

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

Rule of Law and Legal Certainty

The Head of State's Abolition Decision

On 12 April 2016, the President of the Republic of Macedonia passed a decision to pardon 57 persons – suspected perpetrators of criminal offences – who have criminal charges filed against them, and against whom, in some cases, criminal procedures – most of them conducted by the SPP – have been initiated. Most of the suspects are members and high officials, or close collaborators, of the two major political parties – VMRO-DPMNE and SDSM. This decision passed by the President has no legal basis, because Article 11 of the Law on Pardon to which he appeals was actually repealed by the Constitutional Court, and is currently not a part and parcel of the Republic of Macedonia's legal system. Besides, with the act of passing this decision, the President actually overstepped his competence, because the presidential pardon is an act which is envisaged to be applied in particular cases, as correction of justice in specific and distinctly legitimate cases. However, in this case the President essentially and *de facto* adopted an act for group and collective amnesty of persons allegedly responsible for huge number of criminal offences, whereby he breached the competence which, on account of its gravity, the Constitution foresees as an exclusive right of the Assembly of the Republic of Macedonia. With this overstepping of his constitutional and legal competence, the President of the Republic of Macedonia Gjore Ivanov committed the criminal offence Misuse of Official Position and Authorization, according to Article 353 of the Criminal Code of the Republic of Macedonia. With his actions, the President placed himself above the law, above the Parliament, and above the Przhino Agreement, thereby factually revoking the Special Public Prosecution's authority, as a consensually accepted institution authorized to persecute criminal offences related to the illegally wiretapped conversations.

After the Abolition Decision concerning 57 persons had been passed, 105 inmates of the female ward of the Idrizovo Penitentiary send a letter to the President Gjorge Ivanov asking him to pardon them as well, i.e. to reduce 30% of their imprisonment sentences. In their letter, the female inmates emphasize: "... You granted abolition to officials holding high functions. We wish to nobody in the world to go through your personal Calvary: you are a Professor at the Faculty of Law, so you know the best. Crime is a crime. It does not have two names. Punishment is punishment. You are the Father of the nation. Be a statesman who is a gentleman as well. Let the standard of your acts be the same for all." Furthermore, the inmates requested Ivanov to visit them in the penitentiary and personally witness the conditions they are living in, to see the mold on the concrete walls and the diseases which form an inseparable part of their daily life. We warn that the penitentiaries in the Republic of Macedonia are characterized by substandard living conditions. The overpopulation violates and prevents any sense of privacy, undermines people's dignity and



results in inhumane living conditions. The supervision mechanisms are nonfunctional. The inmates are often treated in inhumane ways, which is in collision with the principle of absolute prohibition of torture.

Constitutional Court

During the month of April the Constitutional Court of the RM held two sessions – on 13 and 20 April. Generally speaking, the sessions were conducted in accordance with the Constitutional Court's Rules of Procedure. The only objection refers to the way in which the judges present their exposés. Namely, although the exposés are distributed to the judges in written form beforehand, it is necessary that the reporting judges elaborate on them in greater detail, especially in the cases when in the court room representatives of the public are present as well.

Judiciary

Judicial Council¹

During this time period the Judicial Council of the Republic of Macedonia held five sessions.

At the session held on 4 April, the JCRM adopted a Decision on interim withdrawal from performing the official duty of a judge – President of the Basic Court Kumanovo, as well as a Decision on interim transfer of a judge officiating at the Basic Court Kumanovo to the Basic Court Negotino, starting from 4 April 2016, for a period of at most one year after the day when the transfer becomes effective.

During the month of April two female judges retired, one of whom used to work at the Court of Appeal Gostivar, the other at the Basic Court Prilep.

At the session held on 6 April, which was announced half an hour before the commencement of the session, the JCRM repeated the previous practice, and one day ahead of the Parliament's dissolution adopted a Decision on electing judges to several Courts, namely the following: 1 (one) judge to the Supreme Court of the Republic of Macedonia, civil law area; 2 (two) judges to the Court of Appeal Skopje, civil law area; 1 (one) judge to the Court of Appeal Bitola, criminal law area; 1 (one) judge to the Court of Appeal Bitola, civil law area; 1 (one) judge to the Court of Appeal Gostivar, criminal law area, and 1 (one) judge to the Court of Appeal Gostivar, civil law area.

On 13 and 14 April the Annual Reports on the Work of the Courts in the Republic of Macedonia was discussed and adopted, more specifically the Annual Reports on the following Courts: The Supreme Court of the Republic of Macedonia, the Higher Administrative Court, the Administrative Court, the Courts of the appellate region Skopje, appellate region Bitola, appellate region Gostivar, and appellate region Shtip.

