
Judiciary Challenge of Republic of North Macedonia Towards EU Integration

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Abstract

The transition period in The Republic of North Macedonia alongside with the other Balkan countries was very prolonged and impregnated with numerous problems in the functioning of the rule of law. The judiciary has been the 'Gordian knot', for which it has often received objections from the international community. With constant and direct political interference, blatant nepotism, various compromising cases of corruption, and almost endless delays in cases, the judiciary has recorded successive violations of law and infringement of justice. There are perception that the predominance of the only one political party: the presidency, parliament, municipalities and then all other state institutions, that reflected in the hostage seizure of the state. The wiretapped conversations of high ranked politicians that began to be published since February 9, 2015 proved that the judiciary had been the target of political and party calculations. It clearly showed that politicians are those "big bosses" appoint and dismiss judges and prosecutors, interfere with litigation, assemble cases and proceedings, instrumentalizing all judicial instances. Following the publication of the so-called political 'bombs', with the mediation of the international community among the main political parties the (Skopje) Przhino Agreement was reached and finally the political product of which was the establishment of the Special Public Prosecutor's Office on September 15, 2015. However that hope did not last. At the top the paradox, the Special Public Prosecutor's Office was trapped in a large corruption, so its ending was disappointing and depressing for citizens. From the public statements of Euro diplomats this confusing judiciary situation is expected to have its impact on the road of the country towards European integration.

Keywords: Absolute power; EU; Judiciary; Special Public Prosecution; justice; judge; prosecutor.

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1. Introduction

The role and importance of the judiciary in a liberal democracy is regarded as fundamental to the proper functioning of the rule of law. Without fair and non-discriminatory judgments of guilty citizens and justice being delivered to those who are harmed, the rule of law remains only a utopia on paper. However, Macedonia's judicial system does not come out of the protracted reformist transition. According to [1] "The political and institutional crisis in the Republic of Macedonia over the past years has exposed all the weaknesses and fragility of the constitutional and political system. These weaknesses also highlighted the problems accumulated in the judiciary, which confirmed the very negative perception, in particular of the competent opinion on the failures in the judiciary [2]. The wiretapped conversations revealed serious and disturbing deficiencies in the functioning and direction of the judiciary, related to political and party influence, corruption, judicial clientelism, and the same. Such developments have further exacerbated the perception and destroyed the citizens' lack of confidence in the judiciary".

2. Fabricated cases

One of the deepest and most widespread problems of the judiciary has been fabricated cases. These cases, already known, were inherited from the mindset of the former monist system and had a common denominator: 'forcible displacement of Albanians'. Without going back to the retrospective, for which there are many different studies and researches [3,4,8], it is only worth mentioning that the epicenter of conducting this policy was in Belgrade by communist circles with anti-Albanian nationalist disposition. Such remains appear to have been concentrated in post-independence Macedonia as well as in the judiciary, among others. The cases that caused not only reactions and stasis but also proved to be such were the case of Sopot and that of Monsters. That these cases were mounted, there are indications and evidence of recent wiretaps published by Political Party of Social Democrat League of Macedonia (SDSM) and its leader Zoran Zaev. One of the 'bombs' published by SDLM was dedicated to the 'Sopot' case, where Gordana Jankulovska and Sasho Mijalkov were heard commenting on the entire process, claiming that witness statements were taken with violence. In the Sopot trial 11 Albanians were sentenced to 156 years in prison [11,12], one of whom died while awaiting a court verdict. An indictment was filed against them for allegedly setting up a mine in 2003 in the village of Sopot killing two Polish NATO soldiers and a civilian companion as a translator. The court took the decision to impose the sentence only from the statement of Mr. Ramadan Bajrami, who signed it after a harassment and threat had been made by the investigator. Despite the fact that Ramadan Bajrami was forced to plead guilty, there was no criminal responsibility against the secret police (PSB employees), for allegedly obsolescence of the criminal offenses they committed, as if it would not be possible to be proved. All secret policemen involved in this case escaped without a thorn in their feet, though they mounted the worst case against Albanians since 2001. Special Prosecutor Katica Janeva also confirmed that the legal provisions do not allow the initiation of criminal proceedings against members of the secret police. Although the government decided to indemnify the "Sopot prisoners" for 73 million denars [1,200,000 euros], but the psychological, spiritual and collective damage cannot be compensated. According to [6] the other case that also caused great outrage and revolt was the so-called "Monster case", which followed the fivefold murder that occurred on April 12, 2012, near Smilkovci Lake in Skopje. Immediately after the event, Macedonian citizens rose up against Albanians living in Radishan and

