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NETWORK 23

SHADOW REPORT ON CHAPTER 23

for the period from May 2016 to January 2018

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Shadow Report on Chapter 23
for the period from May 2016 to January 2018

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List of abbreviations:

ACCMIS - Automated Court Case Management Information System

ADR - Alternative Disputes Resolution

AJPP - Academy for Judges and Public Prosecutors

ARM - Army of the Republic of Macedonia

AAVMS - Agency for Audio and Audiovisual Media Services

BPP - Basic Public Prosecutor's Office

ADC - Anti-Discrimination Commission

CC - Criminal Code

CPC - Code of Criminal Procedure

CMDM - Civil Movement for Defense of Macedonia

DPDP - Directorate for Personal Data Protection

DUI - Democratic Union for Integration

EC - European Commission

ECHR - European Convention on Human Rights

ECHR - European Court for Human Rights

ENER - Electronic National Register of Legislation

EPI - European Policy Institute

EU - European Union

GRECO - Group of States against Corruption

IMRO - DPMNU (VMRO-DPMNE) - Internal Macedonian Revolutionary Organization – Democratic Party for Macedonian National Unity

JAM - Journalists' Association of Macedonia

LDTLS - Law on Determining the Type and the Length of the Sentence

LGBTI - Lesbian, Gay, Bisexual, Transgender and Intersexual Community

MCIC - Macedonian Centre for International Cooperation

MERC - Macedonia-EU Resource Center

MOI - Ministry of Interior

MLSP - Ministry of Labor and Social Policy

MRTV - Macedonian Radio Television

OOA - Orthodox Ohrid Archdiocese

OSCE - Organization for Security and Co-operation in Europe

PE - Penitentiary Establishment

PPORM - Public Prosecutor's Office of the Republic of Macedonia

PPOOCC - Public Prosecutor's Office for Organized Crime and Corruption

RM - Republic of Macedonia

SCID - Security and Counterintelligence Directorate

SCPC - State Commission for Prevention of Corruption

SDUM (SDSM) - Social Democratic Union of Macedonia

SEC - State Election Commission

SPPMD - Council for Prevention of Juvenile Delinquency

SPPO - Special Public Prosecutor's Office (for Prosecuting Criminal Offences Related to and Arising from the Content of the Illegally Intercepted Communication)

TIM - Transparency International Macedonia

UN - United Nations

UPOZ - Trade Union of Administration, Judiciary and Citizens› Associations

URP - Urgent Reform Priorities

USA - United States of America

YFU - Youth Forces Union of IMRO-DPMNU (VMRO-DPMNE)

Contents:

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Introduction

Project "Network 23+" implemented by the European Policy Institute-Skopje and the Helsinki Committee for Human Rights aims at providing structured contribution of the civil society in monitoring and assessing the policies included in Chapter 23 of the EU Acquis – Judiciary and Fundamental Rights.

This report unifies all the findings, conclusions and recommendations that resulted from the monitoring of the areas structured in Chapter 23 – Judiciary and Fundamental Rights into a single coherent entirety. In fact, this is the third Shadow Report published by "Network 23". The previous two cover the periods of October 2014-July 2015 and July 2015-April 2016.

This report encompasses the period between the beginning of May 2016 and the end of January 2018. The report's period has been extended in order to correspond to the new cycle of European Commission reports, which are to be released in April.

Taking into consideration the long-standing and deep political and institutional crisis in the country following the disclosure of the wiretapped conversations by the then opposition, currently ruling authorities led by the Social-Democratic Union of Macedonia (SDSM), starting in February 2015, the period that is subject of this report could be clearly divided into three key stages as following:

1) Period prior to the early parliamentary elections on 11 December 2016;

2) Transition period after the elections and before the formation of the new Government on 31 May 2017; and

3) Period from the election of the new Government until the end of January 2018.

Moreover, the drafting of this document was taking place in the period of intensive and hurried launch of the long-overdue reforms in the area of rule of law, marked by the release of the Government's reform plan titled "Plan 3-6-9", [1] which contained an overview of the priority measures and activities necessary for the implementation of urgent democratic reforms, the presentation of the CSOs' proposal for urgent democratic reforms,[2] and the drafting and passing of the Strategy for reforms in the justice sector accompanied by the 2017-2022 Action Plan.[3] In addition, the final stage of the reporting period was marked by an inclusive reform cycle initiated with the justice sector reform of the Ministry of Justice, consultations with civil society organizations about the Plan 3-6-9, and consultations with civil society organizations over the Strategy for reforms in the justice sector and law amendments.

It remains to be seen whether the reform processes will help deal with the shortcomings in the system, especially in key justice and other independent institutions and regulatory bodies. Namely, the proper execution of their constitutional and legal competences is of crucial importance for the protection and exercising of human rights and freedoms. It is expected for all these activities to result in substantial implementation of the reform priorities in the area of rule of law as identified in the Preliminary Report by the Senior Experts' Group led by Reinhard Priebe of June 2015,[4] and reaffirmed in its second Report of September 2017.[5]

1 The plan is available at http://vlada.mk/plan-3-6-9
2 Blueprint of civil society organizations for urgent democratic reforms available at: http://epi.org.mk/docs/Predlog%20IDR_2017.pdf
3 Strategy is available at https://goo.gl/BEPkg5
4 Recommendations of the Senior Experts' Group on systemic rule of law issues relating to the communications interception revealed in the spring of 2015.
5 Assessment and recommendations by the Senior Experts' Group on systemic rule of law issues 2017.

The beginning of the reporting period was marked by the annulment of the collective pardon decision by the President of RM from 27 May 2016, which was an unseen legal precedent that did not result with an impeachment procedure. Moreover, ways were found to further obstruct justice through systematic hindrance of the work of the Public Prosecutor's Office for Prosecuting Criminal Offences Related to and Arising from the Content of the Illegally Intercepted Communication, better known as Special Prosecutor's Office (SPO), reassigning of judges within the Basic Court Skopje 1 and the Supreme Court, as well as series of suspicious actions taken in high-profile cases involving corruption and abuse of power. This impression has been visibly altered following the election of the new Government and positive developments have been noted in the field of justice.

From a human rights viewpoint, the improper conduct of police officers remains to be the key problem, taking into consideration the inefficiency of the Sector for Internal Control, Professional Standards and Criminal Investigations within the Ministry of Interior, as well as the absence of an effective investigation by the Public Prosecutor's Office in cases of torture, inhuman or degrading treatment and punishment. We welcome the efforts of the Council of Europe who cooperation with the MOI and the Public Prosecutor's Office work on the implementation of projects for establishing an external independent mechanism for oversight of cases of illegal actions and excessive use of force undertaken by the police.[6] In this regard, amendments to a number of laws will soon be submitted to the Assembly that should provide the legal framework for the establishment of this mechanism.

The state of persons deprived of liberty in penitentiary and correctional facilities in the country is of special concern. The Ombudsman has repeatedly noted the problem with the overcrowding at those institutions, which results in inhumane conditions at the prisons and remand facilities.[7]

During this period the European Court of Human Rights has not delivered any ruling establishing a violation of Article 3 of the European Convention on Human Rights, but the number of judgments establishing violation of Article 3 that have not been executed still remains high. None of the 11 such judgments delivered since the Convention's ratification has been fully executed, despite the periodical submitting of action plans to the Committee of Ministers, which supervises the execution of judgments by the member-states.

Discrimination on different grounds, especially on the grounds of gender, sex, sexual orientation, disability, as well as political and party affiliation and conviction, is the most visible among a number of violations of human rights noted by domestic organizations, including the Helsinki Committee for the Human Rights, which are to be elaborated in detail below. This is accompanied by the inactivity of the Anti-Discrimination Commission, which is related to the lack of competence by some of its members. In addition, the discrimination of members of the LGBTI community is still present, especially taking into consideration the impunity of the perpetrators of the attacks on the LGBTI support center, who have not faced justice years after the incidents. A positive step in this direction are the changes in the Law on Prevention and Protection from Discrimination, which stipulate the inclusion of sexual orientation in the grounds for discrimination, something that many civil society organizations have promoted for years.

6 Namely, what started to be implemented in the framework of the project supporting the establishment of an external oversight mechanism (http://www.coe.int/en/web/criminal-law-coop/home-fyrom-oversight) continues to be implemented with the project Enhancing Human Rights Policing (http://www.coe.int/en/web/skopje/enhancing-human-rights-policing). Both projects are implemented within the Horizontal Facility for the Western Balkans and Turkey. These projects envisage the adoption of the "Prosecution Plus" model that incorporates the establishment of a separate department within the Public Prosecutor's Office for cases of police ill-treatment, establishment of a separate body for external oversight as the second-instance body to this mechanism, comprised of representatives of civil society organizations and experts in the field.

7 See Annual Report on the degree of respect, promotion and protection of human rights and freedoms, 2016, available at http://ombudsman.mk/upload/Godisni%20izvestai/GI-2016/GI-2016.pdf, pages 51-55.

Freedom of expression was also under threat due to the many attacks against journalists and news crews, preventing them from performing their professional tasks in the public interest. Moreover, the hate speech in the electronic media and press, and especially in the social media and Internet portals, as well as during the "Free Macedonia" protests resulted in a series of hate acts, which culminated with the incidents in the building of the Assembly on 27 April 2017. They were preceded by inflammatory hate speech during the so-called "Night of Knives". It happened few days after the 11 December 2016 early parliamentary elections, when a number of VMRO-DPMNE officials, led by the former Prime Minister Nikola Gruevski, by using such an aggressive and ferocious speech against their opponents and diplomats, tried to pressure the State Election Commission (SEC) claiming that SEC was under political instruction regarding the elections outcome.[8]

Freedom of association was attacked with the arrests, detentions and significant fines against civil society activists for trivial violations in the context of the so-called "Colored Revolution", when they manifested their dissatisfaction with the authorities and demanded resignation of President Ivanov after his decision for collective pardon in the spring of 2016.

On the other hand, 36 persons were arrested on 28 November 2017. The Ombudsman expressed serious concern with the legality of the arrests and pre-trial detention imposed for several MPs because of the failure to follow proper legal procedures related to their immunity.[9]

Freedom of association was essentially violated with the attempts to silence freethinking civil society organizations, which was especially evident after the so-called "desorosoization" was announced by top officials at the end of 2016. In addition, the Public Revenue Office carried out intensive financial controls based on orders by the State Commission for Prevention of Corruption between December 2016 and May 2017, targeting 22 civil society organizations. Although they had not established any financial abuse, the procedures initiated with the Public Prosecutor's bodies have not been officially closed, yet. This brings into question their legal safety.[10]

Despite the ongoing procedures initiated by the SPO, fight against corruption remains at a very low level, which is evident from the trend of lack of accountability and impunity of officials, inefficient use of confiscation and poor implementation of the Law on Whistleblowers, as well as the fact that the State Commission for Prevention of Corruption is not properly performing its legal competences.

This report is a contribution of civil society organizations in addressing the systemic deficiencies in the areas covered by Chapter 23 and providing recommendations regarding the main directions of the initiated reform efforts.

8 http://a1on.mk/archives/681770, accessed on 17 December 2016

9 Materials on pre-trial detention motions available at http://www.sobranie.mk/materialdetails.nspx?materialId=2f6ebb9c-af48-459f-8489-265b77153355

10 This fact was highlighted by representatives of numerous civil society organizations, which actively took part in the work of the focus group on 15 September 2017 for the purpose of drafting this document.

Methodology

The methodology applied for the drafting of this report was monitoring areas in the focus of Network 23 – judiciary, fight against corruption and fundamental rights, developed back in 2015 and already applied in the previous reports. It involved analyses and processing of information acquired from the official sources of public and judicial institutions, analysis of media reports on individual events in these areas during the reporting period, analyses and monthly briefs by civil society organizations that are part of Network 23+ Project, utilization of the possibility of free access to public information from relevant institutions, as well as discussions in focus group with representatives from the civil society associations working in the field, and an expert thematic workshop with representatives of the public institutions and civil society associations.

The focus group aimed at engaging relevant civil society organizations working in the areas covered by Chapter 23 into an open and effective discussion and sharing knowledge and experience from their years-long work in these areas in order to be adequately incorporated in this report. [11]

From the expert thematic workshop, we acquired significant essential contribution from the representatives of relevant public and judicial institutions that we used in this document and some of their remarks to the preliminary draft-document have been incorporated in this Shadow Report. Besides the representatives of Transparency International Macedonia, Institute for Human Rights and Coalition All for Fair Trials, the workshop was also attended by representatives of the Supreme Court, the Council of Public Prosecutors, the Special Prosecutor's Office, the Ministry of Justice, the Anti-Discrimination Commission, and the Directorate for Personal Data Protection.[12]

Furthermore, information from the public administration and judiciary was collected through requests for public information to all basic courts and public prosecutor's offices, Supreme Court, Administrative Court, Judicial Council and Judicial Budget Council, the Ombudsman, Anti-Discrimination Commission, Agency for Audio and Audiovisual Media, State Commission for Prevention of Corruption, Directorate for Personal Data Protection, National Council for Prevention of Juvenile Delinquency, Directorate for Execution of Sanctions and Academy for Judges and Public Prosecutors. Most of the institutions responded to the requests, thus providing significant contribution in the drafting this report.

11 The focus group discussion held on 15 September 2017 was guided by a questionnaire drafted in advance by the authors of the report, and it was attended by representatives of the following civil society associations: Institute for Human Rights, Coalition All for Fair Trials, Macedonian Young Lawyers Association, Center for Legal Research and Analysis, Foundation Open Society Macedonia, Transparency International Macedonia, Transparency Macedonia, Foundation Metamorphosis and Center for Strategies and Development Pactis-Prilep.

12 In addition, retired Supreme Court Judge Milka Ristova joined the workshop held on 7 February 2018.

Overview

It is worth noting that the accepted strategic guidelines include those incorporated in the Blueprint of the civil society organizations for urgent democratic reforms.[13] It incorporates the priority goals, measures and activities for the following 3, 6, 9 and 12 months in series of areas such as justice, fight against corruption and media, thus upgrading the initial document drafted in July 2016. It was published on 19 July 2017, pointing out to the Government the need to fully involve the civil society sector in future judicial reforms.

The findings of the Report of the Senior Experts' Group led by Reinhard Priebe from June 2015[14] were reaffirmed to a large extent in their second Report, which provides additional assessment and recommendations, along with specific guidelines for the reform processes.[15] Findings and conclusions of the second report were presented in the second half of September 2017 after Priebe and his team of experts paid another visit to the Republic of Macedonia in July 2017, to see the progress made in the field of judiciary. The overarching conclusion in Priebe's second report was the non-functioning of key judicial and public institutions to an extent that prevents consistent implementation of laws and legal competences.[16]

13 This document was drafted by a number of civil society organizations and experts over a course of an inclusive process involving 146 individuals, 73 CSOs. Available at http://www.mhc.org.mk/system/uploads/redactor_assets/documents/2375/Blueprint_2017_MK-01.pdf.

14 Recommendations of the Senior Experts' Group on systemic rule of law issues relating to the communications interception revealed in spring 2015.

15 Assessment and recommendations of the Senior Experts' Group on systemic rule of law issues 2017, available at https://goo.gl/JFhEkH

16 The European Policy Institute (EPI) is continually monitoring the status of implementation of the Urgent Reform Priorities. See more on the implementation status of the URP as of November 2017 at http://www.merc.org.mk/status-na-realizacija-na-itni-reformski-prioriteti

1. Judiciary at a crossroad

The need for reforms in the judicial sector is clearly established in the first and second report of the senior experts' group led by Priebe and the Urgent Reform Priorities drafted by the European Commission. A survey carried out by Network 23+ Project is an additional indicator of the need for reforms. The survey shows that 47 percent of Macedonian citizens believe that the state of judiciary is poor.[17] In addition, the judiciary, the Public Prosecutor's Office, the Judicial Council and the Council of Public Prosecutors are considered institutions that are dependent, biased and unprofessional.

Following a long standstill and backtrack in this sphere, the new Government has launched reform activities in the area of judiciary as part of Plan 3-6-9.[18]

Justice Sector Reforms Strategy adopted

The Government adopted the 2017-2022 Justice Sector Reforms Strategy along with the Action Plan in November 2017,[19] after they consulted and requested opinions from Brussels three times.[20]

They stopped working on the Strategy until the summer of 2017, when after a long standstill and backtracking in this field the Justice Minister formed a Council for Reforms in the Justice Sector, composed of representatives of courts and public prosecutor's offices, university professors, legal experts and civil society representatives. This was how the Government launched the reform activities in the justice sector elaborated in Plan 3-6-9 that encompasses the key measures and general guidelines in the field of justice as well as in the Strategy.[21]

17 More about the survey available at: http://www.merc.org.mk/Files/Write/00001/Files/Network23/public_opinion_24_04_17/Istrazuvanje-na-javno-mislenje-poglavje-23-kratka-verzija.pdf

18 Plan 3-6-9 available on the website of the Government of RM, at the following link http://vlada.mk/sites/default/files/programa/2017-2020/Plan%203-6-9%20MKD.pdf

19 Ministry of Justice press release http://www.pravda.gov.mk/novost_detail.asp?lang=mak&id=1410

20 Text of the document can be found at https://goo.gl/SGLRxq

21 Plan 3-6-9 foresees easing the political pressure imposed on judges and the Judicial Council, changes in the Law on Courts, abolishment of the Law on the Council for determining facts and disciplinary responsibility of judges, as well as transfer of its jurisdiction to the Judicial Council by making amendments in the Law on the Judicial Council. Furthermore, a new draft-law on witness protection is in the pipeline, along with the establishment of a working group that would focus on the Venice Commission recommendations to the Law on the Protection of Privacy. This plan incorporates the establishment of the Council for Reforms in the Justice Sector and preceded the formation of the working group on revision of the draft-Justice Sector Reforms Strategy, which was also clearly stated in the plan.

The process of the Strategy drafting was transparent involving intensive consultations with civil society organizations working in the field of justice. As a result, some of the remarks and proposals made by civil society organizations were taken into consideration and incorporated in the Strategy and the Action Plan, whereas others have been gradually incorporated in the newly drafted legislation.[22]

The Council's work was accompanied by series of disagreements by its members, followed by resignations of several university professors, who noted that things were run in a bureaucratic way. In January 2018 things started moving with the establishment of the Council for Monitoring the Implementation of the Justice Sector Reforms Strategy,[23] chaired by Prime Minister Zoran Zaev, including the presidents of the Supreme Court, the Skopje Court of Appeal, the Basic Court Skopje 1, the Chief Public Prosecutor of RM and the Special Public Prosecutor. Such a composition has caused strong reactions in public, especially because of the connections of some of the members of this council with the previous government.

The adoption of the 2018-2022 Justice Sector Reforms Strategy through an intensive and inclusive process of consultations with law practitioners, law experts, European experts and civil society representatives is a positive step towards establishing the real needs and deficiencies in the justice sector and finding sustainable solutions.

The announcement of the establishment of a new Council for monitoring the implementation of the Justice Sector Reforms Strategy demonstrates the Government's commitment to the implementation of the reforms in this area. However, there is a need for increased transparency and inclusion during its establishment, so that the Council is not reduced merely to the executive-judiciary relationship. More stakeholders have to be involved, primarily from institutions encompassed in the Strategy, in order to have different opinions and give weight and relevance to the reforms. In addition, representatives from the legislative power need to be involved.

The civil society sector will need to be involved in the continued monitoring of the implementation of the Strategy and the Action Plan towards their consistent implementation in line with the previously stipulated strategic goals and guidelines.

22 Proposals of the European Policy Institute are available at http://www.epi.org.mk/docs/EPI_StrategijaPravosudstvo_public.pdf

23 Press release published on the web portal Sudstvo of 23 January 2018 https://goo.gl/EXmvh2

Independence

The Judicial and the Public Prosecutors' Councils - leaders or followers

The functioning of the Judicial Council and the Council of Public Prosecutors continued to be problematic. It is therefore justified to ask whether they really have the role of guardians of the integrity and independence of judges and prosecutors, or they are just an instrument of the political strongmen.[24]

During the reporting period, new presidents of these bodies were elected. Namely, the Judicial Council's President Zoran Karadzovski was elected in the second round in April 2016. Petar Anevski was re-elected in September 2016 despite the observations by the civil society sector that the law did not allow re-election,[25] and he resigned on 29 August 2017 citing personal and family reasons. He was replaced by Kole Steriev. The election of the council members and the quality of the elected candidates is also questionable, especially the election of the Judicial Council members from among "prominent lawyers", since their CVs do not give the impression that they meet all the requirements to be considered "prominent lawyer".[26]

The Judicial Council and the Council of Public Prosecutors were critical of the Special Prosecutor's Office until the new authorities came to power. Back in October 2016, the Judicial Council's president Karadzovski condemned and deemed illegal the summoning of five Administrative Court judges to give testimonies in the capacity of suspects by the SPO. He urged all parties involved to refrain from any attempts to endanger their position and role in administering justice and protecting human rights and freedom.[27]

Perception of independence

Relevant public opinion surveys carried out by various entities, including civil society organizations, show enormous distrust of citizens in judiciary. The findings of the public opinion survey carried out by Network 23+ between 11 January and 6 February 2017 show that 50 percent of respondents believe that the judiciary in the Republic of Macedonia has failed to meet the standards for European integration, while 47 percent of respondents assess the work of the judiciary as poor. Thirty-one percent of the citizens say corruption in judiciary is the biggest obstacle in the implementation of reforms. According to the survey, 65 percent of respondents believe civil society organizations should take part in the judicial reforms.[28] The survey interestingly shows that citizens trust the police more than the judicial bodies, which is an indicator of Macedonian citizens' perception about the justice sector.

The latest survey carried out between 12 October and 13 December 2017 on 288 respondents employed in the public administration and the judiciary and working in the areas covered by Chapter 23 shows that 80 percent of the respondents believe civil society organizations should take part in reforms, and 47 percent claim that the institutions have the capacity to implement those reforms. Only 11 percent say the general state of the judiciary is good, while 54 percent

24 Significant observations on the work of the Judicial Council are contained in the Report No. 1 for the period November 2016 - January 2017, published by the Institute for Human Rights, available at http://www.merc.org.mk/Files/Write/Documents/04763/mk/IHR-Izvestaj-01-(web)-MK.pdf

25 Helsinki Committee for the Human Rights reacted vigorously to the election.

26 First monitoring report "Judicial Reforms – from Priebe 1 till Priebe 2 and Beyond", page 5, available at https://goo.gl/Bqq7P6

27 Judicial Council press release available at http://www.ssrm.mk/Novosti.aspx?novost=464 (accessed on 15 October 2016)

28 It was a telephone survey carried out on a sample of 1,200 respondents. The survey results are available at http://www.merc.org.mk/Files/Write/00001/Files/Network23/public_opinion_24_04_17/Istrazuvanje-na-javno-mislenje-poglavje23-celosno.pdf

see it as poor. Sixty-two percent believe that citizens distrust the judicial system, while more than half of respondents stress that the most appropriate ways to help increase the people's trust in the judiciary is by reducing the influence of the executive power over the judiciary (55%) and by increasing the courts' independence and impartiality (53%). A positive indicator from this research is that as much as 69 percent of the respondents agree that EU's proposals for reforms are appropriate and applicable.

