

## Monitoring brief for May 2016 with regard to the monitoring of Chapter 23 – Judiciary, Fight against Corruption and Fundamental Rights

### Rule of Law and Legal Certainty

#### Constitutional Court

##### - Interim Measure

On 25 May 2016, all nine judges of the Constitutional Court of the Republic of Macedonia agreed, without discussion, to annul the decision on dissolving the Assembly of the Republic of Macedonia and on holding early parliamentary elections, which were scheduled on 5 June, i.e. the Court effectively adopted a decision with which it annulled its previous decision on dissolving the Assembly of the Republic of Macedonia.<sup>1</sup>

With this decision of the Constitutional Court, the interim measure on halting all activities arising from the decision of the Assembly, passed by the same Court, ceased to have effect. The entry into force of this final decision of the Court implied annulment of all legal consequences caused by the dissolving of the Assembly, which in practice mostly refer to the activities of the State Electoral Commission (SEC), and the electoral campaign.<sup>2</sup> With the announcement of the Court, where it was stated that: “The decision on dissolving the Assembly, of 18 January 2016, and the decision on amending the decision on dissolving the Assembly, of 23 February 2016, are being annulled. This decision of the Court will have legal effect after it is going to be published in the Official Gazette”, everything that was pertinent to the events connected with the Constitutional Court was rounded up, especially due to the fact that on its last session the Court unanimously decided to initiate a procedure following the initiative of Talat Xhaferi, an MP of the political party Democratic Union for Integration (DUI), who contested the constitutionality of the Assembly’s decision on self-dissolving.

The two major parliamentary parties reacted differently to this decision of the Constitutional Court. Thus, the opposition party SDSM emphasized that:<sup>3</sup> “Today’s decision of the Constitutional Court affirms the state of chaos in VMRO-DMPNE’s ranks, which is being transferred to the subservient institutions as well. Three months ago, on 18 February 2016, the Constitutional Court pronounced itself non-competent to decide on the constitutionality of the decision on dissolving the Assembly with postponed effect. Today, the Constitutional Court adopted completely contrary decision. As Gruevski changes his standpoints, the Constitutional Court’s standpoints change accordingly. First the MPs of the ruling party vote in favor of the decision for postponed dissolving of the Assembly, and if somebody else tries to contest their decision, the Constitutional Court claims non-competence. Then the very representatives of the ruling party, who have voted for such decision, contest it as non-constitutional, while the Constitutional Court all of a sudden achieves enlightenment and

<sup>1</sup><http://www.ustavensud.mk/domino/WEBSUD.nsf>

<sup>2</sup><http://24vesti.mk/ustaven-odluchi-se-ponishtuva-odlukata-na-sobranieto-za-samoraspustanje>

<sup>3</sup>SDSM’s press release with regard to the Constitutional Court’s decision:  
<http://www.sdsm.org.mk/News.aspx?idNews=1716&lng=1&cat=0>



understands that it is actually competent, and so annuls the decision. It is clear to everybody that Nikola Grievski stands behind the Constitutional Court's decisions. As long as the unlawfully granted abolitions produce legal effect and prevent justice, the country remains in political, but also in constitutional crisis."

On the other hand, the parliamentary group of the ruling VMRO-DPMNE<sup>4</sup> pointed out that: "We, as a political party, are going to respect the decision of the Constitutional Court. We hold that it is not in perfect attunement with the directedness of our party's reflections, nor with the direction of our activities, however, the Constitutional Court is an institution which should be respected in this country, and we are going to respect it as such."

### **President's Decision for Annulment of the Decision for Pardon**

On 5/27/2016, the President of Republic of Macedonia, Gjorgje Ivanov, withdrew his decisions to pardon 22 persons or "politically exposed persons" - suspected perpetrators of crimes for which criminal charges and criminal proceedings were initiated, most of them by the Special Public Prosecution. Having in mind the absence of legal basis for withdrawal of some of the decisions for pardon, and thus for establishing partial pardon, the president Ivanov contributed towards deepening of the political crisis in the Macedonian society and continued the trend of selective justice in the Macedonian Judiciary.

