The Project "Network 23+" is financed by the European Union

# SHADOW REPORT ON CHAPTER 23

May, 2016

ХЕЛСИНШКИ
КОМИТЕТ ЗА ЧОВЕКОВИ
ПРАВА НА РЕПУБЛИКА
МАКЕДОНИЈА

МРЕЖА
23

# Shadow Report on Chapter 23

for the Period between July 2015 and April 2016

Publisher:
**Helsinki Committee for Human Rights of the Republic of Macedonia, represented by the President, Professor Gordan Kalajdziev, PhD**

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Proofreading:
**Academic Proofreading Services Ltd.**

Graphic design and print:
**Gaia Design**

CIP – Cataloging in Publication
National and University Library “St. Kliment Ohridski” – Skopje

342.72/73(497.7)(047)
34.03(497.7)"2015/2016"(047)

ČALOVSKA, Neda

Shadow report on Chapter 23 / Neda Čalovska, Voislav Stojanovski, Aleksandar Jovanoski. - Skopje : Helsinki committee for human rights of the Republic of Macedonia, 2016. -56 p. ; 26 см

Footnotes to the text

ISBN 978-608-4790-08-2
1. Stojanovski, Voislav [author] 2. Jovanoski, Aleksandar [author]
a) Human Rights and Freedoms - Macednonia - 2015-2016 - Reports b) Judiciary – Party Influences - Macedonia - 2015-2016 - Reports
COBISS.MK-ID 101166824

This publication has been made possible by the support of the European Union, within the frames of the project Network 23 +, implemented by the European Policy Institute (EPI) – Skopje and the Helsinki Committee for Human Rights. The opinions expressed in this publication are those of the authors, and do not necessarily reflect the official views of the European Union.

## List of abbreviations:

**ACCMIS** - Automated Court Case Management Information System
**CC** - Criminal Code
**CCP** - Code of Criminal Procedure
**CE** - Council of Europe
**CIOM (GROM)** - Civil Option for Macedonia
**CPT** - European Committee for the Prevention of Torture and Inhumane or Degrading Treatment or Punishment
**DPDP** - Directorate for Personal Data Protection
**EC** - European Commission
**ECHR** - European Convention on Human Rights
**ECHR** - European Court for Human Rights
**EPI** - European Policy Institute
**GRECO** - Group of States against Corruption
**IMRO – DPMNU (VMRO-DPMNE)** - Internal Macedonian Revolutionary Organization – Democratic Party for Macedonian National Unity
**JCRM** - Judicial Council of the Republic of Macedonia
**LDP** - Liberal Democratic Party
**LGBTI** - Lesbian, Gay, Bisexual, Transgender and Intersexual Community
**MERC** - Macedonia-EU Resource Center
**MHC** - Helsinki Committee for Human Rights of the Republic of Macedonia
**MI** - Ministry of Interior
**MLSP** - Ministry of Labour and Social Policy
**NSDP** - New Social Democratic Party
**OFA** - Ohrid Framework Agreement
**OSCE** - Organization for Security and Co-operation in Europe
**PARIRP** - Draft-Plan of Activities of the Government of the Republic of Macedonia, prepared on the basis of the list of Urgent Reform Priorities for the Republic of Macedonia
**PE** - Public Enterprise
**PMT (PDT)** - Party for Movement of Turks
**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 Electoral Commission
**SEO** - Department of Equal Opportunities of MLSP
**SPP** - Special Public Prosecution (Public Prosecution for prosecuting crimes connected with and arising from the illegal monitoring of communications)
**UN** - United Nations
**UPOZ** - Trade Union of Administration, Judiciary and Citizens' Associations
**URP** - Urgent Reform Priorities

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# Introduction

The main goal of the "Network 23 +" project, which was implemented by the European Policy Institute - Skopje (EPI) and the Helsinki Committee for Human Rights of the Republic of Macedonia (MHC), is the structured contribution of civil society in monitoring and assessing the policies encompassed by Chapter 23 on the Judiciary and Fundamental rights.

This report is a sublimate of the conclusions and recommendations drafted on the basis of the monitoring of the areas structured in Chapter 23. The report was drafted during a period of deep political crisis, which resulted from the unsuccessful implementation of the Przino Agreement, as well as the failure to effectuate its main provisions, which were connected with the reform priorities outlined on the basis of the Priebe Report.

The dominant thread running through the fabric of this report relates to the above areas, Furthermore, the report's main conclusions remain relevant, particularly in relation to the recently increased control over the Judiciary and other state institutions, which has been exerted with the aim of obstructing the proper clarification of their state of affairs, as well preventing the attempt to provide proper protection and check the legal procedures through which justice might be reinstalled. As such, this would represent a significant step forward in the implementation of reforms and improving the system of protecting human rights in the country. The manifestations of this process of exerting control are mostly reflected in the non-transparency of the procedures, adoption of laws by emergency procedure and without the inclusion of relevant stakeholders in society, appointing judges and other high officials on the basis of their closeness to the ruling party, obstructions put in the way of the Special Public Prosecutor's (SPP's) Office and, finally, direct abuse of the Constitutional Court and the position of the Head of State, as instruments for achieving the Government's goals.

All these factors only confirm the conclusion that the state is still yet separated from the party, which was one of the problems noted in the Priebe Report. The fact that institutions are infected by party influence has produced a system of impunity or selective justice when it comes to the Government's opponents or ardent critics. Detention measures continue to be utilized as punishment in politically related cases, but not for those who are part of the ruling structure. This became obvious with the procedures initiated by the SPP's Office and the Skopje 1 Basic Court's rejections of the requests for detention. On the other hand, the obstruction and prevention of this body's work was stepped up by the Head of State's decision on collective abolition, which is a precedent in jurisprudence, considering that, with this act, he placed himself above the Parliament and acted in accordance with provisions, which have no legal basis. These developments have only contributed to the feeling of legal uncertainty experienced by the citizens, while distrust among the institutions, especially the Judiciary, has been very high lately. Such a perception is undoubtedly founded on the virtual lack of responsibility and legality seen during the proceedings of the institutions and the Court in the recent years. Therefore, human rights and the system for their protection have been pushed to the margins. This state of affairs is also noticeable within the adult prisons and juvenile correctional facilities in the country, where cases of torture and failure to punish

the perpetrators of such crime have been noted, as well as inhumane conditions for those subject to detention measures or serving prison sentences, a lack of programmes for resocialization and integration, as well as lack of system for educating juvenile offenders.

Furthermore, the problem of discrimination, which for years now has been highlighted as a reason for concern, on account of an inept anti-discrimination system, has once again become a subject for discussion since the election of new President and new members of the Commission for Prevention and Protection Against Discrimination, who are not only inexperienced in this rather sensitive area, but also have direct connections with the ruling parties. Considering the fact that one of the key conditions for this Commission to function effectively is its independence; however, its capacity to function as a relevant stakeholder in the human rights area is increasingly a subject of serious concern. This is especially so on account of the fact that the RM has, for years now, shown that it is unable to deal with discrimination against certain groups of citizens, especially against the members of the lesbian, gay, bisexual, transgender and/or intersex (LGBTI) community. To date, the perpetrators of the attacks on the LGBTI Support Centre have not been identified, while any reliable information on whether there is an ongoing investigation into the case is lacking. In this regard, one of the key factors is certainly the absence of any political will, which was also exposed as a fact by the controversies surrounding the new Law on Prevention and Protection Against Discrimination, where sexual orientation is still not defined as grounds for discrimination, despite the numerous recommendations in several of the EU progress reports on the RM.

The enforced discourse of occupation of the free space for providing objective information had serious impact on the freedom of expression and freedom of association, which is witnessed by numerous attacks on free-thinking journalists, activists and civil associations, on account of their critical stance toward the Government's politics. Obstructing citizens' freedom to express their revolt through protests, which has been organized since 13th April 2016, has culminated in arrests of some activists, repeating the scenarios of previous years. House detention measures were imposed upon protestors, with the aim of preventing them from participating in the protests.

All of the above speaks of an almost complete absence of principles, which define the rule of law in a country, an absence of any division of power on account of the dominant influence of executive power and a complete blockade of the system for the protection of the citizens' rights.

This report is conceived as civil organizations' contribution in the areas where it is necessary to initiate the implementation of reforms. We hope that it may serve as a guide in the attempts to redefine not only the principles of proper functioning of the Judiciary and other state institutions, but also in the attempts to redefine the value criteria, which should represent the starting point of that process.

## Methodology

In order to accomplish the goal of the report, a methodology was established for monitoring the core areas of Network 23 – the Judiciary, the fight against corruption and fundamental rights. The methodology included requests of freely access to information from relevant institutions, organizing focus groups with civil associations active in the above areas and a thematic expert workshop, in which civil associations, institutions and former judges participated. We also processed the data, analysis and monthly briefings prepared by civil associations that are part of Network 23.

Requests for information about public character were submitted to all the Basic Courts and Public Prosecutors' Offices in the country, as well as to the Supreme Court of the RM, the Administrative Court of the RM, the Judicial Council of the RM, the Academy of Judges and Public Prosecutors, the Ombudsman, the Commission for Prevention and Protection Against Discrimination, the Agency for Audio and Audiovisual Media Services, the State Commission for Prevention of Corruption, the Directorate for Personal Data Protection, the Council for Prevention of Juvenile Delinquency, and the Directorate for Execution of Sanctions. Four Courts, one Public Prosecution Service office and the Academy for Judges and Public Prosecutors did not provide responses.

The main aim of the focus group was to include relevant civil associations, which work in the area of the Judiciary, fight against corruption and fundamental rights, in the preparation of the report by including the data they had acquired in monitoring these areas. In the focus group, which took place on 26th February 2016, the following civil society organisations participated: the Human Rights Institute, the Coalition All for Fair Trials, the Association of Financial Workers of Local-Self Government and Public Enterprises, the Open Society Foundation, the Macedonian Centre for International Cooperation, the Forum Centre for Strategic Research and Documentation, Transparency Macedonia, Transparency International, the Institute for Democracy, the Metamorphosis Foundation, the Macedonian Young Lawyers Association, and the Association for Democratic Initiatives. The focus group was conducted on the basis of a questionnaire, previously drafted by the report's authors, while the data and the conclusions gathered from the civil associations are included in this report.

The thematic expert workshop, in which relevant experts, including former judges, but also representatives of the institutions took part, was held on 18th April 2016. The participants in the thematic workshop had the opportunity to present their opinion/outlook and recommendations, supported by sources/evidence gathered through experience and practice in the field of the Judiciary, the fight against corruption and fundamental rights.

The Shadow Report refers to the period of July 2015 until the end of April, 2016.

## Constitutional Court

In the period between 2011 and 2013, five new judges were appointed to the Constitutional Court; these judges currently comprise the majority in this court. Their controversial election, especially given that they were not previously known and cannot be considered "prominent lawyers", as required by the Constitution, is also related to suspicions that their election reflects their political background. Namely, the new judges have no scientific title, such as Master or Doctor of Philosophy, nor have they produced any academic work or published scientific papers. Before being elected as constitutional judges, two of them were judges in a basic court, while another has no judicial or scientific experience related to this field, i.e., he used to perform administrative and political functions. All new judges either speak no foreign language or say they can speak a foreign language "partially".[1]

During 2015 and 2016, the Constitutional Court was often criticized by the professional and general public, while the media also covered its work more frequently. According to court statistics, it seems that confidence in this institution is decreasing sharply. Namely, it received 236 cases in 2011, 205 in 2012, 170 in 2013 and 173 in 2014. This means that, in this four-year period, the Constitutional Court noted a decline in cases received of 73%. There is also a decline in revoked and cancelled provisions of the laws. There were 22 revoked/cancelled provisions in 2011, 20 in 1012, 11 in 2013, 11 in 2014 and only six in 2015. There is also a noted decline in filed requests for the protection of civil rights and liberties: 23 were filed in 2011, 25 in 2012, 22 in 2013 and only 13 in 2014. The Constitutional Court operates with less than 20 employees and a budget of only 0.5 million euros.[2] During the month of February 2016 the Constitutional Court passed two decisions which caused vehement reactions, to the effect that such decisions are not meant to defend the Constitution and the citizen' interests, but to defend the interests of the ruling coalition instead. The first decision refers to the initiative proposed by the MPs Pavle Trajanov and Todor Petrov to assess the constitutionality of the decision to adjourn the Assembly, regarding which the Constitutional Court proclaimed itself non-competent, and thus dismissed the initiative. During the public debate at the Constitutional Court the following question was raised: Whether the Constitutional Court is competent to discuss the above decision of the Assembly, i.e. whether the decision to adjourn the Assembly is an internal act over which the Constitutional Court has no jurisdiction, or whether it is a general act regarding which the Court, in accordance with the Rules of Procedure, has the competence to make decisions? The judges' opinions regarding the proposed initiative were divided. Some of them considered that such a decision of the Assembly is erga omnes, and concerns the entire electorate, and that therefore the Constitutional Court should be considered competent in that regard. Nevertheless, the majority of judges reckoned that the Constitutional Court has no competency to decide on a specific legal act of the Assembly, and thus passed the decision whereby they proclaimed the Constitutional Court non-competent, with the rationale that it

[1] http://www.ustavensud.mk/domino/WEBSUD.nsf/Strani/%D0%A1%D1%83%D0%B4%D0%B8%D0%B8?OpenDocument.
[2] http://www.ustavensud.mk/domino/WEBSUD.nsf/Strani/%D0%97%D0%B0%20%D0%A3%D1%81%D1%82%D0%B0%D0%B2%D0%BD%D0%B8%D0%BE%D1%82%20%D1%81%D1%83%D0%B4%20-%20%D0%93%D0%BE%D0%B4%D0%B8%D1%88%D0%BD%D0%B8%20%D0%98%D0%B7%D0%B2%D0%B5%D1%88%D1%82%D0%B0%D0%B8?OpenDocument

is not a case of general act or law, and that if the Constitutional Court intervenes in the decision to adjourn the Assembly, that would mean that it will have the power to interfere in any future decision of the Assembly.

At a closed session on 15 March 2016, the Constitutional Court decided to revoke the Law Amending the Law on Pardons (Official Gazette of the Republic of Macedonia no.12/2009). With this decision, the President of the Republic of Macedonia will have the power to pardon persons convicted of crimes against elections, based on which the functioning of the Commission on Pardons was legally established.

The President of the Constitutional Court did not provide a motivation for the reason and manner in which the decision to exclude the public from the session was adopted. Although the exclusion of the public is a matter that the majority of constitutional judges should decide about, the public was not informed whether and when a working meeting of the constitutional judges was held to determine the reasons for closing the session and the adoption of this undemocratic decision, or whether this was a decision single-handedly adopted by the President.

The urgent proceeding by the Court after the initiative for assessment of the constitutionality of this law submitted at the start of the month of February 2016, immediately after the opening of the investigation on electoral fraud by the Special Public Prosecution, leads to reasonable suspicion that the Constitutional Court works in defense of the ruling party's interests.

