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Kingdom of the Netherlands

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## PREFACE

The “youngest” chapter - Chapter 23: Judiciary and Fundamental Rights - has become the key to EU accession, a catalyst of the accession process. With its introduction (back in 2005), political criteria were introduced into the EU membership negotiations. Along with Chapter 24: Justice, Freedom and Security, they comprise the “rule of law” axis of the EU Enlargement Strategy and the foundation for the “New Approach” in the EU membership negotiations. These are the chapters that are first to open and last to close with every country negotiating for EU membership at present. For those who are not negotiating, the content of Chapter 23 is becoming an increasingly important condition for further progress in the EU integration. In any case, their essence is adoption of the European democratic standards prior to membership.

The Republic of Macedonia, which used to be the regional leader in the introduction of the European democratic standards in the region, is now, unfortunately, lagging behind. Instead of a “lesson learned”, Chapter 23 for us has already become a “lesson repeated”.

At the time of publishing of this publication, the Republic of Macedonia is facing one of the most difficult crises in its history. The continual interference of the executive power with the other state authorities and institutions has led to a drawback in the development of the democratic standards, including the exercise of human rights. The principle of separation of powers is not complied with and the ruling parties have exerted control over the state institutions. The integrity of the institutions is severely marred. The direct interference of the executive power damages the independence of the judiciary. Apart from this, the system of checks and balances, although embedded in the Constitution and the laws, is also seriously marred.

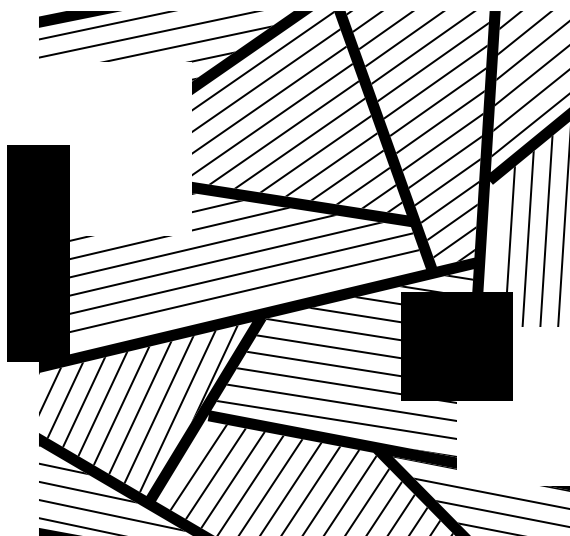
This negative development has often been ascribed to the blocked Euro-Atlantic perspective of the Republic of Macedonia. Until recently, the dominant narrative of the European integration emphasized the perspective of EU membership as a key incentive for changes in society,

which would provide increased freedom, equality and justice. Nowadays, sustainability is increasingly emphasized - society's capability to preserve and develop democratic values. This is not possible without an alert and strong civil sector, which would stimulate active citizenship and open dialogue.

This publication is a contribution towards the effectuation of the role of the civil sector as a vigilant assessor and corrector of the Government's policies in the areas covered by Chapter 23 - Judiciary and Fundamental Rights. It is an overview by civil organizations on the exercise of the European democratic standards in the Republic of Macedonia, based on structured monitoring and evaluation of policies. At the same time, this analysis is the start of the “shadow report” on Chapter 23, which will be published every year. We do hope that its findings and recommendations will be of help in finding the way towards protection and development of democratic values, as they are guaranteed with the Constitution of the Republic of Macedonia.

At the same time, the release of this publication is also an open invitation for a continual public dialogue with the representatives of all three branches of authority in the Republic of Macedonia, as well as the inclusion of other civil organizations who are willing to contribute towards exercising the watchdog role of the civil sector over the government and stimulating active citizenship.

The analysis has been prepared within the Network 23 project, financed by the European Union within the Civil Society Facility programme for 2013.



# INTRODUCTION

The main goal of the Network 23 project, which was implemented by the European Policy Institute Skopje, the Helsinki Committee for Human Rights of the Republic of Macedonia and the Center for Change Management, was a structured contribution of the civil society towards the monitoring and assessment of the policies covered by Chapter 23: Judiciary and Human Rights.

Through the project, in a transparent way, 10 grants were awarded to other civil associations that conducted research and other activities as a contribution towards effective monitoring and assessment of the policies covered within Chapter 23 from the EU accession.

A Methodology for Monitoring and Evaluation of Policies in the Area of the Judiciary and Fundamental Rights was prepared and published, which was designed to aid the advocacy of policies by the civil sector to be well-grounded in evidence and arguments.

Finally, the Project resulted in the creation of a Network of civil organizations - Network 23, the founders of which are eleven civil associations. The network adopted its Strategy and Code. The network's mission is to become a relevant participant in the creation and monitoring of evidence-based policies, in the area of the judiciary and fundamental rights, by stimulating active citizenship.

## The Network founders are:

Civil Association for Equal Opportunities "Equal Access"  
- Skopje

Association of Finance Workers of the Local Government and Public Enterprises of the Republic of Macedonia - Veles

NOVUS Association - Strumica

Association Ploshtad Sloboda (Freedom Square) - association for activism, theory and art - Skopje

European Policy Institute - Skopje

Institute of Human Rights - Skopje

Coalition Sexual and Health Rights of Marginalized Communities - Skopje

Coalition All for Fair Trials - Skopje

NGO Infocenter - Skopje

Helsinki Committee for Human Rights of the Republic of Macedonia - Skopje

Center for Strategies and Development PAKTIS - Prilep

This analysis is one of the key results of the Network 23 project. In fact, it is the first "shadow report" of the Macedonian civil organizations about the state of affairs in the areas covered within Chapter 23 from the EU accession - Judiciary and Fundamental Rights.

The Analysis follows the structure of Chapter 23 for the EU accession negotiations. Even more importantly, the analysis is striving to provide a response to the status in the Republic of Macedonia with regards to the requirements of the *acquis*, including the EU standards and best practices. Although the Republic of Macedonia has not started the negotiations yet, the structure and content of the Chapter was the basis for alignment with the EU standards and practices ever since the introduction of the Chapter in 2005 and was deemed essential since the very start of the EU integration process, when the content of this chapter was part solely of the political criteria. This is also the structure followed by the reports of the European Commission on the progress of the Republic of Macedonia, as well as the National Programme for adoption of the *acquis*.

A crucial challenge, rightfully recognized as such, was to examine the practice, as opposed to the norms. It was exactly because of this that we insisted that the findings be supported by evidence and arguments and be methodologically well-grounded. The project findings are a result of conducted research, whereby several methods were employed: public opinion canvassing, monitoring, interviews, case studies, legal analyses, cost-benefit

analyses, etc. All the organizations that contributed to this analysis relied on the prepared Methodology for monitoring and assessment of the policies in the area of the Judiciary and Human Rights, the trainings and mentoring conducted. Furthermore, their findings were presented at public discussions, which led not only to their dissemination, but also verification.

The analysis incorporates the findings of the partnering organizations in the project, which were based on the regular and structured monitoring of these organizations and the events related to Chapter 23. Moreover, the findings from the regular monitoring of court cases conducted by the Helsinki Committee of Human Rights of the Republic of Macedonia, as well as the monthly reports by the Committee on the situation regarding human rights in the Republic of Macedonia proved to be particularly useful.

The analysis also incorporates the findings of the projects implemented by the civil organizations that were awarded grants within this project:

- Institute of Human Rights: Independent Court Council - Aspirations and Challenges
- Coalition All for Fair Trials: Monitoring of the Implementation of International Standards for Fair Trial
- NOVUS Civil Association: Independence and Impartiality of the Judiciary in the Municipality of Strumica in line with Chapter 23 - Incorporated Tenets or a Challenge for Reforms
- Association of Financial Workers of the Local Government and Public Enterprises (AFW): Tracing the Sources of Funds for Financing of the Judiciary, the Amount of the Provided Funds and their Impact on the Independence of the Judiciary in the Republic of Macedonia
- Association Center for Strategies and Development PAKTIS Media: System of Alternative Measures with Special Overview of its Implementation in the Municipality of Prilep
- NGO Infocenter: Is There Freedom of Expression in Macedonia?

- Independent Union of Journalists in Macedonia: (Dis) respect for Workers' Rights in the Media
- Coalition "Sexual and Health Rights of Marginalized Communities": Analysis of the Mechanisms for Protection against Discrimination of Marginalized Communities on a Local Level: Municipality of Bitola, Municipality of Strumica and Municipality of Centar
- Civil Association for Equal Opportunities - Equal Access: Analysis of the Implementation of the Law on Free Legal Assistance, including a cost-benefit analysis for its implementation, with special emphasis on the gender aspect
- Ploshad Sloboda Association - Association for Activism, Theory and Art - Skopje: *The Skopje Streets and Citizens' Fundamental Rights*

The projects included research in one or more municipalities in the Republic of Macedonia. The surveys and discussions in the field, among the stakeholders, and more broadly, the citizens, were of particular significance.

The analysis also made use of findings of international reports, to the extent that it was necessary, in order to present the wholeness and complexity of the monitoring and reporting on these areas.

The project also enabled the creation of the online tool MERC MK-EU Resource Center on Chapter 23.<sup>1</sup> The idea was to put all the relevant sources and documents on Chapter 23 in one place, which would significantly facilitate research. At the same time, the tool will make it possible for Network 23, as well as all civil associations, to have more extensive and more structured outlet for their contributions to the content covered by the Chapter.

### **Chapter 23 is structured in three major areas:**

- Judiciary;
- Prevention and Fight against Corruption;
- Fundamental Rights.

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1 merc.org.mk



The emphasis is placed on the Judiciary and Fundamental Rights, although the area of Prevention and Combating against Corruption is also covered. The reason for this is that the selected projects were mainly in these fields, along with the fact that other networks are already providing significant contribution to this area.

The analysis is structured in three chapters:

- The content of Chapter 23;
- Judiciary;
- Fundamental Rights.

The Chapter - *Content of Chapter 23* - briefly presents the *acquis*, including the standards and the best practices, in the same way that it is presented in the screening of the *acquis*, as the first stage in the membership negotiations, when the level of the country's alignment with the *acquis* is being established. Although the Republic of Macedonia has not started the negotiations process, the same standards apply to it as a starting point for the monitoring and assessment by the EU institutions, as well as the outlining of the NPAA. This chapter was prepared by Aleksandar Jovanovski M.A., from the Institute of European Policy, and Neda Chalovska M.A., from the Helsinki Committee for Human Rights of the Republic of Macedonia.

