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Content

Foreword

The main aim of the "Network 23" project, implemented by the European Policy Institute — Skopje, the Helsinki Committee for Human Rights of the Republic of Macedonia and the Center for Change Management, is to provide a structured contribution by civil society to the monitoring and evaluation of the policies encompassed by Chapter 23 — Judiciary and Fundamental Rights.

Ten grants were awarded through the project, in a transparent fashion, to other civil society organizations that carried out surveys and other activities as a contribution to the effective monitoring and evaluation of policies informed by Chapter 23 of the EU accession process. As a final product of such research, public policy documents were produced, with recommendations on overcoming the problems identified. Their findings are incorporated into the analysis of issues from Chapter 23 "Judiciary and fundamental rights in the Republic of Macedonia", as a first shadow report of Macedonian civil society organizations, regarding the situations of the areas covered by this chapter. The summaries of public policy documents are attached.

Institute for Human Rights — Skopje

Independent Judicial Council of the Republic of Macedonia — aims and challenges

Guided by its mission to promote, advance and safeguard human rights and freedoms, the Institute for Human Rights implemented this project in order to contribute towards quality enforcement of human rights in an independent and impartial court, exercising those rights in the areas of criminal, civil and administrative law, as well as to secure independence, objectivity and transparency in the work of the Judicial Council of the Republic of Macedonia (JCRM).

This project will contribute towards consistent implementation of the legally prescribed competences and detection of any need for amendments to the applicable legislation or adoption of new legislation in this area. This, in turn, will encourage and increase the independence and objectivity of the procedures for election, discharge and disciplinary actions for judges in the Republic of Macedonia (RM). This will strengthen the responsibility and accountability towards the citizens of both this institution and the judges, which is particularly important at this time, when trust in the judiciary is at a very low level.

In implementing this project, the Institute for Human Rights analysed provisions of the Constitution of the Republic of Macedonia, the Law on the Judicial Council of the RM including amendments made during the analysis period; the Law on the Council on Establishing Facts and Initiating a Procedure to Establish the Responsibility of a Judge was also adopted during the period of analysis, as well as laws containing provisions dealing with securing the independence of the judiciary in general and draft-constitutional amendments — the implementation of which, although they are in parliamentary procedure, is uncertain. When producing the analysis, the standards stemming from international documents, particularly the European Convention of Human Rights, and the documents of international organizations pertaining to the independence and impartiality of the judicial bodies in the Republic of Macedonia were taken into consideration. The work of the Judicial Council of the RM was monitored as well; its final decisions were analysed, interviews were carried out with judge candidates who were not elected and with judges who were discharged, judges against whom there have been disciplinary procedures and with retired judges. Survey questionnaires were sent to all members of the Judicial Council, who, unfortunately, failed to respond to them. The Supreme Court of the Republic of Macedonia, for its part, failed to provide the requested information regarding appeal decisions of the Judicial Council, providing as an explanation that they are safeguarding privacy and personal data.

Finally, one of the activities was a public opinion poll to measure the perception of the citizens regarding the significance and operation of the Judicial Council of the Republic of Macedonia.[1] According to this research, a large percentage

[1] The survey comprised 1,200 respondents in 80 municipalities, with representative sample of all ethnic communities, urban and rural settlements and regions. The survey was carried out in the period between 22 and 25 December 2014. Possible statistical error: +/-4,3%.

of the citizens of the RM (56%) believe that the JCRM is performing the selection of candidates for judges under pressure Out of the 56%, 23.5% believe that the selection is made fully under pressure, while 32.7% believe that the selection is made mainly under pressure. A high percentage of citizens think that certain external factors influence the autonomy and independence of the work of the JCRM. Of those claiming that there are external factors exerting influence, in both Macedonian and Albanian respondents, the greatest percentage of citizens believe that the government is the body undermining ng the autonomy and independence of the JCR. That percentage is 48% for the Macedonians and 62% for the Albanians.

On the basis of the project's activities, an Analysis of the independence of the Judicial Council of the RM was produced. It leads to the following conclusions:

1. The Law on the Council for Establishing Facts and Initiating a Procedure to Establish the Responsibility of a Judge, and the Law amending the Law on the Judicial Council of the RM, were adopted via a rapid and shortened procedure, without consultations with stakeholders or a public debate. They contain numerous deficiencies in terms of unclear legislative provisions, from the aspect of both the organizational structure of the competencies of the Judicial Council of the RM and the Council for Establishing Facts and Initiating a Procedure to Establish the Responsibility of a Judge, and from the aspect of the operation of both organs. In such a situation, it can be concluded that the aim of improving the independence and autonomy of the judicial system, as the sponsor of the laws indicated, was not achieved.
2. The Law on the Council for Establishing Facts and Initiating a Procedure to Establish the Responsibility of a Judge has no constitutional basis for its adoption, as is the case with the Law on the Judicial Council of the RM, and the reference to the Law on the Judicial Council of the RM could not be the basis for the adoption of this law, particularly since neither of the draft constitutional amendments, which are presently part of the procedure, foresee the establishment of such a body.
3. The legislative provisions for the newly-established Council for Establishing Facts and Initiating a Procedure to Establish the Responsibility of a Judge and for the existing Judicial Council of the RM do not foresee responsibility of the members of these two councils, and they do not ensure substantial transparency in their operations.
4. The provisions of analysed laws are unclear and not harmonious with the applicable legislation governing the judiciary (Law on Courts, Law on Litigation and Law on Obligations), from the viewpoint of ensuring legal certainty and identical treatment regarding the timeframe to initiate a procedure for the unprofessional and non-conscientious work of a judge, when that procedure is initiated after a judgement of the European Court of Human Rights has been received, as well as regarding the opportunity to establish that the individual responsibility of a judge is ensured in a clear, specific manner and is substantiated by

arguments, particularly since there is a legal possibility to reopen the procedure before the national courts after a judgement of the European Court of Human Rights has been received.

5. There is no adequate legal remedy regarding the right to appeal for the candidates dissatisfied with the procedure for the election of judges.

