

## The Monitoring Brief for March 2016 covers the monitoring of Chapter 23 – Judiciary, Anticorruption and Fundamental Rights

### Constitutional Court

At a closed session on 15 March 2016, the Constitutional Court decided to revoke the Law Amending the Law on Pardons (Official Gazette of the Republic of Macedonia no.12/2009). With this decision, the President of the Republic of Macedonia will have the power to pardon persons convicted of crimes against elections, based on which the functioning of the Commission on Pardons was legally established.

The President of the Constitutional Court did not provide a motivation for the reason and manner in which the decision to exclude the public from the session was adopted. Although the exclusion of the public is a matter that the majority of constitutional judges should decide about, the public was not informed whether and when a working meeting of the constitutional judges was held to determine the reasons for closing the session and the adoption of this undemocratic decision, or whether this was a decision single-handedly adopted by the President.

The urgent proceeding by the Court after the initiative for assessment of the constitutionality of this law submitted at the start of the month of February 2016, immediately after the opening of the investigation on electoral fraud by the Special Public Prosecution, leads to reasonable suspicion that the Constitutional Court works in defense of the ruling party's interests.

### JUDICIARY

#### Independence and professionalism

##### Judicial Council<sup>1</sup>

In the course of this reporting period, the Judicial Council of the Republic of Macedonia (JCRM), held two sessions. At the session held on 9 March 2016, the Judicial Council elected an acting president of the Primary Court Debar, Ilir Iseni, judge from the Primary Court Debar, although the conditions for election of a president in accordance with the previously announced open call were met.

At JCRM's session held on 14 March 2016 a working group was established to determine the approximate number of cases that a judge needs to solve per month in the courts throughout Macedonia. Although a Rulebook on Determining the Methodology to Establish a Norm is in place, a tendency of a decreasing number of new cases in courts was observed, and therefore the establishing of a norm for 2016 was necessary.

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<sup>1</sup> The monitoring of the Judicial Council is an activity conducted by the Human Rights Institute



A working group charged with drafting a Program for Support of Mediation was also established at the session, which is stipulated as an obligation of the judges in accordance with Article 27 and 29 from the Law on Mediation.

A Rulebook on the criteria for providing a judge with consent for activities performed in an institution of higher education was adopted, which has emerged as a need after the adoption of the Strategy to Combat Corruption and the GRECO recommendations. The criteria, among other things, foresee a minimum of years of experience (6 years of judicial experience) and the lectures are to be held after the judge's working hours.

Lavdrim Seferi, judge in the Primary Court in Gostivar was elected as acting President of the Primary Court in Gostivar.

The JCRM's session where several judges in the primary courts were to be selected from the candidates from the Academy for Judges and Public Prosecutors was postponed several times before it was held.

### Special Public Prosecution

On 15 March 2016, the SPP published the report<sup>2</sup> on its work for the period from 15.09.2016 to 15.03.2016. The report describes the activities taken by SPP in detail, which despite the short period of time and the obstructions by the remaining institutions, managed to emerge as an independent authority in the system of public prosecution of the Republic of Macedonia.

SPP announced that apart from the team of public prosecutors, a team of investigators was also formed, consisting of 11 police officers from the Ministry of Interior and 4 police officers from the Financial Police. In terms of case work, SPP informed that subject-matter jurisdiction was established for a total of 30 cases against 80 people. The structure by criminal acts against a total of 80 persons is as follows: 10 persons for the criminal act of "Violation of the Voting Right", Article 159 from the Criminal Code<sup>3</sup>, 37 people for the criminal act of "Misuse of Official Position and Authorization", Article 353 from CC, 12 people for the criminal act of "Violation of the Voter's Freedom of Choice", Article 160 from the CC, 1 person for the criminal act of "Violation of the Confidentiality of Voting", Article 163 from CC, 3 people for the criminal act of "Abuse of Election Campaign Funds", article 165-a from CC, 1 person for the criminal act of "Misuse of Personal Data", Article 149 from the CC, 3 people for the criminal act of "Abuse of Election Campaign Funds", Article 165-a from CC, 1 person for the criminal act of "Misuse of Personal Data", Article 149 from CC, 2 persons for the criminal act of "Coercion", article 139 from CC, 6 persons for the criminal act of "Unauthorized tapping and video recording", article 151 from CC, 1 person for the

