

MONITOR: IMPLEMENTATION OF URGENT REFORM PRIORITIES

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Negotiations Deadlock or Organized Resistance?

Implementation of the Political Agreement has entered into a serious crisis. Even Johannes Hahn, the Commissioner for European Neighbourhood Policy and Enlargement Negotiations, failed to unblock the negotiations.

Deadlines for the entire remaining package of the Agreement following the return of the opposition in the Parliament and the appointment of the special public prosecutor have passed: appointment of new ministers and deputies (deadline: 20 October), electoral legislation¹, constitution of a special parliamentary committee of inquiry into the wiretap scandal.

The Special Public Prosecutor faces severe obstructions from the beginning of her work. The Council of Public Prosecutors appointed only half of her proposed assistants, while an initiative to assess the constitutionality of the Law establishing this institution has been lodged to the Constitutional Court.

Another serious blow to the Political Agreement was the Draft law to ban publication of the 'bombs'² submitted by MPs from the ruling parties. Following the intervention by the international community, the draft was withdrawn with a promise to consider it in a package with a law on protection of whistle-blowers.

So far, the strong engagement of the international factor urging the parties to comply with the Agreement has been futile. On the other hand, the reactions in the public are polarizing – not only among the ruling party and the opposition, the pro-government and critical media, among the pro-government experts and experts critical towards the government, but reactions from the public prosecutors and judiciary are more frequent and more divergent.

Uncertainty of the impact of a failure to implement the Agreement on the recommendation for EU accession negotiations remains, now that the European Commission has postponed the release of its regular annual reports.

Rule of Law and Judiciary

Judiciary

Discord or Instigation?

At its session held on 14th October, the Council of Public Prosecutors, by a secret vote, appointed only 7³ out of the 14 public prosecutors, proposed by the **Special Public Prosecutor** Katica Janeva. The Council elaborated its decision with the assessment of the Special Prosecutor's Office needs, taking also into account the lack of resources of the state prosecutor's offices. Such elaboration corresponds to the position of the public prosecutors' collegium published the same day.⁴ Obviously, greater resources and higher salaries of the special prosecutors caused reactions among their colleagues. The Prosecutor's Office has failed to provide the necessary resources for the implementation of the new Law on Criminal Procedure for several years, but this problem emerged only now.

Janeva was resolute in her demand to have her complete team appointed. Pressed by the international factor, the signatories to the Political Agreement agreed to send a letter to the Council of Public Prosecutors with a request to appoint the complete team of the Special Public Prosecutor. The seven appointed prosecutors, upon Janeva's appeal, did not appear at the scheduled ceremony of taking oath of office before the Council.

As regards the transparency of the Special Public Prosecutor, it can be concluded that Article 8 of the Law on Public Prosecutor's Office regulating prosecution of criminal offences related to and deriving from the contents of the illegal interception of communications, particularly referring to public relations is complied with, due to the fact that the Special Prosecutor regularly informs the public on all step she has taken so far. Furthermore, the information provided by the Special Prosecutor that persons holding data and information of interest to the investigation, communicated her

¹ There is no deadline for the electoral legislation, but the Commissioner Hahn insisted it to be negotiated by 6 October.

² Materials from the illegal interception of communications.

³ Burim Rustemi, Elizabeta Josifovska, Lejla Kadriu, Ljubomir Lape, Marija Gjorgjeva, Stevcho Donev and Fatime Fetai.

⁴ Announcement of the Public Prosecutor's Office of the Republic of Macedonia. Web-site of PPO. 14.10.2015. Available at: <http://jorm.gov.mk/?p=2188>

in order to acquire a status of protected witness in an eventual criminal procedure, confirms the transparency of her work.

Discussion through the media additionally stirred up the public. The Council of Prosecutors assessed Janeva's statement⁵ that she would resign if even one of the prosecutors on the list was rejected, as a direct pressure on the Prosecutor's Office.⁶ The Public Prosecutor Marko Zvrlevski stated that the establishment of the special public prosecutor's office was political; it was an insult and caused revolt among the public prosecutors, while the 'regular' prosecutor's office was independent.⁷ He announced an initiative to the Constitutional Court against the Law on Special Prosecutor's Office.⁸

The clash between the 'regular' and the 'special' prosecutor is also evident in the '**Puch**' case. The leader of the opposition, Zaev, did not appear at the third hearing on 5th October, announcing that he would appear at the hearings when the Special Public Prosecutor overtook the case. However, the Prosecutor Bikovski declared that the case was within his competence.⁹ On the other hand, on 2nd October, the Basic Court Skopje 1 rejected the request of the Public Prosecutor's Office to withdraw Zoran Zaev's passport, as a defendant in the 'Puch' case, and annulled the measure according to which Zaev was obligated to appear before a competent judge in the court in Strumica once a week.