   There is no independent procedure concerning the legal remedy of disputing the decision for disciplinary responsibility or discharge from a judicial office. Membership and voting rights of the President of the Supreme Court of the Republic of Macedonia in the sessions for the discharge of a judge and a disciplinary liability of a judge could not be neglected, and could give rise to objective doubts about the independent operation of the Council Deciding on Appeals against Decisions of the Judicial Council of the Republic of Macedonia, established by the Supreme Court of the RM. Such doubts are a result of the fact that the Rules of Procedure of the Supreme Court of the RM (which, inter alia, regulates the establishment of the Council deciding upon appeals) is not available to the public and no third parties can become acquainted with or analyse its contents.

   The survey of the work of the Judicial Council of the RM leads to the conclusion that the respondents have little degree of faith in the work of this body, and believe that the election, disciplinary procedures and discharge of judges are without exception made under pressure from the government.

   Decisions of the Judicial Council of the RM are insufficiently substantiated and contain both substantive legal deficiencies and deficiencies from the aspect of procedural law, which leads to general mistrust towards the work of this body. It could also be concluded that, in some cases, it has a selective approach to its work.

The Institute for Human Rights developed the following recommendations:

1. Production of a comprehensive analysis and re-evaluation of the harmonization of these laws with the Constitution of the RM, international documents dealing with relevant standards for independent judiciaries and the observations in Chapter 23 of the EU Accession Progress Reports for the Republic of Macedonia.
2. To stop the procedure for electing members to the Council for Establishing Facts and Initiating a Procedure to Establish the Responsibility of a Judge, bearing in mind the recent developments and taking into consideration the deficiencies identified, the resolutions of which are expected to bring about some clearer guidelines aiming at ensuring the principle of an independent judiciary.
3. To amend the applicable legislation as regards both effective responsibility of the members of the Judicial Council of the RM and the Council for Establishing Facts and Initiating a Procedure to Establish the Responsibility of a Judge, and ensuring essential transparency in the work of both councils.
4. To establish clear and specific legal provisions ensuring implementation of conclusion No. 4. A correction is needed for the deadline within which the institute of reopening a procedure after

receiving a judgement from the European Court of Human Rights, in civil law and administrative law procedures. That deadline should start expiring from the moment that the decision of the European Court of Human Rights is received.

5. To establish an independent and efficient legal remedy for candidates dissatisfied with the procedure for the election of judges. The most feasible solution to secure a legal remedy for the dissatisfied candidates who were not elected as judges is to add another provision to the Law on the Judicial Council, foreseeing that the dissatisfied candidates will have the right to lodge an application initiating an administrative dispute before the Administrative Court. Such a procedure would provide the applicants with the right to appeal to the Higher Administrative Court in the event that they receive a negative decision as guaranteed by the Constitution. Bearing in mind the constitutional amendments in the pipeline, according to the draft amendments, the candidates dissatisfied with the decision of the Higher Administrative Court can continue the procedure before the Constitutional Court by way of lodging a constitutional complaint, but only regarding a violation of the right to a fair procedure by the bodies that processed the case and decided the outcome of the aforementioned procedure.
6. To provide an independent and efficient legal remedy for the dissatisfied participants — judges in the procedure of disciplinary responsibility and the procedure for the discharge of judges:

   a) A recommendation of the Institute for Human Rights to harmonize the efficiency of the legal remedy, and in that way to ensure independence of the judiciary, is to use the opportunity foreseen in the Law on Administrative Disputes and amend the Law on Courts and the Law on the Judicial Council of the RM. In this way, instead of having the right to complain to the Council Deciding on Appeals within the Supreme Court of the RM, the right is introduced of lodging a complaint initiating an administrative dispute before the Administrative Court, as well as the right to legal remedy — an appeal to the Higher Administrative Court. In this way, the Council Deciding on Appeals within the Supreme Court will be abolished.

   b) If the legislator decides against involving the administrative courts in both of the aforementioned procedures and remains with the terms of the present legal concept, it is necessary to introduce corresponding changes to the procedures before the Judicial Council of the RM and the Supreme Court of the RM, which will strengthen their independence and impartiality, and will increase the efficiency of the legal remedy provided.

   c) With regard to legal remedies, the Institute for Human Rights agrees with the initiative announcing amendments to the Constitution, whereby the discharged judge, or a judge subject to disciplinary sanctions, can lodge a constitutional complaint to the Constitutional Court of the RM, but only regarding violations of the right to fair procedure on the part of bodies proceeding and deciding in the aforementioned two procedures.

7. Raising public awareness about the competencies and importance of the Judicial Council of the RM, and possibly also the newly established Council for Establishing Facts and Initiating a Procedure to Establish the Responsibility of a Judge for the independence of the judiciary. This is to be done through media campaigns, brochures and flyers. Regular updating of the website of the Judicial Council of the RM, and possibly also that of the newly established Council for Establishing Facts and Initiating a Procedure to Establish the Responsibility of a Judge, posting information that is relevant and of interest to the public in the RM, as well as the regular publishing of their decisions and annual work reports.
8. Changing current practices towards producing quality and sufficiently substantiated decisions of the Judicial Council of the Republic of Macedonia, without a selective approach and entering all relevant data, in order to fulfil international standards in this area and meet the needs of parties interested in public information, as well as the public interest. Such decisions should be brought by the new Council for Establishing Facts and Initiating a Procedure to Establish the Responsibility of a Judge, if such a Council is established.

It is obvious that there are problems in the judicial system of the Republic of Macedonia and that a significant, serious and high-quality approach to their resolution is needed. By just establishing new bodies without substantial and high-quality application of the principles of democracy and the rule of law, the independence of the judiciary in the Republic of Macedonia will not be achieved.

Association of Citizens "NOVUS"

The independence and objectivity of the judiciary system in the Municipality of Strumica

The association "NOVUS" is a non-governmental organization that is active on the local, regional and state levels. It aims at improving and raising the societal position and awareness of citizens and the youth, with a special emphasis on the protection and affirmation of fundamental human rights and freedoms, as guaranteed by the Constitution, laws and international agreements. It is implementing the project "The independence and objectivity of the judiciary system in the Municipality of Strumica in accordance with Chapter 23 — embedded postulates or challenge for reforms?".

