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Checks and balances in the Republic of Macedonia how to make themwork?

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EFFECTIVE ASSEMBLY, STRONG DEMOCRACY:

Vision for improving the system of checks and balances in the Republic of Macedonia

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IMPROVING CHECKS AND BALANCES IN THE REPUBLIC OF MACEDONIA:

JUDICIAL CONTROL OF EXECUTIVE

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Introduction

In Parliamentary democracy, decisions are adopted by majority. The ruling majority has a 4-year term of office to claim responsibility for the adopted decisions before a Court or the citizens – in elections. In most cases, the adopted decisions can be withdrawn and the country may take a different course with a new Parliamentary majority. Some decisions can be changed and some amended. The decisions that have wider significance for the public, on the other hand, can be adopted by means of compromise between the different political stakeholders (the political parties). But there is a group of polarizing political questions affected by moral outlook, on which compromise is essentially impossible. Moral standpoints derive from religion, legacy, and milieu. The mediation of such questions is truly difficult. They provoke strong emotions and deep segregation in society. Issues such as female reproductive rights, the right to choose dignified death for the terminally sick persons (euthanasia), marriage equality and the like are included here.

One of the models whose purpose is to establish mediation between the extreme positions and disable the tyranny of the majority[1] is the concept of separation of the powers into legislative, judiciary and executive. In this manner, the different branches of power are mutually controlled. In order to prevent one of the powers from becoming dominant, the system of *checks and balances* is introduced. This instrument is particularly important in the work of the Assembly because, in parliamentary democracy, this institution is crucial for the supervision over the whole country. In order to prevent the parliamentary majority from having unlimited power, an effective system of checks and balances is necessary. According to established expert opinion, this is most adequately achieved by a Bicameral Parliament, especially when the two houses are controlled by different parties. Even if one party has control over the two houses, the House of Lords, most often, is directly accountable to its own constituency which is why the interests of all citizens in the constituency, rather than party interests, are of greater significance for the elected representatives. Still, the Bicameral Parliament is being increasingly rejected because it is, above all, expensive. Unicameral Parliaments, however, can also effectively mediate opposing standpoints in line with an adequate legal framework and political culture.

Establishing effective internal system of checks and balances will provide independence to Parliament. A truly independent Parliament will be more capable of implementing checks and balances over the executive power. In parliamentary democracy, the majority elects the government. If the ruling parties have unrestrained control over parliamentary work, there is no reason to expect that they will restrain themselves in the executive one.

[1] According to the Freedom House Report for 2015, Macedonia is included in the countries which are partially free, accessible on https://freedomhouse.org/report/freedom-world/2015/macedonia, retrieved on January 11, 2015.

The need for an effective system of checks and balances is even greater in The Republic of Macedonia because of the incomplete transition to liberal democracy with rule of law and functional market economy. According to most reports, The Republic of Macedonia falls in the line of hybrid regimes.[2] These are a type of regimes all liberal democracy institutions have, but which essentially lacks the fundamental rights and freedoms by which an authoritarian type of rule of law is established.[3] The mechanisms for excessive legal regulation and administrative charging are characteristic of the hybrid regime in The Republic of Macedonia, enabling, in a certain segment of certain domains, the executive power to circumvent the judiciary power, i.e., to systematically take over its operations. Furthermore, by turning the Assembly into a 'voting machine', the executive power takes over the role of the legislative one. The role of the Assembly as prescribed by the Constitution, as several indicators show, has been violated by the big number of laws adopted at summary proceedings. The numerous explicit statements given by the Prime Minister and the ministers that certain laws would be promulgated in the Assembly before any kind of a debate and session take place, clearly point to the executive power's supervision over the legislative one, instead of vice versa. A most escalating example of this is the Prime Minister's statement in December 2014 that the new Law on Higher Education would be adopted as a response to and sanction against the mass protests organized by the Student Plenum. The Government even rescheduled the Assembly session which was later stipulated to show its determination to promulgate the law.[4]

Despite the hybrid regime, The Republic of Macedonia also faces the problem of systemic corruption. The phenomenon captured country[5] represents a high level of systematic corruption in which a certain entity on the market captures the country through close connections to political elites and ensures favourable profit conditions, especially in public-private partnerships such as tenders. "The capturing" may be performed by the political elites themselves. Strong indications of captured state institutions exist in the Skopje 2014 project, in which enormous amounts of public money ended up in the hands of several companies.[6] On the other hand, numerous reports[7] and surveillance communications suggest that high state officials have misused the state institutions for personal gain.

The stagnating development of democratic institutions, the rule of law and the functional market economy indicate a lack of political willingness for this. This additionally reflects the need of effective mechanisms for checks and balances. The focus of this research is placed on the system of checks and balances in the work of the Assembly.

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[2] According to the Freedom House Report for 2015, Macedonia is included in the countries which are partially free, accessible on https://freedomhouse.org/report/freedom-world/2015/macedonia, retrieved on January 11, 2015.
[3] Steven Levitsky and Lucan Way, "The Rise of Competitive Authoritarianism," Journal of Democracy 13, no. 2 (2002): 51–65, doi:10.1353/jod.2002.0026.
[4] The Government adopted the State Exam: the Draft-Law in the Assembly for voting"(Plusinfo, December 21, 2014), accessible at http://plusinfo.mk/vest/8746/vladata-go-usvoi-drzavniot-ispit-predlog-zakonot-vo-sobranie-na-glasanje, retrieved on December 7, 2015.
[5] "In the capture economy, public officials and politicians privately sell underprovided public goods and a range of rent-generating advantages 'a la carte' to individual firms. In the capture economy the 'captor' firm derives significant private benefits at an enormous social cost to the overall enterprise sector—whose overall growth rate over a three-year period is reduced by about ten percentage points." Види повеќе: Hellman, Joel S., Geraint Jones, and Daniel Kaufmann. "Seize the State, Seize the Day: State Capture, Corruption and Influence in Transition." SSRN Scholarly Paper. Rochester, NY: Social Science Research Network, September 1, 2000. http://papers.ssrn.com/abstract=240555.
[6] „Skopje 2014 Uncovered" (Prizma, December 26, 2015), accessible at http://skopje2014.prizma.birn.eu.com/, retrieved on January 11, 2016.
[7] European Commission, "Urgent Reform Priorities for the former Yugoslav Republic of Macedonia" (Brussels, June 2015), accessible at: http://ec.europa.eu/enlargement/news_corner/news/news-files/20150619_urgent_reform_priorities.pdf, retrieved on January, 2016.

Goals and methodology of the study

The idea of this research is point to, via different aspects, the democratic mechanisms and processes (election model, intra-party democracy, the Human Rights Charter, voting mechanisms and political culture) containing weaknesses and prospects for promoting the checks and balances system, in order for the Assembly to supervise the Government.

The purpose of this research is to show how the system of checks and balances works in The Republic of Macedonia by analysing the law adoption process and the way existing mechanisms of checks and balances work in the Assembly in the 2008-2015 period. This study consists of desk research and empirical data research (survey), giving a preview and analysis of the law adoption process and of how the mechanisms for checks and balances work in the Assembly of The Republic of Macedonia.

Research questions:

- Which systematic mechanisms and processes influence the work of the system of checks and balances?
- What are the mechanisms the Assembly has at its disposal to ensure better system of checks and balances ?
- How does the executive power, by adopting laws, influence legislative power?
- How can a better system of checks and balances and law adoption process be ensured?

Analysis of the political context and how it influences the system of checks and balances

Political context

Political dialogue remains a challenge for the EU Accession process. In 2013 and 2014, big problems emerged within the already sensitive dialogue, and in 2015, they resulted in an escalating political crisis and in signing the Przhino Agreement. This Agreement resulted from the Macedonian polarized political actors' powerlessness to find common language to overcome the political crisis. Problematic election rounds the previous year had disabled normal dialogue in the work of the state institutions, most notably, in that of the Assembly.

Big political shocks and hostile political rhetoric between the Government and the opposition followed the incident on December 24, 2012. During the budget-adopting session the opposition MPs and journalists were thrown out of the Assembly by force. The opposition decided to boycott the Assembly until political Agreement was reached on March 1, 2013.

Early parliamentary elections were held on April 27, 2014, characterized by tense atmosphere, irregularities and pressure, which were noted in an OSCE-ODIHR Report.[8] The ruling VMRO–DPMNE party received 42.97% confidence for a mandate. The opposition didn't recognize the elections and announced that it would not participate in the work of the Assembly in such „undemocratic conditions.[9] The international community led by the Directorate for European Commission Enlargement tried to resolve the political crisis but the elections were declared unsuccessful. [10]The opposition didn't show up at the Assembly and the only opposition representatives were three MPs who refused to return their mandates: Roza Topuzova Karevska (LDP), Ljubica Buralieva and Solza Grcheva (both endorsed by SDSM, but later banned from it.)[11] Thus, the Assembly faced parliamentary crisis since the beginning of its new term and could not represent all citizens that voted for the opposition in the decision-making process. Nevertheless, the Assembly continued to perform its legal duties technically while the remaining roles were affected by the deep political crisis. In accordance with the Przhino Agreement, the opposition returned to the Assembly on September 1, 2015.[12]

During 2014 and in early 2015, in the middle of the crisis, the ruling coalition started a process of constitutional amendments without public debate and without the opposition in Parliament. Two of the proposed amendments were controversial. The first one was connected to human rights and referred to the definition of marital and civil partnership as a union between „one man and one woman."[13] This question belongs to the domain of the aforementioned 'moral issues'. The other proposed amendment stipulated financial zones with "their own legal and financial regulation" to be made. This raised the question whether the amendment would provide financial and legal grey zones for suspicious capital and money laundering. The details of these proposals were not publicly explained, nor was there public debate. The opposition boycotting the Assembly did not influence the Government in its decision to implement its idea of constitutional amendments. The amendments were stopped after the political crisis escalated when the surveillance materials were published. This episode additionally emphasizes the need for creating a system of checks and balances which would hinder amending the Constitution without wider political and societal consensus and, at the same time, would prevent amending the Constitution in case of political crisis and absence of the opposition from Parliament, because such an amendment, even if it were formally and legally valid, would be illegitimate.

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[8] OSCE Report on the premature parliamentary and presidentially elections in 2014 explicitly indicates the „deletion of the boundaries between the party and the state" regarding the old-fashioning of the Public service, but also the usage of state resources for party goals. See: International Election Observation Mission (IEOM): The former Yugoslav Republic of Macedonia Presidential and Early Parliamentary Elections, (27 April 2014), accessible at thttp://www.osce.org/odihr/elections/fyrom/118078?download=true, retrieved on January 12, 2016.

[9] Katerina Blazevska, „The President of SDSM, Zoran Zaev, announced that SDSM does not acknowledge the elections", Deutsche Welle, 27 April 2014), accessible at: http://www.dw.de/-сдсм-не-ги-признава-изборите-и-бара-техничка-влада-да-спроведе-нови /a-17594858?maca=maz-rss-maz-pol_makedonija_timemk-4727-xml-mrss, accessed on 27 June 2014., retrieved on December 7, 2015.

[10] „"Gruevski doesn't want, Zaev demands technical government, no one said if they will continue to talk," MKD, (June 24, 2014), accessible at :http://www.mkd.mk/makedonija/partii/gruevski-ne-saka-zaev-bara-tehnichka-vlada-nikoj-ne-kazha-dali-kje-prodolzhat-da#1, retrieved on December 7, 2015.

[11] Grcheva and Buralieva are excommunicated from SDSM (Radio Slobodna Evropa, 21.08.2014) accessible at: http://www.makdenes.org/archive/news/20140821/428/428.html?id=26542436, retrieved on 12.12.2015

[12] „„The opposition returned at the Assembly" (The Voice of America, September 1, 2015) accessible at: http://mk.voanews.com/content/article/2940661.html, retrieved on December 7, 2015.

[13] „„The Government proposes eight constitutional amendments" (MKD, June 28, 2014) accessible at: http://www.mkd.mk/makedonija/vladata-predlaga-osum-ustavni-izmeni, retrieved on December 7, 2015.

Democratic mechanisms and processes influencing the system of checks and balances

For the sake of this research, we shall focus on several elements that contribute to effective mediation of the legislative power.

Voting mechanisms play a great role in the work of Parliament. Mechanisms protecting the will of the parliamentary minority are crucial to greater mediation opportunity. In this way, the „tyranny of the majority" would be avoided as it is a frequent phenomenon in parliamentary systems. The most efficient model of checks and balances in this context is the Bicameral Parliament.[14] However, without Bicameral Parliament the Unicameral Parliament, if appropriately designed, can play this role.

Mechanisms emulating a Bicameral Parliament were introduced by the Ohrid Framework Agreement to obtain checks and balances. The purpose of such mechanisms was to protect minority ethnic groups from laws referring to cultural heritage and language, promulgated by the ethnical majority.[15] More precisely, Article 69/2 states:

Regarding laws directly affecting the culture, use of languages, education, personal documents and usage of symbols, the Assembly shall adopt decisions by minority vote of the present MPs, when there has to be minority votes of the present MPs who claim to belong to communities not belonging to the majority population in Macedonia. In case of dispute within the Assembly regarding the application of this provision, the Committee on Interethnic Relations shall have exclusive jurisdiction..

The cases in which this mechanism – publicly known as "Badinter Majority" – is activated and resolved by the Interethnic Relations Commission is pursuant to Article 78 of the OFA. This mechanism has, so far, contributed to reducing ethnic tensions by increasing inter-ethnic confidence. This experience could be also deepened so as to mediate between extreme standpoints of the parliamentary opposition and the Government.

A positive global example is Article 42 of the Danish Constitution, adopted in 1953, particularly referring to the abolition of the House of Lords (Landstinget). Under this Article, when voting in Parliament (Folketinget), „one third of the members of Parliament (Folketinget) can, within three weeks from the day the legal provision was adopted, ask the President of Parliament that the legal provision be put to a referendum."[16] The cases in which this provision is valid are further specified. The effect of this provision is that „the opposition is in the same position as it was in the years before 1936 (when different parties had controlled both houses). The provision does not provide the minority with absolute veto. The minority can utilise the provision if they are convinced that their position is similar to the position of the average voter rather than to that of the Government."[17] Thus, identical situation arises as in an existing Bicameral Parliament. A number of post-socialist countries have followed this example in introducing similar mechanisms.[18]

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[14] Over the past years, the Democratic Party of the Albanians (DPA) has publicly proposed a Bicameral Parliament several times, in order to mediate between the largest ethnic communities in The Republic of Macedonia. This idea was brought to the fore in 2006 by VMRO – Narodna by their motion to introduce a Senate. The main argument of their opponents regarding this initiative, however, were the additional costs this would cause.

