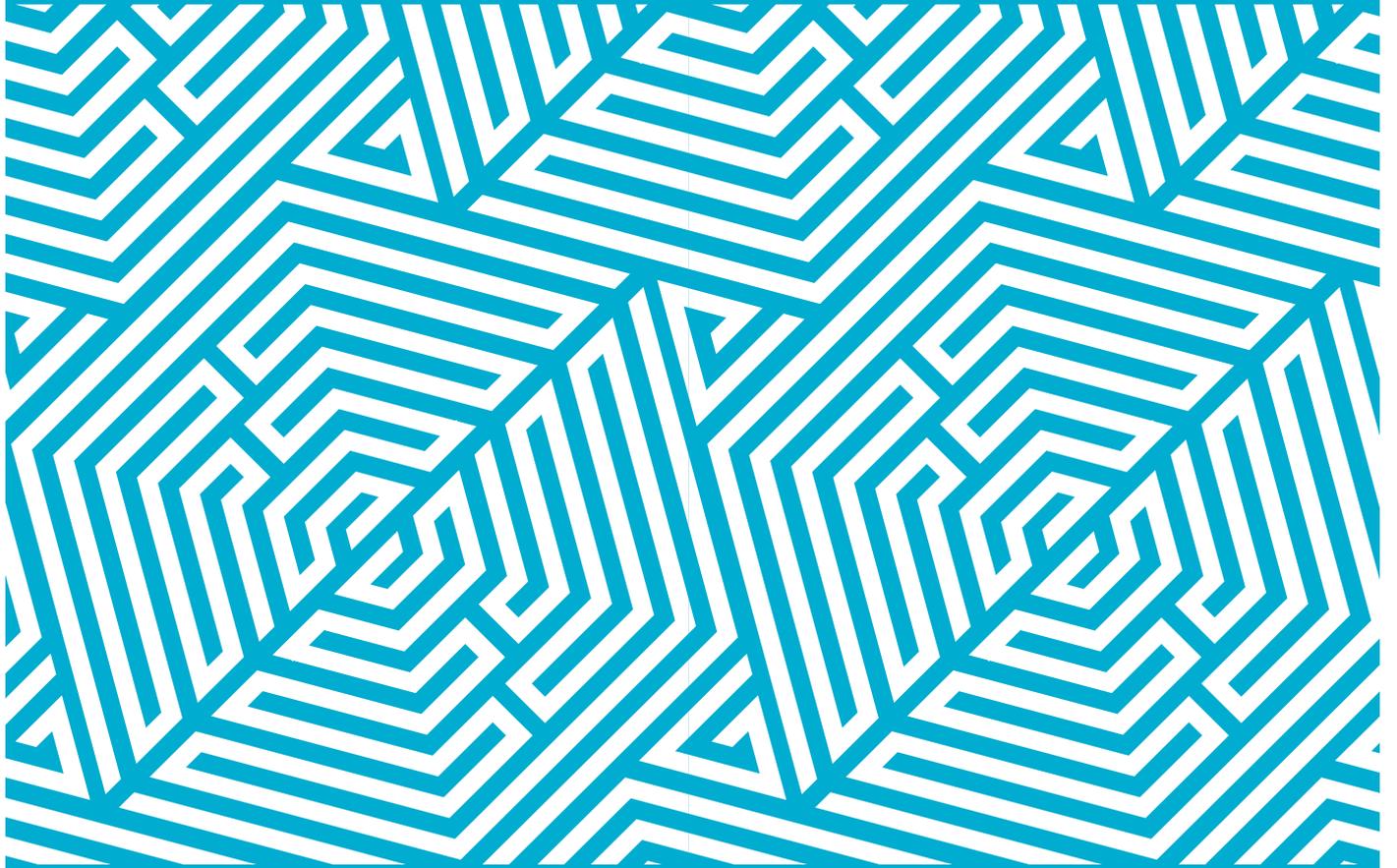
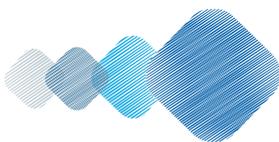


# The Priebe report two years later



new government and new opportunities  
for resolving old problems



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NETWORK

23



When we refer to the Priebe Report,<sup>1</sup> we most frequently focus on the Urgent Reform Priorities – a document of the European Commission, based on the Report, containing concrete recommendations for action. This approach bears the risk of neglecting the wider picture and the essence of the Report's findings in light of a new visit of the expert group announced for July 2017.