The aim of this public policy document is to carry out an analysis of the independence and objectivity of the justice system in the Strumica Municipality. Public opinion was surveyed regarding the independence and objectivity of the justice system in the Strumica Municipality, on the basis of a previously established representative sample of 253 respondents at the municipal level. Within the project frameworks, there were also interviews with representatives of justice system bodies, and survey questionnaires were sent to every judge in the Basic Court of Strumica. However, despite the fact that survey questionnaires, which were confidential and anonymous, were sent to each and every judge, only four judges replied with their responses. This could not be considered a reliable and representative sample through which we might establish judges' perceptions regarding the Basic Court of Strumica. Perhaps this shows the extent to which the judges consider themselves "independent" and "objective".

The survey results show that **37% of respondents are not satisfied with the work of the court, 31% are somewhat satisfied** while only **5% are completely satisfied with its work**.

A proportion as high as **42% of respondents have no confidence whatsoever in the Basic Court of Strumica**, vs. **6% of respondents who have confidence in it.** Regarding the influence of the central government over the independence of the judiciary in the Strumica Municipality, **56% of respondents stated that the judiciary was under the influence of the central government,** while only **10% believed that it does not have any influence over the Basic Court of Strumica**. With regard to the transparency and objectivity of the court, only **7% of respondents stated that the court in Strumica was transparent and objective,** which is in complete opposition to the views of the interviewed representatives of the judicial bodies. A substantial **36% of respondents take the view that the court in Strumica is partially transparent and objective,** which is an excellent basis on which to build and improve the system.

Analysing the independence and objectivity of the justice system bodies in the Strumica Municipality exposes reasons for concern regarding the independence and transparency of the judicial system in the Republic of Macedonia. The perception of citizens is that politics influences the independence of the judicial bodies. On the basis

of data received regarding this issue, we can safely say that politics, as seen by the citizens, determines judicial independence and that this aspect requires serious work. The citizens also experience a high degree of mistrust when it comes to the judicial bodies, and the mechanisms of the judicial bodies of the Strumica Municipality. Aside from political influence, there is the influence exerted by the business elite and influential figures in the society.

Generally, the allocation from the court budget for the Basic Court of Strumica is rather small, which has implications for the independence of the court itself.

In order to improve the situation, the court should consistently implement the European standards for an independent judiciary, as well as human rights' guarantees indicated in and guaranteed by international agreements. The emphasis should be placed on the independent position of the judges: the freer and more independent they are, the more independent the judiciary. Work should be done on raising the awareness of the judges themselves, so that they themselves fight for their rightful place, in line with their role in the Constitution and applicable legislation.

A very important aspect of this issue is that the judicial work should be open to the public, in the sense of the values and principles of accountability and transparency. Greater involvement by the public is needed, as it will contribute towards greater control over the work of courts, and will, in turn, influence their independence and quality of decisions.

At the same time, a full application of existing criteria allowing for quality in the selection and promotion of judges is needed, as well as establishing additional criteria to achieve the aims of an independent and impartial judiciary.

The Association of Financial Officers in Local Self-Government and Public Enterprises

"Funding sources, amount of funds secured and their influence on the independence of the judicial power"

The Association of Financial Officers in Local Self-Government and Public Enterprises implemented the project **"**Funding sources, amount of funds secured and their influence on the independence of the judicial power" between November 2014 and April 2015.

The project's objective was to examine the degree of effectiveness and efficiency of the judicial power, through:

- Examining the level of necessary funds, as stated by the courts that were the subject of evaluation;
- Ascertaining the funds approved;
- Evaluation of the modalities for the allocation of judicial power's funds to the end-users;
- Making recommendations on how to overcome the identified situations.

For this purpose, the following activities were carried out:

1. Gathering information and data (publications and analyses);
2. Creating a baseline analysis;
3. Drawing up progress reports on the Republic of Macedonia;
4. Developing a survey questionnaire to identify the following: the process of budgeting in select courts, and distribution of planned and secured funds over the research period.

   The questionnaire was distributed to five basic courts, of which two basic courts responded.

5. Interviews with the heads of select courts:
   - Interviews were carried out only with the Acting President of the Judicial Budget Council and the Minister of Justice, although interviews were planned with select heads (representatives) from the target group.
   - Due to problems in obtaining the necessary information, informal rather than formal interviews were carried out with individuals knowledgeable in the situation of the analysed area.
6. The gathering, processing and analysis of the information and data obtained were secured through annual reports published on the websites of select courts and the Judicial Council, as well as:
   - Requests for public information sent to three courts;
   - Forms secured from the Central Register — Overview of data from the annual financial statements of select courts, for the reporting periods 2010, 2011, 2012 and 2013.

Results — presentation of the state of play:

- **Planned/actual funds for the judicial power do not exceed 0.38% of the gross domestic product (GDP), which indicates that the legally prescribed level of 0.8% of GDP has not yet been attained. Such approved funds for the courts**

do not allow for of their proper functioning.

- **Allocated funds are not sufficient for their work, which impacts the normal work of the judicial power, undermines the trust of creditors and damages the reputation of the judicial power in general.**

The courts presented the unpaid dues and disrupted solvency of some courts. There is a characteristic case with one court in particular; in some cases, they pay their dues with a delay of 398 days.

The phenomenon of blocking the transactions of some courts because they fail to pay their obligations in time occurs;

In the structure of expenditures, the dominant position belongs to salaries, then to goods and services, and the share belonging to capital expenditures is negligible or insignificant.

In the structure of unpaid obligations, the dominant position belongs to contractual services and utilities.

Also carried forward are unpaid dues related to obligations to provide medical treatment to remand prisoners, and defence attorneys retained ex officio, which has or can have an influence over the rights of certain individuals, regardless of the institution that will undertake these responsibilities in the future.

Recommendations to overcome the situation:

An ideal court budget would be one that amounts to not less than 0.5% of the budget of the RM, which would meet the current financial needs of the judiciary. For an ongoing and unimpeded functioning of operational activities, payments due and investment needs of the courts, it is necessary to allocate a state court budget in the legally established amount of at least 0.8% of the RM's GDP.

It is recommended to increase the proportion used for financing investment activities in the courts.

It is recommended to adjust the budgetary requirements of the courts — budget users on the level of the appellate region

In aiming for as precise a calculation of funds needed as possible and establishing a realistic financial plan (budget request), it is necessary to improve the existing model of costing calculations for a court case.

In aiming for effectiveness and efficiency in the spending of budgetary funds, performing works according to the established rules and respecting the ethnical norms of conduct, it would be necessary to strengthen the system of internal control in courts.