***The Constitutional Court's present line-up lacks the capacity to perform its constitutional role, which is to protect constitutionality and legality. This is to a large degree due to the newly-appointed members, who fail to fulfill the conditions, stipulated in the Constitution, for being members of the Constitutional Court. The citizens' trust in the Constitutional Court is significantly reduced, while its decisions increasingly indicate political interference.***

# 1. The Judiciary

The Urgent Reform Priorities (URPs), in the sphere of the Judiciary, drawn up by the European Commission (EC) in June 2015,[3] were either not fulfilled or the activities undertaken with the aim of fulfilling them were insufficient for the purpose of achieving the goals of the reforms. In the analysis drafted by Network 23[4] on the basis of the effective monitoring of the URPs' realization, it was concluded that "[the reforms] in the area of the Judiciary are not being substantially implemented. As a substitute for the reforms, only 'soft, reform-like wrapping' is being offered, which also provides the form, but not the substance, of the reforms. What is implemented represents only partial details that are more or less technical, which have limited influence on the expected independent and professional attitude".[5] This is also confirmed by the inspection of the specific priorities in the area of the Judiciary, which indicates that actions contrary to the URPs have been undertaken.[6]

As seen in the Working Document of the Government, adopted on 25th February 2016,[7] the Government envisages a series of activities that does not essentially fulfil the URPs, given that the appointment of judges remains with the same criteria as does keeping records about them, thereby dragging out the realization of priorities through analysis etc.[8] The civil sector, including Network 23, during its appearances within the context of the consultation meetings held under the auspices of the Secretariat for European Affairs, issued warnings against the technicisation of the proposed measures and the lack of vision regarding the proper approach to the reforms. Furthermore, the civil sector appealed for a broad consultation mechanism, especially one that included representatives of the legal profession, who could propose more precise and more adequate measures.

[3] http://ec.europa.eu/enlargement/news_corner/news/news-files/20150619_urgent_reform_priorities.pdf.

[4] This comprises the European Policy Institute, the Helsinki Committee for Human Rights, the Human Rights Institute, the All for Fair Trials Coalition and the NGO Infocenter.

[5] Institute for European Policy: "Urgent Reform Priorities Slower than the Restoration of Anti-reformist Practices!". Available at: http://epi.org.mk/docs/Realizacija%20na%20Itnite%20reformski%20prioriteti.pdf.

[6] Macedonia – EU Resource Center (MERC 23): "The Status of the Realization of the Urgent Reform Priorities." Available at: http://www.merc.org.mk/status-na-realizacija-na-itni-reformski-prioriteti.

[7] The Draft Plan of the Government of the Republic of Macedonia's Activities, prepared on the basis of the list of URPs for the Republic of Macedonia, June 2015, PARIRP – 2015. Available at: http://www.sep.gov.mk/data/file/PARIRP/%D0%9F%D0%BB%D0%B0%D0%BD%20%D0%BD%D0%B0%20%D0%B0%D0%BA%D1%82%D0%B8%D0%B2%D0%BD%D0%BE%D1%81%D1%82%D0%B8%20%D0%B7%D0%B0%20%D1%80%D0%B5%D0%B0%D0%BB%D0%B8%D0%B7%D0%B0%D1%86%D0%B8%D1%98%D0%B0%20%D0%BD%D0%B0%20%D0%B8%D1%82%D0%BD%D0%B8%D1%82%D0%B5%20%D1%80%D0%B5%D1%84%D0%BE%D1%80%D0%BC%D1%81%D0%BA%D0%B8%20%D0%BF%D1%80%D0%B8%D0%BE%D1%80%D0%B8%D1%82%D0%B5%D1%82%D0%B8%202015%20(%D0%A0%D0%B0%D0%B1%D0%BE%D1%82%D0%B5%D0%BD%20%D0%B4%D0%BE%D0%BA%D1%83%D0%BC%D0%B5%D0%BD%D1%82).pdf (last accessed on 11th April 2016).

[8] The document was published with a delay of six months, although the civil sector had been insisting on a debate and inclusion as early as August and September 2015.

## *Strategy for the Reform of the Judiciary 2016-2020*

In the budget of the RM for 2016, a programme organized by the Ministry of Justice for reform[9] for the Judiciary is envisaged, with the aim of improving judicial efficiency and efficacy through strengthening the Judiciary's and the Ministry's capacities in implementing the strategy for the reform of the Judiciary, relevant laws and the judicial infrastructure.[10] With this aim in mind, 1.25 million euros were allocated for the reforms in the Judiciary, distributed over the categories of purchasing furniture, equipment, gadgets and appliances, as well as of construction for works.

In December 2015, the Ministry of Justice organized a consultation meeting with the relevant stakeholders, to which representatives of civil society were also invited. The draft strategy focuses on reform interventions in several areas: the Judiciary, the Criminal Justice System, access to justice and transparency, politics and coordination, administrative jurisprudence, information systems, and e-Justice. Part of the presented opinions claims that the draft strategy is written in obscure language and thus causes confusion: envisaged are decisions, which at their core, demand constitutional amendments, as well as call for essential changes to the laws that are being adopted by a two-thirds majority in the Assembly of the RM. Although the draft version of the Strategy for the Reform of the Judiciary 2016-2020 is in its final phase, it has not been adopted during the first quarter of 2016. The Human Rights Institute, a member of Network 23, issued an opinion regarding the draft version of the strategy.[11]

***The Strategy is being adopted while the country is going through politically highly sensitive period, without broader and expert discussion on the novelties/modalities which are being proposed in order to solve the key issues in the area. What is necessary is to organize a much more comprehensive debate, and thus find solutions which would respond to the systemic shortcomings, pointed out in the Report of the Senior Experts' Group on systemic Rule of Law issues and Urgent Reform Priorities.***

[9] Dane Talevski, PhD, Marko Kmezic, PhD, and Lura Polozani, MA: "Improving Checks and Balances in the Republic of Macedonia: Judicial Control of Executive", European Policy Institute, Skopje, March 2016. Available at: http://epi.org.mk/docs/D4V_Democracy%20and%20Rule%20of%20Law_mk.pdf (p. 41, III. Chart – time frame of the reforms).

[10] The draft strategy was produced with the expert and logistic support of the Project for Preparation of the Programme for Support of the Judicial Sector, as well as the IPA 2010 Project, titled "Further Support for an Independent, Responsible, Expert and Efficient Judiciary, and the Promotion of the Suspended Sentence and Alternative measures".

[11] The Human Rights Institute: "Suggestions Concerning the Draft Strategy for Reforms in the Judicial Sector 2016 – 2020". Available at: http://www.ihr.org.mk/images/izvestai/novosti/sugestii%20na%20strategijata%20_ichp_finalni.pdf.

## Independence

Priorities concerning the depoliticisation of appointments and promotions, appraisal, disciplinary proceedings and dismissal of judges are not being implemented. The Judicial Council, referring to the Action Plan, continues to appoint court presidents and judges, without making any previous changes to the election system.[12] Several judges were elected on 23rd March and 4th April, the latter being the day before the anticipated early elections, i.e., before the planned and the prolonged dissolution of Parliament.

In a session held in November 2015, the Judicial Council adopted a new systematization of judicial positions, thereby reducing the number of judges from the current 740 to 636.

The role of the Judicial Council and the Council of Public Prosecutors in ensuring independence and impartiality is questionable. The article, "Improving Checks and Balances in the RM: Judicial Control of the Executive",[13] points out the very low level of trust in the work of these two bodies. It further states that, "[I]t is quite surprising that the Judicial Council and the Council of Public Prosecutors, institutions that should guarantee the independence of the Judiciary from political influence, received the lowest assessment results... [These bodies] were meant to strengthen independence and accountability of the Judiciary.[14] However, in practice, it seems these councils have a different role". The system of electing council members, especially in terms of the quality of the nominees, can also be problematized. It is estimated that actions in increasing quality are avoided, according to the PRI, while quality itself has been decreasing with time. The "functional hierarchy of the Judiciary" requires consideration, given that there is a belief that many of the court presidents (as well as the prosecution) are under the control of executive power or the ruling party.

Although the Judicial Council's President has been increasingly present in the public, actions in this direction do not contribute to increasing the proactive role of the Council and the protection of judges in terms of their independence. During the round table meeting organized by the Council in 2015, the Judicial Council's President stated that the Report from the European Commission in the field of judiciary contains double standards thus denying the conclusion that, in terms of judiciary, the country is backsliding. "Exercise of proactive role by the Judicial Council and increase of its professionalism" are not observed and this especially concerns actions, which should provide sufficient predictability of the definition of "outstanding lawyer" (the 15 year-experience is not enough) as a condition for membership of the Judicial Council. This was the grounds on which the current President of the Judicial Council was elected, in addition to the opposition's absence.

[12] In sessions held on 23rd and 30th September, the Judicial Council of the RM adopted decisions in relation to the appointment of 22 judges in Higher Courts and 20 judges in Basic Courts. For the reaction from "Mreza 23" (Мрежа 23), please see http://epi.org.mk/newsDetail_mk.php?nwsid=84. On 26th November, the Council adopted decisions for the selection of the President of the Court of Appeal in Skopje, Presidents of the Basic Courts in Berovo and Radovis, and 11 judges in total in the Courts of Appeal and Basic Courts. Decisions concerning the appointment of the President of the Basic Court in Strumica and the call for the selection of two judges for the Higher Administrative Court were adopted in the session held on 9th December 2015. Decisions about the selection of Presidents for the Court of Appeal in Bitola and the Basic Courts in Ohrid and Kocani, as well as the publication of announcements about the selection of judges in the Supreme Court, the Court of Appeal in Stip and four Basic Courts, were adopted in the session held on 23rd February 2016.

[13] Dane Taleski, PhD, Marko Kmezikj, PhD, and Laura Polozhani, MA: "Improving Checks and Balances in Republic of Macedonia: Judicial Control of Executive Power", European Policy Institute, Skopje, March 2016. Available at: http://epi.org.mk/docs/D4V_Democracy%20and%20Rule%20of%20Law_mk.pdf (pp. 25, 27).

[14] Dane Taleski, PhD, Marko Kmezikj, PhD, and Laura Polozhani, MA: "Improving Checks and Balances in the Republic of Macedonia: Judicial Control of Executive", European Policy Institute, Skopje, March 2016. Available at: http://epi.org.mk/docs/D4V_Democracy%20and%20Rule%20of%20Law_mk.pdf (see p. 24, paragraph 2, for the methodology).

In his speech[16] in March 2016, the President of the Judicial Council, who has actually never been a judge, emphasized that "...some eminent experts, of whom some in good faith, and others inadvertently ...criticize what is already implemented" and these critics have "daily political connotation and in principle harm the undertaken activities by judicial institutions." This rhetoric is aimed at the reaction published following the EC report, which stated backlisting in the judiciary.

A Commission on harmonizing penal policy, established under the Law on Determining the Type and the Amount of Penalty, [17] which came into force in January 2015, started its work. Public prosecutor Jovan Ilievski, heading the Public Prosecutor's Office for Organized Crime, was appointed President of this Commission by the Parliament of RM. Having in mind that Mr. Ilievski had close family relations with Sasho Mijalkov, former director of the Administration for Security and Counter Intelligence incriminated for the illegal interception of telephone communication made public in 2015, the opposition parties reacted to this kind of appointment.

New salary supplements for judges and public prosecutors were introduced, after the draft-laws submitted by the Government on 30 December 2015 had been adopted in shortened procedure. The obvious aim of these salary supplements is to win over the judges and public prosecutors in the pre-election period, and to invest in their subservience to political behests. At the same session the proposal on salary raise for the Public Prosecution Service was also adopted, simultaneously with the adoption of the draft-law on the employees of the Special Public Prosecution. With this step the Government attempted to “neutralize” the Public Prosecution Service discontent which arose on account of the introduction of Public Prosecution Service within the frames of the SPP.

[16] Announcement - Celebration of the Day of Judiciary, 31 March 2016. Judicial Council of Republic of Macedonia. Available at: http://www.ssrm.mk/Novosti.aspx?novost=412 (last accessed on 11/04/2016

[17] Official Gazette of RM No. 199/2015.

## *Special Public Prosecutor's Office*

The prevalence of public prosecutors' connections with, and interference from, the Government has necessitated the creation of the SPP's Office to deal with criminal acts related to the illegal interception of communications. On 15th September 2015, the Assembly of the RM, in accordance with the Przino Agreement, unanimously passed the Law on the Public Prosecutor's Office for the prosecution of offences connected to, and resulting from, the content of such illegal interception of communications. This law officially provides for the existence of an SPP, who is authorized to prosecute such illegal acts, with the office managed by the SPP, as well as other public prosecutors appointed to this office, investigators, experts and administration.

The Assembly of the RM has proposed as a candidate for this office: Katica Janeva, a Basic Public Prosecutor from Gevgelija. The proposition was unanimously accepted by the Council of Public Prosecutors and the SPP assumed office on 16th September, after taking the official oath of office.

Despite the fact that the appointment of the SPP was an urgent procedure, the office did not begin work until December 2015, mostly due to obstructions by the Council of Public Prosecutors regarding the team requested by the prosecutor. The delay in the work of the SPP ensued after the break in negotiations for implementing the Przino Agreement, which credibly suggests there was political influence over the decisions of the Council of Public Prosecutors. Furthermore, the deadline of 35 days for procuring finances for the operation of the SPP overran, thus creating further delays in its work. Still, despite the time limitations and obstructions by other institutions, the SPP managed to shape itself into an independent agency within the Public Prosecution System of Macedonia.

The first information package about the initial investigations was shared with the public on 12th February 2016. The SPP informed the public at a press conference that an investigative procedure had been initiated in respect of a number of persons involved in criminal actions against elections and voting.[18] The SPP referred to the case as "The Titanic".[19]

Additionally, the SPP reported that there was also an investigation relating to members of the Municipal Election Committee in Cair for allegedly having perpetrated an offence of electoral fraud, as well as an investigation relating to five judges of the Administrative Court in Skopje and four members of the State Electoral Commission for the offence of breach of duty and abuse of authority under Article 353 of the Criminal Law in 2013. On 13th February 2016, the SPP filed two requests for the detention of the suspected persons, but these were rejected by the Basic Court in Skopje 1.[20]

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[18] The entire transcript of the press conference can be read on the official Facebook page of the SPP:
https://www.facebook.com/permalink.php?story_fbid=678493328920887&id=650104671759753.
https://www.facebook.com/permalink.php?story_fbid=678493328920887&id=650104671759753.

[19] The suspected persons, who, during 2012, were in the positions of Minister of Interior, Minister of Transport and Communications, and Secretary of the Government of the RM, together with all the members of the Executive Committee of a certain political party, as well as other, yet unknown, persons, using their official positions, created a group whose goal was to undertake criminal actions against elections and voting.