¹ The monitoring of the Judicial Council is carried out by the Human Rights Institute.

At the session held on 21 April, several Committees were established, namely the Committee on Election of President of the Judicial Council of the Republic of Macedonia, composed of the following members: Mirjana Gocevska Stefanovska, Bekjim Rdzepe and Lidija Kanachkovich, while Meri Dika was appointed deputy member. Also established was the Committee on Drafting a Manual for the Court's Communication with the Public, which is an activity within the frames of a project funded by IPA. At this session also the information was shared that a Working Body in charge of improving the AKMIS system in the Republic of Macedonia's Courts was established. Members of this Working Body are judges and members of the JCRM.

On 25 April a session was held at which a new President of the JCRM was supposed to be elected, after the six-year mandate of the outgoing President Branko Ushkovski – a member of the JCRM nominated by the Parliament – had ended. The Parliament was dissolved without providing replacement for the outgoing President, although it was well known that his mandate ends on 21 April.

The election procedure was conducted by the Committee, and two candidates were nominated. Vlatko Samardzhiski, a member of the JCRM, nominated Zoran Karadzhozovski, and his nomination was supported by Mirjanka Gocevska and Alexandra Zafirovska. The President of the Supreme Court of the RM, Lidija Nedelkovska, nominated Lidija Kanachakovic, and her nomination was supported by the members Violeta Bogoevska and Meri Dika. After the ballot, the President of the Committee, Mirjana Gocevska, submitted a report and said that 13 members took part in the ballot, while out of 13 voting papers 12 were valid and 1 invalid. The result was that six members voted for Zoran Karadzhozovski, and another six for Lidija Kanachakovic. In a case of a draw, according to the JCRM's Rules of Procedure, the procedure for electing a President of the JCRM has to be repeated.

The new President of the JCRM, Zoran Karadzhozovski was elected on "take two", at the session of 26 April, this time as the only nominee. The President of the SCRM was neither present, nor cast her ballot at this session. After the procedure was completed, Zoran Karadzhozovski was elected with 12 votes. With respect to his years of service, Karadzhozovski is a "young" judge, for the first time appointed to the Basic Court Bitola, only five years latter promoted to the position of a judge at the Court of Appeal Bitola, and after a further year spent at that Court, he was elected a member of the Judicial Council as a representative of the appellate region Bitola.

Court Proceedings²

The "Coup" case.

The hearing which was supposed to be held on 3 May 2016, at 10 AM, was suspended, in accordance with the President's abolition decision.

² 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.

The “Rover” case.

On 08 April 2016 the hearing was not held, 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 informed the Court that his absence is due to health reasons, and that later on the appropriate medical documentation would be provided. The Court postponed the hearing, and rescheduled it on 22 April 2016, at 11 AM.

On 22 April 2016 the hearing was not held, 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 submitted medical documentation where the reasons for his absence from the hearing were listed. The Court postponed the hearing, and rescheduled it on 9. May 2016, at 11 AM.

The “Divo Naselje” case.

The “Divo Naselje” case is in evidentiary hearing phase, and during the month of April several hearings were held, all of them closed to the public on account of the fact that presently evidence is being introduced and admitted through interrogation of protected witnesses. Due to these reasons there is no information available on the hearings’ course and development in substantive meaning.

The next hearing scheduled for May 23 was postponed to next term scheduled for May 27 at 10 am.

Fundamental Rights

The Principle of Nondiscrimination

During the month of April the Macedonian Young Lawyers association informed ³ the public that on 3 March 2016 the Basic Court Skopje 2 Skopje for the first time passed judgment with which discrimination and unequal treatment on the basis of personal status, family and marital status was determined. In this particular case, which was a case of cancellation of employment due to pregnancy, the defendant decided not to extend the plaintiff’s employment contract for a definite period of time, and decided to terminate her employment, solely because he learned that she was pregnant. The Court set out that unless the plaintiff were pregnant, the defendant would have, as he had done previously, added an Annex to the employment contract with which her employment contract would be extended, and she would still be employed at the defendants company. In its ruling, the Court invokes Article 14 of the ECHR, the Protocol 12 of the Convention, and the Law on Prevention and Protection against Discrimination. In its ruling, the Court assigned compensation for non-material damages in favor of the plaintiff.