Dracevo - Studenichani, on the outskirts of Skopje, by beating some of them and there are registered some property damage to them. On May 1, of the same year, Macedonian police raided several Albanian families and arresting twenty Albanians, including a 65-year-old woman and a young ladies. About 800 special police forces took part in the raid. After this action, Interior Minister Ms Gordana Jankullovska said they had arrested a group of Islamists who had committed the five- killing. The following day, most of those arrested were released from custody, while others were charged with other offenses. Only Fejzi Aziri, Agim Ismailovic and Rami Sejdi remain charged with the fivefold murder. An international arrest warrant was issued for Alil Demiri and Afrim Ismaili. Among those arrested on May 1, was Haki Aziri but his name was not mentioned until his family members began to look for after him and find out that he was been hired as a protected witness, but few days later after refusing to do so, he was charged with the same indictment. Six months later, on December 2, 2012, at the Basic Court Skopje 1, the trial of the accused in the monster case began. During the trial, Sami Luta, who was arrested on August 28, 2013, was also added to the indictment, bringing the number of defendants to seven. According to [11], during the trial the only evidence (prove) of this serious act of terrorism was the statement of a person- hidden witness codenamed E.N. As the only testimony the court obtained the materials found in their homes and on their computers. The Holy book Kur'an and other religious books as well as the song 'For You Gostivar' sung by the Golden Age also were taken as evidence against terrorism. The prosecution's evidence also included a red Opel car, which was not even seen by the defendants' lawyers. Weapon Cartridges found were used as evidence, but no weapon was found. The prosecution throughout the litigation did not present any material evidence linking the accused to the criminal offense. A church was built during the trial at the place where the murder took place. Two years after the Monster case on May 30, 2014, the prosecution concluded its last words. According to [8] the prosecutor Gordana Geshkovska demanded the maximum sentence for the accused. She declared: "There is no accidentally that on Holy Thursday , April 12, 2012, the murder took place in Smilkovo. The aim was to kill only Macedonian men of Christian faith. The message given is: we shoot you during Holy Thursday to turn the eve in a bloody Easter, to destroy their religion. We shoot at young guys to destroy the nation. We shoot at the future of the state. Doesn't this speak enough about the motive of the offense, their intention to cause insecurity among the citizens"-, she concluded. On December 30, 2014, the Basic Court Skopje 1, sentenced six of the accused to life in prison on terrorism charges, while one of them Sejdi Rami was acquitted. Immediately after this decision, several public protests were organized that went out of control. The protest took place in Pristina, Tirana and the Diaspora. Some of the protesters were arrested and sentenced to prison on charges of disturbing public order in North Macedonia. Following the decision of the first instance court, the lawyers appealed the case to the Court of Appeal. After one year on 14 December 2015, the Court of Appeal upheld the decision of the Court of First Instance. During the publication of the so-called bombs, LSDM leader Zoran Zaev vowed to publish footage related to the monster case, but he never did so. After the lawyers appealed the decisions to the Supreme Court, on November 24, 2017, the Supreme Court upheld the first and second instance decisions and decided to return the case to the Basic Court Skopje 1. After the Supreme Court's decision on December 1, 2017, Agim Ismailovic, Haki Haziri and Sami Luta were released, while Fejzi Haziri is in jail due to another case. The "Focus" magazine wrote that it had been revealed who had ordered the "Monster" case and that the defense was right because the evidence against the accused was weak." These two cases and many others testify to the state of the judiciary, to the insecurity of the citizen in the face of unreasoned decisions, and to convictions without sufficient evidence and facts. On the other hand, "the right of

the citizen to be judged by an independent and impartial judge is a guarantee to society that the judiciary performs the task entrusted to it by the Constitution and that this right of the citizen is upheld at the highest level by guaranteeing its meticulous implementation of the Universal Declaration of Human Rights, the European Convention on Human Rights and all other Council of Europe document. These documents represent the broad platform and source of fair norms for constitutional regulation and legal principles of the judiciary and independent judges". "The efficiency of justice is one of the key components of the concept of fair trial. Otherwise, efficiency means providing final judgments within a reasonable time. In this context, Article 6 of the European Convention on Human Rights, which protects the right to a fair trial, provides in Chapter One that "everyone has the right to be tried within a reasonable time".