On the other hand, the analysis of monitored court cases by the Coalition "All for Fair Trials" leads to the conclusion that most international standards related to fair trials, including those stemming from the European Convention on Human Rights, have been obviously observed with few exceptions, with a possibility for further improvement.[29]

External independence

The general state of affairs in the judiciary over the course of the entire reporting period, continued to be characterized with an extremely low level of independence of the judiciary from political and other forms of influence, noted in numerous reports and analyses by civil society organizations within project Network 23+. The second report of the Senior Experts' Group led by Priebe once again highlights that the control and abuse of the judicial system by a small number of judges in powerful positions has not stopped. They continue to put pressure on younger colleagues and use their power to appoint, evaluate, discipline and dismiss colleagues of lower ranks, thus pressuring them in order to achieve certain political goals.[30]

Specific steps towards strengthening the judiciary's independence were made with the process of drafting the amendments to the Law on Courts and amendments to the Law on the Judicial Council,[31] which started with the establishment of a working group[32] following the decision by the Minister of Justice on 31 August 2017.[33] The proposed changes aim at meeting the Urgent Reform Priorities and recommendations contained in the Priebe reports, published on the Electronic National Register of Legislation (ENER) in January 2018.

The amendments to the Law on Courts mostly refer to the grounds for disciplinary procedures, disciplinary measures and changes in the recruitment criteria in the judiciary. The changes in the Law on the Judicial Council refer to the disciplinary procedure and evaluation of judges, through the introduction of quality criteria for the evaluation of judges. However, some of the civil society organizations and experts emphasize the need for additional detailing of the 'grounds for judges' accountability, as well as detailing the quality criteria for evaluation of judges, primarily related to the complexity of cases, as well as taking into consideration the criteria for election of a judge in a higher-instance court, stipulated in Article 41 of the Law on the Judicial Council. In addition, there is a need of further details about the required level of professional experience of the Judicial Council

29 The complete analysis, which refers mostly to the right to an independent and impartial court, trial within reasonable time, presumption of innocence, equality of arms, observance of the minimum rights of the defense, as well as the right to an appeal are available at http://www.merc.org.mk/Files/Write/00001/Files/Network23/studies/Megunarodni-standardi_fer-i-pravicno-sudenje.pdf

30 Assessment and recommendations of the Senior Experts' Group on systemic rule of law issues 2017, available at https://goo.gl/JFhEkH

31 The amendments to the Law on the Judicial Council were initiated at the beginning of August 2017 with the establishment of a working group tasked with these amendments and the drafting of a law that abolished the Law on the Council for determining facts and disciplinary responsibility of judges. See more at https://goo.gl/KPQrWX

32 The working group includes representatives of the judges, the Judicial Council, representatives of NGOs. EPI representative also takes part in the working group.

33 Overview of status of implementation of measures stipulated in Plan 3-6-9 as of 15 November 2017, page 11, available at https://goo.gl/KPQrWX

members i.e. criteria for the members elected by the Parliament of RM, as well as clearer definition of the concept of "prominent lawyer". Amendments are also needed in order to introduce accountability of the members of the Judicial Council and the Council of Public Prosecutors.

Regarding the election of public prosecutors, there is discrepancy over the requirements for a Public Prosecutor of RM and a public prosecutor in a higher public prosecutor's office. The latter are not required to have prior experience as public prosecutors with confirmed results in their work.[34]

Election and promotion of judges and public prosecutors

Over the course of 2016 and 2017, the Judicial Council and the Council of Public Prosecutors continued to elect judges and public prosecutors without any essential changes to the election process. The election of judges was mainly done without any substantial debate, briefly presenting candidates' CVs and no reasoning is given for the (non)election of candidates with the highest or the same number of points.[35] Moreover, the temporary reassigning of judges to other courts was also criticized, such as the Judicial Council decision of November 2016 for the temporary reassigning of five judges from other towns to the Basic Court Skopje 1.[36] The same judges were temporarily reassigned on a number of occasions.[37] There was additional criticism about the way judges were promoted and presidents of courts elected.[38] The Steering Board of the Judges' Association also reacted, urging the Judicial Council of RM to observe the legal norms and principles when electing and promoting judges, as well as to elaborate on their decisions for the purpose of greater transparency in the Council's work.[39]

By the end of 2016, the Judicial Council launched a procedure for election of new presidents of the Supreme Court, the Basic Court Skopje 1 and the Basic Court in Gevgelija due to the end of the presidents' terms in office. Acting presidents were appointed because of the early parliamentary elections on 11 December 2016. The election was criticized by experts and judges. These practices brought into question the fundamental principles of the Judicial Council as an independent institution.[40]

At its 240th session in December 2016, the Judicial Council elected Snezana Bajlozova as the Supreme Court acting president, disregarding the fact that she had been a Supreme Court judge for only two months, and based on results of the evaluation while she was a judge in the Skopje-based Court of Appeal. At the 248th session of the Judicial Council held in March 2017, Jovo Vangelovski was elected as the Supreme Court's President,[41] a decision causing reactions since Vangelovski was part of the intercepted conversations, where he was heard discussing court documents with the former Minister of Transport and Communications regarding the "Global" case, in which the SDSM leader Zoran Zaev was the prime suspect.

34 There are opinions by experts that emphasize the need for a change to this solution.
35 First monitoring report "Judiciary Reforms – from Priebe 1 to Priebe 2 and Beyond", page 5, available at https://goo.gl/Bqq7P6
36 Judicial Council press release http://www.ssrm.mk/Novosti.aspx?novost=466, пристапено 28.11.2016г.
37 First monitoring report "Judiciary Reforms – from Priebe 1 to Priebe 2 and Beyond", page 5, available at https://goo.gl/Bqq7P6
38 Statements by judges given in TV show "360 Degrees" http://360stepeni.mk/article/454/unapreduvanje-po-zaslugi-ili-po-nekoe-novo-tefterche
39 Reaction by the Steering Board of the Judges' Association available at http://www.akademik.mk/uo-na-zdruzhenieto-na-sudii-sudskiot-sovet-da-gi-pochituva-zakonskite-normi-pri-izborot-i-unapreduvaneto-na-sudiite/
40 These conclusions of the European Policy Institute (EPI) are contained in brief titled "Status of Implementation of the Urgent Reform Priorities" of 30 May 2017, available at http://www.merc.org.mk/Files/Write/Documents/04771/mk/Status-na-Itni-reformski-prioriteti_Maj2017_MK.pdf. and the document "The Priebe report two years later: new government and new opportunities for resolving old problems, page 3
41 Judicial Council press release http://www.ssrm.mk/Novosti.aspx?novost=500, accessed in December 2016.

The disputable fact in the election of Stojance Ribarev as acting president of the Basic Court Skopje 1 was that he was transferred from the Supreme Court, where he had been elected in September 2016, and the dominating position was that there was no legal grounds for his election. Ribarev was elected following the resignation of Tatjana Mihajlova because of the reactions by the judges over the court's annual schedule.

New court presidents were elected following the completion of the local elections in November 2017, opening room for dilemmas whether the judiciary was finally free from the chains of the executive. At the 266th session of the Judicial Council, Judge Ivan Dzolev was elected as the new president of the Basic Court Skopje 1.[42] At the following, 267th session, the Council elected new presidents of the Stip Court of Appeal, and the basic courts in Kumanovo, Tetovo and Resen, whereas the candidate for a new president of the Basic Court in Debar did not get the required majority of votes by the Council.[43]

The election of judges in higher courts was criticized both in the period prior to the formation of the new government in September 2016 and during the last election of judges by the Judicial Council following the local elections in November 2017. Some of the judges applying for these positions reacted to the latest election,[44] especially due to the fact that an article from the Law on Courts was circumvented for the first time, resulting in the failure to elect the candidate the with the highest number of points in the Skopje Court of Appeal.

During the reporting period, three public prosecutors were also elected in the Public Prosecutor's Office of RM, 4 public prosecutors in higher public prosecutor's offices, and 18 public prosecutors in the Basic Public Prosecutor's Office for organized crime and corruption.[45] The latest election of public prosecutors was on 31 January 2018, when eight public prosecutors were elected to the Public Prosecutor's Office for organized crime and corruption-Skopje out of 15 applicants.[46]

After the dismissal of the Public Prosecutor of RM in August 2017, the Government decided at its 36th session to nominate Ljubomir Joveski, member of the Council of Public Prosecutors, as the new Public Prosecutor, based on his CV and the positive opinion given by the Council of Public Prosecutors.[47] He was elected by the Assembly of the RM on 25 December 2017. However, it remains unclear which criteria were taken into account for his election, having in mind the large number of candidates for the post, along with insufficient transparency in the procedure.

42 Judicial Council press release available at https://goo.gl/rACFu3
43 Judicial Council press release available at https://goo.gl/YPc6eA
44 Statement given on 360 degrees TV show http://360stepeni.mk/article/454/unapreduvanje-po-zaslugi-ili-po-nekoe-novo-tefterche
45 First monitoring report "Judicial Reforms – from Priebe 1 to Priebe 2 and Beyond", page 5, available at https://goo.gl/Bqq7P6
46 Council of Public Prosecutors press release available at http://www.sjorm.gov.mk/Soopstenija.aspx?soopstenie=10
47 Government press release on its 36th session available at http://vlada.mk/node/13644

Evaluation of judges and public prosecutors

The independence of the judges' position can also be threatened by improper evaluation criteria, acknowledgment and further promotion. No significant efforts have been undertaken during the reporting period towards reassessing the existing methodology of judges' evaluation and introduction of quality criteria as being key in the evaluation of their work and the grounds on which it will be established that they meet the criteria for their promotion in the hierarchy (career advancement by merit). Instead, the achieved norm has remained the dominant benchmark in the measurement of the judges' performance i.e. the number of cases that the judge needs to solve monthly as a quantitative criterion that does not take into account the quality of the administered justice that needs to be an important component in the evaluation of their performance. Moreover, the Judicial Council takes annual decisions over the orientation number of cases that a judge has to solve on a monthly basis, based on the law and the rules of procedures, but has not passed a Rulebook that would establish the methodology of the case complexity when determining the orientation number of cases that a judge has to solve monthly.[48]

The Judicial Council conducted an extraordinary evaluation of candidates for court presidents, and the sessions for the judges' evaluation were secret, with no exception. The Judicial Council rejected the request by one of the candidates for a president of the Basic Court Skopje 1 to reassess the decision for extraordinary evaluation of the candidates for presidents of the Supreme Court, the Stip Court of Appeal, the Basic Court Skopje 1 and the Basic Court in Tetovo as unfounded and concluded that there was no reason for that.[49]

In December 2016, the Judicial Council conducted an ad hoc evaluation of Supreme Court president Lidija Nedelkova. Dissatisfied with the decision, she submitted a request to the Judicial Council for a new evaluation, which was rejected as unfounded in January 2017. The former Supreme Court President initiated an administrative procedure, urging for annulment of the Judicial Council's decision and issuance of an interim measure – a ban for further activities over the election of Supreme Court president, because the principle of procedure's publicity had been violated during the extraordinary evaluation, which was an unlawful action that prevented or limited the guaranteed constitutional rights and freedoms. However, the Constitutional Court ruled that the ad hoc evaluation by the Judicial Council took place in line with Article 9, Paragraph 3 of the Law on Judicial Council; the procedure was carried out in line with Article 38, Paragraph 4 of the Rules of Procedures of the Judicial Council; and the rights cited by the judge were not violated.[50]

At the continued 262nd session of the Judicial Council held on 20 September 2017 it was decided concerning the requests for repeated evaluation of the courts' presidents for the years of 2015 and 2016, but the practice of excluding the public from the evaluation process continued.[51]

There is no regular and proper evaluation of public prosecutors even though the Council of Public Prosecutors adopted a Rulebook on the evaluation of public prosecutors, stating that the evaluation is to be carried out once in two years.[52]

48 First monitoring report "Judiciary Reforms – from Priebe 1 to Priebe 2 and Beyond", page 5, available at https://goo.gl/Bqq7P6
49 The item on the agenda related to this initiative was not open for the public.
50 Administrative Court decisions Reg. No. 5/2017 and Reg. No. 6/2017 available at http://www.usskopje.mk/Odluki.aspx?odluka=20263 and http://www.usskopje.mk/Odluki.aspx?odluka=20264.
51 Judicial Council press release available at https://goo.gl/1PLX4M
52 Expert workshop on the Shadow Report held on 7 February 2018.

Mobility of judges

The Judicial Council had direct influence on the structure of judges who presided over highprofile cases initiated by the Special Prosecutor's Office by having judges from the basic courts across the country temporarily reassigned to the Basic Court Skopje 1. They did the same with seven judges from the courts of appeal across the country to the Skopje Court of Appeal. Moreover, the Judicial Council's election of acting presidents of the Basic Court Skopje 1 and the Supreme Court was strongly criticized by experts and judges. It brought into question the fundamental principles of the Judicial Council's work as an independent institution.[53] Moreover, the mobility of judges was one of the key remarks in the Priebe report of September 2017.[54]

The reporting period was also marked by mass reassignment of judges in the Basic Court Skopje 1, which started in the autumn of 2016 by the former President, Judge Vladimir Pancevski, and resumed in February 2017 when the acting President Tatjana Mihajlova decided to reassign about 20 judges from the criminal to the misdemeanor department without consulting them. Some of the judges were transferred to lower positions, which they considered as intentional degradation, since they were among the few judges who approved search warrants or pre-trial detention to the SPO, including the 15 judges who signed the petition criticizing Pancevski's work. Certain media interpreted this move as violation of the court's independence, to which the court reacted by claiming that the acting president proceeded in line with her legal jurisdiction and that there was no "cleanup" of "unfit" judges, but merely activities in line with the annual schedule of the court.[55] Finally, a number of judges filed complaints to the Supreme Court regarding the annual schedule, which accepted seven out of eight complaints, putting judges whose complaints were approved back to their old positions, thus prompting Mihajlova's resignation.

The newly appointed president of the Basic Court Skopje 1, Stojance Ribarev continued to use a similar practice in the court's management, which began after the release of the controversial annual schedule of the court for 2017.[56] It provoked fierce reaction of the public to the assignment of pre-trial judges suspected of having close relations with the then ruling VMRO-DPMNE in the organized crime department, where they would preside over SPO's cases. On the other hand at the time of the promotion of judges who were mentioned in the intercepted conversations and seen by the public as hindrance to SPO's work, judges with decades-long experience in the criminal matter were degraded by having them reassigned to lower positions along with the judges who approved search warrants and complaints by the SPO. However, the Supreme Court rejected in April 2017 all 17 complaints by judges from the Basic Court Skopje 1 who were dissatisfied with the schedule.[57] Following the election of Ivan Dzolev as President of the Basic Court Skopje 1, a new schedule was adopted in December 2017, according to which the experienced judges, who had been sent to the misdemeanor department without any explanation two years before, were reassigned back to try organized crime cases.

Besides the decisions for the reassignment of judges in the Basic Court Skopje 1, the public was also puzzled by the reassignment of Supreme Court judges after the change of its leadership. Especially controversial was the Supreme Court's decision of April 2017 to reject the complaint by

53 These conclusions of the European Policy Institute (EPI) are contained in a brief titled "Status of Implementation of the Urgent Reform Priorities" of 30 May 2017, available at http://www.merc.org.mk/Files/Write/Documents/04771/mk/Status-na-Itni-reformski-prioriteti_Maj2017_MK.pdf. and document "The Priebe report two years later: new government and new opportunities for resolving old problems", page 3

54 Assessment and recommendations of the Senior Experts' Group on systemic rule of law issues, 2017, available at https://goo.gl/Gga4Ad

55 Monitoring report on the work of the Judicial Council available at http://www.merc.org.mk/Files/Write/Documents/04763/mk/IHR-Izvestaj-01-(web)-MK.pdf

56 The report on the new annual schedule is available at http://www.osskopje1.mk/Novosti.aspx?novost=598 (accessed on 2 April 2017)

57 Press release by the Supreme Court available at https://goo.gl/gWsn2U

judge Lidija Nedelkova against the decision of the Supreme Court President Jovo Vangelovski to transfer her, the former president of the Supreme Court, to the Department for trial within reasonable time and to replace her with Snezana Bajlozova, whose primary expertise were civil matters. In fact, the incomplete composition of the Supreme Court criminal council was one of the obstacles for the court to schedule a public session, at which it would decide whether pre-trial detention decisions taken by the lower courts were legal and whether the case about the pre-trial detention of businessman Sead Kocan would again be referred to a pre-trial judge. Her transfer occurred several months following the end of her term in office i.e. after speaking publicly for the first time in her career on the general state of affairs in the judiciary in November 2016, criticizing the work of the Judicial Council, as well as the actions taken by the Basic Court Skopje 1 in SPO's cases.[58.]

Internal independence

The work of the Basic Court Skopje 1 attracted media attention not only from the aspect of the proceeding in SPO cases, but also from the aspect of the internal relations between judges and the judicial administration, which had been constantly disrupted.

In November 2016, a day after the release of the EC Report which noted that the Republic of Macedonia is lagging behind in the implementation of judicial reforms, the Basic Court Skopje 1 issued a press release[59] that included a personal statement by President Pancevski, who completely rejected the claims in the criminal charges filed by judge Ivan Dzolev of committing the crime of "receiving an award for illegal influence" as unfounded, saying that he had also filed criminal charges against Dzolev for "falsely reporting of a crime". The public considered this act as violation of the judiciary's independence.

In January 2018 there was considerable media reporting and reactions due to the criminal charges against former Supreme Court President Nedelkova by the incumbent President Vangelovski. He claimed that Nedelkova, in her capacity as the head of the Supreme Court's Department for Punishable Acts, issued an order for the Basic Court Skopje 1 to proceed in SPO cases, thus committing forgery.[60]

Judicial discretion as a guarantee of independence was violated with the adoption of the Law on determining the type and the length of the sentence. This law was often criticized by experts, and this was noted in the Analysis by the Council for Prevention of Juvenile Delinquency within Network 23+, presented in July 2017, aimed at establishing the impact of this law on the general sanction policy in the country. According to the analysis, the implications of this law were mainly reduced to more frequent guilt pleading at the main hearings; more frequent use of fining proceedings; milder sanction for serious crimes; stricter sanction for misdemeanors; inequality of practice. Therefore, researchers recommended proper legal interventions, including abolishment of the law, as well as changes in Article 39, Paragraph 3 of the Criminal Code.[61]

58 The interview in the TV show "360 Degrees" at Skopje-based TV station ALSAT-M, broadcasted on 31 November 2016 is available at https://www.youtube.com/watch?v=GPwTqIHhsaE

59 Basic Court Skopje 1 press release available at http://www.osskopje1.mk/Novosti.aspx?novost=580 accessed on 30 November 2016.

60 Assumed on 30 January 2018 https://goo.gl/zGxepH

61 Analysis is available at http://www.merc.org.mk/aktivnost/24/analiza-na-primenata-na-zakonot-za-odreduvanje-na-vidot-i-visinata-nakaznata. The need to abolish this law was also noted in the analysis of the association "Pactis"-Prilep titled "Analysis of the Law on determining the type and the length of the sanction, http://www.merc.org.mk/Files/Write/00001/Files/Network23/studies/PACTIS-analiza-na-Zakon-za-odmeruvanje-na-kaznata.pdf. Questionnaires were drafted for the purpose of this analysis, which were given to judges, public prosecutors and lawyers in the regions of Prilep, Bitola and Ohrid. This analysis showed that 80 percent of judges, 86 percent of public prosecutors and 93 percent of lawyers favored the termination of this law.

The Constitutional Court decided to abolish the law while elaborating that it seriously breached the independence of the judiciary and violated the principle of power distribution, including interference of the legislative power with the judiciary, which is supposed to be independent. In addition, the decision highlighted that the law went against the legally stipulated free assessment of evidence and judicial discretion, which was formalized with this law, but it did not envisaged individualization of the sanction. The constitutional judges claimed that some of the provisions in the law did not comply with the Constitution and the rule of law, which was also stressed in the analysis of Criminal Law Professors Buzarovska and Nanev,[62] to which the Court referred.[63]

Special Prosecutor's Office

Unlike the report on its first six months of functioning,[64] where the Special Prosecutor's Office (SPO) stated that jurisdiction has been established in 30 cases against 80 persons, the third six-month report submitted to the Council of Public Prosecutors and the Assembly of the Republic of Macedonia, through 15 March 2017, reads that the SPO conducted pre-investigative proceedings against 112 persons, while 50 persons were subject to investigation proceedings. A total of 272,950 audio files i.e. 45 percent of the total number of audio files at SPO's disposal, were analyzed by that time.[65]

However, during the first quarter of 2017 the SPO was prevented from full enforcement of its legal jurisdiction and the necessary cooperation with majority of the relevant state institutions. This period was marked by obstructions and lack of cooperation with the SPO by state institutions such as the Ministry of Interior, but also hindrance in proceedings at the Basic Court Skopje 1. Furthermore, SPO prosecutors were fined with up to EUR 2,000 for alleged "disrespect of the court" during the hearing of the case on alleged violence in the Municipality of Centar.[66]

The attitude of the Basic Court Skopje 1 towards the SPO is also seen in its treatment of SPO's press conferences as "spectacles", which do not respect the presumption of innocence and legality of proceedings,[67] as well as in a number of obstructions, such as the refusal to issue a search warrant of a telecommunications operator, which was explained with alleged lack of clarity of the request.[68] Moreover, a large number of motions for pre-trial detention of suspects in cases arising from the wiretapped materials were rejected, especially when it came to senior state officials. The court issued only one search warrant for an investigation in the case dubbed "Titanic", while all other motions for search warrants involving senior former and current officials were denied.

The criminal council rejected the motions for imposing measures to secure the attendance and precautionary measures for the former Head of the Directorate for Security and Counterintelligence (UBK) Saso Mijalkov and UBK's Section Head Goran Grujevski in the cases dubbed "Target" and "Fortress", related to the illegal wiretapping and destruction of equipment at UBK. There were

62 Analysis developed within project Network 23+ is available at http://www.merc.org.mk/Files/Write/00001/Files/Network23/studies/Analiza_Primena-na-ZOVOVK_SPPMD-Juni-2017.pdf
63 Court decision available at http://www.ustavensud.mk/domino/WEBSUD.nsf
64 Full report is available at http://www.jonsk.mk/%D0%B4%D0%BE%D0%BA%D1%83%D0%BC%D0%B5%D0%BD%D1%82%D0%B8/
65 Third report on the work of the SPO is available at http://www.jonsk.mk/wp-content/uploads/2017/03/III-izvestaj.pdf/
66 Basic Court Skopje 1 press release http://www.osskopje1.mk/Novosti.aspx?novost=592, accessed on 28 February 2017
67 Basic Court Skopje 1 press release http://www.osskopje1.mk/Novosti.aspx?novost=570, accessed on 2 November 2016.
68 SPO press release available at http://www.jonsk.mk/2016/11/24/побарани-дополнителни-информации-од/ A high-level meeting was held at the premises of "Makedonski Telekom" in April 2017, which represented the first concrete step in the cooperation after numerous media reports that unlike other mobile operators, Telekom was the only one to refuse being part of the SPO investigation. (http://www.jonsk.mk/2017/04/24/одржана-работна-средба/)

strong public reactions to the decisions by the Supreme Court's Council of 26 July 2017, which rejected the appeals by the defense of Goran Grujevski and Nikola Boskovski, thus confirming the decisions by the Skopje Court of Appeal for a 30-day pre-trial detention. However, the experts found the suspension effect of the complaint to be controversial, since it opened a time window for the defendants to flee. This resulted in calls for the judges to be hold accountable, since the actions represented an obvious mockery of the law at the expense of justice.