[15] „Ohrid Framework Agreement"(August 13, 2001), accessible at: http://www.siofa.gov.mk/data/file/Ramkoven_dogovor_mk.pdf, retrieved on January 12, 2016.

[16] Quoted in: Qvortrup, Mads. "Checks and Balances in a Unicameral Parliament: The Case of the Danish Minority Referendum." The Journal of Legislative Studies 6, no. 3 (September 1, 2000): 15–28. doi:10.1080/13572330008420629, page 17.

[17] Qvortrup, Mads. "Checks and Balances in a Unicameral Parliament: The Case of the Danish Minority Referendum." The Journal of Legislative Studies 6, no. 3 (September 1, 2000): 15–28. doi:10.1080/13572330008420629, стр. 25.

[18] Qvortrup, Mads. "Checks and Balances in a Unicameral Parliament: The Case of the Danish Minority Referendum." The Journal of Legislative Studies 6, no. 3 (September 1, 2000): 15–28. doi:10.1080/13572330008420629, стр. 26.

The Election Model is one of the most important aspects of the parliamentary system which has a share in enabling or disabling the tyranny of the majority. The Republic of Macedonia utilizes the D'Hondt proportional system of closed lists and its territory is divided into six constituencies. Citizens vote for parties and the parties themselves nominate their candidates. This model favours big parties and coalitions rather than small ones. Thus, voting diversity chances in MP groups and eventual compromises are minimized because the MPs are accountable to the party and not directly to their voters.

A parallel to the personal responsibility ambiguity could be also drawn with the MPs' personal responsibility in the law-adopting process and with at their work as members of commissions and supervisory bodies of the Assembly. The system of parliamentary democracy implies democratic form of rule, in which Government is formed by the party (or coalition of parties) with the largest representation in Parliament. A proportional election model is used in The Republic of Macedonia. According to this model, the candidates or political parties that won the highest number of votes participate in delegating mandates. When a citizen votes for a candidate list (political party list, coalition list, or an independent candidate list), the candidates receive mandates according to the number of votes their proposed list has won.[19] This means that voters do not have the opportunity to elect individual candidates. It is the party or coalition that decides which candidates and in what order may enter Parliament, if sufficient votes have been won. By not getting elected as individuals but as members of a party, the MPs' personal responsibility in the decision-making process, in voting and in performing their duties at the Assembly is decreasing. Personal responsibility shifts to party responsibility.

The idea of open lists is not new in Macedonia. It originated in the civil sector[20] and was supported by the minority parties but there is no interest on the part of majority political parties.[21] This system has been applied in 15 EU-member states (Sweden, Finland, Denmark, Belgium, The Netherlands, Luxemburg, Austria, Czech Republic, Slovakia, Poland, Estonia, Slovenia, Greece, Cyprus), in other European countries like Switzerland, Norway, Iceland and in other regional countries (Kosovo, Bosnia and Herzegovina).[22]

The drawback of this voting type is the uncertain percentage of women who would qualify as members of Parliament. Even though, under open lists, women are likely to win more than 30% of Parliament seats, this could be problematic in a conservative or patriarchal setting.[23] Another drawback is the possible weakening of the connections the MPs have with the citizens and the required turn-out.[24] These drawbacks can be overcome or alleviated by legal amendments to the Election Code. What is important is that such system, which directly hits the Assembly's and the MPs' "weak spot", i.e., their personal responsibility along with the detected drawbacks in the checks and balances, could be overcome.

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[19] „„Active for a democracy", accessible at: http://www.prvpatglasam.org.mk/?page_id=77, retrieved on November 30, 2015.
[20] MOST initiates voting to open lists (Telma, August 17, 2015) accessible at: http://www.telma.com.mk/vesti/most-zagovara-glasanje-na-otvoreni-listi, retrieved on December 11, 2015
[21] „"The big parties run away from open lists" (Radio Slobodna Evropa, August 20, 2015), accessible at: http://www.makdenes.org/content/article/27198056.html, retrieved on December 9, 2015.
[22] „„Comparative experiences" accessible at: http://otvorenilisti.org/?page_id=112, retrieved on November 31, 2015.
[23] „„Open election lists and shooting lists" (Utrinski vesnik, March 23, 2010) accessible at :http://www.utrinski.mk/?ItemID=745B074380631046 90C5F6A654529006, retrieved on December 11, 2015.
[24] „„The big parties run away from open lists"(Radio Slobodna Evropa. August 20, 2015), accessible at: http://www.makdenes.org/content/article/27198056.html, retrieved on December 11, 2015.

Intra-Party Democracy or, to be more precise, the absence thereof in majority parties, further polarizes the political scene. Power is concentrated in the leadership of the political parties which is why any disobedience toward "the party line" is punishable. Electing and re-electing MPs depend on receiving support from their leadership and not from the base. Therefore, the MPs are obedient to their party leadership instead of doing so to their constituency. In such conditions, the prospects of disobedience and compromise, which are favourable to the citizens, are minimal. On the other hand, the existing checks and balances mechanisms in the Assembly are essentially inapplicable if the MPs are accountable to their party leadership, rather than to their constituency.

Political party regulation remains a controversial topic. In Europe, political parties have been traditionally regarded as private organizations in which citizens can freely participate and self-organize. The legal regulation of their work refers to general organizational aspects and financing. In recent years, party regulation has been increasingly threatened to become excessive regulation. The Venice Commission of the Council of Europe delivers recommendations for good practices[25] for the work of the political parties.

The demand of Intra-Party Democracy in the political parties is explicitly contained in the German Constitution of 1949, in Article 21.1:
The political parties shall participate in shaping the political will of the people. They can be formed freely. *Their internal organization has to be in accordance with democratic principles* (note added).[26]

In 1952, the German Constitutional Court banned the Neo-Nazi party (Sozialistische Reichspartei) with the legal explanation that there should be a logical connection between the concept of free democratic order and the democratic principles of the party's organization.[27] A number of countries followed this example and their Constitutions explicitly incorporated the requirement for democratic organization of their parties (Spain 1978, Portugal 1997, Croatia 2000). In some countries, this requirement is explicitly stated in their Constitution (Greece, Italy, France, Lithuania, Bulgaria and Poland).[28]

A more detailed regulation of the political parties began under the 1967 German Law on Parties, and later a number of countries followed Germany's suit and promulgated similar laws.[29] This particularly refers to Eastern European countries, but the section on Internal Democracy is missing in their laws. Generally, countries with a long-established tradition (Austria, Finland, Norway, and Great Britain)[30] pay more attention to the external regulation of the political parties' activities. The countries of the "second" and "third" democratization wave – Latvia, Portugal, Estonia, Lithuania, Spain, Romania – along with Germany, have paid more attention to their legislation regarding intra-party regulation. These countries' laws on political parties have also paid more attention to nominating candidates during election and to electing political bodies by the party membership.

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[25] "Guidelines on Political Party Regulation" -Adopted by the Venice Commission at its 84th Plenary Session Venice, 15–16 October 2010, OSCE- OIDHR, 2011, достапно на: https://www.osce.org/odihr/77812?download=true, пристапено на 12 јануари 2016 г.
[26] Cited in: Ingrid, van Biezen, and Daniela Romée Piccio. "Shaping Intra-Party Democracy: On the Legal Regulation of Internal Party Organizations." in The Challenges of Intra-Party Democracy. Oxford: Oxford University Press, 2013, p. 32
[27] Schneider, Carl J. "Political Parties and the German Basic Law of 1949." The Western Political Quarterly 10, no. 3 (1957): 527–40. doi:10.2307/443534, стр. 536.
[28] Ingrid, van Biezen, and Daniela Romée Piccio. "Shaping Intra-Party Democracy: On the Legal Regulation of Internal Party Organizations." во The Challenges of Intra-Party Democracy. Oxford: Oxford University Press, 2013, стр. 33.
[29] Kasapović, Mirjana. "Nominating Procedures in Democratic Polities." Politička Misao, 38 (5), (2001), стр. 7.
[30] Ingrid, van Biezen, and Daniela Romée Piccio. "Shaping Intra-Party Democracy: On the Legal Regulation of Internal Party Organizations." во The Challenges of Intra-Party Democracy. Oxford: Oxford University Press, 2013, стр. 36.

In the Macedonian Law on Political Parties,[31] internal democracy is not explicitly regulated. Article 2, paragraph 2 states that „political parties shall achieve their goals by democratic formation and by expressing their political will, participating in elections and in other democratic manner." This law only pays attention to gender equality in Article 4: „ In their activities, the political parties shall endeavour to fulfil the principle of gender equality in allocating party functions".[32] Furthermore, under Article 6, political parties are "guaranteed freedom and independence in acting and determining their internal structure, their goals and in choosing their democratic forms and methods of action." Hence, focus is placed on democratic methods of action and not on internal organization.

Existing checks and balances mechanisms in the Assembly of The Republic of Macedonia

Pursuant to the Constitution of The Republic of Macedonia, state power is separated into legislative, executive and judiciary power, through the five stakeholders: The Assembly, the President, the Judiciary, the Government and the Public Prosecution's Office.[33] These bodies supervise one another through mechanisms of checks and balances. The Assembly, by the number of its competences, dominates as compared to the rest of the bodies, both as the citizens' representative body and as a legislative power-holder. Therefore, a functional checks and balances system and an ensured independence of its work, compared to the rest of the types of power, are of crucial significance.
The Macedonian Constitution, The Law on the Assembly of The Republic of Macedonia[34] and the Assembly's Rules of Procedure[35] provide the Assembly with a wide spectrum of supervision mechanisms over the Government. The various supervision mechanisms specify different degrees intervention or influence the Assembly exerts on Government decisions. However, research conducted in 2012 on how these mechanisms work indicated that part of the provisions, which laid down these mechanisms, were not applied in practice.[36]

In EU Reports and, largely, in the recommendations of the Reinhard Priebe report, criticism was directed at Supervision Bodies, i.e. at the Commission Supervising the Security and Counter-Intelligence Bureau (UBK) and the Intelligence Agency, particularly referring to leaked surveillance communications in the spring of 2015.[37]
Following is a description of the mechanisms available to MPs along with the perceived weaknesses in their implementation.

Parliamentary Questions are one of the basic mechanisms enabling asking the Government relevant questions. Parliamentary questions are also the right and duty of the Assembly members and, therefore, may also be an indicator of democratization of the political parties and of the sovereignty and integrity of the MPs. A special session for asking parliamentary questions is organized every last Thursday of the month.

[31] Law on Political Parties, "Official Gazette of The Republic of Macedonia" No, 76/04
[32] Law on Political Parties, "Official Gazette of The Republic of Macedonia" No, 76/04 from 27/10/20
[33] Constitution of The Republic of Macedonia", Official Gazette of RM. No, 52/91.
This year, by a special law, a new body , Special Public Prosecutor, has been introduced, with the purpose to lead the investigation of the wiretapping case...Protocol toward the Agreement of June 2, 2015 (integral) (Alsat, July 15, 2015), accessible at: http://alsat.mk/News/204276/protokol-kon-dogovorot-od-2-juni-2015-integralno, retrieved on January 12, 2015.
[34] Law on the Assembly of The Republic of Macedonia, Official Gazette of RM, No. 104/09.
[35] „Rules of Procedure of the Assembly of The Republic of Macedonia (consolidated text),"accessible at http://www.sobranie.mk/delovnik-na-sobranieto-na-republika-makedonija-precisten-tekst.nspx. retrieved on January 10, 2016.
[36] Neda Korunovska Avramovska, „Parliamentary control over the Government of The Republic of Macedonia ", Open Society Foundation – Macedonia, Skopje, 2012.
[37] European Commission, "Urgent Reform Priorities for the former Yugoslav Republic of Macedonia" (Brussel, June 2015), достапно на: http://ec.europa.eu/enlargement/news_corner/news/news-files/20150619_urgent_reform_priorities.pdf, пристапено на 11 јануари 2016 г

Even though the opposition has the right to ask the Government twice the amount of questions, under the latest amendments to the Assembly Rules of Procedure in 2010, in the last two years 2014-2016, the opposition has not used this right in the specially scheduled sessions. Namely, the opposition has asked only 25% the overall amount of parliamentary questions in the aforementioned period. This results from the absence of the largest opposition party, SDSM, from the Assembly.[38] If the period after SDSM has returned to the Assembly in September 2015 is considered, it will be noticed that the number of questions asked by the opposition (55%) and by the ruling majority (45%) is almost even.

Inquiry Commissions provide the Assembly with ex-post supervision over Government and other institutions under Assembly jurisdiction. This mechanism has proved ineffective in practice. The problems, delays and suspicions around the Inquiry Commission on surveillance communications was the most recent example to indicate that even MPs do not trust this mechanism for supervising the executive power.[39]

Interpellation is the mechanism enabling space for wider discussion, providing the public with access to the opposition MPs' reasons for dissatisfaction, and the majority MPs' contra-arguments. Thus, Government accountability is increasing. Given that MPs are held accountable only to party leadership, however, this situation is insufficiently effective because the existing system (election model, lack of intra-party democracy) is designed so that the MPs should be controlled by party leadership. The MPs' working autonomy is essential to the proper functioning of this mechanism.

Public discussion and debates are an effective mechanism for influencing the law-adoption process. However, these mechanisms still have not been satisfactorily exploited.[40] The deadlines for submitting opinions and proposals are short and result in discouraging the concerned stakeholders (e.g., the civil sector or professional associations etc.) from actively taking these opportunities. Moreover, citizens are insufficiently informed of opportunities and do not make use of public debates.

Supervision Debates enable and facilitate the supervision role of the Assembly in the executive power's law and policy implementation. It is problematic that the opportunity to make a conclusion following the supervision debates is rarely taken; this would otherwise give the Government specific instructions to overcome any perceived problems. In implementing this mechanism, it is found that the municipalities, citizens, organizations and institutions fail to take the opportunity to initiate the implementation of a supervision debate.[41]

The analysis done so far indicates that the political supervision mechanisms do not work. Even when applied, they do not achieve their full effect because the Assembly lacks essential democratic dialogue. This results from the poorly democratised political parties, which in turn results in the MPs acting in the Assembly in line with intra-party decisions instead of being guided by the needs and demands of the citizens they represent, or by their own attitudes and moral reasoning.