Given that President Ivanov previously signed the Law Amending the Law on Pardon, which had already been voted for in Parliament by MPs of VMRO-DPMNE and DUI, the political calculations behind this step is obvious. The amendments of the Law on Pardons provide President Ivanov with legal possibility to withdraw adopted decisions for pardon in his sole discretion or at a request of the persons pardoned.

Being of the opinion that all pardons should be annulled, without annulling some and leaving out other pardon decisions, the Special Public Prosecution had no specific reaction to this step made by the President. However, one of the special public prosecutors, Lence Ristoska, stated: "Our position is that there is no justification for selective approach when it comes to implementation of the rule of law and administration of justice."

The international community also reacted to the decision for partial withdrawal of the decision to pardon. Commissioner Johannes Hahn spoke out on "Twitter" and noted that: "President Ivanov's decision to annul pardons for only a number of people, is not sufficient. As the EU has stressed on a several of occasions, a comprehensive solution is key to avoiding selective justice."<sup>5</sup> Also, Ambassador Orav, with emphasis on corruption and selective justice, stated that: "If a country wants to remain democratic and modern, develop its economy, it is of key significance to tackle corruption, especially the high-level one. We are witnessing unique political confusion in the decision-making of late. Unfortunately, this confusion is continuing. The European Union has clearly said that selective justice and the

<sup>4</sup>The reaction of the parliamentary group of VMRO-DPMNE may be read at the following link:

<http://www.slobodnaevropa.mk/a/27757020.html>

<sup>5</sup><http://www.plusinfo.mk/vest/72429/han-potrebno-e-seopfatno-reshenie-za-abolicijata-za-da-se-izbegne-selektivna-pravda>



pardons are not acceptable. EU and other international factors have highlighted the importance of the Special Prosecutor's Office and the role of the judiciary.”<sup>6</sup>

The movement “Protestiram” and the “Colorful Revolution” keep their position - “We won't stop! We do not accept partial withdrawal of pardon! Partial justice is injustice! We won't stop until complete pardon withdrawal is effected! Not only a few, but everyone should be subject of investigation. We walk the streets for all suspects of crimes to be taken before the court of law. The President is playing games with us, but he is playing games with justice even more. I protest to not let this playing around continue!”<sup>7</sup> - they continued protesting, and on 27 May 2016, the protest was held under the motto “Selective Justice is Injustice.”

## Judiciary

### Judicial Council of Republic of Macedonia<sup>8</sup>

During this period, the Judicial Council of Republic of Macedonia held two sessions.

At the session held on May 13, JCRM adopted the reports on the work of the Courts in the country for the first quarter of 2016 as follows: Supreme Court of the Republic of Macedonia, Higher Administrative Court, Administrative Court, appellate region Skopje, appellate region Bitola, appellate region Gostivar, and appellate region Shtip.

At the session held on 31 May 2016, the Manual for Communication of Courts with the Public which, among else, provides guidelines for greater transparency and accountability of courts in regards to both customers and internally practice, was adopted.

Furthermore, from among the judges in the Republic of Macedonia, two members and their deputies were proposed for the Disciplinary Committee of the Chamber of Enforcement Agents of the Republic of Macedonia. These were Vladimir Panchevski and Uber Hasani and Sandra Krstic and Violeta Arnaudova, respectively.

Due to mandate expiration, a decision has been adopted for Announcement of presidential elections in: Appellate court Gostivar, Basic Court Kratovo, Municipal Court Vinica.

A decision on formation of Committees for handling requests for repeating procedure has been adopted.

At this session, a Decision on temporary referral for performing judicial function has been adopted for:

- referral of judge Marija Skalova from the Basic Court Kumanovo to Basic Court Skopje 2 Skopje, for a period no longer than 1 year from the referral date.