The criminal council also rejected the detention motions in the case dubbed "Titanic", involving former Prime Minister Nikola Gruevski, former Minister of Interior Gordana Jankulovska, the Chief of Cabinet of the former Prime Minister, Martin Protugjer, the former government's Secretary-General Kiril Bozinovski and the former Minister of Transport and Communications Mile Janakieski, issuing precautionary measures against all.[69] Similar were the courts' actions in the case dubbed "Trust", in which the suspect, the businessman Sead Kocan was eventually granted bail.[70]

The Skopje Court of Appeal also showed restraint in ordering pre-trial detention for former senior officials, including former Minister of Culture Elizabeta Kanceska Milevska and former Vice Prime Minister for Economic Affairs Vladimir Pesevski.

The obstructions and the practice of courts to refrain from ordering pre-trial detention on SPO's motions represent a precedent in the proceedings involving organized crime and corruption aimed at preventing the delivery of justice. There is a positive tendency after the change of authorities, towards overcoming the previous state of affairs and achieving improved cooperation with the SPO, especially with regards to the collection of documents and evidence in line with the Criminal Procedure Code. The fourth report on the work of the SPO between 15 March and 15 September 2017 notes during this period they filed indictments for most of the opened investigations i.e. 18 indictments were filed in 19 cases against 120 persons for 168 crimes, which resulted in seven investigations against 25 individuals and 4 legal entities.[71]

Use of the "bombs" as evidence

National courts proceeded in different ways during the reporting period with regards to the use of the intercepted conversations contained in the so-called "bombs" as evidence in the proceedings initiated by the SPO, which brings into question the impartiality of judiciary and legal certainty.

The Court of Appeal allowed on two occasions for the bombs i.e. the intercepted conversations to be treated as evidence in the criminal proceedings (the cases regarding the violence in the Municipality of Centar,[72] and the case titled Trista)[73] by accepting the SPO appeals and altering the Basic Court Skopje 1 decisions, according to which evidence in these cases have been separated from the files as illegally obtained evidence.

On the other hand, the Criminal Court separated the intercepted conversations from the evidence in cases dubbed "Toplik", "Tenders" and "Torture" in September 2017, elaborating that they had been illegally obtained by violating the rights and liberties established with the Constitution of the Republic of Macedonia, which makes them unusable in the related proceedings.[74]

69 Basic Court Skopje 1 press release, http://bit.ly/2hIVx6X accessed on 7 July 2017.
70 Basic Court Skopje 1 press release, http://alturl.com/swpce accessed on 20 May 2017.
71 Report on activities of Public Prosecutor's Office for prosecuting criminal offences related to and arising from the content of the illegally intercepted communication for a six-month period (15 March 2017-15 September 2017) available at www.jonsk.mk/wp-content/uploads/2017/09/ИЗВЕШТАЈ-15.09.2017.pdf
72 Press release of Court of Appeal Skopje, available at https://goo.gl/vB4PEy
73 Press release of Court of Appeal Skopje, available at https://goo.gl/ZFAZYn
74 Press release of Basic Court Skopje 1, available at https://goo.gl/ar8mge

The Supreme Court held a general session in order to take a principled legal opinion whether the "bombs" released by the opposition could be used as evidence in the court proceedings,[75] but despite the elaboration by Mirjana Lazarova Trajkovska, former judge at the European Court of Human Rights, who said that the illegally obtained materials can serve as evidence in the judicial proceedings, as well as her claim that the Supreme Court should not put itself in the role of legislator and allow an individual approach to each case,[76] a decision was not taken on the issue, a fact that can have additional effect on the trust in the Supreme Court.

Further strengthening of the judiciary's independence is necessary, including that of the Judicial Council and the Council of Public Prosecutors, through a proper and transparent process and elaborated decisions for appointment and promotion of judges, as well as the application of clear procedures for the election of court presidents and reassignment of judges. A large portion of the elements in the Justice Sector Reforms Strategy assumes this direction, including amongst other things, de-professionalization of the Judicial Council members and their increased accountability. The de-professionalization is not stipulated in the draft-amendments to the Law on the Judicial Council.

The judiciary's independence should also increase with the proposed amendments to the Law on Courts and the Law on the Judicial Council. In addition, it is necessary to clarify the professionalization of the Judicial Council members i.e. certain criteria for the members elected by the Assembly of RM, along with the definition of the concept of a "prominent lawyer". Law changes are also needed regarding the introduction of accountability of the members of the Judicial Council and the Council of Public Prosecutors.

Regarding the election of public prosecutors, there is discrepancy in the requirements for the Public Prosecutor of RM and a public prosecutor in a higher Public Prosecutor's Office, who are not required to have experience as public prosecutors with confirmed results in their work.

Although the Council of Public Prosecutors has adopted a Rulebook on the evaluation of public prosecutors, which states that the evaluation is carried out once in two years, such evaluation of public prosecutors has not been regular and fails to yield proper results. It is necessary to improve the quality of the evaluation process of public prosecutors. In addition, it is necessary to clarify further the proposed quality criteria for the evaluation of judges, primarily and depending on the complexity of cases, as well as taking into consideration the criteria for election of judges in a higher court, cited in Article 41 of the Law on the Judicial Council.

The financial independence needs to be reinforced by increasing the share of the Gross Domestic Product earmarked for the judiciary. It needs to reach the legally prescribed 0.8 percent of the GDP or to change this provision to the optimal 0.5 percent of the GDP for the judiciary, in line with the analyses in the area. Furthermore, the practice of cutting down the judiciary budget through budget reviews should be abandoned.

The strategic guideline contained in the Justice Sector Reforms Strategy over the incorporation of the SPO as a separate prosecutor's office within the Public Prosecutor's Office of the Republic of Macedonia is welcomed. This office would have jurisdiction over the entire territory of the country and its competence would stretch to other crimes involving high-profile corruption (white-collar crime), besides the cases arising from the illegal surveillance of communications. However, one

75 Statement by Supreme Court's President Jovo Vangelovski, available at http://makfax.com.mk/daily-news/вангеловски-не-се-откажува-и-покрај-од/
76 Ibid.

should be very careful in avoiding any unwanted overlapping of its competences with those of the Basic Public Prosecutor's Office for organized crime and corruption. Moreover, the challenge remains to guarantee the complete independence and impartiality of judges who would be selected to preside in the special department, taking into consideration the prior negative experiences.

Impartiality

Impartiality of judges and prosecutors, and judiciary as a whole, was in question on a number of occasions. First of all, the bias of the Public Prosecutor's Office manifested in proceedings solely against members of the opposition and civil society, versus the passive approach regarding claims of abuse and crimes by representatives of the then ruling VMRO-DPMNE over a longer period. There were reactions over the Public Prosecutor's Office bias in pre-investigative proceedings and detention orders related to the April 27 events in the Parliament.

As an illustration, the Basic Public Prosecutor's Office-Skopje launched the investigation against Andrej Zhernovski, the Mayor of Centar municipality, for a crime of "malfeasance of office" and "failing to enforce a court ruling" related to an illegally constricted building based on a report on the very same day when the demolition of illegally built house of the Basic Court Skopje 1 President Vladimir Pancevski started.

The public perception over the obvious abuse of the Public Prosecutor's Office for political purposes was enhanced when the Basic Public Prosecutor's Office-Skopje opened a procedure against SDSM over abuse of funds during the election campaign for the early parliamentary elections,[77] in February 2017 i.e. exactly the same time when the SPO sent invitations to about 200 individuals in Ohrid, primarily members and activists of VMRO-DPMNE, to give testimonies as witnesses in the pre-investigative procedure investigating donors and donations to the party and a possible abuse in that regard. The information that the Public Prosecutor's Office of RM started two new investigations in March 2017, regarding election irregularities for the 2014 presidential elections and the December 2016 early parliamentary elections, generated a perception of selective activities as counterbalance to the investigations of election irregularities by the SPO against former senior government officials for election fraud.

During the same month, the Public Prosecutor's Office for organized crime and corruption issued an Order for investigation against a senior official of the Strumica municipality,[78] as continuation of the pre-investigative activities related to the municipality's operations in 2016. Earlier, the Public Prosecutor's Office for organized crime and corruption carried out a search in the home of the chief of the Kumanovo police, who was considered to be close to SDSM. On the other hand, the Public Prosecutor's Office for organized crime and corruption rejected as unfounded the initiative for criminal charges for receiving a reward for illegal influence against the Basic Court Skopje 1 President Vladimir Pancevski, filed by a judge from the same court, announcing at the same time that criminal charges were brought against the applicant for a crime of "falsely reporting of a crime".[79]

In January 2017, the SPO withdrew the indictment in case dubbed "Coup" involving opposition leader Zoran Zaev as the fourth defendant, after the case was handed over to the SPO by the Public Prosecutor's Office of RM. Zaev was indicted for violence against representatives of the highest state authorities.

77 Press release of Public Prosecutor's Office of RM, available at http://jorm.gov.mk/?p=3852
78 Press release of Public Prosecutor's Office of RM, available at http://jorm.gov.mk/?p=3901
79 Press release of Public Prosecutor's Office of RM, available at http://jorm.gov.mk/?p=3701

All the above-mentioned cases raised serious questions regarding the observance of the principles of impartiality and non-selectiveness in the work of the judicial and prosecutorial bodies, thus undermining the already low citizens' trust in the judiciary in the Republic of Macedonia.

Proceedings related to the incidents in the Assembly of RM on 27 April 2017

The storming of the Assembly on 27 April 2017 by a crowd among who there were also masked individuals, office holders such as mayors and directors of public enterprises, represented a direct violation of provisions in the Constitution and numerous laws (Law on Police, Law on Public Gatherings, Criminal Code).[80] These events represent a big test for the impartiality in the functioning of the Public Prosecutor's Office of RM. The failure to act on the part of the police in this specific case came as a result of an illegal order and abuse of power. In this sense, the Helsinki Committee for Human Rights called for the accountability of the perpetrators and their superiors.[81]

Immediately after the events, the Basic Public Prosecutor's Office-Skopje informed the public it had identified 15 persons involved in the incidents at the Assembly, and that they interviewed many individuals, including police officers,[82] while pre-trial detention orders were issued for 14 persons.[83]

The identified perpetrators were suspected of three types of crimes – participation in a crowd thus preventing an official from performing official duties, participation in a crowd committing a crime, and causing general danger. Vis-à-vis this, the special report on these events drafted by the Helsinki Committee for Human Rights listed 28 different serious crimes regulated in the Criminal Code. This report was aimed at helping the competent judicial bodies, primarily the Public Prosecutor's Office of RM, with in the qualification of those crimes.[84]

The trust in the process of establishing and sanctioning the perpetrators was additionally diminished by fact that all nine defendants that the Basic Public Prosecutor's Office charged with participation in a crowd and preventing an official from performing official duties according to Article 384 Paragraph 1 of the Criminal Code pleaded guilty at the main hearing at the Basic Court Skopje 1 held on 23 May 2017, followed by the court giving them suspended sentences, with none of the getting an effective prison sentence.

In the following days, the Basic Public Prosecutor's Office-Skopje initiated proceedings against a number of people under suspected of committing crimes of "causing general danger", "Illegal possession and distribution of firearms or explosives"[85] and "violence", issuing pre-trial detention orders for some. The suspect who attacked then MP Radmila Shekerinska during the incidents at the Assembly was convicted and sentenced to prison after being charged for act of serious violence.[86]

80 Media and civil society organizations noted and numerous video recordings showed that authorized police officers, who were supposed to maintain the public order and security of those present in the parliamentary hall, in fact allowed free entry in the hall, following the violent events in the Assembly building. Entry was allowed to persons wearing hoods and carrying heavy and sharp objects intended to be used against the physical integrity of those in the Assembly. Consequently, 109 persons were injured, including citizens, 22 police officers and dozens of MPs (at least one with serious bodily injuries).

81 Statement of the MHC regarding the events at the Assembly of RM, available at http://mhc.org.mk/announcements/576?locale=mk#.WcBBjcgjHIU

82 Press release of Public Prosecutor's Office of RM, available at http://jorm.gov.mk/?p=4002

83 Press release of Public Prosecutor's Office of RM, available at http://jorm.gov.mk/?p=4006

84 For insight into the detailed list of crimes identified by the Helsinki Committee based on the relevant audio and video materials and testimonies of involved individuals, see the Special report on identified and possible crimes committed during the violence in Parliament on 27 April 2017, available at http://www.mhc.org.mk/system/uploads/redactor_assets/documents/2282/Poseben_izvestaj_Sobranie_27_04_17.pdf

85 Press release of Public Prosecutor's Office of RM, available at http://jorm.gov.mk/?p=4053

86 Press release of Public Prosecutor's Office of RM, available at http://jorm.gov.mk/?p=4184

The turnaround in the activities of the Public Prosecutor's Office came after 36 persons were detained, including several MPs who were stripped of their immunity on 28 November 2017, when the Basic Prosecutor's Office for organized crime and corruption issued an order for an investigation against 36 persons suspected of committing a crime.[87] Pre-trial detention was sought for all of them, but unlike previous "light" incriminations related to participation in a crowd, these persons were now charged with "terrorist threat against the constitutional order and security", in line with Article 313 of the Criminal Code, stipulating a prison sentence of at least 10 years. This cast additional doubt on the impartiality and consistency in the proceedings of the public prosecutor's offices since a long seven-month period had passed from the actual events until concrete investigative activities were undertaken, and because of the severity of the incriminations.

ACCMIS

The ethical and impartial actions by certain judges and court presidents were under serious doubt in the context of the possible abuse of the Automated Court Case Management Information System (ACCMIS), especially regarding the management of cases arising from the wiretapped conversations in the jurisdiction of the SPO, which were distributed to only a few judges in the Basic Court Skopje 1. A positive step in determining the shortcomings and the possible abuse of this system is the mentioning of the need to manage cases free of outside influence in the draft-Justice Sector Reforms Strategy. These doubts were also strongly highlighted in the second expert Priebe report.[88] The report claims it is possible for the system to have been manipulated in many ways, such as: 1) reassignment of "unfit" judges to other departments when sensitive cases were about to be distributed; 2) judges who wanted to avoid pressure went on sick leaves or other types of absence in the period when such cases were distributed; 3) the possibility of using the difference in proceedings according to the old and new CPC in facilitating the manipulation of the system; and 4) abuse of the system by those with direct access, such as the courts' presidents.

Taking into consideration that a thorough ACCMIS oversight has never been done, the experts' group proposed such oversight without any political interference, and if needed, including international institutions and representatives. Therefore, a special Commission investigating possible ACCMIS abuse was set up at the Ministry of Justice. After checking the functionality of the IT system and looking into the application of provisions from the courts' rules of procedures i.e. the ACCMIS in the course of 2016 and 2017 (on 5-10 October at the Basic Court Skopje 1; 9 November at the Skopje Court of Appeal; and on 17 November at the Supreme Court), a final report[89] was presented, which was submitted to the Public Prosecutor's Office of RM for further processing in January 2018.[90]

87 Press release of Public Prosecutor's Office of RM, available at http://jorm.gov.mk/?p=4416
88 Assessment and recommendations of the Senior Experts' Group on systemic rule of law issues 2017, page 5
89 Assumed on 30 January 2018, https://goo.gl/Jz398e
90 The absence of an official investigation, doubts over irregularities and illegal activities in the functioning of the Basic Court Skopje 1 at the time of the presidency of judge Vladimir Pancevski additionally increased especially after the search of his offices and home in October 2017 by the SPO team as part of a pre-investigative procedure, in which Pancevski and two members of the IT staff were suspected of abusing the system for assigning cases, especially those of the SPO. See http://www.merc.org.mk/Files/Write/Documents/04801/mk/Mreza-23-mesecen-pregled-oktomvri-2017_MKD.pdf

Accountability

Dismissal and establishing accountability

All of the above imposes the need for greater impartiality and accountability in the actions by judges and public prosecutors, stricter observance of ethical standards by legal professionals and establishment of their disciplinary accountability in a proper and fair procedure.

A total of 18 public prosecutors were dismissed over the course of the reporting period. There are no public prosecutors dismissed following a procedure for establishing any serious disciplinary violation. There had been no decision rejecting the first-instance decision by the Public Prosecutor of RM for dismissal of public prosecutors based on a procedure for establishing serious disciplinary violation. There had been no decision for suspension of any public prosecutor, and there had been 36 decisions for temporary inactivity.[91]

The years-long discontent from the way in which Marko Zvrlevski performed his duties as a Public Prosecutor led to his dismissal by the newly established parliamentary majority on 17 August 2017. The explanation that was provided for his dismissal stated "illegal, untimely and insufficiently professional performance of duties in office,... failure to file requests for initiating criminal procedures in cases stipulated by law and undermining the reputation of the office."[92] Prior to this, the Council of Public Prosecutors accepted by majority of votes (8 to 1) the Government's motion for dismissal, without elaborating on the reasons.[93] The Council elected Zvrlevski's Deputy Liljana Spasovska as acting Public Prosecutor at the same session.[94] The Government passed a conclusion at its 36th session to nominate Ljubomir Joveski, member of the Council of Public Prosecutors, for new Public Prosecutor, based on his CV and the positive opinion given by the Council of Public Prosecutor.[95] The Parliament elected Joveski as the new Public Prosecutor of RM at a session held on the 25 December 2017.

Following many cases of judges' dismissals in recent years, the trend of insignificant number of cases in which the Judicial Council established disciplinary responsibility of judges for severe disciplinary violations, unprofessional conduct and negligence resumed in 2016. Namely, the Judicial Council proceeded on three motions for the initiation of such procedures in 2016, submitted by the Council for determining facts and disciplinary responsibility of judges (hereinafter: Council for Facts).[96] The Judicial Council's decision to strip the immunity of five Administrative Court judges indicted in a SPO case dubbed "Titanic" over election irregularities during the 2013 local elections also caused a stir.[97] In addition, the Judicial Council once again dismissed Court of Appeal Judge Mitrinovski in December 2017, after the court in Strasbourg decided that the procedure over his dismissal in 2011 was not legal.[98] The Council acted on the instructions of the European Court of Human Rights and repeated the procedure at the applicant's request after the Strasbourg court stated that the petitioner for Mitrinovski's dismissal, Supreme Court's President Jovo Vangelovski, also voted as a member of the Council, resulting in having a bias dismissal decision.[99]

91 First monitoring report "Judiciary Reforms – from Priebe 1 to Priebe 2 and Beyond", page 5, available at https://goo.gl/Bqq7P6
92 Materials from the plenary session of the Assembly of RM, available at https://goo.gl/jpdX5y
93 http://www.24vesti.mk/sovetot-na-javni-obviniteli-go-prifati-predlogot-za-razreshuvanje-na-zvrlevski accessed on 13 June 2017.
94 Statement by Anevski, available at http://telma.com.mk/vesti/anevski-podnese-ostavka-od-lichni-prichini, accessed on 30 August 2017.
95 Government press release on its 36th session, available at http://vlada.mk/node/13644
96 Annual report on the work of the Judicial Council of RM for 2016, page 9, available at https://goo.gl/AH38UL
97 Press release of Judicial Council, available at https://goo.gl/7fXRR4
98 Press release of Judicial Council, available at https://goo.gl/cZvZJP
99 Assumed from http://www.sudstvo.mk/2017/12/29/митриновски-разрешен-по-втор-пат/, accessed on 9 January 2018

Besides the Judicial Council, the Council for Facts resumed its non-transparent functioning by not issuing any press releases from its public sessions. It still does not have its own website because the Judicial Budget Council had not carried out a procurement procedure.[100] This Council was established in 2015 with the task of acting upon complaints and motions against judges as a separate investigative body in order to have certain stages of the disciplinary procedure against judges separated (initiating a procedure, managing an investigation and deciding over the judge's disciplinary responsibility). Taking into account that its establishment was considered superfluous by experts from the very beginning and later it was confirmed in its work, the Council's abolishment was included in Plan 3-6-9 and the Justice Sector Reforms Strategy.[101]

In this regard, the Assembly adopted the Law abolishing the Law on the Council for Determining Facts and Disciplinary Responsibility of Judges on 11 January 2018. [102] The objective of this law was to give the jurisdiction in managing disciplinary procedure back to the Judicial Council, taking into account the remarks and recommendations by international institutions in regard to the judiciary reforms. In accordance with the changes in regard to the process of initiating a procedure against certain judges by the Judicial Council, the idea is not to have the Council members who initiated the procedure as "prosecutors" involved in the decision-making process as "judges". Such a solution corresponds to the viewpoints of the Venice Commission and the case law of the European Court of Human Rights.[103] In order to avoid any dilemmas (presented in public by the President of the Judicial Council), one more provision needs to be added to the transitional and final provisions, according to which any procedures for disciplinary responsibility and dismissal of judges initiated by the Council for Determining Facts and Disciplinary Responsibility of Judges, which were ongoing before the Judicial Council on the date of its abolishment, 18 January 2018, will be continued in line with the amendments to the Law on the Judicial Council of RM No. 197/2017.

A step towards enhancing the ethical standards in the judiciary is the decision of the Steering Board of the Judges' Association of 25 January 2018 to elect members to the Advisory Body on Judicial Ethics, which is stipulated within the Judicial Code of Ethics. This body has an advisory role on issues related to violation of the principles of the Judicial Code of Ethics and has seven members. [104]

The decisions of the Judicial Council and the Council of Public Prosecutors on disciplinary responsibility and dismissal of judges and public prosecutors should be clear and properly elaborated.

The draft-amendments to the Law on Courts and the Law on the Judicial Council aim at increasing the judiciary's accountability. However, some civil society organizations and experts active in this field claim the grounds for the accountability of judges should be elaborated in more details.

Codes of ethics for judges, public prosecutors and staff at the public prosecutor's offices should be consistently respected. In addition, judges and public prosecutors should refrain from public statements that bring into question the impartiality of judges and public prosecutors.

100 First monitoring report "Judiciary Reforms – from Priebe 1 to Priebe 2 and Beyond", page 5, available at https://goo.gl/Bqq7P6

101 The abolishment of the Council for determining facts and the transfer of its competences to the Judicial Council were also supported by the Minister of Justice in his statement available at https://www.plusinfo.mk/vest/121365/na-sudskiot-sovet-kje-mu-se-vratat-site-nadleznosti

102 Session of Assembly of RM, 11 January 2018, https://goo.gl/zm7nkp

103 Prior to its abolishment, the Council for Facts filed a motion to the Judicial Council urging for the dismissal of the five-member Supreme Court's Criminal Council, which decided on the pre-trial detention of businessman Sead Kocan due to the unprofessional and negligent conduct by judges of the Skopje Court of Appeal and the Supreme Court. https://goo.gl/E9JXoR

104 Press release of the Judges' Association, available at https://goo.gl/NMCKaB

Stripping judges of their immunity should be a measure of last resort, used rarely only in exceptional situations.

The impartial assignment of cases needs to be ensured (especially when it comes to sensitive high-profile criminal cases) by guaranteeing the continual functioning of the ACCMIS. There is a need for regular control and revision of its functioning in order to prevent any abuse of the system.