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[38] In the Assembly in the period May 2014- September 2015, the opposition was represented by the MPs of DPA (7), LDP (1) and SDSM (2).
[39] „Inquiry Commission in order not to solve the problem" (Radio Slobodna Evropa, December 29, 2015), accessible at http://www.makdenes.org/content/article/27455386.html, retrieved on January 12, 2016
[40] Neda Korunovska Avramovska, „Parliamentary control over the Government of The Republic of Macedonia ", Open Society Foundation – Macedonia, Skopje, 2012, 85.
[41] Ibid., 88.

Supervising the national budget planning and spending. This mechanism refers to the control over public spending done by formal consent of the Assembly. Existing research has noted the need to strengthen the civil servant capacities in the Assembly to conduct financial supervision. The research findings reveal: "Additionally, it is problematic that the budget has no obligation to state overdue receivables and outstanding payables. This means that the former have not been recorded in any financial report even though they form the basis for creating the state's macroeconomic policy and they form the basis for drawing up the next year's budget. Moreover, the Assembly is excluded from other budgetary cycle phases, e.g., from drawing up the budget phase programming."[42]

Tensions between the opposition and the ruling coalition, particularly regarding the budget culminated in the events on December 24, 2012. This marked the beginning of the political crisis and pointed to serious weaknesses in the political dialogue, which made the existing mechanisms for budget control completely dysfunctional.

Controlling the state security bodies. Wiretapped communications of high state officials that the opposition SDSM party leaked in 2015 pointed to serious flaws in the work of the security bodies. Although the VMRO-DPMNE-led ruling coalition first accused "foreign intelligence agencies" and then the opposition, it is still clear that only state security bodies can perform such complex operations, as many security experts and international reports agree.[43] The Senior Experts' Group Report, led by Reinhard Priebe, stated that „The causes of the prolonged scandal in the former Yugoslav Republic of Macedonia can be traced back both to a concentration of power within the national Security and Counter-intelligence Bureau (UBK) and to a failure in the supervision mechanism over the UBK." Furthermore, the report emphasized that „UBK has been operating outside its legal mandate on behalf of the Government to control top officials in the public administration, prosecutors, judges and political opponents thus interfering in the independence of the judiciary and other relevant national institutions."[44]

Moreover, the Report stressed that existing supervision mechanisms over the UBK – the Commission Supervising the work of the Security and Counter-Intelligence Bureau and the Intelligence Agency and the Commission Supervising the implementation of special investigative measures for communications under surveillance by the Ministry of Interior, Ministry of Defence and other competent [bodies]," performed inappropriately:

[42] Ibid., 88.
[43] European Commission, "Urgent Reform Priorities for the former Yugoslav Republic of Macedonia" (Brussel, June 2015), accessible at http://ec.europa.eu/enlargement/news_corner/news/news-files/20150619_urgent_reform_priorities.pdf, retrieved on January 11, 2016.
[44] "The former Yugoslav Republic of Macedonia: Recommendations of the Senior Experts' Group on systemic Rule of Law issues relating to the communications interception revealed in Spring 2015" (Brussels, 8 June 2015), accessible at http://ec.europa.eu/enlargement/news_corner/news/news-files/20150619_recommendations_of_the_senior_experts_group.pdf, retrieved on January, 12, 2016.

The first Commission never met. The other one, on the other hand, met eight times since having been formed in 2006, but it has never started working properly. The Commission members neither inspected the UBK nor did they collect statistics on the communications under surveillance. It is evident that the Commission doesn't possess the required technical knowledge to collect data from UBK instruments or from telecommunication operators in order to compare the number of leakages with the number of issued Court orders, with the purpose of detecting abuse. Moreover, the Commission has been prevented from conducting inspections at the UBK in light of the fact that out of totalling 5 members, there has always been one or two who do not have safety certificates to access classified information such as surveillance data, which is an evident conflict of interest given that the UBK itself issues such certificates.

The three Commission members who belong to the opposition have been preventing the regular work of the Commission for over a year, in light of their party's decision to boycott the work of Parliament. The Commission has also violated its legal duty to submit annual report to Parliament.[45]

The Report clearly indicates lack of political will for effective supervision over the Security and Counter-Intelligence Bureau. An additional problem are the „[f]amily ties between high-ranking politicians and high-ranking UBK officials, and Public Prosecution's Office officials, all of which creates a risky environment for a conflict of interests."[46] The fact that „UBK can directly wiretap communications, independently and freely, no matter if a court warrant has not been issued for it, in accordance with the Law on Surveillance of Communications,"[47] leaves huge space for massive political control over the institutions („hybrid regime") and for personal profit of individual high officials

Analysis of the work of the Assembly

Data indicating that the executive power has taken over the role of legislative power by turning the Assembly into a „voting machine" are shown in this section of the study.

According to data from reports of the Macedonian Assembly, there has been an increase in adopted laws in summary proceedings in recent years.

- In 2010, 13,1% of the laws were adopted in summary proceedings;
- In 2011, from 1.01.2011 to 14.04.2011, 15,2% and from 25.06.2011 to 31.12.2011, 16% of the laws were adopted in summary proceedings;
- In 2012, 26,9% of the laws were adopted in summary proceedings;
- In 2013, 30,8% of the laws were adopted in summary proceedings;
- In 2014, 54,3% of the laws were adopted in summary proceedings;[48]
- In 2015, by 31. 08. 2015 (before the opposition returned to the Assembly) 70.8% of laws were adopted in summary proceedings, from 1.09.2015 to 31.12.2015, 30,6% of laws were adopted in summary proceedings.[49]

[45] "The former Yugoslav Republic of Macedonia: Recommendations of the Senior Experts' Group on systemic Rule of Law issues relating to the communications interception revealed in Spring 2015" (Brussels, 8 June 2015), достапно на: http://ec.europa.eu/enlargement/news_corner/news/news-files/20150619_recommendations_of_the_senior_experts_group.pdf, пристапено на 12 јануари 2016 г.

[46] "The former Yugoslav Republic of Macedonia: Recommendations of the Senior Experts' Group on systemic Rule of Law issues relating to the communications interception revealed in Spring 2015" (Brussels, 8 June 2015), достапно на: http://ec.europa.eu/enlargement/news_corner/news/news-files/20150619_recommendations_of_the_senior_experts_group.pdf, пристапено на 12 јануари 2016 г.

[47] "The former Yugoslav Republic of Macedonia: Recommendations of the Senior Experts' Group on systemic Rule of Law issues relating to the communications interception revealed in Spring 2015" (Brussels, 8 June 2015), достапно на: http://ec.europa.eu/enlargement/news_corner/news/news-files/20150619_recommendations_of_the_senior_experts_group.pdf, пристапено на 12 јануари 2016 г.

[48] Reports on the work of the Assembly, accessible at: http://sobranie.mk/godishen-izveshtaj.nspx, retrieved on 12.12.2015

[49] Materials from the work of the Assembly, accessible at: http://sobranie.mk/materijali.nspx retrieved on 10.01.2016

In the past five years, the opposition has left the Assembly on several occasions. The first time, from January 28, 2011[50] to June, 2011, i.e. after the Parliamentary elections, then, from December 24, 2012 to August 26, 2013.[51] The last time the opposition left the Assembly was after the 2014 elections and it returned pursuant to the Przhino Agreement of September 1, 2015.[52] It could be noticed that the highest percentage of laws in summary procedures have been adopted in the period when the opposition boycotted the Assembly.

According to the Legislative Procedure of the Assembly of The Republic of Macedonia, the mover may propose that the Assembly should debate the Draft Law in summary proceedings when the law in question is not complex and extensive, when the validity of a given law or individual provisions thereof have terminated, or when complex and extensive harmonization of the law with EU law are not taken into consideration.[53] Given the frequent use of such a procedure in periods when the main opposition party is boycotting the Assembly, it is debatable how, and according to what criteria it is determined whether a law is complex and extensive. Thus, the debate is jeopardized and a wider debate on individual laws is prevented.[54] This is also indicative of the MPs' personal responsibility regarding their work and the way they adopt laws.

Any MP in the Assembly, Government or at least 10.000 constituents have the right to motion the adoption of a law in accordance with the Constitution of The Republic of Macedonia. Any citizen, a group of citizens, institution and association can initiate the promulgation of a law to the competent mover. Nevertheless, when the mover [55] is not the Government, the Assembly submits the draft to the Government for consideration.[56]

So far, in practice, this is the percentage of adopted laws by movers:

Time period	**Movers (expressed in percentage)**
10.05.2014 to 31.12.2014	96,8% Government and 3,2% MPs
26.06.2011 to 5.03.2014	97,9% Government and 2,1% MPs
1.06.2008 to 14.04.2011	96,6% Government and 3,4% MPs
26.07.2006 to 12.04.2008	98,6% Government and 1,4% MPs
2002 to 2006	95,5% Government , 4,4% MPs и 0,2% group of citizens[57]

According to previously presented data, in the last five years, it is noticeable that the Assembly has been utilized as a voting machine of the Government. No data have been received on the Assembly rejecting a law motioned by Government. The last time a law motioned by a group of citizens was adopted was from 2002 to 2006.

[50] The opposition left the Assembly (Utrinski, January 28, 2011), accessible at http://www.utrinski.mk/?ItemID=8516903F431F1449B987F563B792C4D4, retrieved on 13.01.2016

[51] „The opposition returned to the Assembly" (24 Vesti, August 26, 2013), accessible at http://24vesti.mk/opozicijata-se-vrati-vo-sobranieto , retrieved on January 12, 2016.

[52] „The opposition returns to the Assembly of The Republic of Macedonia " (Telma, September 1, 2015), accessible at http://telma.com.mk/vesti/opozicijata-se-vrakja-vo-sobranieto-na-republika-makedonija, retrieved on January 12, 2016.

[53] Legislative Procedure of the Assembly of The Republic of Macedonia, accessible at http://www.sobranie.mk/zakonodavna-postapka.nspx, retrieved on January 10, 2016.

[54] The Government doesn't renounce the laws in summary proceedings (Utrinski vesnik, June 19, 2013) accessible at: http://www.utrinski.mk/default.asp?ItemID=6546DC019B647F419DD1DCDB01DBF549, retrieved on December 12, 2015

[55] The Constitution of The Republic of Macedonia, Official Gazette of RM, No. 52/91, Article 71.

[56] Rules of Procedure of the Assembly of The Republic of Macedonia, Official Gazette of RM, No. 91 from 2008, Articles 132 and 138.

[57] Reports on the work of the Assembly, accessible at: http://sobranie.mk/godishen-izveshtaj.nspx, retrieved on December 12, 2015.

Public Opinion on the performance of the Assembly

Data received from research at the Institute for Social Sciences in Skopje, conducted by the same researchers, have been used for the purposes of the project. In 2015, a closed research was conducted (according to the donators' needs) on the national representative sample of 1000 respondents by a telephone survey. The data received referred to the performance of the Assembly and did not evaluate its transparency correctly. As follows:

- Citizens evaluated law-adoption at the Assembly with an average grade of 2,4 (from 1 to 5);
- Citizens evaluated the implementation of adopted laws with 2,31 (from 1 to 5);
- Citizens evaluated MP performance with 1,9 (from 1 to 5);
- 43% of the citizens believed Assembly and MP performance to have worsened;
- 43% of the respondents believed Assembly to be completely closed to citizens;
- 43% of the citizens believed citizens to be not informed on Assembly performance;
- 33% of the citizens gave a grade of 1 to the implementation of adopted laws

Conclusion and Recommendations

The analysis based on existing theory and research shows that the weakening of the checks and balances of Parliament over the executive and other institutions is influenced by different processes. These are processes such as election model, voting mechanisms, intra-party democracy and the functioning of existing checks and balances in Parliament. We believe that by introducing our proposed policy recommendations in these spheres and processes, the democratic capacities of Parliament and its role in controlling the executive branch will grow strong.

Voting mechanisms

Voting mechanisms are crucial to providing checks and balances and preventing the “tyranny of the majority”. The positive experience of Article 69 of the Ohrid Framework Agreement (the so-called Badinter majority), in mediating the ballot outcome and in increasing trust between polarized parties gives us opportunity to establish a similar checks and balances system within the tradition. Additionally, the positive example of Article 42 of the Danish Constitution and of other post-socialist countries following it, supports our efforts in introducing a similar mechanism. Therefore, we propose to amend the Tenth Amendment of the Constitution of The Republic of Macedonia. The proposed amendment would enable the parliamentary minority, by one third of MP votes, to adopt a referendum on disputable legal decisions. This would be valid for clearly defined domains. Thus, the Parliamentary opposition would not have the right to veto (as the minority ethnic communities have under the Tenth Amendment of the Constitution) by which it would be impossible to block the work of Parliament. On the other hand, a key mechanism of checks and balances, and one which goes not only along ethnic lines, would be provided to mediate questions about which there is deep societal segregation.

Election model

From the aforementioned analysis and indicators of the role of the Assembly in supervising the work of the Government, it could be concluded that it is very problematic and questionable when it comes to adopting laws and applying mechanisms for political supervision over the executive power.
Such procedures and practices in recent years have indicated a lack of personal responsibility among MPs. Compared to this system, the system of open lists provides the voter with an opportunity, in addition to voting for a candidate list, i.e. party/coalition, to vote for one or more candidates of the candidate list (so-called preferential ballot) thus influencing the final election. The higher the number of preferential votes the voter has, the bigger the possibility to influence the election of candidates, and the bigger the competition between candidates for votes of the election body.[58]

Accepting this election model would imply accepting the whole territory of The Republic of Macedonia as one constituency. Big political parties object to this model because this way they would lose several MPs in comparison to the present division into 6 constituencies.[59] On the other hand, better prospects would be provided to smaller parties or independent candidates.

The perceived advantage of this system has been in the shifting responsibility from the party to the individual, i.e. personal responsibility. Moreover, voters would have a better choice. Candidates elected in this manner would be more highly motivated to be active in fulfilling their promises and be more sensitive to the needs and demands of their electorate. The election of individual candidates would also increase the sense of responsibility among politicians toward the citizens at the expense of party leadership.[60]

Changing the rules for establishing a political party. Presently, it takes gathering 1.000 signatures and following complicated procedures to establish a political party (obtaining citizenship, notary statements). Consequently, The Republic of Macedonia is among the countries in the region, that have the most complex procedures for establishing a political party. We recommend simplifying the procedure and reducing significantly the required number of signatures.