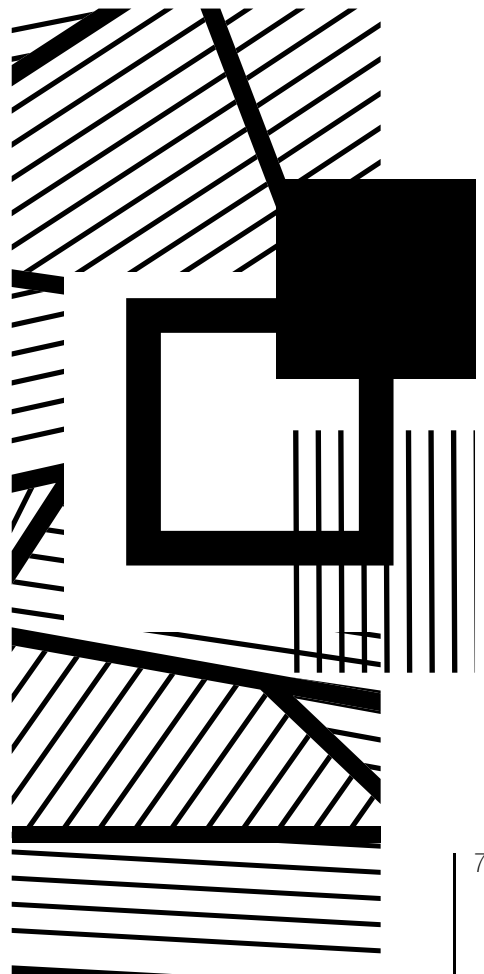
The Chapter *Judiciary* presents the main legal framework in the Republic of Macedonia and the key part is dedicated to the analysis of the situation with regards to the standards in the areas of: independence, impartiality, professionalism and competence. This is followed by conclusions and recommendations. The author of this chapter is Neda Chalovska M.A., from the Helsinki Committee for Human Rights.

In the Chapter on Human Rights there is special emphasis on the analysis of those rights, the protection and compliance with which were most relevant and on which the Network had conducted corresponding research procedures. It is followed by conclusions and recommendations. This part was authored by Jasmina Golubovska M.A., from the Helsinki Committee for Human Rights of the Republic of Macedonia.

Special attention was paid to the Chapter on Procedural Rights. Dr. Voislav Stojanovski from the Helsinki Committee for Human Rights of the Republic of Macedonia conducted an in-depth analysis of the compliance of the legal framework of the Republic of Macedonia with the corresponding EU directives, as well as practice, greatly relying on the findings of the conducted monitoring of court cases. Special conclusions and recommendations on the content of this chapter are provided.

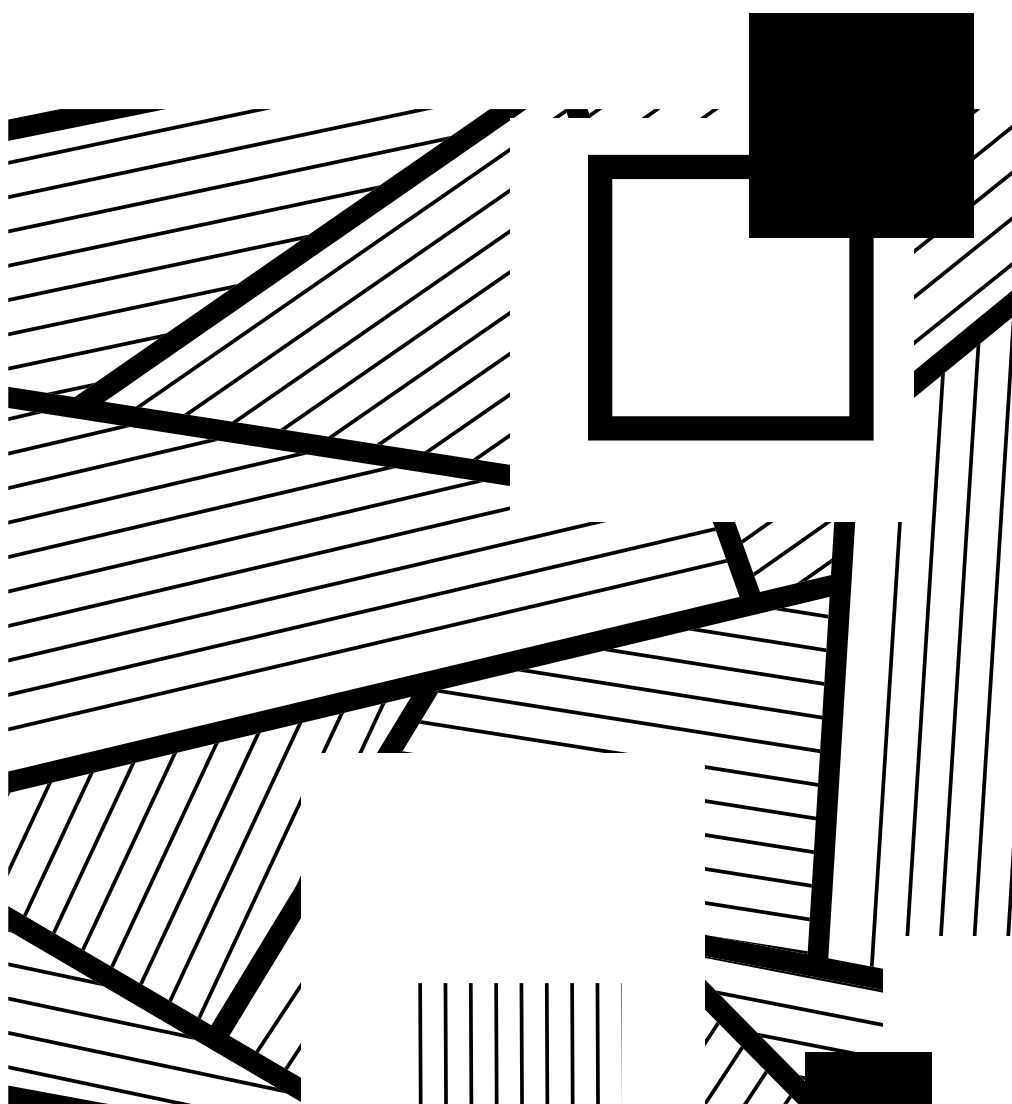
This is the first attempt at a "shadow report" on Chapter 23 in the Republic of Macedonia and it will prove worthy in future if it stimulates and incorporates as many relevant findings by the civil sector in the Republic and contributes towards a substantial dialogue between the authorities and the citizens. Therefore, all constructive criticisms, remarks and proposals are welcome.

Malinka Ristevska Jordanova Ph.D.



## List of abbreviations

GRECO	Group of States against Corruption
ECHR	European Convention on Human Rights
EU	European Union
CPT	European Committee for Prevention of Torture and Inhumane or Degrading Treatment or Punishment
OECD	Organization for Economic Co-operation and Development
OUN	Organization of the United Nations
OOA	Orthodox Ohrid Archbishopric
CE	Council of Europe
JCRM	Judicial Council of the Republic of Macedonia



## CONTENT OF CHAPTER 23

The chapter content is presented according to the available documents from the screening of the *acquis* of the states that went through this process most recently (Serbia and Montenegro), as well as the reports of the European Commission.

The content of Chapter 23: Judiciary and Fundamental Rights is based on Article 2 from the Treaty on the European Union, which calls for the principles of human dignity, freedom, democracy, equality, rule of law and protection of human rights. These are shared principles by all the countries in the EU and at the same time they are binding for the membership candidate countries. Article 3 (2) from the Treaty on the European Union and Article 67 (1) from the Treaty on the Functioning of the European Union lay down the areas of freedom, security and justice. The EU policies in the area of the judiciary and fundamental rights have the goal to maintain and enhance the Union in those areas.

### Judiciary

The rule of law and right to a fair trial which are incorporated in Article 6 of the European Convention on Human Rights and Article 47 from the Charter of Fundamental Rights of the European Union serve to point out that the judiciary must be independent and impartial. The requests in this respect refer to the countries' dedication to remove external influences on the judiciary and invest in adequate financial resources and training. The legal procedures and guarantees for fair trial must be complied with in their entirety.

The EU standards in the area of the judiciary also rely on the standards established in the documents of the UN and in the "soft law" of the Council of Europe.

The most significant standards from the UN documents are:

- The Universal Declaration of Human Rights, which stipulates in Article 10 that everyone is entitled in full equality to a fair and public hearing by an independent

and impartial tribunal, in the determination of his/her rights and obligations and of any criminal charge against him/her;<sup>2</sup>

- The International Covenant on Civil and Political Rights<sup>3</sup>, which stipulates in Article 14 that all persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him/her, or of his/her rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law;
- The UN General Assembly established a set of standards in 1985 known as the Basic Principles of Independence of the Judiciary, which demand from the judges to both individually and collectively comply with the functions of the judiciary and strive towards strengthening and preserving the trust in the judiciary and enable the judges to have full authority to act without any pressures and threats, and to be adequately paid and trained to perform their duties.<sup>4</sup> Apart from this, the UN Human Rights Commission adopted the Bangalore Principles of Judicial Conduct.

A key European document is the European Convention on Human Rights (ECHR), in which the rule of law is laid down as a cornerstone of the convention as a whole. The signatories must guarantee that in the determination of a person's civil rights and obligations or of any criminal charge against them, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.

A line of documents have been adopted within the Council of Europe (CoE) containing principles of the judiciary, judges and public prosecutors:

- Recommendations of the Council of Europe CM/Rec (2010)12 from the Committee of Ministers to member states on judges: independence, efficiency and responsibilities;

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2 The full text of the Declaration is available at the following link: <http://www.un.org/en/documents/udhr/>

3 The full text of the Covenant is available at the following link: <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

4 The basic principles of independence of the judiciary are available at the following link: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/IndependenceJudiciary.aspx>

- Recommendations of the Council of Europe Rec (2000)19 on the role of the public prosecution in the criminal justice system;
- European Charter on the Statute of Judges (1998);
- Magna Carta of Judges (fundamental principles) (2010);
- European guidelines on ethics and conduct for public prosecutors (The Budapest Guidelines adopted at the Conference of Prosecutors General of Europe on 31 May 2005).

In line with these standards, the Chapter 23 accession requirements in the area of the judiciary had been set:

**The independence of the judiciary** is observed as external and internal. The external independence establishes the relationship between the independence of the judges and principles of equality of the citizens before the law. Its key aspects are the constitutional separation of powers and media relations. The internal independence presupposes the independence of each individual judge in the exercise of his/her function, without any restrictions, improper influences, pressures, threats or interferences, from any authority, including authorities within the judiciary, in the adoption of decisions.

