

# MONTHLY BRIEF

November 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](http://www.epi.org.mk/newsDetail_mk.php?nwsid=131).

## Quality, competence and efficiency of judges and judiciary

### Academy of Judges and Public Prosecutors

There is still no information about the start of classes for the sixth generation of candidates for judges and public prosecutors in the Academy for Judges and Public Prosecutors "Pavel Satev". This is due to the procedures before the Administrative and Higher Administrative Court regarding the selection of participants for the initial training.

Otherwise, in the course of November, the Academy celebrated its 10 anniversary and on that occasion it organized 10 daily events, additional trainings to the already planned ones.<sup>1</sup>

The Academy for Judges and Public Prosecutors conducted a training on the following topic: "The process of proving in the new Code of Criminal Procedure – The Croatian experience", intended for the representatives of the Council of Public Prosecutors, the Judicial Council, judges of the criminal departments and public prosecutors from the appeal regions of Gostivar and Skopje, representatives of the Ministry of Justice of the Republic of Macedonia and lawyers.

The Academy in cooperation with the Danish Patent Office and Trademark Office, organized a three two-day seminars on "Criminal-legal, civil-legal and administrative - judicial protection of intellectual property." The latest developments in the field were presented by

<sup>1</sup> <http://www.jpacademy.gov.mk/novosti/---10---ee--ae----->



the judges in the Supreme Courts of Latvia, Romania, Italy and Denmark, as well as judges of specialized court departments, public prosecutors, investigators and experts from the Danish Patent Office and Trademark Office and Commercial Court. These seminars are intended for judges and prosecutors in the appellate regions Skopje and Gostivar and judges from the High Administrative Court and the Administrative Court, representatives of the State Office of Industrial Property, experts, lawyers, representatives of industrial property rights and representatives of other relevant institutions.

On the eve of the scheduled elections, in cooperation with the OSCE Mission to Skopje, the Academy organized a consultation on the amendments to the Electoral Code for the Judges of the High Administrative Court and the Administrative Court, representatives of the State Election Commission, State Commission for Prevention of Corruption, the State Audit Office and representatives of the civic association MOST.

On 16.11.2016, the Academy, in cooperation with OSCE, held a regional conference titled "Reducing the use of the Internet for terrorist purposes," which was attended by around seventy judges, prosecutors and investigators from 12 Southeast European countries.

The Code of Judicial Ethics in Macedonia was presented at an event in Skopje organized by the Academy of Judges and Prosecutors and Judges Association of the Republic of Macedonia.<sup>2</sup> The presentation was attended by judges and public prosecutors of appellate regions Bitola, Gostivar, Skopje and Stip, representatives of the Bar Association of the Republic of Macedonia, the Notary Chamber of RM, the Bailiff Chamber of RM and NGOs.

The Academy organized a seminar on "Human Resource Management", held on 22 November 2016. The consultation was intended for court clerks from all courts in the country.

On 24 November 2016 the Academy organized a two-day regional conference "Enhanced cooperation among judicial institutions of countries in the Western Balkans" aimed at exchanging experience and improving the efficiency and quality of training. The conference brought together eight directors of judicial academies in Southeast Europe and Turkey, representatives of the European Law Academy (ERA) and the HELP program of the Council of Europe and the Secretary General of the European Judicial Training Network (EJTN).

In cooperation with and financial support of the OSCE Mission to Skopje, and in order to continue the implementation of training for the application of the LCP, the Academy of Judges and Prosecutors organized training on "The role of the judge / judicial ethics and impartiality."

The Academy of Judges and Public Prosecutors in cooperation with the Ministry of Justice and within the Twining project of Latvia and Croatia on 28 and 29 November 2016 organized

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<sup>2</sup> The Code of Ethics of judges in Macedonia was adopted in 2014 and provides for an advisory body according to the GRECO recommendations of the 4th round of evaluation which require the establishment of an advisory body to advice judges in the case of ethical dilemmas. The ethics committee does not establish any disciplinary responsibility, but provides guidelines or recommendations that may help judges in their work and decision making. See: <http://www.akademik.mk/wp-content/uploads/2015/04/KodeksNaSudskaEtika13102014.pdf>

a one day training for judges, court counsellors, prosecutors and lawyers on the application of Article 10 of the European Convention on Human rights and the case law of the ECHR.