Simplifying the civil lists procedure. The 6.000 signatures (1.000 from each constituency) required to formalize the civil list significantly impoverish the political offer, especially that of independent political options. We propose a legal amendment to significantly reduce the number of signatures required to establish a civil list. The naming of the civil lists is to be left at the choice of its holders, and should not be named after them, so the citizens would have a better choice from their own Parliament representatives.
These proposed amendments will broaden the citizens' political choice and national elected representatives will have greater autonomy in the work of the Assembly. Thus, the existing checks and balances mechanisms will be indirectly strengthened (Interpellations, Parliamentary questions, Inquiry Commissions...).

[58] „What are open lists?", accessible at: http://otvorenilisti.org/?page_id=107, retrieved on November 31, 2015.
[59] „The big parties run away from open lists" (Radio Slobodna Evropa, August 20, 2015), accessible at http://www.makdenes.org/content/article/27198056.html, retrieved on January 11, 2015.
[60] Advantages of the open lists, accessible at: http://otvorenilisti.org/?page_id=110, retrieved on 9.12.2015

Intra-Party Democracy

The dysfunctional political supervision mechanisms available to the MPs point to political parties' poor democratization. In order to stimulate in-party democratization, political parties should acquire knowledge and skills to deal and mediate the decision-making processes inside the party. Two parallel processes can contribute in this respect.

We believe, therefore, that what is necessary is a **Law amending the Law on Parties** which would contain an explicit intra-party democratization requirement in electing both candidates for public incumbents and for intra-party bodies.

For an effective internal democratization, support from **European filial parties**, experience-sharing and good intra-party democracy practices are necessary. Facing Europe's authoritarian wave, inter-party cooperation is of crucial importance for defending and promoting fundamental democratic values.

The success in implementing these recommendations will lead to the MPs' accountability and responsibility to their own constituency and party membership, not to their party leadership. Thus, the MPs' greater responsibility will be stimulated by activities in the various Assembly checks and balances bodies. For, in order for these mechanisms to work, it is necessary that the MPs should be able to oppose officials suspected of illegitimate actions, even if they belong to their own party.

Active mechanisms for supervising the executive power in the Assembly

Finally, it is necessary to determine the practice of the existing mechanisms. The Assembly needs to improve the image of its activity and provide better inclusion mechanisms for the public and for the citizens. It should do this by providing adequate information, by educating citizens about the prospects of inclusion in public debates, and by initiating supervision debates. The Assembly ought to provide enough time to include the parties involved in these processes.

The Assembly is to exploit all mechanisms to strengthen supervision over state bodies responsible for securing, planning and spending the national budget. Regarding budget supervision, the Assembly needs to be involved in other budgeting phases, such as budget phases programming. Regarding budget spending, the Assembly should have access to overdue receivables and outstanding payables. Regarding supervising state security bodies, Government and MPs' need to express their unequivocal political will in order that the mechanisms ensuring supervision should be able to function.

IMPROVING CHECKS AND BALANCES IN THE REPUBLIC OF MACEDONIA:

JUDICIAL CONTROL OF EXECUTIVE

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Résumé / Abstract

This study finds that the political interference of the executive, which has surged in recent years, is the main problem inhibiting the independence of the judiciary in the Republic of Macedonia. In addition, the Judicial Council and the Council of Public Prosecutors are not acting according to their competences, which is to secure and protect the independence of the judiciary. Furthermore, this study identifies problems with the accountability of judges. On the one hand, the results show that there is a lack of meritocracy in the career system as a result of political influence. On the other hand, the trust in the judiciary has eroded based on the perception of several cases that are seen as examples of selective justice or wrongful judgment. The quality of justice needs improvement. The study offers a set of recommendations to empower and strengthen the independence, accountability and transparency of the judiciary, so that there can be a greater judicial control over the executive in Macedonia.

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Introduction

A functioning judiciary lies at the core of the idea of a modern state, as it is a fundamental principle and integral element of all liberal democracies and all democracy building. It is also an essential precondition for the establishment of an effective system of governance based on the rule of law and is of critical value in safeguarding the impartiality of judges from undue external influence(s). The roots of the theory of a functioning judiciary are based in the doctrine of separation of powers. According to the doctrine, the judiciary needs to be separate from the executive and legislative branches of government and is supposed to hold them accountable.

In functioning parliamentary democracies with their inherent systems of checks and balances, this understanding of the rule of law through the realm of the reach of democracy is constrained by and in the favour of judicial power. While elections give voters the opportunity to choose whether to keep the same governing majority or to vote for an alternative, the judiciary imposes limits on the law-making and executive powers by keeping them responsible. In a nutshell, the judiciary is supposed to impose restraints on government officials by requiring compliance with the existing law, as their acts must have positive legal authorization and must not contravene a legal prohibition or restriction.

This has not been the case in Macedonia over the past decade, as politics, according to the reports coming from the EU, most notably the recent Senior Experts' Group (hereinafter the Priebe report)[1] and the US State Department report[2], exercises excessive control over the main state institutions such as the judiciary, the public administration, the media and even the electoral process. Moreover, last year's wiretapped materials[3] suggest that the government has complete control over the judiciary, including the career advancement system and the election of members to the Judicial Council and the Council of Public Prosecutors, and has misused it for persecution and intimidation of its political opponents.

New democracies face various problems in the functioning of the judiciary. In most of the East European transitioning societies, the actions of local political elites are dominantly focused on their refusal to cede traditional impunity and vested interest. The recent conviction of the Croatian former Prime Minister Ivo Sanader for corruption[4] serves as a most striking example of the 'harmful' effect of judicial reform for established elites. Hence, ruling elites follow up with regularized patterns of delay of key reforms that would lead to a substantive improvement of the judiciary, particularly in the sphere of its independence.

In this regard, this study observes that the establishment of a lasting and effective system of rule of law requires not only a widely shared conviction among the society – citizens and political and economic elites – that people identify themselves with law, but also the presence of an institutionalized, independent, accountable, efficient and effective judiciary, crucial to both aforementioned functions. In the following sections this study provides an overview of the state of affairs and presents the research question and hypothesis. It then outlines the results of the analysis, summarizes the main conclusions and offers policy recommendations that serve to remedy the current situation.

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[1]The Former Yugoslav Republic of Macedonia: Recommendations of the Senior Experts' Group on systemic Rule of Law issues relating to the communications interception revealed in Spring 2015, pp. 4. Available at: http://ec.europa.eu/enlargement/news_corner/news/news-files/20150619_recommendations_of_the_senior_experts_group.pdf

[2]US State Department, 2014. Macedonia Human Rights Report pp. 1. Available at: http://www.state.gov/documents/organization/236762.pdf

[3]For more information:"Interactive Overview of Macedonia's Largest Wire-Tapping Scandal", Al Jazeera. Available at:

[4]http://interactive.aljazeera.com/ajb/2015/makedonija-bombe/eng/index.html

"Former Croatia PM Ivo Sanader convicted of corruption", BBC (March 11, 2014). Available at: http://www.bbc.com/news/world-europe-26533990

Framing the challenge

The rule of law principle has a long common tradition in most influential legal orders, but it has not been precisely defined by any of them. The broadest understanding of the rule of law – often touted as the 'thin' definition of the notion – is that the state and its officials are limited by the law. There are two distinct characteristics of the concept that government officials are bound within a limiting framework of law. The first is that officials must abide by the positive law. The second sense is that, even when government officials wish to change the law, they are not entirely free to change it any way they desire. There are legal procedures that need to be respected. In other words, the sovereign's power over the positive law is itself restricted in legal terms.

Due to the predominance of the legal interpretation of the rule of law principle, it has already been asked whether the principle is not more a "Rule of Lawyers" than a "Rule of Law".[5] The dilemma that this question raises is not one of efficiency or protecting the purity of law, but rather of preservation of the integrity of law, which can only be achieved if the institutional arrangements are capable of dealing reasonably with the dual dangers of anarchy and unrestrained power. The legal arrangements alone, however, are not sufficient to complete this task, as they always need "a supporting circumstance"[6] – a well-functioning judiciary based on the existence of an independent, accountable, efficient and competent legal profession and a legal tradition committed to the rule of law. More concretely, there have to be certain conditions in the judiciary in order for it to be able to restrain the exercise of power.

The Judicial Council and the Council of Public Prosecutors are the two main institutions which should ensure the independence of the judiciary in Macedonia. The legal basis of the former lies in the Constitution of Macedonia, in which the Judicial Council is defined as an independent body that secures and guarantees the independence of the judiciary.[7] However, in recent reports the independence of the Judicial Council has been challenged, particularly with the recently and quickly passed law for determining the facts and initiating a procedure to determine accountability of judges. This law has been heavily criticized by civil society, mostly because it hinges on the security and confidence of judges in carrying out their decisions without fear of being targeted for disciplinary actions by the recently established Council for Determining the Facts. In addition, a recent study noted that the law takes away the competences of the Judicial Council, which is an institution prescribed in the Constitution, and grants them to the new Council, which is not prescribed in the Constitution.[8] Therefore, the changes are potentially unconstitutional, in addition to not being sufficiently and openly debated in parliament. The EC Progress Report noted that the law is a "further blow to a profession which is already under siege."[9] The enactment of this law points out the persisting challenges that exist for independence of the judiciary in Macedonia. Despite the numerous negative comments, the government formed the Council for Determining the Facts in a hasty procedure. However, it was not operational at the time when this study was done, in March 2016.

[5] See a detailed elaboration of this question in F. Kratochwil. 2009. "Has the 'Rule of Law' become a 'Rule of Lawyers'? An Inquiry into the Use and Abuse of an Ancient Topos in Contemporary Debates," in G. Palombella and N. Walker, Relocating the Rule of Law (Oxford: Hart): 171–196..
[6] See M. Krygier. 2009. "The Rule of Law: Legality, Teleology, Sociology," in G. Palombella and N. Walker, Relocating the Rule of Law, cit.: 51-79.
[7] Constitution of Republic of Macedonia, Amendments XXVIII (1) [Устав на Република Македонија, Амандман XXVIII (1)].
[8] Institute for Human Rights [Институт за човекови права]. 2015. Analysis of independence of the Judicial Council of Republic of Macedonia – Aspirations and Challenges [Анализа на независноста на Судскиот совет на Република Македонија - стремеж и предизвици, стр. 10]. Available at: http://www.merc.org.mk/Files/Write/Documents/01236/mk/Analiza_ICP.pdf
[9] EC Progress Report 2015, pp. 52. Available at: http://ec.europa.eu/enlargement/pdf/key_documents/2015/20151110_report_the_former_yugoslav_republic_of_macedonia.pdf

Lack of implementation of laws as well as budgetary constraints are other problem areas identified in various reports about the judiciary in Macedonia. The Priebe Report notes that "the country possesses a comprehensive set of rules which, if fully observed, should generally ensure a proper functioning of the judicial system to a high standard.[10]" Indeed, this is an often-heard statement in Macedonia, namely the idea that the problem is not in the legal framework but in the implementation. However, this calls into question the adequacy of the laws – are they implementable at all? An answer to the question of the implementation of the laws and the independence of the judiciary may partially lie in budgetary constraints. As the State Department report notes, the "inadequate funding of the judiciary continued to hamper court operations and effectiveness. A number of judicial officials accused the government of using its budgetary authority to exert control over the judiciary." [11]

However, the judiciary is not simply hampered by the lack of independence or budget, but also by the lack of trust among citizens. Two studies, one supported by IRI and the second conducted within Network 23, provide data which show a deep mistrust in the judiciary and its various institutions. The IRI Survey shows that a majority of the citizens interviewed do not trust the Courts nor the Public Prosecutors, based on their actions in the past year.[12] The Network 23 analysis notes a lack of trust of the Judicial Council, particularly among the Albanian population (63%).[13] The lack of trust by citizens hinders the legitimacy of the courts as well as the perception of their reliability by the citizens, which might partially serve to explain why there is no public pressure on judiciary reform.

Research question

The research question that this study aims to answer is: Why is there a lack of judicial control over the executive in Macedonia? More specifically, what limits the independence, accountability and efficiency of the judiciary?

Judicial independence lies at the core of the idea of a modern state, as it is of critical value in safeguarding the impartiality of judges from undue external influence(s). It is embedded in direct and formal guarantees of real independence of individual judges as they exercise their core decision-making function. The issue of independence is also intimately linked with the interdependence of various state bodies, as a consequence of the delicate system of balances within the theory of division of powers. As the concept of judicial independence is a reaction to concrete threats to judges' impartiality, legal academia has developed a number of benchmarks for this issue. These include, among others, substantive, personal, collective, internal, structural and administrative safeguards of judicial independence. However, a particular obstacle in calculating judicial independence refers to the fact that formal guarantees of independence can easily be neglected or even manipulated, either by external actors or by the judges themselves.

[10]The former Yugoslav Republic of Macedonia: Recommendations of the Senior Experts' Group on systemic Rule of Law issues relating to the communications interception revealed in Spring 2015, pp. 9. Available at: http://ec.europa.eu/enlargement/news_corner/news/news-files/20150619_recommendations_of_the_senior_experts_group.pdf

[11]US State Department, 2014. Macedonia Human Rights Report, pp. 6. Available at: http://www.state.gov/documents/organization/236762.pdf

[12]IRI Center for Insights in Survey Research, 2015. Survey of Public Opinion in Macedonia, pp. 31. Available at: http://www.iri.org/sites/default/files/wysiwyg/2015-11-19_survey_of_citizens_of_macedonia_september_29-october_5_2015.pdf

[13]Institute for Human Rights [Институт за човекови права], 2015. Analysis of independence of the Judicial Council of Republic of Macedonia – Aspirations and Challenges [Анализа на независноста на Судскиот совет на Република Македонија - стремеж и предизвици]. Available at: http://www.merc.org.mk/Files/Write/Documents/01236/mk/Analiza_ICP.pdf

Given that the judges are provided with real independence in performing their core function, they are primarily accountable to legal norms. However, there is still a need for a systematic mechanism for the evaluation of judges' performance, followed by the implementation of appropriate measures in the case of corruption, or an erroneous decision. In other words, an effective system of checks and balances between judicial independence and judicial accountability is necessary to assure citizens of the impartiality of the adjudication process. On a theoretical level, as opposed to the normative, we see it as a benchmark in which judges are constrained by "external means and by internal norms."[14] Besides 'hard accountability' such as mechanisms of selection, promotion and disciplinary control, Piana considers soft mechanisms of accountability, e.g., obligation to be transparent to the public, responsiveness to senior colleagues and moral honesty, to be more powerful and effective than the hard mechanisms might be.[15] However, soft accountability is inherent in mature and consistent legal cultures, which are unfortunately, as yet, still lacking in Macedonia.

