

*This Report covers issues connected with Chapter 23, followed from 01 to 29. 02. 2016 – Judiciary, Fight against corruption, and Fundamental rights, as activities included within the Project Network 23+, supported by the European Union.*

## **Special Public Prosecution**

On the 12<sup>th</sup> of February 2016, the SPP held a press-conference during which the public was informed that the SPP had initiated investigative proceedings against multiple individuals for crimes against elections<sup>1</sup> and voting procedure, in the case named “Titanic”.

The suspects, who during 2012 held the positions of Minister of Interior, Minister of Transport and Communication and Secretary of the Government of the Republic of Macedonia, together with all members of the Executive Committee of a political party, as well as some other, presently unknown persons, took advantage of their official position and created a group with the intention to perpetrate crimes against elections and voting procedure. Additionally, the SPP announced that it had also initiated investigative proceedings against some members of the Municipal Election Commission in Cair, on the basis of reasonable suspicion that they had perpetrated the criminal offence Electoral fraud, and had also initiated investigation against five judges of the Administrative Court in Skopje and four members of the State Election Commission from 2013, for the criminal offence Misuse of official position and authorization, pursuant to Article 353 of the Criminal Code.

On 13.02.2016, the SPP submitted two proposals for determining detention measure for the suspects, which were both rejected by the Basic Court Skopje I Skopje.<sup>2</sup>

The SPP also reported that it was confronted with difficulties in the area of cooperation with the institutions, especially so in the cases of the Basic Court Skopje I Skopje, the Cadaster Agency, the Fifth Directorate SCID of the MI, the Municipality of Bitola, the Administrative Court, the Basic Public Prosecution Skopje and the Prosecution for Persecuting Organized Crime and Corruption. Such non-cooperation with the SPP causes procrastination of certain pre-trial investigation proceedings, and can also result in obstructions to the investigation and thus prevention of initiating court proceedings against persons with regard to whom there is reasonable suspicion that they perpetrated heavy crimes which endanger the constitutional order.

## **The Constitutional Court**

During the month of February 2016 the Constitutional Court passed two decisions which caused vehement reactions, to the effect that such decisions are not meant to defend the Constitution and the citizen’ interests, but to defend the interests of the ruling coalition instead. The first decision refers to the initiative proposed by the MPs Pavle Trajanov and Todor Petrov to assess the constitutionality of the decision to adjourn the Assembly, regarding which the Constitutional Court proclaimed itself non-competent, and thus dismissed the initiative. During the public debate at the Constitutional Court the following question was raised: Whether the Constitutional Court is competent to discuss the above decision of the Assembly, i.e. whether the decision to adjourn the Assembly is an internal act over which the Constitutional Court has no jurisdiction, or whether it is a general act regarding which the Court, in accordance with the Rules of procedure, has the competence to make decisions? The judges’ opinions regarding the proposed initiative were divided. Some of them considered that such a decision of the Assembly is *erga omnes*, and concerns the entire electorate, and that

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<sup>1</sup> The full transcript of this press-conference may be read on the official Facebook page of the Special Public Prosecution, at the following link:

[https://www.facebook.com/permalink.php?story\\_fbid=678493328920887&id=650104671759753](https://www.facebook.com/permalink.php?story_fbid=678493328920887&id=650104671759753).

<sup>2</sup> The reports of the Basic Court Skopje I in Skopje concerning the requests and the decisions for determining detention measure in the “Titanic” case may be read on the official web-page of the Court, at the following link:

<http://www.osskopje1.mk/Novosti.aspx>.

therefore the Constitutional Court should be considered competent in that regard. Nevertheless, the majority of judges reckoned that the Constitutional Court has no competency to decide on a specific legal act of the Assembly, and thus passed the decision whereby they proclaimed the Constitutional Court non-competent, with the rationale that it is not a case of general act or law, and that if the Constitutional Court intervenes in the decision to adjourn the Assembly, that would mean that it will have the power to interfere in any future decision of the Assembly.

