



## **Monitoring Brief for December 2016 on Following Chapter 23 – Judiciary, Fight against Corruption, and Fundamental Rights**

### **I JUDICIARY**

#### **Impartiality**

##### **1. Primary Court Skopje 1 – The Second Rejection of SJO’s Request for Issuance of Search Warrant for Telecommunications Provider’s Systems**

The Special Public Prosecutor’s Office (SJO) for crimes related to and arising from the illegal communications monitoring reported<sup>1</sup> that the Criminal Council of the Basic Court Skopje 1, composed of judges Vladimir Panchevski as President of the Council and judges Diana Gruevska Ilievska and Ljubinka Bashevaska as Council Members, refused to issue a search order for computer systems in telecommunications provider, thereby confirming the disapproval expressed by the preliminary procedure judge.

According to SJO, the Court used the same explanation for the allegedly vague and imprecise claim, although the claim clearly states that the required computer data stored in servers, which are related to entries from which it can be determined exactly which telephone numbers were subject to illegal monitoring. According to SJO, the Court stated that the devices which are subjects of the search warrant “are servers that are transportable, i.e. devices that can change location” without providing the evidence for such a statement. SJO reminded that the previous search order for computer systems was rejected because of its alleged indefiniteness on the location of servers that needed to be searched, so it is unclear why the Court changed its position on the need to define the location of the servers. The Court has not denied the decision nor has given an announcement on the official website.

#### **Independence**

##### **1. Judicial Council**

**At the 240<sup>th</sup> session<sup>2</sup>**, the Judicial Council adopted a decision of appointing Snezana Bajlazova, a Judge in the Supreme Court, as acting President of the Supreme Court. Tatjana Mihajlova, a Judge in Primary Court Skopje 1 was appointed as an acting President of Primary Court Skopje 1. Also, a Conclusion was adopted upon Judge Vladimir Tufegdjkj initiative from 11.28.2016 year for reconsideration of the

<sup>1</sup> <http://www.jonsk.mk/2016/12/02/судот-повторно-одби-да-издаде-наредба-з/>

<sup>2</sup> <http://www.ssrn.mk/Novosti.aspx?novost=479>





Decision on the extraordinary evaluation of presidential candidates for the Supreme Court, Appellate Court Shtip, Basic Court Skopje 1, and Basic Court Tetovo. According to the Judicial Council, the initiative is unfounded.

**At the 241<sup>st</sup> session<sup>3</sup>**, decisions were adopted on the extraordinary evaluation of presidential candidates for President of the Primary Court Skopje 1.

**At the 242<sup>nd</sup> session<sup>4</sup>**, decisions were adopted on the extraordinary evaluation of presidential candidates for President of the Supreme Court of the Republic of Macedonia, the Appellate Court Shtip, and the Primary Court Tetovo.

### **Judicial Service**

#### **The Trade Union of Administrative Employees, Judicial Authorities and Citizens Associations of the Republic of Macedonia (UPOZ)**

UPOZ issued a report<sup>5</sup> which states that at the session held by the UPOZ Union Presidency on 21.12.2016, a unanimous decision was adopted for terminating the membership of ex-President of the Association of Unions of Macedonia (SSM) Zivko Mitrevski in the Union of UPOZ. According to UPOZ, the Presidency's decision adopted at the Union's session was based on the fact that Zivko Mitrevski, as a member of the Union of UPOZ, acted contrary to the Statute of the Union of UPOZ for a long period of time, did not respect the decisions adopted by the bodies, and acted destructively towards other Trade Union members.

### **Competence**

#### **Academy for Judges and Public Prosecutors – Training for Lawyers, Judges, and Court Staff for Complaints Brought before ECtHR Regarding Ownership Rights**

The Academy for Judges and Public Prosecutors "Pavel Shatev" in cooperation with the Ministry of Justice within the Twinning Project of Latvia and Croatia on "Strengthening the Rule of Law" organized two one-day **Trainings for lawyers, judges and court staff for complaints brought before the ECtHR, as well as current court practices of the ECtHR regarding Article 1 of Protocol 1 (right to ownership)**.<sup>6</sup>