Finally, in the light of Article 6(1) of the European Convention on Human Rights, which calls for a public hearing to be held within a reasonable time,[16] but also in response to the increasing demands of taxpayers and voters for a more efficient and less expensive public administration,[17] efficiency of the judicial administration has become the third pillar of the functional justice system.

The study primarily focuses on formal manifestations of judicial independence. More attention is given to the functioning of new institutions such as the Judicial and Prosecutors' Councils. In addition, the study investigates institutional accountability, which refers to the appointment, selection, promotion and disciplinary control over the judiciary, social accountability exercised by the civil society 'watchdogs' and professional accountability exercised by peer judges.

The performance of the judicial system remains difficult to measure, largely due to the lack of coherent international standards. This is why the study chooses to analyse the challenges to judicial independence stemming from the work of key institutions such as the Judicial Council and the Council of Public Prosecutors, the low level of salaries paid in the judiciary and proportional ethnic representation in the judiciary, which challenge the notion of 'fair trial' and that have not been empirically studied so far. Secondly, independence must be balanced with accountability against the danger of a "gouvernement des judges". [18]

Methodology

The study intends to overcome the separation of research by lawyers and political scientists and to re-integrate the various aspects of legal and political analyses through the logic of "functional interdependence." The research is based on an analysis of the institutional reforms thus far performed, with a focus on the Judicial Council and Council of Public Prosecutors with the goal to assess whether they ensure the independence of the judiciary. In addition, all relevant stakeholders were mapped and divided into four categories: judiciary, legislative, executive and interested public; and interviews were conducted with representatives from each category.

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[14] J. G. S. Koppell. Pathologies of accountability: ICANN and the challenge of "multiple accountabilities disorder", Public Administration Review. 2005:65 (1). pp. 94-108:94.
[15] D. Piana. 2010. Judicial Accountabilities in New Europe (London: Ashgate): 300.
[16] Council of Europe. Rome: 1950. Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended by the provisions of Protocol No. 14 (CETS no. 194) from its entry into force on 1 June 2010). Article 6 (1).
[17] See H. R. v. Gunsteren. 1986. "The Ethical Context of Bureaucracy and Performance analysis", in F.-X. Kaufmann, G. Majone, V. Ostrom and W. Wirth (eds), Guidance, control, and evaluation in the public sector: the Bielefeld interdisciplinary project (De Gruyter: Berlin): 267..
[18] W. Sadurski, A. Czarnota and M. Krygier (eds). 2006. Spreading Democracy and the Rule of Law: The Impact of EU Enlargement on the Rule of Law, Democracy and Constitutionalism in Post-Communist Legal Orders (Netherlands: Springer).
[19] Detailed explanation of the logic of functional interdependance is available in the works of J. Marko. 2008. "The Law and Politics of Diversity Management: A Neo-Institutional approach," European Yearbook of Minority Issues 6 (2006/07: Brill): 252-279; and J. Marko and M. Handstanger. 2009. "The interdependence of Law and Political Science: About the 'essence and value' of a 'Juristenpolitologie'- approach: Wolfgang Mantl for his 70th birthday," Vienna Online Journal on International Constitutional Law 3(2).

The study includes 36 semi-structured expert interviews conducted during the months of December 2015 and January 2016. This is not a representative sample of the relevant stakeholders. However, it is a very high number for experts' interviews and there is a high saturation in the answers. Most of the interviews (14, or 38.9% of the total) were carried out with judges and prosecutors. Interviewees include judges from the Basic Courts all the way to the Constitutional Court and prosecutors from various levels. Interviews were also carried out with relevant members of parliament (five) (e.g., Deputy Speaker of Parliament and members of the legislative committee) and government (six) (e.g., acting and previous Ministers of Justice, high-ranking public administration officials) and interested members of the public (11) (e.g., relevant NGOs, journalists, university professors and international actors). The experts interviewed included former and acting stakeholders who have between five and 40 years' experience with the judiciary.

Respondents were asked to answer closed questions which evaluated the independence, accountability and efficiency of the judiciary and open questions which focused on judicial reforms, the challenges and the accomplishments thereof. The questionnaire is available in Appendix V. The data were analysed by comparing the means with a Cronbach's alpha test for reliability of results.[20] The study also includes an analysis of variance (one-way ANOVA) to see whether there were significant differences in the answers between respondents of different categories. The ANOVA results showed that there were no significant differences. Therefore, these results are not included in the analysis, but they are present in Appendix IV.

Analysis: Judicial control or control of judiciary

Reforms of the judiciary in Macedonia started relatively late, in 2004. Almost 15 years after the proclamation of independence, the judiciary remained intact. Some respondents claimed that this allowed for practices and legacies from the previous system to persist over time. [21]This can explain many of the problems with the judiciary before 2004, such as the lack of independence, accountability and efficiency. However, wanting to excel at the EU integration process, the government produced a comprehensive and high-quality strategy for judicial reforms in 2004. The process of making the strategy was inclusive. The strategy envisaged the main reforms such as making Constitutional amendments, introducing Judicial Council and Council of Public Prosecutors and establishing instruments for training and capacity building in the judiciary.

The enactment of legal reforms unfolded from 2005 onwards and intensified after 2009, as can be seen in the graph provided in Appendix 3. Most of our respondents, in particular those who participated in the reform process, noted that the reforms of the judiciary were highly needed. The respondents had a largely favourable view about the making of the strategy and its initial implementation, notwithstanding that there were varying opinions among the stakeholders. The establishment of new institutions, such as the Councils, were expected to contribute towards strengthening judicial independence and accountability. The introduction of the Academy for Judges and Prosecutors was expected to elevate the quality and competence of human resources. Many investments were made in technical capacities, including ICT tools, which help courts to increase their efficiency and reduce the backlog of cases. Furthermore, changes and improvements included the introduction of an Administrative Court, improvements in the career system based on merit and evaluation and the introduction of an IT system for case management. Subsequently, some courts, mainly in Skopje, received new buildings and improved offices, and salaries of judges and prosecutors were raised.

[20]Cronbach's alpha is a statistical measure which shows the correlation within a set of answers. It is a standardized test when analysing and comparing means to show internal consistency and reliability of the answers. The test values range from zero to one. Values above 0.5 are acceptable; however, higher values designate higher consistency and reliability

[21] Even though respondents in Macedonia were convinced that the late start of reforms contributed to the lack of reforms in the legal culture, comparative research shows that the legal culture did not significantly change in post-communist countries in which reforms started early.

It would be fair to say that, overall, the judiciary has substantially improved in Macedonia. On average, individual citizens experienced an improvement in the quality of justice, even though equal access to justice could be further improved. Challenges remain, however, in regards to the independence of the judiciary and the strengthening of the Councils

Assessment of Judicial Institutions

The respondents gave relatively **low grades for the functioning of judicial institutions.** The results are shown below in Table 1. As previously stated, the answers are more of an assessment of the judicial control of executive and judicial independence than an evaluation of the work in civil cases. It is somewhat surprising that the Judicial Council and the Council of Public Prosecutors, the institutions that should guarantee the independence of the judiciary from political interference, got the lowest grade. The Judicial Academy got a relatively high grade, almost a three, and it was generally seen as taking the most positive step towards capacity building. As one respondent of Category IV noted, the Academy provides a positive step towards the long-term improvement of the judiciary.

Table 1. Grading the work of the judicial institutions, on a scale from 1 (bad) to 5 (very good)

N = 35	1	2	3	4	5
Courts		2,42 (0,80)			
Prosecutors		2,34 (1,02)			
Judicial Council	1,78 (0,83)				
Council of Public Prosecutors	1,77 (0,97)				
Judicial Academy		2,97 (0,87)			

Cronbachs alpha: 0.79, standard deviation in parentheses

The independence and accountability of the judiciary were supposed to be strengthened with the introduction of the Judicial Council and Council of Public Prosecutors. However, in practice the Councils seem to play a somewhat different role. Respondents gave a very low score for their functioning and other research corroborates the existing weaknesses.[22]

For many of our respondents, the Councils represent an intermediary instrument for the executive to control judges and prosecutors, even though some measures were undertaken to increase their independence (e.g., the Minister of Justice no longer has the right to vote in the Judicial Council). Judges and prosecutors elect the majority of the members in the Councils. The elected members represent the geographical and hierarchical set-up of the courts and prosecutor's office.

[22] Institute for Human Rights [Институт за човекови права]. 2015. Analysis of independence of the Judicial Council of Republic of Macedonia – Aspirations and Challenges, pp. 27 [Анализа на независноста на Судскиот совет на Република Македонија - стремеж и предизвици, стр.27]. Available at:

The Judicial Council has 15 members, eight of whom are elected by the judges themselves. One representative is elected in each of the four appellate areas, one is elected from the Supreme Court and three members are elected in a nationwide constituency for representatives of minority communities, in which all judges vote. This means that judges receive two ballots, one for representative of their appellate area and one for representative from minority communities. Elections are won with plurality of votes. Five members who have most of the votes in the appellate areas and the three candidates with most of the votes from the nationwide constituency are elected. The Council of Public Prosecutors has 11 members, six of whom are elected. One member represents the Public Prosecutor's Office of Macedonia, four members are elected from Higher Public Prosecutor's Areas (one each from Bitola, Gostivar, Stip and Skopje) and one member is elected in a nationwide constituency to represent minority communities, in which all prosecutors vote. Similarly to the judges' elections, prosecutors also get two ballots and elections are decided by plurality of the vote. It is somewhat odd that all judges and prosecutors vote for a representative of minority communities. Perhaps this favours voting for the most competent or well-known candidates, but it certainly undermines descriptive minority representation and opens possibilities for majorization.

Prosecutors who have been in office for at least eight years and have no disciplinary measures against them can run in the elections. However, the requirement for judges is five years as a judge and positive evaluations in the last three years.[23] The campaign and presentations of candidates are not regulated. For example, all candidates should submit their CVs, but they are not shared among judges and prosecutors. Presumably, candidates are known in their judicial appellate or higher prosecutor's area. However, these areas vary in geographical size and in human resources. Elections for the Judicial Council are organized in the basic courts of appellate areas and some have only a few judges, which is also the case with some prosecutors' areas. For example, there are basic courts with 10 or fewer judges. Furthermore, for the first elections for the Prosecutors' Council in 2008, there were 87 voters in Skopje, but only 11 in the Public Prosecutor of Macedonia's Office and 17 in Gostivar, 29 in Stip and 35 in Bitola. Having fewer voters diminishes the potential for competition and fosters peer pressure and other control mechanisms, which increase the chances of influencing the outcome.

Respondents were asked to grade the elections on a scale from 1 (bad) to 5 (very good), in terms of whether the elections were free and fair, whether they suffered from political influences and whether the most competent candidates were elected. The mean scores are presented in Table 2.

Table 2. Grading the elections for members of the Judicial and Prosecutors' Councils

N = 33		1	2	3	4	5
Free and fair elections	Judicial Council	1,82 (0,85)				
	Prosecutors Council	1,94 (1,09)				
Political influences	Judicial Council	1,79 (1,34)				
	Prosecutors Council	1,97 (1,3)				
Competent candidates	Judicial Council	1,73 (0,76)				
	Prosecutors Council		2 (1,06)			

Cronbachs alpha: 0.88, standard d eviation in parentheses

[23]Many of our respondents were critical of the current evaluation system. One of the problems is that it relies too much on quantitative indicators and does not take into account the substance of the work.

In general, our respondents had a very negative view of the elections for the Judicial and Prosecutors' Councils. Almost all the results, except for competence of candidates in the Prosecutors' Council, have a mean score of below two. The Cronbach's alpha value is very high (0.88), which shows strong consistency and high reliability of the answers. The ANOVA results, provided in Appendix IV, Table 3, show that either there was almost no difference between the answers from respondents from the judiciary (category I) and the others (categories II, III and IV), or judges and prosecutors gave even lower scores. The judges and prosecutors interviewed pointed to political pressures, mainly coming from the government. Some former judges noted that the strong government involvement was a deterrent for them to run as candidates, as they did not want to enter into a power battle with the government.

Respondents stated that the Judicial Council was controlled from its formation. On one side, the outcome of elections was to some extent influenced and, on the other side, the Minister of Justice, who was an ex officio member of the Council, wielded enormous political influence. This was noted in the EU progress reports and was especially criticized when the Council dismissed almost 10% of the judges within a couple of years. To respond to the criticism, the government proposed legal changes, stripping the voting rights of the Minister, and even proposed a Constitutional amendment, still pending, to take the Minister out of the Council. The Council of Public Prosecutors was similarly perceived to be under control; however, some respondents believed that it did not have such negative influence on the work of prosecutors, as the Judicial Council has had on the work of judges. Control of the Councils allows control of the selection, promotion and dismissal of judges. It also allows for setting up and controlling the functional hierarchy in the judiciary.

Some of our respondents noted that the quality of elections for members in the Judicial Council and Council of Public Prosecutors have deteriorated over time. They described a process where the initial control of the Councils was used to create and control the functional hierarchy in the judiciary. There was a widespread belief that most of the presidents of basic courts, as well as the prosecutors' hierarchy, were controlled by the ruling party. Presidents of courts were mentioned as the main interlocutors through whom the influence of the executive was exerted when it was time for elections. It seems that the government has used the Councils to set up a functional hierarchy in the judiciary and uses it as one of the instruments to maintain political control over both councils. This system then translates to political influence in the career system of judges.

Within the framework of this research, results from both councils for all elections were requested. Having access to the data would enable a comparison of the voter turnout and of trends and voting patterns. However, the Council of Public Prosecutors provided data only for the first elections held in 2008, but not for subsequent ones. The Judicial Council provided information only for the elections in 2012, not before or after that.