To strengthen capacities for financial management in courts.

NGO Infocentar — Skopje

НВО ИНФОЦЕНТАР

"What is the price of freedom of expression in Macedonia?"

The NGO Infocentar, in partnership with the Center for Media Development, carried out a research project in the context of the Law on Civil Responsibility for Defamation and Insult, entitled "What is the price of freedom of expression in Macedonia?"

This research encompassed the court cases according to the Law on Civil Responsibility for Defamation and Insult in nine basic courts: Gostivar, Tetovo, Stip, Veles, Bitola, Prilep, Strumica, Kumanovo and Skopje 2, as well as the views and experiences of civil activists, journalists, judges and human rights experts.

From the entry into force of the Law on Civil Responsibility for Defamation and Insult, 520 cases were initiated before the basic courts, of which 74.4% have already been finalized, while 25.6% of the court procedures are still ongoing.

Views about freedom of expression are usually challenged before the Basic Court Skopje 2 — Skopje. Most of the judicial procedures for defamation and insult appear before this court, and these cases comprise almost two thirds of the total number of court cases included in this analysis. As many as one third of the procedures taken before the Skopje court involve journalists, media workers or media as parties to the procedure.

The practice thus far (but also the analysis of the judgements that have become final) shows that there is a disturbingly drastic difference in court processing if parties to the procedure are politicians/state officials, vs. cases where they are not involved, whether as complainants or defendants.

When a state official or politician is a party to the case, it is evident that they are processed faster, i.e., there is a visible tendency of more urgent court proceedings. In addition, in such cases, the application of the European Convention and jurisprudence of the Strasbourg Court — which, inter alia, foresees that public office holders have a higher threshold of tolerance regarding criticism — is inconsistent and is directed towards full protection of the honour and dignity of the officials, at the expense of freedom of expression.

Dual standards in the processing of cases by judges, the fully unfounded protection of honour and dignity of officials and the failure to respect the European Convention and the jurisprudence of the Strasbourg Court put freedom of expression in Macedonia at serious risk, leading to self-censorship, causing a chilling effect on investigative journalism and raising serious questions about the (in)dependence of the judicial power in the state.

Activists, journalists and human rights experts are virtually unanimous in the conclusion that in Macedonia, freedom of expression is at serious risk and that people who have a critical attitude towards the government and its policies — on both national and local levels — are almost constantly and increasingly subject to various types of pressures, threats and intimidations.

Activists and human rights experts, particularly those living and working in Skopje, are the agents most commonly facing continuous public persecution by pro-government media, commentators on social networks but also by representatives of the government and the ruling parties. The activists, mainly those living in areas around Skopje, also face other forms of pressure that are not so visible but which are

also very strong, worrying and intimidating, such as warning messages, threats that a family member would lose their job, inspections, etc. At the same time, the activists do not feel safe and protected. Therefore, according to them, there are situations when they censor themselves and "weigh" every word they utter in public.

The journalists are virtually unanimous in saying that they are a constant target of pressures applied by the government, both local and national, but also by the owners of media outlets for which they work. Their financial and social positions worsen and become progressively more difficult. Many of the journalists at a local level do not feel protected by the editors and owners of their outlet. Such a situation is demotivating, inevitably leading to self-censorship and a dramatic decrease of journalistic professionalism.

According to human rights experts, the Law on Civil Responsibility for Defamation and Insult did not provide protection of freedom of expression in the Republic of Macedonia. Decriminalization of insult and defamation is surely a positive step forward, but it did not allow for greater freedom of expression, and freedom from self-censorship and censorship, for journalists.

Independent Trade of Journalists and Media Workers

"Media, Owners, Journalists and Workers' Rights"

The Independent Trade Union of Journalists and Media Workers carried out case studies, which it published in the booklet "Media, Owners, Journalists and Workers' Rights". The studies covered the following topics:

- Systemic corruption in Macedonian media;
- Trade union organizing in media;
- The case of five journalists discharged from "Utrinski Vesnik";
- The case of "Alpha TV".

In addition to the booklet, the project also produced a documentary with the same title.[2]

The analysis highlights two key pillars of systemic corruption in Macedonian media: the ownership structure of the media and the government's advertising. Proof was given of close relations between the government and media owners, especially those owning TV stations from which citizens usually source their information. Despite the changes of owners of some media, in order to formally meet the legal requirements, nothing was changed substantially. Only in 2014, and after a great deal of pressure, did the government publish the data on government advertising (but only for the period from 2012 onwards). The criterion the Government indicates for the allocation of funds for its own campaign to the media — the ratings — was not respected, and the advertising prices were artificially low. In addition to this, the analysis also discusses the course of developments (legislative changes, institutional changes) through which the Government exercised decisive influence over the regulatory bodies — the Agency for Media and the Agency for Audiovisual Services, as well as the Macedonian Radio and Television.

Using many pieces of evidence and journalists' testimonies, the case studies show the systematic pressures experienced by journalists, primarily the most experienced ones. This is particularly typical of media outlets that have changed ownership. Through testimonies in the booklet and statements in the documentary, journalists testify to the pressures exerted on them — both regarding freedom of expression and professionalism of journalists, and also regarding their rights as workers.

"Precarious work, working under limited contract, constant and selective approach of inspection bodies create an army of completely unprotected journalists and exploited media workers... The main features of this media group are poor salaries, working overtime, failure to pay any contributions — in a word, complete social and existential lack of security, or, to put it differently — a silenced outcry".[3]

Before the Macedonian courts, several procedures were or still are ongoing regarding the discharging of journalists. From the judgements delivered in the cases, one cannot thus far detect consistency in the jurisprudence. Despite this fact, cases that should have been processed as urgent (six months for labour disputes) have

2 http://ssnm.org.mk/mediumi-gazdi-novinari-i-rabotnichki-prava-dokumentaren-film/

3 Ibid.

dragged on for several years.

