

MONTHLY BRIEF

September 2016

Justice Governance for Growth Monitor (JuDGMeNT)

These monitoring reports are drafted within the framework of the project "Justice Governance for Growth Monitor by the SEE 2020 Strategy (JuDGMeNT)" implemented by the European Policy Institute with the financial support by the Regional Cooperation Council. The Project's objective is to establish structured civil society organisations mechanism for monitoring the implementation of the measures/instruments/priorities from the *Justice* dimension in compliance with the SEE 2020 Strategy.

These measures are the following:

P.1. Improve efficiency and competence: review the quality, efficiency and competence of judges and the courts

P.2. Improve judicial cooperation in free access to information, cross border enforcement and cross-border proceedings in bankruptcy and take-over and mergers

P.3. Support ADR: Introduce or improve the legislation on ADR and enable proper legal and institutional cooperation with the judiciary and the enforcement system

For more information see: http://www.epi.org.mk/newsDetail_mk.php?nwsid=131.

Quality, competence and efficiency of judges and judiciary

The Judiciary Council of the Republic of Macedonia at the meeting held on 5 September 2016 adopted a decision for the election of 28 judges for the courts in the Republic of Macedonia in compliance with the previous decision for announcing public calls for election of judges adopted at their meeting held in August. This decision was followed by reactions from the civil society. Having no doubts about the need of judges in some of the courts, Network 23 pointed out that this is the third time that the Judicial Council of the Republic of Macedonia would be electing presidents of courts and judges right before the coming early elections.¹ With this policy it has continued with the non-implementation of the reform priorities that refer to the de-politicisation of the appointment and promotion of judges, evaluation, disciplinary proceedings and dismissal and the Judicial Council continues with the election the presidents of courts and judges without previously making any changes in the election system.

At the other meetings held in September the Judicial Council appointed an acting President of the Tetovo Basic Court and an acting President of the Stip Court of Appeal and decided to announce a public call for those positions as well as a public call for the election of a judge for the Basic Court Skopje 2 Skopje from the Academy for Judges and Public Prosecutors.

In the course of September the planned trainings were held, such as the training for practical application of the Law on Determining the Type and Length of Sanctions, Law on Transfer of the Burden

¹ The Judicial Council of the Republic of Macedonia in the previous period had elected eight presidents of courts and announced a public call for the election of ten judges on 23 February 2016 and for the election of seven judges on 6 April 2016, in both cases only one day before the scheduled dissolution of the Parliament. The full version of Network 23 press release is available on the following link: <http://www.merc.org.mk/aktivnost/9/soopshenie-po-povod-najaveniot-izbor-na-novi-28-sudii-od-strana-na-sudskiot-sovet-na-republika-makedonija>.



of Proof in Cases of Discrimination in cooperation with the OSCE Mission and the Academy for Judges and Public Prosecutors and a training for practical implementation of Article 5 from the ECHR in cooperation with the Academy of Judges and Public Prosecutors and IPA.

The strike of the court administration that started in May 2016 and was put on hold in August, was terminated in September even though the previously articulated demands of the court administration were not met². This decision follows after the court administration has been faced with pressures of all kinds,³ which only points out to the fact that there is no clear understanding about its significance for the efficiency of the judicial system and access to justice.⁴

The Judicial Budget Council decided for the salaries of the court clerks for May 2016 to be paid in full, and the amount that needs to be withheld from their salaries pursuant to Article 77 from the Law on Judicial Service to be done with the payment of the salary for June 2016. According to the Secretary General of the Trade Union of Employees in the Public Administration, Judicial Authorities and Civil Associations in the Republic of Macedonia this was just another attempt to break the strike of the court administration and to draw the attention away from the problems of court clerks. The Judicial Budget Council (JBC) sent a notification to the court employees stating that their salaries will be cut by 40% collectively for the duration of the court administration strike. This decision by JBC came only few days after the first decision demanding for the presidents of the courts to cut by 60% the salaries of the employees that were on strike for two months demanding higher wages. These facts, among others, show that instead of negotiations the court administration was under pressure by the Judicial Budget Council and the President of the Judicial Council which is unacceptable for a judicial council that is supposed to be an independent judicial body and shows lack of transparency on its part.⁵

The strike of the court administration undoubtedly had negative impact, jeopardising the functioning of the courts. However, we have to underline that in a democratic society it is a guaranteed right and there was always a possibility to prevent it if the stakeholders had only managed to reach an agreement.