<sup>2</sup> The full report is available at the official web-site of the Prosecution at the following link:

<http://www.jonsk.mk/%D0%B4%D0%BE%D0%BA%D1%83%D0%BC%D0%B5%D0%BD%D1%82%D0%B8/>

<sup>3</sup> The abbreviation CC (K3) refers to the Criminal Code of the Republic of Macedonia and shall be used as such throughout the body of this report



criminal act of "Espionage", Article 316 from CC, 1 person for the criminal act of "Violence against the Representatives of the Highest State Authorities", Article 311 from CC, 2 persons for the criminal act of "Injury to the Equality of Citizens", Article 137 from CC, 3 persons for the criminal act of "Electoral Deceit", Article 165 from CC and 1 person for the criminal act of "Destruction of Electoral Material", Article 164 from CC. Apart from the listed criminal acts, 10 of these persons are also being indicted for the criminal act of "Terrorist Organization", Article 394 from CC.

In the part referring to the processing the wiretapped calls submitted by SDSM, SPP informed that the process of evidencing the materials has been completed and a commission to examine the materials has been established. On 30 March 2016, SPP held a press-conference where they informed that another investigation has been opened for a case filed under the name Fortress (Tvrdina). Five persons working in departments of the Security and Intelligence Administration and the Minister of Interior are suspected that in the first half of 2015, by misusing their official position and authorization and exceeding the limits of their official authority, they intentionally destroyed the systems for interception of communications thereby inflicting the state and the Budget of the Republic of Macedonia damage in the amount of 10,000,000.00 EUR, or 615,000,000.00 MKD.

In this case, SPP issued a search warrant for one of the suspects with the initials G.G. that the judge did not provide consent for in the course of a previous proceeding<sup>4</sup>. The Criminal Chamber upheld the judge's decision stating three reasons for it: 1) the limited authority of SPP, 2) SPP's request did not clearly specify what period in time the content of the unlawful interception of communication referred to and 2) SPP's request did not lead to reasonable suspicion that the specific criminal act was the outcome of the unlawful interception of communication.

This argumentation of the Criminal Chamber is legally ungrounded since in accordance with Article 6 from the Law on SPP this prosecution has full autonomy in the investigation and pursuit of criminal acts related to the unlawful wiretapping. Based on this, it is obvious that the Primary Court Skopje 1, Skopje has exceeded its authorization<sup>5</sup>.

When it comes to SPP's proposal to impose the measure of detention against the suspect G.G., the judge from the previous proceeding accepted the proposal and imposed the measure of detention in a duration of 30 days. An appeal was filed to the Criminal Chamber against this decision by the defense of the suspect, which replaced the measure of detention with the measure of house arrest.

<sup>4</sup> The full press release of the Primary Court Skopje 1 regarding the judge of the previous proceeding not providing consent is available at the following link: <http://www.oskopje1.mk/Novosti.aspx?novost=463>

<sup>5</sup> Helsinki Committee's reaction on the decision of the Primary Court Skopje 1 is available at the following link: <http://www.mhc.org.mk/announcements/388#.VweG5P197IU>



## Court proceedings<sup>6</sup>

### Case - Coup ("Puch")

At the hearing on 02.03.2016, SPP informed that through a special written submission they requested copies of the evidence on the case to be submitted to them, but the court declined this request. Consequently, SPP filed an appeal to the Court of Appeal in Skopje, and the hearing was postponed for 03.05.2016, at 10 am.

Through a press release posted on its official facebook place, SPP<sup>7</sup> informed that the first request to the Court for delivery of the records and electronic evidence was sent on 21.12.2015, and it was further specified with a request from 09.02.2016. The request was submitted pursuant to Article 81 from LCP, which governs the inter-institutional cooperation. Despite the sending of two reminders pointing to the necessity of the delivery of those copies, the Court adopted a decision to reject our request for delivery of copies of the records and electronic evidence as late as 29.02.2016. SPP informed that this decision will be appealed against, since the Court's elaboration of the reasons on grounds of which the request was rejected are fully ungrounded. SPP reminded that the accusatory principle and the principle of legality of the proceedings stipulate that the public prosecutor should possess the evidence that the indictment is grounded on. This leads to the impression that the Court obstructs the work of this Public Prosecution by postponing the criminal proceedings and disabling this Public Prosecution to engage with the main hearing.