The primary focus is on the position of the profession of a judge and a prosecutor, the duration of their mandates and clear and transparent rules for selection, promotion and dismissal. In this context the position, structure and functioning of the Judicial Council and the Council of Public Prosecutors is of crucial importance. The administrative capacities and adequate budget independence are the key prerequisites to providing sustainable and long-term results from the reforms implemented in the judiciary.

**Impartiality and accountability** implies acting professionally on cases and delivering the profession with integrity. Conflict of interest needs to be prevented, along with appropriate exemption rules. The case assignment system - by random choice or fixed order - is also significant, as are the rules for revocation of cases. Compliance with the codes of ethics on the part of the judges and public prosecutors is also relevant for this area. According to the

standards of the Council of Europe, the disciplinary liability of judges shall be free from internal or external influences, the acts which would be subject to disciplinary liability shall be clearly defined, the procedures implemented according to set rules, the right to appeal needs to be provided and the decision-making authorities should be subject to liability.

In the area of **professionalism, competence and efficiency**, a consistent training system for judges and public prosecutors is crucial. This implies a strong role of the Academy for Judges and Public Prosecutors and financial sustainability of the established system for continual learning and progress of the judges and public prosecutors. With regards to efficiency, the average duration of cases, the backlog of cases and the number of cases run for an extended period of time are important indicators. The integration of new ICT technologies, the monitoring of judicial statistics and the provision of electronic access to the national jurisprudence are also important elements that contribute to professionalism and efficiency in the judiciary.

Within the Council of Europe there are advisory bodies that establish the standards and monitor their implementation.

The Committee of Minister of the Council of Europe founded the **Consultative Council of European Judges (CCJE)**, as an advisory body with regards to the issues referring to the independence, impartiality and competence of judges. The goal, on the other hand, of the **European Commission for the Efficiency of Justice (CEPEJ)**, is the promotion of efficiency and the functioning of justice in the CoE member countries.

## Fight against Corruption

The EU member countries must ensure effective struggle against corruption, which poses a serious threat to the stability of the democratic institutions and the rules of law. Article 83 (1) of the Treaty on the Functioning of the European Union established the Union's competence to lay down minimum rules in defining criminal offences and sanctions in the area of corruption. The Convention on the protection of the European Communities' financial interests from 1995 and the subsequent Convention on Fight against Corruption which involves officials from the EU or from the member countries from 1997 are based on Article C.C (2,c) of the Treaty on the European Union. Thus the focus is also expanded to the public office holders in the European Community and in the member countries and effective, proportionate and dissuasive mechanisms for the fight against corruption are sought in the criminal laws. The Framework Decision from 2003 on preventing corruption in the private sector is also significant. In 2008, the European contact-point network against corruption was founded.

A sound legal framework and responsible institutions are the basic prerequisite in the creation of a coherent policy for prevention and eradication of corruption.

Political and institutional ownership is expected in the struggle against corruption and achievement of a higher level of coordination among the national institutions. Political and institutional guidance is followed along with the implementation of the national Strategy for Fight against Corruption and a successful track record of cases. In accordance with the new approach and content of the Chapter, the strategies need to provide horizontal coordination in the control of political activities of the Government (especially during the elections period), in the allocation of public finances, privatization and public-private partnerships, the judiciary, police, physical planning and construction, healthcare, education and sport, including the media. The administrative capacities of the institutions, independence in the procedures and adequate budget funds are the key indicators in this area. Furthermore, the work of the State Commission for Prevention of Corruption and the implementation of its recommendations are also systematically followed, especially when it comes to

prevention of conflict of interest and the verification of the declarations of assets of the public office holders. The control over the financing of political parties and electoral campaigns is also an important issue, along with the protection of the institution's whistleblowers regarding possible corruption and the horizontal cooperation with non-governmental institutions.

In the area of the international and domestic legal framework, the progress in the alignment with EU legislation and international instruments is assessed, including the Criminal Law Convention against Corruption and Civil Law Convention against Corruption of the Council of Europe, the UN Convention against Corruption, the UN Convention against Transnational Organized Crime, the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, as well as the transposing of the Directive 2014/42/EU on freezing and confiscation of instrumentalities and proceeds of crime in the European Union. Successful and sustainable implementation is of crucial importance.

The implementation of national legislation is particularly monitored when it comes to provisions on bribery, the specific provisions during the election process, fraud and misappropriation of public funds, money laundering, abuse of official position and authority, abuse of public procurement, etc.

The key mechanism in CoE in the fight against corruption is the **Group of States Against Corruption (GRECO)**<sup>5</sup>, founded in 1999 for the purpose of improvement of the members' capacity to combat corruption by monitoring their alignment with the CoE anti-corruption standards through a dynamic process of mutual evaluation.

Since its accession in 2000, Macedonia is subject to evaluation within the first (in December 2002), second (in October 2005), third (March 2010) and fourth (December 2013) round of evaluation by GRECO. The fourth round of GRECO evaluation, which started on 1 January 2012, dealt with "prevention of corruption in respect of the members of parliament, judges and prosecutors." By choosing

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5 More on the competences of GRECO is available on the following link: [http://www.coe.int/t/dghl/monitoring/greco/default\\_en.asp](http://www.coe.int/t/dghl/monitoring/greco/default_en.asp)

this topic GRECO opened a new area, emphasizing the multidisciplinary character of its jurisdiction. At the same time, this topic has clear links to the previous work of GRECO, especially the first round of evaluation, which put strong emphasis on the independence of the judiciary.<sup>6</sup>

## Fundamental rights

According to Article 6 of the Treaty on European Union and the case law of the Court of Justice of the EU, the Union shall respect fundamental rights as guaranteed by the Charter of Fundamental Rights of the EU. The guaranteeing and promotion of fundamental rights is a fundamental principle of EU law and is the result of the constitutional traditions common to the Member States. These principles are binding for the institutions of the Union in the exercise of their powers and the EU Member States in implementing Union law (Article 51 of the Charter of Fundamental Rights of the EU). The protection of fundamental rights covers traditional civil rights such as the right to life, prohibition of torture and degrading treatment, the right to freedom and security, the establishment of clearly defined restrictions on the use of detention, freedom of religion, freedom of speech and freedom of assembly and association. The European Union also guarantees the private life and protection of personal data in accordance with EU Directive 95/46/EC of the European Parliament and the Council on the protection of citizens concerning the processing of personal data and the free movement of such data. Framework Decision 2008/977 on the protection of personal data applies to the processing of personal data in the framework of police and judicial cooperation in criminal matters, and Directive 2002/58/EC refers to the processing of personal data and the protection of privacy in the telecommunications sector (Directive on privacy and electronic communications).

The EU legislation in the field of fundamental rights guarantees equality. There is a general prohibition of discrimination on several grounds, especially gender equality, while cultural, religious and linguistic diversity must be respected. Furthermore, the rights of the child are

in need of special protection. The content of these rights stems from the United Nations Convention on the Rights of the Child, which has been ratified by all member states. According to Article 21 of the Charter of Fundamental Rights of the EU, discrimination against persons belonging to national minorities is prohibited. The legislation in the field of fundamental rights contains a multitude of important legal guarantees.

In accordance with the Charter of Fundamental Rights of the EU, the level of protection of rights with the Charter may in no case be lesser than that of the European Convention for the Protection of Human Rights and Fundamental Freedoms. With the Lisbon Treaty, the European Union took on the obligation to accede to the Convention.

The European Convention for the Protection of Human Rights and Fundamental Freedoms provides compliance by the signatory states with the rights and freedoms established in the Convention, including the Republic of Macedonia, as well as effective control in case of their limitation. The European Court of Human Rights (ECtHR) was founded in order to ensure compliance on the part of the signatories with the obligations under this Convention and its protocols, and it puts particular emphasis on compliance with the rule of law in the signatory states. In fact, the rulings of ECtHR that indicate violation of rights of citizens upon previously filed appeal to the court need to be implemented by the signatory states in such a way that, besides the damage compensation that needs to be paid to the victim, the state should also change the jurisprudence in the violation of rights or make changes in the legislation in order to establish a certain right or provide a mechanism for its protection.

Important bodies acting in the area of democracy and human rights are:

- **Venice Commission** - an advisory body of the Council of Europe on issues related to constitutionality and democracy. The role of the Venice Commission is to provide legal assistance to Member States and, in particular, to assist States wishing to adapt their legal and institutional structures to the European standards and international experience in the field of democracy, human rights and the rule of law. The Commission

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<sup>6</sup> All of GRECO's reports on the evaluation of the Republic of Macedonia are available at the following link:[http://www.coe.int/t/dghl/monitoring/greco/default\\_en.asp](http://www.coe.int/t/dghl/monitoring/greco/default_en.asp)

operates in three areas: a) democratic institutions and fundamental rights; b) constitutional and ordinary justice; c) elections, referendums and political parties. The Venice Commission has issued several opinions on draft legal acts of the Republic of Macedonia.<sup>7</sup>

- **European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)**, founded with the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment in 1989, has established a monitoring system by means of direct visits to prisons and other institutions for people whose freedom is limited and by submitting regular reports, with recommendations.
- Bodies with particular importance within the **UN** are the **Human Rights Council** (which succeeded the Commission on Human Rights), the **United Nations Commissioner for Human Rights**, as well as the special commissions for separate types of rights, which observe the implementation of international instruments, by requiring reports by the member-states, holding hearings on them and drafting their reports and recommendations.

## Rights of the citizens of the European Union

This area of Chapter 23 refers to the right to vote and the possibility of citizens to run in the elections for the European Parliament and local elections, the right to free movement and residence throughout the Union's territory and the right to diplomatic and consular protection. These rights are usually subject to negotiations in the final stages of accession of the candidate countries.

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<sup>7</sup> More on the opinions of the Venice Commission can be found on the following link: <http://www.venice.coe.int/webforms/documents/?country=37&year=all>



# JUDICIARY

## National legislation

The legal framework in the Republic of Macedonia consists of the Constitution, ratified international treaties, laws and bylaws.

### Constitution of the Republic of Macedonia

One of the fundamental values of the Republic of Macedonia is the rule of law and separation of powers into legislative, executive and judicial (Article 8). The concept of separation of powers is particularly important for securing the rule of law, because compliance with this concept should provide independence of the work of all government bodies within their jurisdiction without interference and pressures outside the relations regulated by law. This principle also lays the foundations for the independent and autonomous judiciary in our country.