According to the information from the Judicial Council, 644 out of 661 judges voted in 2012. The elections were competitive in the appellate areas in Skopje (six candidates), Gostivar (three candidates) and Stip (four candidates) and there were six candidates for representatives of minority communities in the nationwide electoral unit. However, there were no results for the Bitola appellate area. There was only one candidate for Supreme Court representative in 2012; however, she received 15 of a possible 17 votes. The results from the Council of Public Prosecutors show that 179 out of 183 prosecutors voted in 2008. In some electoral units the elections were very competitive. For example, Skopje had seven candidates, Gostivar had three and in Stip, Bitola and the Public Prosecutor of Macedonia's office there were two candidates. Four candidates competed for the minority communities' public prosecutor representative.

(Lack of) independence and (strong) political influence

In general, the respondents considered the independence of the judiciary to be on the decline and noted that this was mostly due to the presence of political interference. As indicative examples of this, the respondents pointed to cases where high-ranking government officials sued journalists or political opponents for libel and defamation and to cases where opposition politicians were put on trial, which are seen as cases portraying selective justice. Furthermore, when asked about the challenges of the judiciary, most of the respondents noted that political interference was the greatest obstacle. Indeed, the EU Progress Report also notes that "the extent of previously suspected political interference in both the appointment of judges and the outcome of court proceedings was confirmed by the content of the intercepted communications.[24]" Serious concerns about the lack of judicial control of the executive, or to put it precisely – the belief that the executive controls the judiciary – provide a very negative view about the entire judicial system.

Even though on average the judicial system has improved compared with previous years, the handling of sensitive and politically charged cases creates an impression of a failing rule of law. Such cases present a minority of all cases; however, they show precisely the state of judicial control of the executive. Almost all of our respondents, across categories, believed that the executive controls the judiciary. Respondents were asked to name an example, the first that came to mind, of judicial control of the executive. Almost none of the respondents could point out an example of judicial control over the executive. Some even claimed that the judiciary cannot control the executive, because the judiciary was there to enforce the laws, while the executive together with the legislative enacted the laws, while one respondent noted that the way that the system in Macedonia is built simply does not allow for judiciary control over the executive (Category III). This shows that many of the relevant stakeholders, including judges and prosecutors, do not see the judiciary as an equal and independent branch of power, but as being subordinated to the executive.

Very few of the respondents pointed to cases where acting politicians were held accountable in a court of law. These were mainly corruption cases against state secretaries, some heads of sectors and local government officials. There have been no cases in which acting high-level politicians were taken to court. On the other hand, there have been cases against former high-level politicians, which one of our respondents labelled as "revenge cases", namely former executives being charged by the new governing powers to assert strength.

Respondents were asked more concretely to grade the independence of the judiciary and the independence of the Councils on a scale from 1 (no independence at all) to 5 (completely independent). We also asked, on the same scale, whether the Judicial Budget was deemed adequate (1 being completely inadequate and 5 being completely adequate), as an indicator of financial independence. We also asked to what extent there is a judicial control of the executive, from 1 (not at all) to 5 (complete control). Combining these questions, we can measure the independence of the judiciary, on a scale from 1 (very low or no independence) to 5 (substantial or high independence). The results show that the independence of the judiciary is seriously hindered. The mean scores are presented in Table 2. The Cronbach's alpha, the test for reliability and consistency of the answers, is significant.

[24] EU Progress Report 2015.

Table 3. Grading the independence of the judiciary

N = 34	1	2	3	4	5
Judiciary		2,03 (0,75)			
Judicial Council	1,53 (0,75)				
Council of Public Prosecutors	1,5 (0,75)				
Adequacy of Judicial Budget		2,68 (1,06)			
Judicial Control of Executive	1,74 (1,05)				

Cronbachs alpha: 0.62, standard deviation in parentheses

The results show that there is very little independence of the judiciary. There is some financial independence. The adequacy of the judicial budget has a mean score of 2.68, which is the highest compared with the others. The independence of the overall judiciary has a mean score of 2, while the independence of the Councils and the possibility for judicial control over the executive were graded as lower.

Respondents were asked to grade to what extent various factors limit the independence of the judiciary, on a scale of 1 (lowest) to 5 (highest). The majority of the respondents pointed to political influences as the main impediment to the independence of the judiciary. The results, with a relevant Cronbach's alpha test, are shown in Table 4.

Table 4. Factors limiting the independence of the judiciary

N = 32	1	2	3	4	5
Inadequate laws		2,31 (1,2)			
Political influences				4,47 (1,07)	
Incompetent judges and prosecutors			3,19 (1,03)		
Lack of capacity (space)		2,34 (1,23)			
Poor technical resources		2,41 (1,21)			
Poor administration		2,5 (1,08)			
Low salaries		2,59 (1,27)			

Cronbachs alpha: 0.55, standard deviation in parentheses

It is not surprising that political influences are the main factor. Other research, carried out in Macedonia in 2015, corroborates our findings. According to an IRI nationwide survey, a majority of the respondents considered that courts are susceptible to political influences (i.e., 22% of respondents said "fully susceptible" and 33% said "rather susceptible").[25]

[25]IRI Center for Insights in Survey Research, 2015. Survey of Public Opinion in Macedonia, pp. 57. Available at: http://www.iri.org/sites/default/files/wysiwyg/2015 11-19_survey_of_citizens_of_macedonia_september_29-october_5_2015.pdf

However, it is somewhat surprising that the incompetence of judges and prosecutors is listed as the second most influential factor limiting the independence of the judiciary, with a mean score of 3.19. The other factors were seen as having less of an influence and being approximately on the same level. These results highlight the doubts about the quality of human resources in the judiciary. They also reflect deep sentiments that politics has corrupted the judiciary. The arguments in the answers were supported by some of the released wiretapped conversations.

Indeed, the wiretapped conversations revealed in 2015 have largely influenced the opinions of the respondents over the factors that influence the judiciary. Almost all respondents, from various categories, referred to the wiretapped conversations. For example, a respondent of category II said that "if the wiretapped conversations were to serve as an indicator, then it is noticed that the prime minister and the ministers are directly involved in the selection of judges. There are no other data available to us from other sources". This is a considerable indicator, particularly taking into the account the expectation that representatives of the legislative would be better informed, beyond the released conversations.

According to the respondents, the government exerted the highest influence on the work of judges and prosecutors. The Judicial Council, with a mean score of 4.2, is believed to have high influence on the work of judges, followed by the influence of the Prosecutors' Councils on the work of prosecutors, with a mean score of 3.7. The business community is believed to have some influence, albeit slightly more on judges than on prosecutors. The media have less influence and the civil society the least.[26]

Table 5. Who exerts influence on the work of judges and prosecutors, from 1 (none) to 5 (highest)?

N = 30		1	2	3	4	5
Parliament	Judges		2.4 (1.04)			
	Prosecutors		2.37 (1.16)			
Government	Judges				4.37 (0.93)	
	Prosecutors				4.3 (0.92)	
Judicial Council					4.23 (0.73)	
Public Prosecutors' Council				3.7 (1.09)		
Business Community	Judges			3 (1.08)		
	Prosecutors		2.93 (1.11)			
Media	Judges		2.57 (1.1)			
	Prosecutors		2.33 (1.06)			
NGOs	Judges	1.53 (0.94)				
	Prosecutors	1.37 (0.85)				

Cronbachs alpha: 0.82, standard deviation in parentheses

[26] On the other hand, the President of the Judicial Council and also some other judges have pointed out in several public discussions that the media, in terms of the way in which they report on court cases, greatly influence the judiciary.

Several examples were cited, some from the wiretapped materials, which strikingly show the government's influence. According to some respondents from category I, the government adopted a conclusion which instructed judges not to reward compensation for damages when the state was sued. The government was attempting to prevent unforeseen costs to the state budget, by diminishing the rule of law. Some of the respondents of the same category also gave examples of how the criteria for 'distinguished lawyer' can be stretched for personal advancement in the judiciary, if they act in favour of the government. For example, lawyers from private companies and attorneys at law have been directly selected as judges in the Supreme Court. The unclear criterion, with political inference, has been used to push lawyers from public administration into a speedy judicial career all the way to the Constitutional Court or to attain membership and functions in the Judicial Council. Some respondents also expressed concerns about the fast promotion of judges who advanced after their judgments favoured the government in politically sensitive cases.

In addition, it was noted that the government and public administration are not implementing the laws pertinent to the independence of the judiciary and they are not respecting court decisions. For example, the Ministry of Finance does not grant a Judicial Budget in accordance with the legally prescribed criteria and the public funds for pensions, social and health insurance do not obey decisions of the administrative court. The wiretapped materials were cited as proof that a former Minister of Justice and members of his family were interfering with court processes and that some of the government's political opponents faced selective justice processes. This shows that the government has completely undermined the independence of the judiciary. It has infringed fundamental rule of law principles, such as equality before the law, private ownership and impartiality.

(Lack of) accountability and (political control of) the career system

Many of the respondents were concerned about the lack of accountability of the judiciary, while few or no reforms were made to improve it. One respondent noted that "in the past decades, the independence of the judiciary has visibly stagnated. At the same time there are no essential changes in the accountability and efficiency of the judiciary" (Category I). Another respondent said that "in relation to accountability there have been no specific reforms" (Category III).

The perception is that the career system is politically plagued to an alarming level. We asked the respondents to grade the objectiveness and independence of the judges' and prosecutors' career system (selection, promotion and dismissal) on a scale from 1 (bad) to 5 (very good).

Table 6. Grading of the objectiveness and independence of judges' and prosecutors' career system

N = 33		1	2	3	4	5
Selection	Judges	1,58 (0,79)				
	Prosecutors	1,94 (0,93)				
Promotion	Judges	1,7 (0,77)				
	Prosecutors	1,94 (0,83)				
Dismissal	Judges	1,58 (0,71)				
	Prosecutors		2,06 (1,03)			

Cronbachs alpha: 0.85, standard deviation in parentheses

The results show that, except for the dismissal of prosecutors, which has a mean score of 2.06, the other grades are below 2. The Cronbach's alpha test also shows strong consistency and reliability of the answers. There is an overall perception that the meritocracy in the judicial system is significantly hindered. As one respondent noted, "professionalism in the judiciary is a problem since there is a lack of meritocracy, as there is still insistence on the selection of judges from outside the Academy" (Category IV). Another respondent noted that "government should leave space for the selection of judges" (Category IV).

As to why this is the case, the Priebe report might shed some light, as it states that "there is an atmosphere of pressure and insecurity within the judiciary [...] Many judges believe that promotion within the ranks of the judiciary is reserved for those whose decisions favour the political establishment."[27] One of our respondents noted that in order for the judiciary to be independent the security of judges must be ensured so that they do not suffer any personal or professional consequences. Thus far, the security of judges is not ensured and in fact, with the adoption of the Law for a Council Determining the Facts and the start of a procedure to establish accountability of judges, the judges feel even more threatened that they will be under close scrutiny and feel pressured by external actors, who, instead of aiming to encourage their independence, would work to ensure their dependence on political actors.

[27] The former Yugoslav Republic of Macedonia: Recommendations of the Senior Experts' Group on systemic Rule of Law issues relating to the communications interception revealed in Spring 2015, pp. 9. Available at: http://ec.europa.eu/enlargement/news_corner/news/news-files/20150619_recommendations_of_the_senior_experts_group.pdf

Ethnic Albanian respondents, from various categories, expressed a slightly higher scepticism over the accountability of the judiciary. In their view, the way in which some cases, which have security implications, were handled, has tarnished the perception of judicial accountability. As one respondent noted, "In the case of 'Sopot', persons are still in prison [even though their innocence was shown through the wiretapped conversations] just to safeguard the reputation of the judiciary" (Category II). A respondent from category IV noted in regards to the same case that "people suffered, yet no one was held accountable or responsible which means they [judges and prosecutors] will continue to make the same mistakes". The lack of accountability, as perceived by the respondents, harms the trust that is placed upon these institutions. This then impacts the inter-ethnic relations in regard to equality before the law. As one respondent noted, "the decisions are different for Albanians and Macedonians. A study needs to be done on this issue. Eighty per cent of Albanians do not trust the judiciary because of cases such as 'Sopot' and 'Monstra'" (Category IV). It is unclear whether this comment is founded or not; however, it shows the deep distrust towards the judiciary among ethnic Albanians. Most of the ethnic Albanian respondents shared this sentiment.

Many of the respondents noted that there is a lack of trust in the judiciary. For one respondent from Category II, "citizens' loss of trust in the judicial process" has been one of the biggest problems for the judiciary in the past decades. As another respondent from Category III explained, it is difficult for individuals to have trust in the judiciary, if they end up experiencing negative consequences for taking a case to the attention of the court, meaning they face pressures from their superior(s). Furthermore, our findings correspond to the IRI nationwide poll, according to which, when respondents were asked "To what degree do you trust the following according to their actions in the last 12 months?", the majority responded that they do not trust the Courts and the Public Prosecutors.[28]

Quality of justice

The problems with independence and the accountability of the judiciary reflect in the quality of justice, that is to say, in an increased perception of selective justice. Many respondents pointed out that equality before the law is not guaranteed. It almost comes as a rule, in politically sensitive cases, that the government and government's officials are usually favoured. This creates an atmosphere of selective justice, which has been emphasized in the EU Progress Report along with the presence of political interference.[29]

On the other hand, the efficiency of the judiciary has improved, while transparency remains an issue where further improvements are needed. One respondent noted that "in terms of efficiency the judiciary has improved. The transparency of the judiciary has also seen improvements with the publication of decisions on the courts' website. The problem remains with the quality of justice as the decisions are not well argued" (Category IV). Furthermore, a respondent of Category III noted that case law is not applied properly by judges, which hinders the consistency and the quality of the judgments. Transparency is also problematic for most of the respondents as they do not consider that the Courts are reaching out to the people and the civil society organizations

[28] IRI Center for Insights in Survey Research, 2015. Survey of Public Opinion in Macedonia, pp. 31. Available at: http://www.iri.org/sites/default/files/wysiwyg/2011119_survey_of_citizens_of_macedonia_september_29-october_5_2015.pdf

[29] EC Progress Report 2015, pp. 13. Available at: http://ec.europa.eu/enlargement/pdf/key_documents/2015/20151110_report_the_former_yugoslav_republic_of_macedonia.pdf

When asked to grade the transparency of the judiciary, on a scale from 1 (no transparency at all) to 5 (completely transparent), respondents gave a mean score of 2.21, with a standard deviation of 0.893. A respondent noted that the "transparency of the work of judges and prosecutors is needed as it is lacking. The media could play a more positive role in following the work of the judiciary" (Category III). This lack of transparency can in turn also affect perceptions of their independence, namely, according to one of the respondents, a majority of judges are credible and independent; however, "the judges should be more transparent in showing their independence" (category III) to the public. However, the same respondent noted that access to courts is limited, which could account for problems with transparency but also a general lack of information of court proceedings.

