



## Monitoring Brief for October 2016 on the following of Chapter 23 – Judiciary, Fight against Corruption and Fundamental rights

### I JUDICIARY

#### The visit of the Euro-Commissioner Johannes Hahn

On the 14<sup>th</sup> of October the Commissioner for Neighborhood Policy and Enlargement Negotiations, Johannes Hahn, held meetings in Skopje with the Prime Minister, and the leaders of the four major political parties, civil society representatives and the Special Public Prosecutor, Katica Janeva from the Special Public Prosecution office (SPP). The Commissioner stressed that the role of the SPP, as a key element of the Treaty of Przino, was agreed by all party leaders. According to Mr. Hahn, the European Union strongly encourages all to comply with their clear commitment, and points out to the importance of the legal and political responsibility, in the best interest of the country. The Commissioner once again called for the implementation of the Urgent reform priorities, aimed at resolving the political crisis that has affected all sectors of society.<sup>1</sup>

#### Independence

##### 1. Juridical council – Reaction on the independence of judges, verbal attack on the SPP and election of judges

During the press conference of the Judicial Council, the Council's President, Zoran Karadzovski, addressed to the national and international public, claiming that judges are united and together in the fight for independence of the judiciary and that this is their top priority. He referred to the work of the SPP, specifically their calling for interrogation as suspects of five of the judges from the Administrative Court. This action of the SPP was strongly condemned and noted illegal. The President declared that the manner of treatment of the SPP and "certain individuals and groups, organizations and institutions" is contrary to the standards of independence and impartiality of the judiciary. The President Karadzovski appealed to all involved parties to refrain from any attempt to jeopardize their position and role in the administration of justice and protection of Human Rights and Freedoms.<sup>2</sup>

The Judicial Council also elected a judge at the Basic Court Skopje 2 Skopje, from the rows of the candidates of the Academy of Judges and Public Prosecutors<sup>3</sup> and published a call for election of the President of the Supreme Court, President of the Basic Court Skopje 1 Skopje and a judge in the Court of Appeal Bitola.<sup>4</sup>

##### 2. Another reappointments of judges in the Basic Court Skopje 1 Skopje

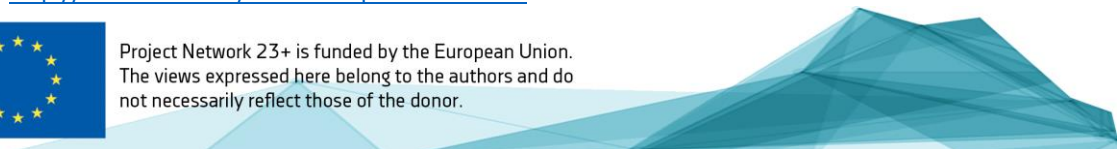
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1 [http://ec.europa.eu/commission/2014-2019/hahn/announcements/eu-commissioner-johannes-hahn-his-visit-skopje-14-october-2016\\_en](http://ec.europa.eu/commission/2014-2019/hahn/announcements/eu-commissioner-johannes-hahn-his-visit-skopje-14-october-2016_en)

2 <http://www.srm.mk/Novosti.aspx?novost=464>

3 <http://www.srm.mk/Novosti.aspx?novost=459>

4 <http://www.srm.mk/Novosti.aspx?novost=460>





After the appointment of seven judges in September, the Court made, once more, three new allocations within their departments outside the annual schedule.<sup>5</sup> A new Vice President of the Basic Court Skopje 1 was appointed, on the grounds that the predecessor requested himself the removal from office. In the Office of Adult Criminal a new judge President was appointed, on the grounds that his predecessor personally requested allocation to another department. Because of the same reasons, the past President of the Office of Adult Criminal from the Department for Organized Crime and Corruption is assigned to the Department of Prior Criminal Procedure. The Court announced that it will report on any additional reallocations in order not to jeopardize its' operating. The reallocation of eight judges on "their request" and the positive decision on all such requests by the presiding judge, opens additional doubts about the impartiality in deciding on the cases, especially the ones that are under the authority of the SPP.