### Monitoring of court proceedings<sup>3</sup>

During the month of November the main hearing of the the case with KOK no.60 / 16 generally known as “the Coup”, on 01.11.2016 was postponed after the president of the Trial Chamber at the hearing found that one of the judges - jurors upon his personal request was dismissed by the council, and a new judge – juror was appointed as well as an additional judge – juror, who despite requests and urgency interventions, sent by the president of the court, have not yet been given clearance certificates for handling and inspection of classified information and data necessary to act in the present case.<sup>4</sup>

The trial judge who was assigned the case of the Public Prosecutor's Office for prosecution of crimes arising from the illegal interception of communications (SPP) against 7 persons suspected for "Falsifying an official document" has scheduled a hearing for the 28.11.2016. Moreover, immediately after filing the prosecution proposal SPP requested the exemption of the appointed judge, a request which was rejected by the presiding judge. After this, the SPP filed an appeal to the Appellate Court, and the court refused to exempt the judge. The hearing was therefore scheduled on the above date.<sup>5</sup>

The Criminal Council of the Basic Court Skopje 1 - Skopje, acting on a complaint filed by the SPP against a decision of a judge of the preliminary procedure dated 28.10.2016 in the SPP case known as "Tenders", issued a decision rejecting the appeal of the prosecution, and confirming the decision of the judge of preliminary proceeding.<sup>6</sup>

The main hearing on the case K.no 1904/16 regarding events that occurred in front of the Municipality Centar, scheduled for 21.11.2016 was adjourned due to the absence of the defence lawyer MJ Nikola Dodevski.<sup>7</sup>

The Criminal Chamber of the Organized Crime and Corruption Unit in the Basic Court Skopje 1 - Skopje acting upon the appeal against the decision of the judge of preliminary procedure on 4.11.2016 on imposing precaution measure against three persons included in the case known to the public as "Treasury" issued a decision confirming the decision of the judge of preliminary procedure and the appeal of SPP to impose measures of precaution for all three persons were rejected as unfounded.<sup>8</sup>

### The Judicial Council of the RM

The Judicial Council of the Republic of Macedonia on 23.11.2016 reviewed and adopted the court reports in the Republic of Macedonia for the third quarter of 2016. It issued a decision to conduct an ad hoc assessment of candidates for court presidents. They reviewed several reports and issued a decision on the temporary referral (6 months) of a judge from one basic court to another. The competent Commission was requested to take action and conduct

<sup>3</sup> From the Regular monitoring of the proceedings of the Coalition All for Fair Trials

<sup>4</sup> 11.01.2016 PRESS RELEASE, <http://osskopje1.mk/Novosti.aspx>

<sup>5</sup> 04.11.2016 PRESS RELEASE, <http://osskopje1.mk/Novosti.aspx>

<sup>6</sup> 07.11.2016 PRESS RELEASE, <http://osskopje1.mk/Novosti.aspx>

<sup>7</sup> 17.11.2016 PRESS RELEASE, <http://osskopje1.mk/Novosti.aspx>

<sup>8</sup> 22.11.2016 PRESS RELEASE, <http://osskopje1.mk/Novosti.aspx>

investigations in relation to the situation in the Basic Court Skopje 1 and prepare a report.<sup>9</sup> Acting as required, the Commission invited to a meeting the judges that had signed the statement dated 11.11.2016 at the Judicial Council on 28.11.2016 (Monday).<sup>10</sup>

The President of the Judicial Council of the Republic of Macedonia on 03.11.2016 met with the British Ambassador HE Charles Garrett and discussed the reforms in the judicial system and the level of their realization.<sup>11</sup>

On 1 and 2 November 2016, a delegation of the Judicial Council of the Republic, together with representatives of the courts and public prosecution participated in the Regional Conference in Bucharest, Romania on "Preventing and combating corruption in the judiciary and public prosecution in South-eastern Europe."<sup>12</sup>