³ The Macedonian Young Lawyers Association informed the public through a press-release published at its internet portal <http://www.myla.org.mk/index.php/component/content/article/9-macedonian/novosti/219-2016-04-27-11-16-24>

Freedom of Expression and Media Plurality

In the conclusions of the 4th Monthly Report on Monitoring Media Contents through the Mechanism for Observing and Reaction of the Institute for Communication Studies regarding political pluralism in the media, which encompasses four weeks in the period from 12 March to 8 April 2016,⁴⁵ it was ascertained that in the media reports and information-sharing Nikola Gruevski, VMRO-DPMNE and the Government are in fact presented as a single entity, that the reporting on the opposition party SDSM is nothing but an appearance of political balance, and that the media reports in such a way as to discredit the Special Public Prosecution by presenting it as a political tool of SDSM.

In the Report are also noted violations of the journalist profession's ethical standards by several media houses. Thus, the Report points out that the public broadcaster MTV 1 continues to violate the standards and principles of the principles laid down in Article 111, and especially the obligation from Article 110 of the Law on Audio and Audiovisual Media Services, according to which it "should not support or protect policies or interests of a particular political party ... while the programmes which it creates should be protected from any kind of influence from the Government, political organizations and other centers of economic and political power." It was pointed out that MTV1 broadcasts news reports in which uncritically promotes Government projects and investments, and that it also uses propagandistic-apologetic approach in the news reports which are related to Nikola Gruevski as the leader of VMRO-DPMNE, while he promotes Government projects. Furthermore, it is pointed out that three private television stations, namely Sitel, Kanal 5 and Alfa, continue to violate the basic principles of the profession, laid down in Article 61 of the Law on Audio and Audiovisual Media Services, regarding: (1) "Objective and unbiased presentation of events, with equal treatment of diverse views and opinions, and enabling of free forming of public opinion on particular events and issues" (Article 61, Paragraph 1, Indent 9), and (2) "Autonomy, independence and accountability of editors, journalists and other authors involved in creation of programmes and editorial policy" (Article 61, Paragraph 1, Indent 13). It is concluded that each of these television stations takes sides, reports in a biased way and is partial to the views of the ruling party. In this way the aforementioned television stations violate the basic principles laid down in the Code of the Journalists of Macedonia, and especially Article 14, where it is stated that "reporting on political processes ... must be impartial and balanced."

⁴ The Reports are available at the following link: http://respublica.edu.mk/modem/03-do-04-2016/Fourth-Monthly-report-MODEM_mk_01-full_opt.pdf

⁵ The report analyzed 11 programs of news and 38 issues of 11 different current-affairs programs on public service (MTV 1 and MTV2) and 7 private television (Sitel, Kanal 5, Alfa, Telma, Alsat M, 24 news and TV21).

Freedom of Assembly

After the President of the Republic's Decision on abolition of 57 was made public, the citizens initiated daily protests in front of the state institutions, with the aim to express their revolt and dissatisfaction. During the protests, the citizens' right to peaceful assembly was restricted by the Police. Namely, the Police prevented the protesters from approaching the headquarters of the ruling party VMRO-DPMNE, as well as some other state institutions, through rearranging the walking route of the protesters by placing barricades composed of police officers.

On 13 April 2016 the police officers apprehended 13 persons, out of whom 11 were pronounced misdemeanor sanctions according to Article 14 of the Law on Disturbing Public Peace and Order, due to alleged actions contrary to the order of competent state authority or of authorized official representing competent state authority, which forbids access to or lingering on a certain location⁶. Two persons were brought in front of a judge in a pre-trial procedure, on account of being suspected to have committed the criminal offence "Participating in a crowd committing a criminal offence", Article 385, Paragraph 1 of the CC, and they were put under house arrest in duration of 8 days, which was later extended to 30 days. All 13 persons were held at a police station up to 24 hours, although the persons who had received misdemeanor sanction, on account of committing misdemeanor, according to Article 50 Paragraph 3 from the Law on Police, could not be detained for longer than 12 hours.

The sanction stipulated in Article 385, Paragraph 1 of the CC for the criminal offence "Participating in a crowd committing a criminal offence", is a fine or a prison sentence of up to 3 years; it is considered a minor crime, which on principle should not entail house arrest, i.e. it would be more fitting to assign a milder cautionary measure, like regular reporting to an assigned official. The Basic Public Prosecution appealed the house arrest decision, but the appeal was rejected by the Criminal Council of the Basic Court Skopje 1 Skopje. Having in mind that the two suspects are members of the newly-formed opposition party "Levica", their arrest and detention undoubtedly represents an act meant to intimidate and deter the protesting citizens and the political opponents of the ruling party.

⁶ Report by the Helsinki Committee for Human Rights on the apprehended and detained persons <http://www.mhc.org.mk/announcements/400#.VzCOTYR97IU>