During the hearing related to the '**Rover**' case against the former minister of interior, Ljube Boshkovski, the lawyers of the defendants declared they would request the Special Public Prosecutor to take over the case due to alleged existence of the intercepted material for this case.¹⁰

On 2nd October, the **Judicial Council** published a call for appointment of two Council members to determine the facts and initiate a procedure for determination of responsibility of a judge among the range of retired university professors at the Faculty of Law at a university in the Republic of Macedonia.¹¹ The Council has not started its work yet, since its team has not been fully constituted.¹²

On 8th October, the Judicial Council, at an urgent session, decided to revoke the immunity of the President of the Basic Court - Kumanovo¹³, upon the request submitted by the Basic Public Prosecutor's Office for prosecuting crimes in the field of organized crime and corruption Skopje.¹⁴ He was assigned a 30-day detention under the suspicion of taking bribe in the amount of EUR 25,000 in exchange of releasing a person from detention. Bexhet Elezi, a judge in the Basic Court - Kumanovo was appointed an acting President of the Court.

The Judicial Council announced a second round table of the Judiciary Council of the Republic of Macedonia for the last week of October 2015.¹⁵ It was proposed to allow more time for discussion by the judges, and to invite judges only, not presidents of courts as on the first round table, since Council members got informed that presidents of courts influenced the judges.¹⁶ Envisaged as part of the 'Action Plan', these activities should contribute to the transparency of the Judicial Council; therefore, participation of the wider public is expected.

The President of the Supreme Court of the Republic of Macedonia, Lidija Nedelkova, announced that **a survey of judges** would be conducted, together with the President of the Association of Judges, to prove that 'there was no political pressure in the judiciary'. She also stated that the survey conducted by the OSCE Mission in 2009 did not reflect

⁵ If only one is not appointed, Katica resigns. Vest. 08.10.2015. Available at:

<http://www.vest.mk/default.asp?ItemID=745146CFCD0B49488E68438A9A1D7F27>

⁶ Katica threatens us. Vest. 09.10.2015. Available at: <http://www.vest.mk/default.asp?ItemID=7129C0D527E8B643BBAFD927D9267CE8>

⁷ Announcement of the Public Prosecutor's Office of the Republic of Macedonia. Web-site of PPO. 14.10.2015. Available at:

<http://jorm.gov.mk/?p=2188>

⁸ Such initiative was already submitted by the lawyer Tome Todorovski.

⁹ Regular monitoring of court cases by the Coalition 'All for fair trials'.

¹⁰ Regular monitoring of court cases by the Helsinki Committee for Human Rights.

¹¹ Call for election of members of the Council for determination of facts and initiation of a procedure to establish a liability of a judge. Judicial council of RM. 02.10.2015. Available at: <http://www.ssrn.mk/Novosti.aspx?novost=350>

The Institute for Human Rights regularly monitors the Judicial Council's sessions.

¹² So far, 7 members have been appointed: Zlata Stamboliska (241 vote), Jordan Lazarov (206) and Faton Pachiku (199) from the retired judges; Ivan Jakimovski (375), Kire Sekulovski (375) and Feta Iseini (375) from the retired public prosecutors and Sasho Povevski (281) from the retired lawyers. The appointment was published on 15th July 2015. 594 voters (judges) were registered in the Judicial Electoral register, out of which 535 voted. Number of invalid votes was 160, and 59 ballots were unused. The announcement of the Judicial Council for conducted elections for members of the Council for determination of facts and initiation of a procedure to establish a liability of a judge. 15.07.2015. Available at: <http://www.ssrn.mk/Novosti.aspx?novost=332>

¹³ Announcement of the Judicial Council. Web-site of the Judicial Council. 08.10.2015. Available at: <http://www.ssrn.mk/Novosti.aspx?novost=352>

¹⁴ The Basic Public Prosecutor's Office for prosecuting organized crime and corruption acts against 12 persons detained in today's action. Web-site of the PPO. 08.10.2015. Available at: <http://jorm.gov.mk/?p=2181>

¹⁵ The topic of the first round table was 'The role of the Judicial Council and the Highest Instance Courts in the protection of judges against interventions in their independence' and it was held on 28th September.