On the 24<sup>th</sup> of February 2016, the Constitutional Court passed yet another decision which was condemned by the public, and which refers to the initiating procedure for assessing the constitutionality of the Law on Amendments and Supplements to the Law on Amnesty (“Official Gazette of the Republic of Macedonia, no. 12/2009”). This decision allows for abolishing or annulment of the Law which stipulates that pardon cannot be granted to persons convicted for criminal offences against the elections, on the basis of which the existence of the Pardoning Commission was legally determined. The initiative for assessment of the constitutionality of this Law was submitted at the beginning of February 2016, immediately after the opening of the investigation for election fraud by the Special Public Prosecution. Taking in consideration the Constitutional Court’s promptness of the proceedings on the submitted initiative, it may be justifiably said that there is a place for reasonable suspicion whether the Court is acting in the interest of the citizens and the Constitution, or instead acts in accordance with the interests of the ruling coalition. The decision whether and to what degree the Law will be abolished or annulled is expected at the beginning of March 2016.

### **The Judicial Council<sup>3</sup>**

During the period scrutinized for the purposes of this Report, the Judicial Council of the Republic of Macedonia (JCRM) held two sessions. At the session held on 11 February 2016, the Judicial Council examined the Reports on the operation of the Courts in the Republic of Macedonia, issued for the fourth quarter of 2015. It was concluded that most of the Courts in this time period had acted promptly and diligently, except for the Higher Administrative Court, the Court of Appeals Shtip, the Basic Court Kratovo and the Basic Court Shtip, which failed to deal with the lagging court cases during the aforementioned period.

At the session held on 23 February 2006 a decision was adopted to appoint Court Presidents of the Court of Appeals Bitola, the Basic Court Ohrid and the Basic Court Kochani, as well as a decision to announce call for appointing judges at the Supreme Court of the Republic of Macedonia, the Court of Appeals Shtip, the Basic Court Skopje I Skopje, the Basic Court Skopje II Skopje, the Basic Court Veles and the Basic Court Strumica, for candidates of the fifth generation of the Academy for judges and public prosecutors. The representatives of the Albanian minority contested the decision to appoint the Court President of the Court of Appeals Bitola a candidate from the Basic Court, in the case when there were also qualified applicants from the Court of Appeals Bitola. Negative comments were also given with regard to the re-appointing of the current Court President of the Basic Court Ohrid, on account of the significant number of complaints filed against him.

At the session was also unanimously adopted the Rulebook on salary supplements, their amount and the way of determining the amount for judges in the Republic of Macedonia, which resulted from the amendments to the Law on salaries of judges, declared on 31 December 2015. With regard to this Rulebook the members of the JCRM were themselves of the opinion that additional time is needed in order to provide a complete analysis of the ways to determine the specific characteristics of different Courts, so that the salary supplement may be properly and justly fixed. The JCRM also filed a request for amendments to the Law on amendments to salaries of judges, asking for abolishment of the provision which envisions necessary consent of the Minister of Finance regarding the Rulebook, whereas such obligation is absent from the amendments concerning the public prosecutors. In this regard it was decided to also request harmonization of the salaries of the court clerks, because with the aforementioned amendments the clerks in the Public Prosecution Offices would get their salaries equalised, while in the case of the court clerks the same would have to be accomplished through

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<sup>3</sup> The activity of following the Judicial Council was conducted by the Human Rights Institute.

amendments to the Law on judicial service. With regard to the frequent criticism to the effect that JCRM influences the work of judges and chief judges, the president Ushkovski reacted and confuted such attack, explaining that such criticism results in damaging the reputation and the integrity of the judges who are organs of the judicial power, and thus undermines the very fundamentals of the judicial power. Following this reaction, a letter with which the JCRM demands that the judges should declare that the members and the president of the JCRM are not exerting any pressure over them was presented in the media.<sup>4</sup>

## **Court proceedings**

### **The case “Divo naselje”**

The court proceedings regarding the events that took place on the 9<sup>th</sup> and 10<sup>th</sup> of May 2015, when the public was informed about a conflict between the Ministry of Interior and a group of armed individuals, started on the 9<sup>th</sup> of February 2016. In the wake of these events, 29 persons were charged with criminal offences Terrorism and Terroristic organizations, who all pleaded not guilty and claimed that the particular case is politically manipulated. During the month of February four hearings were held, at which were also present observers from the OSCE Mission in Skopje, the Helsinki Committee for Human Rights of the Republic of Macedonia, the Coalition All for Fair Trials, the Embassy of the Republic of Kosovo, and a significant number of media.

