



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

Rule of Law and Legal Certainty

Judicial Council

During the monitoring period, when it comes to the work of the Judicial Council of the Republic of Macedonia (JCRM), it is significant to note that a meeting was held between JCRM and representatives of the Trade Union of UPOZ and the AJA where the strike of the court administration and the members of the judiciary was discussed, whereby it was concluded that all of the stakeholders should comply with the provisions from the Law on Court Service.

Court proceedings

1. The "Divo Naselje" Case

Three hearings from the "Divo Naselje" Case were held in the course of June. The hearings were held in the hall of the Supreme Court of the Republic of Macedonia.

The proceedings started from the beginning, after the prosecution merged the indictments for the "Divo Naselje" Case and the "Molnja" (translator's note: thunderbolt) Case, which led to adding 8 more persons as defendants who are charged with logistic support of the 29 already indicted defendants.

On 06.06.2016 the hearing was held in which the accused, the defendants and the prosecution gave their opening addresses and pleaded guilty or not guilty. All 37 defendants pleaded innocent for the acts they had been charged with. During the evidentiary hearing, the statements of the 5 witnesses given at the main hearing on 23.02.2016 were also read.

On 14.06.2016, the main hearing was held in which the court proceeded to read the statements of the witnesses given at the main hearing before the merging of the proceedings.

On 30.06.2016, a hearing was held that the public was excluded from, in order for evidence to be drawn based on the examination of the protected witnesses.

2. The "Protesters" Case

In the course of June one hearing from the "Protesters" case was held, in which Zdravko Saveski and Vladimir Kunovski occur as defendants. The defendants are charged with the crime of "Participation in a crowd which will commit a crime".





The hearing was held on 10.06.2016 in the Primary Court Skopje 1. At this hearing, at the proposal of the defense, and with the consent of the prosecution, the judge issued a decision to suspend the measure of house arrest of the defendants and imposed the measure for providing presence: seizure of travel documents and obligation to call on a set date. The defense asked the lease agreement for the office of President of the Republic to be submitted as evidence at the next hearing, after they indicated that according to the title deeds, the office is not owned by the Republic of Macedonia at the previous hearing, and therefore the state cannot act as plaintiff in the case. The defense also requested the expert insight not to be considered as evidence because it was obtained illegally, i.e. it was not done at the behest of the Public Prosecutor, but at the request of the State Attorney of the Republic of Macedonia, which is contrary to the Law on Criminal Procedure. The next hearing is scheduled for 06.07.2016.

3. The "Spy" Case

In the course of the month of June two sessions on the Spy case were scheduled.

The Public session scheduled for 10.06.2016 was delayed because the public prosecutor of the Special Public Prosecutor's Office was not present. The judge informed those present that the Special Public Prosecutor's Office has submitted a motion requiring postponement of the public session because of official absence of the prosecutor assigned to this case.

The Public session scheduled for 29.06.2016 was postponed again due to the absence of a public prosecutor from the Special Prosecutor's Office. The judge informed that on 28.06.2016 the court had received a motion of the Special Public Prosecutor stating that the public prosecutor will not be present at the scheduled session with the explanation that on the 24.06.2016 the defendant's lawyer Zoran Bozinovski had submitted request to the Special Public Prosecutor requiring establishing jurisdiction over the case.

Fundamental Rights

Prevention of Torture and other Cruel and Degrading Treatment and Punishment

The Helsinki Committee for Human Rights of the Republic of Macedonia, in accordance with its strategic commitment and long-standing practice of visiting the closed institutions in the Republic of Macedonia, paid a visit to the PI Special Institute - Demir Kapija. The visit took place in February 2016, upon prior approval of the Ministry of Labour and Social Policy. The objective of the visit was to determine the actual state of the conditions in the institution and the upholding of the fundamental human rights of the persons with intellectual disabilities who are placed in this institution, and who, due to their vulnerability, represent a sensitive category of citizens and are entitled to special rights based on their special needs. On the occasion of the visit of PI Special Institute - Demir Kapija, the Committee published a special report¹, which, under the section of "Living Conditions, Hygiene, Housing," states that "The exterior of the buildings is in poor

¹ <http://www.mhc.org.mk/reports/424#.V40F0zWtyUk>





condition, the walls are dilapidated and the façade is ruined in several places. The rooms accommodating the inmates are covered with moisture and mold. There is almost no storage space there and the blankets are old and worn out. There were no pillows on the beds, and in some of the rooms even stray cats could be observed laying on the patients' beds. The toilets were also below any standards - they were old and damaged and lacked essential tools for cleaning. It was evident that the tiles in all of the toilets had not been cleaned in a longer period of time; mold and dirt could be noticed in the washing basins and tubs, and most of the toilets were smeared with feces. It is worth mentioning that during our visit the staff at the Special Institution would not turn the lights on in some of the toilets because they were in an unbearably bad condition. All wards reeked of urine. The poor hygiene in the institution, among other things, is a result of the lack of personnel. In several departments we could also see the patients maintaining hygiene themselves, which in turn reflects on their own personal hygiene, which is also at a very low level".

Furthermore, in the section "Treatment and care of inmates, health care, program content and activities, contact with the outside world and inspection", we remind that in the series of recommendations given to the state by the European Committee against Torture and Inhuman or Degrading Treatment or Punishment in 2014 for improvement of the conditions of living, housing, treatment and care by the personnel, the Committee has documented that: "what is especially worrying is the finding, verified by the "Records of Deaths". According to the records, from 1993 to February 5, 2016, 375 persons died in this Special Institution. Most of the deaths are due to lung diseases among the inmates. The majority of the patients who died from lung diseases were paralyzed and with profound intellectual disabilities and were accommodated in the block B2. Block B2 has no door, and the inmates accommodated there are subjected to continuous draft, so it not surprising that most of them have lung diseases".