3. Hope and Disappointment in Justice

With the establishment of the Special Public Prosecutor's Office on September 15, 2015, and with the approval of the four largest parties, there was the hope of the average citizen that things would finally get right [2]. This prosecutor's office considered several cases, while the way they approached and appeared in press conferences created the impression of a different prosecutor's office. However, even though the chief prosecutor of this prosecutor's office herself, fell into this trap. On August 8, 2019, the Italian newspaper 'La Verita' began publishing video and audio recordings, with Ms. Katica Janjeva involved in it. In fact, while dealing with this case, so-called "Empire", Ms. Janeva has been planning to close the case where the main suspect was known businessman Mr. Orce Kamchev, in exchange for the millions promised to her through the mediation of the well-known Bojan Jovanovski, a.k.a. "Boki 13". The link to this network was the son of Ms. Janeva (Chief Prosecutor) Mr. Lazar Janev, a friend of Boki 13. The video recorded at the house of Orce Kamchev, published by the newspaper 'La Verita', showed the money being handed over and then another recording where the voice of Boki 13, telling Kamchev that "the lady is greeting you" and also is heard a voice of Janeva herself, by telling to Mr. Kamchev the words: "Don't worry, everything will be fine." According to [12] on August 21, the chief prosecutor was taken to the Shutka (Skopje) prison. On September 14, with 102 votes in the Assembly, she was ousted. On September 4, Janeva from Shutka Prison wrote to current SPP colleagues to hand over all documentation on all cases under investigation and pretrial proceedings within three days to Mr. Ljubomir Jovevski. Although still formally on duty and unmarried, but nonetheless arrested and in custody it is absurd that Janeva, as a suspect in the "racketeering" case, has the right from pre-trial detention to tell special prosecutors how to act SPP cases. Probably there is a case of 'sui generis' and 'unprecedented'. On September 6, the Public Prosecutor's Office confirmed that it would take the Special Prosecutor's cases and examine one of the Special Public Prosecutor's cases to determine the stage they had reached. On September 11, at the premises of the Special Public Prosecutor's Office a letter was received from Public Prosecutor's Office signed by the Public Prosecutor, Lubomir Joveski, to take over the cases. On September 12, the Special Public Prosecutor's Office posted on its website a notice expressing its readiness to respond to Joveski's letter and immediately forward the cases to the Public Prosecutor's Office. On November 19, Katica Janjeva was released from Shutka Prison and was sent home. She was also privileged in Shutka Prison and according to prison director Esat Rahic, she was in a special room because it was improper for her to be equated with other prisoners [12]. According to [4] the "racketeering" case and the detainee boss Ms. Janeva were a problem for the cases processed by the SPP. The lawyers of defendants demanded the dismissal of special prosecutors because of the SPP's compromise. In the

"Toplik" case the first suspect is former Minister of Transport and Communications Mr. Mile Janakieski for the sale of state-owned land for the construction of the "City of the Sun", residential complex on the slopes of Vodno in the municipality of Sopiste. The expected confrontation over the illegal wiretapping between Zoran Verushevski and Sasho Mijalkov did not take place at the Target-Fortress case. Verushevski, who is the current security adviser to Prime Minister Zaev, did not appear at the hearing despite being summoned as a SPPO witness. The DSK chief Sasho Mijalkov, the chief of the Fifth Directorate Goran Grujovski and eight others, are charged with unlawful interception of communications between 2008 and 2015. In the "Tank" case, the convicted officials were Ms. Gordana Jankulovska, Mr. Djoko Popovski and Mr. Nikola Gruevski. Only Mr. Popovski is in jail because Gruevski escaped to Hungary and Gordana Jankulovska received postponement of the sentence because of her newborn baby. Another case is the so-called "Trust", against businessmen Sead Kocan and Vasilije Avirovic..