Judicial cooperation in the area of free access to information, implementing cross-border enforcement and cross-border bankruptcy, take-over and merging procedures

In the course of September the public interest in the possible take-over of "Makpetrol" SA Skopje by the "Balkan Petroleum Holding Limited" continued.

The Securities Exchange Commission of the Republic of Macedonia at its 98th session held on 19 September 2016 adopted a Decision to stop the procedure initiated with the request for a permit by "Balkan Petroleum Holding Limited" to offer a take-over of "Makpetrol" SA Skopje.

As stated by the Commission the procedure was stopped for the purpose of resolving a previous issue by a different authority. The procedure related to the request for a permit by "Balkan Petroleum Holding Limited" to offer a take-over of "Makpetrol" SA Skopje will resume after the other issue is resolved by the competent authority.

² http://www.upoz.org.mk/index.php?option=com_content&view=article&id=407:2016-09-13-11-53-33&catid=1:latest-news

³ <http://www.slobodnaevropa.mk/a/27842287.html>

⁴ <http://www.akademik.mk/naroden-pravobranitel-sudskata-administratsija-so-pravo-se-chuvstvuva-diskriminirano-poradi-neednakvata-raspedelba-na-sredstvata-za-sudskata-vlast/>

⁵ <http://vistinomer.mk/sudskiot-budhetski-sovet-ne-smee-kolektivno-da-gi-namali-platite/>

At the beginning of September 2016 the Minister of Justice Valdet Xhaferi and the British Ambassador to the Republic of Macedonia Charles Garrett signed a Memorandum of Cooperation for improving the system of court practice by using the British judicial system model, its tradition and culture. The goal of the Memorandum is to strengthen the independence of judiciary, to improve the judges' capabilities, and to increase the trust of the citizens in the justice system. The objectives are to strengthen the key principles: consistency, coherence, legal certainty, predictability and transparency.

Furthermore, it emphasises that all businesses, regardless whether they are small or big, local or foreign need a judicial system they can trust and which will deliver fair and independent decisions.

Alternative dispute resolution

In the course of September, after the end of the courts' collective summer holiday and restarting the scheduling of court hearings the activities in the field of mediation have been intensified again.

During this time there have been 9 (nine) licensed mediators that have been actively working. Their contact information is available on the web site of the Ministry of Justice and an increase has been noticed in the interest for getting information about the mediation procedure by persons who need legal assistance from a mediator.⁶

Due to the increased interest of the parties and their proxies in the mediation procedures, especially in the area covered with the amendments to the Law on Litigation Procedure that introduces mandatory attempt for mediation in commercial disputes with claims up to MKD 1,000,000 (one million), which procedures are initiated with a lawsuit to the competent court, there is an urgent need for a Chamber of Mediators to be established in order to organise the licensed mediators as well as a need of adopting bylaws for the purpose of harmonising the work of mediators when acting and undertaking actions in the cases they register upon a request by the parties interested in mediation.⁷

In regard to the number of registered and executed cases of mediation in the Mediation Procedures Register that is kept at the Ministry of Justice – Department on Notaries, Bailiffs and Mediators in September a total of 9 (nine) cases of mediation has been registered based on the collected reports that the licensed mediators submit to the Ministry.⁸

Out of the total of nine registered mediation procedures, only in one case the parties came to an agreement while in the other 8 (eight) cases the mediation had not even started because the parties failed to show interest in extrajudicial dispute resolution.

It is still expected to have significant positive results from the introduction of the mandatory attempt for mediation with the amendments to the LLP that came into force in February 2016. However, the mediators that worked based on the old mediation legislation, which has been revoked and who have no licences i.e. they did not take the mediator's exam, still appear as members of the old Chamber of Mediators (which still exists formally but it is not active) and they act upon requests for mediation from interested parties. In the absence of a new Chamber of Mediators as well as an initiative from the competent Ministry for resolving this burning issue, it is of utmost importance in order to improve the situation to make an attempt for overcoming the problems and deal with the lack of legal unification in the area of mediation.⁹