Professionalism, competencies and efficiency

Quality of Justice

Academy for Judges and Public Prosecutors

The Academy for Judges and Public Prosecutors (AJPP) has been continuously advancing and modernizing the curriculum and quality of initial and continuous training, even though there is need for further improvement.[105] The designed framework program based on training evaluations is shared with the courts, the Judicial Council and the Council of Public Prosecutors for assessing the real training needs. In order to improve the quality of trainings, it will be necessary to ensure that permanent educators work as part of the Academy, who will also prepare the teaching materials and respective case studies. According to the Academy, the changes in the Law on AJPP should be undertaken in parallel to the changes in the Law on Courts. That would enable to regulate the engagement of the legal practitioners (judges), who will be recruited by the AJPP as educators for a definite period of time, so that they will avoid any difficulties related to their career promotion. The problem pertaining to the recruitment of educators that will be working as part of AJPP mainly concerns the legal practitioners and not the professors.[106]

The Academy was confronted with problems regarding its role in the selection of new candidates for judges and public prosecutors because of the delayed start of the initial training for the 6th generation of 37 applicants in March,[107] as result of initiated appeal proceedings before the Administrative court. On 30th August 2016, the Academy published the call for application for 60 candidates for public prosecutors in line with the legislative changes from 2015, which stirred up controversy among the general public on the grounds for suspicion that around 30 applicants submitted falsified certificates for foreign language ability. In December 2017, the Governing board of the AJPP revoked the call.[108] In order to tackle these problems,[109] members of the academic community hold the opinion that some legislative changes will be required so that the issuance of certificates for foreign languages ability is restricted only to authorized organizations for administration of language tests in the country or the language test should be part of the entrance exam at the AJPP.

On two occasions, the Managment Board introduced changes to the Rulebook on the Initial Training from 2017 regarding the theoretical teaching, before the final exam was administered for the

105 Based on information provided by the Academy, in the period from May 2016 to August 2017, total of 336 trainings and workshops were organized for 7920 participants, i.e. 3329 judges, 1109 public prosecutors and 2208 court and prosecution associates, thus, if one person attends several trainings it shall be considered as repeated participation based on the number of attended trainings and workshops. 25 educators for civil matters and 33 edcators for criminal matters were hired for the trainings. AJPP annual reports provide detaled summary of evaluated trainings.

106 Second monitoring report on URP about judiciary is available at - http://epi.org.mk/docs/Vtor%20monitoring%20izvestaj%20-%20itni%20reformi%20vo%20sudstvoto.pdf

107 Announcement by AJPP, available at: http://www.jpacademy.gov.mk/novosti/aae----6---------

108 Announcement by AJPP, available at: http://www.jpacademy.gov.mk/novosti/10444

109 Second monitoring report on URP about judiciary is available at - http://epi.org.mk/docs/Vtor%20monitoring%20izvestaj%20-%20itni%20reformi%20vo%20sudstvoto.pdf

sixth generation of candidates.[110] The respective changes simplified the scoring system and the final exam. The publication of case studies with offered set of questions was done contrary to the Rulebook. The administration of electronic exams still poses a dilemma in terms of whether it serves the purpose of assessing the practical skills of candidates.[111]

AJPP budget for 2017 amounted to 41.125.000,00 MKD; however, following the budget rebalance, instead of being increased, the budget was cut to 38.415.000,00 MKD, irrespective of the requirements arising from the financial implications in the legislative changes in 2015 and the necessity to enhance the quality of training and improvement of technical and infrastructural facilities. In addition, it would be necessary to increase the compensation paid to the members of the Programming Council, given the scope and responsibility associated with their work.[112] The proposed changes to the Law on the Academy for Judges and Public Prosecutors, published on ENER in January 2018,[113] mostly refer to the conditions that members of the bodies within the AJPP are required to fulfil.

In respect of the Academy, the draft Strategy for Reform of the Judicial Sector, stipulated that certain percentage of judges and public prosecutors are elected from among experienced legal practitioners, and not only from the AJPP. In contrast, the last report of the Reinhard Priebe's senior expert group puts forward a recommendation that the Academy must remain the only source for recruitment of judicial personnel in order to avoid the abuse from the past. The final version of the Strategy envisages that the recruitment of personnel should be from the ranking list of AJPP graduates.[114] Nevertheless, the Strategy also entails that analysis should be prepared for possible design of a separate initial training curriculum for long-standing and experienced legal practitioners, including experienced expert associates, as well as continuous trainings through redesigned curricula and teaching methods. In addition, the Strategy foresees the introduction of new legal criteria for the composition of the governing and managing bodies of the AJPP, as well as staffing and technical upgrading and adequate spatial conditions.[115]

In accordance with the Strategy, legislative changes are proposed in view of the new legal criteria for the composition of the governing and managing bodies of AJPP. Such changes play crucial role given that the mandates of the members of the Governing Board of AJPP and of the AJPP director are already expired. Furthermore, the criteria for English language ability for the members of the Programming Council contributes to the shortage of qualified educators from all levels of judiciary and the Academia.

In respect of the staffing upgrading,[116] even though the jobs systematizations was extended to 47 positions, currently there are total of 18 employees at the AJPP, that is, 16 administrative staff and 2 employees recruited according to the Labour Relations Law, while in the course of the past 9 years, 15 vacancies were not filled.[117]

110 http://www.jpacademy.gov.mk/za-akademijata-mk/zakon-i-podzakoni-akti
111 Second monitoring report on URP about judiciary is available at - http://epi.org.mk/docs/Vtor%20monitoring%20izvestaj%20-%20itni%20reformi%20vo%20sudstvoto.pdf
112 Ibid.
113 Draft proposal for Law on Changes and Amendments to the Law on the Academy for Judges and Public Prosecutors https://goo.gl/EpM7XF
114 Strategy for Reform of the Judicial Sector for the Period 2017 – 2022 with Action plan, page 7
115 Ibid. page 15
116 Given the shortage of staff, there is no professional specialization and the departments lack staff. Also, no professional development and motivation are provided to the employees. The AJPP disposes of technical equipment, however, it is obsolete and requires major costs for repairs and depreciation. A new building will be needed and the room for the initial training does not fit the needs of the initial training candidates. More literature will have to be provided as well as space for the reading room. The second monitoring report is available at http://epi.org.mk/docs/Vtor%20monitoring%20izvestaj%20-%20itni%20reformi%20vo%20sudstvoto.pdf.
117 Ibid.

The AJPP has developed a practice to enable judges, public prosecutors, candidates for judges and public prosecutors, as well as members of the Academy's bodies and professional and technical service, Judicial Council and Council of Public Prosecutors to take part in various study visits, international trainings, exchanges, meetings, workshops and conferences.[118] The candidates, from among judges and prosecutors, are still not selected based on the published call on 12.04.2016 for 6-month stay and work at the ECHR for 2 candidates, even though the list of judges and prosecutors was prepared in 2016 once the scoring exercise was completed by the members of the AJPP Governing Board and was forwarded to Strasbourg.[119]

Monitoring and evaluation of judicial activities

Judicial practice

After a one-year delay, the Supreme Court put the judicial e-portal http://www.sud.mk/ in operation, where all court decisions are to be published. In fact, the portal is practically non-functional, includes just a small portion of court decisions, and it is unknown whether the available court decisions are enforceable, modified, reversed or annulled. Hence, the portal makes no contribution to improve the judicial practice and legal security.

The last survey,[120] concerning the publication of court decisions and functionality of the web portal sud.mk, which included 224 respondents -lawyers, revealed that the biggest portion of court decisions are not enforced in timely manner. According to 55% of the respondents, the courts rarely or never publish the court decisions within the prescribed legal deadlines. For 30% of the respondents, the portal www.sud.mk has no searching and notification functionality; however, it is assessed as much better than other individual court portals. 32.5% of the lawyers disagree with this statement and believe that the individual portals of courts better serve the purpose. 21.4% of the respondents state that the portal is functional in view of searching and notifications. However, one should note that 15.6 % of the respondents are not familiar with this portal, that is, the portal is not updated on regular basis and should be available through the search engine on google.com.

In 2016, the highest court instance in the country adopted 6 principled legal opinions, which is considered a positive step from the aspect of equalizing the domestic case law.[121] Furthermore, the same court was active in the field of legislation, whereby during the judicial session and the general session, it proactively analysed and reached conclusions in respect of the changes and amendments to the Law on Courts and the Law on the Judicial Council of Republic of Macedonia. On the other hand, the Ministry of Justice had requested the opinion of the general session of the Supreme Court on one occasion in respect of the changes and amendments of the Court's Rules of procedure, whereas the general session of the Supreme Court, so far, has not requested any opinion concerning a proposed law from the Ministry of Justice that mainly proposes new laws.

118 2016 AJPP Annual Report available at https://goo.gl/rjHn4f

119 Second monitoring report on urgent reform priorities, concerning the judiciary, available at - http://epi.org.mk/docs/Vtor%20monitoring%20izvestaj%20-%20itni%20reformi%20vo%20sudstvoto.pdf

120 For more information, see: First monitoring report "Judicial Reforms – from Priebe 1 to Priebe 2 and beyond", page 8-9, available at https://goo.gl/Bqq7P6

121 These data and other data presented in the Report concerning the work of the Supreme Court were obtained from the court on the basis of submitted request for access to information of public character by the Helsinki Committee.

Alternative dispute resolution

The use of alternative methods for dispute resolution is deemed unsatisfactory in the Republic of Macedonia. Irrespective of the extent to which alternative methods are applied, the work of the institutions and individuals dealing with and supporting the alternative methods for dispute resolution are subject to monitoring in order to assess the current state of affairs. The monitoring aimed to promote and develop the alternative dispute resolution, in general, takes into account the practicing of mediation by licensed mediators, the application of the provisions of the Law on Mediation, the Law on Litigation, and the Obligations Law by the courts, the role of mediators in labour dispute resolution, the role of arbiters in arbitration proceedings as well as the role of all involved parties in alternative dispute resolution.[122]

Even though the Law on Mediation underwent changes, the insufficient application of this concept is still noted[123] and there is a persistent lack of licensed mediators as result of the complex and inadequate exam for mediators.[124] This deficiency has been persistently noted for many years also in the European Commission reports about Republic of Macedonia. Competent institutions need to intensively promote mediation in order to improve the institutional cooperation with courts and other state agencies in RM.[125] The Strategy for Reform of the Judicial Sector[126] foresees certain legislative changes on reviewing the exam for mediators that would ensure the required competencies and skills of mediators, introduction of electronic service of process for mediation, harmonization of the mediation registers kept by the Ministry of Justice and mediators, as well as more frequent use of mediation by public authorities by ensuring assumptions and encouraging public authorities to apply mediation in mutual disputes. There is an identified need to promote the benefits of mediation for awareness raising purposes, in line with the EC Directive on mediation in civil and commercial matters from 2008 and the Directive on mediation in consumer disputes.

In December 2017, the Government of RM adopted the decision for appointment of new president and members of the Board for provision, monitoring and evaluation of the quality of mediation work.[127] In addition, in December, the Constitutional Court annulled Article 2 of the Rulebook on exams for mediators, which sets forth the examination sessions for mediation throughout the year.[128] According to the Constitutional court, the legal powers granted to the Minister of Justice in the respective article of the Rulebook were considered as excessive, which violates the rule of law as fundamental value of the constitutional order in RM. Therefore, the Court held that Article 2 of the Rulebook is not compliant with Article 8 paragraph 1 line 3 and klArticle 51 of the Constitution and Article 59 paragraph 1 item c) of the Law on Mediation.[129]

Budget and resources

In respect of the overall judicial independence, matters of financial independence must be given due consideration. The Report on the work of the Judicial budgeting council and the execution of the judicial budget for 2016, submitted to the Assembly in June 2017, notes that the approved budget for 2016 was insufficient to cover the funding needs of the judicial branch, and therefore budget beneficiaries were unable to meet some of their legally binding obligations.

122 Thematic report on the project "Monitoring the rule in the area of justice (JuDGMeNT)", available at https://goo.gl/u9wMqT
123 Completed over 1000 cases of mediation, 80% of which were volunatary and not mandatory.
124 Strategy for the Reform of the Judicial Sector 2017-2022 , available at https://goo.gl/SGLRxq
125 Thematic report on the project "Monitoring the rule in the area of justice (JuDGMeNT)", available at https://goo.gl/u9wMqT
126 Strategy for the Reform of the Judicial Sector 2017-2022 , available at https://goo.gl/SGLRxq
127 Official Gazette of RM No. 182/17
128 However, pursuant to Article 59 paragraph 1 item c) of the Law on Mediation, the Board on provision, monitoring and assessing of the quality of mediation, based on the principles of automony and professionalism, determines the examination sessions for exams for mediators.
129 Official Gazette of RM No. 193/17

The analysis prepared by the Association of Financial Officers -AFO as part of the "Network 23+" project elaborates the problems related to the financing of the judicial branch. The Law on Judicial Budget from 2003 stipulates that the financial means for the judicial branch should amount to at least 0,8% of GDP in R.Macedonia, and this amount should have been reached in 2015 based on the changes and amendments of the same law from 2010. However, the analysis made by AFO shows that the extent of planned/realized funds does not surpass 0,38% of GDP. According to AFO report, an ideal judicial budget should not be less than 0,5% of the Budget of RM.[130]

Given the needs for drafting this report, request for access to information of public character was sent on 11.09.2017 to the Judicial Council, concerning the total budget of the judiciary in 2016 and 2017. According to the received information, the total budget after the budget rebalance amounted to 1.865.111.000 MKD in 2017, which implies certain reduction compared to the budget of 1.892.431.000 MKD in 2016. The total budget entails the separate budgets of the Judicial Council, the Council for establishing the facts, the Supreme Court, the four appellate courts, all basic courts, the Administrative and the Higher Administrative court as well as the Academy for judges and public prosecutors.

Judicial service

In the course of 2016, 97 individuals were recruited and the Ministry of Finance provided funding for the recruitment of 69 staff in the judicial administration for definite period of time and additional 28 staff for indefinite period of time. However, one can still note a lack of appropriate and professional staffing in the courts, which is also underlined in the 2016 Annual report on the work of the Judicial Council.[131]

In November 2016, the Labour inspection examined the allegations of a court clerk from the Basic Court Skopje 1 that he was demoted because of having taken part in the Colourful Revolution. Contrary to such claims, the court provided an account to the inspectors that the clerk had been promoted; however, the clerk's conduct negatively affected the interpersonal relations and served as reason to initiate a disciplinary procedure that may even result in a criminal liability procedure. During the same month, 11 court clerks from the same court requested the Judicial Council and the Council for establishment of facts to take measures against the president of the court, Mr.Pancevski. These developments, in general, tarnished the credibility of the court as well as the status of court clerks.

Based on the initiative of the Trade Union of the Administration, Judicial Bodies and Citizen Associations (UPOZ) and previously initiated procedure for reviewing the constitutionality of certain provisions of the Law on Judicial Administration, the Constitutional Court revoked Article 144 of the law that set forth the obligation for court clerks to provide certificates for foreign language ability and computer skills.[132] According to the Constitutional Court, the legislator specified new requirements for already established employment, which were also specified as general conditions, but without having taken into consideration that when the employees were recruited no such conditions were stipulated.

Given the poor situation and inability to exercise their rights, in the course of 2016, the judicial administration went on strike that lasted for 62 days and resulted in 40% salary cut for the strikers. One year later, in March 2017, UPOZ and the Association of the court administration (ZSA)

130 The analysis is available at: http://www.merc.org.mk/Files/Write/Documents/01238/mk/Analiza_ZFR.pdf
131 2016 Annual Report on the Work of the Judicial Council, page 23 and 24 in the Report.
132 Notification from the Trade Union of UPOZ,
available at: http://www.upoz.org.mk/index.php?option=com_content&view=article&id=428:-144-&catid=1:latest-news

requested resignation from the president of the Judicial Council on the ground that the Council and the Ministry of Justice did not acknowledge the only request of the strikers – court clerks to receive pay rise.

Efficiency

After many delays, the 2016 Annual Report on the Work of the Judicial Council of Republic of Macedonia was reviewed and adopted at the session held on 3 July 2017. The report entails data on the work of the Judicial Council, i.e. number of dismissed judges and lay judges, undertaken procedures to establish unprofessional performance, judges' performance evaluation, information about undertaken action upon citizens' complaints and other data about the operation of courts in RM. In respect of the backlog, the biggest number of cases older than 7-10 years were found at the Basic Court Skopje 2 Skopje, Basic Court Skopje 1 Skopje and the Basic Court Kumanovo.[133]

According to the Annual report data on the diligence of domestic courts, the Supreme Court of Republic of Macedonia[134] failed to provide diligence and efficiency concerning its caseload, that is, failed to resolve outstanding cases and to deal with the influx of new cases, whereby the backlog increased for additional 157 cases. On the contrary, the Administrative court and the Higher Administrative court demonstrated efficiency with regard to the caseload.

The situational analysis done by the Judicial Council concerning the caseload per appellate regions shows that except for the Gostivar appellate region which is assessed to lack diligence and efficiency, the other three appellate regions managed to deal with the caseload and reduce the backlog in cases from previous years.

One can commend the decision of the Judicial Council that presidents of courts were to take measures for reducing the backlog of judicial cases that can be classified in three groups, that is, unresolved cases for three, seven and ten years. In this context, judges working on cases where the length of proceedings was more than seven, that is, ten years, were tasked to draft a plan with projection for resolution of any such case. As result of this effort, in 2016, 56,28% of outstanding cases for more than 3 years, 43,56% of outstanding cases for more than 7 years and 24,32% of outstanding cases for more than 10 years were resolved, which significantly reduced the backlog of cases in the judiciary on national level.[135]

With regard to cases concerning the trial in reasonable time, which serve as indicator for efficiency, i.e. length of domestic court proceedings, in 2016, the Department for trail in reasonable time worked on total of 818 cases (two instances of decision-making), out of which 633 cases (77,3%) in the first instance and 185 cases (22,6%) in the second instance (appeal procedure). From the total number of cases (818) in 2016, 490 cases were resolved and the initiative for protection of the right to trial in reasonable time was adopted in 170 of the cases. The highest amount of compensation that was awarded on the ground of established violation of this right amounted to 120.000,00 MKD (first instance procedure), i.e. 100.000,00 MKD (second instance procedure), and the minimal award amounted to 3.000,00 MKD (first instance procedure), or 5.000,00 MKD (second-instance procedure). The total amount of awarded compensation for violation of the right to trial in reasonable time amounted to 3.032.900,00 MKD (in the first instance), i.e. 901.850,00

133 First monitoring report "Judicial Reforms – from Priebe 1 to Priebe 2 and beyond", page 8-9, available at https://goo.gl/Bqq7P6
134 Annual report on the work of JCRM,
available at: file:///C:/Users/Asus%20Notebook/Downloads/izvestaj_za_rabotata_na_ssrm_2016.pdf
135 The table showing statistics can be found on page 19 in the 2016 Annual report on the work of the Judicial Council of RM.

MKD (in the second instance) or cumulatively for both instances, the awarded compensation amounted to 3.934.750,00 MKD, including the awarded compensation and the legal costs in the procedure for filing an initiative in respect of trial in reasonable time.

Until August 2017, total of 391 cases were submitted to the Supreme Court of RM for protection of the right to trial in reasonable time, i.e. 262 in the first instance and 129 in the second instance. 327 cases were resolved both in first and second instance, i.e. 221 cases in first instance and 106 cases in second instance appeal proceedings.

Execution of judgments of the European Court of Human Rights

The Bureau for Representation of RM before the ECHR is continuously making efforts to ensure that judgements delivered by the Strasbourg court are executed, by means of drafting detailed action plans and reports, including specific and general measures for execution of judgments. Given the situation that the Interagency committee for execution of ECHR judgments is not functional and the fact that it has not convened since March 2016, even though the Minister of Justice as chair of the interagency committee has the legal obligation to convene the committee on quarterly basis, the whole process has been blocked. No significant interventions have been made in practice with regard to legal provisions that were found as source of violation of the European Convention of Human Rights, or any significant changes in the judicial and administrative practice. The execution of ECHR judgements is mainly reduced to payment of the awarded compensation in the judgments.

In this context, another problem is the inability to reopen contentious domestic proceedings that the Court found to be in violation of the Convention. This is true for most of the judgments that necessitate the reopening of domestic legal proceedings, as well as judgments in which the Court held that there had been a breach of Article 6 of the ECHR on the ground of unfair procedure for dismissal of a judge. In the 2016 Annual Report, the Judicial Council stated that six requests had been filed for reopening of proceedings based on delivered judgements by the ECHR; however, given that the Interagency committee did not give the respective recommendations for 5 cases, but only for 1 case, the reopening of proceedings was allowed by the Judicial Council only for that case, which is still ongoing.[136] Namely, it concerns the case of the former president of the Court of Appeal in Skopje, Mr. Jordan Mitrinovski, where the European Court of Human Right held that there had been a violation of Article 6 of the ECHR in the procedure undertaken by the Judicial Council for his dismissal. [137] However, in respect of the other five cases, where the applicants were also unfairly dismissed judges, the requested reopening of proceedings before the Judicial Council was not done in compliance with the established standards of the European Convention of Human Rights and the case law of the Strasbourg court.

136 2016 Annual report on the work of JCRM, page 10.
137 After the request for reopening the domestic proceedings based on the ECHR judgment was accepted, the hearing before the Judicial Council from May 2017 was postponed for indefinite period of time on request of the applicant's legal representatives because of his inability to take part in the hearing for health reasons.

The Law on the Academy of Judges and Public Perosecutors will have to undergo changes concerning the criteria for admission of candidates for the initial training. In particular, this pertains to the criteria for foreign language proficiency, as well as reconciliation of the criteria for admission of candidates for the initial training for judges and public prosecutors, given the disbalance created with the changes in the Law from 2015 between the selection of judges and public prosecutors.

The designing of new curriculum for separate initial training for experienced longlasting legal practitioners and for continuous training by redesigning the existing curricula and teaching methods must be based on a thorough analysis. That would ensure that both experienced expert associates and other longlasting legal practitioners can be included in trainings.

The increasing of the AJPP budget will be required due to the financial implications deriving from the legislative changes from 2015, and also due to the fact that the AJPP is faced with burden of debts every budget year.

The e-examination of practical knowledge will need to be cancelled.

The length of years of service at the ECHR for the national judges and public prosecutors needs to be increased for at least one year, in order to enable them to transfer the acquired practical experience.

It will be indispensable for the Minister of Justice and the Trade Union of Administration, Judicial Bodies and Citizen Associations (UPOZ) to enter into an effective dialogue for the purpose of providing substantive improvements to the status of court clerks.

The functionalities of the court web portal sud.mk will require some improvements as well as to ensure that court decisions are published within the specified legal deadline, the instructions for anonymizing the court decision are respected as well as that court decisions are specifically marked as enforceable or not.

It will be required to promote and raise awareness on alternative dispute resolution, in particular about mediation, in order to reduce the court caseload. The work of institutions and individuals dealing with and supporting the alternative dispute resolution should be subject of monitoring in order to assess the current state of affairs in this particular area. The Law on Mediation will need to undergo certain changes in order to tackle the existing deficiencies in this area.

The Minister of justice and competent state authorities need to coordinate the activities for improved and more efficient execution of ECHR judgments delivered for R. Macedonia, given the standard and/or enhanced oversight over their execution by the Council of Europe Committee of Ministers, on one side, and the need to eliminate individual violations as well as to implement legislative changes and annul the negative systemic practice that results in human rights violation, on the other hand.

2. Fight against corruption

Throughout the reporting period, most of the state authorities responsible for preventing corruption in fact protected high corruption.

Numerous investigations and proceedings initiated by the SPO, revealed possible corrupt practices of public officials. Among many cases, the "Titanic" case where former high-ranking officials of VMRO-DPMNE are suspected for electoral irregularities, the "Talir"case, where an investigation was launched into illegal financing of the VMRO-DPMNE political party, as well as the "Tenk" case regarding the Mercedes-Benz official vehicle worth nearly 600 thousand euros, but also numerous other cases, raised most of the public interest.