<sup>3</sup> <http://www.ssrn.mk/Novosti.aspx?novost=481>

<sup>4</sup> <http://www.ssrn.mk/Novosti.aspx?novost=483>

<sup>5</sup> [http://www.upoz.org.mk/index.php?option=com\\_content&view=article&id=420:2016-12-23-11-57-14&catid=1:latest-news](http://www.upoz.org.mk/index.php?option=com_content&view=article&id=420:2016-12-23-11-57-14&catid=1:latest-news)

<sup>6</sup> <http://www.jpacademy.gov.mk/novosti/--o-----oe-----1---1>



## Public Prosecutor's Office of the Republic of Macedonia (JORM)

### Cases Related to Irregularities during the Early Parliamentary Elections

JORM reportedly monitored all events and posts regarding the organization and implementation of the elections on December 11<sup>th</sup>, 2016.<sup>7</sup> A Committee was established for monitoring the irregularities in the electoral process and with the aim of acting upon any indications of criminal acts related to the elections. According to JORM, a total number of 42 cases were established. Out of those, 20 cases were established ex officio on the basis of hearsay information published in media, web pages and social networks. 3 cases were established upon criminal charges filed by individuals. 19 cases were established upon complaints by citizens associations, political parties, and institutions.

## II FIGHT AGAINST CORRUPTION

### A Search of the Kumanovo Police Chief's Home

The Public Prosecutor's Office for Organized Crime and Corruption informed that on 13.12.2016, as a part of the preliminary investigation, a house search was conducted at the home of the person with initials S.V. from Kumanovo, the Chief of the Internal Affairs Division (IAD) in Kumanovo<sup>8</sup>. The search warrant was issued by the Judge of the preliminary procedure at the Organized Crime and Corruption Department in the Basic Court Skopje 1. The purpose of the search was finding traces of a criminal offense or objects relevant to the criminal proceedings and seizure of those objects. The seized items contain written data and data in electronic form related to criminal cases - Criminal Association pursuant to Article 394 and Abuse of Official Capacity and Authority pursuant to Article 353 of the Criminal Code, as well as other crimes which are prosecuted ex officio.

## III FUNDAMENTAL RIGHTS

### The Rule of Law – Voting Rights

Regarding the Rule of Law, all eyes in the country were focused on the electoral process and, more specifically, on the Election Day. In this context, according to the Ministry of Interior of the Republic of Macedonia, the elections have gone more peacefully in comparison to the previous cycles, with smaller and only isolated incidents<sup>9</sup>. The Internal Affairs Division in Skopje filed two criminal charges for two crimes of “destruction of electoral documents” against two persons from Skopje.

<sup>7</sup> <http://jorm.gov.mk/?p=3715>

<sup>8</sup> <http://jorm.gov.mk/?p=3748>

<sup>9</sup> <http://www.mvr.gov.mk/vest/3176>





Physical evidence was provided and there is an ongoing process of documenting five criminal events in IAD Strumica (Valandovo and Strumica), IAD Veles (Kavadarci), IAD Kumanovo, and IAD Bitola for the following criminal offenses: "violation of secrecy of voting", "violation of voting rights", "obstruction of the elections and of voting", "destruction of electoral documents", "violence" and "damaging items belonging to other persons".

Furthermore, proper actions were taken on 38 events (Skopje-20, Bitola-5, Veles-5, Strumica-4, Veles-2, and Tetovo-2). Out of these cases, 7 were filed for alleged bribery, 14 for campaigning around polling stations and organized attracting of voters, 5 for photographing the ballot, while others referred to the attempt of filling boxes and insulting a deputy member of the Election Board. Following the measures that were taken by the police for 22 events, it was established that there was no evidence of such events.

### **Freedom of Speech and Media Pluralism**

The Agency for Audio and Audiovisual Media Services was active in terms of monitoring the pre-election period and election media presentation. A significant number of inspections on the work of the media was implemented, including the Macedonian Radio Television and other commercial, national, and local television channels and radio channels.<sup>10</sup>

In several cases, the Agency found violations of the Electoral Code, most of which were related to provisions of Articles 75 and 76 (coverage of the electoral process in a fair, balanced and impartial manner and marking political advertising as "paid political advertising"), as well as violations of the Law on Media. After the submission of the monitoring reports, the Temporary Committee for Monitoring Media Coverage (ad hoc body formed during the election process) submitted proposals for actions on the basis of which the Agency initiated misdemeanor proceedings against broadcasters and issued warnings and fines against broadcasters who violated the provisions of the Law. After completion of the revote in the village of Tearce and the formal completion of the electoral process, the Agency decided to dissolve the Temporary Committee.<sup>11</sup>