<sup>6</sup><http://lokalno.mk/orav-abolicijata-mora-bide-povleचना/>

<sup>7</sup><http://www.plusinfo.com.mk/vest/72417/selektivna-pravda-e-nepravda-poracuvaat-demontrantite>

<sup>8</sup>Monitoring of Judicial Council of Republic of Macedonia is a regular activity of the Institute for Human Rights.



- referral of judge Miroslav Georgievski from the Basic Court Kumanovo to Basic Court Kratovo, for a period no longer than 1 year from the referral date.

Adoption of the Rules of Procedure on internal organization and systematization of the Rules of Procedure on systematization of job positions in the Judicial Council was postponed for the second time because some members of JCRM did not have the submitted material examined.

Regarding the strike of judicial administration personnel, the President of the Judicial Council of the Republic of Macedonia, who is also the President of the Court Budget Council, stated through a press release that he did not accept the presumptive union talks that sound defamatory and are published in the statement made by the Union of UPOZ, which is giving false picture of the actions taken by him. More on the strike by judicial administration personnel can be found on the website of the Institute of Human Rights<sup>9</sup>.

### **Court Proceedings<sup>10</sup>**

#### 1. The “Coup” case

The hearing which was supposed to be held on 03 May 2016, at 10 AM, did not take place, because the procedure was suspended in accordance with the President’s abolition decision.

#### 2. The “Rover” case

The hearing scheduled on 09 May 2016 did not take place, on account of the fact that the necessary legal prerequisites were not fulfilled. Namely, one of the defendants was not present, and his defense attorney provided the necessary medical documentation in which were listed the reasons due to which the defendant was prevented from participating in that particular hearing. The Court postponed the hearing, and rescheduled it on 20 May 2016, at 12:30 PM.

The hearing scheduled on 20 May 2016 was once again not held, on account of the fact that the necessary legal prerequisites were not fulfilled, i.e. three of the defendants’ defense attorneys were not present. One of the attorneys was properly informed, but failed to justify his absence, the other informed the Court *viva voce* that he would not be able to attend the hearing due to health reasons (regarding which he would later on submit medical documentation to the Court), while the third had to travel abroad due to professional obligations, and presented to the Court the necessary evidence in support of his claim. The Court postponed the hearing and rescheduled in on 04 July 2016, at 10:30 AM.

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<sup>9</sup>Reaction of the IHR in connection with the strike of judicial administration personnel: [www.ihr.org.mk](http://www.ihr.org.mk).

<sup>10</sup>The monitoring of the court procedures is carried out by the Coalition All for Fair Trials and the Helsinki Committee for Human Rights of the Republic of Macedonia.



### 3. The “DivoNaselje” case

During the month of May 2016, hearings were scheduled on 11 May 2016, 19 May 2016, 23 May 2016, 27 May 2016, and 31 May 2016.

Because in the Basic Court Skopje I Skopje it was not possible to find a court room spacious enough to accommodate all individuals that were supposed to be present at the hearing, the President of the Supreme Court of the Republic of Macedonia was asked to allow the scheduled hearings to be held in the Supreme Court’s main hall. The President of the Supreme Court did not approve of the motion, offering the rationale that the hall is of festive character and that it is not equipped properly in order to function as a court room, as well as that the security and the regular operation of the Court would be endangered.<sup>11</sup> After this reaction, the Basic Court Skopje I Skopje asked for permission to use the same hall from the Government of the Republic of Macedonia, which passed a positive decision on temporary use of the hall by the Basic Court Skopje I Skopje, in duration of six months.<sup>12</sup>

Nevertheless, the hearing scheduled on 31 May 2016 was not held either, and the public and the defendants’ defense attorneys were denied access to the Court, on account of a procedural omission concerning the Courts’ jurisdictions, with regard to the issue which one is supposed to organize and conduct the trial (the Court which handles the case, or the Court which provides the room where the trial is taking place). The Basic Court Skopje I Skopje reported that, as far as they were concerned, they secured all the necessary conditions for the trial to take place,<sup>13</sup> while the Supreme Court reported that it had no jurisdiction over the organization of the trial, which was postponed and rescheduled on 06 June 2016, at 10 AM.