Therefore, in this document we first make a brief assessment of the implementation of the priorities, based on the systematic monitoring of the Network 23 throughout the last two years. However, we are also turning to the basic findings and recommendations of the report itself in the attempt to identify the most critical issues and risks in the new situation, following the establishment of a new Macedonian Government, exploring the potentials for change. Finally, options and recommendations are given for the key issues.

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<sup>1</sup>The Recommendations of the Senior Experts' Group on systemic Rule of Law issues relating to the communications interception revealed in Spring 2015, available at: [https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/news\\_corner/news/news-files/20150619\\_recommendations\\_of\\_the\\_senior\\_experts\\_group.pdf](https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/news_corner/news/news-files/20150619_recommendations_of_the_senior_experts_group.pdf)

# The Judiciary

## Implementation

The *priorities* have not been realised. Instead of depoliticisation of appointment and career advancement of judges, the dossier of appointments<sup>2</sup> and approval of “temporary assignments” of the Judicial Council<sup>3</sup> indicate clearly political bias.

The pressure on judges has been strengthened also through the controversial establishment of the Council for Establishing Facts and Instigating Procedure for Disciplinary Accountability of Judges, contrary to the opinion of the Venice Commission and the reactions of the civil sector.

Additionally, the adopted Law on determining the type and duration of the sentence is largely seen as another restriction to the internal independence of the judiciary.

The highest bodies in the judiciary – the Judicial Council and the Supreme Court did not promote steps to protect the judges from political interference. This is clearly illustrated by the case of refusal of the complaints of judges of the Skopje 1 Court for re-assignment to cases, as well as the complaints of the former President of the Supreme Court. Moreover, the case of the annual schedule of the judges in the Basic Court Skopje 1 illustrates the selective approach and interference of the independence of the judiciary by the presidents of the courts.<sup>4</sup>

The filed complaints and public reactions of some of the judges show examples of discontinuation of the previous self-restraint behaviour of judges.

The President of the Council of Public Prosecutors openly defended the positions of the Government and demonstrated a selective and more rigorous approach to the Special Prosecutor's Office. The appointment of 60 prosecutors on the basis of a legal exception to established criteria, in addition to the scandal of falsified certificates of candidates for public prosecutors<sup>5</sup> indicates politicised engineering of appointments in the Public Prosecutor Office.

Further concerns on increased manipulation of the system of allocation of cases have been expressed, which have not been addressed.<sup>6</sup>

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<sup>2</sup> Including the appointment for the second time of a President of the Supreme Court, known as close to the previous Government.

<sup>3</sup> With the temporary appointment of judges from the basic courts from all over the country to the Basic Court Skopje 1 and the temporary appointment of seven judges from the Courts of Appeal from other parts of the country to the Skopje Court of Appeal the Judicial Council has influenced directly the structure of the judges that would decide in the high profile cases initiated by the Public Prosecution Office.

<sup>4</sup> Moreover, the selection of acting Presidents of Basic Courts Skopje 1 and President of the Supreme Court by the Judicial Council, was followed by criticism from the media, experts and the judicial community. These practices make us question the basic working principles of the Council as an independent institution.

<sup>5</sup> The former acting president and the current one adopted almost the same schedule for 2017. In the first case the complaints of the judges were adopted by the Supreme Court and afterwards all complains were refused.

<sup>6</sup> Under investigation are 33 of total 122 candidates for Public Prosecutors. Basic Public Prosecutor Office announced that international legal aid is requested for the preliminary investigation of those cases.

Although the Priebe report establishes the need for the Judicial Council to regularly inspect the system, this recommendation is not part of the URP.

## New developments/assessment

With a new Government in power, the political pressures on the judiciary are likely to decrease. The risk environment for the independence of the judiciary is changing.

One risk is the continuation of the resistance of the already installed pro-VMRO-DPMNE structures within the judiciary and the independent bodies to any substantial reform, which is directed at: a) avoiding criminal responsibility of the former political elites for the crimes indicated by the wiretapping scandal; b) maintaining a long-term support within the judiciary for the VMRO-DPMNE installed political/business elites during the past years of power.