The Constitution (Article 98) stipulates that courts exercise judicial power independently and autonomously and rule based on the Constitution, laws and international agreements ratified in accordance with the Constitution. There is no time limit in the exercise of judicial office. The establishment, jurisdiction, types, abrogation, organization and structure of courts, as well as the proceedings before them, are regulated by a law adopted by a two-thirds majority in parliament. These laws should be aimed at institutional guarantees of independence of the judicial system. According to the Constitution, the judicial function is incompatible with any other public office, profession or membership in a political party. Any political organization and activity in the judiciary is prohibited.

In 2005 the constitutional articles regarding the judiciary were amended, in particular the procedure for appointment and dismissal of judges, which was transferred from the Parliament to the Judicial Council of the Republic of Macedonia. The majority of Council members (eight out of 15) are elected by the judges from their ranks, but the Minister of Justice also participates in its work by line of

duty. His/her membership does not entail the right to vote; however, the participation itself is perceived in public as interference of the executive power in the judiciary.

### Law on Courts<sup>8</sup>

Adopted in order to protect the concept of independent and autonomous judiciary, the Law on Courts regulates the organization and jurisdiction of courts, the election of judges and lay judges, the rights, duties and immunity of judges, the termination and dismissal from office and the judicial and court administration. In addition, it initially governs the judicial information system, the court service, the judicial police and the working assets.

This law stipulates that courts in the country are autonomous and independent bodies, defining the judicial authority and the importance of the judicial function, the relationships and communication with other state authorities, as well as the relationship with citizens. The Law on Courts stipulates that the court proceedings are regulated by special laws and based on the principles of: legality and legitimacy, equality of the parties, trials within reasonable time, fairness, publicity and transparency, contradiction, two instances, convention, orality, immediacy, the right of defence, i.e., representation, free evaluation of evidence and cost-effectiveness.

The Law on Courts also regulates the election procedure, the determining of disciplinary liability and the dismissal of judges and lay judges, which is under the jurisdiction of the Judicial Council of the Republic. Article 43 of the Law stipulates that in the process of election of judges and lay judges there may be no discrimination on grounds of gender, race, colour, national and social origin, political and religious beliefs, property and social status, and that adequate and equitable representation of citizens belonging to all communities needs to be ensured.

The process of selection of judges is regulated by general and specific conditions, which particularly depend on the instance of court that the judge applied for. One of the general requirements for judges is their result in the integrity

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<sup>8</sup> Official Gazette of the Republic of Macedonia no. 58/2006, 62/2006, 35/2008, 61/2008, 118/2008, 16/2009, 150/2010 and 39/2012



tests and psychological tests conducted by the Judicial Council of the Republic of Macedonia.

The specific conditions require qualifications depending on the instance and type of court. Namely, a primary court judge may be a person who has completed the initial training at the Academy for Judges and Public Prosecutors, a condition that began to be applied from 1 January 2013. Being a judge in an appellate court requires work experience of at least four years of uninterrupted judicial service as a judge in a primary court or as a judge in an Administrative Court or in a Higher Administrative Court. Being a judge in an Administrative Court requires at least four years of uninterrupted service as a judge in a primary court or five years of judiciary work in a state body. A judge in a Higher Administrative Court is required to have at least three continuous years of judicial service as a judge in an administrative court or a person who has six years of judiciary service in a state body. A judge in the Supreme Court of the Republic of Macedonia is required to have work experience of at least six uninterrupted years of judicial service as a judge in an appellate court or as a judge in an administrative court or a higher administrative court. The special conditions for the election of judges in appellate courts and the Supreme Court began to apply from 1 July 2013.

A lay judge may be an adult citizen of the Republic of Macedonia with at least a university education who actively speaks Macedonian, enjoys good reputation for exercising this office and is not older than 64 years of age. A lay judge at trials of minors may be chosen from the ranks of persons with experience in the education of youth. A lay judge is elected for a term of four years and may be re-elected.

## **Law on the Council Determining the Facts and initiating procedure for liability of judges<sup>9</sup>**

On 11 February 2015, the Assembly of the Republic of Macedonia adopted the Law on the Council Determining the Facts and initiated a procedure for accountability of judges. The Council Determining the Facts was founded as a new judicial body, whose aim is to take over some of the work of the Judicial Council of the Republic of Macedonia. The main competence of the Council Determining the Facts would refer to initiating disciplinary proceedings and proceedings for unprofessional and unethical conduct of judges before the Judicial Council of the Republic of Macedonia. The Council Determining the Facts would be entitled to dismiss the initiatives to establish liability whereby such a decision becomes final, i.e., the discarded initiatives would not be taken into consideration by the Judicial Council of the Republic of Macedonia. The Council Determining the Facts shall consist of nine members who shall be bound to be from the ranks of retired lawyers, more specifically, three judges, three prosecutors, two professors of law and one lawyer. Apart from the requirement that all members should be retired, they also need to have continuous years' service spanning over 15 years, outstanding results in their work and no disciplinary sanctions stated against them. The mandate of the elected members lasts four years without the right to re-election. At least one-third of the members are scheduled to be from among the members of the non-majority communities in the Republic of Macedonia. The candidates from the Council Determining the Facts apply to a public announcement, and are elected by all judges at direct and secret elections.

## **Law on the Academy of Judges and Public Prosecutors<sup>10</sup>**

With regard to providing greater independence of the judiciary through the concept of professionalism and efficiency, the Law on Judges and Prosecutors is of

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9 Official Gazette of the Republic of Macedonia, no. 20 from 12.02.2015

10 Official Gazette of the Republic of Macedonia, no. 20 from 12.02.2015

particular importance. The goal behind the funding of this institution is to provide professional, independent, impartial and effective work by judges and prosecutors, as well as professional and efficient operation of the professional services in the judiciary and the public prosecution. The Academy organizes and conducts continuous training of the professionals in the judiciary and public prosecution and training of all entities involved in the implementation of laws from the area of the judiciary or who exercise analytical activities in the judicial theory and practice.

## Law on the Judicial Budget

When it comes to securing the independence of courts and judges, their financial independence is of particular importance. The Law on the Judicial Budget, which was adopted in 2003, provides funding to the courts, the judges, the Judicial Council of the Republic of Macedonia and the Academy of Judges and Public Prosecutors. The Judicial Budget Council was founded in order to carry out the duties related to the judicial budget, composed of a chairman and 10 members. The President of the Judicial Budget Council is the President of the Judicial Council of the Republic of Macedonia. In his/her absence, the role of a Deputy is taken by the President of the Supreme Court. Members of the Judicial Budget Council are the Minister of Justice, President of the Supreme Court of the Republic of Macedonia, the President of the Administrative Court, the presidents of the appellate courts, two presidents of the primary courts rotating in an order established in the Law on Courts, and the Director of the Academy for Judges and Public Prosecutors. Representatives from the Ministry of Finance also participate in the work of the Judicial Budget Council, but without decision-making authority.

## Law on Judicial Service<sup>11</sup>

The Law on Judicial Service stipulates the rights, duties and responsibilities of the court officials and the system of salaries and allowances paid to court officials.

The judicial service consists of the judicial officers, persons employed in courts who perform technical and auxiliary work and the judicial police. Judicial officers are people with a status of administrative officers. In order to exercise and protect the rights of the judicial service, a Council of the Judicial Service was founded, which consists of 11 members.

The recruitment of judicial officers is carried out by means of a public announcement, while their promotion is implemented through the posting of an internal advertisement as well as mobility through deployment or takeover.

For the selection of candidates from public announcement, a Commission of selection for employment is established. The selection procedure for judicial officers consists of administrative employment selection, judicial officer exam, verification of the reliability of the evidence, an interview, and a personality test. The candidate for a judicial officer post sits the judicial officer exam, which consists of two parts, namely: a professional part and assessment of the intellectual capacity of the candidate.

The promotion of judicial officers is carried out through an internal announcement, the goal of which is to provide judicial officers with career advancement, i.e., moving from a lower level job with a lower title to a higher level job or title.

Mobility is the horizontal movement of an employee from one job to another within the same group of jobs stipulated by this law. Mobility is done by deploying, i.e., redeploying the employee from one workplace to another at the same level; i.e., a job that the employee meets the general and specific conditions for, laid down in the act of systematization of jobs of the court that he/she is deployed to or taken over by. Mobility is carried out without an internal or public announcement.

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11 Official Gazette of the Republic of Macedonia, no. 43/2014, 33/2015 and 98/2015

In terms of accountability, judicial officers are personally responsible for the performance of duties and tasks of the job and they are subject to disciplinary action for breach of official duty. Responsibility for a crime, i.e., misdemeanour, does not preclude the disciplinary liability of the judicial officer.

## **The situation with the judiciary in the Republic of Macedonia analysed from the aspect of the standards of Chapter 23**

A fundamental rule of the Constitution of the Republic of Macedonia is the separation of powers into legislative, executive and judiciary and the rule of law, which should be accomplished by protecting the rights of citizens by means of independent courts. The constitutional provisions structured in this way were to be further promoted with the adoption of appropriate legislation that was supposed to guarantee the independence and professionalism of the judiciary.

A large number of laws were adopted in the past 25 years, as well as constitutional amendments in order to meet EU standards in the area of justice and adequately protect the constitutionally and internationally guaranteed rights and freedoms. The legal solutions opened the way towards achieving independence of the judiciary, in particular when it comes to the influences of the executive power. In this context, it is of particular importance that the selection of judges in the Republic of Macedonia, in accordance with Article 38, paragraph 1 of the Law on Courts, is without limitation to the term of office. Compared with other public officials, the salary of judges in the country is relatively high, which should contribute to their independence and impartiality.

However, the implementation and application of the legal solutions has remained a problem that the judiciary has faced since the very beginning.