## Fundamental Rights

### Freedom of Expression and Media Plurality

In the conclusions of the Report from the Monitoring of Media Content through the Rapid Response Media Mechanism of the Institute for Communication Studies on political pluralism in the media, in the period from 16 April to 7 May 2016,<sup>14</sup> were covered the protests and their media coverage. It was emphasized that the main communication strategy of the ruling VMRO-DPMNE is directed toward silencing, delegitimizing and demonizing of the critical voices, all that with the goal to impair the mobilizations of the citizens who are taking part in the Colorful Revolution.

“The most relevant media coverage subject in the second half of April and the beginning of May were the protests initiated by the civil movement ‘Protestiram’. The way in which the pro-Government media were reporting on the protests confirms the phenomenon which is the

<sup>11</sup>The full rationale of the President of the Supreme Court may be read at the following link: <http://novatv.mk/lidija-nedelkova-ne-dozvoluva-sudene-na-divo-nasele-vo-vrhoven-sud/>

<sup>12</sup>The Basic Court Skopje I Skopje announced the decision of the Government of the Republic of Macedonia and may be read at the following link: <http://www.osskopje1.mk/Novosti.aspx>

<sup>13</sup>Announcement to the public by the Basic Court Skopje I Skopje <http://www.osskopje1.mk/Novosti.aspx>

<sup>14</sup>In the report were analyzed 11 informative programmes (news) and 38 issues of various topical-informative broadcasts of the Public Service Broadcaster (MTV1 and MTV2), as well as 7 private TV stations (Sitel, Kanal 5, Alfa, Telma, Alsat M, 24 Vesti and TV21). <http://respublica.edu.mk/5-mesecen-izvestaj>



theory known as ‘protest paradigm’. It has been established that the media’s reporting on various social protests is often directed toward discrediting and marginalizing of the protest activities, or promoting and favoring of one party on the one hand, while on the other demonizing and degrading the other party of the social conflict. The more the social protest are directed toward changes of the social conditions, norms and policies, the more negatively will they be represented in the media. This is especially prominent in the systems where the media are under substantial political and ideological control.”

In breach of the Law on Audio and Audio-visual Services, as well as of the media ethics standards, the media houses which are pro-Government oriented (Sitel, Alfa, Kanal 5 and TV Nova), when it comes to the “Protestiram” movement and the Colorful Revolution protests, keep on persistently and jointly repeating the phrase “the hooligans od SDSM and Soros”, with the aim to misinform the public and to create an impression that the protests are organized by the political opposition party SDSM, despite the fact that this information is false, although SDSM does support the protests. On the other hand, the same media network used to characterize and denominate GDOM’s counter-protests as “civil” and “people’s gatherings”, ignoring all the way through the fact that this gatherings were much less spontaneous, considering that many people were transported by buses from different towns in an organized manner.

### **Right to Assembly**

The protests which, after the President of the Republic announced his decision to grant abolition to 56 persons, became a daily affair, continued throughout the month of May as well. Despite the fact that the protests were completely peaceful and nonviolent, an increased presence of police officers in full riot gear was nevertheless noticed, as well as their forming of police cordons, which hampered the protesting citizens’ right to freedom of movement. Despite the peaceful atmosphere in which the protests are held, it was nevertheless noticed that the Ministry of Interior has continued its tendentious practices, as are the unauthorized recording of the protesting citizens, and also the summoning of some of them to questioning in Police stations.

### **Treatment of socially vulnerable persons and the non-discrimination principle**

#### **Discrimination against blind persons by the banks**

The Helsinki Committee, jointly with the members of the Network for Protection against Discrimination, the National Union of Blind Persons of the Republic of Macedonia, and the Macedonian National Union of Civilian Victims of the War, have submitted a complaint (24 October 2013) to the Commission for Protection against Discrimination (CPD), on which the CPD passed an opinion, whereby it pinpoints direct and prolonged discrimination on the basis of bodily disability exerted by the banks in the Republic of Macedonia against blind persons.

