



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

### **1. The Rule of Law and Legal Security**

#### **Constitutional Court**

During the month of July 2016, the Helsinki Committee has published the monitoring analysis on the work of the Constitutional Court titled “The Constitutional Court in the Grip between Political Parties and Human Rights”.

The independence of the court is weakening, especially after the changes in membership of the court. This is confirmed by the data given in the analysis, according to which tendencies are shown in the way of acting upon the initiatives submitted to the Constitutional Court and the decisions after the changes in membership of the court. Additionally, the opinions acquired by the Court from the Government and the Assembly of the Republic of Macedonia as proponents, i.e. lawmakers, are not subjected to any discussions, even though they are often identical as if they came from the same source. The change in the Court's work is also evident from the number of initiatives that reach the Court. In 2011 the Court received 236 initiatives, while in 2015 there was a decreased by 46%, i.e. the Court received 128 initiatives, which points to a decline in confidence in the Court.

Regarding transparency, a decline has been noticed, which is confirmed by the data for duration of sessions. According to the number of sessions held in 2015, on average, a Constitutional Court session lasts for an hour, i.e. the constitutional judges devoted only 31 hours to review the initiatives of a public session.

Regarding the protection of freedoms and rights of citizens, it can be concluded that the number of citizens' requests for protection of rights and freedoms is constantly decreasing from year to year. In its 24-year operation, the Constitutional Court has received about 300 requests and has accepted only one. This indicates that the legal institution is not an effective legal organ in the legal order of the state. Although the Rules of the Constitutional Court require holding public hearings when deciding on requests for protection of rights and freedoms, this is not implemented in practice.

The full analysis can be found on this link:

[http://www.mhc.org.mk/system/uploads/redactor\\_assets/documents/1635/Ustaven\\_sud\\_analiza.pdf](http://www.mhc.org.mk/system/uploads/redactor_assets/documents/1635/Ustaven_sud_analiza.pdf).

#### **Legislation**

The four political parties (co-signatories to the Przino Agreement), mediated by the international community, on July 20<sup>th</sup>, 2016 finally agreed upon a solution as a way out of the political crisis. Unlike in previous contractual processes, there is no fixed election date, but the parties have to evaluate the implementation of the agreed upon procedures until August 31<sup>st</sup>, 2016, and then set the date for the early parliamentary elections (if the parties give the green light, a transitional government which will conduct the electoral process will be formed a 100 days before the elections, and one possible date which has been mentioned is December 11<sup>th</sup>, 2016). The agreed upon procedures include guidelines about the work of several institutions and the function of different areas, such as Voting List and





changes to the Electoral Code, the work of the media, a transitional government and an election date, as well as to the work of the Special Prosecutor's Office.<sup>1</sup>

In order to commence the implementation of the agreed upon procedures from July 20<sup>th</sup>, the Assembly of the Republic of Macedonia with 90 votes in a summary proceeding amended the Law on Internal Affairs, Law on Audio and Audiovisual Media Services, the Electoral Code, and the Law on Government.<sup>2</sup>

Proposers of the Laws were the VMRO-DPMNE coordinator Ilija Dimkovski, the SDSM coordinator Goran Sugareski, the DPA vice coordinator Bekim Fazliu, and the member of DUI party Artan Grubi.<sup>3</sup>

With the adopted amendments, the Minister of Interior can replace 15 persons from the managing staff. One hundred days before the election date, a transitional government will be formed with two ministers and three additional vice ministers from the opposition, which will resign the day the State Election Commission announces the final election results.

MRTV will establish a channel program in Albanian language only. The Agency for Audio and Audiovisual Services will form a five-member electoral monitoring body. Implementation of these laws will be evaluated by leaders on August 31<sup>st</sup> and they will assess the conditions for credible elections.<sup>4</sup>

## Judiciary

### Court Proceedings<sup>5</sup>

#### 1. Subject matter: "Protesters"

During the month of July, a hearing was held on the subject of "Protesters", in which Zdravko Saveski and Vladimir Kunovski were the defendants. The defendants were charged with the crime of "Participation in a crowd committing a criminal offense".

The hearing was held on 06.07.2016 in the Primary Court Skopje 1.

The public prosecutor from the Public Prosecutor's Office in Skopje, Snezana Bundaleska, presented new evidence, i.e. submitted a title deed according to which the site of the National Office of the President is owned by the Republic of Macedonia and the Government's decision on the temporary use of the space for this purpose. The defense requested a postponement of the hearing due to the need for studying and examining the submitted evidence.