Freedom of Assembly and Association

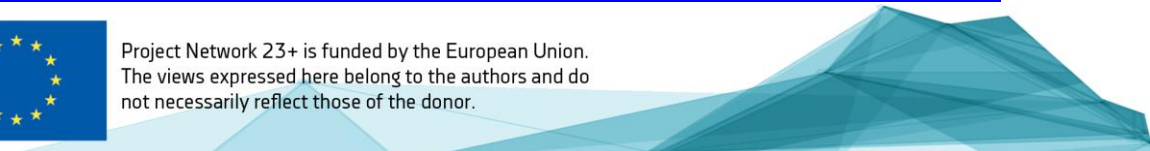
During the month of June, from the perspective of the civil organizations and protests against the current ruling structure, it is important to note that the "Colorful Revolution" and "I Protest" delivered a request asking for the civil society organizations to also be engaged in the negotiating process in the role of an observer because, as the members of the protest movements pointed out, it is important for the negotiation process to be transparent and the citizens to be acquainted with it, i.e. for it not to take place behind closed doors.²

Although the pace of the protest rallies has changed, i.e. they are not held every day, the Ministry of Interior and the police officers who were assigned to monitor the protests obstructed the right of assembly, and also proceeded to detain and ask protesters for identification, after the rallies, as was the case with Pavle Bogoevski and Simona Spirovska.³

With regards to applying disproportionate force and obstructing a public assembly, it is necessary to highlight the protest of students in front of the Student Parliament of the University "St. Cyril and

² <http://meta.mk/sharenata-revolutsija-pobara-graganskiot-sektor-da-se-vkluchi-vo-pregovorite/>

³ <http://www.brif.mk/vecherva-uapseni-devo%20ka-i-momche-od-sharenata-revolutsi%20a/>





Methodius", which took place after the end of the voting for a new president of SPUKM. The voting atmosphere was illegal, illegitimate and violent, if it is taken into consideration that the ballot boxes were forcibly taken away by persons who are not students at of UKIM, but for who are allegedly members of the Youth Union of VMRO-DPMNE. In fact, after the ending of these criminal student elections, a group of students, including those from the Student Plenum and "Mugra", organized a protest outside the offices of SPUKM where they were forcibly removed from by the Rapid Deployment Unit⁴.

Treatment of socially vulnerable persons, disabled people and the non-discrimination principle

During the month of June, on 10.06.2016 to be more specific, the Commission for Protection against Discrimination adopted Opinion no. 07-1117/4 which confirmed discrimination on grounds of gender identity. A case where a transgender person was denied entry to a facility providing public services - a swimming pool, or had had limited access to services based on his/her gender identity was in question. As a representative of the victim, the Helsinki Committee for Human Rights filed a complaint to the Commission for Protection against Discrimination requesting to establish discrimination on grounds of gender identity. Although the Commission's opinion defines that the discrimination on grounds of sex, the rationale of the decision concludes that the victim's gender identity was the key factor why the person was denied entrance.

According to the Helsinki Committee for Human Rights in Macedonia (as a member of the Network for Protection against Discrimination), which filed the proceedings before the Commission, this represents a major step forward in the fight against discrimination and should serve as an incentive and encouragement to all those who have been, or will be victims of discrimination in future, so that they can pluck the courage to report the violation of their rights. Moreover, in relation to the adopted Opinion, the Commission and its members were sent an appeal to keep up the good work in future, in order to protect all citizens equally within their scope of jurisdiction.

Freedom of Expression and Media Plurality

During the month of June, the Association of Journalists (AJM) and its President Naser Selmani, initiated a meeting with the leader of the main opposition party SDSM, Zoran Zaev, and discussed the reforms in the media and the discussions between the political leaders on these reforms.⁵ According to Zaev, as was stated at the meeting, one of the key topics for discussion, within the framework of the political dialogue under the auspices of the international community, are the reforms the media, which are a prerequisite for free, fair and regular elections.

"It is essential to allow AVMS to perform the role of regulator in the media, and MRTV to become real public service in the interest of delivering objective, impartial and balanced information to the citizens" - stated SDSM.

⁴ <http://lokalno.mk/galerija-brojni-polisciski-sili-pred-spukm-spirovski-zakluchen-so-kutiite-plenumcite-pred-vrata/>

⁵ <http://faktor.mk/2016/06/28/sredba-zaev-selmani-bez-slobodni-mediumi-nema-uslovi-za-slobodni-izbori/>





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Apart from the topics which are becoming typical for the media, such as the violence against journalists, AJM also underlined that they will not accept partial solutions, although, as Zaev stated, in this period of negotiations VMRO-DPMNE still oppose the possible solutions which could lead to enabling the media to freely perform their real role.

In the course of June AJM launched another initiative - the request to the Special Public Prosecutor (SPP) to take over the separate case of journalist Zoran Bozhinovski from the Prosecution for Organized Crime, because of its association with the "Spy" Case, that the SPP has already established competence over. With regards to this request, AJM's press release stated that: "(...) the case of journalist Zoran Bozhinovski, who has been in detention for two months because the Prosecutor's Office suspects he has committed multiple crimes.

Bozhinovski was extradited from Serbia in April and so far there has been no formal indictment against him." ⁶

⁶ <http://www.mkd.mk/makedonija/politika/znm-na-sredba-so-janeva-sjo-da-go-prezveme-sluchajot-so-novinarot-bozhinovski>



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