On the other hand, many of the respondents pointed out that if there was more transparency and public involvement when possible in judicial proceedings, then it would have a positive effect in terms of increasing independence and it would strengthen the integrity of judges and prosecutors. The presence of the "public eye" through an increased awareness of the citizens of the judicial system was seen as one of the factors which could ultimately improve the efficiency as well as the quality of justice in Macedonia.

Conclusions

This study confirms that an insufficient culture of judicial independence and separation of powers and functions is still very much persistent in Macedonia. This is mainly the consequence of a lack of the political preconditions for judicial independence and the presence of legacies of the old political and/or legal culture. In order to achieve the independence and self-government of the judiciary, Macedonia has established Judicial and Prosecutors' Councils – autonomous bodies dealing with the main organizational issues of the judiciary and prosecution, namely selection, promotion and to a limited extent dismissal of judges and prosecutors, as well as proposals for the budget.

The main problem regarding the independence benchmark is that the Judicial Council and Council of Public Prosecutors are under political control. Removing the political control is an imperative.

Furthermore, stakeholders are not sufficiently included in the process of drafting legislative reforms. Instituting a process of deliberative reforms (i.e., a process whereby various stakeholders in the judiciary and the interested public could bring forth their views and together decide on necessary reforms) would empower all potential stakeholders, but in particular primary actors from the judicial branch of government, and would allow them to get involved in policymaking on an equal footing with the legislative and executive. A possible threat to judicial independence is the lack of clearly established criteria for career advancement, as well as in the rules for appointing the courts' presidents, which leave room for political influence on the process. Most importantly and particularly worrisome is the observed trend of political (formal and more often informal) influence over the judiciary.

The salaries of judges are a significant element of their social and economic status, intimately linked to their independent position. In this regard, the economic independence of judges provides an additional guarantee for preventing forbidden influence on judges. The salaries of the judicial branch are regulated by special laws that take into consideration the salaries of all public officials. In comparison with the average of these salaries, it can be observed that the prescribed salaries of judges meet satisfying standards. However, it is necessary to improve the salaries of the judicial administration.

Despite the evident progress achieved in the reform of the judiciary over the past decade, the reform momentum in particular needs to be additionally strengthened to ensure the implementation of the undertaken reforms. This is also mentioned in the latest European Commission Enlargement Strategy document, which reads that the rule of law reforms in accession countries must move "beyond declarations to tangible results." [30]In a nutshell, Macedonia needs to ensure full independence of the judiciary, provide higher quality procedures for the appointment of judges and additionally improve the quality and efficiency of justice. However, as seen throughout the study, this endeavour threatens the rent-seeking interests of the established political elites by increasing the prospect of the loss of their position in power and possibly even their criminal indictment and imprisonment.

This study confirms that the main task in creation of the sustainable independence of the judicial apparatus requires certain domestic conditions to prevail – most notably, the reduction of the number of veto players and the elimination of institutional obstructions exhibited in clientilistic relationships among the domestic ruling elites and institutions prone to corruption. In other words, the extent to which judicial control over the executive exists in a particular regime reflects the entire democratic quality of that regime. Conversely, as this research has proven, internalization of the judicial reforms is crucially dependent on the political and legal stability in countries of concern. In this regard democracy and the rule of law remain mutually interconnected. However, democracy cannot be engineered through smart design of formal institutions. Therefore, it is essential to pay greater attention to the whole forest and not just the trees when it comes to judicial reform. To conclude, a special focus needs to be placed on gearing the country towards stable and prosperous democracy governed by the rule of law.

The real dilemma is how to perform this task in an absence of functional institutions. Under the 'rule-of-law orthodoxy,' civil society is at best an adjunct for strengthening the institutions. This study argues, however, for the need of a more inclusive bottom-up approach to the judiciary reforms, in which civic networks composed of Judicial Associations, expert NGOs, various civil society organizations, independent investigative journalists, Ombudspersons, and so forth, will be empowered to play a rights-holder's role vis-à-vis political authorities in order to push for compliance of key laws, monitoring of their implementation and influencing norm socialization. The broad inclusion of civil society in the ongoing accession process can help to build broader constituency in favour of EU accession in the country and help to keep the reforms on track.

European Commission, Enlargement Strategy and Main Challenges 2014-15, (Brussels: 2015). Available at http://ec.europa.eu/enlargement/pdf/key_documents/2014/20141008-strategy-paper_en.pdf

Recommendations

In order to address the identified issues, this study suggests the following recommendations, by outlining the area of improvement with a given recommendation, the institutions responsible for implementing the reform, the indicator for measuring implementation, the risks involved with the given recommendations and the way forward. The first and main recommendation is to implement fully and immediately, without further delays, the urgent reform priorities proposed by the EU. These should bring substantial changes in the political climate and help to generate political will, which is the main precondition for implementing the other policy proposals.

Recommendation	Area of improvement	Institution(s) responsible for reform	Indicator	Risks	Way forward
Fully implement the urgent reform priorities.	Empowerment of judiciary and judicial control.	Ministry of Justice, Parliament.	Proposals for changes and process of adoption and enforcement.	Political obstructions and lack of political will.	Make proposals for legal changes; begin adoption and enforcement.
Institute a deliberative process of reforms.	Strengthening independence.	Judicial and Prosecutors Councils, Ministry of Justice, Associations of Judges and Prosecutors, Parliament and interested public.	Number of deliberative sessions. Number of joint decisions made. Number of joint decisions enacted.	Lack of political will for inclusive policymaking. Difficulties in reaching consensus. Deliberation without conclusion.	Organize a joint deliberative session on challenges and needed reform priorities.
Form an ad hoc Commission of various stakeholders from judiciary and interested public, as first step towards deliberative reforms.	Strengthening independence.	Stakeholders from judiciary and interested public.	Forming the Commission and its functioning. Discussions and drafting a strategy for necessary judicial reforms.	Lack of political will.	First concrete step towards setting up a system of deliberative reforms.
Develop clear criteria for distinguished lawyer and ensure that these criteria are applied in all cases.	Strengthening independence and accountability.	Ministry of Justice, Judicial and Prosecutors Councils, Associations of Judges and Prosecutors and interested public.	Clear definition of distinguished lawyer to include: years of experience, type of experience, education, personal achievements, merits and acknowledgements. Application in all cases.	Lack of political will to set clear criteria. Lack of equal application across cases.	Develop the criteria and implement them to ensure less manipulation and external influence in the composition of the Councils and in the selection of judges.
Make a comprehensive quality assessment of individual judges and prosecutors and their performance.	Strengthening of independence and accountability.	Judicial and Prosecutors Councils, in cooperation with CSOs and international actors.	Inspect the work of individual judges and prosecutors, especially those involved in politically sensitive cases. Confirm and acknowledge cases of impartial adjudication. Sanction selective justice actions.	Unwillingness to do the assessment and prescribe punitive measures. Further undermining the trust in judiciary.	Put judges and prosecutors in politically sensitive cases under higher public scrutiny to increase trust in judiciary.
Make a comprehensive quality assessment of functional hierarchy.	Strengthening of independence and accountability.	Judicial and Prosecutors Councils, in cooperation with CSOs and international actors.	Inspect the work of presidents of courts and higher level prosecutors. Confirm and acknowledge good management and sanction political pressures.	Erosion of subordination. Personal biases and animosities.	Put presidents of courts and higher level prosecutors under higher scrutiny to enforce and maintain highest legal standard in functioning and to sanction political pressures.
Make a rule to have only written communication in the functioning of the hierarchy.	Strengthening of independence.	Judicial and Prosecutors Councils, Associations of Judges and Prosecutors.	Create a rule for judges and prosecutors to have only written communication with superiors.	Formalizing and bureaucratization of functioning.	Change rules of conduct to have only written communication with superiors to protect integrity of judges and prosecutors.
Enforce legally binding verdicts of domestic and international courts.	Strengthening of independence.	Ministry of Justice, Councils, Government.	Enforcement of verdicts from European Court of Human Rights and Administrative Court.	Lack of political will from executive to comply. Financial implications for compensating damages.	Enforce verdicts of domestic and international courts to support independence of judiciary and to increase trust.

Recommendation	Area of improvement	Institution(s) responsible for reform	Indicator	Risks	Way forward
Change electoral regime for members of Councils.	Elections for Councils. Strengthening accountability and transparency.	Ministry of Justice, Councils, Parliament.	Elect all members in one nationwide constituency. Consider postal voting or e-voting. Amendments to laws on Councils.	Losing geographical representation. Technical organization of elections.	Avoid small electoral units with few votes, while maintaining plurality vote to increase independence of Councils.
Introduce campaign and presentations of candidates.	Elections. Strengthening accountability and transparency.	Councils, Ministry of Justice.	Envisage and regulate campaign and presentations of candidates for elections. Amendments to laws on Councils.	Lack of material and technical resources. Possible politicization of process.	Allow judges and prosecutors to get to know the candidates who are running in elections to make an informed decision to increase independence of Councils.
Make mandatory that CVs of candidates are public.	Increasing transparency and accountability in elections and career system.	Judicial and Prosecutors Councils.	Publish CVs of all candidates running in elections for Councils or being considered for selection and promotion. Changes to law on Councils, Courts and Prosecutors.	Lack of technical and material resources. Misuse of personal data or misinterpretation for defamation.	Increase transparency and scrutiny over candidates for CouncilsQ elections and candidates being considered for selection and promotion of judges.
Publish full results from elections and selection of judges.	Increasing transparency in elections and career system.	Judicial and Prosecutors Councils.	Publish results of all candidates who run in elections and who were considered for selection or promotion. Changes to law on Councils, Courts and Prosecutors.	Lack of technical and material resources. Misuse of personal data or misinterpretation for defamation.	Increase transparency and scrutiny over elected Councils members and selected or promoted judges to increase independence and accountability.
Apply set of existing qualitative indicators in career system and make them clearer.	Improving career merit system and increasing accountability.	Judicial and Prosecutors Councils, in cooperation with CSOs and international actors.	Application of existing qualitative criteria in career system and making them clearein practice.	Time-consuming evaluations. Biases if criteria not clear or not equally implemented.	Greater reliance on qualitative, on a par with quantitative indicators, in career system of judges and prosecutors.
Enforce Judicial Budget as legally prescribed.	Strengthening of independence.	Ministry of Finance, Ministry of Justice, Judicial Budget Council.	Judicial budget to be 0.8% of GDP.	Lack of financial possibilities.	Increase funding for judiciary to meet legally set size of 0.8% of GDP.
Increase the capacities for prosecutors or provide budgetary requirements for existing capacities.	Strengthening of independence.	Ministry of Justice, Ministry of Finance, Prosecutors Council, in cooperation with CSOs and international actors.	Funding and capacities for prosecutors. Opening investigative centres.	Lack of political will and financial capacities to support work of prosecutors.	Increase funding and support for prosecutors to carry out new competences provided in the Criminal Code.
Increase capacity of smaller courts.	Strengthening of independence.	Judicial Council, Ministry of Justice, Ministry of Finance.	Funding and support for smaller courts.	Lack of political will and financial means to increase capacity of smaller courts.	Increase capacity of smaller courts to improve quality and access to justice.
Reinstate specialized publications.	Strengthening of independence and accountability.	Councils, Associations of Judges and Prosecutors, in cooperation with CSOs and international actors.	Publishing of specialized publications.	Lack of capacity and resources.	Reinstate specialized publications to increase quality of judiciary and to distinguish outstanding professionals.
Develop a system of rewards and acknowledgements.	Strengthening of independence d an accountability.	Councils, Associations of Judges and Prosecutors, in cooperation with CSOs and international actors.	Developing a system of reward and acknowledgement and putting it into practice.	Lack of capacity and resources. Biases if creation and implementation of standards not clear.	Develop and implement standards to distinguish outstanding professionals to increase independence and accountability.
Strengthen training on integrity and ethics.	Strengthening of independence and accountability.	Judicial Academy, in cooperation with CSOs and international actors.	Courses on integrity and ethics. Follow up results.	Lack of capacity and resources. Lack of upholding standards in practice.	Increase training on integrity and ethics to increase independence and accountability.
Open specialization tracks in Academy.	Strengthening accountability and efficiency.	Judicial Academy.	Tracks for specialization in area of law.	Lack of capacity and resources. No guarantees that candidates will work in areas of specialization.	Develop specialization tracks so that candidates for judges and prosecutors would already be specialized in one area of law after finishing the Academy.
Increase involvement of CSOs and media.	Increasing transparency to support independence and accountability.	Councils, Courts, individual judges, in cooperation with CSOs and international actors.	Public monitoring of court processes.	Public pressure on judges and prosecutors.	Increase transparency of court processes to support integrity and independence of judges.

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Appendix

I. Mapping of Stakeholders

Rank	Category	Institution	Competences
I.	Judiciary	1. Constitutional Court	Checks constitutionality of laws and decisions
		2. Supreme Court	Checks legality of Courts verdicts
		3. Administrative courts (2)	Check legality of elections and decisions of government and public administration
		4. Appellate courts (4)	Courts of second instance
		5. Primary courts (27)	Courts of first instance
		6. Public Prosecutors	Prosecution of criminal offences
		7. Special Public Prosecutor	Investigates wiretapped material (2015)
		8. Judicial Council	Elects, evaluates and dismisses judges
		9. Council of Public Prosecutors	Elects, evaluates and dismisses prosecutors
		10. Court and prosecutors administration	Administrative work in judiciary
II.	Legislative	1. Parliament	Enacts legislation
		2. Committee on Constitutional Affairs	Implementation and changes to Constitution
		3. Committee on Legal Affairs	Checks legal compliance of laws and approves them
		4. Political Parties MP Groups	Political representation and drafting legislation
III.	Executive	1. Government	Preparation of laws
		2. Ministry of Justice	Reform of judiciary
		3. Secretariat for European Affairs	EU acquis compliance
IV.	Interested public	1. Association of Judges	Improves and strengthens judiciary
		2. Association of Prosecutors	Improves and strengthens public prosecutors
		3. Academy for Judges and Prosecutors	Trains candidates for judges and prosecutors
		4. Experts (university professors)	Provide expert opinion
		5. Media (journalists)	Inform the public
		6. NGOs	Support and monitor reforms
		7. Internationals (US, EU)	Support reforms

II. The Legal framework for the Judicial System

Constitution, 1991: Judiciary, art. 98 105; Prosecutors, art. 106 and 107; Constitutional Court, art. 108 113.
Constitutional Amendments XX XXX, December 2005: Judiciary reforms Creation of Judicial and Prosecutors Counc ils.