4. Government and Opposition

The head Prosecutor of the Prosecution of Organized Crime and Corruption Ms. Vilma Ruskovka for the so-called case 'Reket' (extortion) was initially informed by Prime Minister Zoran Zaev, as some businessmen complained to him. Special Public Prosecution cases which were filed after June 2017 remain a barrier for political compromise between the government and the opposition in the time being. The latter demanded that any charges filed after June 2017 being dropped, alleging in this case dismissal of the "Talir" case on charges of unlawful party financing that seriously endanger the freezing the assets of the Hristijan Mickoski political party. Prime Minister Zoran Zaev has said that criminal offenses cannot be hidden. According to him, anyone who attempts to invalidate the charges loses politically. Prime Minister Zoran Zaev has threatened to sue the 'Infomaks' news portal and its journalist after publishing the first page of the taping record from Orce Kamchev's testimony regarding the 'racketeering' case filed with the Organized Crime and Corruption Prosecutor's Office [5]. In addition to one published page of the document, the Infomaks portal and later other electronic media alleges that Kamchev incriminated Prime Minister Zoran Zaev, Defense Minister Radmila Sekerinska, Foreign Minister Nikola Dimitrov and other officials during the testimony. Ministers Shekerinska and Dimitrov, as well as Deputy Speaker of Parliament Frosina Remenski, have reacted and opposed. State President Stevo Pendarovski said at a meeting of the Chamber of Commerce that the "racketeering" case captures many layers in the country, including political ones. SDLM MP Frosina Remenski was invited at the Prosecutor's Office for Organized Crime and Corruption to show her the evidence that prosecutor Villma Ruskoska has collected against her for questioning of the funding of the Boki's 13 (a.k.a. Bojan Jovanovski) humanitarian organization, the International League.

5. The Judiciary system is a Gordian Knots towards European integration

On August 8 and 9, 2019, in his Facebook profile, the Editor of "La Verita" newspaper Mr. Laris Gaiser, explaining the reasons for posting videos of the 'Reket' case in his status, wrote that "The European Union, after supporting change of regime in Macedonia, defining the sovereignty of the country, supported the creation of a Special Public Prosecutor's Office, which not only interferes in politics illegally but also extorts people. A mafia system operating directly under the control of high-ranking politicians, preferred by the EU and Soros.

Macedonia has a big problem on its way to the EU... the EU too! Ms. Mogherini and Mr. Juncker are guilty of humiliating an entire nation and of supporting everything that is contrary to the rule of law, a right which Brussels claims loudly. He wrote that his only desire is to promote a fight against corruption and a fight for an independent judiciary... it is now time for the country to join the European Union. "Corruption is on the rise, but not sanctioned. "We can attest to the key challenges and the current situation in relation to the 'independent judiciary' standard through various promulgated documents, both international and domestic ..." "The Helsinki Committee for Human Rights actively monitors the discriminatory situation in the Republic of Macedonia ... through monitoring of court proceedings ...through complaints received by citizens - victims of discrimination and through proceedings before the equality and trial body". "The judicial postal service has often failed to send summonses to parties involved in court cases. It is symptomatic that failure to deliver relates to officials and other public figures involved in court cases and whose address and mail are easily verified. Judicial services usually point out that the shipment is poorly done and almost never find that the parties have refused to accept the invitation for hearing." Some US Department of State reports have stated that the judiciary continues to be in the grip of politics, sometimes by budgetary and financial pressures [10]. The report of the Regional Development and Integrity Network in South East Europe (SELDI) shows that 490 038 citizens have been pressured into corruption, while in 2018 only 92 people have been convicted of abuse of power. Thus, US Deputy Ambassador Jennifer Littlson and Frick Danmat from the EU delegation stress out the urgency of bringing the new law on public prosecution. EU Ambassador to North Macedonia Mr. Samuel Zbogar declared: "Our position is clear, we support the court to use the elements to improve the court internally. We will continue with our support both in the past and in the future, from next year we are planning a project to monitor cases of high corruption and we believe this will improve the functioning of the court."