However, by obstructing the work of the SPO, the competent state authorities practically made impossible the efficient administration of justice and postponed the expected concrete results from the fight against corruption. In this regard, a survey conducted by the Institute for European Policy and the Helsinki Committee within the project "Network 23+" showed that as many as 60% of the respondents think that the current situation with the fight against corruption is bad,[138] while according to a survey conducted with state officials,[139] 46% of them gave the same rating. In this process, they located the reason for this in the inconsistent, non-objective and selective implementation of the law. As many as 44% of them think that the Republic of Macedonia is not ready to join the EU from the perspective of the fight against corruption, while more than double (88%) believe that reforms in this area are important for the accession.

The National Integrity System (NSI) conducted by Transparency International-Macedonia (TIM), showed that while the Republic of Macedonia has a good legal framework for combating corruption, there is still a poor implementation of anti-corruption laws, the institutions that are responsible for preventing and combating corruption are not effectively managed, nor sufficiently independent to cope with corruption and lack integrity.[140]

As a concrete example of the lack of oversight mechanisms, one could take the scandal involving the State Election Commission (SEC) members who payed to themselves bonuses for their increased workload for the scheduled but postponed early parliamentary elections in April 2016, as well as for the December parliamentary elections, which encountered harsh public reactions and led to their resignations in mid-December 2016.[141]

138 The results of the survey are available at http://www.merc.org.mk/Files/Write/00001/Files/Network23/public_opinion_24_04_17/Istrazuvanje-na-javno-mislenje-poglavje-23-kratka-verzija.pdf

139 The results of the survey are available at: http://www.merc.org.mk/Files/Write/00001/Files/Network23/Poglavje-23-Anketa-na-administracija.pdf

140 Transparency International Macedonia, National Integrity System - Assessment for Macedonia, May 2006, p. 28, available at http://www.transparency.mk/images/stories/NIS_mk.pdf

141 http://www.24vesti.com.mk/ostavki-vo-dik-ostana-samo-salija-jakupi-si-odi-od-moralni-prichini-boneva-poradi-hajka-protiv-nea, accessed on 14.12.2017.

Although the Report of the Fourth Evaluation Round of the Council of Europe GRECO Committee was adopted at its 62nd plenary meeting held on 6 December 2013, the Republic of Macedonia has not yet undertaken activities aimed at implementing part of the recommendations referred to in the report . Namely, GRECO's report on the implementation assessment from 1 July 2016, published on October 12, 2016, which deals with the fight against corruption in the Parliament of the Republic of Macedonia, the judiciary and the public prosecutor's office[142], has established that the Republic of Macedonia has implemented satisfactorily only three out of a total of nineteen recommendations, ten were partially implemented and six were not implemented at all.

Four of the non-implemented GREKO recommendations refer to the prevention of corruption among members of the Parliament, while the other two non-implemented recommendations refer to the judiciary and the public prosecutor's office.[143] The first one recommends the introduction of more qualitaty criteria in the system of assessing the achievements of judges and the removal of all automatic reductions of scores in judges' assessment when they change a ruling, and the second one recommends that it is necessary to give a clear definition of violations and the scope of available sanctions when establishing the disciplinary responsibility of public prosecutors in order to ensure better proportionality, and that the dismissal of prosecutors is possible only for serious cases of unethical behavior. The GRECO report assesses as partially implemented the recommendation for taking appropriate measures in terms of strengthening the independence, impartiality and integrity of the lay judges, inter alia, through their training on ethical issues, prevention of corruption and conflict of interests, such as introducing the obligation of lay judges to abide by the Code of Ethics, which was adopted by the Association of Judges.[144]

Corruption in the judiciary is of particularl concern, given the special importance of these officials in building a system of rule of law, but also in the current fight against corruption by the holders of the other two powers. Although judges, as well as other holders of state and public functions, are subject to the same obligations stipulated in the Law on Prevention of Corruption and the Law on Prevention of Conflicts of Interest, and in that sense they are obliged to disclose their property and timely inform about changes in it, judges, as well as most other officials, generally respect the obligation to disclose their property, but largely fail to update their asset declarations, and the SCPC has not yet established a mechanism to accurately monitor changes in judges' assests.[145]

Additionally, the Republic of Macedonia recorded historically and globally the largest drop in the rankings of the corruption perception index.[146] For 2016,[147] Macedonia ranks 90th with 37 points, down from 24 in 2015, when it was ranked 66th in the Corruption Perception Index. Compared with countries of the Western Balkans, only Kosovo is behind the Republic of Macedonia holding the 95th place.

142 Fourth Evaluation Round- Corruption Prevention in respect of members of Parliament, judges and prosecutors, Compliance report „the former Yugoslav Republic of Macedonia" (https://www.ecoi.net/file_upload/1226_1478595492_grecorc4-2016-8-the-former-yugoslav-republic-of-macedonia-en.pdf).

143 This assessment was also expressed through the Press Release to the media - the Republic of Macedonia continues to fail to comply with the recommendations of the GRECO's fourth assessment covering the Assembly, the judiciary and the Public Prosecutor's Office, published on December 22, 2017 on the Transparency International website, http: / / /www.transparency.mk/index.php?option=com_content&task=view&id=1244&Itemid=57

144 The summarized findings of the GRECO report for the Republic of Macedonia are derived from the views taken by Transparency International - Macedonia published in a statement on their website http://www.transparency.mk/index.php?option=com_content&task=view&id = 1221 & Itemid = 57

145 Transparency International Macedonia, National Integrity System - Assessment for Macedonia, May 2006, p. 96, available at http://www.transparency.mk/images/stories/NIS_mk.pdf;

146 Statement by the President of Transparency International Macedonia, available at https://goo.gl/afxvng (Accessed on 15.02.2017)

147 Corruption perception index 2016, available at https://www.transparency.org/news/feature/corruption_perceptions_index_2016

State Commission for Prevention of Corruption

Even the State Commission for Prevention of Corruption (SCPC), which is elected by the Assembly and in accordance with the law should be independent, faces significant problems with regard to accountability, integrity and transparency, which results with an insignificant role in the fight against corruption. At the same time, there are obvious shortcomings and lack of sufficient capacity in the system of oversight of the executive power by the Public Prosecutor's Office, which results from the utter lack of political will for dealing with corruption. However, the State Audit Office, which has sufficient capacity to fulfill its legal mandate, is assessed as the strongest pillar in the fight against corruption.[148]

The Committee on Political Systems and Inter-Community Relations reviewed the Annual Report on the work of the SCPC in 2016 during 4 plenary sessions in June 2017. Both parliamentarians and representatives of civil society organizations attending the session critisized the work of the SCPC. The Platform of Civil Society Organizations for Combating Corruption has called on the Committee for Political System and Inter-Community Relations to adopt a Conclusion proposing to the Parliament to refute the Annual Report on the work of the State Commission for Prevention of Corruption (SCPC) in 2016.[149]

The Platform considers that while by its structure the Annual Report provides an answer to the implementation of the SCPC competencies, it does not provide a comprehensive picture of the activities that were or were not undertaken in 2016, and in accordance with the competences given in the Law on Prevention of Corruption, the Law on Prevention of Conflicts of Interest, the Law on Protection of Whistleblowers and the Electoral Code. One of the key objections that directly affects the civil sector is that the Annual Report does not present the case where the SCPC requested competent actions from the Public Prosecutor's Office of the Republic of Macedonia, the Public Revenue Office (PRO) and the Financial Intelligence Directorate against 21 association and foundation and one political party.[150]

Even after the change of power, the SCPC faces similar challenges in terms of non-enforcement of its legal competences, including the publication and updating of its official web page of a full account of the property situation through the asset declarations of the newly elected and appointed officials, giving an opportunity to have an insight into the changes occurring in the former holders of high state and public functions.

At the public session held on January 4, 2017, the State Commission for the Prevention of Corruption rejected the complaints filed by the Coalition led by the Social Democratic Union of Macedonia for violation of the Electoral Code (Article 8-a) related to the employment and construction of public buildings during the period of election campaign. According to the report published by the SCPC, the complaints were rejected because the calls were announced before the elections were scheduled, or they received an agreement from the SCPC, or the funds were foreseen in the Budget for the activities undertaken during the campaign.

The State Commission for Prevention of Corruption on August 29, 2017 decided unanimously to initiate procedures on three complaints against the General Secretariat of the Government and the

148 Transparency International Macedonia, National Integrity System - Assessment for Macedonia, May 2006, p. 29-30, available at http://www.transparency.mk/images/stories/NIS_mk.pdf;
149 Letter from the Platform of Civil Society Organizations for Combating Corruption to the members of the Commission for Political System and Inter-Community Relations, Parliament of the Republic of Macedonia, available at: https://goo.gl/geC5Lj
150 Press release of the Platform of Civil Society Organizations for Combating Corruption, available at: https://goo.gl/8fhV1u

Employment Agency of the City of Skopje for initiating disciplinary proceedings, suspensions and dismissals after the announcement of the local elections. In the three cases, the Commission concluded that there was a basis for initiating procedures and announced that it would submit requests to the General Secretariat and to the Employment Agency for the appropriate documentation, to be delivered as President Igor Tanturovski said, as soon as possible, and no later then 15 days. According to him, thirty-two government employees filed a complaint against the General Secretariat of the Government.[151]

The problem with party employments at the local level was analyzed by the ZIP Institute in a study titled "Who Employs, the Party or the Municipality", prepared within the project "Network 23+". The analysis pointed out that when the Law on Public Sector Employment is used for the technical and auxiliary staff, the employment process is more vulnerable to corruption. Although the increased participation of the Agency for Administration in the employment process is a positive step for reducing corruption in employment, in the municipalities, and especially in smaller municipalities, the party employments continue.[152]

At the same time, its bias was visible when the SCPC at a session held on 15 August 2017 decided that the dismissal of the public prosecutor Marko Zvrlevski was illegall since it occurred during the election process when dismissals and employments in the state and public institutions are not allowed. The Anticorruption Commission members unanimously concluded that Zvrlevski cannot be dismissed once the elections are scheduled as this is a violation of the Electoral Code.

At the same time, their opinion was also handed over to the Parliamentary Commission immediately after the end of the session. According to the President of the Commission, Igor Tanturovski, this opinion is identical to other similar situations, when the Commission had the same ruling and in accordance with Article 8 of the Electoral Code, which is clear. Anti-Corruption Members voted a week after VMRO-DPMNE asked them to provide an interpretation for the application of Article 8, which prohibits procedures for recruiting new persons or termination of employment of state officials once the elections have been scheduled.

Overall, the work of the Commission can be assessed as passive, selective and insufficiently transparent. According to the response of the SCPC to the Request for Information of Public Character sent by the Helsinki Committee, which referred to a number of issues in the scope of work of the Commission, in terms of the number of complaints of corruption received by the Commission during 2017 as of 31 August 2017, a total of 46 reports of suspected corruption were submitted to the SCPC, out of which 44 were submitted by natural persons, and the other two were submitted by citizens' associations or other legal entities. In the course of this period, the State Commission for Prevention of Corruption, after recieiving the applications, in order to verify the allegations in the application and determine the factual situation in 148 cases, took a decision for further action by the competent institutions, ie submitted a request for gathering information or relevant documentation or for undertaking actions by other competent institutions.

Moreover, according to the received notification, in the same period, the Commission has not initiated procedures on its own initiative in front of a competent authority for suspected corruption, nor has it initiated any criminal liability procedure against elected or appointed persons, officials and responsible persons in public enterprises, public institutions and other legal entities with state capital. In the first nine months of 2017, the SCPC filed 12 requests for initiation of a misdemeanor

151 Anti-Corruption Commission initiated procedures for disciplinary, proceedings, suspensions and dismissals once the elections were announced, article available at http://www.libertas.mk/antikoruptsiska-povede-postapki-za-di/, accessed on 09/04/2017
152 The analysis is available at: https://goo.gl/g7CkLj

procedure before a competent court, as well as 2 initiatives for initiating a procedure before the competent authorities for dismissal, redeployment, replacement or application of other measures of responsibility of the elected or appointed persons, officials or other legal entities, as well as 4 initiatives for dismissal due to a confirmed situation of conflict of interests. In the course of 2017, the Commission did not receive a report from the Prosecution on any initiated corruption cases.

According to quarterly reports from the monitoring of the work of the SCPC prepared by the Macedonian Center for International Cooperation (MCIC), which address a number of different indicators that monitor the fulfillment of legal obligations, anti-corruption verification of legislation is being implemented, but not actively enough and incompletely.

Thus, in the reporting period July-November 2017 this verification was made on five laws and started for 11 others. None of the 13 draft laws set at the Government session were submitted to the SCPC for mandatory verification. In the same quarter, the SCPC responded to 916 requests for opinion by state institutions for the application of the Law on Prevention of Corruption in the election process, which concerned the undertaking of procedures for a full time employment and for a definite time employment, public procurement procedures, procedures for lease of state-owned property and other types of state property activities, as well as opinions on requests for extraordinary payments of budget funds and other budget fund expenditures at central and local level. SCPC has opened 18 cases of possible abuses during the local elections that have raised suspicions of possible misuse of budget funds, public funds and funds from public enterprises and other legal entities that have state capital since the announcement of the elections on August 6, 2017 year. 16 cases were opened on complaints submitted by natural persons, one complaint was filed by a legal entity and one complaint by an unknown applicant.

It should be noted that in the second half of 2017, the SCPC showed greater openness for cooperation with civil society organizations, while the Commission remains intransparent and insufficiently informs the public about its activities through its website or in any other way. SCPC needs to make public its practice and the reasoning of its rulings, in particular decisions related to political financing, conflicts of interests and asset declarations.[153]

Only in the third quarter of 2017, SCPC recievied a total of 19 reports of possible corruption, filed by citizens, legal entities and cases opened by the SCPC's own conviction. The allegations contained in these cases concerned suspicion of corruptive elements in the exercise of public power, public procurements, performance of public interest matters, etc., and the proceeding after them is still ongoing.

The updating of the register of asset declarations of elected and appointed officials remains one of the weaknesses of the SCPC. According to MCIC data, out of 633 appointed officials, 468 (70.59%) persons have not made their information public. Otherwise, 755 declarations were submitted to the SCPC after the election in office, 407 asset declarations after the termination of the office, as well as 64 asset declarations to report changes in assets. The SCPC could and did not initiate a procedure for initiating a misdemeanor procedure before the competent court against the institution or the responsible person because of failure to provide the data necessary to update the Register.

Regarding the possible conflict of interest, in the period July-September 2017, the Commission launched 33 new procedures to establish such cases, with one public reprimand, and there was one initiative for dismissal of a member of the Board of Directors. The SCPC has not yet prepared a

153 Transparency International Macedonia, National Integrity System - Assessment for Macedonia, May 2006, p. 275, available at http://www.transparency.mk/images/stories/NIS_mk.pdf;

special report on possible misuse of budget funds to finance the election campaign or other political activities for the December parliamentary elections.

At the same time, SCPC is a passiv regarding initiatives before the competent bodies for controlling the financial and material operations of political parties, and there was no such initiative in the third quarter of 2017.[154]

The state must take serious steps towards the full implementation of GRECO's recommendations, with particular emphasis on recommendations referring to the judiciary.

The State Commission for Prevention of Corruption must finally and consistently apply the Law on Prevention of Corruption regarding the asset declarations and changes of property status for public officials, including its own members, in accordance with Article 50-a of the Law on Prevention of Corruption.

SCPC needs to make public its practice and the reasoning of its decisions, in particular decisions related to political financing, conflicts of interests and asset declarations.

It should act independently, proactively and impartially, in accordance with its legal competences. At the same time, it is necessary to increase the transparency of the SCPC by organizing open and public sessions and developing close cooperation with all civil society organizations working in the field of fight against corruption, despite the current trend of closed and isolated operations that violates the integrity of this body.

154 All above-mentioned data are extracted from the Quarterly Report no. 4 from the monitoring of the work of the SCPC, which relates to the period July-September 2017 and is available at http://www.mcms.mk/images/docs/2017/sledenje-na-dksk-kvartalen-izveshtaj-br- 4.pdf

Confiscaton of property

Despite the fact that the existing national legal framework constitutes a solid legal basis for effective international cooperation in legal matters, investigations and returns, this still does not work in practice.

The confiscation of illegally acquired property remains an area in which no progress is made, regardless of the numerous initiated procedures in cases related to organized crime and corruption, including the cases of the SPO. In May 2017, the Basic Court Skopje 1 did not accept any request from the SPO to freeze VMRO-DPMNE's property for the Talir case, regarding the financing of this party. All 12 requests for freezing of property, including ther building of the party headquaters, were rejected.[155]

In order to move things in a positive direction, on the proposal of the Ministry of Interior, the Government adopted a decision on the adoption of the Strategy of the Republic of Macedonia for strengthening the capacities for conducting financial investigations at the 22nd session held on 09.08.2017 (item 17) and confiscation of property, with an Action Plan for its implementation.[156] Since this strategy is part of the agenda of the 3-6-9 Plan, the Government entrusted the Ministry of Justice and the Ministry of Finance (Public Revenue Office, Customs Administration, Financial Police Administration, Financial Intelligence Directorate), to nominate members of the Working Group for drafting the Strategy.[157] In the Ministry of Interior, a working group was set up to work on drafting the strategy, involving non-governmental organizations. This strategy is expected to improve the capacities for conducting financial investigations and the confiscation system in the Republic of Macedonia, it is additionally necessary to regulate important aspects and shortcomings that exist in these areas with further legal changes.[158]

It is necessary for the Strategy for strengthening the capacities for conducting financial investigations and confiscation of property to determinate all inconsistencies in the system of confiscation of property in order to overcome them.

The strategy should be complementary to the already existing National Strategy for Combating Money Laundering and Financing Terrorism adopted for the period 2017-2020 and other strategic documents.

Further regulation of important aspects and shortcomings that exist in these areas require further regulation with additional legislative changes.

Non-governmental organizations should actively monitor the implementation of the Strategy.

155 https://www.slobodnaevropa.mk/a/28504940.html, accessed on 05.07.2015.
156 Report from the 22nd session of the Government of the RM, available at: http://vlada.mk/node/13212
157 Ibid.
158 From the expert workshop for confiscation of property and acquired property benefit organized within the project "Network 23+" in cooperation with Transparency International Macedonia. In the expert workshop, the President of Transparency International Macedonia, Ms. Slagjana Taseva presented the identified weaknesses in the system and the envisaged solutions in the draft Strategy for Strengthening the Capacities for Financial Investigations and Property Confiscation. Representatives from the NGO sector, SPO, judges, as well as representatives of the Ministry of Internal Affairs participated in the discussion. The past weaknesses in the system for conducting the confiscation measure were pointed out, with concrete recommendations for overcoming them.

Law on Protection of Whistlblowers

Despite the adoption of the Law on Protection of Whistleblowers on November 10, 2015, which should contribute to a more efficient fight against corruption and organized crime, primarily through the protection of persons who provide information about unacceptable and illegal behavior and by encouraging them in that direction, it is hardly implemented in practice. Being aware of the importance of this law for the work of the SPO, the Special Public Prosecutor Katica Janeva, in her presentation on the event marking the whistleblowers' day, reminded of the need for the implementation of the Venice Commission recommendations regarding the Law on Protection of Privacy and the Law on Protection of Whistlblowers due to the problems SPO faces in its work.[159]

According to the MCIC, the SCPC did not undertake specific measures for active implementation of the Law on Protection of Whistleblowers and by-laws related to obligations of public institutions in front of the SCPC. In that sense, the Commission has not undertaken specific activities to inform and educate the institutions of their obligation to appoint a person to receive application from whistleblowers and to provide information about that person. The data show that the total number of institutions that submitted information with the name and surname of an authorized person for receiving applications from whistleblowers in the period from January to June 2017 was 41, and since the entry into force of this law to date, a total of 65 institutions or 5.03% out of a total of 1,291 public institutions.

More information on the assessment of the impact of this law is given in the study "Will there be "whistleblowers "at universities?",[160] Prepared by the Institute for Strategic Research and Education as part of the "Network 23+" project. This study is focused on the effects of the implementation of the Law on Protection of Whistleblowers and the possibilities for its implementation in preventing corruption in higher education. According to the conducted research, as many as 54% of the respondents believe that corruption is widespread in higher education. From the survey, 70% of the respondents do not know that there is a Law on Protection of Whistleblowers, and 83% do not know that the institution where they study has an authorized person for receiving reports from whistleblowers.

Because of the visible weaknesses of this law, and especially in view of implementing the recommendations of the Venice Commission and its internal and terminological improvement, it was necessary to proceed with its amending. In the last quarter of the reporting period, the Ministry of Justice submitted to the expert public a draft law amending the Law on Protection of Whistleblowers that should provide some improvement in the legal framework, although significant legal, institutional and practical preparations for its implementation as well as raising public awareness are needed in order to ensure efficient implementation.

A positive step is that the adoption of this law was preceded by a broad public debate, involving representatives of all relevant state institutions, experts in the field, as well as representatives of the civil sector. At the same time, it should be noted that this draft law is essentially covered by the majority of the opinions and recommendations of the Venice Commission, which clarifies the term "institutions", other proposed terminological adjustments have been made, the scope of protected disclosure of information is revised, in particular regarding the enlargement of the list for protection during public announcement, the protection of the person who wistleblowes or reports is clearly

159 Press release of the SPO: http://www.jonsk.mk/2017/03/24/катица-јанева-со-свое-излагање-на-меѓу/
160 The analysis is available at: http://www.merc.org.mk/Files/Write/00001/Files/Network23/studies/2017-ISIE-Policy-Study-Will-there-be-'Whistleblowers'-at-the-Universities.pdf

defined and significantly improved, the institution that will perform and supervise the implementation of the provisions of the Law on Protection of Whistleblowers and others.

However, the law does not contain other important recommendations and views expressed in the Venice Commission's Opinion: it does not establish that the disclosure of the identity of the whistleblower, even by a court decision, would be possible only in exceptional circumstances and cases; does not contain provisions that would provide temporary assistance to the whistleblower during the proceedings before the court; the necessary precision of the provision regarding the public part of the court procedure, in order to solve the problem of protected internal and external reporting, is not made and at the same time the proposed law does not contain provisions that would pay attention to the authorized person for reception of information as an important element in the whole procedure, by providing mechanisms for his/her protection against influences and abuses.[161]

Moreover, it is necessary to amend several bylaws, including the Rulebook for protected internal reporting in the public sector[162] institutions in the part that regulates the criteria for appointing an authorized person for receiving applications in public sector institutions that are highly placed and challenging financial implications of the institutions.

The harmonization of this law with Article 50 of the Law on Public Internal Financial Control,[163] stipulates that a person designated by the head of the public sector entity reports irregularities and suspicions of fraud or corruption.[164]

Amending or supplementing the Law on Whistleblowers, represents a positive step towards its alignment with the recommendations of the Venice Commission in order to eliminate all identified shortcomings in the existing draft law.

However, further improvement of the draft law with incorporation and other necessary solutions are recommended.