## Impartiality

### 1. Another verbal attack of the Basic Court Skopje 1 against the SPP

The Basic Court Skopje 1 informed the public that unlike the SPP, which according to the Court makes "spectacles" on the TV press conferences during which it presents cases and does not respect the presumption of innocence and the legality of the proceedings, the Court did not intend to participate in such spectacles, but will inform the public exclusively through press releases.<sup>6</sup>

### 2. Case "Trezor"

Acting on the complaint of the SPP against a decision of a judge on a preliminary procedure for undelivering of the proposed detention measures against a suspect, the Criminal Council of the Basic Court Skopje 1 adopted a decision with which it rejected the complaint as unfounded, and confirmed the decision of the judge of the preliminary procedure. The Court also received a decision from the Court of Appeal with which it dismisses the complaint of the SPP filed against the decision of the court of first instance with which the request of the SPP for recusal of a judge authorized to act on a bill of indictment against 7 persons, for the offense 'Making false official documents' was rejected.<sup>7</sup> For this same case, the judge of the preliminary procedure in the Basic Court Skopje 1 adopted a decision with which he stopped the execution of the financial transactions in the accounts of the legal entity DTU "Finzi" LTD Skopje. The decision was made upon the request of the SPP for temporary measure - 'prohibiting the use and disposal of financial accounts of the legal entity' through which the SPP suspects were siphoned funds from the budget.<sup>8</sup>

### 3. Case "Transporter"

The Supreme Court of the Republic of Macedonia accepted the complaint against the decision of the Court of Appeal Skopje, which rejects the proposal of the SPP for the extension of the house arrest measure of the Mayor of Bitola, Vladimir Taleski, the first defendant in the case "Transporter". The decision of the

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5 <http://www.oskopje1.mk/Novosti.aspx?novost=560>

6 <http://www.oskopje1.mk/Novosti.aspx?novost=570>

7 <http://www.oskopje1.mk/Novosti.aspx?novost=564>

8 <http://www.jonsk.mk/2016/10/07/блокирана-сметката-на-правното-лице-в/>





Court of Appeal was annulled and the case was sent back for retrial.<sup>9</sup> The reason for annulling is that the same judge was deciding in the first instance procedure, and later in the second instance procedure, after being promoted from the Basic Court Skopje 1 to the Court of Appeal in Skopje.

### **Competence and transparency**

After a one-year delay, the Supreme Court finally released the electronic Court web portal - <http://www.sud.mk/>. which should be used to publish court decisions, but it is practically unfunctional, contains a small number of decisions, and it is unknown whether the available decisions are effective, altered, repealed or invalidated. For that reason, the portal does not contribute to the improvement of juridical practice and legal security.

### **More significant court proceedings**

#### **Case "Divo Naselje"**

Three main debates in court of the case KOK no. 127 / 15 took place, known in public as "Divo Naselje", in which the defendants are being charged for the crimes of "terrorism" and "terrorist organization". At the debate that took place on 4<sup>th</sup> of October, the physical evidence were presented by the Public Prosecutor, including photographs and video footage, on which, according to the prosecution, we can see how a few days after the events, one of the defendants, Sulejman Osmani, accompanied by the police reveals the place where the weapons and ammunition was hidden. This defendant fled from the police officers when he was carried on the field to show them where the weapons stolen during the attack on the police station Goshince were hidden, and following his extradition from Kosovo, a special procedure against him has started in the Criminal Court.

On the 6<sup>th</sup> of October, the defendant Enver Hoxha Klein complained on injuries in court, due to alleged beatings by the police. A team of emergency medical assistance was called, and a number of the other defendants also applied for a medical exam because of alleged physical harassment by the police. Once it was determined by the emergency medical assistance that there is no obstacle for defendants to follow the hearing, it continued with the presentation of physical evidence by the prosecution. The debate which took place on the 10<sup>th</sup> of October, continued in the phase of evidentiary hearing, with the presentation of the physical evidence, including CD drives with photos and video footage from the autopsy performed on the bodies of the deceased. The remaining hearings scheduled for the month of October were not held because of the official absence of the authorized Public Prosecutor.<sup>10</sup>

#### **Case "Shpion"**

The Court of Appeal - Skopje submitted a verdict to the Basic Court Skopje 1 - Skopje with which the first instance ruling for the case "Shpion" is confirmed, with the fact that the appeals of sixteen defendants are partially accepted, and the ruling is altered in the part of the decision on the sentence, while the

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9 <http://www.vsrn.mk/Novosti.aspx?novost=126>

10 <http://www.osskopje1.mk/Novosti.aspx?novost=568>





appeal of one of the accused is accepted, and in this part of the ruling is now sent on a new trial and decision. The rest of the first instance ruling is fully confirmed.<sup>11</sup>

### Case "Raskolnik"

On the 5<sup>th</sup> of October the main hearing was held on the case KOK no. 56/15, in which as defendants, on the count of 'money laundering and other proceedings', arise the Archbishop Jovan Vranishkovski and 18 of his followers, including two bishops, priests, as well as monks and believers of the Orthodox Ohrid Archbishopric. The case was returned on a second trial in front of the Basic Court Skopje 1, after the Supreme Court abolished the first and second instance verdict that the defendant was found guilty and sentenced to three years in prison, currently under the evidentiary hearing. According to the Supreme Court, the existence of reasonable suspicion for having committed a crime cannot be determined clearly in this case.