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Changes and amendments, 14.03.2008
Constitutional Court decision to annul some provisions, 16.04.2008
Constitutional Court decision to annul some provisions, 10.09.2008
Changes and amendments, 18.11.2010

Law on Public Prosecutor, Official Gazette 80/1992 (Out of Force)
Changes and amendments, 01.04.1993
Constitutional Court decision to annual some provisions, 28.04.1993
Changes, 25.02.1994

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Law on Public Prosecutor for Investigating Criminal Acts Connected with and Coming out from the Content of the Illegal Wireta pping, Official Gazette 159/2015

Law on Judicial Budget, Official Gazette 60/2003
Changes and amendments, 28.03.2006
Changes and amendments, 19.08.2008
Changes and amendments, 05.11.2010

Law on Salaries for Public Prosecutors, Official Gazette 153/2009
Changes, 14.05.2010

Law on Republic Judicial Council, Official Gazette 80/1992 (Out of Force)
Changes and amendments, 04.08.1999
Changes and amendments, 01.07.2003

Law on Judicial Council, Official Gazette 60/2006
Changes and amendments, 18.11.2010
Changes and amendments, 25.07.2011
Changes and amendments, 12.02.2015
Changes and amendments, 17.04.2015

Law on Council for Determining the Facts and Initiating a Procedure to Establish a Judges Accountability, Official Gazette 2 0/2015

Law on Public Prosecutors Council, Official Gazette 150/2007
Changes, 25.07.2011

Law on Academy for Training Judges and Prosecutors, Official Gazette 13/2006 (Out of Force)

Law on Academy for Training Judges and Prosecutors, Official Gazette 88/2010 (Out of Force)
Constitutional Court decision to annul some provisions, 04.05.2011
Changes and amendments, 26.12.2012
Changes, 20.02.2013

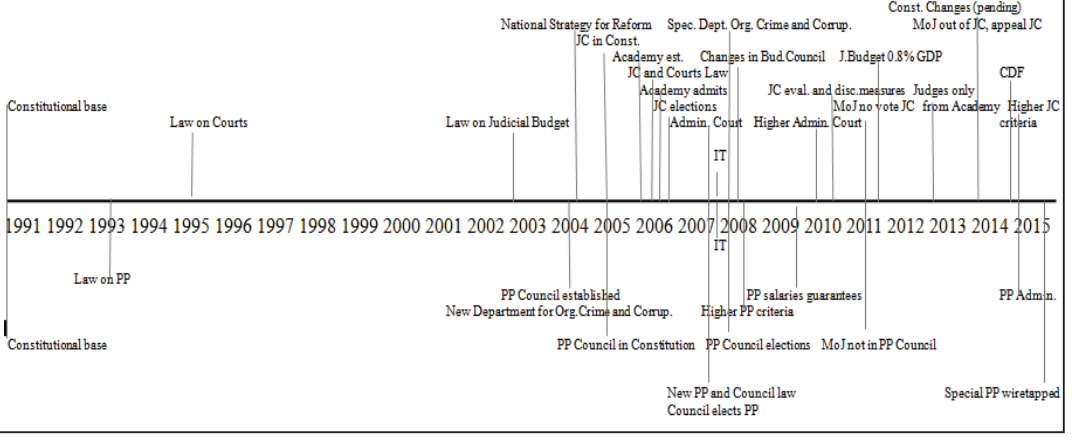
Law on Academy for Training Judges and Prosecutors, Official Gazette 20/2015
Changes and amendments, 05.11.2015

Law on Judicial Service, Official Gazette 98/2008 (Out of Force)
Changes and amendments, 24.12.2008
Changes, 15.01.2009
Constitutional Court decision to annul some provisions, 29.04.2009
Constitutional Court decision to annul some provisions, 23.12.2009
Changes and amendments, 18.11.2010

Law on Judicial Service, Official Gazette 43/2014
Constitutional Court decision to annul some provisions, 08.10.2014
Amendments, 05.03.2015
Changes, 15.06.2015

Law on Public Prosecutors Service, Official Gazette 62/2015

III. Graph. Time line of reforms.



IV. Analysis of variance and tests for homogeneity of variances.

Judiciary N = 14, current and former judges and prosecutors
Others N = 22 (executive, legislative and interested public)

Table 1.
On a scale from 1 (bad) to 5 (very good), how would you grade the work of:

	Judiciary	Others	Total	Levenes te st
Courts	2.36 (0.75)	2.45 (0.86)	2.42 (0.8)	0.30
Prosecutors	2.38 (1.12)	2.32 (0.99)	2.34 (1.03)	0.81
Judicial Council	1.71 (0.83)	1.82 (0.85)	1.78 (0.83)	0.05
Public Prosecutors Council	1.69 (0.95)	1.82 (1.00)	1.77 (0.97)	0.00
Judicial Academy	2.79 (0.89)	3.09 (0.87)	2.97 (0.88)	0.05

Standard deviation in parentheses

Table 2.
On a scale from 1 (not at all) to 5 (completely), how would you grade the independence of:

	Judiciary	Others	Total	Levenes test
Judiciary	2.21 (0.69)	1.95 (0.78)	2.06 (0.75)	0.05
Judicial Council	1.43 (0.75)	1.55 (0.74)	1.5 (0.74)	0.07
Public Prosecutors Council	1.5 (0.65)	1.5 (0.80)	1.5 (0.74)	0.84
Adequacy of Judicial Budget	2.38 (0.87)	2.86 (1.13)	2.69 (1.05)	0.43
Judicial Control of Executive	1.69 (1.25)	1.73 (0.94)	1.71 (1.05)	0.65

Standard deviation in parentheses

Table 3.
On a scale from 1 (bad) to 5 (very good), how would you rate the elections for members of the Judicial and Prosecutors Councils?

		Judiciary	Other	Total	Levenes test
Free and fair elections	Judicial Council	1.85 (0.99)	1.81 (0.75)	1.82 (0.85)	5.37
	Prosecutors Council	1.92 (1.32)	1.95 (0.92)	1.94 (1.07)	1.44
Political influences	Judicial Council	1.79 (1.05)	1.82 (1.47)	1.81 (1.31)	0.43
	Prosecutors Council	1.79 (1.05)	2.05 (1.39)	1.94 (1.26)	1.32
Competent candidates	Judicial Council	1.79 (1.12)	1.86 (0.79)	1.83 (0.92)	2.25
	Prosecutors Council	2 (1.16)	2.05 (1.02)	2.03 (1.06)	0.05

Standard deviation in parentheses

Table 4.

On a scale from 1 (bad) to 5 (very good), how would you rate the objectivity and independence of the career system for judges and prosecutors?

		Judiciary	Other	Total	Levenes test
Selection	Judges	1.64 (0.84)	1.50 (0.74)	1.56 (0.77)	0.66
	Prosecutors	1.92 (0.95)	1.95 (0.95)	1.94 (0.94)	0.45
Promotion	Judges	1.71 (0.83)	1.67 (0.73)	1.69 (0.76)	0.28
	Prosecutors	1.77 (0.83)	2 (0.84)	1.91 (0.83)	0.19
Dismissal	Judges	1.57 (0.76)	1.57 (0.68)	1.57 (0.69)	0.75
	Prosecutors	2.25 (1.36)	1.95 (0.81)	2.06 (1.03)	5.95

Standard deviation in parentheses

Table 5.
On a scale from 1 (no influence) to 5 (strongest influence), which of the following influence the work of judges?

	Judiciary	Other	Total	Levenes test
Parliament	2.92 (1.31)	2.3 (0.98)	2.53 (1.14)	2.6
Government	4.21 (1.05)	4.32 (0.99)	4.28 (1.00)	0.25
Judicial Council	4.14 (0.86)	4.29 (0.64)	4.23 (0.73)	2.38
Business Community	3.23 (0.93)	2.95 (1.2)	3.06 (1.09)	2.48
Media	3	2.33	2.58	10.58
	(1.54)	(0.86)	(1.17)	
NGOs	2 (1.2)	1.33 (0.66)	1.58 (0.94)	2.29

Standard deviation in parentheses

Table 6.

of prosecutors?

	Judiciary	Other	Total	Levenes test
Parliament	2.92 (1.38)	2.19 (1.12)	2.45 (1.25)	1.03
Government	4.14 (1.03)	4.24 (0.99)	4.2 (0.99)	0.09
Public Prosecutors Council	3.54 (1.19)	3.65 (1.09)	3.61 (1.12)	0.32
Business Community	3.45 (1.04)	2.55 (1.09)	2.87 (1.15)	0.00
Media	2.55 (1.29)	2.15 (0.93)	2.29 (1.07)	1.81
NGOs	1.64 (1.03)	1.2 (0.69)	1.35 (0.84)	4.19

Standard deviation in parentheses

Table 7.
On a scale from 1 (lowest) to 5 (highest), which of the following is limiting the independence of the judiciary?

	Judiciary	Other	Total	Levenes Test
Bad laws	2.83 (1.4)	1.95 (0.97)	2.27 (1.2)	4.18
Political influences	4.21 (1.31)	4.36 (1.22)	4.31 (1.24)	0.26
Incompetent judges and prosecutors	3.21 (1.31)	3.14 (0.73)	3.17 (0.98)	5.86
Lack of capacity (space)	2.29 (1.32)	2.43 (1.16)	2.37 (1.22)	0.21
Bad technical resources	2.21 (1.19)	2.52 (1.17)	2.4 (1.17)	0.17
Bad administration	2.64 (1.08)	2.43 (1.07)	2.51 (1.07)	0.2
Low salaries	2.85 (1.21)	2.52 (1.29)	2.65 (1.25)	0.22

Standard deviation in parentheses

V. Questionnaire

FIRST PART: CLOSED QUESTIONS

1) In your opinion, to what extent is the judiciary independent, on a scale from 1 (not at all) to 5 (completely independent)?

1	2	3	4	5

2) How would you grade the work of the courts on a scale from 1 (bad) to 5 (very good)?

1	2	3	4	5

3) To what extent can the following institutions and actors influence the work of judges, on a scale from 1 (no influence) to 5 (strongest influence)?

Parliament	1	2	3	4	5
Government	1	2	3	4	5
Judicial Council	1	2	3	4	5
Business Community	1	2	3	4	5
Media	1	2	3	4	5
NGOs	1	2	3	4	5

4) How would you grade the work of the prosecutors on a scale from 1 (bad) to 5 (very good)?

1	2	3	4	5

5) To what extent can the following institutions and actors influence the work of prosecutors on a scale from 1 (no influence) to 5 (strongest influence)?

Parliament	1	2	3	4	5
Government	1	2	3	4	5
Public Prosecutors Council	1	2	3	4	5
Business community	1	2	3	4	5
Media	1	2	3	4	5
NGOs	1	2	3	4	5

6) How would you grade the work of the Judicial Council on a scale from 1 (bad) to 5 (very good)?

1	2	3	4	5

7) To what extent is the Judicial Council independent on a scale from 1 (not at all) to 5 (completely independent)?

1	2	3	4	5

8) How would you grade the elections for members of the Judicial Council on a scale from 1 (bad) to 5 (very good)?

Free and fair	1	2	3	4	5
Political influences	1	2	3	4	5
Choosing the most competent candidates	1	2	3	4	5

9) How would you rate the objectivity and independence of the following, on a scale from 1 (lowest) to 5 (highest)?

Selection of judges	1	2	3	4	5
Promotion of judges	1	2	3	4	5
Dismissal of judges	1	2	3	4	5

10) How would you grade the work of the Public Prosecutors Council on a scale from 1 (bad) to 5 (very good)?

1	2	3	4	5

11) To what extent is the Public Prosecutors Council independent on a scale from 1 (not at all) to 5 (completely independent)?

1	2	3	4	5

12) How would you grade the elections for members of Public Prosecutors Council on a scale from 1 (bad) to 5 (very good)?

Free and fair	1	2	3	4	5
Political influences	1	2	3	4	5
Choosing the most competent candidates	1	2	3	4	5

13) How would you rate the objectivity and independence of the following, on a scale from 1 (lowest) to 5 (highest)?

Selection of prosecutors	1	2	3	4	5
Promotion of prosecutors	1	2	3	4	5
Dismissal of prosecutors	1	2	3	4	5

14) How would you grade the work of the Judicial Academy on a scale from 1 (bad) to 5 (very good)?

1	2	3	4	5

15) What is limiting the independence of the judiciary on a scale from 1 (lowest) to 5 (highest)?

Bad laws	1	2	3	4	5
Political influences	1	2	3	4	5
Incompetent judges and prosecutors	1	2	3	4	5
Lack of capacity (space)	1	2	3	4	5
Bad technical resources	1	2	3	4	5
Bad administrative staff	1	2	3	4	5
Low salaries	1	2	3	4	5

16) In your opinion, how would you grade the the adequacy of the Judicial Budget on a scale from 1 (bad) to 5 (very good)?

1	2	3	4	5

17) To what extent can the judiciary hold the government accountable on a scale from 1 (not at all) to 5 (full judicial control)?

1	2	3	4	5

Question ONLY FOR media and civil society

18) To what extent is the judiciary transparent in its work on a scale from 1 (not at all) to 5 (completely transparent)?

1	2	3	4	5

19) To which category does the respondent belong:
1. Judiciary
2. Legislative
3. Executive
4. Interested Public

SECOND PART: OPEN-ENDED QUESTIONS

Which reforms have contributed to the independence of the judiciary and which were less effective?

Who supported and who impeded the reform processes? What do you think their motivation was – to support or to block reforms?

Looking at the past two decades, what has changed in terms of judicial independence, accountability and efficiency?

What is the biggest problem in the work of the judiciary, for judges and for prosecutors?

What needs to be done to change and improve that problem?

Can you name any examples of when judicial control of the executive was exercised, either raising charges or starting a trial and reaching a verdict (at various levels of government, public administration, local government)?

What conditions are necessary for a stronger judicial control of the executive? What is the state of affairs at the moment and how can it be changed and improved?

What is the best way for the judicial control of the executive to improve?

Is there anything you would wish to add that you think is important and that we did not ask?