The Law on Whistleblowers and the relevant by-laws will have to be consistently applied, whereby the state will have to make significant legal, institutional and practical preparations for law enforcement, as well as raising public awareness of the legal framework in order to ensure its efficient implementation

161 However, according to information received from the representative of the Ministry of Justice who actively participated and contributed to the expert workshop on the "Shadow Report", this aspect that refers to the authorized person for receiving applications will be covered by the amendments to the Law on Prevention of Corruption. In addition, a relevant information was presented that it is foreseen to introduce a new criminal offence "Obstruction of justice" in the Criminal Code of RM.

162 Official Gazette of the Republic of Macedonia" No.46 / 2016

163 Official Gazette of the Republic of Macedonia" No. 90/09, 12/11, 188/13, 192/15, 147/17

164 Opinion of the Network 23 on the draft law for amending and supplementing the Law on Protection of Whistleblowers.

3. Fundamental rights

Human Rights

Ombudsman

In the course of 2016, the Ombudsman Office received 3.775 complaints from citizens, and 37 complaints were initiated proactively. In the period from January to August 2017, total of 2.117 complaints were filed. As regards the cooperation, the Ombudsman held that it was encumbered by many institutions, such as the Ministry of Labour and Social Policy, Ministry of Health, Ministry of Interior, Ministry of Justice, Public Prosecutor's Office, Public Revenue Office and the Public Enterprise "Vodovod i kanalizacija (Water-supply and sewerage)".[165]

In respect of the caseload, there is a 20% increase in the number of citizen complaints on the ground of unequal treatment, i.e. violation of the equality and non-discrimination principle, and most prevalent cases refer to labor discrimination in the public administration, including the political elements. The Ombudsman views the functioning of the judiciary as very problematic, along with a range of deficiencies that have direct impact on the efficient realization and protection of citizens' rights, especially in applying the principle – trial in reasonable time. Furthermore, it held that the employment of groups of people (on the ground of ethnicity or political affiliation), in fact, implies gross manipulation of citizens, so that the administration works for the benefit of political parties and not for the citizens.

The changes and amendments to the Law on Ombudsman from September and October 2016 were aimed to ensure the implementation of the Paris Principles, as well as to harmonize the law with Priebe's recommendations and Urgent reform priorities for improvement of the human rights protection system. Based on the recommendations, the legislative changes were meant to strengthen the powers, i.e. extend the Ombudsman mandate so as to include human rights promotion, enhanced financial independence and strengthened human capacities as preconditions for accreditation of the Ombudsman Office to Status A as National human rights institution.

However, most of the recommendations were not embraced in the new solutions provided by law. The only recommendation that was translated into law entails the possibility for the Ombudsman to act as amicus curia with authorization to actively participate in all stages of the proceedings, the right to be informed about scheduled hearings, to be able to make inspection of case files and the right to give proposals and opinions.

Furthermore, it also entailed strengthened control of the Assembly over the executive branch by means of setting measures for implementing the recommendations pertaining to the identified situation in the Ombudsman's Annual Report. In future, the Government will have to notify the

165 Annual report on the extent of respect, promotion and protection of human rights and freedoms, available at http://ombudsman.mk/upload/Godisni%20izvestai/GI-2016/GI-2016.pdf

Assembly about implemented recommendations semi-annually, while the parliamentary working bodies shall review the information in presence of the Ombudsman and representative of the Government.[166]

Despite the legislative changes, the Ombudsman is still unable to recruit professional staff to perform its function in successful manner.[167] Based on the legal powers, the scope of work, and the existing jobs systematization, there should be at least 94 employees at the Ombudsman office to ensure the efficient and effective workflow and protection of citizens' rights. However, the reality is that the staffing is below the required level and accounts for 68 percent of the foreseen capacities (64 employees).[168] In July 2017, the Assembly adopted the decision to give consent concerning the Ombudsman general acts and approval for new employment at the Ombudsman office was granted.[169] This came about after a long period that dates back to 2011, when the vacancies could not be filled because the minister of finance would not give consent for employment, whereby the National Preventive Mechanism (NPM) was left with no employees which seriously impacted the realization of its legal mandate.

The inability for real independent and autonomous work is deemed a serious cause for concern, that is, despite the changes, the Ombudsman budget is still dependent on the Ministry of Finance, i.e. the Government. The adopted budget for 2017 failed to encompass the financial implications for implementation of the Law on Changes and Amendments to the Law on Ombudsman, and includes budget cuts for salaries.[170] Even though the law stipulates the independence of the institution, the actual independence is impeded by the Law on Execution of the Budget.

The Ombudman Report for 2016 notes stagnation as well as regression in some areas concerning human rights, which is proved by 4% increase in the number of human rights and freedoms violations.[171] Most alarming are the highly politicized and dysfunctional institutions, namely, one portion of the institutions carry out political agendas; the existence of unprofessional and brutal police treatment; the excessive use of force by prison police on convicts and lack of systemic health care in penitentiary institutions; the deficiencies of the pension system with detrimental consequences on the insureds; the unsecured funds for payments related to social protection rights; the violation of the right to employment for people with disabilities; the illegal deportation of refugees; the illegal billing and collection of broadcasting fee and water supply charges; the illegal taxation of citizens; as well as the unprofessional work done by the electoral authorities.

Based on the submitted request for information of public character, the institution informed that the legislative changes failed to ensure the required financial independence and Priebe's recommendations for imposing sanctions on those who encumber the functioning of the institution and the establishment of ad hoc parliamentary inquiry committees concerning cases initiated by the Ombudsman. The adopted changes failed to ensure the independence of the professional/technical service and its separation from the state administration and there is collision between the provisions in the Law on Ombudsman and the Law on Administrative Servants.

166 Ibid.
167 For more information, see https://sdk.mk/index.php/glasno-za-ombudsmanot/sobranieto-so-nov-zakon-ke-mu-gi-vrze-ratsete-na-narodniot-pravobranitel/
168 Civic monitoring of the Ombudsman "The Ombudsman- between its mandate and its capacities", report No. 2 available at http://nvoin-focentar.mk/wp-content/uploads/2017/05/Monitoring-izvestaj-Ombudsman_broj-2.pdf
169 http://www.sobranie.mk/sessiondetails.nspx?sessionDetailsId=0d46cc3a-68dd-4764-93c8-f3123c09aa17&date=05.7.2017
170 Annual report on the extent of respect, promotion and protection of human rights and freedoms, available at http://ombudsman.mk/upload/Godisni%20izvestai/GI-2016/GI-2016.pdf
171 Announcement by the Ombudsman, available at http://ombudsman.mk/upload/documents/2017/Pres%20GI-2016/Press%202016-Mk.pdf

One can commend the signing of the Memorandum of Cooperation between the Ombudsman and the Helsinki Committee on Human Rights – LGBTI Support Centre[172] in December 2016, aimed at strengthening the capacities of the Ombudsman as well as the legal certainty and mechanisms for protection of the rights of LGBTI community on the territory of RM.

The Assembly should give due consideration to the Ombudsman Annual Report and identify measures to implement the general recommendations for improving the system based on the legislative changes, thus ensure quality respect, promotion and protection of human rights.

Adequate funding needs to be provided for the Ombudsman Office to be able to start implementing the stipulated powers, thus avoid any pro forma implementation of recommendations given by international organizations.

The Constitutional Court as safeguard for human rights and freedoms?!

The number of initiatives that citizens file before the Constitutional Court notes a continuous decline. In its 24 years of existence, the Constitutional Court declared admissible only one out of 300 filed initiatives, which makes this legal instrument an inefficient remedy.

In the course of 2016, only 8 initiatives for protection of rights and freedoms pursuant to Article 110 line 3 of the Constitution of Republic of Macedonia were filed to the Constitutional Court. During the same year, only 11 cases for protection of rights and freedoms were resolved (out of which 7 initiatives were filed during 2016, 3 in 2015, and 1 in 2014). The Constitutional Court, reached decision to dismiss one case for alleged discrimination on the ground of social status, and all other cases were dismissed either because the court declared to have no jurisdiction or due to procedural obstacles to decide on the merits.

Even though the Rules of Procedure of the Constitutional Court stipulate that the court decides about the initiatives for protection of freedoms and rights during a public session, it fails to do so in practice. In its judgement in the case "Selmani and Others versus R.Macedonia", the European Court of Human Rights held that there had been a violation of the right to fair trial based on Article 6 of the European Convention of Human Rights because of failure on the part of the Constitutional Court to hold a public hearing.[173] This judgement of the ECHR confirms the inefficiency on the part of the Constitutional Court in respect of the constitutional guarantees for the protection of freedoms and rights. The specific case concerned the Constitutional Court decision upon the initiative for protection of freedom of thought and freedom of expression that was filed by a group of journalists, and in the context of the events that took place at the Assembly on 24 December 2012. One can also note the lack of transparency in the work of the Court, which is also supported by data on the length of court sessions.

The new President of the Constitutional Court was elected on 17 October 2016, and following the expiry of the term of three constitutional judges in October 2017, the President of RM nominated two candidates,[174] who were elected by the Assembly on 11 January 2018.[175]

172 http://ombudsman.mk/mk/aktivnosti/231373/potpishan_memorandum_za_sorabotka_pomegju_kancelarijata_na_narodniot_pravobranitel_i_lgbt_centarot.aspx
173 SELMANI AND OTHERS v. THE REPUBLIC OF MACEDONIA (Application no. 67259/14), judgment from 9 February 2017, available at Council of Europe HUDOC database.
174 For more information, seehttp://www.akademik.mk/kadriu-i-kostadinovski-izbrani-za-novi-ustavni-sudii/
175 For more information, see https://goo.gl/x1nnCV

Despite proposed constitutional changes in 2014, the mechanism of constitutional complaint is still not introduced as the last resort for protection of human rights and freedoms before an application is filed with the ECHR.[176]

The inactivity and political instrumentalization of the Constitutional Court amount to continuous lack of credibility and public trust. The process of electing judges should give due consideration to the professionalism, competencies and integrity of newly elected judges, which should ultimately raise the level of the Constitutional Court.

In order to increase the public trust in the Constitutional Court, it would be necessary to clearly define the term "prominent lawyer". In addition, the names and curriculum vitae of candidates for constitutional judges should be discussed by the academic community before they are appointed, in particular when judges are nominated by the Assembly of RM. A higher parliamentary majority for the election of constitutional judges should be also taken into consideration. With the existing law, constitutional judges may be elected even in the aabsance of the opposition.

The constitutional complaint needs to be introduced in order to ensure enhanced protection of citizens' freedoms and rights.

Torture and other types of cruel, inhuman or degrading treatment or punishment

During 2016 and 2017, as part of the Council of Europe project activities, additional efforts were made to introduce an efficient external control mechanism for the work of the police, along with establishment of special department at the Public Prosecutor's Office and department at the Ombudsman Office, including representatives of the civil sector.[177]

The introduction of external mechanism along with appropriate strengthening of the existing internal control system at the Ministry of Interior, which demonstrated lack of efficiency and independence, comes in response to a dozen of judgements of the European Court of Human Rights in conjunction with Article 3 of the European Convention of Human Rights (prohibition of torture). In its judgments, the Court found that the investigation was inefficient, because either the Prosecution Office failed to conduct an investigation or legal actions taken by injured parties were dismissed.

During the reporting period, the ECHR did not deliver rulings on the violation of Article 3; however, a number of cases were communicated to the Government Agent and to the Bureau for representation of RM before the ECHR where the applicants argue that there had been violation of the prohibition of torture or other type of inhumane or degrading treatment or punishment. Among the four communicated applications with allegations for violation of Article 3, two of those specific cases are described below.

In the first application, the applicant argued that there had been violation of both the substantive and the procedural part of the Article because during a family celebration in Kumanovo, he had been forcefully taken from his father's home to the police station. There he had been exposed to

176 The role of the Constitutional Court in protecting the freedom of expression in the Republic of Macedonia, available at http://www.epi.org.mk/docs/TRAIN%202016_Lea.pdf.

177 More about the project, which according to recent information from July 2017 was strongly supported by the new structures at the Ministry of Interior(http://www.coe.int/en/web/skopje/-/meetings-with-the-newly-appointed-minister-of-internal-affairs-and-deputy-minister-of-justice-in-skopje), is available at http://www.coe.int/en/web/skopje/enhancing-human-rights-policing

physical abuse, supported by medical documentation. His complaint to the MOI Sector for internal control was dismissed on the ground of alleged lack of evidence for police brutality, whereas the Public Prosecutor had notified the applicant about the ruling according to which there was no evidence of a crime which is prosecuted ex officio.[178]

The second application refers to the case of a juvenile L.R., a case that the Helsinki Committee of Human Rights dealt with for a long time. It concerns the inhumane and degrading treatment of L.R, who was wrongly diagnosed in 2008 and placed in a facility that failed to provide him with adequate treatment and care, where he was confined to a bed and was subjected to inhumane treatment. The failure of the state to take the necessary steps through the Centre for Social Work, as his legal guardian, and the failure to conduct effective investigation about the allegations for inhumane and degrading treatment by the Prosecution Office, served as reasons to file an application before the ECHR where the proceedings are still ongoing.[179]

Moreover, in 2016 and 2017, the Helsinki Committee registered several cases that may be considered as violation of Article 3 as result of failure to conduct effective investigation. At the end of 2016, a case was reported to the Committee about physical violence against a Roma child by a medical doctor during the medical check-up at the health facility, which resulted in mild bodily injuries and suffered psychological trauma. The competent prosecutorial authorities failed to conduct any investigation in this particular case.

In the beginning of September 2017, the Helsinki Committee sent 49 requests to all basic prosecution offices and basic courts in view of collecting information about registered and undertaken procedures for all crimes listed under Article 142 (Torture and other cruel, inhumane or degrading treatment and punishment) and Article 143 of the Criminal Code (ill-treatment while performing official duties). 24 basic courts and 18 basic Public Prosecutor's Offices responded positively.

Based on the response provided by basic courts, only 13 cases had been registered pertaining to Article 143, out of which 3 at the Basic Court Skopje 1 with 2 resolved cases, 3 cases at the Basic Court Tetovo (the outcome in 2 cases was probation sentence, and 1 case remains unresolved as proceedings are still ongoing), 3 at the Basic Court in Strumica (1 dismissal, 1 conviction and 1 ongoing proceedings involving an employee at the Sector for Internal Affairs Strumica), 2 cases at the Basic Court Delcevo (1 probation sentence, and the second is still unresolved), 1 recent case at the Basic Court Bitola with acquittal, as well as 1 case at the Basic Court Prilep without any further information provided.

There were no registered cases pursuant to Article 142 of the Criminal Code in any of the basic courts that provided feedback, except for the Basic Court Skopje 1 as the only specialized criminal court where 2 cases were registered. In the first case, probation sentence was imposed to two persons, while in the second case the proceedings were stayed.

Basic prosecution offices dealt with only 8 cases of torture pursuant to Article 142 of the Criminal Code, and total of 44 cases pursuant to Article 143 (ill-treatment while performing official duties), whereby criminal charges were dropped in a total of 4 cases, indictment was filed in 32 cases, and

178 The facts of the case and the allegations of the applicant in the Application No.59119/15 are available on the following link in HUDOC database of the ECHR https://hudoc.echr.coe.int/eng#{"languageisocode":["ENG"],"respondent":["MKD"],"article":["3"],"documentcollectionid2":["COMMUNICATEDCASES"],"kpdate":["2016-09-20T00:00:00.0Z","2017-09-20T00:00:00.0Z"],"itemid":["001-172741"]}

179 The application, in the same form as communited to the Government Agent for response, is available at https://hudoc.echr.coe.int/eng#{"languageisocode":["ENG"],"respondent":["MKD"],"article":["3"],"documentcollectionid2":["COMMUNICATEDCASES"],"kpdate":["2012-09-20T00:00:00.0Z","2017-09-20T00:00:00.0Z"],"itemid":["001-166835"]}

one case was completed with probation sentence. Nevertheless, the data should be accepted with reservation because the prosecution offices did provide the number of cases but without specifying the outcome of the respective procedures, that is, whether the criminal charges were dropped, an indictment proposal was filed etc.[180]

The competent authorities need to cease the practice of impunity for authorized officers for torture and other forms of inhumane and degrading treatment. The failure of the Public Prosecutor's Office to act in cases of torture, especially when committed by police officers, further strengthens the citizens' distrust in the judicial system.

At the same time, serious efforts need to be made regarding the execution of the judgments where the European Court of Human Rights found violation of Article 3, through reopening the investigation, whenever possible, and when there is no statute of limitations for the criminal prosecution.

The establishment of external mechanism for control over the work of the police and monitoring cases of police misconduct must be put in practice as soon as possible, by means of adopting the foreseen legal framework and building the necessary institutional capacities for consistent application.

Victims of torture and police ill-treatment must be guaranteed adequate legal, medical, psychological and social support, in line with the requirements set forth in the EU Directive 2012/29 establishing minimum standards on the rights, support and protection of victims of crimes.

Prisons and Remand Facilities

According to the response from the Directorate for Execution of Sanctions to the public information request, dated 29 November 2017, in mid-November 2017 the total number of sentenced and remand prisoners in the thirteen penitentiary institutions in the country was 3045, which in comparison to the 3446 officially registered prisoners on 12 April 2016 shows a drop of 11,6%. Out of this number, 2809 were sentenced prisoners serving their prison sentence, and 236 were remand prisoners.

In addition, in the Educational-Correctional Centre for Juveniles "Tetovo", which is temporarily accomodated in the Ohrid prison, there was a total of 20 juveniles. We are still concerned with the fact that instead in a specialised educational-correctional facility (which has been in a process of construction in the vicinity of the Tetovo village of Volkovija for a number of years), the juveniles are taccommodated in a penitentiary institution lacking adequate conditions for their education, resocialisation and development, that would help them reintegrate in the Macedonian society after they leave the institution.

The total capacity for sentenced and remand prisoners is 2576, which compared to the number of 2809 persons in the prisons shows an overcrowding of 10.9% that is in average of 109 prisoners accommodated in a space planned for 100. But still there are differences in the levels of overcrowding among the different penitentiary institutions. Hence, the most alarming is the situation with

180 In addition, please note that three of the basic prosecution offices responded on the request for information of public character by refusing to provide the requested data on the ground that such information is neither available or created at the basic prosecution offices because of lack of statistical analyses. Therefore, they decided, on no ground, to dismiss the procedure based on the submitted requests and deprive the report of relevant data related to their work.

the Idrizovo Prison, which official capacity is 1094 and at the moment there are staggering 1786 prisoners, which is significantly over its capacity with an overcrowding of 163.25%. According to the European Committee for the Prevention of Torture (CPT) its real capacity is 900, which is twice below the current number of prisoners.

The comparison of the official data about the accommodation facilities of the penitentiary institutions outside of Skopje and the number of prisoners there, on 17 November 2017 shows overcrowding in the prisons in Strumica (136%), Shtip (134.6%) and Tetovo (126.5%).

Overcrowding, lack of hygiene and substandard conditions accompanied by the fact that the prisons are understaffed and the current staff not sufficiently trained, the poor material and financial conditions, lack of professionalism evident from the excessive use of force and the corruption on one hand and the insufficient access to medical care, inefficient legal aid, failure to implement the resocialisation programmes through education, work, sports and other affirmative activities result with inhumane and inadequate treatment of prisoners and increased violence among the prisoners. The unprofessional attitude and use of torture against the prisoners as well as inadequate medical treatment (especially of the female prisoners), the lack of access to a doctor and the inadequate distribution of therapy were also emphasised in the 2016 Ombudsman's human rights and freedoms report presented on 30 March 2017.[181] The situation is similar with the juveniles serving educational-correctional measures at the Tetovo Educational-Correctional Institution, whose accommodation in the Ohrid Prison is utterly inadequate.[182]

Even though the points made by the Ombudsman resulted in concrete actions taken by the Directorate for Execution of Sanctions and ad-hoc inspections were carried out in some institutions, they are still not mandatory and have no real effect. In addition, the National Preventive Mechanism has been left with no funds for more than two years, therefore hardly able to perform its duties. This is a body, which in cooperation with the civil society organisations should play a key role in the supervision of the situation in all the places of detention, which means both penitentiary and psychiatric institutions, and provide recommendations on how to overcome the problems and how to provide adequate treatment to persons deprived of their liberty in accordance with the relevant international standards. In spite of the current limited role of the NPM in performing its legally provisioned competences, this body still operates with the support from foreign donations, a situation that is impermissible and as such should be resolved urgently.

We are especially concerned with the increased number of people who died while in prison custody. In 2016 the Ombudsman initiated investigation in the death of two inmates serving prison sentences in the Idrizovo Prison. He requested from the Institute for Forensic Medicine and Criminology a report on the cause of death established after the performed autopsies, but the procedure is still ongoing.[183] According to the latest information received from the Directorate for Execution of Sanctions, in the course of 2017 until the 31 January 2018 nineteen deaths of prisoners were registered in all penitentiary institutions, out of which 14 in the Idrizovo Prison, 2 in the Shtip Prison and 1 in the open ward of the Kumanovo Prison in Kriva Palanka, the Skopje Prison and the Prilep Prison. In this context 3 prisoners died while on leave, and from the remaining 16 – 2 committed

181 Annual report on the level of respect, promotion and protection of human rights and freedoms available on http://ombudsman.mk/upload/Godisni%20izvestai/GI-2016/GI-2016.pdf

182 The findings regarding the situation of these persons are presented in the Special Report on the circumstances under which the educational-correctional measure of placing minors in an educational-correctional institution is executed and the level of rights exercising by the children, published in May 2016 (http://ombudsman.mk/upload/Istrazuvanja/2016/Informacija%20VPD%20Tetovo-Ohrid-mk.pdf).

183 2016 Annual report of the Ombudsman on the level of respect, promotion and protection of human rights and freedoms, available on http://ombudsman.mk/upload/Godisni%20izvestai/GI-2016/GI-2016.pdf, p.53.

suicide by hanging, and 14 died from health-related complications, regardless whether they died at the prison or on the way to or at the hospital. The matter of concern is the fact that as many as four of them were Roma.

In the last report of the Council of Europe's Committee for the Prevention of Torture, that was published on 12 October 2017 presening the findings from its visit to the Republic of Macedonia in December 2016, it criticises the detention conditions as well as the treatment of prisoners at the Idrizovo Prison, where almost 60% of all the prisoners in the country serve their sentences.[184]

Since 2006 the CPT has repeatedly been highlighting certain fundamental structural issues, such as low level of competence for managing complex penitentiary institutions and poor management and performance on the part of staff and absence of adequate supervision and control systems and accountability in cases of ill-treatment. The Committee notes that little progress has been made, but since the same systematic problems continue, it concludes that there is a tendency of continued deterioration of the situation. It recommends a new approach towards achieving rule of law with absolute respect of human rights in compliance with the international obligations undertaken by the Republic of Macedonia.

Moreover, the Committee notes totally inadequate health-care that places prisoners' lives at risk; absence of proper educational and working regime as well as endemic corruption where every aspect of imprisonment is up for sale, from obtaining a place in a decent cell, to home leave, to medication, to mobile phones and drugs. The report goes on to emphasise that the continued problems of ill-treatment, inter-prisoner violence, corruption and a lack of activities offered to prisoners at Idrizovo Prison are intrinsically linked to the insufficient number of prison staff and the lack of training and support provided to them.

Although the situation in the Shtip Prison is considered better in comparison, the report recommends there it is necessary to reduce the extreme overcrowding, to improve the material conditions of detention and to offer a regime of purposeful activities for the prisoners. In comparison, CPT qualifies the regime offered to remand prisoners at the Skopje Prison as a relic of the past, pointing out that the prisoners are confined to their cells with only one our outdoor exercise for periods of up to two years.