## **Independence**

The judicial system is still one of the major problems that Macedonia is facing, especially because, even after 25 years, the government has failed to uphold the rule of law and the separation of powers into legislative, executive and judicial. The influence of the executive power on the judiciary is still visible, especially in recent years, notably in the court cases which are known to the public as “political cases”, such as the cases against Jovan Vranishkovski and members of the Ohrid Orthodox Archbishopric, the journalist Tomislav Kezarovski, the doctor Dejan Stavrikj, the President of the Council of the Municipality of Centar Miroslav Shipovikj, the directors of several schools in Gostivar and dozens of former officials and office holders lustrated as alleged collaborators of the communist regime.<sup>12</sup>

The reality of the politicized nature of the judiciary in the country, the disrespect for the rule of law and the lack of separation of powers was confirmed in the recordings of wiretapped conversations of senior government officials which were released to the public by the leader of the Social Democratic Union of Macedonia. Namely, starting from 9 February 2015, the Social Democratic Union of Macedonia held 36 press conferences in which they exposed information that the state services illegally followed the communications of more than 20,000 citizens of the Republic of Macedonia, as well as that some of the government officials and people close to them committed a number of crimes ranging from endangering security, to the abuse of power, criminal association and electoral fraud on a large scale.<sup>13</sup> Some of the released talks referred to the judiciary and the way in which the executive power influences the choice of judges and prosecutors, as well as negotiates decisions on particular cases. In addition, the released talks provided indications of connections between the executive power and the Public Prosecutor of the Republic of Macedonia. These conversations are not only controversial in terms of the judiciary, but also in terms of the fundamental rights of citizens, especially the right

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<sup>12</sup> Details on these court cases are available in the Annual Report of the Helsinki Committee for 2013, available at the following link:[http://www.mhc.org.mk/system/uploads/redactor\\_assets/documents/681/Helsinki\\_Godisen\\_2013.pdf](http://www.mhc.org.mk/system/uploads/redactor_assets/documents/681/Helsinki_Godisen_2013.pdf)

<sup>13</sup> Full versions of the wiretapped talks are available on the following link:<https://www.youtube.com/user/SDSMtube>

to privacy, if the allegations that more than 20,000 citizens of the Republic of Macedonia were illegally monitored are confirmed.<sup>14</sup> The abuse of authority by the Administration for Security and Counter Intelligence and the abuse of the system to wiretap for the goals of the party in power was also established in the report of the expert group of the European Commission, which noted serious shortcomings in five areas: interception of communications, external oversight by independent bodies, judiciary, elections and the media.<sup>15</sup> In the area of the judiciary they concluded that there is a selective approach and political influence in all aspects - from the moment of election of judges and prosecutors, judicial procedures, assessment of judges, dismissal of judges, the functioning of the Judicial Council, the transparency of the selection and dismissal of judges and the functioning of the system for case assignment.

The procedure for the annual evaluation of judges positively influences the efficiency of their work, but at the same time jeopardizes the competence of judges and the legal security of citizens. The evaluation system is largely based on monitoring the performance of judges in terms of speed of action in decision-making, rather than their competence and, as it is, it particularly affects career progression of judges, since it can serve as grounds for initiating disciplinary liability or dismissal. This conclusion expressed in the Progress Report by the European Commission for the country for 2014 provides specific recommendations for change, yet no amendments to this section have been proposed. According to the research by the NOVUS Association from Strumica conducted within the project Network 23, "The evaluation of judges is perceived as "a competition" of which of them will complete the year with fewer revoked or altered verdicts".

The Judicial Council of the Republic of Macedonia operated without an elected and appointed president for three months after the expiry of the mandate of the previous President and did not hold any sessions during this period

of time (from 12 December 2014 to 13 March 2015).<sup>16</sup> Finally, in March, a president of the Judicial Council was elected who is not from the ranks of judges and whose appointment as a member of the Council triggered the issue of whether he satisfies the criterion of "a distinguished lawyer" in the Assembly and in the public.

In April 2015 the Council elected fourteen presidents of courts according to the modified procedure. For the first time, court presidents were chosen only from among the judges who were best evaluated over the previous two years, so that the short-listing of candidates was done automatically.

There are suspicions that the newly established system of selection/promotion of judges fails to put all candidates in the same position. The promotion of judges is not based on fully transparent and objective criteria. According to some observations, "the legally mandated criteria for years of service are too short to create an image of a good judge, much less for the environment to perceive a certain judge as someone who would provide guidance to the lower courts." There is no adequate legal remedy for candidate-judges dissatisfied with the procedure for selection of judges. The establishing of the integrity of the judge on the basis of a test of integrity, not their overall work, is also questionable.<sup>17</sup>

When it comes to the **citizens' confidence in the judiciary**, the latest report for 2014 of the Ombudsman established an increase in distrust, citing that "statistics show that the proceedings before the courts of the first instance last several years on average, which is a violation of the right to trial within a reasonable time."<sup>18</sup> In most of the cases, citizens complain of the excessive length of proceedings before the Administrative Court, then the civil proceedings, in which the petitioners seek to exercise and protect certain property rights or statutory rights and interests, and they complain the least of first instance criminal proceedings. There are a high number of complaints in which citizens state that the judicial

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14 In more detail in the section on Fundamental Rights - Right to private and family life and communications, from the present analysis

15 The full report of the expert group of the European Commission is available on the following link:[http://ec.europa.eu/enlargement/news\\_corner/news/newsfiles/20150619\\_recommendations\\_of\\_the\\_senior\\_experts\\_group.pdf](http://ec.europa.eu/enlargement/news_corner/news/newsfiles/20150619_recommendations_of_the_senior_experts_group.pdf)

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16 Data from JCRM's website; <http://www.ssrn.mk/Novosti.aspx>

17 From the discussion at the Closing conference of this project, held on 9 July 2015.

18 The entire report of the Ombudsman for 2014 is available on the following link:<http://ombudsman.mk/upload/Godisni%20izvestai/GI-2014/GI%202014.pdf>

decisions were biased, adopted by incompetent lay judges, under pressure and through corruption. In their complaints, the citizens requested that the Ombudsman reconsider the work of judges and change their decisions...The data from the case work also shows that, in the reporting year, the number of citizens' complaints about the delay in the court proceedings before the courts of second instance has slightly increased, while the complaints against the Supreme Court are on a par with the previous year."

The latest research of the Helsinki Committee on the citizens' understanding and awareness of human rights and protection mechanisms in case of their violation points to the citizens' mistrust in courts for the protection of their rights.<sup>19</sup> The last question was about the institutions where the respondents can seek protection in case they believe that their human rights have been violated. According to the results, the respondents (a total of 1,001 respondents) most often see the Ombudsman (27%) as an institution where they can seek protection if they are denied their human rights. The confidence bestowed in non-governmental organizations dealing with human rights (15%) and lawyers (14%) was also not negligible. From the obtained data it can be noted that the respondents expressed lower confidence in the courts with regard to this issue - only 11%.

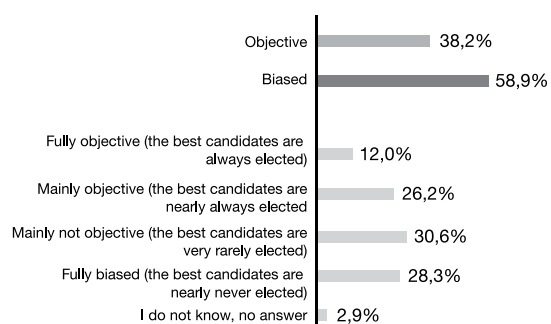
These findings were supported by the analysis of the NOVUS Civil Association from Strumica, which, under the framework of the Network 23 project, carried out an analysis of the independence and impartiality of the judiciary in the Municipality of Strumica according to Chapter 23. When asked "**Do you have confidence in the judicial system in the Municipality Strumica?**", the responses of 258 people showed that only 6% of respondents have full confidence in the judicial system in the municipality of Strumica and almost half of them (42%) have no confidence in it, which is a high rate and a worrying perception by the citizens.

19 The research was conducted by Viktorija Borovska, Kalina Lechevska and Ana Blazheva from the Institute of Social Sciences and Humanities, within the project "Increasing the transparency and improving the rule of law by monitoring and reporting violations of human rights in the Republic of Macedonia", supported by the Foundation Open Society. The full research is available at the following link:[http://www.mhc.org.mk/system/uploads/redactor\\_assets/documents/902/Istrazuvanje\\_Razbiranje\\_na\\_covekovi\\_prava\\_MK\\_EN\\_AL.pdf](http://www.mhc.org.mk/system/uploads/redactor_assets/documents/902/Istrazuvanje_Razbiranje_na_covekovi_prava_MK_EN_AL.pdf)

There is also lack of confidence in the independence of the Judicial Council of the Republic, as authority in charge of the selection and dismissal of judges in the country. In the analysis of the work of the Judicial Council of the Republic, carried out by the Institute of Human Rights under the framework of this project<sup>20</sup>, the citizens mainly answered that the election of judges was biased, that there is pressure on the Judicial Council in the selection of judges and that this is mainly done by the executive power.

When asked "**Is, according to you personally, the selection of judges by the Judicial Council of the Republic of Macedonia objective?**", it is clear that a very high percentage of citizens said that the election of judges by JCRM was biased (58.9%). Only 38.2% of respondents believe that this is an objective process.

Graph 1: Answer the question: "**Is, according to you personally, the selection of judges by the Judicial Council of the Republic of Macedonia objective?**"; Source: Institute of Human Rights "Analysis of the Independence of the Judicial Council of the Republic of Macedonia - aspirations and challenges"

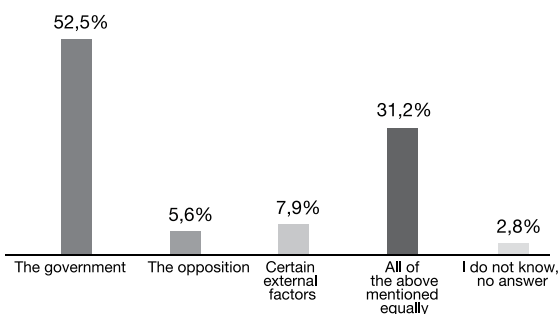


20 The survey, conducted by the Rating Agency, covered 1200 respondents from 80 municipalities with a representative coverage of all ethnic communities, rural environments and regions. The survey was conducted in the period from 22-25 December 2014. Possible statistical error +/-4.3%. The full analysis is available at the following link:<http://www.ihr.org.mk/images/pub/analiza-za-ssrm-konecna.pdf>

The percentage of the Albanian citizens who answered that the selection of judges is not objective is higher and amounts to as much as 74%, while the same opinion is held by 54% of Macedonians. Only 23% of Albanians and 43% of Macedonians believe that the selection of judges is objective.

When asked **“According to you, does JCRM perform the selection of candidates for judges under pressure?”**, a majority of the citizens of the Republic of Macedonia (56%) believe that the JRCM carries out the selection of judges under pressure, 23.5% of them believe that the selection is done fully under pressure, while 32.7% believe that the selection is done mainly under pressure. Only 39% of citizens answered that the selection is not carried out under pressure. When asked **“Who has the highest influence over the work of JCRM?”**, which was posed to those who had previously answered that certain external factors affect the autonomy and independence of the work of JCRM, most of the citizens, i.e., 52.5%, answered that the government is the one that has the biggest influence, 31.2% answered that all stakeholders had equal influence, 5.6% said that the opposition exerts its influence, while 2.8% had no opinion on this question.

Graph 2: Answer the question: **“Who affects the autonomy and independence of the work of JCRM the most?”**; Source: Institute of Human Rights “Analysis of the independence of the Judicial Council of the Republic of Macedonia - aspirations and challenges”



The problem with the non-transparency of the courts was also prominent. The current settings on the webpages of the courts do not enable easy browsing through the cases.