From 16 to 18 November 2016 in Budva - Montenegro the Norwegian Ministry of Foreign Affairs and the Norwegian Court Administration organized the II - Regional Conference on "Improving the quota system and evaluation of judges performance". The conference was attended by representatives from the Judicial Council of the Republic of Macedonia and representatives of Judicial Councils of Slovenia, Croatia, Serbia, Bosnia and Herzegovina, Albania and Montenegro.<sup>13</sup>

After the statements by the President of the Supreme Court of the Republic of Macedonia, Lidia Nedelkova given for the programme "360 degrees" on TV Alsat-M on 11.11.2016, the Judicial Council of the Republic of Macedonia issued a statement which categorically rejected the allegations of Nedelkova who said that as a member of the Judicial Council of the Republic of Macedonia in office, she was not duly invited to the scheduled sessions and meetings that had been deliberately scheduled on days when she was abroad on a an official trip.<sup>14</sup>

On 15.11.2016, the Judicial Council of the Republic organized a presentation and a round table discussion on "How to turn data into applicable and effective knowledge." Regarding the development of cases in 2013, 2014 and 2015, the expert Hodzic prepared a report on the indicator "rate and duration of case solving and " stating that at the level of all courts in the country, a progress is noted in terms of the reduction of days needed to solve a case, and the increase the number of solved cases, or handling the influx of new cases and reducing the backlog of unresolved cases, given the constant decrease in the number of judges.

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<sup>9</sup> Press release from the 239-ra session on 23.11.2016, <http://www.ssrn.mk/Novosti.aspx?novost=476>

<sup>10</sup> Press release regarding the situation in the Basic Court Skopje 1 Skopje, <http://www.ssrn.mk/Novosti.aspx?novost=477>

<sup>11</sup> 07.11.2016 Press release, <http://www.ssrn.mk/Novosti.aspx?novost=468>

<sup>12</sup> 11.11.2016 Press release, <http://www.ssrn.mk/Novosti.aspx?novost=470>

<sup>13</sup> 21.11.2016 Press release, <http://www.ssrn.mk/Novosti.aspx?novost=475>

<sup>14</sup> 15.11.2016 Press release, <http://www.ssrn.mk/Novosti.aspx?novost=472>

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

On November 28, 2016 a discussion was held on public policies for judicial cooperation on free access to information, cross-border bailiff and cross border bankruptcy procedures, takeover and merger. The discussion focused in more details on international legal assistance and the accompanying problems, and comparative experiences were shared. Moreover, numerous issues regarding bankruptcy were reviewed and identified several weaknesses in the legislation and in practice were identified. Cross-border bailiff was discussed, and the role of numerous chambers and professional associations. The discussion resulted with a number of well founded recommendations.

## **Support to ADR: Introduction or improvement of the legal framework for ADR and providing adequate legal and institutional cooperation with the judicial system and the mediation implementation system**

In view of promoting mediation as a way of ADR out of court proceedings, the Mediation Support Association within the Economic Chamber of Macedonia, held several one-day free seminars in Veles, Gevgelija, Kumanovo, Tetovo and Strumica on "Mediation as efficient way of dispute resolution." The participants at the seminars were primarily people from the business sector, courts, lawyers and representatives of state institutions.

During the November exam session for mediators in the Ministry of Justice, out of initially reported 21 applicants only 9 actually passed successfully the first (test questions) and the second part (case studies) of the examination. The third part of the exam (interview) has not yet been held. The mediation procedure is still actively conducted by only nine licensed mediators.

Three offices for the use of mediation were equipped during November in the Basic Courts in Kavadarci, Vinica and Skopje 2 in Skopje. The courts are still required to publish a list of licensed mediators on their notice board.

### **Amicable labour dispute resolution**

In November, there was an increasing number of people who showed interest in resolving labour disputes in the MLSP, but have not reported any individual or collective dispute. The Association of Mediators and Arbitrators in Labour Relations in Macedonia (APARS) have registered a domain [www.apars.mk](http://www.apars.mk), containing an overview of the objectives of APARS, basic information about labour disputes, as well as information on the actions of APARS in the current period. Moreover, they are working on a book of abstracts and conference proceedings from the conference of mediators and arbitrators in labour disputes that took place in October 2016 in Ohrid.<sup>15</sup>

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<sup>15</sup> Association of mediators and arbitrators in labour disputes in the Republic of Macedonia