[20] Announcements made by the Basic Court in Skopje 1 on claims and decisions on assigning detention measures in "The Titanic" case are available on the official Webpage of the Court: http://www.osskopje1.mk/Novosti.aspx

Regarding the court decision, the All for Fair Trials Coalition,[21] a member of Network 23, has found a series of inconsistencies in the procedure, especially given that, "Pursuant to the Code of Criminal Procedure (CCP), the court, according to Article 25 on page five of the Code, was supposed to make a decision after the complaints were made by the end of the day on 16th February 2016, but failed to do so". Furthermore, it has been reported that this behaviour by the court "encountered reactions from many lawyers, including renowned ones, who said this act by the court was without precedent". The coalition assesses this kind of action as unusual and extraordinary, as well as indicative of classic unlawful conduct by the court. Furthermore, specifically Article 169 of the CCP Par.  has been violated. Namely, the Criminal Council, after 48 hours, had still has not made a decision on the first four filed complaints, which means that the Criminal Council has acted against the law".[22]

Since the very start, the SPP has faced difficulties in getting cooperation from institutions, particularly the Basic Court in Skopje 1, the Agency for Real Estate Cadastre, the Fifth Directorate for Security and Counter-intelligence of the MOI, the Witness Protection Unit at the MOI, the Municipality of Bitola, the Administrative Court, the Basic Public Prosecutor's Office in Skopje and the Prosecutor's Office, in its pursuit of organized crime and corruption. This kind of non-cooperation with the SPP can delay certain pre-investigative procedures; it may also inhibit investigations and limit the capacity to press criminal charges against persons who are suspected of having perpetrated serious crimes, which are also a threat to constitutional order.

In the report on its work during the first six months,[23] the SPP announced that factual jurisdiction had been established in a total of 30 cases against 80 persons.

Despite the SPP having begun a serious fight against corruption at the highest level in the country, the President of the Republic of Macedonia, Gorge Ivanov, decided to collectively pardon 57 suspects from both the government and the opposition, for whom criminal charges have been filled and criminal procedures initiated. With these actions, the President has overstepped his constitutional and legal authority, which means that he has perpetrated a crime of misconduct/breach of duty according to Article 353 of the Criminal Code of the Republic of Macedonia.

The decisions of pardons by the President have no legal grounds, due to the fact that Article 11 of the Law on Pardoning has been annulled and is currently not part of Macedonian legislation. By this action, the President has placed himself above the law, above the Assembly and above the Przino Agreement, thereby revoking a large part of the SPP's remit in terms of overseeing a consensually accepted agency authorized to deal with crimes connected to illegal interception of communications. These pardons not only undermine the rule of law but also seriously damage the RM's international obligations in protecting human rights.

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[20]Announcements made by the Basic Court in Skopje 1 on claims and decisions on assigning detention measures in "The Titanic" case are available on the official Webpage of the Court:http://www.osskopje1.mk/Novosti.aspx.

[21]Aleksandra Bogdanovska, MA, and Natali Petrovska: "Criminal Council vs. the Law on Criminal Procedure", All for Fair Trials Coalition, 18th February 2016. Available at: http://www.all4fairtrials.org.mk/Main_files/KS%20versus%20ZKP.pdf (last accessed on 11th April 2016)

[21]Ibid., стр. 5.

[22]The entire report can be read here:
http://www.jonsk.mk/%D0%B4%D0%BE%D0%BA%D1%83%D0%BC%D0%B5%D0%BD%D1%82%D0%B8/.

he state has a positive obligation to provide the unobstructed enjoyment and protection of human rights provided by the European Convention and other international treaties on human rights protection, as well as clear and unambiguous procedural duties concerning the thorough and effective investigation of any instance of human rights violations, punishment of their perpetrators and prevention of future occurrences. By the President's pardoning of some of these offences, damage has been inflicted in relation to the RM's obligations under Articles 2 and 3 of the ECHR, which guarantee the right to life and the prohibition of torture, and inhuman and degrading treatment, as well as representing a massive violation of human rights in terms of privacy, under Article 8 of the ECHR. Therefore, the RM must provide more efficient controls over the potential illegal monitoring of conversations. Furthermore, by preventing criminal procedures against suspects of such crimes, the President has harmed the rights of the victims of these abuses by depriving them of effective legal remedy, which could provide the victims with legal, moral and material satisfaction. Thus, a breach has been made in relation to Article 6 of the ECHR in the sense of restricting efficient court access, as well as Article 13 of the same Convention in curtailing efficient legal remedy in terms of the protection of violated rights and freedoms. The President's actions, as well as those who provided him with information about initiated criminal procedures, have committed a criminal offence by breaching secrecy concerning legal procedure according to Article 369 of the Criminal Code, while Articles 289 and 299, dealing with the secrecy in relation to criminal procedures, are also implicated.

What should not be neglected either is the fact that, by obstructing criminal justice in many of the corruption cases that were pardoned, the President has harmed the international obligations of the country in terms of preventing and prosecuting corruption and money laundering, as well as undermined the provisions of the Palermo Convention. In asserting his authority, the President never gave any reasonable explanation for each separate case pardoned, preferring instead to make glib political points, none of which reflects any real justification or the interest of the state.

***The Judiciary's independence is being constantly impaired. The Urgent Reform Priorities related to the independence of the Judiciary are not implemented. The model of appointment and membership of the Judicial Council should be thoroughly reviewed. Selection and appointment of judges and presidents of courts, without prior fullfilment of the conditions provided for in the Urgent Reform Priorities contributes to perception of increased politicisation, as well as general public's distrust in this institution by the judges, and by the wider public. The selection and appointment procedures should be transparent and subject to public scrutiny in order to meet principles of professionalism and responsibility. The Judicial Council of RM has to become more open toward the expert community and should make its strategic decisions and internal acts related to the independence and impartiality of the Judiciary publicly available.***

***The President of the Republic of Macedonia has abused his official position and authority, by illegally preventing the prosecution of persons suspected of mass violation of human rights and corruption, which is under the jurisdiction of the Special Public Prosecution. With this act, the President undermined the principles of rule of law and separation of powers, and should therefore be held accountable for it. He must immediately revoke the decision for halting the criminal prosecution of persons related to the wiretapping scandal.***

*It is necessary to bring to an end all obstructions to the work of the Special Public Prosecution, while the institutions should offer their cooperation and provide all documentation requested by the SPP, in pursuance of the provisions of the CCP. A specialized court department should be formed at the Basic Court Skopje 1, having a jurisdiction only over criminal cases related to the illegal interception of communications. The Judicial Council of the Republic of Macedonia should announce a public call for judges who will work in this department. The judges should be appointed by the Judicial Council, however only after previous broad debate and opinions by all parties involved, especially by prominent civil organizations active in the area of the judiciary. Amendments in Article 22 of the Law on Public Prosecution for the prosecution of offences connected to, and resulting from, the content of such illegal interception of communications must be made in a way that the deadline for submission of an indictment by the Special Public Prosecutor of 18 months will be extended to 24 months.*

*Further amendments should be adopted in order to make it clear that the 24-month deadline does not apply to possible new cases that might arise from or are linked to the illegal wiretaps (new Article 22-a, paragraph 1). For such cases, the deadline to lodge an indictment should be 18 months and should start to run once the Office has made a decision to initiate investigative proceedings (new Article 22-a, paragraph 2).*

A commission on harmonizing penal policy, established under the Law on Deciding and Determining the Amount of the Penalty,[24] which came into force in January 2015, has started its work. Jovan Ilievski, heading the Public Prosecutor's Office for Organized Crime and Corruption, was elected its President by the Parliament of the RM. Parties that form the Opposition reacted to the fact that Mr. Ilievski had close family relations with Sasho Mijalkov, former director of the Administration for Security and Counter Intelligence, who was incriminated for the illegal interception of telephone communication, which was made public in 2015.

## Impartiality and Accountability

In October 2014, contrary to the Constitution and the Criminal Procedure Code, the Police, acting on their own initiative and without a prior court order, arrested 14 judges and 11 experts, as well as other clerks from the Department for Misdemeanours of the Basic Court in Skopje 1. These people were arrested at work without court approval. Except in cases of extreme emergency and excluding acts monitored and investigated for a longer period of time, the Police were not allowed to deprive them of their freedom in this way. The manner of apprehension was shocking and deliberately covered by the media, thus reiterating previous practices of the Ministry of Interior (MOI) relating to the public arrest of suspects by media exposure, thereby violating the presumption of innocence. This conduct reveals the tendency of executive power to influence judicial power, which undermines the principle of the rule of law.[25] Throughout May, the Public Prosecutor's Office in Skopje announced that it had struck deals with eight of the suspected judges. They received a suspended sentence.[26] In December 2015, the Supreme Court passed a decision regarding the case known as "Iusticija" to transfer the local jurisdiction of the Basic Court in Skopje 1 to the Basic Court in Bitola, so that judges would not be prosecuted in the court in which they were employed.

[24] Official Gazette of the RM (no. 199/2015).
[25] Helsinki Committee: "Loud announcement of the introduction of police state!". Available at: http://mhc.org.mk/announcements/249.
[26] http://jorm.gov.mk/?p=1806

On October 2015, on suspicion of having committed abuse of his official position and authority, as well as his criminal associations, the President of the Basic Court in Kumanovo was arrested. His arrest was similar to the arrest made in the "Justicija" case, i.e., with strong police and media presence during the arrest, which took place in the court building. Decisions about ordering and extending detention were not in accordance with the Code of Criminal Procedure, i.e., they were not elaborated upon. One of the appeal decisions was not deliberated upon by the Criminal Council of Basic Court in Skopje 1 in line with the statutory period of 48 hours.[27] The Court President, following a decision of the Supreme Court, was released from custody in March 2016, after five and a half months in detention.

In October 2015, the Supreme Court of the Republic of Macedonia commemorated its 70th anniversary.[28] In her welcome address, the President Lidija Nedelkovska asked for "support of the public opinion for stopping the public smear campaign against the Macedonian Judiciary, of which a distorted picture is being painted in the public. It should not be forgotten that, although having its own weaknesses and faults, the Macedonian Judiciary remains the pillar of the state's structure."[29]

She requested the public "to desist from stating generalized criticism, slanders, to desist from undermining the judicial system – this is an appeal to instead try to improve the latter with new ideas, with well-wishing thoughts, to enable it to function properly and efficiently, on the strength of just, independent and law-based judging."[30]

Worthy of compliment is the fact that, after many years, the Supreme Court published printed "Collection of Decisions 2004-2014".[31]
The Helsinki Committee submitted a request to the Supreme Court for access to public information pertaining to the amount of adopted general positions and legal opinions, the amount of opinions submitted draft laws and other regulations, relevant to thecourt work (during the 2010-2015 period), as well as regarding the number of claims lodged for closing trials within a reasonable time frame and the damages paid in 2015. According to the reply from the Supreme Court, in 2010, 2011, 2013 and 2015, there were no newly adopted general positions or legal opinions. In 2012, one general outlook and one legal opinion were adopted; in 2014, three general legal opinions were adopted. Regarding the number of opinions submitted on draft laws, according to the Supreme Court in the period stated, the responsible ministry, the Ministry of Justice, did not ask for opinions from general sessions regarding draft laws, except for the Court Rules of Procedures and their amendments. These data suggest that the Supreme Court dedicates a minimum amount of time to one of its basic competences and does not contribute to the promotion of quality within the Judiciary and of the jurisprudence.

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[27]The inspection of case KOK.PP no. 547/15-12 by the Helsinki Committee.
[28]Owing to the lack of finances in its own budget, even an even of such importance had to be supported by the OSCE Mission in Skopje, on the request of the Supreme Court.
[29] Speech of the President of the Supreme Court of the Republic of Macedonia, Lidija Nelkova, delivered at the Gala Academy held in honor of the 70th anniversary on the Supreme Court, which took place on 2 November 2015. It is available at
HYPERLINK "http://www.vsrm.mk/cms/FCKEditor_Upload/File/%D0%93%D0%BE%D0%B2%D0%BE%D1%80-70%20%D0%B3%D0%BE%D0%B4%D0%B8%D0%BD%D0%B8.pdf" http://www.vsrm.mk/cms/FCKEditor_Upload/File/%D0%93%D0%BE%D0%B2%D0%BE%D1%80-70%20%D0%B3%D0%BE%D0%B4%D0%B8%D0%BD%D0%B8.pdf, accessed on 20.05.2016.
[30]Ibid.
[29]http://vsrm.mk/cms/FCKEditor_Upload/File/%D0%97%D0%B1%D0%B8%D1%80%D0%BA%D0%B0%20%D0%BD%D0%B0%20%D1%81%D1%83%D0%B4%D1%81%D0%BA%D0%B8%20%D0%BE%D0%B4%D0%BB%D1%83%D0%BA%D0%B8%202004-2014.pdf.

Although there is increased public presence from the Judicial Council's President, actions in this direction do not contribute to increasing the proactive role of the council and the protection of judges in terms of their independence. During the round table meeting organized by the Council in 2015, its President stated that the report from the EC about the Judiciary contained double standards,[33] thus denying the conclusion that, in terms of the Judiciary, the country is going through regression. "The exercise of a proactive role by the Judicial Council and an increase in its professionalism" are not observed, particularly in relation to actions that should provide sufficient predictability of the definition of an "outstanding lawyer" (15 years' experience is not enough) as a condition for membership of the Judicial Council. This was the grounds on which the current President of the Judicial Council was elected, in addition to the Opposition's absence.

In his speech in March 2016,[34] the President of the Judicial Council, who has never actually been a judge, emphasized that "... eminent experts, sometimes, in good faith, and others, inadvertently... criticize what is already implemented" and these critics have "ongoing political connections and in principle harm the activities undertaken by judicial institutions." This rhetoric is directed at the reaction to the EC report, which was determined a setback for the Judiciary.

As for the submitted requests for closing trials within a reasonable time and damages paid in 2015, the Supreme Court received 451 requests and 172 complaints, of which 421 requests and 174 claims were settled (the number of complaints is higher due to a backlog from 2014). In total, 238 requests were accepted. In 588 settled cases, the aggregate compensation paid was 6,344,100 denars (about 103,000 euros), both as legal compensation and as procedural expenses after submitting appeals for protecting the right to trial within a reasonable period. From the information received, the conclusion is that the Supreme Court is diligent in dealing with cases within a reasonable time.

It is unclear whether the announced new central database of the Supreme Court of the RM, through which judgements of all courts in the country should be published, will contain judgements already published on specific court websites, thus making the substance of this intervention questionable. If the database does not incorporate previous decisions as well, this activity is not only inadequate in terms of the priorities for timely publication of all court judgements, but it goes against the spirit of this priority, which primarily relates to the publication of a judgement by a judge within a statutory deadline.

Regardless of the reactions from the civil sector,[35] pointing out that the Council for Determination of the Facts and Initiation of Disciplinary Procedure for Establishing Disciplinary Responsibility of a Judge (hereinafter: Council for the Determination of the Facts) is not a suitable solution for the implementation of the recommendations issued by GRECO, the Council of Europe's anti-corruption body, concerning actions relating to the selection of its members and its constitution. This Council is foreseen as a new judicial body, which is to take over some of the work done by the Judicial Council of the RM. Its competence r

[33] According to the Judicial Council, the EC has shown double standards with regard to the Judiciary. Telma, 27th November 2015. Available at: http://telma.com.mk/vesti/za-sudskiot-sovet-ek-ima-dvojni-standardi-za-sudstvoto.