In this situation, the decisions of the courts in the cases instigated by the SPP, even though concentrated in three Skopje courts (Skopje Basic Court 1, Appellate Court and Supreme Court) will be the test for the judicial community as a whole and its potential to reform from within.

The other risk is the general re-appointment of judges (favoured by SDUM during the elections), even eventual “vetting” of judges, which could lead to new sources of instability.

Consequently, if the Judicial Council and the Council of Public Prosecutors continue with their biased records/practices, the new government majority might be tempted to intervene in their composition – most likely not with replacing the members the Parliament appoints (which is almost impossible under the current law), but by amending the laws. Such a procedure would be perceived, especially by international monitors, as infringing the principles of independence of these bodies, despite the issue of their legitimacy as they have not performed their duty independently.

All the risks are feasible and detrimental for the sustainability of reform in the judiciary. Is a third way feasible?

## ■ Options/recommendations

- Initiate a new Strategy for the Judiciary, which is long due. Establish a Council for the Judicial Strategy (most appropriately by the Parliament), consisting of reputable personalities who can effectively play a leading role;
- Open a wide public discussion on the new Strategy for the Judiciary;
- Ensure a vibrant participation of the judicial community, academia and civil society in general in the deliberations;
- Strengthen the role of parliament in the oversight of the independent bodies; establish the practice of parliamentary hearings for the Judicial Council and Council of Public Prosecutor's representatives;
- Install a mechanism of transparency of the appointment and advancement of judges;
- Abolish the laws on Establishing the Council for Establishing Facts for Disciplinary Accountability of Judges;
- Abolish the Law on determining the type and duration of the sentence

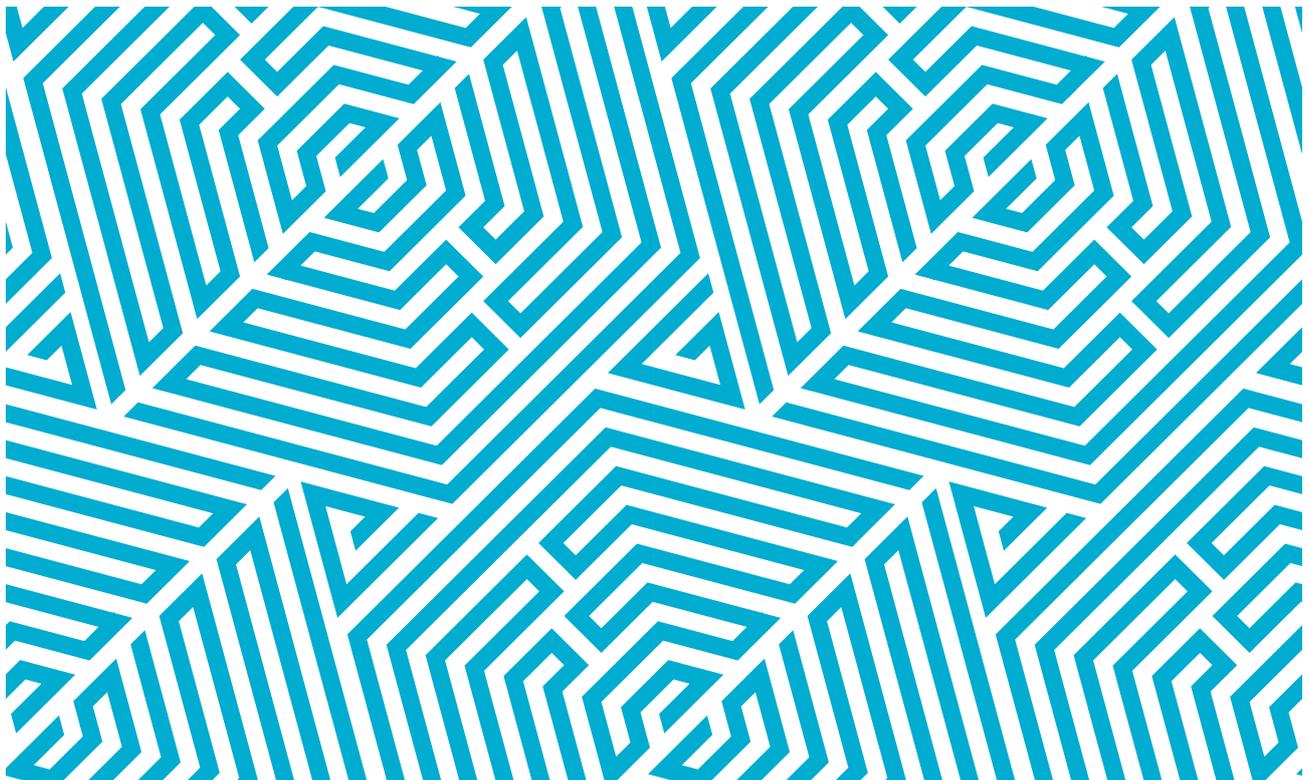
# Judicial and Parliamentary Oversight of Interception of communications