6. Conclusions

It is a timely imperative for Macedonia to do everything possible to improve and advance the judicial system. First and foremost, it must place its citizen and respect for its freedoms and rights. "Human freedoms and rights as the innate values of the individual and the essence of his anthropological nature penetrate his embodiment in society through the incessant struggle of the individual for their realization.[8] "All the accumulated civic discontent in the recent past, the state must return in the hope of the future. "Belief in the trials in a democratic society should inspire the public." Northern Macedonia must not back down from the values of the democratic world. Those values are the foundation of modern civilization [9]. "The European Convention on Human Rights is an integral part of the legal order of the Republic of Macedonia and it is directly applicable. For all the rights and freedoms regulated by the Convention and which are protected by the European Court of Human Rights, the courts of the Republic of Macedonia directly apply their rulings and, in accordance with the provisions of the Criminal Procedure Code, to the reasoning their decisions should be based on the decisions of the European Court of Human Rights" [7]. The more the laws are respected, the more the citizens will be loyal to the state and the more the overall democracy will develop. Without justice, the rule of law, respect for the rule of law, freedom and equality, there is no democracy. No one should be above the law, everyone should be compensated: the one who transgresses it will be punished, and the one who is wronged will be compensated [6]. "The capacity of a democratic society is measured by the degree of rule of law. In addition, the democratic capacity of society is not only valued through laws that guarantee and guarantee the exercise of rights and

freedoms, but also the possibility of exercising these rights in independent and objective judicial bodies [4]. "Without these postulates, the country will be stuck in place, unable to take any step forward. Therefore, in the future one should not ignore the advice of the international factor, but work together with friends around the world to build a sound foundation of the legal system that would be the foundation for the better construction and functioning of the state as a whole.

References

- [1]. Presova, Denis, *Judicial Reform In The Republic Of Macedonia, Changes Without Reforms*, Institute For Democracy ~ Societas Civilis / Scs / Konrad Adenauer Stiftung / February 2018
- [2]. *Independence Judiciary - Legal Analysis*, Organization For Security And Co-Operation In Europe Spillover Monitor Mission To Skopje, December 2009
- [3]. *The First National Report From The Matrix Of Performance Measurement Indicators Is The Judicial Reforms*, Center For Legal Research And Analysis, National And University Library "St. Klimentohridski", Skopje, 2019
- [4]. High Representative Of The Union For Foreign Affairs And Security Policy And Vice-President Of The European Commission From November 2014 To November 2019.
- [5]. Draganov, Miroslav, *Analysis Of The Judiciary Of The Republic Of Macedonia, The Ipa2 Project Civil Society Mechanism*, Skopje, 2017
- [6]. *Annual Report On The Situation In The Field Of Human Rights In The Republic Of Macedonia For 2015*, Helsinki Committee For Human Rights Of The Republic Of Macedonia, Skopje
- [7]. Medarski, Vladimir, *Monitoring Judicial Cases Return And Defamation*, Center For Media Development, Usaid, Skopje, March 2014
- [8]. *Analysis Of Independence Of The Judiciary Vorepublika Macedonia - Perception, Difficulties And Challenges*, Institute For Human Rights Skopje, Foundation Open Macedonia, Foundation Open Society Macedonia
- [9]. Kambovski, Vlado, *Independence Of The Judiciary*, Macedonian Academy Of Sciences And Arts, Scientific And Professional Discussion Held On November 3, 2015, / Skopje 2016 /
- [10]. Mirjana Lazarova - Trajkovska, *The "Principle Of Separation Of Powers And Protection Sideways Constitutional Court Of The Perspective Of European Court Of Human Rights" The Constitutional Court Of The Republic Of Macedonia, Of Contemporary Challenges Constitutional Judiciary / Skopje On 18-21 September 2014,*
- [11]. *Collection Of Court Decisions 2009 - 2019 Book Xi*, Supreme Court Of The Republic Of Macedonia /
- [12]. *Collection Of Public Policy Documents Chapter, Number 23 Judiciary Foundations / Institute For European Policy, Skopje 2020.*