One month after the publishing of this report the Government discussed and adopted a draft Law on Amnesty, which was then forwarded to the Assembly, where it was adopted on 15 January 2018. The draft law points out that the its purpose is to ensure resocialisation of prisoners in order to deter them from reoffending, preventing negative consequences and criminal infection as a result of the overcrowding and the bad and inhuman conditions in the penitentiary institutions as well as to provide financial relief for the Budget by saving on the costs for the prison population.[185]

This short law defines the categories of prisoners to be released that include prisoners convicted to prison sentences of up to six months that would be released immediately; prisoners convicted to prison sentence longer than six months that would have 30% reduction on the entire sentence

183 Report to the Government of "the former Yugoslav Republic of Macedonia" on the visit to "the former Yugoslav Republic of Macedonia" carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 6 to 9 December 2016, CPT/Inf (2017) 30, available on https://rm.coe.int/pdf/168075d656

184 According to some estimates, with the Law on Serving a Prison Sentences 670 people with effective prison sentences of up to 6 months will be released and the sentences of 3097 prisoners will be reduced for 30% http://www.mhc.org.mk/system/uploads/redactor_assets/documents/2655/Mesecen_IZVESTAJ_za_covekovi_prava-Noemvri_2017_1.pdf)

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and prisoners convicted with effective judgement to a single prison sentence for several crimes who would get 30% reduction only in the part of the individual sentences covered with the amnesty. The draft also clarifies that if such a prison sentence contains among others a sentence for a crime that is not covered by the amnesty, the prisoner will be exempted from 30% of the sentence only in the part of the individual sentences covered with the amnesty. Article 3 clearly states that the amnesty does not apply for persons convicted to life imprisonment and lists the crimes that would be exempted from the process such as murder (Art. 123 from the Criminal Code); crimes violating elections and voting (art. 158-165-c from the CC), crimes against sexual freedom and sexual morality (Art. 188, 189, 191, 193, 193-a, 193-b and 194 from the CC); crimes against the state (Art. 305-327 from CC); crimes against public order (Art. 394-a, 394-d from CC); as well as crimes against humanity and international law (Art. 403-418-a and 418c-422 from CC).

The situation with prisons overcrowding and prisoners' treatment is alarming. There is a need of urgent measures in order to change the policies that regulate the execution of sanctions and remand detention.

There is a need of full implementation of CPT recommendations in order to annul the established shortcomings, by placing an emphasis on improving the general conditions, ensuring adequate medical care, prevention and accountability in cases of ill-treatment as well as preventing corruption.

It is of absolute importance to shed light on the cases of death of prisoners in the prisons.

The National Preventive Mechanism should be provided urgently with staff and material and financial resources in order to be able to perform its duties adequately.

The NGOs should bi given free access to the prisons for regular inspections of the conditions in order to provide recommendations aimed at their improvement.

The Law on Amnesty should be implemented carefully, and be accompanied by adequate measures and policies for resocialisation of the amnestied persons after their release in order to prevent reoffending and other negative consequences.

Vulnerable Groups and the Principle of Non-discrimination

Even after six years since the Law on Prevention and Protection from Discrimination went into effect and the Anti-Discrimination Commission (ADC, the Commission) was created, we are still not able to speak about effective protection against discrimination, especially when it comes to the marginalised groups. The main issues related to the access to justice for the victims of discrimination such as court expenses for initiating court procedures for protection from discrimination, independence of the Commission and absence of sexual orientation and gender identity as grounds for discrimination remain unsolved.

The LGBTI persons remain subject to systematic discrimination, because of the failure on the part of the Public Prosecutor's Office to act in several incidents that involved attacks on the LGBTI Centre. It has failed to carry out adequate investigation of the incidents in 2013 and 2014, and the police failed to arrest most of the perpetrators. Because of this situation of impunity, the LGBTI persons do not trust the institutions to report violation of their rights, and especially in case of discrimination.

After submitting a public information request on 12 September 2017, we received information that in 2016 ADC had received 60 complaints and in 2017 until August 2017 they had received 36, showing a small drop in the numbers. During this entire period the ADC established discrimination in 13 cases based on age, health, sexual orientation, sex, skin colour, personal or social status, and pursuant to Article 24 Paragraph 1 from the Law on Prevention and Protection against Discrimination the Commission in all these cases recommended for the violation to be remedied by the concerned institution. At the same time the ADC pointed out that they did not keep any statistics of the number of cases in which the recommendation was (not) implemented. Still, the Commission in 2 cases in which discrimination was established submitted an initiative for procedures before the competent bodies.

In May 2016 the Commission adopted a decision, establishing direct and continued discrimination by the banks based on a physical disability against blind persons, based on the complaint submitted by the Helsinki Committee, and the members of the Anti-Discrimination Network, the National Association of Blind People and the Macedonian National Association of Civilians with Disabilities from the War. The unequal treatment was related to the use of banking services and products that require signature by the client. In the Decision's rationale the ADC gives concrete recommendations for the banks to create conditions and to reasonably adapt to the specific needs of the blind.[186]

At the same time one needs to note also the need to improve the conditions at the courts that should review the accessibility standards when they renovate the old and build new buildings, and to make them accessible for all the citizens i.e. to follow the needs of the persons with disabilities in order to increase their independence and to improve their quality of life.[187]

Even more there is e need for broader definition in the new Law on Free Legal Aid of the legal issues for which free legal aid could be requested, and the need for all the citizens that need legal aid to be covered, as well as to alleviate the conditions that citizens need to fulfil in order to have access to FLA.[188]

In addition, the ADC's opinion from June 2016 is important since it establishes discrimination based on gender identity in a complaint submitted by the Helsinki Committee that represented the victim. It was a case of a trans-gender person that was denied access to services based on gender identity by not being allowed entrance to a public pool.[189] The discriminatory treatment on the part of the provider of public services continued in 2017 when a person in a wheel chair was not allowed to enter the Olympic Pool in Skopje. This is contrary to the requirements of the UN Convention on the Rights of Persons with Disabilities that imposes an obligation to the Republic of Macedonia as a state that has ratified the Convention to undertake adequate measures to ensure for the private entities that offer services open to the public to take into consideration all the aspects of accessibility for persons with disabilities. Moreover, the Law on Prevention and Protection against Discrimination provisions that failure to eliminate any barriers and to adapt the infrastructure and the space thus preventing the access for persons with mental and physical disabilities to publicly available resources or their involvement in the public and social life also represents discrimination.

186 The initiative is available on http://www.mhc.org.mk/system/uploads/redactor_assets/documents/1503/KZD_.pdf

187 These conclusions can be found in the analysis done by "Open Your Windows" titled "Accessibility and inclusiveness of the courts in Macedonia" which was drafted within the framework of the "Network 23+" project.

188 More details are available in the analysis titled "Free Legal Aid – Challenges and Solutions" done by the Association "Multikultura" published within the framework of the "Network 23+" project and available on http://www.multikultura.org.mk/documents/Analiza%20Multikultura%2006.09.2017%20MK.pdf

189 Helsinki Committee for Human Rights, Monthly Report on Human Rights, June 2016, available on http://www.mhc.org.mk/system/uploads/redactor_assets/documents/1659/Mesecen_IZVESTAJ_za_covekovi_prava-JUNI_2016.pdf

With few of his initiatives, the Ombudsman managed to play an affirmative role in the protection of the members of groups vulnerable to discrimination. Following to the reaction by his office, the Government adopted a decision in September 2016 reinstituting the right to allowance for persons diagnosed with cystic fibrosis,[190] Namely, the Ombudsman acted on a complaint by a parent of a child diagnosed with cystic fibrosis and submitted an initiative to the relevant public bodies for the Rulebook for assessing the specific needs of persons with problems with the physical or psychological development to be amended since it had not included this group of people as chronically ill persons. The Ombudsman also submitted an initiative to the Ministry of Labour and Social Policy for the Law on Child Protection to be amended, more specifically its provisions that discriminated based on the sex because of unequal treatment of the parents. Namely, in cases when the mother does not fulfil the conditions for allowance for a third child this right to be exercised by the father as the other parent.

Discriminatory contents were also detected in some of the primary school textbooks, primarily in the fourth grade Social Science textbook that encompassed contents that were excluding and stigmatising against all children and parents who live in untraditional families, as a kind of discrimination. This represented a violation of the Law on the Protection and Prevention against Discrimination that explicitly prohibits discrimination based on family and marital status as well as of the Family Law that explicitly forbids discrimination against children born out of wedlock. 40 complaints by mothers who live in single parent families, extramarital unions or marital union, supported by 8 CSOs were submitted to the Ombudsman's Office and the State Educational Inspectorate demanding for discrimination to be established and for the Ministry of Education and Science to initiate a procedure for publishing a new contemporary textbook with inclusive contents. Consequently, in July 2017 the disputed textbook was withdrawn. There was also an initiative by the Ombudsman to the Ministry of Education to withdraw the discriminatory contents from the eighth grade Civil Education textbook where there was discriminatory definition about women.[191]

Direct discrimination based on the sex was also established in the statement by the International Athletic Marathon in Ohrid because of different values of the rewards given to the participants depending on the sex of the winners. The Helsinki Committee for Human Right reacted after which there was an apology, as well as correction in the rewards that were made equal both for the male and the female winners.

In the course of 2017 based on an initiative by the Macedonian Young Lawyers Association, KHAM Delchevo and Helsinki Committee for Human Rights a public debate was organised with the Standing Inquiry Committee or Protection of Civil Freedoms and Rights at the Macedonian Assembly[192] regarding the cases of restriction of the right to free movement and discrimination at the border crossings against citizens of Roma ethnic origin. The idea was to come up with "concrete proposals for initiatives aimed at improving the legal framework protecting the already established rights and freedoms of the citizens and to overcome the systematic practices of racial profiling". The analysis titled "The Roma at the Macedonian Borders" by the European Policy Institute and KHAM Delchevo shows that the Roma believe that they are treated differently in comparison to the other citizens of the Republic of Macedonia when travelling abroad. They believe that their skin colour, name and surname are key factors used by the border police when they decide not to allow them to leave

190 The Government reinstituted the allowance for the persons with cystic fibrosis after the reaction by the Ombudsman, available on https://sdk.mk/index.php/makedonija/vladata-ja-vrati-pomoshta-za-bolnite-od-tsistichna-fibroza-po-reaktsijata-na-narodniot-pravobranitel/

191 The discriminatory Social Studies textbook will be withdrawn, the article available on https://www.slobodenpecat.mk/naslovna/diskriminatorskiot-uchebnik-po-opshtestvo-ke-bide-povlechen/

192 Initiative for public debate of the Standing Inquiry Committee or Protection of Civil Freedoms and Rights, available on http://myla.org.mk/иницијатива-од-граѓанскиот-сектор-за/

the country. This practice was especially serious because it resulted in violating one of the most protected grounds, the race. Apart from violating their rights that have also been confirmed by the Macedonian courts, this practice also represented a risk for the media to create an image that the Roma posed a threat to the visa-free regime,[193] as well as a potential further distancing of the Roma community from the state and its institutions, especially the police.[194]

Since 2011 to date a number of international reports by the United Nations and the Council of Europe, as well as reports and other activities by national CSOs establish discriminatory practice on the part of the MOI. So far 50 lawsuits have been initiated for determining the right to equal treatment at the border crossings that resulted in 13 positive effective verdicts, 9 negative and the remaining ones are still pending. Because of the negative court decisions, 7 applications have been submitted to the European Court of Human Rights referring to the violation of the right to equal treatment of the Macedonian citizens of Roma origin by the State.

When it comes to the court proceedings in discrimination related cases, the records of the Basic Court Skopje 2 show 10 cases in 2016, and 8 more registered by the end of August 2017.[195] Out of these 18 cases 11 are still in procedure; 2 cases have been officially closed with a decision that rejects the lawsuit by the plaintiff as incomplete; 1 case is pending until another procedure is legally completed since it had already been initiated on the same grounds in 2016; and the remaining 4 cases are closed, but the court decisions were not final at the time this report was drafted. Additional 10 cases were registered in the ACCMIS system in 2016, and 4 more cases by the end of August 2017 at the Department for Labour Disputes of this court as cases in which there were grounds for establishing and protection against discrimination in work-related disputes. Out of all 14 cases in the area of labour only 4 are closed and archived. The biggest number of cases of discrimination in the work-related disputes is related to discrimination on the grounds of ethnic origin. During the reporting period the Basic Court Skopje 2 accepted one lawsuit demanding protection against discrimination where unequal treatment was established because of a personal or family status related to the health (pregnancy) of the plaintiff.[196]

Finally, one needs to note also the problem that the children of mainly Roma ethnic origin are faced with when they return from the Western European countries, related to their reintegration in the schools. Namely, the common practice is to have the children return to the same grade they attended before they left with their parents to the Western European countries even though they have school certificates as proofs of completed education there. Many of the parents because of their financial situation cannot afford to nostrificate those documents and because of that many children drop out of school because they are forced to attend the lower grades even though they are at the age of 13-15. The percentage of children dropping out of school or not continuing their primary or secondary education is significant and these children remain completely excluded from the educational process and have no access to education.[197] In this context one needs to mention that the Government in 2010 adopted the Programme for support and facilitation of the reintegration of those returning to the Republic of Macedonia in compliance with the readmission agreements.[198] Even though it envisages measures, mechanisms and bodies that should facilitate the reintegration of those returning, nothing has been put to practice, yet.

193 Life to the Border – reports by the Macedonian media on the Roma and the visa liberalisation, available on https://goo.gl/Hsx6b7

194 The Roma at the Macedonian borders, December 2016, study available on http://epi.org.mk/docs/Osnovna%20studija_Romite%20na%20makedonskite%20granici.pdf

195 The presented statistics that refer to the cases of discrimination were submitted by the Helsinki Committee for Human Rights and rejected by the competent civil courts.

196 Regarding the other basic courts that responded to the Request for Public Information, it seems that many of them have no record of discrimination-related lawsuits, and they do not keep statistics on the grounds in the lawsuits (even in the bigger basic courts, like the ones in Bitola and Veles) or their number was insignificant (for example one lawsuit of such kind at the Resen Basic Court). On the other hand the Berovo Basic Court established discrimination in two cases.

197 These findings were shared by a representative of the Institute for Human Rights that focused on this issue, and who participated in a discussion of the Focus Group from 15 September 2017.

198 The Government of the Republic of Macedonia, Programme for support and facilitation of the reintegration of those returning to the Republic of Macedonia in compliance with the readmission agreements, available on http://www.migrantservicecentres.org/userfile/PROGRAMA%20ZA%20POMOS%20I%20PODDRSKA%20PRI%20REINTEGRACIJA%20NA%20POVRATNICI%20VO%20REPUBLIKA%20MAKEDONIJA%20SOGLASNO%20REA.pdf

It is urgently necessary to thoroughly reform the Anti-Discrimination Commission in the direction of its greater professionalisation, in order to more successfully perform its competences for equal protection of all citizens.

The Ombudsman should continue with his efforts and activities in fighting against discrimination within the framework of his mandate.

The proposed amendments to the Law on Prevention and Protection against Discrimination should strengthen the access to justice for the victims of discrimination by exempting them from court expenses for initiating court proceedings for protection against discrimination; strengthen the independence of the Anti-Discrimination Commission; and incorporate sexual orientation and gender identity as grounds for discrimination.

There is an urgent need of results from the investigation of the attackers against the LGBTI Center for support of the LGBTI persons because the impunity would represent discrimination against the LGBTI persons as a marginalised group that would fully destroy their trust in the institutions.

In the new Law on Free Legal Aid there should be broader and clear definition of the legal issues for which free legal aid could be granted, as well as to cover all the citizens that need legal aid, and to ease the conditions that the citizens should fulfil in order to have access to FLA.

Freedom of Assembly and Association

In 2016 in several occasions the right to free assembly was curtailed during peaceful gatherings and public protests. The decision of President Ivanov to pardon all the politicians who were under investigation or charged and to stop all the criminal procedures against 56 officials from the ruling and oppositional parties in April 2016 caused revolt among the public. During the protests against this decision of his there was noticeably greater presence of police in full gear and their deployment in police cordons that curtailed the right to freedom of movement of the citizens that were protesting. Regardless of the fact that the protests were peaceful certain uncalled practices on the part of MOI were noticed such as unauthorised video recording of the citizens that were protesting; inviting a number of protesters and human rights activists to informative interviews at the police because of their "participation in protests"; and other similar practices that evidently were aimed at intimidating the participants in the protests having in mind that the right to public assembly is guaranteed in article 21 of the Constitution and regulated with a special Law on Public Assembly. In addition during the protests that followed after the amnesty was withdrawn by the President in June 2016, police officers would ID and take into police custody protesters after the end of the protest,[199] that resulted in initiatives for criminal proceedings or criminal charges against the protesters.

The use of disproportional force and interfering with the public gathering, was also noted during the students' protests in front of the offices of the Students Parliament of the Ss Cyril and Methodius University in Skopje, immediately after the voting for the new President of the SPUKM thus committing two offences: "Preventing a public gathering" (Article 155, Paragraph 2 from the Criminal Code) and "Mistreatment while performing official duties" (Article 143 from the Criminal Code). In this case the Helsinki Committee submitted an initiative for criminal charges to the Public Prosecutor's Office against senior officials at MOI,[200] however the Prosecutor's Office has not acted on it, yet.

199 The activists Pavle Bogoevski and Simona Spirovska were taken into police custody, available on http://novatv.mk/privedeni-aktivistite-pavle-bogoevski-i-simona-spirovska/

200 The Helsinki Committee submitted initiatives for criminal procedure against the police officers who were beating up students, http://24vesti.mk/helsinshki-komitet-podnese-krivichni-prijavi-policajcite-koi-tepaa-studenti

After the change in power there have been certain isolated cases of improper police actions in the sense of illegal and wilful breach of the right to free assembly and expression of protest that also meant violation of the right to freedom and safety. That was also the case with taking into police custody a small group of activists from "Levica" who in July 2017 were protesting at the Skopje square during the show of the US and Macedonian military equipment. The obstruction of the right to peaceful protest, as well as the illegal taking into custody by use of means of restrain (handcuffs) by authorised police officers, in this specific case represented flagrant violation of the Constitution, Law on Public Assembly, Law on the Police, Rulebook on performing police duties and the relevant international standards.[201] By doing this the police openly acted against the citizens and only contributed further to the trend of mistrust among the citizens.[202]

Moreover, the civil society organisations were faced with serious challenges concerning their functioning. The civil movement "Stop Operation Soros" that was established in January 2017 targeted the NGOs funded by the Foundation Open Society-Macedonia. It represented a direct attack against the credibility and reputation of the civil society organisations and human rights defenders in the country. Simultaneously, the court proceedings against civil activists, members of the Colourful Revolution prosecuted for participating in a crowd that committed a crime pursuant to Article 385 from the Criminal Code were still ongoing at the time when this report was drafted.

In a judgement by the ECHR from 16 November 2017 it was concluded that Article 11 was violated (freedom of assembly and association) in conjunction with Article 9 (freedom of thought, conscience and religion) from the European Convention on Human Rights because the competent authorities refused to register the Orthodox Archdiocese of Ohrid (OAO) as a separate religious community.[203] ECHR established that the request by the OAO to be registered was rejected over and over again because of formal reasons and based on two other grounds: the applicant association was formed by a foreign church or state and its proposed name was problematic because it was very similar to the name of the "Macedonian Orthodox Church - Archdiocese of Ohrid" that had historical, religious and moral right to continuity in using that name. Regardless of the broad discretional right of the state in this area, ECHR in its judgement points out the duty of the state to remain neutral and impartial in its relation with the various religions and religious groups as well as to ensure religious pluralism. The Court in Strasbourg explicitly condemned the preventive measures undertaken against the freedom of association in a democratic society.[204]

The state should ensure respect of the right to assembly in a way that will not be limited either by the police, or by another groups of citizens - opponents in cases when the protests are properly announced in accordance with the Law on Public Assembly.

Initiating criminal procedure against these individuals could be considered also as a warning for other citizens who want to take part in the protests, contrary to Article 21 of the Constitution of the Republic of Macedonia, an article that provisions for the citizens to have a right to assembly and to express public protest without previous announcement or special permit and exercising this right could be curtailed only under circumstances when a state of war or emergency is declared, which was not the case.

Adequate disciplinary measures to be imposed against all police officers that use excessive force against participants in peaceful protests, as well as against their superiors.

201 Available on http://mhc.org.mk/announcements/618?locale=mk#.WcNdScgjHIU

202 The Helsinki Committee for Human Rights initiated procedure for establishing the circumstances in the case, recommending for measures to be undertaken by the Department for Internal Control, Criminal Investigation and Professional Standards to establish the responsibility of the involved police officers, who used means of coercion in a situation that provided no grounds for such a response. In addition, the competent authorities at MOI were asked to undertake the necessary measures and activities and to act along the line of the established legal and universal international standards regulating police actions.

203 The application was submitted to the ECHR by the Helsinki Committee for Human Rights.

204 See http://www.mhc.org.mk/announcements/666?locale=mk#.WmObXkxFxPZ. The ECHR Judgement is available on https://hudoc.echr.coe.int/eng#{"documentcollectionid2":["GRANDCHAMBER","CHAMBER"],"itemid":["001-178890"]}

Freedom of Expression and Pluralism in the Media

The judgement of the ECHR in the case "Selmani and Others Against the Republic of Macedonia"[205] cconfirmed the nondemocratic practices which influence the freedom of expression. The court determined that Article 10 from the Convention was violated when the reporters were violently expelled from the Parliament on 24 December 2012. This prevented them from following the plenary session and appropriately reporting on what was happening in the Parliament.

The practice of violating the Law on Media and the Law on Audio and Audio-visual Media Services continued throughout 2016 and 2017. During 2016 the Agency for Audio and Audio-visual Media Services received 18 complaints and suggestions and the Agency handled them in accordance with the Law; in 2017 it received 12. Out of the 25 complaints and suggestions received until 31 August 2017, 16 were submitted by legal entities (associations of citizens and other legal entities) while 9 were submitted by natural persons. According to the information provided by the Agency, 5 of the complaints and suggestions submitted in 2017 were related to discrimination or hate speech.

The reporting on the protests of the organization "I protest" and on the counter protests of the Association GDOM, illustrate the division in the media. On one hand we had the TV stations supporting the Government (the biggest national broadcasters Sitel, Alfa, Kanal 5 and TV Nova), which when reporting about the protests of "I protest" and the protests of the Colourful Revolution constantly and in sync repeated the phrase "the hooligans of SDSM and of Soros" while the contra protests were called "civilian" and "people gatherings ". On the other hand, the neutral and critical TV stations very rarely reporting on the GDOM protests, and more often on the protests of the Colourful Revolution. The Macedonian National Television (MRT) on its two programs informed in an informational and balanced way on both movements.