## Implementation of URP

In this area THE achievement is the establishment and operation of the Special Public Prosecutor. This example confirms the finding of the Priebe Report that “there is a lot of professionalism in the administration and in the judiciary, with devoted staff keen to do their jobs properly”....

Apart from this specific measure, none of the findings and recommendations of the Report and the URP have been implemented. Throughout the last two years the situation has worsened. The cases of interception of communications raised by the Special Prosecutor found firm and organised resistance by Government agencies and the judiciary.

The scandal of interception of communication is a symptom/syndrome that is pointing out to the most delicate and sensitive issue raised by the Report – the functioning and the (lack) of control of the security services.



## New developments/assessment

The events in the Parliament from 27 April 2017<sup>7</sup> have shown that the politicisation and partisanship of security services has jeopardised the functioning of the democratic institutions of the country.

<sup>7</sup> After the election of the Speaker of the Assembly on 27 of April, 2017, demonstrators, many wearing masks, stormed [Macedonia's](#) parliament and physically attacked MPs of the parliamentary majority. The videos from the security cameras in the Assembly show that the group was aided by several VMRO MPs from the inside of Parliament. The police forces did not respond in a timely and adequate manner, raising serious doubts over the political influences in the Bureau for Public Security within the Ministry of Interior.

## Options

The implementation of the recommendations from the report is only the easiest of the challenges that the current government (and very likely – future governments) is facing - establishing professional security services, serving all the citizens and communities of the country and its national interests.

**Short term**, the basic challenge is to implement swiftly the recommendations from Priebe's report, while not compromising national security and efficiency of the fight against organised crime. This would put the following measures to the forefront of attention:

- Swiftly implement the urgent reform priorities, primarily those related to the divesting of the intermediary function of UBK and removal of direct access to the technical equipment allowing mirroring of the communication signal;
- Establish a National coordinative centre for criminal intelligence, which would effectively facilitate cooperation among enforcement agencies and be responsible for interception of communications in criminal cases under judicial order;
- Take urgent steps towards professionalisation of the UBK and establish a plan of reform of this agency;
- Form a coordinative unit/establish a mechanism within the government to provide efficiently by the government agencies all required evidence by the Special Prosecutor;
- Provide the necessary resources to the parliamentary oversight committees to ensure capacity for effective oversight.

Medium and long-term, the Government should return to the issue of the National Security Strategy, based on the defined national interest of the country and measures of confidence between the communities. In addition, the model of parliamentary control could be re-considered to ensure improved efficiency.



# Independent bodies

## Implementation of the URP

A positive development is the amendment to the Law on the Ombudsman, which paves the way for granting Status A of this institution in line with the Paris Principles. While in its report and public appearances, the Ombudsman severely criticised the Government the practice of balancing with the political establishment continued evident through the appointment of two prominent party functionaries as deputies to the Ombudsman in the autumn of 2016.

No major changes have occurred in the manner of operation of the Personal Data Directorate, which did not act on the recommendations of the Priebe Report. The Directorate did, upon complaint, determine a violation of the right to personal data protection as to the publishing of the income of civil society activists. However, no activity of this institution was recorded related to the scandal for interception of communications.

## New developments/assessment

A stronger support by the Government and follow-up to the recommendations of the Ombudsman is expected. As the mandate of the Director of the Personal Data Directorate is until January 2021 (with the possibility of one re-appointment), the operation of this institution will be essential for ensuring the realisation of the priorities in this area.