### Case "Zoran Bozhinovski"

On the 18<sup>th</sup> of October the main hearing was scheduled on the case KOK-79/16, in which as a defendant of criminal conspiracy, espionage and blackmail we find the journalist Zoran Bozhinovski. At this appearance in court, the defendant, for the first time since the beginning of the procedure, was conducted in the courtroom. Asked by the President of the Juridical Council, Lenka Davitkova, if he understood the charges with which he is charged, Bozhinovski replied that he doesn't understand the charges, but did not want to receive at all a charge from a Court that he considers criminal association and prosecutes him on political bases. After the public prosecutor read the bill of indictment KOK no. 91/13, a copy from the same was given to the attorney defending Bozhinovski. The attorney defending, which was newly appointed by the defendant after the revoking of the power of attorney of his previous defenders, requested a postponement of the appearance in court, in order to better study the indictment. The proposal was accepted by the Court.

## II FIGHT AGAINST CORRUPTION

### 1. Public prosecution office Skopje – Visitation of a university

On order of a judge in the preliminary proceedings, and by officers of the MoI, the Public Prosecutor's Office -Skopje searched the premises of a University. From the Prosecution they informed that there are grounds for suspicion that through the abuse of the official position and fraud, financial criminal was done.<sup>12</sup> In part of the public, speculations and accusations against the prosecution occurred, that the case is politically motivated. These claims were specifically dismissed by the Public Prosecutor's Office – Skopje.

### 2. The SPP opened two new investigation proceedings – Toplik and Tenderi

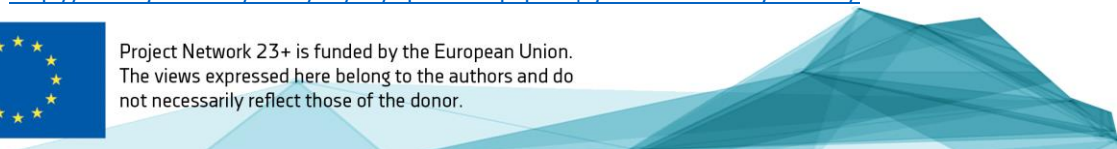
The two newly opened investigations are conducted because of the existence of reasonable grounds of suspicion of criminal acts that violated the Law on Public Procurement and damaged the budget. In the first case led under the name "Toplik"<sup>13</sup> the Special Public Prosecution suspects that in the period from

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11 <http://www.osskopje1.mk/Novosti.aspx?novost=565>

12 <http://jorm.gov.mk/?p=3591>

13 <http://www.jonsk.mk/2016/10/20/прес-конференцијата-се-поместува-за-в/>





2007 to 2013 in Skopje, five suspects from the Ministry of Transport and Communications, of which the first suspect holds a management position and the other members of the Commission as accomplices have used their official duty and caused damage to the funds from the Budget of the Republic of Macedonia in the amount of 1.044 million euros.

For the second case, "Tenders", according to the Special Public Prosecution, from the collected evidence they came to a reasonable suspicion that in the period from 2011 to 2013 in Skopje, the first suspect as management official in the Ministry of Culture and three suspected officials, members of the Public Procurement Commission in the Ministry of Culture as accomplices, took advantage of the official position and authority and perform public procurements for the legal entity TCN Beton Stip AD Stip, obtained illegal profits, which manifested itself in an unlawful privilege - favoring the execution of final construction and construction - craft works on the building of the Museum of the Macedonian Struggle for Statehood and Independence and Museum of the victims of the internal Macedonian revolutionary organization and Museum of the victims of the communist regime" in Skopje. At the end of the press conference the special prosecutor Fatime Fetaj said that corruption and culture are two different life concepts and that the SPP will fight to give them opposite paths.