In regard to the mediation promotion in September the Mediation Support Association (MSA) at the Macedonian Chamber of Commerce intensified its activities. Three one-day free seminars were held in Prilep, Bitola and Skopje on the topic of "MEDIATION as an Efficient Way of Extrajudicial Dispute

⁶ http://www.pravda.gov.mk/documents/medijatori_2.pdf

⁷ <http://www.pravo.org.mk/documentDetail.php?id=289>

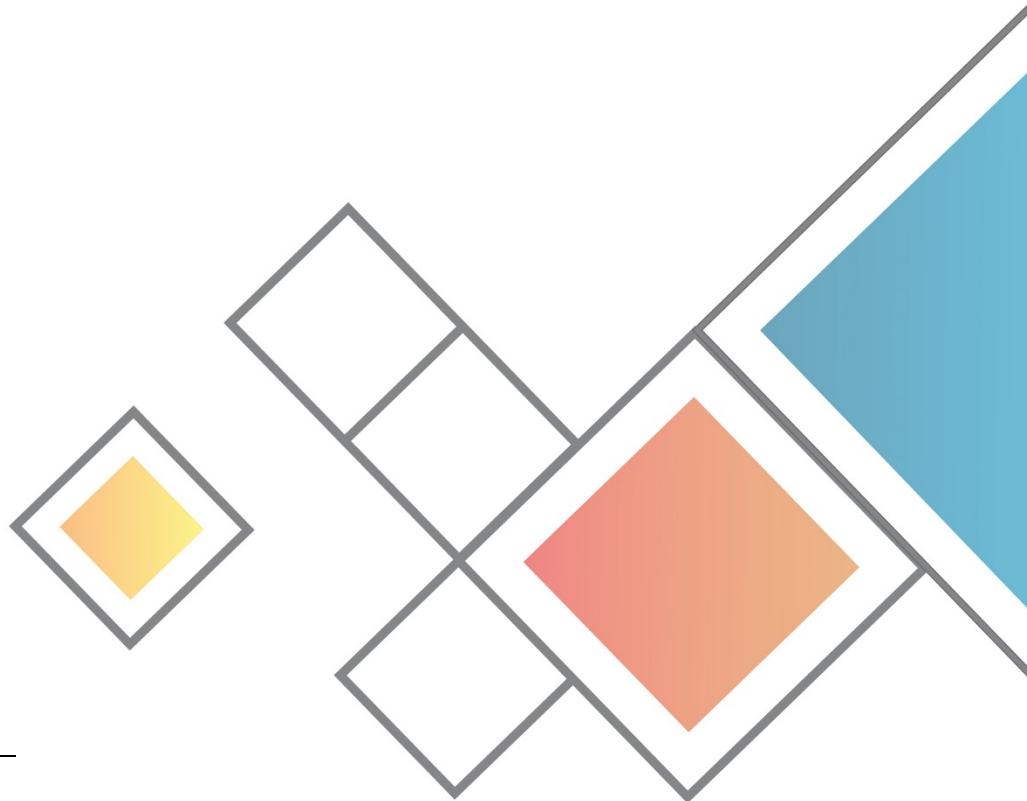
⁸ Official data from the Ministry of Justice

⁹ Official data from the courts with extended jurisdiction / interviews with licensed mediators

Resolution” and the target group were the representatives of the business sector. They were introduced to the basic principles of mediation, the differences between mediation and court procedures as well as provided with information about the disputes that could be subjected to mediation and the ones that cannot i.e. for which cases they could seek the help of a mediator.¹⁰

The activities of MSA in September were also focused on the brochure for mediation promotion under the motto “promotion – Affirmation – Success”. A press conference was held at the premises of the Macedonian Chamber of Commerce at which they also promoted the Association’s web site.¹¹

Training for amicable settlement of labour disputes in accordance with the international standards of ILO was held in Skopje on 26-28 September. Seventeen people were trained.¹² The trainers at this training were three members who were among the founders of APARS and who were certified trainers in amicable settlement of labour disputes from ICT-ILO. One of the trainers was also a licensed mediator under the Mediation Law.¹³



¹⁰ <http://www.mchamber.org.mk/>

¹¹ www.apm.mk

¹² An interview with a trainer as part of the EU-funded Project *Promoting Social Dialogue*

¹³ An interview with trainers for amicable settlement of labour disputes