### **The case “Monster”**

On 11 February 2016 the Basic Court Skopje I Skopje informed the public<sup>5</sup> that the courts in Kosovo had not allowed extradition to the Republic of Macedonia of the individuals Afrim Ismailovic and Alil Demiri, both convicted to lifetime imprisonment on the charges of Terrorism, within the frames of the case “Monster”. The Court of Appeals in Prishtina assessed that the extradition of the aforementioned persons is not allowed, and on that account terminated the detention measure on 22 January 2016. As far as the international arrest warrant for this individuals is concerned, the Basic Court Skopje I Skopje reported that it is still active, and that if they should be found in a third country, outside the borders of the Republic of Kosovo and the Republic of Macedonia, the request for extradition of the Ministry of Justice of the Republic of Macedonia will be acted upon. The answer of the Kosovo authorities was sent to the Ministry of Justice of the Republic of Macedonia.

## **Freedom of expression and media plurality**

In the period to which this Report pertains, some changes have been noted in the area of information-sharing and reporting by the biggest national broadcasters Sitel and Kanal 5. After a significant time-period (8 years), they finally invited representatives of the opposition for interviews at their main news broadcasts. Although obviously aimed at improving the image of the above media houses, these steps do not stand for real change in the editorial policy, and instead are nothing else but confirmation of the Government’s control over them. On 10 February 2006, the President of the Social Democratic Union of Macedonia, Zoran Zaev, was invited as a guest at the 19h “Dnevnik” of Sitel, anchored by the editor-in-chief of the informative program of Sitel TV, Dragan Pavlovic Latas. Although the interview was supposed to provide media space for presenting the biggest opposition party and their views on current social and political issues, the editor-in-chief of Sitel TV manifested degrading attitude towards his interlocutor and utter disregard of the minimum standards of professional journalism. With one of the insults directed to Mr. Zaev, the editor-in-chief also insulted the entire Turkish ethnic community, which on the next day held protest at the Sitel TV premises. The interview of Sitel’s editor-in-chief was an example of biased approach in every respect. During this interview, the editor-

<sup>4</sup> The entire news clip may be read at the following link: <http://telma.com.mk/vesti/ushkovski-baral-pretседателите-na-sudovite-deka-ne-im-bil-vrshen-priteisok>.

<sup>5</sup> The entire press release may be read on the official web-site of the Basic Court Skopje I Skopje, at the following link: <http://www.osskopje1.mk/Novosti.aspx>.

in-chief of Sitel TV revealed lists of intercepted Viber and cellphone communication, whereby he wanted to disclose to the viewers that the communication following is still current.

The Agency for Audio and Audiovisual Media Services<sup>6</sup> condemned the disregard of the professional journalistic principles and standards exhibited by the editor-in-chief of Sitel TV. In its reaction, the Agency emphasized that the interview lacked in every kind of professional distance, was conducted without any respect of the interlocutor's dignity, as well as of the dignity of a host of other persons mentioned in the conversation.

Taking in consideration this interview's condemnation by the public – and especially by the institutions, the journalist association and the international community – the Council of Media Ethics of Macedonia drafted the Charter of Ethical Reporting During Elections,<sup>7</sup> which has been signed by most of the media houses, including Sitel TV. The content of this Charter is based upon the most important and generally accepted principles of the journalist profession, contained in the documents and publications of the International Journalist Federation, the Initiative for Ethical Journalism, the Reuters Foundation and the Reporters without Borders.

### **National hatred and religious intolerance**

The setting up of a 51-meter high cross at the roundabout in Butel Municipality, and of the two-headed eagle memorial – a token of tribute to the National Liberation Army (NLA) – in the month of February 2016, triggered national hatred and religious intolerance. After on the 27<sup>th</sup> of February a group of citizens gathered to mark the beginning of the construction works at the location where the cross was to be erected, the President of the World Macedonian Congress, Todor Petrov, was attacked and injured by a group of citizens, members of the Albanian community in Macedonia, including members of DUI. At the beginning of March a relatively small group of citizens decided to camp there in a sign of revolt and protest, while one day another group appeared at the spot, organizing a counter-protest. During the protests the foundations of the cross were damaged, a confrontation sparked between the two groups (marked by hurling stones and bottles), and three police officers were injured.

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<sup>6</sup> The entire reaction of the Agency for Audio and Audiovisual Media Services may be read at the following link: <http://semm.mk/novosti/2015-08-11-15-03-18/204-2016-01-27-13-41-21>.

<sup>7</sup> The integral text may be read at the following link: <http://semm.mk/novosti/2015-08-11-15-03-18/204-2016-01-27-13-41-21>.