### Case - Rover<sup>8</sup>

On 04.03.2016, the hearing on the Rover Case was scheduled, but it was postponed due to the illness of one of the members of the Trial Chamber. Considering the fact that the court was informed about the absence, it withdrew the order for transportation of one of the defendants from prison. In accordance with the laws and international conventions ratified by the state, the defense requested the three defendants for which notification was obtained that they are unavailable and out of the country to be sought out by the court, i.e. the court to contact the states that they are in and to demand for them to be sent so that they can be present at the hearing. The hearing was postponed for 08.04.2016, at 10 am.

On 07.03.2016, supporters of Ljube Boshkovski protested in front of the Idrizovo Prison demanding that Boshkovski be released 90 days prior to the release date of his prison sentence for the Campaign Case, due to his good conduct in prison.

<sup>6</sup> From the monitoring carried out by the Helsinki Committee and the Coalition All for Fair Trials

<sup>7</sup>SPP's press release posted on their official facebook page:

[https://www.facebook.com/permalink.php?story\\_fbid=685201784916708&id=650104671759753](https://www.facebook.com/permalink.php?story_fbid=685201784916708&id=650104671759753)

<sup>8</sup> The Rover case refers to the murder of Marjan Tanushevski and Kiro Janev which took place in Skopje, in July 2001. One of the defendants on this case is Ljube Boshkovski, who was Minister of Interior at the time when the murder was committed.



The indictment against Ljube Boshkovski in the Rover case was provided as a reason why he would not be granted early release by the director of the Idrizovo Prison, Zhivko Pejovski. The director informed that although in accordance with Article 206 from the Law on Execution of Sanctions the convict may be released up to 90 days before the release date for a prison sentence of five years, this legal option is examined for each case individually, taking into account the remaining circumstances regarding the person and the ongoing criminal proceedings, as well as the possible risks regarding the course that the proceeding may take.

### **Case – "Divo naselje" (Wild Settlement)**

In the course of March 2016, 4 hearings of the case dubbed as Divo Naselje in public were held, out of which the hearing on 02.03.2016 was open the public, the hearing from 16.03.2016 was postponed, while the hearings held on 22 and 30 March 2016 were closed to the public due to the hearings of protected witnesses. At the hearing held on 02.03.2016 one of the defenders reacted to the court that the principle of publicity of the procedure is being breached and violated, considering the fact that not all the interested relations are present in the room, and that some of them had come from Kosovo to follow the hearing. He demanded from the court to provide the technical conditions and circumstances for all the then present relations and family members of the defendants to follow the hearing, in accordance with the principle of publicity of the proceedings. The court answered that the hearing is public and that it is being held within the limitations of the technical possibilities considering the fact that the courtroom in the Supreme Court was being renovated and this was the next biggest courtroom, the capacity of which has been fully used.

### **Fundamental rights**

#### **Freedom of assembly**

On 14.03.2016, immediately before the Constitutional Court adopted the decision on the legal changes to the Law on Pardoning, a group of citizens scheduled a protest in front of the Constitutional Court. The goal of the protest was the citizens to express their negative standpoint regarding the possibility of termination of the legal changes to the Law on Pardoning which limited the right of the President of the Republic of Macedonia to pardon persons convicted of electoral fraud. However, the right to assembly was limited by another group of citizens - counter-protesters, who started gathering in front of the Court during the day.

Such a counter-protest at the same location and at the same time was impermissible, since it prevented the previously announced protest from taking place. The persons who participated in the counter protest committed the crime of Preventing or Hindering a Public Gathering, Article 155 from the Criminal Code. The sanction foreseen for this act is a fine or imprisonment of up to a year.