Apart from this, at the start of this year, the webpages of the courts were out of order for more than two months, allegedly due to the public procurement procedure.

In addition, the grantees of the Network 23 project encountered serious problems when trying to obtain data from the judiciary. Even when the Commission for Free Access to Information of Public Character adopted decisions for access to be provided, there were cases when those decisions were not complied with.<sup>21</sup> Most of the courts/judges who were subjects of the research or were sent questionnaires (even anonymous ones) did not share information, i.e., decided not to respond to the sent questionnaires. Apart from this, as of June 2014, the President of the Constitutional Court made a decision not to allow audio or video broadcasting of the Court sessions.

The Republic of Macedonia gets negative marks in the judiciary section in all international reports, including the reports of the European Commission, in particular the Report for 2014, which highlighted that “there are doubts within and outside the state for possible political influence over certain trials” as well as that “the issue of deficiencies in the current system of career of judges has not been resolved yet, despite the potential threat they pose to the independence of judges.”<sup>22</sup> The remarks of the State Department of the United States, which in its report on human rights in the country for 2013 states that there is a problem with the right to a fair trial and the court proceedings, particularly due to the political pressure and intimidation applied by the Government in order to influence the judiciary, are similar in tone.<sup>23</sup> Such remarks were also expressed by GRECO, whose report for 2013 concluded that the legal provisions related to the election of judges, which stated that 50% of the newly elected judges were to be from among the graduates of the Academy of Judges and Public Prosecutors,

21 Such is the case with the request of the Institute of Human Rights from the Supreme Court to submit the decisions upon an appeal for disciplinary liability, i.e., dismissal of judges.

22 The full report of the European Commission on Macedonia's progress is available on the following link:[http://www.sep.gov.mk/data/file/Progres%20Report%202014/lzvestaj%20MK\\_PROV\\_10\\_10\\_2014.pdf](http://www.sep.gov.mk/data/file/Progres%20Report%202014/lzvestaj%20MK_PROV_10_10_2014.pdf)

23 The full report of the State Department is available on the following link:<http://www.state.gov/documents/organization/236762.pdf>



were not complied with.<sup>24</sup> In addition, it stated that they have been informed by various sources that nepotism and political influence still play an important role in practice. The problem with the independence of the judiciary was also established in the concluding observations on the country's progress in respecting and protecting human rights given by the Human Rights Committee of the United Nations in 2013 upon inspection of the Universal Periodic Review Report, which contained several recommendations on how the judiciary can be protected from political interference.<sup>25</sup>

In the Progress Report on the Republic of Macedonia for 2014, the European Commission recommends that "The practice of the Judicial Council in relation to discipline and dismissal proceedings needs to be more proportionate and transparent. Poor performance by judges should be addressed through remedial measures such as organisational improvements and training, rather than resulting in dismissal. Dismissal should be limited to serious and persistent misconduct and should only be imposed following recourse to less severe disciplinary penalties, such as warnings and salary reductions, which are rarely used at present." In a similar vein, the GRECO remarks also recommend that dismissal of judges be only possible in very severe cases of incompetent and unethical conduct, whereby particular attention needs to be paid to all the circumstances regarding the case. The part of the recommendation refers to the need to withdraw the sanction for dismissal of a judge in the case when there is only a violation of right to trial in a reasonable time. Regarding the disciplinary proceedings for judges, it is recommended that legal provisions be revised in a way that the violations would be subject to independent disciplinary proceedings, and in light of the principles of judicial independence, the body that will initiate the procedure and carry out investigation into the disciplinary proceedings should be separated from the body which decides on the sanctions.

## **Review of the Law on the Council Determining the Facts**

Taking these recommendations as a starting point, the state decided to found the **Council Determining the Facts** as a new body in the judicial system, which should initiate disciplinary proceedings and proceedings for unprofessional and unethical conduct of judges before the Judicial Council of the Republic of Macedonia. The law that established this body was adopted by means of summary proceedings without public debate and without the involvement of experts. Because of the manner of adoption of this law and also because of the disputed provisions, in particular the part on election of the members of this body, suspicions were raised again as to whether its purpose is to enable greater independence or open another way for influence over the judiciary. This law is controversial in many respects. First, the possibility of the Council Determining the Facts to reject initiatives and this decision to be final is contrary to Amendment XXIX of the Constitution, which stipulates that the Judicial Council of the Republic of Macedonia is authorized to monitor and evaluate the performance of judges and to decide on their disciplinary liability. In this way, the Judicial Council of the Republic of Macedonia will not be able to review the rejected initiatives whereby the complaints against a large number of judges will end before the Council Determining the Facts. This role of the Council Determining the Facts is unconstitutional, given that this body, unlike the Judicial Council of the Republic of Macedonia, is not stipulated in the Constitution. As a result of this law a part of the constitutional authority of the Judicial Council of the Republic of Macedonia will be suspended. Second, the requirement that only retired judges, prosecutors, professors and lawyers may be members of the Council Determining the Facts is equivalent to direct discrimination on grounds of age and is contrary to Article 32 of the Constitution which stipulates that anyone, under equal conditions, is eligible for any position. Third, in the transitional and final provisions (Article 52) of the law, the legislator stipulates that the first election of members of the Council Determining the Facts would be carried out by a Commission established by the Judicial Council of the Republic of Macedonia, consisting of five members. Similarly to the previous ones, these provisions are also unconstitutional because the envisaged constitutional

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24 The full report is available on the following link:[http://www.pravda.gov.mk/documents/lzvestaj%20na%20GRECO%20za%20eval%20na%20RM\\_Cetvrt%20krug\\_mk.pdf](http://www.pravda.gov.mk/documents/lzvestaj%20na%20GRECO%20za%20eval%20na%20RM_Cetvrt%20krug_mk.pdf)

25 The full report and recommendations are available on the following link:<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G14/053/66/PDF/G1405366.pdf?OpenElement>

powers of the Judicial Council of the Republic of Macedonia do not provide it with an electoral function, much less bestow such a function on only one-third of its members. In this way the Judicial Council of the Republic of Macedonia is given new unconstitutional powers and at the same time the will of all judges that the members of the Council Determining the Facts will be able to elect only for the first time is suspended. Regarding the competence of the Council Determining the Facts to discuss the delays in court proceedings, it is insufficiently clear in relation to the given jurisdiction of the Supreme Court of the Republic of Macedonia, which decides on the cases of violation of the right to a trial within a reasonable time for court proceedings. We believe there is no need to establish such an imprecisely defined competence, especially in light of the fact that the court ruling in this area is sufficient and relevant. The competence of the Council Determining the Facts to hold sessions "on hearsay" which is treated as an initiative to take further action is unclear and too broadly defined, giving it jurisdiction equal to that of the Public Prosecutor. It would be sufficient for the Attorney General to take actions "on hearsay", taking into account which bodies could act as initiators before the Council on Facts, so that it can take actions in order to determine the situation. The given authority to the Council Determining the Facts to also act on other information received on the work of judges and presidents of courts is an unclear and incomplete competence, bearing in mind which bodies may occur as initiators of action before the Council Determining the Facts. The Council Determining the Facts is also given the authority to review the reports of the Judicial Council of the Republic of Macedonia on the work of the judges and the courts in the country, but it is unclear on what grounds and what the reason for bestowing this competence is, nor the purpose of such a review. Is this not a way to introduce control over the work of the Judicial Council and does this not undermine its independence stipulated by law, as well as its status of an independent judicial authority?<sup>26</sup> The sudden adoption of the Law on the Council Determining the Facts is also

disputable from the aspect of the proposed constitutional amendments that aim to strengthen the independence of the Judicial Council, due to the apparent problem with its politicization. The proposed amendment envisages exclusion of the Minister of Justice from the Council and revokes the membership of the President of the Supreme Court, which is currently being acquired by line of duty. The amendment envisages 10 Council members to be judges elected from their own ranks and the remaining five members (elected by Parliament) to be from among the university professors of law, lawyers and other prominent jurists. In addition, the Council's decisions, which are at present finite, will be subject to appeal by judges, by means of Amendment XXXIX before the Constitutional Court. This amendment was proposed in the package of changes to the Constitution along with several other articles that are still in Parliament. The Helsinki Committee, along with several associations of citizens, submitted an opinion on the proposed constitutional changes to the Government, including the proposed amendments relating to the Judicial Council.<sup>27</sup> From a theoretical and legal aspect, the participation of the Minister of Justice in the work of the Judicial Council may be assessed as natural and desirable. This is due to the fact that the Minister's participation may be observed through the viewpoint of mutual control (checks and balances) within the system of separation of power. The opinion of the Venice Commission on the constitutional changes in the Republic of Macedonia from 2005 does not contain remarks regarding the minister's membership in the Council. However, bearing in mind the perception of the citizens and the national and foreign organizations about the politicization of the judiciary of the Republic of Macedonia, the proposed Amendment may be perceived as an important step towards the prevention of the influence of the executive authority on the judiciary. The option of having the judges choose 10 instead of eight judges from their ranks is a proposal that can additionally strengthen the judiciary. At present, the member judges of the Council are banned from holding a judicial or any other public office. It is desirable that this practice be abandoned and the member judges of the Council be allowed to be simultaneously involved in the work of the

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26 The analysis of the functioning of the Council Determining the Facts is available on the following link as part of the analysis of the independence of the Judicial Council of the Republic of Macedonia prepared under this project by the Institute for Human Rights:<http://www.ihr.org.mk/images/pub/analiza-za-ssrm-konecna.pdf>