¹⁶ From the regular monitoring of the sessions of the Judicial Council conducted by the Institute for Human Rights – Skopje.

the real situation.¹⁷ So far, this survey, conducted anonymously, has been widely recognized as a relevant source on the state-of-affairs in the judiciary.¹⁸

The Supreme Court announced the promotion of a **new central database and website** through which they would publish the rulings from all courts in the country. However, the new database would not contain court rulings already published on the courts' websites.¹⁹

The Prosecutor Jovan Ilievski who is heading the Basic Public Prosecutor's Office for prosecuting crimes in the field of organized crime and corruption was appointed a **chairperson of the Committee on unification of the penalty policy**, upon proposal of the Public Prosecutor's Office.²⁰ As expected, the opposition party SDUM severely criticized this appointment.²¹

The Draft Law Amending the Law on the Academy for Judges and Public Prosecutors is in second reading in the Parliament. The Draft provides for electronic protection during exams, stricter control over the held exams and sanctions in case of violation of the legal provisions. The Draft aims to increase the transparency through a public call regarding candidates (professors and prominent jurists) for members of the Programme Council and by providing public information on the date and time when the already selected candidates would take the exam. However, the Draft is an example of the already established normative practice of technical solutions and introduction of new penalty measures without addressing the underlying problem. This Draft does not make an effort to solve core problems – lack of Academy candidates and advancement of the training quality.

New Passport and a Gun in an Old Bag?

The former director of the Administration for Security and Counter Intelligence, Sasho Mijalkov, continues to provoke public attention. Under the pressure of the public, he returned his diplomatic passport issued in an irregular manner (as an 'expert').²² Even a greater scandal was his detaining at the Belgrade airport, when a gun was detected in baggage. He was released, following an intervention of Macedonian "high government official". The event raised the issue of security at the Skopje airport from where Mijalkov departed. TAV (operating the Skopje airport) announced an investigation.²³

Interception of Communications

An Attempt for Censorship, while the Parliamentary Committees are Warming up

On 6th October, MPs from VMRO-DPMNE and DUI submitted a Draft law on the prohibition to possess, process, publish and use materials from the illegal interception of communications to the Parliament. The Draft introduces prohibition to possess, process, publish through media, social networks, web portals or any other form of public announcement and use of materials obtained during the illegal interception of communications, including their use in the election process, and it provides for criminal liability in the event of violation of its provisions. The public assessed this proposal as an attempt for censorship and violation of the Political Agreement. Again, following the intervention by the international community, the Draft was withdrawn with a promise to put it under consideration in a package with a law on protection of whistle-blowers.

On 6th October, the parliamentary committees responsible for monitoring interception of communications and intelligence agencies²⁴ discussed the Urgent Reform Priorities and recommendations of the Report by the Senior

¹⁷ President of the Supreme Court does not trust OSCE. Prisma 17.10.2015. Available at:

<http://prizma.birn.eu.com/%D0%BC%D0%BA/%D1%81%D1%82%D0%BE%D1%80%D0%B8/%D0%BF%D1%80%D0%B5%D1%82%D1%81%D0%B5%D0%B4%D0%B0%D1%82%D0%B5%D0%BB%D0%BA%D0%B0%D1%82%D0%B0-%D0%BD%D0%B0-%D0%B2%D1%80%D1%85%D0%BE%D0%B2%D0%BD%D0%B8%D0%BE%D1%82-%D1%81%D1%83%D0%B4-%D0%BD%D0%B5-%D0%BC%D1%83-%D0%B2%D0%B5%D1%80%D1%83%D0%B2%D0%B0-%D0%BD%D0%B0-%D0%BE%D0%B1%D1%81%D0%B5>

¹⁸ OSCE, Judiciary independence – Legal analysis, December 2009. Available at <http://www.osce.org/mk/skopje/67585?download=true>

¹⁹ Information announced at the round table on the topic 'Greater Transparency of the Judiciary and Unification of Case Law through Publicity of Court Rulings and Titles of Verdicts'. The Helsinki Committee for Human Rights regularly monitors the activities of the Supreme Court.

²⁰ The Committee was established in accordance with the Law on Determining the type and the amount of the penalty which entered into force on 7 January 2015. The Parliament of the Republic of Macedonia adopted the composition of the Committee for Unification of Penalty Policy at its 63rd session held on 26th August 2015.

²¹ SDUM severely reacted on that appointment since the person was brother-in-law to the former Director of the Administration for Counter Intelligence: No brother-in-law, nor godfather can help Gruevski and Mijalkov. Web-site of SDUM. 02.10.2015. Available at: <http://www.sdsd.org.mk/default.aspx?mld=55&agld=6&articleId=12443>

²² Mijalkov's diplomatic passport annulled by a stamp. Telma. 8.10.2015. Available at: <http://telma.mk/vesti/diplomatskiot-pasosh-na-mijalkov-od-denes-so-pechat-ponishteno>

²³ Mijalkov case – human error in the security procedures. Telma. 17.10.2015. Available at: <http://www.telma.com.mk/vesti/sluchajot-mijalkov-chovechka-greshka-vo-bezbednosnite-proceduri>

²⁴ Oversight Committee for Monitoring Interception of Communications by the Ministry of Interior, Administration of the Financial Police, Customs Administration and Ministry of Defence and Oversight Committee for Monitoring the Work of the Administration for Security and Counter Intelligence and the Intelligence Agency.