The project led to the following recommendations:

- Resolving the systemic corruption in the media through better legal solutions regarding media ownership.
- Changing legislation that could restrict state sponsorship towards the media in the form of government advertising.
- Establishing democratic control and mobilization of competent institutions and bodies in charge of implementing the Law on media.
- Restructuring the Agency for Visual and Audiovisual Services and the Macedonian Radio Television in a way that will be deliberatively decided between all stakeholders.
- Following the international reports as roadmaps on how to harmonize strategies to advance freedom of speech and the rights of journalists and media workers.
- Respecting all international conventions and declarations signed by the Republic of Macedonia, as well as respecting the Constitution and laws on the part of state institutions and media owners.
- Creating a collective agreement that will serve as a negotiating instrument and democratic instrument to advance workers' rights in the media sector, through:

- Resolving the problem of part-time staff (limited contract staff, HONORARCI) and precarious work.
- Resolving the problem of unpaid overtime.
- Resolving the problem of sick leave and annual leave.
- Resolving the problem of mobbing, unfounded discharge decisions and late payment of salaries.
- Increasing the transparency of media work and cooperation between owners and workers.
- Resolving the problem of the status of media workers in the new (online) media.
- Decreasing the influence of political and business elites on the editorial policies of media.

- Enhancing the functionality of the labour inspectorate and protection of workers from institutions, in order to exercise the constitutional right to establish and belong to a trade union.
- Regarding the enhancement of trade unions and the power of journalists and media workers:

- Improved cooperation of the trade union with foundations, non-governmental and activist organizations in the Republic of Macedonia.
- Networking trade unions in the Republic of Macedonia with international trade unions, primarily the European Union's trade unions, in order to exchange experiences and provide assistance in solidarity.
- Increasing the amount of expert analysis and reference literature related to workers' rights in the Republic of Macedonia.
- Strengthening the capacities of trade unions, through restructuring and replacing the old passive forms with new, proactive and better-articulated forms of action.

The Coalition "Sexual and Health Rights of Marginalized Communities"

Analysis of mechanisms for protection from discrimination of marginalized communities on the local level: the Municipality of Bitola, the Municipality of Strumica and the Municipality of Cair

The functioning of mechanisms for protection from discrimination is of key importance to ensure protection from discrimination on all levels. The practices and activities of civil society's organizations thus far indicate that there is a lack of data on the functioning of mechanisms protecting people from discrimination on the local level, and on their exchange and cooperation within the civil sector.

The purpose of the analysis is to examine the functioning of mechanisms for protection from discrimination on the local level, and the degree of protection of the right to equal opportunities and non-discrimination of marginalized communities (drug users, sex workers, people living with HIV and LGBT individuals). An additional purpose of the analysis is to increase cooperation with the local citizens' associations working with marginalized communities and local institutions that have mandates to protect people from discrimination.

The analysis provides an overview of the legislative framework, through a desktop analysis carried out regarding the Law on local self-government, the Law on equal opportunities of men and women (LEOMW), the Law on Prevention and Protection of Discrimination and the Law on Ombudsman, as well as the statutes, rules of procedure and other strategic documents in the municipalities. Furthermore, discussions with focus groups were organized with sex workers, drug users and LGBTI people; only in the Centar Municipality were there also discussions with a focus group comprising people who live with HIV. To prepare the analysis, interviews were also carried out with representatives of institutions for protection from discrimination on the local level (deputies to the Ombudsman in Strumica and Bitola, presidents of equal opportunity committees and equal opportunity coordinators) and representatives of associations that work with marginalized communities.

The analysis can, inter alia, lead to a conclusion that mechanisms for protection from discrimination on the local level face many challenges. The new LEOMW imposes an obligation on local equal opportunity committees to carry out activities for protection from discrimination, but without foreseeing the modalities and formats through which this competence will be implemented. The deputy ombudsman in Bitola and Strumica has no jurisdiction to decide on protection from discrimination; as a result, marginalized communities on the local level almost never report discrimination they suffer. Although marginalized communities in all three municipalities are often victims of discrimination, the protection offered by the existing mechanisms is inadequate.

Therefore, it is necessary to strengthen the position of the coordinator for equal opportunities for women and men in all municipalities, by way of adopting an act on systematization, which will establish the coordinator's competencies. In addition, it is necessary to allocate funds for the work of the coordinator, for promotional activities and for protection from discrimination. It is necessary to build

the capacities of members of committees for equal opportunities for women and men, and support the office of the Ombudsman regarding specific needs in protection from discrimination against marginalized communities. The Bitola Municipality, specifically, is advised to implement the Action Plan for Sustainability of HIV- and Tuberculosis Programmes (1 January 2014 to 31 December 2016) in order to evaluate the impact of the plan and to continue with the activities. All three municipalities are recommended to increase the number of petitions to the Ombudsman, by motivating the marginalized communities and offering them free legal aid. Considering the fact that marginalized communities in all municipalities have been victims of discrimination and harassment in the schools, each of the three municipalities needs to undertake urgent measures to eliminate homophobic harassment in schools. The Strumica Municipality, inter alia, is recommended to formalize the assistance previously given by the municipality on an ad hoc basis towards certain marginalized communities, and to involve the associations and marginalized communities in the work of the municipality with their own initiatives. The Centar Municipality, inter alia, is recommended to adopt the planning document and to implement activities for protection from discrimination against marginalized communities

The Coalition "All for Fair Trials"

The Monitoring of the Implementation of International Standards for a Free and Fair Trial

INTRODUCTION AND RESEARCH METHODOLOGY

The main mission of the Coalition relates to respect for human rights and freedoms, and particularly to the international standards for a fair trial.

The Coalition of All for Fair Trials monitors a number of cases in civil and in criminal procedures by qualified and independent monitors, and prepares an analysis on the implementation of international fair trial standards, with specific statistical indicators.

AIMS AND RESEARCH METHODOLOGY

The research implemented the methodologies of monitoring and a prepared instrument — a questionnaire.

The monitoring period ended with 54 cases (45 criminal and nine civil cases), and the monitoring was carried out by three trained monitors (one male and two female bachelors of law) who were present at hearings/sessions and directly gathered the data.

At each hearing, monitors filled out a questionnaire consisting of 82 questions, and which was divided into several chapters, in order to examine the implementation of laws in the court, the implementation of the international standards for a fair trial, as well as questions about the procedure of presenting the evidence, etc.