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27 The full petition is available on the following link:[http://www.mhc.org.mk/system/uploads/redactor\\_assets/documents/796/Pismo\\_do\\_Vlada\\_na\\_RM\\_Ustavni\\_izmeni.pdf](http://www.mhc.org.mk/system/uploads/redactor_assets/documents/796/Pismo_do_Vlada_na_RM_Ustavni_izmeni.pdf)



regular judiciary. This possibility would imply continual and uninterrupted engagement of the judges, a significant activity from the aspect of following the positive law and its judicial application, direct involvement in the implementation of the reforms in the judiciary and participation in the continual training provided by the Academy of Judges and Public Prosecutors. Although the selection of five members from the ranks of university professors in law, attorneys and other prominent lawyers is a good international practice, it would be desirable to establish an additional condition that would regulate the years of experience of these candidates. This solution exists in the Italian Constitution, which stipulates not less than 15 years of experience in the area of law. In this direction, and in order to base the selection on merit, it is worth considering having the attorneys selected based on the proposal of the Bar Association of the Republic of Macedonia. When it comes to the proposal that the decisions of the Judicial Council should be the subject of assessment by the Constitutional Court, the Venice Commission, in its opinion on the constitutional changes in the Republic of Macedonia from 2005, emphasizes that, in order to provide accountability of the Council, it would be desirable to provide the right to appeal, which could be exercised through the Constitutional or the Administrative Court. The second instance in the procedures of the Judicial Council through the Constitutional Court is stipulated in France, Croatia and Serbia. Although this proposal theoretically does not lead to direct impact of the legislative or executive over the judicial power, it is necessary that the higher organ that would make decisions on appeals should enjoy trust in society. In conditions when it is disputable whether the present structure of the Constitutional Court is from the ranks of prominent lawyers, their political selection by the Assembly, the disrespect of the Court of its own previous practice, the closing down of the sessions to the public and the non-acceptance of the opinions of the Venice Commission all currently point to the inadequate selection of a body of a second instance. The Civil Associations have given a recommendation that the members of the Judicial Council be allowed to continue performing their judicial office, in order to prevent the possibility of the member judges of the Judicial Council losing their immediate contact with the regular judiciary. In order to provide professionalism and competence by the members of the Council who are

not judges, it is necessary to stipulate an additional condition for their membership, which would refer to their professional experience and achievements in the profession. In this sense, it is desirable that the members from the ranks of attorneys are selected from the Assembly at the proposal of the Bar Association of the Republic of Macedonia. Although from a theoretical and legal aspect, the solution which stipulates the Constitutional Court of the Republic of Macedonia to decide on appeals against the decisions of the Judicial Council is well-grounded, at present it would be difficult to say that the Constitutional Court is a body enjoying great social respect in terms of its competence and independence. The depoliticization of the Judicial Council by excluding the Minister of Justice as its member must not be replaced with another body that would open the way for even more pronounced influence over the judiciary.

## Court Budget

A particularly important part of the independence of the judiciary is the judicial budget, managed by the Court Budget Council, which, pursuant to the Law on the Court Budget, is to amount to not less than 0.8% of the country's gross domestic product. This level was (to be) achieved according to the following schedule:

- 0.5% of GDP in 2012;
- 0.6% of GDP in 2013;
- 0.7% of GDP in 2014; and
- 0.8% of GDP in 2015.<sup>28</sup>

However, the analysis of the Association of Financial Professionals in Local Government and Public Enterprises - "Sources of funding, the amount of funds provided and their impact on the independence of the judiciary" - prepared within the Network 23 project, concluded that the level of planned funds for 2015 does not exceed 0.38% of GDP. This directly violates the Law on the Judicial Budget.

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28 Article 16 from the Law Amending the Law on Judicial Budget.

The analysis concluded that most of the budget is allocated for the salaries of judges and court administration and the rest of it for the necessary goods and services used by the courts. Based on the data obtained, it was concluded that there was insufficient funding for the courts and therefore it is impossible to talk about proper allocation of funds since the obtained resources are objectively lower than actually necessary, which leads to constant occurrence of outstanding debts. This condition has impaired the solvency of some of the courts. A typical case is when one of the analysed courts submitted data that they settled their bills with a delay of 398 days, as well as that there are cases of blocked transaction accounts of some of the courts due to delays in the payment of debts. The debts of the courts were eliminated by the end of 2008, but afterwards they began to rise again.<sup>29</sup>

Most of the budget for courts is allocated for salaries (85%). The study found that there are a high number of judges in Macedonia, which is also supported by the analysis of the Court Budget Council. This particularly refers to the number of judges in some courts in the interior of the country, where there is a visible disproportion in the number of cases compared to the number of judges. The number of judges is the reason why a special law applies to judges (*lex specialis*), according to which judges retire as per the old system (62/65 years) and not in accordance with the changes in the Labour Law, according to which the deadline for retirement has been extended by three years for women (65 years), or two years for men (67 years). The purpose of this approach was to reduce the number of judges and consequently alleviate the pressure on the judicial budget. In this context, there is specific emphasis on the need to close down certain courts inside the country. There are smaller courts (for example, Krushevo, Vinica and Berovo) that are not cost-efficient since they incur huge costs for a small number of cases. Closing them down as a means to reduce costs should be considered. They could be replaced by branch offices of the appropriate appellate courts from the same area of appellate jurisdiction. On the other hand,

there is a lack of competent officers in court who could work on promotion and management of courts, including financial operations.<sup>30</sup>

The bad financial situation has been noticed by lawyers and judges. This was also concluded in the analysis of the NOVUS Civil Association, which analysed the independence and impartiality of the judiciary in the municipality of Strumica according to Chapter 23. The analysis indicated that the part of the judicial budget that is allocated to the courts is extremely small and that it may have implications for the independence of the court. In this context, one of the lawyers interviewed believes that the use of every single sheet of paper is planned in advance because the finances are so low. This is also supported by the information that the judges do not receive the official gazette, leaving them uninformed about changes in laws, and that sometimes they borrow books and literature from attorneys. In addition, when the court assigns a case to a lawyer *ex officio*, most of those lawyers are unpaid and the court owes them money. Furthermore, the former President of the Basic Court in Strumica is of the opinion that the part of the judicial budget allocated to the Primary Court in Strumica is insufficient and that more funds are required for it to operate functionally.

A small part of the court budget (on average approximately 0.95% of the annually planned funds, i.e., 0.87% of the effectuated annual court budgets) is allocated to capital investments.

## Impartiality and Accountability

The bias of the judges in individual cases, especially when there is political motivation, or when people from politics are involved, influences citizens' confidence in the judiciary and their legal certainty. Additionally, the independence and impartiality of judges is also mirrored in their relationship to

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29 This problem was pointed out at the round table of the Association of Financial Workers of the Local Government and Public Enterprises: "Sources of funding, the amount of funds provided and their impact on the independence of the judiciary", held on 27 April in Veles.

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30 This was also pointed out at the discussion at the round table of the Association of Financial Workers of the Local Government and Public Enterprises: "Sources of funding, the amount of funds provided and their impact on the independence of the judiciary", held on 27 April in Veles.

other participants in the proceedings (charged, damaged, prosecutors, plaintiffs, defendants, defenders, etc.).

In the latest analysis of the Helsinki Committee, the observations of court litigation led to the conclusion that judges are generally impartial in relation to the other participants in the proceedings, yet there is a certain closeness between judges and prosecutors, as well as a more favourable attitude of the judges towards older and more experienced attorneys as opposed to their attitude towards less experienced attorneys.<sup>31</sup> In the said analysis, the bias on the part of judges was observed in several cases - for proposing witnesses after the main hearing and return of the case in the stage of main hearing without the knowledge of the defendants and their attorney (case J.V. and others, KOK no. 59/12 of the Primary Court Skopje 1) and for allowing a judge, a member of the Trial Chamber, to leave the courtroom during the procedure (cases A.D. and others, KOK no. 80/12 and T.K. and others, KOK. no. 51/13 of the Primary Court Skopje 1).

The conclusion that judges are in general impartial during trials, but that there are still isolated cases where there is an obvious bias, especially towards the public prosecutor, was also presented in the latest analysis of the Coalition "All for Fair Trials" with the title "Implementation of International Standards for Fair Trial".<sup>32</sup> This type of behaviour was observed in a case for which they state that "in case KOK no. 7/14, where there were nine defendants for criminal conspiracy and tax evasion, the observer estimated that the trial was partially fair, believing that the court was sympathetic to the prosecution. The observer stated that the defence had only a formal role, since every motion or objection was rejected by the court, and also the defence complained that they were not given access to all the evidence gathered by the Public Prosecutor's Office and other bodies."<sup>33</sup> The impression of inequality, i.e., more favourable treatment of the public prosecutor, was also evident in cases when the public prosecutor enters the courtroom prior to all the other participants in the proceedings.

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31 The full analysis of the observed court procedures with regards to compliance with the basic civil and political rights is available on the following link:[http://www.mhc.org.mk/system/uploads/redactor\\_assets/documents/731/Analysis\\_-\\_Final.pdf](http://www.mhc.org.mk/system/uploads/redactor_assets/documents/731/Analysis_-_Final.pdf)

32 The full analysis is available on the following link: [http://all4fairtrials.org.mk/Main\\_files/Standardi\\_2015\\_MKD.pdf](http://all4fairtrials.org.mk/Main_files/Standardi_2015_MKD.pdf)

33 Ibid.

Regarding the citizens' perception, on a local level, about the objectivity of the courts, the data from the analysis by the Civil Association NOVUS from Strumica show that only 7% of respondents said that the court in Strumica is transparent and objective, which is contrary to the opinions of the interviewed representatives of the judicial authorities. A solid percentage of 36% of respondents, on the other hand, take the view that the Court in Strumica is partially transparent and objective, which could serve as a great basis for improvement. Thirty-five percent believe that the Court in Strumica is non-transparent and biased and 22% have no opinion on this issue.

From the analysis of all decisions for dismissal of judges and disciplinary proceedings in the period 2010-2014, the Institute of Human Rights concluded that "they are not sufficiently justified because they do not contain sufficient reasons for the decisive facts and circumstances relevant to the adopted decision, so that it could be clear and allow both the involved parties and the general public to fully understand what the basis for submission of an appeal by the persons involved in the dispute would be, and for all others provide grounds for trust in the work of this institution". In addition, formal shortcomings of the decisions have also been observed.<sup>34</sup>

The impartiality of the courts is also affected by the work of judges representing all members of the communities in the country. The Report of the Ombudsman on monitoring the application of the principle of adequate and equitable representation for 2014 states: "Considering the overall received data for 2014, the following state of representation of communities can be established for primary courts: Macedonians - 80.5%, Albanians - 13.4%, Turks - 1.4%, Roma - 1.0%, Serbians - 1.3%, Vlach - 1.3%, Bosnians - 0.6% and other – 0.3%". Primary courts, compared to last year, mark a slight decrease in the number of the members of the majority community, yet we point to the lack of recruitment of members of the smaller communities, whereby the Ombudsman recommends "these institutions to take measures towards consistent implementation of the principle of adequate and equitable representation". The situation is

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34 "Analysis of the Independence of the Judicial Council of the Republic of Macedonia - Aspirations and Challenges", Institute of Human Rights, Skopje, 2015 <http://www.ihr.org.mk/images/pub/analiza-za-srrm-konecna.pdf>

similar in the four appellate courts, bearing in mind the fact that in the appellate courts there is not a single employee from the Roma community. Therefore, apart from the Vlach, no other small community is equitably represented in the courts in the country.

The impartiality of judges should be aided by a system of random case assignment, established through Automated Court Case Management information systems (ACCMS). However, there is no confidence that the system of assignment of cases in practice provides a fully random selection.