## Options/recommendations:

- The Government should re-instate the mechanism for follow-up to Ombudsman recommendations and strengthen the monitoring of their implementation by government agencies;
- The Government should also take a pro-active role in the area of data protection, examine the state of affairs in government institutions and develop plans for enhanced data protection; it should also file cases to the Data Protection Directorate;
- The Data Protection Directorate should investigate infringements of data protection rules in the case of interception of communications and publish a report;
- The Parliament should hold an oversight hearing on data protection.



# ■ Anti-corruption policies

## Implementation

The main achievement is the establishment and the operation of the Special Public Prosecutor. Although faced with systematic and organised obstruction by Government institutions and courts, the SPO continued its investigations. The requests for legal extension of the term for filing charges and protection of witnesses were not addressed.

In addition, a Law on Whistle-blowers was adopted, but it is not functioning in practice.

The State Commission for Protection from Corruption has not carried out its task of a watchdog and was manifestly biased in favour of the previous Government.

## New developments/assessment

The Government initiated a procedure for dismissal of the Public Prosecutor Marko Zvrlevski – which is legitimate and needed, considering the fundamental failure of this institution to fulfil its constitutional role. In a situation when the Special Public Prosecutor has not received additional time for submitting prosecutorial acts, the appointment of the new prosecutor is considered as crucial for restoring the rule of law and accountability in the country.

## ■ Options

- A procedure for accountability for the members of the State Commission for Protection of Corruption should be initiated;
- The Government should establish an internal anti-corruption unit (possibly also designate a minister without portfolio in charge of anti-corruption policies within the Government) in order to promote a zero-tolerance attitude to corruption and ensure the implementation of the whistle-blowing mechanism;
- Promotion of the implementation of the whistleblowing mechanism, especially within the public administration, in parallel with amendments to the Law on Whistle-blowers.



# ■ Elections

## Implementation

The Urgent reform priorities have been partly implemented, mainly through the new composition of the State Electoral Commission and revision of the Electoral Code.

In practice, the style of operation of the State Electoral Commission has not significantly changed, despite the increased transparency of its work.

## ■ Options

- The State Electoral Commission should publish an analytical report on the elections, providing recommendations for improving the electoral process;
- The debate on possible changes of the electoral code should start immediately, in order to avoid amendments of the Electoral Code close to the election dates;
- The transparency of the institution should be enhanced – not only in time of elections, but on its regular operation.



# ■ Public Administration

## Implementation

The developed legislative framework, including the new laws on administration has become an “empty shell”. The public administration has been further misused as a main instrument for political clientelism, creating the critical link between the state and party.

## New developments/assessment

The new Government has launched the discussion on the Draft Strategy for Public Administration taking over the text from the former Government. The Government has so far had a sustained approach to dismissals.

## Options/recommendations

The Government should:

- Take all available measures to de-install the party installations within the public administration;
- Implement mechanisms for future prevention of blurring state and party misusing the public administration;
- Re-consider the baselines and main principles of the Draft-Strategy for Public Administration Reform; consider measures of empowering institutions and promoting integrity in the public administration;
- Install a mechanism for monitoring employment procedures, ensuring transparency;

While the implementation of different indicators (OSCE SIGMA, etc.) is certainly important, isolated focus on technical aspects of the PAR should be avoided.



# Media

## Implementation

The media landscape continued to be largely dependent on the Government. Government controlled media praised the governing party while demonizing the opposition parties, spreading hate towards individuals opposing the Government and misinforming the public by spinning stories and facts.

## New developments/assessment

This is the area in which the change has been felt immediately with the establishment of the new Government, though without significant legal changes.

With the ceasing of the fuelling of taxpayers' money in the private media and the firm party control as well as the demonstrated new and unselective approach of the Government towards the media, a new climate has been created.

In the dawn of new government formation several newspapers printed their final editions, due to ambiguous shut down of the major newspapers' company, which had been connected to a money-laundering scandal.

## Options/recommendations

The key challenges are now to set-up a sustainable way of ensuring independent reporting of the media and financial independence.

Hereby we are pointing to the options and recommendations developed by a group of relevant media associations within the document "Blueprint for urgent democratic reforms".<sup>8</sup>



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<sup>8</sup>[http://iks.edu.mk/attachments/article/274/BP\\_ENG\\_FINAL\\_08.07.2016.pdf](http://iks.edu.mk/attachments/article/274/BP_ENG_FINAL_08.07.2016.pdf)