Working Group led by Priebe.²⁵ Mr. Pavle Sazdov, an MP from VMRO-DPMNE, expressed his reserves regarding the Report's findings, considering that it was impossible to conduct a real assessment of the political and security situation in the country in 7 days.

During the session it was concluded that a reform of the security services was indispensable, and that the system of parliamentary control has to become functional. For that purpose it was necessary to establish regular and undisturbed communication with the Administration for Security and Counter Intelligence and the Intelligence Agency, as well as to engage technical experts and include the expert public in the debates. Members of the Oversight Committee monitoring the work of the intelligence agencies visited the Intelligence Agency on 15th October. The meeting was realized upon the invitation of the Agency's Director and was related to security risks the country faced.²⁶

For the first time after many years, directors of the Administration for Security and Counter Intelligence and the Intelligence Agency attended the session of the Oversight Committee monitoring the work of the intelligence agencies held on 16th October. Actions undertaken to implement the Urgent Reform Priorities were discussed. The question was raised whether illegal phone-tapping continues. The Director of the Administration for Security and Counter Intelligence stated he would answer such questions behind closed doors. The invitation and annual reports on the work of these bodies were discussed at the session held on 19th October.

Lustration

On 15.10.2015, it was observed that the web-site of the Committee on the Verification of Facts was not functional.²⁷

Electoral Reform

Since the SDUM announced they may withdraw from the negotiations, the question was raised whether an agreement was reached on this topic. The party declared this issue irrelevant, since there were violations of the previous agreement on the special public prosecutor. According to the facilitator, Vanhoutte, there had been an agreement on electoral legislation.

It is reported that the Electoral Register would contain the voter's name and surname, including his/her photography from the Mol database for biometrical passports.

According to the representative of VMRO-DPMNE, an agreement was also reached regarding diaspora voting. Three MPs from a single constituency representing the diaspora would be elected by a proportional model, by minimum of 6,000 votes. The State Electoral Committee (SEC) would decide with absolute majority, and only in exceptional cases with qualified majority.²⁸ Representative from DUI stated that Albanian representatives should be entitled to specific voting as a form of the Badintaire's rule in SEC decisions. As regards the Electoral Register, there would not be a full field check, but a partial one, only in certain critical regions. The Register would be cleared through comparisons with the databases.²⁹ Women's representation, paid political advertising and campaign financing are still open issues.

Media: Freedom of Expression

Defamation

On 1st October, the Basic Court - Shtip passed a decision that the businessman Miki Naumov defamed the reputation of Zoran Zaev. Zaev had initiated the court proceeding following Naumov's statement from May 2015 that he had given Zaev, in the capacity of a mayor of the Municipality of Strumica, a bribe in the amount of EUR 39,000, and in exchange, had obtained attractive premises in the 'Global' city mall.³⁰

²⁵ The Ombudsman Ixhet Memeti, representatives from the Ministry of Interior and the operators 'One', 'VIP' and 'Telecom', as well as representatives from the civil society were present at the session, but the Minister of Interior, Mitko Chavkov, did not attend the session.

²⁶ Announcement on the working visit to the Oversight Committee monitoring the work of the intelligence agencies visited the Intelligence Agency on 15.10th October. Web-site of the Intelligence Agency. 15.10.2015. Available at: <http://www.ia.gov.mk/pdf/%D0%A1%D0%BE%D0%BE%D0%BF%D1%88%D1%82%D0%B5%D0%BD%D0%B8%D0%B5%20-%D0%9A%D0%BE%D0%BC%D0%B8%D1%81%D0%B8%D1%98%D0%B0.pdf>
Intelligence services submitted the information on Kumanovo incident to the highest state officials. Web-site of SDUM. 15.10.2015. Available at: <http://www.sds.org.mk/default.aspx?mId=55&agId=6&articleId=12524>

²⁷ Information from the regular monitoring of the work of the Committee of Verification of Facts by the Institute for Human Rights.

²⁸ Dimovski: The Electoral model remains the same, the diaspora will have their MPs. MIA. 14.10.2015. <http://www.mia.mk/mk/Inside/RenderSingleNews/250/132847075>

²⁹ Is there an agreement on the Electoral Code? Telma. 14.10.2015. Available at: <http://www.telma.com.mk/vesti/ima-li-dogovor-za-izborniot-zakonik>

³⁰ Businessman from Shtip claims he gave a 39 000 EUR bribe to Zaev. Alfa TV. 17.10.2015. Available at: <http://www.telegraf.mk/aktuelno/makedonija/273973-alfa-tv-biznismen-od-stip-tvrdi-deka-mu-dal-mito-na-zaev-od-39-000-evra>