[34] Judicial Council of the RM: "Announcement - Celebration of the Day of the Judiciary, 31 March 2016". Available at: http://www.ssrm.mk/Novosti.aspx?novost=412 (last accessed on 11th April 2016).

[35] Mreza 23: "Monitoring of Urgent Reform Priorities". Available at: http://epi.org.mk/newsDetail_mk.php?nwsid=89.

elates to the initiation of disciplinary proceedings, as well as proceedings in relation to unprofessional and unethical conduct of judges, before the Judicial Council of the RM. The Council for the Determination of the Facts will be able to dismiss initiatives for establishing liability, upon which such decisions become final, i.e., dismissed initiatives would not be considered by the Judicial Council of the RM at all. The Council conducted an election of members and the results of the election are symptomatic because of the low number of votes for the candidates. Results are available from the Judicial Council website: http://www.ssrm.mk/Novosti.aspx?novost=332. In addition to these activities, the Council for the Determination of the Facts has yet to start its work. In December 2015, the Venice Commission adopted an opinion on the proposed amendments of the laws on courts, the Judicial Council of the RM and on the Council for the Determination of the Facts, with regards to disciplinary liability and the evaluation of judges.[36] The Commission noted that these important reforms must normally receive the broadest possible political support; otherwise, there is a risk that the public will perceive them (rightly or wrongly) as an attempt by the ruling majority to form newly created bodies and, through them, to establish control over the Judiciary. The opinion expressed is not in favour of the establishment of a special body for disciplinary liability; rather, it proposes the return of the functions of the Council for the Determination of the Facts to the Judicial Council, where members of the Judicial Council, who will be involved in the initial phase of initiating disciplinary procedures, will not participate in deciding on disciplinary liability.

On 30th December, the Assembly of the RM adopted a bill for employees in the Prosecutorial Office of the Public Prosecutor's Office for crimes related to, and arising from, the content of the illegal interception of communications, submitted by the Government in a shortened procedure.[37] The proposal was originally submitted on 21st December by a group of MPs from the Social Democratic Alliance of Macedonia, the New Social Democratic Party, the Liberal Democratic Party and the Party of Democratic Transformation, but has not reached the agenda because the MPs of the VMRO-Democratic Party for Macedonian National Unity voted against, stating that the matter is already regulated by other laws concerning the Public Prosecutor, Public Prosecution Service and Administration, while, with the proposed law, this kind of prosecution would be undertaken from a privileged position.[38]The Government submitted the Draft Law Amending the Law on Salaries of Public Prosecutors and the Law on Salaries of Judges in a shortened procedure.[39]The proposed legislation provides for additional grounds for salary supplements. The amount and method of determining the supplements are regulated by the Law on the Judicial Council of the RM, i.e., by the Public Prosecutor of the RM, upon prior approval of the Minister of Finance. In her reaction, SPP Katica Janeva estimated that the provision authorizing the Public Prosecutor of the RM, upon prior approval of the Minister of Finance, to decide on supplements for public prosecutors in the context of this public prosecution, violates established principles of autonomy and financial independence. Subsequently, the Government submitted an amended draft law, which provides that the supplements, their amount and the manner of their determination for

[36] http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2015)042-e

[37] Materials from the relevant session are available at: http://www.sobranie.mk/sessiondetails.nspx?sessionDetailsId=514ae52a-f803-4ef7-9096-92fb31766def&date=30.12.2015.

[38] The Assembly adopted several amendments to laws in different areas. MIA, 21st December 2015. Available at: http://www.mia.mk/mk/Inside/RenderSingleNews/381/132953583.

[39] Complete materials are available at: http://www.sobranie.mk/materialdetails.nspx?materialId=d22bc200-1622-4dd7-9428-a6893925c922 and http://www.sobranie.mk/materialdetails.nspx?materialId=e274859b-52a8-4434-b9ba-3f28685dca8f.

special public prosecution shall beregulated by the public prosecutor who runs such a prosecution. Analogously, the public prosecutor in charge of the Public Prosecutor's Office is afforded such a responsibility in relation to organized crime and corruption.

*The process of taking judges into custody must not take place in the same way as it was the case in 2014 and 2015. The Judicial Council should raise its voice against spectacular arrests by the Police within the Courts' premises, while the Public Prosecution should react to any violation of the presumption of innocence principle as applied to members of the judiciary.*

*The Law on the Council for Determination of the Facts and Initiation of Disciplinary Procedure for Establishing Disciplinary Responsibility of a Judge should be invalidated. The competence regarding these matters should be reinstated to the Judicial Council, while at the same time securing the principles of impartiality and objectivity.*

*Failure of the much heralded central database of court rulings does not contribute to the transparency of the Judiciary and the development of case law in the country. The Supreme Court must accelerate the process of launching the database and find a way for rulings published in Basic Courts and Courts of Appeal to be transferred to the central database. The increased activity of the Supreme Court for in attending professional events and meetings with stakeholders is commendable; however, such activities must not be ceremonial, but directed towards improvements of in the conditions in the Judiciary.*

## Professionalism, Competence and Efficiency

No steps whatsoever were undertaken in the direction of changing the criteria for appraisal and promoting of judges, which are presently based exclusively upon quantitative criteria of efficiency. On the other hand, members of the Judicial Council of RM have been repeatedly highlighting the advantages of the system, which allows the judges with best results to "automatically" come to the fore.[40] According to some opinions, the present system of promotion of judges does not put in the forefront their expertise and integrity.[41]
The interventions in the system of appraisal, promotion and appointment of judges within the span of more than a few past years, resulted in an "open door" for political influences over the judiciary.

### Academy of Judges and Public Prosecutors

The Assembly of the RM adopted the Law Amending the Law on Judges and Prosecutors in December 2015.[42] The amendments provide for electronic protection when conducting examinations, tighter control over examinations and sanctions for any violation of these provisions. The amendments seeks to increase transparency by requiring the announcement of a public call for candidates among professors and prominent lawyers to become members of the Programme Council. The 2016 budget will provide the Academy with about 675,000 euros (an increase compared to 2014 and 2015).

[40] This was emphasized on meetings organized by "Network 23".
[41] Discussion during a Conference of Network 23, held on 9 July 2015.
http://epi.org.mk/docs/Zapisnik%20od%20Zavrsna%20konferencija%20Mreza%2023.pdf
[42] Official Gazette of the RM (no. 231/2015).

In 2015, the Academy of Judges and Public Prosecutors announced the admission of 30 new participants in the initial training for those who would be candidates for judges and public prosecutors. Following the announcement, the Academy registered 82 candidates for the initial training, of whom 60 took the qualification examination in March 2016. Accordingly, this year (unlike previous cycles, when there were not enough candidates for all published positions), two candidates applied for every one position.

The survey on the perception that lawyers have in relation to the Academy of Judges and Prosecutors, conducted by the Coalition "All for Fair Trials in December 2015, involved 45 lawyers. Of the total number of respondents, 67% recognized the contribution made by the Academy to the quality of justice as insufficient, 76% were not sufficiently familiar with the work of the Academy and 89% thought that lawyers do not have sufficient access to training at the Academy, since they have repeatedly been denied training. With regards to the latter, only 38% had participated in training organized by the Academy, of which 62% were satisfied with the quality, although it was felt that more lawyers should be recruited as trainers, while topics and methodology should be adapted in order to meet the needs of lawyers. Lawyers consider that prominent members of the Bar Association should become members of the Administrative and Programme Council of the Academy. The article, "Improving Checks and Balances in the RM: Judicial Control of the Executive", gives the Academy the best score (2.97 out of 5), compared to courts (2.42 of 5), prosecutors (2.34 of 5), the Judicial Council (1.78 of 5) and the Council of Public Prosecutors (1.77 of 5).[43]

### *Judicial Service*

Regarding the exercise of the rights of judicial officers, it can be concluded that there is a regression in these rights, particularly due to the amendments to the Law on Judicial Service, which strengthen the criteria for evaluating judicial officers without including a plan for their career advancement, further training and increases in salaries.

Therefore, during March 2016, judicial officers staged a three-day strike due to dissatisfaction with the amendments to the Law on Judicial Service, which was adopted without public discussion in a shortened procedure. In particular, salaries failed to be increased by more than 5%, compared to the increase of 35% in compensation for duty and overtime work for judges and public prosecutors. Despite the strike, there was no proper response from the Ministry of Justice, which has the power to propose amendments to the Law on Judicial Service.

In terms of ensuring the "speedy execution of all European Court of Human Rights (ECHR) judgements against the state", the adoption of action plans for each conviction and their submission to the ECHR, which is existing practice in Macedonia, does not fully meet the recommendations of the priority "to develop practical and effective measures for each category of cases".[44]

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[43] Dane Taleski, PhD, Marko Kmezikj, PhD, and Laura Polozhani, MA: "Improving Checks and Balances in the Republic of Macedonia: Judicial Control of Executive", European Policy Institute, Skopje, March 2016. Available at: http://epi.org.mk/docs/D4V_Democracy%20and%20Rule%20of%20Law_mk.pdf (p. 25).

[44] European Policy Institute: "Urgent Reform Priorities Slower than the Restoration of Anti-reformist Practices!". Available at: http://epi.org.mk/docs/Realizacija%20na%20Itnite%20reformski%20prioriteti.pdf.

No systematic measures in this direction are noted. On the other hand, some legislative interventions, which cannot be said to correspond to or contradict the URPs, have recently been made. Such an example is the introduction of salary supplements for judges and public prosecutors, which are obviously aimed at pre-election incentives and reward for their subservience to the political hierarchy. Another example is the facilitation of judicial associates in applying for initial training at the Academy for Judges, but only as candidates for public prosecutors, not judges. The warning strike by administrative workers in the Judiciary, provoked by the decisions made as a result of the relevant law, did not encounter any serious reaction. This category of workers in the Judiciary remains neglected, although their role is important, especially in conditions where the number of judges is being reduced.

***It is necessary to urgently undertake reassessment of the system of appraisal and promotion of judges, which is presently based exclusively upon numeric quantitative criteria of efficiency. The long lasting legal interventions in this area provided an "open door" for political influences over the judiciary.***

***The Budget increase for the Academy of Judges and Public Prosecutors is commendable, but budget cuts must not be allowed through the supplementary budget, as was the case in the past years. There is a need for public debate about the possibility to open the Academy for the Bar Association and lawyers, given that unlike judges and prosecutors, lawyers are not provided continuous training. Comprehensive evaluation of achievements of the Academy in the framework of continuous training for judges and public prosecutors is necessary.***

***The Ministry of Justice should initiate a dialogue with the Union of the Workers in Administration, Juridical Authorities and Citizens' Associations of Macedonia (UPOZ) for appropriate amendments to the Law on Judicial Service, which will enhance the rights of judicial workers. Recruitment of insufficiently qualified judicial administration personnel by the way of mobility should be stopped, and significant investments into systematic training of judicial administration personnel should be made.***

## State Commission for the Prevention of Corruption

The preparations for the new programme of the State Commission for the Prevention of Corruption (SCPC) have been found to be non-transparent, despite having involved many citizens' associations engaged in the fight against corruption. The process did not include all the members of the Platform Against Corruption, due to the selectivity that exists in relation to those citizens' associations that criticize the SCPC.[45] In common with the previous programme, there is still no official report on the results of its implementation, which is one of the crucial demands by citizens' associations. Additionally, the lack of transparency is due to persistent meetings being held behind closed doors, not inviting experts and the intermittent involvement from citizens' associations. Some associations are faced with access to public information being restricted by the SCPC, which prevents comprehensive monitoring of its work.[46] Inaccessibility is also present in relation to questionnaires about the properties of state executives, including the very members of the SCPC, which is considered as public information according to Article 35 of the Law on Prevention of Corruption. Those citizens' organizations fighting corruption have publicly appealed to the SCPC[47] to publish and grant public access to the questionnaires, given that the information they contain is in the public interest.

The SCPC's work can be assessed as passive and ineffectively selective, given that it failed to react to the contents of published recordings, which revealed abuse of position by high-ranking state officials. The contents of the new programme reflect such attitudes of the SCPC and provide no details of actions to address the reality of the situation. Instead, the new programme simply offers general directions for dealing with corruption in the country. One of the main reasons for this passivity by the SCPC is the selection of members who are not particularly active in the fight against corruption.

Due to these facts, citizens' associations have demanded that a system of checks and balances needs to be established, while the way of selecting the membership must be changed as well, i.e., that the members are selected by a two-thirds majority, with some of them on the recommendation of citizens' associations. During 2015, the SCPC received 124 complaints about corruption by citizens and acted in 273 cases, of which only 50%, or 137 cases, have been resolved. These numbers indicate that the SCPC has acted in less than 10% of the 1,544 complaints in 2014.

As 2014 was an election year, an increase in the number of complaints by citizens, as well as political parties, was expected. That said, the number of solved cases by the SCPC in 2015 is less than satisfactory. The observation about passive participation by the SCPC is supported by the fact that it has, to date, only solved one case of political corruption. Moreover, it has only initiated two instances of pressing charges and two instances of dismissal, replacement or other accountability issues relating to elected/appointed positions, in accordance with Article 49, Paragraph 1, of the Law on Prevention of Corruption.

[45] A statement given by participants in a focus group.
[46] A statement given in a focus group by a representative of Transparency Macedonia
[47] 40 The entire transcript of the statement by the Platform can be read here:
http://standard.mk/platforma-za-borba-protiv-korupcija-antikorupciska-da-ne-go-krie-imotot-na-funkcionerite/.

According to the budget plan of the RM for 2016, the budget of the SCPC has been increased by less than 9,000 euros. These funds are insufficient to fully strengthen the SCPC's capacities, especially when it comes to the need for the urgent application of activities in the new programme for the prevention and suppression of corruption, as well as the prevention and reduction of conflicts of interest within the SCPC stated in the Action Plan 2016-2019. Also planned are five new appointments to the roles of Director and Counsellors within the SCPC.

***The SCPC fails to perform its role of autonomous and independent body, in accordance with the Law on Prevention of Corruption.***

***The SCPC has to consistently apply the Law on Prevention of Corruption in publishing the questionnaires concerning the properties of public officials, including its own members. The SCPC needs to hold open meetings and cooperate with all citizens' organizations fighting against corruption. The SCPC has to be proactive in the fight against corruption and guarantee independence in the work of all its members, including the Chairman.***

## Law on the Protection of Whistle-blowers

The latest political crisis, especially the release of taped conversations with politicians, has made the promulgation of the Law on the Protection of Whistle-blowers an urgent matter. Due to this law having been agreed upon by the political parties, the preparation and implementation has mostly been non-transparent, as well as excluded experts from the public domain. Despite this, the appearance of this law can be considered a positive example of the effort taken by the Government to deal with corruption.