At this hearing, at the request of the defense, Judge Vesna Petrovska Tagasovska adopted a decision which annulled the measure for ensuring presence in court - the disqualification from holding personal travel documents (adopted at the previous hearing), while the measure for reporting on a specific date (every two weeks) proposed by the same decision remained in force.

#### 2. Subject matter "Spy"

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<sup>1</sup> <http://slobodna.mk/2016/07/27/dogovorot-od-przhino-treta-epizoda-ambitsiozen-plan-za-pravedni-i-kredibilni-izbori/>

<sup>2</sup> The law amendments were published in the Official Gazette of the Republic of Macedonia no. 142 on 01.08.2016.

<sup>3</sup> <http://a1on.mk/wordpress/archives/634254>

<sup>4</sup> <http://makfax.com.mk/makedonija/sobraniето-gi-donese-zakonite-od-dogovorot-vo-przhino>

<sup>5</sup> Monitoring of the Judiciary Proceedings is conducted by the Coalition *All For Fair Trials* and the Helsinki Committee for Human Rights of the Republic of Macedonia.





During the month of July, the Appellate Court had scheduled a public hearing on the matter generally known as "Spy", in which 19 people were charged with espionage, criminal association, fraud, blackmail, and concealment.

The hearing which was scheduled for 19.07.2016 was postponed due to the absence of a public prosecutor from the Special Prosecutor's Office. The judge informed the attending persons that a request has been submitted by the Special Public Prosecutor's Office requiring a short postponement of the public hearing and thereby stated that they would be prepared to speak on the matter at a hearing in August 2016.

## 2. Fundamental Rights

### Ombudsman

On July 18<sup>th</sup>, 2016, in the Assembly of the Republic of Macedonia–Commission for Political System, the first public hearing was held on the proposed amendments to the Ombudsman Legislation whose proponent is the Government of the Republic of Macedonia. The explanation in the text of the law<sup>6</sup> states that this bill must meet set criteria for obtaining status A of the Ombudsman for the National Human Rights Institution. The need for a full mandate will include promotion and protection of human rights is also noted in the report on the Republic of Macedonia's progress, as well as the recommendations of the Group of experienced experts on systemic issues of rule of law in the Republic of Macedonia (the Priebe Report) related to the interception of communications, and implementation of Urgent reform priorities for the Republic of Macedonia by the European Commission.

With the proposed amendments, the Paris Principles of the mandate and independence of the national human rights institution are not fully implemented, especially as the Ombudsman remains financially dependent on the government, and is left without mechanisms (sanctions) that can oblige ministries and state administration to implement the recommendations made by the Ombudsman to overcome and improve the situation of human rights, and remains without the possibility of hiring professional staff to successfully perform that function.<sup>7</sup>

The hearing on the Ombudsman legislation continues in August 2016.

### Attitude towards socially vulnerable groups and persons with disabilities and the principle of non-discrimination

Persons suffering from cystic fibrosis are not able to exercise the right for a special allowance despite the fact that they are persons who suffer from a chronic condition with special needs. Pursuant to Article 4 of the Regulation for Assessment of the Specific Needs of persons with Physical or Mental Disabilities as people with physical or mental disabilities who have special needs, and therefore have the right to necessary allowance, the following groups are listed: the visually impaired, the hearing impaired, the speech impaired, the physically disabled people, the mentally retarded persons, the autistic, the chronically ill people and people with various kinds of disabilities (combined disabilities).

<sup>6</sup> Full text of the proposed Law is available on:

<http://www.sobranie.mk/sessiondetailsrabotni.nspx?sessionDetailsId=a0c00738-aea2-4b33-a7e9-393bbe7be22d&date=18.7.2016>.

<sup>7</sup> The reaction of the Ombudsman for the essential shortcomings in the proposed law amendments can be found on the following link: : <http://sdk.mk/index.php/glasno-za-ombudsmanot/sobranieto-so-nov-zakon-ke-mu-gi-vrze-ratsete-na-narodniot-pravobranitel/>





However, in chronically ill persons or persons with serious chronic conditions and serious health impairments, there are only 10 listed diagnoses, and cystic fibrosis is not among them. Due to that fact, a decision has been made to not give special allowance to the families of these persons.