The unequal treatment applies to the utilization of banking services and products which, in order to be accessed, require the user's signature. However, the banks do not recognize as valid the blind persons' signature, do not allow usage of facsimile and subsequently force the blind persons to authorize a third person who would sign their name on their behalf. Blind persons also face problems in the course of using e-banking, on account of the banks' internal



regulations (usage of tokens, codes and similar security tools which are out of the blind persons' reach). Furthermore, the banks do not provide usage of assisting technology, as, e.g., voice activated ATM, Braille printers, software solutions for access to e-banking services, etc., would be.

Hence, in the rationale of its decision, the CPD recommends that the banks should not demand an authorized person who would act on behalf of the blind persons and persons with impaired vision, as well as that they should create conditions for personal signature and facsimile. Besides, the CPD recommends that each bank should introduce reasonable adjustments in order to accommodate the specific needs of the aforementioned persons, both in their branches and on the Internet. With regard to supervision of the banks' operations, the CPD recommends that the National Bank of the Republic of Macedonia, as the institution in charge of supervision of banks, should strengthen the control in the area of achieving equal access to banking services and products for blind persons and persons with impaired vision.

To date, good will to discontinue the unequal treatment has been shown only by Komercijalna Bank A.D. Skopje, which has amended its internal regulations and made it possible for blind persons to perform banking transactions of receiving and sending financial assets as well as to use other services on their own, both directly and with the assistance of the Bank's employees, and without needing the presence of any authorized person. For this reason, the Bank has trained some of its employees, who are already operating in the area of e-banking, opening of current accounts and deposit accounts. Besides, the Bank has already trained numerous blind persons and persons with impaired vision to use e-banking services and products (Internet, e-applications, etc.). The Bank also adjusted the procedure of renting safes by blind persons and persons with impaired vision, in such a way that they are now free to rent a safe in the presence of two employees of the Bank.

### Protection of personal data

During the month of May, with the aim to discredit the ongoing protests through the alleged "Mercenary Revolution" scandal, supposedly involving persons and/or organizations which are active participants in the protests, several media which form part of the propaganda network of the ruling VMRO-DPMNE ("Kurrir", "NetPress", "Press24", "Vecher", "Republika"), published names and personal income of more than 60 persons, in an attempt to picture them as foreign mercenaries, on account of the fact that they have been receiving salaries or fees from the Nongovernmental organizations by which they are employed. Such data, however, especially the amounts of their salaries and fees, represent data which is secret, private and protected by law. In other words, the only institution where the annual reports on the companies' revenues and expenditures are gathered in one place is the Public Revenue Office (PRO). Those reports, however, cannot legally be the source for the media outlets of the aforementioned portals, and therefore this situation necessarily gives rise to the suspicion that the state institution in question is leaking out the citizens' personal data.<sup>15</sup>

<sup>15</sup><http://prizma.birn.eu.com/%D0%BC%D0%BA/%D1%81%D1%82%D0%BE%D1%80%D0%B8%D0%B8/%D0%BB%D0%B8%D1%87%D0%BD%D0%B8-%D0%BF%D0%BE%D0%B4%D0%B0%D1%82%D0%BE%D1%86%D0%B8-%D0%B2%D0%BE-%D1%81%D0%BB%D1%83%D0%B6%D0%B1%D0%B0-%D0%BD%D0%B0-%D0%BF%D1%80%D0%BE%D0%BF%D0%B0%D0%B3%D0%B0%D0%BD%D0%B4%D0%B0>



Taking in consideration the fact that the unlawfully acquired information by this media network creates degrading impression of the personality and the professionalism of the persons involved in the slanderous news article “Mercenary Revolution”, the implicated citizens, in pursuance of Article 13 and 14 of the Law on Civil Liability for Libel and Insult, demanded apology from the editor’s office, as well as to publish the disclaimers in their integral form, and to provide for them the same coverage that was provided for the slanderous so-called scandal.