This law was passed on 10th November 2015, came into force on 18th November 2015 and implemented on 18th March 2016. Within the provisions of this law, the Minister of Justice was compelled to adopt the relevant by-laws within 60 days of it coming into force. However, the deadline overran and the Rule Books were instead passed on 3rd March 2016, coming into force on 11th March 2016. The delay in the Rule Books inevitably affected the implementation of the law itself

Regarding the contents of the law, an opinion by the Venice Commission was published,[48] saluting the new law and remarking that the legal solution was in accordance with Recommendation CM/Rec (2014) of the Council of Ministers in the European Council. These remarks were aimed at the need to further clarify the public interest regarding whistle-blower protection and also reinforce Article 6, which covers protected whistle-blowing.

***Since by-laws have also been passed, the Law on the Protection of Whistle-blowers can and should be applied practically, while the Government should provide all that is needed for its efficient application. Amendments are needed to this law in accordance with the recommendations of the Venice Commission.***

[48] The entire opinion of the Venice Commission on the Law on Whistle-blower Protection can be read here: http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2016)008-e.

# 3. Fundamental Rights

## Human Rights

### The Ombudsman

During 2015, the Ombudsman of the RM received 4,403 appeals from citizens, which equates to 154 more appeals than the previous year.[49] Meanwhile, 717 appeals were received for January and February 2016. Regarding cooperation with Governmental institutions, the Ombudsman has reported obstruction of his work by a larger number of institutions compared to previous years, especially the MOI, the Agency for Real Estate Cadastre and the Government of the RM. Of particular concern has been the lack of cooperation from certain courts, which was noted for the first time during 2015. The Ombudsman's casework shows that there is an increase in the number of complaints by citizens in the area of the Judiciary. The Ombudsman has concluded that the Administrative Courts are still inefficient and their reform is to be taken seriously.

The necessity of amending the Law on the Ombudsman has yet to be seen as a priority by the state, which leads to the conclusion that URPs concerning the promotion of the system of human rights protection are not being respected. There is no plan for reinforcing the capacities of the Ombudsman; this is evidenced by the allotted budget for 2016, which was increased by a meagre 1% compared to 2015. Furthermore, the Ombudsman has informed us that, during 2015, there was only one person employed at the Skopje office, and this was in the Hygiene Department; at the time of writing, however, there are no employees at the National Preventive Mechanism.

***The Law on the Ombudsman needs to be applied within the shortest possible period in order to reinforce the authority of the Ombudsman, especially in the area of investigation, but also in promoting human rights. These legal changes need to lead to greater independence of the Ombudsman and an increase in human resources in this office, thus creating grounds for achieving an A status.***

### Torture and Inhumane or Degrading Treatment or Punishment

During 2015, the European Court of Human Rights made an unprecedented number of five rulings pertaining to Article 3 of the ECHR, which concerns the prohibition of torture.[50] In all of these rulings, torture by state officials was confirmed. This was despite the fact that these officials had not been investigated or, if they had, the investigation was completely ineffective, although the cases were reported to the Public Prosecutor. In cases where the harmed parties lodged private appeals, these were either rejected or not given due consideration by courts. Such conduct by the Prosecutor's Office and the court system constitutes grievous offence to the rights of the plaintiffs. To this extent, the RM was fined a paltry 50,000 euros under Article 3, which was paid to the victims.

[49] The Ombudsman's Report for 2015 is available at:
http://ombudsman.mk/upload/Godisni%20izvestai/GI-2015/GI_2015-za_pecat.pdf.

[50] Aslani vs. Macedonia (complaint no. 24058/13), Hajrulahu vs. Macedonia (complaint no. 37537/07), Andonovski vs. Macedonia (complaint no. 24312/10), Kitanovski vs. Macedonia (complaint no. 15191/12) and Ilievska vs. Macedonia (complaint no. 20136/11).

Despite the fact that these events happened between 2004 and 2009, the Helsinki Committee for Human Rights has, in the last three years, registered a dozen cases similar to those previously described; however, they have not been effectively investigated by the prosecution. Such instances relate to the torture of three Albanian detainees, who were handcuffed to radiators,[51] a detainee beaten and ordered to strip naked in the prison toilet,[52] a citizen who was brutally assaulted by police on the streets of Ohrid,[53] a prisoner who lost a kidney and his spleen after an attack by a prison guard,[54] a large number of police who attacked citizens of the Roma community in the Topaana settlement,[55] the beating of an innocent boy to a pulp at the police station in Demir Hisar,[56] members of the Alpha special police force beating Roma juveniles,[57] binding an underage boy with rope, who was wrongly placed in an institution for physically disabled persons,[58] and the use of contaminated water at Kumanovo Prison.[59]

During March 2016, the Helsinki Committee filed 49 requests for information regarding registered cases processed by Basic Public Prosecutors and Courts, under Article 142 (torture and other cruel, inhumane or degrading treatment or punishment) and Article 143 (harassment while performing an official duty), over a six-year period (2009-2015). Feedback was received from 21 (out of 26) courts and 20 (out of 23) Basic Public Prosecutors' Offices. According to the court system, during these six years, they acted on 22 cases relating to Article 142 and 56 cases relating to Article 143. Among the Article 142 cases, there was none in which the defendant received a prison sentence on account of torture. There were only eight probation sentences, as an alternative measure. As for the Article 143 cases, there was only one prison sentence (six months for a collector at the Agency for State Roads) and 16 probation sentences. Basic Public Prosecutors processed 32 cases of torture. Only in seven of them were there investigations leading to charges being pressed. In the Article 143 cases (harassment while performing an official duty), the prosecutors dealt with 138 cases, of which 30 were investigated and 22 resulted in charges being pressed.

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[47] Helsinki Committee, Quarterly Report (October-December 2012): http://www.mhc.org.mk/reports/99.
[48] Helsinki Committee, Monthly Report (March 2013): http://www.mhc.org.mk/reports/124
[48] Helsinki Committee, Quarterly Report (April-June 2013): http://www.mhc.org.mk/reports/145.
[50] Ibid.
[51] Ibid.
[52] Helsinki Committee, Bimonthly Report (July-August 2013): http://www.mhc.org.mk/reports/149.
[53] Helsinki Committee, Bimonthly Report (April-May 2014): http://www.mhc.org.mk/reports/219.
[54] Helsinki Committee, Monthly Report (June 2014): http://www.mhc.org.mk/reports/237
[55] Helsinki Committee, 20th October 2014: http://www.mhc.org.mk/announcements/254

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***The authorities should commence a zero tolerance policy for acts of torture by public officials. The passiveness of the Public Prosecution in cases of torture, especially when performed by police officers, leads to citizens' losing trust in the judiciary system and reluctance to report such acts. It is high time to face the issue of the fraternization of public prosecution officials and the Judiciary with the Police to avoid punishment. The main focus should be on victims of torture, who have not yet been provided with proper legal, medical, psychological and social support by the state. To achieve this goal, it is necessary to immediately implement EU Directive 2012/29 for establishing the minimum standards concerning the rights, support and protection of crime victims.***

## Prisons and Detention Centres

During March 2016, the Helsinki Committee requested access to publicly available information from the Directorate for Execution of Sanctions (DES) on the capacities of prisons and detention centres, as well as the numbers of prisoners and detainees. According to the reply, as of April 2016, there are 3,446 persons in total in all of the 13 prison institutions. Of those, 3,159 are serving a prison sentence, while 287 are awaiting further resolution. In addition, there are 28 juvenile persons at the Juvenile Educational-Correctional Facility in Tetovo. The total capacity for housing prisoners is 2,026, which means that the prisons are 156% overcrowded; put another way, there are 156 persons, on average, living in facilities meant for 100 persons. As for the capacities of detention centres, they can house 450 persons, although they are currently housing 287, which is less than their full capacity. According to information from the DES, the most alarming conditions are found at the Strumica Correctional Facility, where the capacity is 62 persons, even though it is currently filled with 150, i.e., it is 242% overcrowded. The Tetovo prison is 200% overcrowded, while Idrizovo, Shtip and Gevgelija are overcrowded by 170%.

The prisons have substandard living conditions, compared to what is prescribed or accepted in many international or domestic documents. One of the basic problems for many years now has been congestion in these facilities, which threatens privacy, thereby degrading human dignity and creating inhumane living conditions in the correctional facilities. The mechanisms supervising these institutions are dysfunctional. The treatment received by prisoners is often inhuman, which is completely inconsistent with the absolute prohibition of torture by institutions of authority.

The Prisons Reconstruction Project was supposed to begin in 2011. As of today, except for the newly built Kumanovo Prison, which has not been built according to the standards for this type of institution,[60] planned reconstructions for all facilities remain unfinished. According to the DES, the number of persons serving sentences has increased by 46% between 2010 and 2016.[61]

The house rules in the prisons are either barely applied or not at all. Prisoners who have contacted the Helsinki Committee most often complain about inadequate healthcare, congestion, inefficient legal assistance, non-application of resocialization programmes, absence of educational programmes, lack of hygiene, lack of activities, not being allowed to be outside for longer than an hour, limited correspondence etc. There are no programmes of any kind for persons serving life sentences.

The system enabling prisoner complaints to reach prison wardens, the Directorate for the Execution of Sanctions and the court system is completely non-functional. A state commission for supervising prison and correctional facilities, as envisioned in the Law on Execution of Sanctions,[62] exists on paper only[63] and is not operational. Supervision by judges from the DES is not provided either. All things considered, apart from the Ombudsman, whose recommendations are not regarded as obligations to act, there are no mechanisms for independent control or supervision of either the prison estate or the DES. Since 2011, the Directorate has consistently refused to grant any access to non-governmental organizations (NGOs) and the media to visit prisons and talk to convicts.

Driven by the President's decisions for pardon, 106 female prisoners filed requests for pardon. Their letter was accompanied by the same request from 2,000 prisoners from the male ward.  President Ivanov rejected the female prisoners' applications in writing, clarifying that his decision "is not to pardon criminals but to help bring the state back to track." The male prisoners' request for pardon has not yet been addressed by the President. After receiving the President's reply, the female prisoners announced a hunger strike while male prisoners announced a protest. However, these events did not take place.

[60]The barber's quarters, the religious rites hall, the classroom and the library are all non-functional. The prison has no plumbing or sanitary infrastructure/sewage pipes. The water used for drinking, cooking, washing and bathing is carried there by tanks and drawn from nearby wells. More information about similar issues in this prison is available at: http://www.mhc.org.mk/announcements/254

[61]There were 2,157 in 2010 and 3,159 in 2016. Yearly reports of the Directorate for Execution of Sanctions should be compared to the report sent to the Helsinki Committee in April 2016; see: http://www.pravda.gov.mk/tekstoviuis.asp?lang=mak&id=godizv.

[62]Official Gazette of the RM (no. 2/2006 and no. 57/2010).

[63]"Decision of the Macedonian Government to form the Commission": Official Gazette of the RM (no. 111/10).

***Prisons' over-crowdedness and the treatment of the prisoners is alarming. It is necessary to take urgent measures by changing the policy for execution of criminal sanctions and imposition of detention measures.***

***Activities prescribed in the Prisons Reconstruction Project have to be accelerated. Administrative and judicial supervision needs to be intensified. NGOs and the media need to be able to freely visit prisons and inform the public about their living conditions.***

## *Respect for Private and Family Life and Communications*

After the illegal wiretapping scandal was made public in July 2015, the Assembly of the RM suspended the process of lustration. It nevertheless remained active for all persons for whom decisions had been made before the termination of the procedure would become final. Despite such an outcome, the conclusion, that the process of clearing up the past should have had been based upon the principles of legality and justice, is still pertinent. In opposition to these postulates, the lustration process in the RM was turned into a classic inquisition procedure, in which the defendants are not given the right to a hearing not the opportunity to defend themselves. As a consequence, the result of this procedure for a whole range of professions – including journalists, professors and others – was equivalent to the sanction prescribed in the Criminal Code: prohibition to perform a profession, activity or duty. The Constitutional Court failed to provide secrecy in relation to personal data, protection of personal integrity, and respect for privacy, family life, dignity and reputation. In light of these failures, several persons decided to seek justice at the European Court of Human Rights. In January 2016, the European Court had already passed one judgement, which confirmed that the lustration process in the RM was unfolding at variance with the ECHR.[64]

In January 2016, there was a total of 38 active cases dealt with by the Committee, 38 cases dealt with the Court as well as some cases dealt with by the ECHR.[65]

The Helsinki Committee submitted a request to the Administrative Court for public information on active cases that it was processing or had processed and are under appellate procedure at the Higher Administrative Court, after appeals were filed against decisions by the Commission for Fact Verification on the basis of the Law on Lustration, as well as the number of cases with a final judgement in line with this law. According to the response, there were eight appeals against decisions by the Commission during 2012, which were all closed, while six decisions by the Administrative Court were appealed against at the Higher Administrative Court, of which have all been resolved. During 2013, there was a total of 30 appeals against the Commission's decisions, which have all been decided upon, and appeals against 19 decisions by the Administrative Court. There have also been appeals filed at the Higher Administrative Court, for which all have received verdicts. During 2014, there were nine appeals in total filed against the Commission, out of which three have been resolved, although none of them has been appealed against at the Higher Administrative Court. During

[64] Ivanovski vs. Macedonia (complaint no. 29908/11).

[65] Data from the Institute for Human Rights – gained from systemic monitoring of the lustration and through request for free access to information of public character.

2014 and 2015, not one case received a final decision. According to the response from the Administrative Court regarding requests submitted in 2014-15, the Court had been deciding on them for longer than a year. This conduct is in opposition to the Law on Lustration, which demands urgency in procedure.

Making the wiretapping scandal public was the reason behind the passing of the Law on the Protection of Privacy, which was an outcome of the Przino Agreement, adopted in summary proceedings, without public debate, but with consensus in the Assembly. This law prohibits the release of illegally wiretapped transcripts from 2008-2015, with the exception of those already made public. The law foresees prison sentences lasting between one month and one year for anyone who makes public any of the hitherto unreleased material. Nevertheless, the law also foresees that, in the case that such trials are initiated, courts will be obliged to respect the ECHR and the judgements of the European Court of Human Rights. The European Court has declared[66] that freedom of information provides the public with one of the best tools for forming opinions about the politicians. According to the Court,[67] the right to privacy differs in the case of politicians and ordinary citizens, i.e., politicians consciously submit themselves to the direct scrutiny of journalists and the public to the extent that they have to display a higher level of tolerance when it comes to disclosing details of their life. The European Court also emphasizes that politicians are not allowed to deprive journalists of their role as "public guardians". The Venice Commission also offered its opinion on this law, stating that, on the basis that the SPP possesses all the relevant materials, the state must not hinder those forums or institutions that would have exclusive right to access, investigate and use this information. The role of journalists in the process of releasing this material has to be limited exclusively to criminal allegations, while private and family matters must be excluded by all means. The Venice Commission's concluded that the Law on the Protection of Privacy requires "in-depth revision".

***The Registry of lustrated citizens available on the website of the Commission on Fact Verification as well as the decisions reached for these people should immediately be invalidated and removed from the Internet.***

***The Administrative Court should act in accordance with the Law and respect the urgency of procedure in cases concerning lustration. Jurisprudence of the European Court of Human Rights should be taken in consideration when deciding these cases.***

***It is necessary to revise the Law on Protection of Privacy, as recommended by the Venice Commission. However, even without such revision, according to our Constitution, ratified international agreements (such as the European Convention on Human Rights) are part of the internal legal system and cannot be changed by law.***

[66] Lingens vs. Austria (complaint no. 9815/82).
[67] Incal vs. Turkey (complaint no. 41/1997/8251031).

