According to Sazdov, an MP from the ranks of VMRO-DPMNE, Lokvenec should be criminally prosecuted for disclosing such data.¹⁷

Parliamentary committee of inquiry into the wiretap scandal will be composed of 16 members: 8 from VMRO DPMNE, 4 from SDSM including the chair and co-chair of the committee, 2 from DUI, 1 from DPA and 1 independent MP. The meetings of the Committee will be public and each party will propose three witnesses. The Commission will submit a report in January 2016.

Lustration

The website of the Commission on Verification of Facts is functional again, and the homepage contains information about the new law.¹⁸

Electoral Reform

With the amendments of the Electoral Code on the political advertising, media outlets will no longer be able to appear as donors and the total amount per voter is limited to 110 denars. The government and the opposition will have equal media representation, including 3 hours on the public broadcaster each, 8 minutes per hour on the private media and proportional distribution on billboards.

¹⁴ This information was obtained from the Bureau for Representation of RM before the ECHR as a reply to a request for free access to public information by the Human Rights Institute on 17 September 2015.

¹⁵ 'All for Fair Trial' Coalition – Source of information: websites of the Parliament and the Academy, 2014 Annual Report of the Academy.

¹⁶ In 2014, the Academy spent 26.720.285,00 denars out of the allocated 30.469.000,00 denars according to the budget rebalance. However, according to the annual account of the 2014 Budget of RM, funds allocated to the Academy amounted to 28.849.000,00 denars. It demonstrates that cuts in 2014 totalled 6.097.000,00 denars rather than 4.477.000,00 denars.

¹⁷ Accusations following the visit to the ASC. Telma. 27.10.2015 Available at: <http://www.telma.com.mk/vesti/obvinuvanja-po-posetata-na-ubk>.

¹⁸ This information resulted from the regular monitoring of the Commission on Verification of Facts by the Human Rights Institute.

The nine-member composition of the State Election Commission should be completed 15 days after the adoption of the Electoral Code, where the ruling party and the opposition will have three members each and the remaining three members including the chair, will be experts.

International community called upon that the elections must be conducted on level playing field and be internationally recognized. Commissioner Hahn announced a strong international monitoring.¹⁹

Depoliticisation of the Public Administration

100 volunteers at the Kumanovo General Hospital were handed decisions for transformation of their working contracts into full time positions in the presence of the Local Self-Government Minister and the Minister of Economy.²⁰ This decision is not in accordance with the Urgent Reform Priorities that suggested a moratorium to the Law on Transformation of Temporary Employment into Fulltime Employment until the principle of merit is fully respected in the process of transformation.

Media

At the Speak Up3 Annual Conference in Brussels, Commissioner Hahn pointed out that freedom of expression and the media will have a central role in the enlargement process and that this issue cannot be a subject of negotiations.²¹

The Constitutional Court rejected Apostolov and Kostova appeal, a journalist and editor of the weekly magazine "Focus", to protect the freedoms and rights pertaining to freedom of public expression of thought. The published texts in the weekly magazine Focus did not intend to cause public debate, but to harm personal rights of the plaintiff Mijalkov. At the same time, Constitutional Court held that the text did not meet the principles of investigative journalism, and that the source of information, a former ambassador to Macedonia, cannot be considered as a relevant factor.

This decision raises the following questions: (1) Why does the Court consider that the texts relating to the conduct of a public official, in this case, the former director of ASCI, are not a matter of public interest?; (2) Why did a former ambassador, a holder of high state public office, cannot be considered as a relevant source of information?²²

¹⁹ EU Commissioner Hahn calls for implementation of Przhino agreement and fair elections in April. MIA. 04.11.2015 Available on: <http://www.mia.mk/en/Inside/RenderSingleNews/200/132878667>.

²⁰ 100 volunteers were given decisions for employment. MIA. 29.10.2015 Available at: <http://www.mia.mk/mk/Inside/RenderSingleNews/380/132869259>.

²¹ Commissioner Hahn warns bad media situation affects the ability of a country to join EU. MIA. 04.11.2015. Available on: <http://www.mia.mk/mk/Inside/RenderSingleNews/98/132877476>.

²² From the monitoring activities of NVO Info center.

REACTIONS

From this edition on, we will publish reactions to the contents of this report.

We are publishing in full the reaction we received on our e-mail address on 26 October 2015 by the spokesperson of the Supreme Court:

“Dear,

We carefully read your report “Monitor: Implementation of Urgent Reform Priorities” for the period 01-20.10.2015, you have sent to us via e-mail on 21.10.2015 at 22:25. In the explanation to your report, you have clarified that Network 23-network of civil society organisations was established in July 2015, and is currently working on monitoring the urgent reform priorities, supported by the Kingdom of the Netherlands, and produces its reports on grounds of evidence-based research and advocacy.

In this context, it is unacceptable to us for the report to contain a text related to the President of the Supreme Court of the Republic of Macedonia, copied from a text published by Sashe Dimovski on the ‘Prizma’ website on 14 October 2015. The reason for this is that the published text of this author obviously reflects his personal opinion taken out of context and imposing wrong perception in the public about the work and the reputation of the judiciary, particularly the Supreme Court of the Republic of Macedonia.

The event the author talks about in the text, happened on 28 September 2015 and in the debate statements at no time the results of the survey on the judiciary conducted in 2009 with assistance of the OSCE Mission in Skopje were disputed, nor there has been any intention of doing so. It is even less true that a survey of the judges, planned to be conducted by the Association of Judges of the Republic of Macedonia would be carried out in order to prove that there was no political pressure in the judiciary.

In no case a personal opinion of anyone and a self-wilful comment could be grounds for your report, you have claimed is based on research and advocacy based on evidence and arguments.

Therefore, we are submitting this text as our Comment, we request to be taken into account. This Comment was also submitted to the OSCE Mission in Skopje”.