Standards for a fair and just trial in line with international standards, which were the subjects of observation in this project, relate to:

- The right to an independent and impartial tribunal (Art. 6 ECHR).
- The right to a trial within a reasonable time (ECHR) and a new development envisaged in the Law on Courts, introducing a new legal remedy — complaint before the Constitutional Court regarding protection of the right to trial within a reasonable time.
- Equality of arms, i.e., equal possibilities of parties to present their evidence, as well as equal treatment by the court. In criminal proceedings, the equality of arms is a safeguard for the right to defence. The principle requires sufficient time, as well as possibilities, to prepare a defence; it also includes the right to an attorney, the right to nominate and examine witnesses and the right of the accused to be present during the trial. This principle will be violated if the defendant does not receive information necessary for preparing their defence.
- The principle of a public trial before an independent tribunal (Art 6 ECHR).
- The presumption of innocence, envisaged in Article 6, paragraph 2 of the ECHR, in the Constitution of the RM and as the leading principle of the Law on Criminal Procedure.

FINAL CONCLUSIONS

- No final conclusion can be drawn regarding the issue of a fair and just trial, or trial within a reasonable time, because the monitoring encompassed cases that had already started and some of them did not end within the monitoring period.
- The courts were generally impartial and professional in performing their duties; there was no case with a motion to replace the judge.
- In three cases, the defence complained that it had not had access to all evidence materials and, in one case, the evidence was not given to them.
- For the most part, trials were public, i.e., 48 cases were tried publicly, while in six cases it was not noted if the trial was public. However, in 15 cases the venue and time for the trial were not publicly announced.
- It is concluded that the court respected the rights of the defendants, provided interpretation when needed and the defendants were asked whether they knew what they were accused of, but in only 15 of the cases were they informed about the possibility of receiving free legal aid. These figures appear to be very low, but if you consider their relative values, four out of 45 cases amounts to almost 10%, which is alarming.
- The main grievance about the civil cases is the postponing of hearings due to the absence of parties, which is, in turn, caused by the improper service of writs.

RECOMMENDATIONS

- The monitoring of cases should cover all stages in order to allow a complete evaluation of the application of fair trial and due process standards.
- Respect for the principle of the presumption of innocence, by incorporating a strengthened guarantee and control mechanism in the case of its violation, and mandatory training for the judges so that they will react when this right is violated.
- Publishing the venue and time for trials, in order to meet the standards for a fair trial.
- It is necessary for the court to use all legally prescribed mechanisms to ensure proper service. In addition, individuals who are serving time in a remand prison must be taken to court mandatorily, in order to avoid the postponing of hearings in procedures where trials should be prompt.
- Courts should verify whether the accused is financially capable of covering the costs of defence and instruct them about the possibility of free legal aid.
- Provision of sufficient time for the defence to prepare its case throughout the procedure, particularly in preparation for the main hearing, besides providing access to evidence and respecting equality of arms in the procedure.
- Introducing a legal remedy to restricted access to evidence, and a mechanism to dispute the translation, which is essential for exercise of the right to defence.

Association Center for Strategies and Development PACTIS in Prilep

System of alternative measures, with special emphasis on its implementation status in the Prilep Municipality

Within Network 23, the Association Center for Strategies and Development PACTIS from Prilep, implemented within a six-month period the project 'System of Alternative Measures', with a special emphasis on their implementation in the Prilep Municipality. The aim of the project was to devise an incentive to apply the non-prison measures that provide an equilibrium between the rights of the perpetrator, the rights of the victim and those of society, i.e., the notion that the sanction of prison is used as a last resort. Additionally, through the activities of the association, the aim was to raise the issue of alternative measures and the operation of the country's penitentiary system, besides informing professionals and the general public about the state of implementation of alternative measures, their roles and aims. The interest in researching this topic was triggered by the alarming situations in prisons in the Republic of Macedonia, where there are general problems of overcrowding, inhumane and degrading treatment of prisoners, decrepit material conditions, absence of any routine, lack of professional management, inadequate healthcare and lack of control and supervision. This situation is generally noted every year in the European Commission Progress Reports for the Republic of Macedonia, in Chapter 23 — Judiciary and Fundamental Rights. Therefore, of particular importance is the need to adequately implement alternative measures, as it will have a direct influence on the level of overcrowding and the improvement of prison conditions, besides the need to improve the efficiency of the judiciary regarding appropriate sentencing, which will attain the aim of penalizing misconduct and will result in an improved approach towards the penal policy aiming to reduce the crime rate in the Republic of Macedonia.

The research methodology included: interviews of institutions' representatives, surveys of the professional public, analysis of institutions' reports and analysis of jurisprudence.

From the research, we can conclude that there is a high rate of application of prison sentences, of which there is a high percentage of short-term prison sentences. Statistical data on the prison sentences pronounced and the percentage rate of short-term prison sentences appear in the table below. [4]

[4] Publications – „Perpetrators of Crimes" for 2007 – 2013, available at http://www.stat.gov.mk/PublikaciiPoOblast.aspx?id=43&rbrObl=6

Year	Total prison sentences	Prison sentence of up to six months	Percentage
2009	2808	1065	37.9%
2010	2596	693	26.6%
2011	3020	1230	40.7%
2012	2807	1206	42.9%
2013	3064	1148	37.4%

In addition to the overview showing an increase in the number of prison sentences pronounced, with a peak in 2012, there is a particularly worrying fact that in the three most recent years there is a high rate of pronounced short-term sentences, which amount to more than one third, i.e., up to 42.9%, of the total number of prison sentences. Such a situation indicates that the prisons are full of perpetrators of so-called petty crimes, exposed to all of the risks that a prison sentence entails.

Correspondingly, as a consequence of the aforementioned situation, in the RM we face a high number of recidivists:[5]

Year	Total perpetrators of crimes	Total sentenced to prison	Recidivists
2007	9639	2654	1825
2008	9503	2430	1561
2009	9801	2808	1830
2010	9169	2596	1945
2011	9810	3020	2093
2012	9042	2807	1239
2013	9539	3046	1328

Alternative measures are an expression of the modern tendency to restrict use of prison sentences, and of the treatment and reintegration of perpetrators outside of the prison. The new development from 2004, in line with the recommendations of the Council of Europe — Recommendation (92) 16 — on the European Rules on Community Sanctions and Measures and Recommendation (2000) 22, on improving the implementation of the European Rules on Community Sanctions and Measures, the Criminal Code of the Republic of Macedonia, introduced a system of alternative measures which envisages the following: a suspended sentence, a suspended sentence

[5] Publications – „Perpetrators of Crimes“ for 2007 – 2013, available at http://www.stat.gov.mk/PublikaciiPoOblast.aspx?id=43&rbrObl=6

with protective supervision, parole, community service, judicial reprimand and house arrest. In line with the Criminal Code, the special aim of the alternative measures is established as follows: to avoid sanctioning a criminally responsible perpetrator for smaller offenses when it is not necessary for the purposes of criminal law protection, and when it can be expected that the purpose of sentencing can be achieved with a warning, a threat of sanction (suspended sentence) or a measure of assistance and supervision of the perpetrator's conduct when at liberty.