## *Freedom of Assembly and Association*

During 2015, the right to free assembly, while holding peaceful gatherings and public protests, was restricted on multiple occasions. Disproportionate and excessive force was used by the Police during protests, which took place on 5th May 2015. On the protest that followed, police officers were restricting the right to freedom of movement, and simultaneously the right to public assembly, without authority.

Despite all the aforementioned violations by the Police, the Public Prosecution Service has not, as yet, initiated a single ex officio procedure against police officers in this instance. Criminal charges were filed by the Liberal Democratic Party with the Public Prosecution Service regarding the event that took place in the Braka Miladinovci Library. Meanwhile, of the persons against whom excessive force was used, only one filed charges on account of abuse in the course of performing an official duty. Despite the seriousness of the charges, the Public Prosecution Service has not yet informed the public about the outcome of the investigation, as well as whether any court procedure against the suspected police officers is going to be initiated.

In the second half of 2015, high school students' protests continued, which were organized by the High School Plenum movement. On 21st November 2015, a huge protest march involving high school students against the educational reforms was held. With regard to this event, some students and their parents reported serious threats, which had been issued by principals and other employees in the high schools. Especially worrisome were the allegations relating to officials confining students in school by locking classrooms and school exit doors, as well as the fact that certain media reported that certain high school students had received financial remuneration for their participation in the protests. Against this backdrop, then, the honour and reputation of the children who wanted to express their dissatisfaction with the educational reforms were violated. Furthermore, confining children in schools in order to prevent them from participating in the protest march amounted to an act of unlawful arrest, which is prohibited by the Criminal Code of the RM.[68]

During February and March 2016, several protests were held in reaction to the Constitutional Court's decision to initiate procedures concerning the constitutionality of the amendments to the Law on Pardons from 2009, as well as the abolition of a provision restricting the Head of State from pardoning persons convicted of electoral fraud. The protest, which was supposed to be held on 15th March 2015, immediately before the decision was to be adopted by the Constitutional Court, was prevented by another group of citizens, under the direction of the leader of the GROM political party, Stevco Jakimovski. Considering the fact that the planned protest had been properly registered with the MOI and reported in the media, the protest venue was nevertheless occupied by persons with diametrically opposed views. As such, the conclusion may be drawn that there a criminal offence relating to the prevention or obstruction of public protest – Article 155 of the Criminal Code – was committed. In any case, the Public Prosecution failed to inform the public whether it acted ex officio and initiated any investigation against the organizer and the opposing protesters.

[68] In Article 140, Paragraph 3, it is stated: "If the unlawful arrest is performed by an official person, by misusing their official position or authorization, he shall be punished with imprisonment of six months to five years". This Paragraph provides the basis for the Public Prosecution Service to act on hearsay and investigate any information concerning the high school students' deprivation of liberty.

In reaction to the decision by the President of the RM, Gorge Ivanov, to pardon 57 suspects, both from the Government and the Opposition, who were already criminally charged and against whom there were ongoing criminal procedures, citizens have begun mass protests all over the country. So far, 15 persons have been apprehended, of which 11 were charged in connection with misdemeanours according to Article 14 of the Law on Public Peace and Order; in other words, actions that are considered contrary to civil order by state authorities, which forbid access to or lingering in certain locations. All 13 persons were held at a police station for up to 24 hours, even though anyone charged with misdemeanours, according to Article 50, Paragraph 3, of the Law on Police should not be detained for longer than 12 hours. Four persons were brought before a judge and, in turn, put under house arrest for the duration of eight days, which was later extended to another 30 days. These persons were accused of the crime of participating in a crowd in which a crime is committed, as per Article 385, Paragraph 1, of the Criminal Code. This crime is assigned a fine or a prison sentence of up to three years. As it is considered a minor crime, it should not, on principle, entail house arrest; rather, it would be more fitting to assign a milder cautionary measure, such as regularly reporting to an assigned official. Bringing in those who participate in protests serves to intimidate not only them, but also other current or future protesters. House arrests especially affect the right to protest, due to the fact that, as a reason for this measure, the authorities are suggesting that those arrested might repeat the same offence when future protests are announced.

Detention or house arrest for, as well as pressing criminal charges against, such persons can be considered a warning to other citizens who may want to participate in the kinds of protest that have been going on lately. These actions are in breach of Article 21 of the Macedonian Constitution, which prescribes that citizens have the right to gather and publicly protest without any previous announcement or special permission. The exercise of this right can only be limited in war and emergency conditions, which did not apply in this case. Meanwhile, no charges were brought against participants in the violent protests before the Municipality of Centre in 2014, which further supports our conclusions regarding selective justice.[69]

With regards to freedom of assembly, increased pressure from Government institutions upon civil associations is noticeable, as is pressure exerted by pro-Government media through so-called smear campaigns.[70] A blatant example of such pressure is the tendentious financial supervision of the MOST Citizens Association by the Financial Police Office in the period when opinion was supposed to be presented about whether the Government was ready to conduct fair and independent elections. The Financial Police Office reported[71] that it had acted upon tip-offs about suspicious financial transactions by MOST to dubious bank accounts belonging to real account holders in Libya, Jordan, Kyrgyzstan, Albania and Tunisia, whom MOST reported were experts on electoral processes hired on temporary contracts.

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[69] Announcement made by the Helsinki Committee for Human Rights about these protests: http://www.mhc.org.mk/announcements/400#.VysJtIR97IU.

[70] Details of the campaign directed against the critically inclined civil associations may be read in the NGO Infocenter analysis, entitled "Critically inclined citizens constant target of assaults in the pro-Government media": http://nvoinfocentar.mk/analiza_kritikite_gragjani_postojana_meta_na_napadi_vo_provladinite_mediumi/.

[71] The Financial Police Office's full report is available at: http://kurir.mk/makedonija/vesti/finansiska-politsija-most-ne-dozvoluva-uvid-vo-dokumentatsijata-i-odbiva-sekakva-sorabotka/

*The state ought to ensure the observance of the right to assembly in such a way that it is not going to be restricted, either by the Police or by some other group of citizens, such as counter-protesters, in cases where the protest is properly announced and registered, as prescribed in the Law on Freedom of Assembly. The judges who pass decisions on specifying and extending measures for ensuring presence should take into consideration the fact that these are cases of minor criminal offences, which do not require detention or house arrest measures, let alone ignore the fact that the involved persons do not have a history of previous criminal offences.*
*The state must not exert pressure on the activities of civil associations, which are supposed to serve as a corrective to the Government and work for the public interest.*

## Treatment of Socially Vulnerable and Disasbled Persons and Principle of Non-discrimination

Despite the fact that five years have elapsed since the implementation of the Law on Prevention and Protection Against Discrimination and the establishment of the Commission for Prevention and Protection Against Discrimination, we are still not in a position to talk about effective protection against discrimination, especially when it comes to marginalized groups. The main points, which refer to access to justice by victims of discrimination, i.e., exemption from legal fees in cases involving court procedures about protection against discrimination, as well as the inclusion of sexual orientation and gender identity as a basis for discrimination, have remained intact.

In January 2016, the Assembly of the RM, through a non-transparent procedure, elected new members[72] of the Commission for Prevention and Protection Against Discrimination. Most of the members had no previous experience in the area of working with vulnerable groups, while some of them were closely connected with the ruling coalition or were public supporters of the Government's policies, especially those that preclude the equal treatment of ethnic minorities in the country. This situation clearly exposes the tendency towards even more pronounced partisanship on behalf of the Commission, which, according to international and domestic standards, should be independent. Such a line-up of the Commission goes against the spirit of respecting differences, especially given that the Commission only has one female member and no representatives from any of the smaller ethnic communities.

The measure of legal protection in cases of discrimination are being applied more and more often, but most of the initiated court procedures are actually supported by civil associations, which provide legal assistance in cases of discrimination. This is a result of the inconsistency of the Law on Prevention and Protection Against Discrimination in the area of access to justice, because it does not allow for help with legal fees when initiating legal proceedings. For these reasons, it may be concluded that access to justice and legal protection against discrimination remain limited. This conclusion is confirmed by the court responses regarding the initiated legal proceedings about protection against discrimination: namely, according to the responses from courts around the entire country, court procedures on account of

[72] On 11th January 2016, the Assembly of the RM, during its 85th Session, with 62 "aye" votes and one "nay" vote, elected Toni Naunovski, Aleksandar Dashtevski, Aleksandar Spasenovski, Nena Nenovska-Georgievska, Jovan Ananiev, Irvan Dehari i Bekim Kadriu as members of the Commission for Prevention and Protection Against Discrimination.

discrimination have been initiated in Skopje, Delchevo, Kratovo and Kochani. Court proceedings about protection against discrimination have been initiated in Bitola as well, but this could not be verified on the basis of the response from the Basic Court in Bitola, because the Automated Court Case Management Information System (ACCMIS) does not keep separate records on court procedures for protection against discrimination; instead, it registers them as employment disputes, as claims for damages or as disputes of lesser value. This state of affairs was also confirmed by the Basic Court in Skopje 2, which nevertheless managed to provide detailed information about the initiated court procedures for protection against discrimination.

As far as the vulnerable groups most liable to discrimination are concerned, it may be concluded that, among them, the Roma community remains the most prominent. This situation is due to the systematic discrimination that is continuously exerted against members of this community, especially in light of the MOI's restrictions concerning their right to freely leave the country, as well as the segregation to which Roma children are exposed within the educational system. This state of affairs has also been noted by the Committee on the Elimination of All Forms of Racial Discrimination of the United Nations, which pointed to the restriction of basic freedoms and rights, as well as to inefficient protection especially in the area of freedom of movement, concerning the Roma community, as well as its inability to obtain personal identification documents, let alone the situation in which Roma children are living on the streets in addition to the segregation in schools. According to the conclusions made by the UN Committee on the Elimination of All Forms of Racial Discrimination, it is obvious that the state has failed to improve the situation of the Roma community, whose members are the most marginalized ethnic community in the RM. The Committee also expressed its concern about the problems regarding the housing of the Roma community and its low social status, concluding that it is the community that is most exposed to poverty, unemployment and social exclusion.

The LGBTI community still remains subject to systematic discrimination, due to the failure of the Public Prosecution Service to act, even after the multiple attacks on the LGBTI Centre, as well as due to the fact that issues of sexual orientation and gender identity are not included in a great number of laws, which are supposed to provide effective protection against discrimination and promote the inclusion of vulnerable groups in society. Given that offenders regularly escape punishment, the LGBTI community has no confidence in state institutions; as such, community members do not report violations of their rights, especially when it comes to instances of discrimination. This conclusion is confirmed by the latest survey by the LGBTI Support Centre, which represents the first systematic attempt on a national level to offer a detailed statistical analysis of LGBTI people's outlooks and perceptions about the targeted problematic areas and protection mechanisms. The survey showed that a high rate of 39% of interviewees claim that they were victims of discrimination in the process of effecting their rights to social protection (social prevention, healthcare, social financial assistance, right to social housing, one-off financial assistance or material assistance). However, an additional problem is the low rate in relation to reporting perceived .

discrimination, since out of all those who consider that they were discriminated against, only 17.6% reported the form of discrimination to the Centres for Social Work, while 7.8% reported it to an NGO. The remaining 74.6% did not report the case at all. A high rate of 65.9% of interviewees stated that, up to that point of their life, they had been victims of violence on account of their sexual orientation and/or gender identity. Of these, 21.87% said that they were victims of physical violence, 42.5% said that they were victims of psychological violence, 29.37% said that they were victims of verbal violence and 6.25% said that they were victims of sexual violence. Very worrisome is the finding that 18% of victims of violence suffered at least three types of violence. Also distinctive is the problem of not reporting, since the very high rate of 71.27% of LGBTI victims of violence did not report the case to any institution or organization.

*The drafting of the amendments to the Law on Prevention and Protection Against Discrimination should commence at the earliest possible date. The problems are especially pertinent to the areas involving access to justice by victims of violence, i.e., relief from legal fees for initiating court procedures in relation to protection against discrimination, the independence of the Commission for Prevention and Protection Against Discrimination, and the inclusion of sexual orientation and gender identity as a basis for discrimination.*

*An urgent update is needed regarding the investigation into the attacks on the LGBTI Support Centre and the LGPTI community, because the impunity of the attackers is an example of discrimination of this community as a marginalized group and because such impunity absolutely undermines confidence in institutions.*

*Upgrading the ACCMIS should be initiated, so that precise data on court procedures for protection against discrimination and on the basis upon which such protection was requested may be procured. Special judges should be appointed to work on these data, in the same way as those court procedures that were initiated on account of defamation and insult.*

## Freedom of Expression and Pluralism in the Media

The negative practice of violating the Law on Media and the Law on Audio and Audiovisual Media Services continues. During 2015, the Agency for Audio and Audiovisual Media Services received 71 complaints and suggestions, on which the Agency acted in accordance with the Law on Processing Complaints and Suggestions. Out of these 71 complaints and suggestions, 22 were submitted by legal entities (civil associations and other legal entities), while the remaining 49 were submitted by individuals. The Agency for Audio and Audiovisual Media Services noted that, in total, there were 224 violations of legal regulations, of which 204 violations were in relation to the provisions of the Law on Audio and Audiovisual Media Services, while 40 violations concerned the Law on Media. These figures show an increase in violations of the Law on Media and the Law on Audio and Audiovisual Media Services in comparison to 2014, when the Agency noted a total of 179 violations of the legal regulations. Most of these violations have been committed by broadcasters, although those committed by publishers of print media and operators of electronic communication networks are in no way absent. The negative trend in the violation of legal regulations, which are supposed to guarantee freedom of expression and media pluralism, has continued in the first three months of 2016 as well. In the period from 1st January to 31st March 2016, the Agency initiated 87 supervisions on its own initiative, out of which 59 involved broadcasters, five involved publishers of print media and 21 involved operators of public electronic communication networks. During the supervisions, 17 violations of the Law on Media and the Law on Audio and Audiovisual Media Services, committed by broadcasters were noted, as well as three violations by publishers of print media and seven violations by operators of public electronic communication networks. Especially noteworthy is the Agency's extraordinary supervision of several episodes of the television programme called the Milenko Nedelkovski Show, which is broadcast nationally on two channels. Under this supervision, a violation of Article 48 of the Law on Audio and Audiovisual Media Services was noted, i.e., spreading discrimination, intolerance or hatred on the basis of race, gender, religion or ethnicity.