The Ombudsman of the Republic of Macedonia, following a complaint received by the parent of a child with cystic fibrosis, submitted an initiative to the Ministry of Health, Ministry of Labor and Social Policy, Ministry of Education and the Health Insurance Fund for amending the Regulation for Assessment of the Specific Needs of persons with Physical or Mental Disabilities in a manner that will list the people with cystic fibrosis in Article 9 which omits them as chronically ill. The institutions have not submitted an answer to the Ombudsman yet.<sup>8</sup>

### **Freedom of speech and pluralism in the media**

According to the agreement of the political parties from July 20<sup>th</sup>, 2016, a new editor of public service should be appointed as proposed by the opposition, who will take office a hundred days before the elections, and an ad hoc body will be formed which will monitor media reporting. The monitoring body will consist of 5 members, 4 of which shall be proposed by the political parties or contracting parties, and the fifth member shall be elected by consensus of the parties. The work of the ad hoc body also involves making recommendations that will have to be monitored by the Council of the Agency for Media and based on those recommendations, the Council will deliver warnings and fines on media.<sup>9</sup>

However, these sections of the Przino Agreement are considered disputable decisions that are made only in function of elections and do not guarantee the long-term independence of public service.<sup>10</sup>

### **Measures against racism and xenophobia**

Between January 1<sup>st</sup> and December 31<sup>st</sup>, 2015, there were 44 registered crimes and hate crime incidents. Compared to the incidents recorded in 2013 and 2014, the biggest change is in terms of victims which are now mostly refugees and migrants. Another striking difference from the period of 2013/2014 compared to one of 2015 is the fact that not even one hate incident because of the sexual orientation/gender identity of the victim has been reported in 2015. This does not necessarily mean that society has become more tolerant towards the LGBT community. It has to be noted that the state authorities failed to properly investigate the incidents in 2013 and 2014, while the police failed to arrest a large number of perpetrators. The failure of the state to protect the victims, the refusal of the Parliament to include sexual orientation as a reason for possible discrimination and hate crimes, as well as the Government's plans to constitutionalize marriage exclusively as a union between a man and a woman, have a negative effect on people of the LGBT community who are possibly afraid to report crimes committed against them.

The third and huge, but a positive difference is the number of incidents in terms of the Macedonian or Albanian ethnicity of the perpetrators/victims. In 2013, these incidents accounted for 84% of incidents (98 of 116), while in 2014 the percentage was 61% (53 of 87). During 2015, only 15 incidents (34%) happened between Macedonians and Albanians. The biggest number of incidents (41%) happened in Skopje (municipalities of Centar, Chair, Gazi Baba, KARposh, and Aerodrom) and in the Skopje district

<sup>8</sup> The full report by the Ombudsman regarding this case can be found on the following link:

<http://sdk.mk/index.php/glasno-za-ombudsmanot/vladata-shtedi-so-diskriminirane-teshko-bolni-detsa/>

<sup>9</sup> <http://telma.com.mk/vesti/ad-hok-teloto-za-mediumi-ne-e-soodvetno-reshenie>

<sup>10</sup> The expert opinions on media can be found on the following link:

<http://www.slobodnaevropa.mk/a/27880809.html>





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area. There were 10 incidents in Gevgelija, 6 in Kumanovo, 2 in each Bitola and Negotino, and 1 incident in Tetovo, Gostivar, Kochani, Kriva Palanka, Kavadarci, and Veles in each town (including the district areas of each town).

The full report of hate crimes can be found on the following link:

[http://www.mhc.org.mk/system/uploads/redactor\\_assets/documents/1617/ZLOSTORSTVA\\_OD\\_OM\\_RAZA\\_2015\\_MK.pdf](http://www.mhc.org.mk/system/uploads/redactor_assets/documents/1617/ZLOSTORSTVA_OD_OM_RAZA_2015_MK.pdf)

### Right to property

European Court of Human Rights ruled in the case "Vasilevski against the Republic of Macedonia", in favor of the applicant Vasilevski from Kavadarci. The case concerns the loss of ownership of the truck, confiscated by the state. According to the judgment, the return of the vehicle is needed for restitution of the situation.<sup>11</sup>

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<sup>11</sup> More about this case is available on: <http://www.akademik.mk/presuda-na-eschp-za-sluhajot-vasilevski-protiv-rm-odzemaneto-na-tovarnoto-vozilo-od-strana-na-drzhavata-e-poprechuvane-na-mirnoto-uzhivane-na-sopstvenosta/>.



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