The Agreement of the four political parties from 20 July 2016 included several new provisions related to the work of the media. One of them was the appointment of the new editor of the MRT proposed by the opposition, who is to take his/her post 100 days before the elections; another one is the ad-hoc body established by the Agency for Visual and Audio-visual Media Services to monitor the reporting in the media (Interim Commission for Monitoring the Media Reporting). This body was tasked to give recommendations based on which the Council of the Media Agency should issue warnings or sanctions to the media. According to this Agreement, the four political parties agreed to change the laws regulating the work of the media within six months after the elections and in agreement with the Priorities for Urgent Reforms and the Report of Reinhard Priebe. However, these provisions in the Przhino Agreement are considered debatable, adopted only for the elections since they do not guarantee long term independence of the public service.[206]

After the Interim Commission for Monitoring the Media Reporting (the ad-hoc body established during the political negotiations in Przhino in July 2016) submitted its proposals, the Agency asked for misdemeanour procedures, warnings and pecuniary sanctions to be imposed against the first TV program of MRT because it broadcasted commercials funded from the national budget; against TV Sitel, TV Nova and TV Alfa for unbalanced and biased reporting and against TV Alfa for electoral media promotion of a political entity through the activities of the state administration bodies. The Agency determined that TV Nova, Alsat - M and Radio Kanal 77 Dooel Shtip violated the provisions on paid political advertising. Besides this, the Agency received proposals by the Interim Commission for Monitoring the Media Reporting for taking actions, which were as follows: three requests for

205 SELMANI AND OTHERS v. THE REPUBLIC OF MACEDONIA (Application no. 67259/14), Judgement of February 9th 2017, available in the HUDOC database of the Council of Europe.
206 The Agreement on the Media does not Solve the Problem, article available on https://www.slobodnaevropa.mk/a/27880809.html

initiating misdemeanour procedures and imposing sanctions (fine) and five requests for initiating misdemeanour procedures for imposing sanctions (reproach). After the election process formally ended, the Agency adopted a decision for disbanding the Interim Commission.

The general conclusion about the political pluralism in the media in Macedonia is that the situation is somewhat improved, which is visible in the "softening" of the negative manifestations very much present before, such as taking sides, propaganda reporting, demonizing political entities, introducing political marketing as part of the news etc.[207] After the end of the early parliamentary elections, the situation in the media was similar to the one before the elections and most of the TV stations returned to their standard editorial practices. .[208]

Throughout 2017 extremely worrying was the growing trend of attacks and physical violence against reporters and journalists.[209] Several media organizations strongly criticized the attacks and requested criminal prosecution for the perpetrators. The president of the Association of Reporters of Macedonia, Naser Selmani, said that Nikola Gruevski, the leader of VMRO-DPMNE is responsible for this violence. The Ministry of Interior apprehended 12 persons under the suspicion of committing violence against the crew of A1OH, and afterwards a criminal charge was filed against one person. This trend of violence against journalists is a serious problem which should not be neglected. In this way the journalists are prevented from reporting about the current events and happenings and their lives and security are threatened.

With its plan "3-6-9" announced in July 2017, the Government committed to protect media workers from such attacks and without delays to bring the perpetrators to justice thus providing efficient protection of the freedom of speech and freedom of reporting. Besides this, the area related to media operation also relates to the requests for urgent reforms of the five associations/organizations and the adoption of the Draft-Law on Changing and Amending the Law on Audio and Audio-visual Media Services of 2016, which was analysed, and recommendations were given by the Agency for Audio and Audio-visual Media Services to the Ministry on Information Society and Administration.

> The reforms in the media sector agreed in the Przhino Agreement 2 need to be implemented in the period after the new Government is established. The proposals for urgent changes in the laws need to be prepared transparently, in consultations with civil society organizations, before being submitted for adoption to the Government.
>
> It is necessary urgently to change the Law on Audio and Audio-visual Media Services in order to prohibit advertising paid by the state, as well as to ensure independence and avoid political influence on the regulatory body - the Agency for Audio and Audio-visual Media Services.
>
> The broadcasters should strictly follow the professional principles for their activities and should report objectively and without bias, providing all relevant standpoints which should be treated equally.

207 Institute for Communication Studies, Report on the Monitoring of TV News in the Period 5-16 September 2016, available on http://respublica.edu.mk/attach/MODEM/final.pdf

208 Institute for Communication Studies, Report on the Monitoring of TV News (period 16-27 January 2016, available on http://respublica.edu.mk/attach/MODEM-izvestaj-januari-MK-2017.pdf

209 In February 2017 during the gathering organized by the citizens association "For Joint Macedonia", one reporter and camera man from the electronic media "A1OH" were physically attacked; the following month there was a series of attacks against reporters and they were as follows: a reporter from TV "24 Vesti" was physically attacked by a protester when he was reporting directly from the protest organized by this association; the TV crew of TV "Telma" was verbally attacked when they tried to take the opinions of some of the persons attending the gathering; a reporter was publicly humiliated when having lunch in a restaurant. During the broadcast of the violent attack to the Parliament on 27 April 2017, a reporter of TV Nova was attacked (first verbally and then physically with hits and dragging). The same media crew was also attacked in August 2017. The MOI determined the identity of the attacker and the Basic Public Prosecutor's Office - Skopje opened a case file for this case. The prosecutor in charge gave orders and guidelines to determine the facts, after which a meritorious prosecutorial decision will follow.

The reporters and journalists should take due care neither they, nor their interlocutors not to use discriminatory speech instigating hate, insults, defamations or disinformation.

The journalists should apply the basic professional standards when reporting on topics of broader societal importance, by reporting accurately, in a balanced way and fairly, taking due care about the truthfulness, relevance, trustfulness and credibility of their texts.

The journalists' associations and organizations should intensify their efforts to ensure conditions so that reporters and journalists and other media professionals can carry out their duties professionally and free of fear or pressure.

It is necessary to change the Law on Civil Liability for Defamation, especially its definitions (in order to harmonize it with article 10 from the ECHR), as well as to change the Rules of Procedure for excluding cases of small value and the use of mediation services.

Right to Respect for Private and Family Life and Communications

Although in July 2015 the lustration process was formally stopped, it continued for those being subject of decisions, until the procedures already started are officially finished. This was a result of the recommendations and comments given by relevant international institutions, including the Venice Commission, which pointed out that there is a danger the process to become "a witch hunt", or a classic persecution of political opponents, especially having in mind that it was implemented by violating some of the fundamental principles and safeguards for fair trial, and the persons were denied the right to defence.

All this resulted in dozens of applications submitted against the Republic of Macedonia to the European Court on Human Rights by the lustrated persons, who mostly complained about violations of Article 6 (right to fair trial) and Article 8 (right to respect for private and family life) from the ECHR.

The established systemic deficiencies in the implementation of the lustration process were reflected in the statements issued by ECHR contained in the judgement for "Karajanov Against the Republic of Macedonia".[210] In it, the ECHR determined a violation of the right to fair trial during the lustration process against the applicant, because he was not given a possibility effectively to present his case, and the two courts acting in the administrative dispute against him did not implement their full competence for determining the facts and applying the law and did not meritoriously reviewed the case. Moreover, there were no exceptional circumstances which could justify the lack of public hearing in the presence of the applicant in any phase of the procedure, having in mind that there were debatable factual and legal issues which were not purely technical. Additionally, the decisions of the administrative court were not properly reasoned.

What is even more significant from the point of view of protecting the privacy of the applicant is that the ECHR determined that Article 8 of the Convention was violated because the decision from the Lustration Commission was published on the web-page of the Commission on the same day when it was adopted, even before it became enforceable and final. When making the decision, the ECHR took into consideration that such publication did not serve any of the legitimate goals, such as protecting the national security, the public security, economic welfare of the country or the rights and freedoms of others since the applicant was 77 years of age and was not holding any public function. The ECHR also took into consideration the opinion of the Venice Commission at the Coun-

210 KARAJANOV v. THE REPUBLIC OF MACEDONIA (Application no. 2229/15), Judgement of 6 April 2017, available in the HUDOC database of the Council of Europe.

cil of Europe of 17 December 2012 that the legal provisions for publishing the names of lustrated persons before the decision becomes final are contrary to Article 8 from the Convention and may have harmful consequences on the reputation of the person which cannot be remedied later on, as well as the Decision of the Constitutional Court of the Republic of Macedonia U.br.42/2008 of 24 March 2010.

The Law on Protection of Privacy, which was adopted in the previous reporting period aimed at preventing and prohibiting publication of illegally wiretapped materials created in the period from 2008 to 2015, besides those that were already published by the SDSM (at that time an opposition party) is not applied in practice. Having in mind that this law was adopted in a very non-transparent manner, without appropriate public discussion and it stipulates very severe penalties for its violation, still valid is the Conclusion of the Venice Commission that it requires an "in-depth review". In this regard, most of the civil sector organizations support its full withdrawal so as to make it null and void.

Civil society organizations share information and opinions that the system for intercepting communications can still be misused, due to the legislation which permits intercepting communications for a wide range of offences, without an appropriate assessment whether the violation of privacy is proportional to the severity of the offence and the evidence expected to be collected with the special investigative measures (i.e. the intercepted communications). Hence, they proposed intercepting communications to be possible only for offences for which a minimum penalty of 4 years of imprisonment is stipulated.[211]

In November 2017, MoI published the new Draft Law on Intercepting Communications. It was pointed out that its adoption will implement the recommendations given by Priebe and its application should start by 1 November 2018. The draft-law regulates the procedure for implementing the special investigative measure "intercepting and recording telephone and other electronic communication"; the conditions and the procedure for intercepting communications in order to protect the state and the security interests; the obligations of the operators and of the Operational-Technical Agency (OTA), which shall be established outside of the MOI as a technical service to assist in the process of intercepting communications, as well as the supervision and the control over the application of the special investigative measures.

What is still disputable is the manner of setting up the civil mechanism for supervising the operation of OTA, as well as the lack of appropriate safeguards that OTA will not be used to the detriment of the citizens privacy. Even more, it seems that the parliamentary control over OTA is not improved neither with the newly proposed legal solutions. Besides this, very concerning is the possibility to use the measures for intercepting communications in order to protect the defence and the security of the state, as they are stipulated in the law, and to large extent violate human rights and freedoms.

211 Public Policy Study "Towards the Citizens' Pantopticum: Better Balance Between Protection of Privacy and the Need for Intercepting Communications", prepared by Female Action and published in 2017 as part of the Project "Network 23+". It is available on http://www.merc.org.mk/Files/Write/00001/Files/Network23/studies/Kon-gragjanski-panoptikon-ramnoteza-pomegju-sledenje-na-komunikaciite-i-privatnosta_MK.pdf

The new system for intercepting communications through OTA needs to have sufficient safeguards against its arbitrary use to the detriment of the citizens' privacy. To achieve this civil society organizations and the Parliament should have a greater role so as to efficiently control the operation of OTA.

Interception of communications, as a special investigative measure, should be limited to a specified category of offences (for e.g. only for those offences for which a minimum penalty of four years of imprisonment is stipulated).

Even more it is necessary more restrictively to specify the conditions under which such measure can be ordered orally, having in mind the old provisions of the Law on Intercepting Communications. The interception process should also be limited in time, and the lengthy deadlines stipulated in the current regulations should be re-examined. An obligation should be introduced for the body implementing the interception to stop the measure once the objectives for which the measure was imposed are achieved. At the same time the law should stipulate that the persons concerned should be informed about the special investigative measures applied once they are terminated.

It is necessary to prevent employees from having direct access to the content of the communications and the competent authority should be obliged to inform the operator and to submit a court order for intercepting the communications before the operator makes it possible for the interception to takes place. In this sense, it is necessary to keep records of the persons employed in the operator company who have accessed data related to the content of the communication and of employees who have right to access, thus making it possible to prosecute them in case of unauthorized access to the data.

It is necessary to strengthen the internal control function in the MOI so that it can control the cases of abuse of authority for intercepting communications.

Procedural Safeguards

Right to Liberty and Security

Concerning deprivation of liberty and limiting the right to liberty and security, the reporting period featured two different practices: 1) high number of rejected proposals for imposing detention by the Court of First Instance Skopje 1, for officials suspected of offences referred to in the wire-tapped materials under the competence of the Special Prosecution Office, and 2) visible readiness to impose detention for several persons suspected of an offence related to the events in the Parliament on 27 April 2017.

The fact that the Criminal Court in Skopje, rejected, that is abstained from imposing detention was a precedent having in mind that this court specifically has not done so in any of the organized crime cases led by the Public Prosecutor's Office for Organized Crime and Corruption.[212] This shows the selective and biased practices of the courts depending on the category of the suspect. The inconsistent practice of the courts and their indecisiveness to impose detention in cases of politicians or persons close to the political establishment point to the fact that the judiciary is severely captured which seriously endangers the principle of the rule of law in our country.

Additional legal precedent in the Macedonian judiciary were the decisions of the Supreme Court Council which rejected the appeals of the attorneys of Goran Grujovski and Nikola Boshkovski, suspected for illegal destruction of the equipment in the Administration for Security and Counterintelligence (UBK), which confirmed the appellate decisions for detention, but only after this suspended the effect of the appeal, which enabled the defendants to flee.

This gradually began to change and detentions were imposed during the last quarter of 2017. Namely detention was imposed to Edmond Temelko, suspected of a series of electoral irregularities during the local elections in 2013. At the same period, after the pre-investigative procedure of the Basic Prosecution Office for Investigating Organized Crime and Corruption was criticized for being too slow in determining the events that took place in the Parliament on 27 April 2017, on 28 November 2017 36 persons were apprehended, among which several members of parliament. They were all imposed detention, except for six persons for whom the Court of First Instance Skopje 1 imposed house detention.[213] In the meantime, the Commission for Procedural and Mandate - Immunity Affairs convened and unanimously decided to revoke the immunity of all MPs subject of detention.[214]

Acting upon a complaint received by the parliamentary group of VMRO-DPMNE and the coalition "For Better Macedonia", the Ombudsman determined that the right to immunity and presumption of innocence were violated during the apprehension of three MPs. Specifically, there was a violation of Article 19 from the Rulebook on Policing, which stipulates that if the person apprehended invokes his/her immunity the police officer after verifying this statement shall cease the apprehension process and shall immediately inform his/her superior officer. The Ombudsman issued a recommendation to the Minister of Interior asking the MOI to investigate the conduct of the police officers involved in the specific case.[215]

212 The annual reports on the operation of the Public Prosecutor's Offices of the Republic of Macedonia for 2012, 2013 and 2014, published on the web page of the PPORM http://jorm.gov.mk/?page_id=31.
213 Amendment to the press release, available on https://goo.gl/59uMKm
214 See the following links http://www.sobranie.mk/materialdetails.nspx?materialId=2f6ebb9c-af48-459f-8489-265b77153355 and http://www.merc.org.mk/Files/Write/Documents/04802/mk/Mreza-23-mesecen-pregled-noemvri-2017_MKD.pdf.pdf
215 The Ombudsman determined that there was a violation of the immunity of the arrested MPs, a letter submitted to https://www.slobodnaevropa.mk/a/28943871.html

It is indeed necessary to change the Public Prosecutor's Office and the court detention practice in order uniformly to apply the Law on Criminal Procedure and Article 5 from the ECHR.

At the same time, in order equally and unselectively to protect the right to liberty and security of all citizens in the country, judges and prosecutors should be held individually responsible if they have been subjective and violated the law when deciding (not) to impose detention.

Measures against Racism, Xenophobia and Hate Speech

From 1 January until 31 December 2016, the Helsinki Committee registered 70 hate crimes, and the same number of incidents was recorded in 2017.[216] Compared to the incidents registered in 2015 and 2016, the biggest difference in 2017 is that political affiliation is the prevalent reason for committing hate crimes. Unfortunately, most concerning is the number of incidents committed because of the Macedonian or Albanian ethnicity of the perpetrator/the victim. In 2013, such incidents presented 84% of all hate crimes, in 2014 - 61% , in 2015 the trend decreases to 34%, in 2016 almost 50% were such incidents, while in 2017, 43 % of all registered incidents happened between ethnic Macedonians and ethnic Albanians.

Although there is evident hate speech in the public and in everyday life, only a small number of such occurrences are reported. The underreporting is the consequence of the fact that the citizens do not recognize hate speech and its elements, they do not know the competences of the institutions and what are their duties in cases of hate speech. The low number of indictments for hate speech of the Public Prosecutor's Office and almost the non-existing number of convicted and sentenced persons for hate crimes is another reason why the citizens do not report such incidents.

Several cases of hate speech which directly led to hate crimes were noted in 2016 and 2017. Very concerning is the fact that in these instances, the hate speech was made by high officials, public persons and heads of institutions and that it was not sanctioned. On the protest in front of the State Election Commission, while the Commission was reviewing and deliberating the complaints submitted by political parties at the early parliamentary elections, attended by members, supporters, officials of VMRO-DPMNE and its coalition members, speakers in their speeches had elements of the following offenses: Promoting hatred, division or intolerance due to national, racial, religious or other discriminatory basis and Threatening the security of several persons. These are sanctionable as per the Criminal Code of the Republic of Macedonia.[217]

MOI and the Public Prosecutor's Office should take urgent and immediate measures for prosecuting hate speech having in mind that the impunity of spreading and promoting hate speech in the public sends signals that it is tolerated and justified.

Public persons and high political representatives should refrain from using hate speech and should condemn its use. Respect of ethical and professional standards in reporting is compulsory and will prevent the use of hate speech in the media.

216 A list of verified and nonverified incidents are available at http://www.zlostorstvaodomraza.mk/.

217 The Director of the Commission for Inter-Ethnic and Inter-Religious Issues, addressing the attendees at the gathering threatened the opposition parties and the State Election Commission pointing out that they should carefully respond to the complaints and not think that they can deny the will of the people because the "Night of long knives" will take place, alluding to the massacre of the political opponents which took place in Germany in 1934. The MP Amdi Bajram in his speech send threatening messages to the leader of SDSM calling for his soon to be death. During the protest in front the State Election Commission the mass chanted "Damn Shiptars" (pejorative term for Albanians - comment of the translator), while the Director of the State Archive threatened one of the ambassadors in the country.

Legislative solutions from EU member countries should be considered in order to extend the scope of the offence "hate crime" so as to include other reasons for bias in these offenses.

Relevant measures should be taken to facilitate reporting of these crimes by the victims and as much as possible to strengthen the organizations supporting the victims. The measures should include activities for building trust in the police and other state institutions.

Hate Crime

The number of incidents committed because of the political affiliation or political convictions of the perpetrators / victims is significantly higher before or during the election cycles. This was noted before and during the early parliamentary elections in 2016, and this continued even after the elections were completed. The number of such incidents also grew during the first and the second round of the local elections in October 2017.[218]

The first incident committed because of the political affiliation or political conviction happened on the first day of the pre-election campaign, in September 2017. An office of a political party was demolished (one of the many such cases during the election campaign). By the end of October, the demolition of party offices continued daily, and the offices of several political parties were demolished. During the election campaign several incidents of physical violence happened. The candidate for mayor of Shuto Orizari was attacked and injured, while in the evening on 15 October, on the second round of elections, a person using knife threatened the candidate for mayor of the municipality of Karposh and the citizens gathered in front of a party office. In Sveti Nikole a married couple was attacked and injured immediately after the celebration of the political party SDSM in the town centre.

MOI invested efforts to discover the perpetrators of the registered offences, as well as to prevent similar such incidents in future.

Legislative solutions from EU member countries should be considered in order to extend the scope of the offence hate crime in order to include other reasons for bias in these offenses.

Additionally, timely and efficient investigation of hate crimes should be ensured, having in mind the motives for biased acting during the whole criminal procedure.

Protection of Minorities and Cultural Rights

Great controversy in the public was caused by the fact that the Agenda of the Commission for European Affairs as well as of the Commission for Political System contained an item related to the Draft-Law on the Use of Languages which significantly broadens the scope of using the Albanian language in the country. Although the government representatives and the representatives of the parliamentary majority insisted that this is a legitimate project which fast adoption is necessary and in accordance with the requirements of the European Union, there is an impression that the Government decided to adopt this law quite quickly although it is a law that regulates a complex and sensitive matter.

218 In September 2017, eight offences - hate crimes were recorded, out of which five were committed because of political affiliation or conviction, while in October, 18 hate crimes were registered, out of which 14 (or almost 80% of the incidents registered in that month) were perpetrated because of political affiliation or conviction.

However, it seems that a comprehensive and inclusive public debate involving the experts and academia, as well as representatives of the civil society is needed. Its adoption has to be a result of a completely democratic and transparent process, based on a thorough analysis of the financial implications of its implementation on the budget of the Republic of Macedonia. Finally, it would be prudent this law to be adopted after receiving the relevant opinions and recommendations from the Venice Commission, which would enable their full incorporation in the legal text and would prevent further controversies, which instead of promoting the rights of the communities lead to further unnecessary inter-ethnic tensions and lack of trust among the citizens. After the adoption of this law on 11 January 2018 and after it was vetoed by the President Ivanov on 17 January 2018, it is returned for further deliberation in the Parliament. At the moment there is an enormous number of amendments proposed by the opposition party, which makes this law even more problematic having in mind how it was adopted and what legal solutions it proposes.

In September 2016, the ECHR delivered the Government Agent for Representing the Republic of Macedonia before the ECHR the application submitted by 53 Roma persons who were forcefully removed from the illegal settlement "Poligon" under the city Citadel (Kale) in the summer of 2016, which left them living in tents and in improvised shelters in the suburbs of the capital.[219] The Ministry of Labour and Social Policy made efforts these persons to be accommodated in appropriate premises until their problem is permanently resolved, however the procedure before the ECHR is still ongoing and the final decision of the court is pending.

Protection of Personal Data

In 2016 and until 31 August 2017 the Directorate for Protection of Personal Data received 578 complaints and carried out 187 inspections upon their own initiative. 55 were carried out in the first eight months of 2017, which is a significant reduction compared to the numbers in 2015, when the Directorate carried out even 394 such inspections. According to the official data available in the Directorate, the Law on Protection of Personal Data was violated in 196 instances, of which 50 were in 2017 (by the end of August 2017).

Besides this, until the end of 2017 297 inspections were carried out, of which 155 were regular and planned, 132 ad hoc and 10 were follow-ups.[220]

The protection of personal data in intercepted communications should be improved especially the legal framework. The institutional role of the DPPD and the obligations and responsibilities of electronic communication operators should be additionally specified.[221]

219 Presentation of the facts in the case Bekir and Others v. the Republic of Macedonia, Application no. 46889/16, submitted for deliberation to the Government Agent is completely available on the following link https://hudoc.echr.coe.int/eng#{"languageiscode":["ENG"],"respondent":["MKD"],"documentcollectionid2":["COMMUNICATEDCASES"],"itemid":["001-167970"]}

220 This information were provided by the representatives of the Directorate during the expert topical workshop on the Shadow Report held on 7 February 2018.

221 Public Policy Study "Towards the Citizens' Pantopticum: Better Balance Between Protection of Privacy and the Need for Intercepting Communications" published by "Female Action" in 2017 as part of the Project "Network 23+", quoted above in this Shadow Report.

The Directorate for Personal Data Protection needs to have a stronger role in protecting the citizens and in this regard, it should be more actively involved in protecting the privacy and personal data of citizens.

The Directorate should strengthen its supervisory role concerning the data contained in the communications intercepted by the authorities and should oversee the application of the right for protection of personal data in such cases.

It is quite necessary to re-examine Articles 255 and 263 from the Law on Criminal Procedure so that it can be ensured that the data collected with intercepted communications are only used for the purpose for which the order has been issued and they are not kept for an unreasonably lengthy period.

The security of data collected during intercepting communications should be legally guaranteed, as well as their destruction in cases when they are no longer needed for the purpose for which they have been collected.

A practice of compensating the persons whose rights were violated with the intercepted communications by the competent authorities should be developed.

The providers of electronic communication services need to take appropriate technical and organisational measures which will ensure that access to personal data is granted only to authorised personnel so that the data can be protected from unauthorised or illegal form of processing, and they should ensure the application of security measures when processing personal data.

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