Generally speaking, in this period, a change in the reporting policy of the biggest national broadcasters, Sitel and Kanal 5, was obvious. After almost eight years, these broadcasters invited representatives of the Opposition for interviews in their main news broadcasts, in line with the implementation of the Przino Agreement, which, among other things, envisaged improvements with regards to the media. Although the aforementioned media obviously aimed to improve their image with these steps, primarily in the eyes of the international community, their actions did not stem from a genuine desire for change in the editorial policy, but instead only confirmed the Government's control over them. The best evidence in this case is the interview with the President of the Social Democratic Alliance of Macedonia, Zoran Zaev, who was invited as a guest on the 7.00pm news broadcast on Sitel TV, anchored by the station's editor-in-chief, Dragan Pavlovich Latas. Although the interview was supposed to provide media space to the biggest party in the Opposition and its views on current social and political issues, the editor-in-chief of Sitel TV displayed an undignified attitude towards his interlocutor and utter disregard for the minimum standards

of professional journalism. With one of the insults directed to Mr. Zaev, the editor-in-chief also insulted the entire Turkish ethnic community, which, on the next day, protested outside the Sitel TV premises. This interview by Sitel's editor-in-chief was an example of a biased approach in every respect.

The Agency for Audio and Audiovisual Media Services[73] condemned the contempt for professional journalistic principles and standards exhibited by the editor-in-chief of Sitel TV. In its reaction, the Agency emphasized that the interview lacked every kind of professional distance and was conducted without any respect for the interlocutor's dignity, as well as the dignity of anyone else mentioned in the conversation. In response to this interview's condemnation by the public, and especially by the institutions, the journalists' association and the international community, the Council of Media Ethics of Macedonia drafted the Charter of Ethical Reporting During the Elections,[74] which has been signed by most of the media houses, including Sitel TV. The content of this charter is based upon the most important and generally accepted principles of the journalist profession, contained in the documents and publications of the International Journalists Federation, the Ethical Journalism Initiative, the Reuters Foundation and Reporters Without Borders.

The trend of media houses reporting with the aim of providing support to the Government has continued into 2016 as well. The governing structure continues to make use of the most influential TV stations in order to retain the status quo with respect to political power relations. Several chief strategies may be identified: (1) using the TV news as a political marketing tool of the Government and the leader of the VMRO-DPMNE; (2) selective censorship of the expression of political ideas; and (3) the orchestrated media showdown with opponents.[75]

There are no initiatives to amend the Law on Civil Liability for Defamation regarding definitions (harmonized with Article 10 of the ECHR), neither any amendments to the Rules of Procedure for exclusion of cases of small value and use of mediation, as suggested by the Urgent Reform Priorities. The analysis of cases of defamation shows that politicians have imposed self-limitation regarding defamation lawsuits compared to the previous year. From 1 June 2015 until the end of that year, 8 new cases in which a party is a journalist have been initiated, and hearings were scheduled for 24 ongoing cases.[76] 9 new cases for insult and defamation were initiated in 2015. It is interesting to mention that according to Basic Court Skopje 2 Skopje, during 2015, in all 9 new cases for insult and defamation in which the parties are politicians, the letter are the plaintiffs. Out of 9 cases in 2015, appeal proceedings are conducted before the Court of Appeal for a single case and the remaining 8 are still pending before the Basic Court. [77]

[73] http://www.avmu.mk/index.php?option=com_content&view=article&id=2609%3A2016-02-11-12-08-03&catid=88%3Asoopstenija-media&Itemid=313&lang=mk

[74] http://www.avmu.mk/index.php?option=com_content&view=article&id=2609%3A2016-02-11-12-08-03&catid=88%3Asoopstenija-media&Itemid=313&lang=mk

[75] These conclusions were adopted from reports on the following media content, which were drafted by the Institute for Communication Studies. The integral reports are available via the following links:
http://respublica.edu.mk/modem/MODEM-eden%20_18%20noemvri%20_23%20dekemvri.pdf;
http://respublica.edu.mk/modem/19-29-januari/Second-Monthly-report-MODEM_mk_opt.pdf;
http://respublica.edu.mk/modem/06-04-mart-2016/Third-Monthly-report-MODEM_opt.pdf.

[76] From the monitoring acitivities of NGO Info-Centre

[77] NGO Info-centre, Report: Politicians and Court Cases for Insult and Defamation, NGO Info-centre, December 2015, available at: http://nvoinfocentar.mk/wp-content/uploads/2016/01/Politicarite-i-sudskite-slucai-za-navreda-i-kleveta1.pdf

On 1 October 2015, the Basic Court in Shtip reached a decision that the businessman Miki Naumov had violated the reputation and honour of Zoran Zaev. Zaev initiated the court proceedings after hearing Naumov's statement from May this year claiming that he had paid Zaev a bribe in the amount of 39.000 in his capacity as a Mayor of Municipality of Strumica, and in return he received and attractive space in the shopping mall Global.[78]

On December 9, at the retrial on the charges of defamation[79] and libel filed by ex-Interior Minister Gordana Jankulovska against Peter Shilegov from SDSM, Basic Court Skopje 2 ruled that Shilegov should pay Jankulovska damages in the amount of 200.000 denars.[80] Previously, the Court of Appeal overturned the first instance verdict to pay damages of 500.000 denars.

The Constitutional Court refused the request for protection of freedoms and rights pertaining to freedom of public expression of thought filed by Apostolov and Kostova, a journalist and editor of the weekly "Focus", respectively. The rationale was that the published articles in the weekly Focus were not meant to provoke public debate, but to harm personal rights of the plaintiff Mijalkov. At the same time, the Constitutional Court considers that the texts fail to respect the principles of investigative journalism, and that the source of information, a former ambassador to Macedonia, cannot be considered a relevant factor.

This decision raises several essential questions: (1) Why does the Court consider that the texts relating to the conduct of a public official, in this case, director of the Directorate for Security and Counterintelligence at the time, are not in the public interest?; (2) Why can't a former ambassador, a holder of high public office in the state, be considered a relevant source of information?[81]

***The Law on Audio and Audiovisual Services should be amended urgently in order to prevent advertising paid by the state as well as to ensure independence and de-politicization of the regulatory body – which is the Agency for Audio and Audiovisual Services, by changing the selection of members.***

***The media should inform the public independently, without self-censorship, and more vigorously on issues that are of broad social importance, wherewith they will enable the citizens to access a broader spectrum of information needed for real and effective participation in the processes influencing which influence their lives and professional activities.***

***Journalists should embrace and apply the basic professional standards, while sharing information on issues of broad social importance, by reporting in an accurate,ly, in a balanced and fair way, and as well as paying attention to the authenticity, relevancey, reliability and credibility of their writings. The journalists should practisce,***

[78]A businessman from Stip claims to have given Zaev a bribe of 39,000 euros. Alfa Tv. 10/17/2015 Available at: http://www.telegraf.mk/aktuelno/makedonija/273973-alfa-tv-biznismen-od-stip-tvrdi-deka-mu-dal-mito-na-zaev-od-39-000-evra

[79]Jankulovska filed a lawsuit of defamation and insult against Shilegov in September 2014 claiming to had been falsely accused publically of increasing her property, in apartments only, for 200,000 euros once she had entered the ministerial post in the Ministry of Interior.

[80] From the monitoring acitivities of NGO Info-Centre

[81] From the monitoring acitivities of NGO Info-Centre

*the owners should support and the editors should encourage investigative journalism on subjects of broad social importance, as a way for such that the media to realize their social function and ito increase their credibility, along with and the public's confidence, which will and thus augment their own income as well.*

*The media should invest (assets, time, technology and effort) in the further education of journalists and editors, not only on the matter of respecting basic professional standards of the vocation, but also on the techniques and methods of investigative journalism. The media should provide their journalists with legal and every other kind of protection, in order to allow them to inform the public in a professional and objective manner, while the journalists should make use of the existing legal provisions in order to achieve the same goal.*

*Journalists' associations and organizations should intensify their efforts in providing the conditions for journalists and other media professionals needed to perform their duties in a professional manner and free from fear and pressure. The Law on Civil Liability for defamation regarding definitions (harmonized with Article 10 of the ECHR) should be amended, and the same should be done with the Rules of Procedure for exclusion of cases of small value and use of mediation.*

## Right to Education

Especially worrisome in this area is the restriction of the right to education of minors in the penal institutions. Offenders from the Juvenile Educational-Correctional Facility in Tetovo, which is presently undergoing refurbishment, are currently housed in Ohrid Prison; however, there are no formal educational programmes. Some informal educational activities are taking place, which have been developed as a result of foreign donations. Within the context of these activities, juvenile offenders study the Macedonian language, mathematics, biology, music, art and physical training. These subjects are studied at a beginner's level, taking into consideration the fact that most juveniles are lagging behind in the matter of education. Actually, a significant percentage of them is illiterate, while very few have completed primary or secondary education (two out of 11). Additionally, these juveniles do not have a library at their disposal, i.e., literature that is available to read at any time.

*Formal education should be introduced in adult and juvenile correctional institutions as soon as possible. Until the introduction of formal education, the number of classes in which children attend should be increased through the introduction of additional subjects (human rights, life skills), so that the children can spend more quality time, such that the time they spend attending classes would be approximate to that they would be spending if they were free.*

## *Right to Property*

The policy of legalizing illegally built structures, which began to be implemented in 2011, deserves credit. Still, this process is unfolding too slowly. Furthermore, the worry remains that, in the implementation of the law dealing with illegally built structures, citizens are faced with many unresolved issues regarding property in which illegal objects are located and on which the outcome of such developments depends. The Roma population is particularly faced with a host of issues, which influence the settling of the status of illegal objects in the environment in which they live. The land where their objects are built is often not part of urban planning projects or the part of the city where a Roma settlement is located, as envisaged as a part of the green belt, which is not meant for individual housing. This means that the legalization of such objects is at issue. To this end, the Municipal Council should make a decision whether those objects are going to be included in the urban planning documentation. The Municipalities, on the other hand, do not change the general and detailed urban plans for these areas on account of an alleged lack of finance, which directly affects most of the Roma community's pursuit of legalization. Furthermore, the attempts to solve numerous previous issues, which are not synchronized with the legalization procedure, results in the failure to implement the law. Due to unsettled proprietary relations, the Municipalities still hesitate to finalize the procedure of the object's legalization, but only on the basis of a notary-certified statement that the petitioner has been using the construction land for more than 20 years.

***The application of the law dealing with illegally built structures should be standardized, while complementary policies, on which legislative implementation depends, should be effectively applied. The Agency for Real Estate Cadastre of the RM should intensify its efforts to procure urban planning documentation for illegal structures built on land, which, according to current urban planning documentation, is either intended for traffic roads and green belt or is not part of the urban planning programme.***

## *Gender Equality and Women's Rights*[82]

The amendments and supplements to the legislation on equal opportunities imply the existence of a standardized model for reporting on the application of the laws by local and state authorities. Still, the level of implementation cannot be assessed because the local and state authorities' reports on the application of such legislation on equal opportunities by the Ministry of Labour and Social Policy (MLSP) are not available to the public. A limited number of municipalities has a policy on gender equality, although reporting on the implementation of legislation on gender equality and policy is very restricted.

The Department for Equal Opportunities (DEO) of the MLSP lacks the appropriate resources (human, technical and financial) needed to advance gender equality. Institutional reforms are required in order to strengthen the DEO's position within the context of gender-based

[82]In this section, the data and the conclusions of the Gender Equality Platform were used: http://rodovaplatforma.mk/.

mechanisms, as well as increase its competences, so that it can fulfil its mandate. The lack of political will results in a deficit of financial, human and technical resources in implementing the Gender Equality Strategy 2013-2020. Although the National Action Plan ends in 2015, there is presently no information available on preparations for a new iteration.

The Parliamentary Committee on Equal Opportunities fails to make use of the possibility to monitor the implementation of legislative requirements pertaining to equal opportunities. The result is that nobody pushes on the integral implementation of the adopted conclusion on harmonizing the reports, which are concerned with implementing the Gender Equality Strategy 2013-2020, with departmental priorities, measures, indicators and financial implications. Furthermore, the 2015 session of the Committee on the Country's Development on the subject of gender equality was not open to the public and civil associations. This practice should be changed during 2016, while the Committee should organize a public debate, on which the report on development in 2016 should be analysed from a gender perspective. Civil associations' full participation in this process should be ensured.

Women's participation in the labour market remains very low, despite the fact that the number of women with university diplomas is higher in comparison with the number of men with a university education. The rights of women workers remain poorly protected, especially so in the textile industry, where 82% of the employees are women, while only 9% of them are trades union members. Although the law relating to a minimum wage was adopted in 2012, it does not encompass the manufacturing, textile and leather industry, where the highest percentage of employees are women. These industries were granted a three-year adjustment period (2012-2014), but, in 2014, they were given an additional four years to adapt. Despite numerous protests by civil society, no discussions on changing this decision have been organized.

The mandatory written request for the termination of an unwanted pregnancy submitted to an appropriate health institution, along with mandatory biased counselling and a three-day waiting period (after the counselling) before the medical intervention commences, prevents women from exercising their right to receive a safe abortion. The content and manner of the mandatory counselling are prescribed by a rule book, although the process is conducted in a biased manner, with the intent to dissuade the women against terminating their pregnancy.

The insufficient number of gynaecologists and gynaecology clinics in the country, especially in the rural areas, prevents women from accessing appropriate health services. This results in an increased infant mortality rate and maternal mortality rate (the perinatal mortality rate in the RM is 14.3%, compared to EU rate of 5.2%). The finances allotted for infants and maternity health are being constantly decreased and regularly reallocated for other purposes, while the reporting process on their flow remains non-transparent. In November 2015, the Ministry of Health announced new measures, which were supposed to ensure that all women would be provided with free gynaecological services during their pregnancy. Although a proper assessment of this measure's effects still cannot be given, early reports

indicate selective implementation and limited reach. The Health Insurance Fund does not cover the contemporary contraception methods, which places additional burden on women in the areas of reproductive health protection and family planning.

The inefficient protection of women from domestic and other forms of gender violence continues. During 2015, five new cases of femicide – i.e., the murder of woman by a current or former spouse or intimate partner – were recorded. One of the most brutal homicides occurred in October 2015, when a women was murdered by her husband with an axe. In its bulletin of daily events, the MOI cited disrupted family relations as the cause of the homicide, while unofficial sources claim that the event was preceded by a heated argument. Only two days later, the media reported on an event, which took place in Kochani, where a man had committed suicide by hanging; the previous night, the man had physically harassed his wife and stabbed her in the arm with a knife.

These two events are merely a continuation of the numerous incidents of gender-based and/or domestic violence ending in deadly consequences in the last two years. For instance, in May 2015, an elderly lady was found dead in her Skopje home, within the Przino settlement, with visible traces of violence. The prime suspect in this crime was her son. In January, a pregnant woman was killed at the Paediatric Clinic in Skopje, and then thrown from the roof by the perpetrator.

These kinds of event are worrisome, especially considering the fact that the state neither provides special protection in relation to various kinds of gender-based violence, nor keeps distinct records of femicide cases. As a consequence, it may be concluded that the state still fails to fulfil minimum standards, which should be guaranteed in order to procure efficient protection from violence against women. In the absence of appropriate reactions by the Police and the Centres for Social Work, the limited number of shelters for victims of domestic violence, the absence of shelters for victims of sexual violence and the absence of multilingual helplines are just part of the systemic problems, such that it may be concluded that the state does not fulfil the conditions for providing appropriate protection for those women who are victims of gender-based violence. With regard to protection against gender violence, it is important to note that the RM has not yet ratified the Istanbul Convention, nor has it clearly defined and regulated crimes related to gender-based violence. These conditions have been set down by the Istanbul Convention, which is the first all-encompassing international document on protecting women against violence. Although the RM is a signatory of the Istanbul Convention, it still has not ratified it.