The application of types of alternative sanctions over the period 2007–2013:[6]

	Suspended sentence	Conditional termination of the criminal procedure	Suspended sentence with protective supervision	Community work	Judicial reprimand	House arrest
2007	4712	0	0	1	214	0
2008	4877	0	0	0	182	0
2009	4698	0	0	0	180	0
2010	4138	0	0	0	145	0
2011	4241	0	0	0	153	0
2012	3463	0	0	2	130	0
2013	3804	0	0	0	110	0

The table with statistical data about the application of various types of alternative measures leads to a conclusion that despite the introduction of new alternative measures to the Criminal Code, the penal policy is still reduced to pronouncing admonitive and cautionary sanctions, as in the previous system, i.e., for the most part, the judges pronounce a suspended sentence and, to a smaller degree, a judicial reprimand.

The research led to the following conclusions; there was:

- An insufficient use and proposing of measures to improve conditions, in order to execute the alternative measures by the Directorate for the execution of sanctions.
- A failure to inform the public about the state of implementation of alternative measures — the Directorate is omitting this topic from its annual reports.
- An insufficient degree of professional assistance of other institutions on the part of the Directorate — there was only one workshop on the practical application of alternative sanctions.
- A lack of coordination between the Directorate and the Centers for Social Work.

[6] Publications – „Perpetrators of Crimes" for 2007 – 2013, available at http://www.stat.gov.mk/PublikaciiPoOblast.aspx?id=43&rbrObl=6

- Regarding the execution of the measure of community service in other cities (except for the city of Skopje), there are no memoranda of cooperation with public enterprises.
- A failure to take timely measures to procure equipment for carrying out electronic supervision in the house arrest measure.
- In the Center for Social Work in Prilep, the unit for execution of alternative measures was never established; nor are there officers tasked with the execution of alternative measures.
- The state of the implementation of various types of alternative measures did not improve, despite the adoption of secondary legislation in 2008, namely: the Rules on Conditions, Procedure and Modalities for Issuance and Revoking Licences to Execute Alternative Measures; the Rules on the Type and Conditions for Community Service and Rules on Professional and Instructive Supervision over Community Service Execution.
- In line with Article 497 of the Law on Criminal Procedure — the proposal to issue sentencing orders — the other types of alternative measures are not foreseen, with the exception of the suspended sentence, which leads to the conclusion that the role of public prosecutors is passive regarding the initiative of applying alternative measures.
- In one case only has the public prosecutor from the PPO Prilep proposed in his closing arguments the alternative measure of community service.
- In the Basic Court of Prilep, no sentenced individual has used the opportunity available to them in line with Article 58-b, paragraph 3 of the Criminal Code, that individuals sentenced to a fine of up to 90 days, or up to 1.800 euros in denars exchange value, or a prison sentence of up to three months, can have the sentence replaced with community work.

Following the analyses on how to improve the implementation of the system of alternative measures, we propose the following recommendations:

- Active contribution of the state and institutions towards greater promotion of the system of alternative measures, in order to achieve their full impact and to increase the seriousness and responsibility towards this type of sanction.
- The courts ought to be urged to use prison sentences as ultima ratio.
- Regular informing of institutions, particularly the Directorate for Execution of Sanctions, with special reports on the Execution of Alternative Measures.
- Necessary implementation of activities for the education of staff in the relevant institutions regarding the implementation of alternative measures.
- Creating technical prerequisites for the execution of alternative measures and for following the effects they cause.
- Creating a system categorizing the types of crimes and perpetrators of crimes, that pronounces when alternative measures will have the greatest impact, which will in turn encourage judges to pronounce them more often.

- Creating a system that will show all institutions, companies and organizations in which the sentenced individuals will be able to perform community service.
- A more active role of the Prosecutors Office in terms of proposing alternative measures, amending and extending Article 497 of the Law on Criminal Procedure, in order to provide an opportunity for other types of alternative sanctions to be included in the proposal for issuing a sentencing order.
- To extend the list of obligations that can be pronounced together with a suspended sentence with protective supervision, which will extend the scope of possibilities for various crimes and types of perpetrators.
- In some cases, for less severe crimes and if the victim is protected and compensated, the court could also sentence recidivists to community work, which would implement the principle of non-discrimination regarding the use of these measures.
- Transparent, efficient and timely implementation of the new system of introducing probation in the Republic of Macedonia, in line with the Action Plan foreseen, involving the public in the entire process and, at the same time, allowing strong monitoring by the non-governmental sector.

Association for Equal Opportunities "Equal Access" ("Ednakov Pristap")

"Analysis of the application of the Law on free legal aid, including a cost-benefit analysis of the costs of its implementation, with a special focus on the gender aspects".

The subject of the analysis is the application of the Law on free legal aid (LFLA — ZBPP) and the costs of its implementation, with a focus on the gender aspects. The analysis also contains a comparative overview of the countries from the region (Montenegro, Croatia and Slovenia). The cost-benefit analysis indicates potential ways that could bring about the Law's greater effectiveness.

The analysis' purpose is to provide insight into the right to FLA as a mechanism available to vulnerable categories of citizens, particularly women who face various obstacles and/or types of discrimination in exercising their rights before the courts and state institutions.

The field research was carried out in three municipalities: Kumanovo, Tetovo and Bitola, multi-ethnic cities characterized by a large number of applications for free legal aid in 2013 and 2014, and cities that have registered citizens' associations offering preliminary legal assistance. Semi-structured interviews were carried out with 21 individuals: 11 lawyers, eight judges and two representatives of the court's administration. Three focus groups took place in the three selected cities, with 35 citizens — potential applicants were female victims of family violence and individuals experiencing social risks. A survey was also carried out with 151 citizens, on the level of awareness and access of citizens to FLA in the three selected cities. Of the survey's participants, 41% were male and 59% were female.