### 3. Case "Tenderi"

Acting on the proposal of the SPP for the determination of measures of precautions against two people covered in the case "Tenderi",<sup>14</sup> a judge of the preliminary procedure in the Basic Court Skopje 1 - Skopje after the questioning of both parties in the presence of a representative of the SPP, has rejected the proposal as ungrounded.<sup>15</sup>

## III FUNDAMENTAL RIGHTS

### Right to life

Through a public reaction, the Ombudsman stated that "you cannot pay with human lives the fact that third year in a row, the new Law on Execution of Sanctions of 2013 is not implement, with which the health care in the prisons goes under the jurisdiction of the Ministry of Health, more specifically in the public health, which should provide the primary level of health protection." This reaction of the Ombudsman follows after within 8 days two prisoners died. The Ministry of Health procrastinates the implementation of the Law on Execution of Sanctions for three years, whose amendments were adopted in 2013 were to be applied 30 days after their adoption. According to the Minister of Health, Nikola Todorov "Analysis of the staff is made, but the new approved systematizations, currently we looking where deficit can be found, and we are making appropriate efforts to fill it".<sup>16</sup>

### Freedom of speech and pluralism in media

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14 <http://www.jonsk.mk/2016/10/21/поднесени-предлози-за-мерки-на-претпа/>

15 <http://www.osskopje1.mk/Novosti.aspx?novost=571>

16 <http://sdk.mk/index.php/neraskazhani-prikazni/ministerot-todorov-tri-godini-prebrojuva-kolku-lekari-falat-vo-zatvorite/>





The Agency for Audio and Audiovisual Media Services (AVMS) during the month of October continued the monitoring of media presentation regarding the elections on 18 program services. AVMS, on the proposals of the Interim Commission for monitoring of media presentation, initiated violation proceedings against TV Sitel, TV Nova and TV Alfa, due to violation of Article 75 paragraph 1 of the Electoral Codex (unbalanced and biased reporting), while TV Alfa according to Article 75 -B of the Codex (electoral media presentation of a political subject through activities of national authorities). AVMS condemned the violence against a journalist of TV Telma and considers that such actions are a direct attack on press freedoms and the right of the public to be informed. A charge was brought against the attacker by the police.

According to the general conclusions of the Monitoring of the television news of the Institute of Communication Studies in the period from the 3<sup>rd</sup> to the 14<sup>th</sup> October "out of 12 monitored TV stations, 7 used only one source of information in the video stories (excluding MTV2, Alsat M and TV 21), no matter that in most cases after a video story, a reaction of counterweight follows. This may not affect the overall picture of balanced news, but it reflects the journalistic rule to consult the "both sides" in the video story and at the same time underlines that the news are reduced to simple transmission of events, but not to a journalistic commitment as well."<sup>17</sup>

### Discrimination

During the month of October, numerous overreactions were observed on the social networks, caused by the content of the textbook "Society" for 4<sup>th</sup> grade, in which an exercise requests from the students to stick a photo of the wedding of their parents, and furthermore from to say whether they got married in a church or made a civil marriage. Besides the fact that the content of this exercise, and other contents that are to be taught about marriage and family, are disturbing, excluding and stigmatizing to non-traditional families and to all those children and parents who live in non-traditional families, such an exercise and text signify discrimination for children living in single-parent families, which may occur through the divorce of spouses, death of parent(s), children living in families with other relatives, and even to parents who live in community where no marriage was concluded, or the parents who concluded a civil marriage, but did not have a wedding.

The Network for protection against discrimination estimates that the textbook "Society" for 4<sup>th</sup> grade contains discriminatory texts based on marital and family status, but also on the basis of religion. The Network calls on the anti-discrimination provisions of the Law on Primary Education, the Law on Protection and Prevention of Discrimination that expressly prohibits discrimination on the basis of family and marital status, as well as the Law on Family, which expressly prohibits discrimination against children born in and out of marriage. Therefore, they appeal to the competent institutions for the removal of such content and its' replacement with an appropriate content that will represent all types of families and communities; having in mind that if the competent authorities do not act ex-officio, the Network for Protection against Discrimination will file petitions in order to remove the discriminatory content.<sup>18</sup>

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17 [http://respublica.edu.mk/modem/Sedmi-mesecen/MODEM\\_izvestaj\\_oktomvri\\_MK\\_FINAL.pdf](http://respublica.edu.mk/modem/Sedmi-mesecen/MODEM_izvestaj_oktomvri_MK_FINAL.pdf)

18 [http://mhc.org.mk/announcements/474#.WCYxU\\_krLIU](http://mhc.org.mk/announcements/474#.WCYxU_krLIU)