***By the end of 2016, an independent evaluation of the implementation of the current Action Plan should be drafted, with the aim of identifying the challenges and weaknesses in the implementation. This could be a significant step in the drawing up the new Action Plan. In the preparation of the new Action Plan, full participation of civil organizations should be ensured.***

***Of utmost importance is the introduction of essential changes in the legal framework for victims' protection, followed by improving the conditions in shelters, as well as improving the professional and appropriate responses by police officers, the Centres for Social Work and courts, which are obliged to protect victims.***

# Procedural Safeguards

## *Liberty and security*

In February 2016, the SPP's Office opened an investigation procedure and proposed the detention of several individuals (including former Ministers of the Interior and Transport, members of the State Election Commission (SEC) and judges of the Administrative Court) for crimes against elections and voting, arising out of illegally wiretapped materials. All proposals were refused by the Basic Court in Skopje 1.[83] The refusal to impose detention by the court set a precedent because, in the previous three years, the Court did not refuse a single detention proposed in relation to any case of organized crime put forward by the Public Prosecutor's Office for Organized Crime and Corruption.[84]

In defiance of the decisions regarding the cases initiated by the Special Public Prosecution, the Court imposed house detention measure on four participants in the protests against the decision for pardon by the President of the Republic of Macedonia (see: Freedom of assembly and association).

Such inconsistent practice of the Courts regarding detention policy clearly indicates selective justice and actual serious influence of the government on the judiciary.

***Change of prosecutorial and judicial practice regarding detention is necessary for consistent application of the Code of Criminal Procedure.***

[83]Announcements made by the Basic Court in Skopje 1 in relation to the demands and decisions to impose the measure are available at: http://www.osskopje1.mk/Novosti.aspx.
[84]Annual reports on the work of the Public Prosecution Service in the RM for 2012, 2013 and 2014 are available from: http://jorm.gov.mk/?page_id=31.

## Protection of Minorities and Cultural Rights

Over the last 15 years, the Ohrid Framework Agreement (OFA) showed its potential as a framework for a functional multi-ethnic democracy. Nevertheless, deepening of mutual understanding between different communities and building of a cohesive society remain enduring challenges.

Over the time, there was a significant but, since recently, delayed improvement of the equitable representation.[86] In a study done by the EPI,[87] findings suggest that the perception of ethnic groups that are in the worst position in terms of equitable representation in the institutions, is as follows: the Roma are in lead position (37.6%), however, the next in line are the Albanians (19.3%). Equitable representation is increasingly seen as a monopolized process relating only to the Albanian community, marginalizing smaller communities. Despite the perceived benefits of the implementation of equitable representation, serious obstacles were identified. These obstacles are primarily related to the politicization of the administration, the commitment of managers, the problematic employment and recruitment procedures with inadequate monitoring mechanisms and sanctions, as well as the lack of basic working conditions and budgetary constraints.

The dominant view is that the implementation of the principle largely depends on the ethnicity of the head of the institution. Both at central and local level, the implementation of the principle was not called into question in institutions run by Albanians. Moreover, these institutions have reached a satisfactory level of representation. However, the need to meet the legally determined level of equitable representation in the institutions run by people with Macedonian ethnicity is recognizable.

The view of the administration employees themselves is that political party membership card comes before merit. They also consider that departization of institutions is necessary. Party employments arise as the biggest problem and there is a trend of employment without prior evaluation of the need for employment and profile of employees. The need for full implementation of the merit system complying with the principles of competence and integrity is emphasized. Therefore, there is a need for finding mechanisms to overcome political manipulation of laws, especially in the part of recruitment procedures, as well as effective implementation of the Methodology for Equitable Representation.

Furthermore, researches suggests that there is some segregation in the workplace in the sense that the divisions and units within the state administration are ethnically diverse, but diversity is expressed mostly through the numbers in the total number of divisions and units). However, not all departments, divisions and team, even institutions, are of mixed ethnicity.

[86] Reports of the Ombudsman, the Secretariat for Implementation of the Ohrid Framework Agreement, the Ministry of Information Society and Administration

[87] Ristevska Jordanova, M., Ardita Abazi-Imeri et all, "Life and Numbers - Equitable Ethnic Representation and Integration at the Workplace", European Policy Institute, March 2016, Skopje http://epi.org.mk/docs/Life%20and%20Numbers_MK_Final%20version.pdf

The principle of equitable representation applies to the entire public sector at all levels, including public enterprises, showing particularly dramatic under-representation of communities.[88] However, no data is available for equal representation in such enterprises. OFA Review on Social Cohesion recognizes the need to expand the application of equitable representation of privatized former public enterprises or large companies of national importance, given that it represents a fundamental value of the constitutional order. [90]

Employment process thus far ignores the merits of multilingual workforce and the benefits of an administration composed of administrative officers who can directly communicate with citizens in the official languages. Multilingual personnel could potentially have a positive impact on the integration of the workforce and the efficiency of the administration serving the citizens of Macedonia. OFA Review on Social Cohesion found that in the process of appointment and promotion, knowledge of another official language in Macedonia is given less importance to a foreign language, thus omitting an important opportunity to promote and value the language diversity in the country.[91] Learning the language of other ethnic communities is seen by employees in the administration themselves as an activity which should contribute to greater integration.[92] Findings show that the majority of employees would attend a course to learn the language of other ethnic communities.[93] Furthermore, perceptions of greater integration is that it will be achieved through education.

Segregation in the education system for many years was manifestly or latently supported in order to avoid conflicts between students of different ethnic groups. However, as a consequence of this separation, stereotypes and prejudices against the other strengthened among the two largest ethnic groups. Almost a decade after the adoption of the OFA, recognition of the failure of the education system in terms of the development of social cohesion between culturally diversified groups started to manifest.[94]

When it comes to measures and activities relating to promotion of integrated education in the country, regardless of the adopted strategy by the relevant ministry, it is important to note that most of the initiatives on the issue come from joint activities of international organizations and civil society organizations while the commitment of institutions is negligible.[95]

There is a need of a comprehensive discussion on the Review of the implementation of the Ohrid Framework Agreement and its recommendations aimed at reaching an agreement on political level to build a cohesive society.

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[88] Http://www.siofa.gov.mk/ OFA Review on Social Cohesion p. 27

[89] At the end of 2015, a review of the implementation of Ohrid Framework Agreement in the context of social cohesion was prepared. This document was supported by the OSCE Mission in the country and the European Institute for Peace and prepared by the Secretariat for Implementation of the Ohrid Framework Agreement. The report is not made available to the Macedonian public, but the European Institute of Peace on its website integrally published the full analysis http://eip.org/sites/default/files/OFA%20Review%20on%20Social%20Cohesion.pdf. Although the Deputy Prime Minister at the time, Musa Xhaferi, informed that the conclusions of the review will be discussed at an international conference, this did not happen. In his response to VMRO-DPMNE, he disputed that government commissioned the analysis, arguing against further review of the findings after which the government stopped the procedure for reviewing the document.

[90] http://eip.org/sites/default/files/OFA%20Review%20on%20Social%20Cohesion.pdf

[91] Http://www.siofa.gov.mk/ OFA Review on Social Cohesion

[92] Ristevska Jordanova, M., Ardita Abazi-Imeri et all, "Life and Numbers - Equitable Ethnic Representation and Integration at the Workplace", European Policy Institute, March 2016, Skopje http://epi.org.mk/docs/Life%20and%20Numbers_MK_Final%20version.pdf

[93] 76% of respondents would attend a course for learning the language of other ethnic groups, compared to 14.8% who would not use this opportunity.

[94] B. Bakiu, M. Dimitrovska, A. Brava., How to achieve integrated education in Macedonia European Policy Institute - Skopje, Skopje, 2016http://epi.org.mk/docs/D4V_Social%20cohesion_mk.pdf

[95] Ibid.

*A comprehensive debate on the Review on the Implementation of the Ohrid Framework Agreement and its recommendations, aiming at achieving consensus on political level would contribute to building a cohesive society.*

*Measures are needed to achieve the legally projected level of representation in all institutions and at all levels, including leadership positions in institutions. It is necessary to hasten the pace and to increase the representation of less numerous communities in public administration at central and local levels. In addition, a comprehensive mechanism needs to be established to monitor and implement the Methodology for Workforce Planning as well as measures for sanctioning its inadequate implementation.*

*A system for monitoring the implementation of language policies at central and local level needs to be established in order to identify and adequately address the deficiencies therein.*

## Measures against Racism and Xenophobia

In the period from 1st January to 31st December 2015, the Helsinki Committee noted a total of 44 hate-related acts. Verified and unverified incidents are available from www.zlostorstvodomraza.mk. In comparison with the incidents noted in 2013 and 2014, what differs most is the identity of the victims, most of whom are refugees. Twenty-one of the 44 incidents (48%) in 2015 are related to robberies against refugees during their transit through the country. At least 58 victims of those incidents (46% of all registered victims) were citizens of Syria, Afghanistan and Morocco. Another significant, but this time positive, difference is that the number of incidents on account of the victim's or the perpetrator's (Macedonian or Albanian) ethnicity has decreased. These incidents in 2013 comprised 84% of all incidents (98 out of 116), while in 2014 this figure was 61% (53 out of 87). During 2015, only 15 incidents (34%) between ethnic Macedonians and Albanians were noted.

Most of the hate crimes were perpetrated by thugs and youngsters. The most commonly perpetrated criminal offences have been robbery (23) violence (21), battery (17) and the destruction of property (6). Most of the incidents took place in Skopje and its vicinity (18), while 10 incidents occurred in Gevgelija and six in Kumanovo. Hate crimes against refugees usually occurred along the highway that forms a part of Pan-European Corridor X. At least 125 victims and 174 perpetrators of hate crimes were registered. The majority of the victims are refugees and youngsters of Macedonian or Albanian ethnicity. In 33 out of 44 incidents, the perpetrators acted in a group. According to the written reports of the MOI, the Police identified the perpetrators in at least 20 incidents. In the case of another 20 incidents, the Police was alerted and these cases remain under investigation.

By the end of 2015, a working group composed of members from state, academic and NGO institutions drew up draft amendments to the Criminal Code, with the aim of more precisely defining hate crimes and strengthening the sanction policy toward the perpetrators of such crimes. The draft amendments were submitted to the Ministry of Justice, but were not in turn proposed to the Assembly of the RM for adoption. Although the Academy of Judges and Public Prosecutors increased the amount of training in this area, there was only one trial for hate crimes in 2015 on the national level, which took place in the Basic Court in Struga.[96]

[96] K. no. 227/14.

During 2015, the Helsinki Committee's Web-based platform (www.govornaomraza.mk) rreceived 33 notices about cases of hate speech, of which 26 were verified. The most prominent causes of hate speech in the reported cases were in relation to sexual orientation, gender identity, ethnicity, religious belief and political affiliation. Hate speech is most prevalent on social networks, although its presence on internet portals, i.e., Internet-based media, is not lagging far behind. Worrisome is the fact that hate speech is increasingly more present in news articles and the content on internet media, which undermines the ethical standards and principles of journalism, as confirmed by numerous decisions by the Council of Media Ethics.[97]

Despite the increased frequency in the occurrence of hate speech in daily life and the public sphere, a relatively low number of reported events of hate speech is noticeable. The failure to report such cases may be explained by one of two factors. The first one is the non-recognition of hate speech and its basic elements, as well as citizens' inability to clearly discern the reasons behind hate speech. Alongside this, citizens' lack of acquaintance with institutions' competences and their obligations to act in relation to cases of hate speech should be pointed out. The second, far more important, factor involves the small number of cases when the Public Prosecutor's Office actually pressed charges on account of hate speech, as well as the low, almost non-existent, number of convicted and punished persons who used hate speech. In other words, during 2015, out of the 21 Basic Courts that replied to the Helsinki Committee, only the Basic Court in Skopje 1, on one occasion, conducted any criminal procedure on account of the offence stipulated in Article 417 of the Criminal Code (racial and other discrimination), on the basis of hate speech.[98]

***The Public Prosecutor's Office and the Courts are obliged to show zero tolerance towards hate crimes and hate speech, as well as duly prosecute and convict the perpetrators of such offences, within the context of their competences. Public figures and high-ranking political representatives must restrain themselves from using hate speech, as well as condemn such practices. The ethical and professional standards of journalism should be respected by any means. This step will preclude the usage of hate speech in the media space.***

[97] Decisions and opinions of the Appeals Committee of the Council of Media Ethics of the RM: http://semm.mk/komisija-za-albi/odluki-i-mislenja

[98] The Helsinki Committee submitted requests for access to information about public character to all of the 27 Basic Courts in the RM; responses were only received from 21 of them.

## Personal Data Protection

During 2015, the Directorate for Personal Data Protection (DPDP) received a total of 393 complaints and authorized 394 inspection supervisions. This information confirms a decrease in the number of inspection supervisions in comparison with the previous year. In other words, the Directorate executed 10 supervisions fewer. After asking about how many times the DPDP performed supervisions on its own initiative, we were told that, in this regard, special plans are being drafted and that supervisions are being executed in relation to the relevant areas.

Nevertheless, the DPDP decided to execute an extraordinary inspection supervision, on its own initiative, in relation to the SEC, on account of the release of the electoral roll data on the latter's website. In this case, the DPDP adopted a decision, in which it forbade the SEC "to provide electronic access to the personal data on the electoral roll published on the website https://izbirackispisok.gov.mk". In this regard, the DPDP cited the fact that, according to the Electoral Code (Article 55, Paragraph 1), it is assumed that personal data on the electoral roll are protected by law and that they must not be used for any reason other than facilitating citizens' right to vote. In another interim decision, the DPDP forbade the SEC to reveal personal data of natural persons, claiming that, "The SEC has no legal basis to… [release] personal data of ordinary persons". Both decisions were published as a result of the electoral roll databases being cross-checked, as well as on the suspicion that there are huge numbers of so-called "phantom voters". The SEC, during a public session, decided to act in accordance with the Directorate's decisions. At the same time, however, the SEC announced that it would lodge an appeal to the Administrative Court of the RM.

***The Directorate for Personal Data Protection should be involved more actively in the protection of citizens' privacy and personal data.***

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Public Prosecution of RM:www.jorm.mk
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Secretariat for Implementation of the Ohrid Framework Agreement: www.siofa.gov.mk
Ministry of Justice: www.pravda.gov.mk
Ombudsman of RM: www.obmudsman.mk
Agency for Audio and Audiovisual Services: www.avmu.mk
Council of Media Ethics of Macedonia: www.semm.mk

## *Platforms:*

MERC: www.merc.mk
Gender Equality Platform: http://rodovaplatforma.mk/
Platform for Fight against Corruption: www.mcms.org.mk

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