A cost-benefit analysis was made, as an approach to making economic decisions in order to evaluate the implementation of the LFLA.

The cost-benefit analysis used financial information with some restrictions and took into consideration only the direct costs of the Ministry of Justice in the implementation of the LFLA (attorney's fee, compensation for citizens' associations offering preliminary legal assistance, days of free legal aid and publication of a plan in the media).

The analysis gave rise to the following conclusions:

- The positive influence of the implementation of the LFLA on the individual level is indisputable; on the community level, however, the access to exercising the right to FLA is limited because information that it exists is also limited.
- The LFLA does not provide citizens with equal access to the institutions, nor does it provide effective legal assistance, due to lengthy procedures.
- There is a lack of confidence on the part of the courts regarding representation by attorneys.
- Attorneys are facing problems in collecting payment for the services they provide, which influences the quality of services given.
- The level of cooperation and coordination among all entities involved in the

FLA system is unsatisfactory.

- Insufficient education and lack of sensitivity can be observed in staff in regional units of ministries, courts and attorneys in charge of implementing FLA.
- The number of filed and approved applications for FLA is small because it does not correspond to the needs of the potential applicants.
- Women benefit more in exercising this right, which is indicative of the position they occupy in society.

The following recommendations are made:

- Improvements to the coordination and cooperation between the entities involved in the FLA system.
- Intensified promotion of the LFLA in order to raise the awareness of citizens regarding the availability and of the modalities, conditions and procedures to exercise this right, as well as the benefits that the law offers to providers of FLA.
- More efficiency and transparency in the provision of access to justice for socially vulnerable groups, with a special focus on women.
- More training is needed for the staff of the regional offices, judges, attorneys and representatives of citizens' associations on how to implement the LFLA.
- Women ought to be encouraged and motivated to use the right to FLA for both themselves and their children.
- More funds ought to be provided in the budget for the implementation of the LFLA.
- Development of an initiative to amend the LFLA, aiming to simplify the procedure for exercising the right to FLA.

Conclusions and recommendations address the relevant nstitutions, in order to build a more efficient system where citizens would be able to fully exercise their right to equal access to justice, and find active and positive solutions, thus improving the LFLA.

The Association of Plostad Sloboda (Freedom Square) — Association for activism, theory and art, Skopje

ПЛОШТАД
СЛОБОДА

New streets in Skopje and fundamental rights and freedoms in the EU Treaty

Public space regulated by public institutions is a physical embodiment of the public policies they implement. Local and national legal acts regulating street reconstruction promote, to a certain extent, public policies in line with the Treaty on Fundamental Values and Freedoms of the European Union; the situation in reality, however, is completely different.

The prevailing practice of public institutions when reconstructing streets is to be arbitrary or to have only marginal respect for the legal and regulatory provisions that provide most protection to the vulnerable categories of participants in traffic and the environment. Whenever a spectrum of standards is prescribed, public institutions, as a rule, adhere to the minimum, particularly when it comes to providing physical space, protection or a measure for the integration of pedestrians and vulnerable categories of participants in traffic.

Plostad Sloboda carried out field research of six streets in three Skopje municipalities in order to examine the policies and practices deployed during their reconstruction, and evaluate them from the aspect of citizens' fundamental rights — particularly those of the most endangered participants in traffic. It led to the following conclusions:

- When reconstructing the streets in Skopje, little or no consideration is taken of the traffic's participants who do not drive motor vehicles, and their safety is generally also at risk on the newly renovated streets;
- The safety of all participants in traffic, and particularly of the vulnerable categories, is at great risk;
- When planning the reconstruction of Skopje streets, little or no care is taken of the rights, dignity and integration of the elderly, disabled or people needing mobility assistance, nor of the protection and sustainability of the environment;
- When planning and reconstructing the Skopje streets, interventions are made to the existing situation, without anticipating the future or developing the needs and habits of citizens;
- There is no distinction between types of street users, nor is there a method for integrating different types of traffic that use the streets (dynamic-static, pedestrian-bicycle);
- Street renovation in the City of Skopje is usually done at the expense of non-drivers, and for the benefit of automobile traffic;
- Newly renovated streets motivate drivers to drive at greater speeds than

before;

- The new drop-off edges, access ramps, crossings, drains and urban and advertising equipment are not standardized, and cause awkward obstacles for the streets' users who do not drive cars;
- The newly introduced parking regime is oriented towards profit-generation, and not towards the protection of non-drivers or enforcing order on the traffic;
- Problems with parking and the revolt of citizens are also caused by the unclear and overlapping competencies between the City of Skopje and other municipalities;
- Pedestrians are usually forced to walk down car lanes or to turn away from their planned route due to the presence of parked cars;
- The supply of goods to the local shops is done at all times of the day, which is one of the biggest obstacles to the unobstructed traffic flow;
- There are no efforts to protect and develop the urban green environment; on the contrary, for the purposes of expanding car lanes or pedestrian pavements, the existing tall greenery is destroyed;
- Citizens, local businesses and institutions are not consulted about their needs and comments when new streets are planned.

Many of the problems have a simple solution and, in the existing political situation in Macedonia, their resolution often depend on the willingness of the public-office holders or on the public-tender offer that is the most market oriented.

Specific recommendations based on the findings of this research are:

- Synchronization of the corresponding legislative framework with European legislation, particularly Chapter 23, the Treaty on Fundamental Rights and Freedoms of the European Union;
- Implementation of the reformed legislation;
- Employment of highly educated staff in the areas of traffic engineering, sociology and environment within the existing public institutions;
- Analysis and application of good examples and practices from domestic and foreign policies;
- Field research and analysis of the ways to use the space that consider the habits and needs of citizens from the local community, before new public policies are devised;
- Treating the renovated streets as part of the traffic system, and not only in terms of their physical boundaries;
- Providing quality public transportation in order to discourage the use of private cars;
- Introducing special traffic regimes (for instance, odd-even licence plates, car-sharing, zoning, etc.);
- Introducing a more restrictive parking system to discourage usage of private cars;
- Introducing a local traffic regime for delivery, taking children to and from school, etc.;
- Implementation and a strict respect for the legislative framework regulating the urban green areas and urban environment.

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