### **Ombudsman**

In December 2016, a Memorandum of Cooperation between the Helsinki Committee for Human Rights of the Republic of Macedonia - LGBT Support Center and the Ombudsman of the Republic of

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<sup>10</sup> <http://www.avmu.mk/>

<sup>11</sup> [http://www.avmu.mk/images/Odluka\\_za\\_prestanok\\_na\\_mandat\\_na\\_Privremenata\\_komisija.pdf](http://www.avmu.mk/images/Odluka_za_prestanok_na_mandat_na_Privremenata_komisija.pdf)





Macedonia was signed.<sup>12</sup> The aim of the cooperation is to strengthen the regional capacity of the Ombudsman in the field of human rights and freedoms of LGBT people and to increase legal security and mechanisms for protection of rights of the LGBT community in the Republic of Macedonia.

The Ombudsman held a two-day thematic meeting on “The role of the Ombudsman in Protecting Children Refugees/Immigrants”, supported by the organization “Save the Children”.<sup>13</sup> According to the Ombudsman, Mr. Idjet Memeti, “In times of violation of the fundamental human rights, it was our obligation to speak loudly about it and to require that government policies and laws be adapted i.e. to match the instruments for child protection, particularly the Convention on the Rights of the Child, the humanitarian and the refugee law.”

### Right to Privacy and Data Protection

According to SJO, there is an increasing number of citizens’ requests filed on daily basis related to illegal phone surveillance. Until December, a total number of 81 requests were filed for finding out whether their phones had been a subject of illegal surveillance. The requests are related to 145 telephone numbers.

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### Correction of the Monitoring Brief for November 2016 on Following Chapter 23 – Judiciary, Fight against Corruption, and Fundamental Rights

In the last month’s Monitoring Brief, it was stated that the monitoring of the Agency for Audio and Audiovisual Media Services included 18 programme services. Following the Agency’s reaction<sup>14</sup>, we hereby correct that information which referred to the period from November 11<sup>th</sup> to November 20<sup>th</sup>, but not for the period from November 1<sup>st</sup> to November 10<sup>th</sup>. In addition, we also include the data for the period from November 21<sup>st</sup> to November 30<sup>th</sup> (published by the Agency in December 2016).

According to the Agency, with the beginning of the campaign on November 21<sup>st</sup>, the scope of monitoring had increased and included 5 programme services MRT and 106 commercial programme services. The third ten-day report of the monitoring for the period from November 21<sup>st</sup> to November 30<sup>th</sup>, 2016 included 22 programme services. In November, the Temporary Committee delivered 49 proposals for actions to the Agency. On the proposal of the Temporary Committee, the Agency initiated 8 misdemeanor procedures for first-time offenses and imposed a sanction - a reprimand, and 6 misdemeanor procedures imposing a sanction - a fine, for repeated violations.

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<sup>12</sup>[http://ombudsman.mk/MK/aktivnosti/231373/potpishan\\_memorandum\\_za\\_sorabotka\\_pomegu\\_kancelarija\\_ta\\_na\\_narodniot\\_pravobranitel\\_i\\_lgbt\\_centarot.aspx](http://ombudsman.mk/MK/aktivnosti/231373/potpishan_memorandum_za_sorabotka_pomegu_kancelarija_ta_na_narodniot_pravobranitel_i_lgbt_centarot.aspx)

<sup>13</sup>[http://ombudsman.mk/MK/aktivnosti/231375/narodniot\\_pravobranitel\\_odrzha\\_dvodneven\\_tematski\\_sostanok\\_na\\_tema\\_ulogata\\_na\\_ombudsmanot\\_vo\\_.aspx](http://ombudsman.mk/MK/aktivnosti/231375/narodniot_pravobranitel_odrzha_dvodneven_tematski_sostanok_na_tema_ulogata_na_ombudsmanot_vo_.aspx)

<sup>14</sup> АВМУ, Барање за исправка на информации (Request for Correction of Information), бр. 03-388/1 од 13.01.2016 година.