## Prohibition of torture and other inhumane and degrading treatment and punishment

On 28 March 2016, SPP held a press-conference where they informed that an order has been given to conduct an investigative procedure for inhumane treatment during the arrest of the President of the United for Macedonia party (Обединети за Македонија) - the damaged Ljube Boshkovski. SPP informed that based on the collected evidence reasonable grounds emerged that everyone involved in the arrest, apart from the damaged, were keenly inclined to have the entire public see the unscrupulousness of some of the police forces - the Alpha units, while performing the arrest of the political opponent of the ruling party which was in charge of the police at that moment. SPP emphasized that such conduct, i.e. Torture, is punishable in accordance with all the international standards and in accordance with the Criminal Code of the Republic of Macedonia - Article 142 from CC, Torture and other Cruel, Inhuman or Humiliating Activities and Punishments. There are 7 suspects for this specific case, some of whom are still employees at the Ministry of Internal Affairs. SPP submitted proposal to the Primary Court Skopje 1, Skopje, to impose a precautionary measure - prohibition to undertake certain work activities related to the crime against all the persons who are still employees of the Ministry of Internal Affairs.

### Rights of the national minorities

The publication published by the European Policy Institute "Life and numbers: Equitable Representation and Integration at the Workplace"<sup>9</sup> concludes that one of the biggest achievements in the implementation of equitable representation is the increase in numbers of the representation of non-majority communities in the administration. The main obstacle for further promotion of diversity and achievement of equality in the workforce is the politicization of the administration. Furthermore, the analysis concludes that the equitable representation is perceived as a process monopolized by the Albanian community only. There is also lack of commitment among the management structures in the implementation of equitable representation and management of differences. The members of the non-majority communities are better represented in institutions managed by members of non-majority communities, which is indicative of the segregation of the administration.

### Measures against racism and xenophobia

#### *National hatred and religious intolerance*

Over the month, the Helsinki Committee registered a total of 10 incidents, which according to the indicators may be labeled hate crimes. Out of the total number of incidents, 4 took place in Skopje and Tetovo each, and 2 in Kumanovo. Nine of all the incidents occurred between youth from Macedonian and Albanian ethnic background. Nearly all incidents involve victims attacked by a group. The attacks took place in public, in buses and schools. A

<sup>9</sup> Malinka Ristevska Jordanova, PhD., Ardita Abazi Imeri, LL.M., Biljana Kotevska, LL.M., MA., Elena Anchevska, MA., et al. "Life and Numbers: Equitable Ethnic Representation and Integration at the Workplace", European Policy Institute, March 2016. Available at: [http://epi.org.mk/docs/Life%20and%20Numbers\\_MK\\_Final%20version.pdf](http://epi.org.mk/docs/Life%20and%20Numbers_MK_Final%20version.pdf)



few of the attacks also involved cold weapons, and in the most serious incident, a 16 year old juvenile was stabbed in the chest.

### Protection of personal data

Following an urgent inspection in the State Election Commission from the Directorate for Personal Data Protection, the Directorate adopted a decision<sup>10</sup> that prohibited SEC "to provide electronic access to personal data in the voter list posted on the website <https://izbirackispisok.gov.mk>". Directorate referred to the Electoral Code which (Article 55, paragraph 1) provides that personal data contained in the Voters List shall be protected in accordance with laws and may not be used for any purpose other than exercising the voter's right of citizens. In another temporary decision, the Directorate also banned SEC from disclosing personal information about individuals, considering that "the SEC has no legal grounds to process by publishing personal data about natural persons...". Both decision were released as a result of the crossing of the databases with the Voter List and the suspicions about a large number of so-called phantom voters.

At a public session the SEC decided to act on the decision of the Directorate, but at the same time announced that they would appeal those decisions before the Administrative Court of RM.

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<sup>10</sup>Press release. Directorate for Personal Data Protection. Available at: [http://www.dzlp.mk/sites/default/files/u4/Soopstzenie\\_za\\_mediumi\\_izbiracki\\_spisok\\_1.pdf](http://www.dzlp.mk/sites/default/files/u4/Soopstzenie_za_mediumi_izbiracki_spisok_1.pdf). Last accessed 14.04.2016.