## Professionalism, competence and efficiency

The Academy of Judges and Public Prosecutors, which promotes and implements the concept of lifelong learning and competence of judges, prosecutors and court staff, is of particular importance in this area. Despite the important role of the Academy in meeting this standard, it has been allocated a small budget to carry out its competencies. In 2014 the Academy was approved a budget of 34,946,000 MKD, which is 10,000,000 MKD higher than the previous year.<sup>35</sup> However, the budget rebalancing led to a cut in the budget of the Academy of Judges and Public Prosecutors, to the amount of 4,477,000 MKD. In the course of 2014 a total of 280 training sessions with the participation of 7,560 participants were realized, 3,844 of whom were judges, 1,185 prosecutors, 961 associates from courts and prosecutors' offices and 1,570 other participants - representatives of other relevant institutions, organizations, NGOs etc., invited by the Academy and working on areas related to the content of the training, which in total adds up to ten more training sessions compared to the previous year. The annual report of the Academy provides a detailed overview of the training of the fifth generation in the initial training 2013/2015, as well as of the plan for practical work. The number of 13 participants in the initial training indicates a dramatic decline in the number of candidates interested in applying for and building a career

in the judiciary or public prosecution. There are several factors leading up to this situation, in particular the bad image of the judiciary with regards to its independence, which also mirrors the perception of the Academy; the signing of a fixed-term contract between the listeners and the Academy, whereby any previous permanent employment contracts need to be terminated; and the need for a grade point average of at least 8.0. The last requirement is particularly unnecessary due to the fact that there are specific tests for the candidates of the Academy, designed to determine their knowledge and expertise.

On the other hand, there is a perception of insufficient competence of the candidates for judges to perform their judicial function immediately after the training and it is recommended that the preparation of graduates from the Academy should be improved. By exclusively recruiting judges from among candidates from the Academy, a large number of experienced associates in the courts are denied the opportunity to become judges, which affects their motivation. The possibility of preparing a special programme within the Academy to provide an opportunity to these employees to be elected judges was also pointed out.<sup>36</sup>

In the course of 2014 and 2015 a certain incompetence was detected among judges in criminal proceedings taking place in accordance with the provisions of the new Law on Criminal Proceedings and in civil cases establishing discrimination, especially in the proceedings before the Commission for Protection against Discrimination and in the shift of the burden of proof. In the case of "V.CH and others, WO no. 95/2013 in the Primary Court Gostivar", which dealt with discrimination on grounds of political affiliation, a negative court decision for the plaintiffs was adopted, with a mention from the trial chamber that the plaintiffs' counsel, prior to filing a lawsuit, should have filed a complaint before the Commission for Protection against Discrimination. However, The Commission for Protection against Discrimination is an independent body that adopts opinions and recommendations upon complaints of alleged discrimination and is not a prerequisite for court protection against discrimination. Regarding the burden of proof, the judges have neither the practice nor are trying to create a practice of transferring the burden of proof on the

35 The full report of the Academy for Judges and Public Prosecutors for 2014 is available on the following link:<http://www.jpacademy.gov.mk/upload/lzvestai%20za%20Akademija/%D0%93%D0%9E%D0%94%D0%98%D0%A8%D0%95%D0%9D%20%D0%98%D0%97%D0%92%D0%95%D0%A8%D0%A2%D0%90%D0%88%202014.pdf>

36 From the discussion at the project closing conference, held on 9 July 2015.

defendants. An example for this are the proceedings “A.A. and others, WO 121/13 in the Primary Court Gostivar”, which dealt with establishing discrimination on grounds of political affiliation. In this case, despite the large body of evidence that plaintiffs used to make probable that the defendants had discriminated against the plaintiff, the court decided not to shift the burden of proof on the defendants and led the procedure as an ordinary civil action in which the plaintiffs were to prove the merits of their claim.

The amendments to the Law on Judicial Service from 2014 were also adopted without involving the stakeholders. According to the data from the Association of Court Administration, no judicial officer has so far been promoted by means of an internal announcement. On the other hand, the deployment of court officials by means of the principle of mobility cannot contribute towards improving the quality and efficiency because there are indications that the rule of competence is not complied with in practice.<sup>37</sup>

In addition, the professionalism of the courts and the legal certainty of citizens, especially the participants in criminal proceedings, are also affected by the lack of equipment for audio recording of trials, most often in criminal proceedings. This situation is being explained away by the lack of sufficient financial means to achieve this standard, stipulated in both the Law on Criminal Procedure and the Law on Civil Procedure.

Judicial reforms implemented since 2004 have yielded best results in the efficiency of the judiciary. However, there are still critical points. One such issue is the work of the Administrative Court, which does not decide the merits against the decisions of the state bodies and refuses to adopt final decisions that would protect the rights of citizens. In this way the cases are taken back to the same state bodies that adopt the same decisions, without consideration for the opinions of the administrative courts, thereby violating the right to trial within a reasonable time. There are several cases of procedures running before administrative courts for more

than eight years, one of which has lasted as long as 18 years (the S.M. case). The right to trial within a reasonable time is also violated by primary and appellate courts, in particular by delaying the announcement of judgments. The deadline for drafting a verdict of 15 days as of the conclusion of the main hearing is also not complied with and there has been a case of exceeding the limit of 60 days for more complex cases. In this regard we would like to mention the example of the case “L.J.B. and others, KO. no. 2917/12 in the Primary Court Skopje 1” in which more than four months passed from the date of the conclusion of the first instance procedure to the date of delivery of the judgment, which is more than twice the legally prescribed deadline. This case, for which there are also doubts about political influence, is being run for more than two and a half years, although several defendants are under arrest. Also, violation of the right to trial within a reasonable time was observed in the case “KOK. no. 534/13 in the Primary Court Gostivar”, for the crime of rape, reported on 9 October 2008, when the critical event supposedly occurred; indictment was submitted to the court on 21 June 2011, i.e., two years and ten months after the crime was reported. The procedure before the court, on the other hand, is being conducted for four years, because the decisions of the Court of the First Instance have been twice repealed by the appellate court and there is still no final decision on the case. We consider this case, in which five years and 10 months have passed since it was reported and there is still no final court decision, indicative of the fact that there is no effective protection when it comes to sexual violence against women.

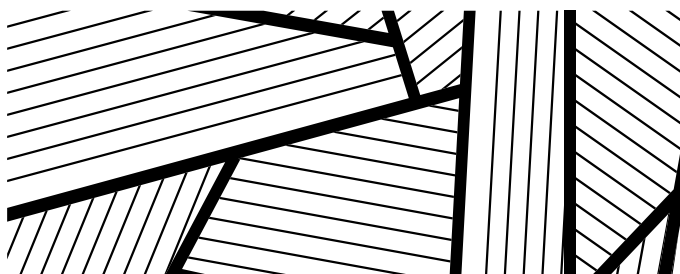
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<sup>37</sup> According to the reports of the Judicial Council of the Republic of Macedonia for 2013 and 2014, most of the employment in judicial service is by redeploying people from the Public Enterprise “Macedonian Forests” (where most of the newly employed got their jobs via lottery), as well as the Secretariat for the Framework Agreement.

# CONCLUSIONS AND RECOMMENDATIONS

## Conclusions

1. The independence of the judiciary deteriorated in the course of the previous year, due to the non-compliance with the principle of separation of power and the politicization of institutions.
2. The different treatment of the “Puch” (Coup) case and the criminal charges related to the wiretapping scandal are additional indications of the selective justice and direct influence of representatives of the executive power over the public prosecution and the judiciary.
3. The Judicial Council of the Republic of Macedonia has not managed to perform its basic function according to the Constitution - guarantee for the independence of the judiciary, in particular due to its non-transparent work and the biased decisions for disciplinary liability and dismissal of judges.
4. The Law on the Council Determining the Facts and the initiation of a procedure to determine the liability of a judge, instead of complying with GRECO's recommendation, have taken an opposite direction and are further undermining the independence of judges.
5. The legal solutions for the newly established Council Determining the Facts and the initiation of a procedure to determine the liability of a judge or the existing Judicial Council of the Republic of Macedonia do not demand responsibility from the members of the two councils, nor provide substantial transparency in their operations.
6. The promotion procedure does not satisfy the principle of transparency and is not implemented according to objective quality criteria. There is no adequate legal remedy when it comes to exercising the right to an appeal by dissatisfied candidate-judges in the procedure for selection of judges.
7. The legal framework for the financial independence of the judiciary is not complied with, which directly affects its independence and the exercise of the rights of citizens.
8. Public trust in the judiciary is low.
9. Most of the laws are adopted by means of summary proceedings, without a comprehensive debate and the inclusion of experts.
10. There is no equitable representation of smaller ethnic communities in the judiciary and the judicial service.
11. The efficiency of the courts has improved and yet still the right to trial within a reasonable time is being violated. What is particularly disquieting is the fact that the procedures stipulated as urgent in both criminal and in civil proceedings are not being complied with, thus affecting the exercise of other rights established by the Constitution and international treaties.
12. There is no confidence in the independence of the Public Prosecutor of the Republic of Macedonia, due to the connection of the Attorney General of the Republic of Macedonia with the “Prislushvanje” (Wiretapping) affair, as well as the constant failure to prosecute high-ranking state officials in cases of reasonable suspicion of corruption and failing to prosecute for the purpose of protection of civil activists and marginalized communities in cases of attacks on them.
13. There is a shortage of applicants to the Academy of Judges and Public Prosecutors and the Academy is facing a shortage of funds.



## Recommendations

1. Selection of a new and independent Public Prosecutor of the Republic of Macedonia, who needs to begin and implement a procedure for establishing accountability of holders of executive power, based on indications of strong influence of the executive power over the judiciary, presented in the wiretapped recordings.
2. Ensuring enhanced monitoring of the functioning of the Public Prosecution Office, the courts, the Judicial Council of the Republic of Macedonia and the Council of Public Prosecutors, especially by civil society organizations.
3. Strengthening of the independence of the Judicial Council of the Republic of Macedonia by electing its members from the ranks of judges and granting them permission to continue with the performance of judicial office in order to not lose direct contact with the judiciary. In order to provide the necessary expertise and competence from the members of the Council who are not judges, it is necessary to stipulate an additional condition for their membership, which would refer to their professional experience and achievements in the field. In this regard, it is desirable that members from the ranks of lawyers should be elected by the Assembly at the proposal of the Bar Association of the Republic of Macedonia, after a previous vote of all lawyers.
4. Putting a moratorium on the application of the Council Determining the Facts and initiating procedure for determining the liability of judges, taking into account the identified deficiencies.
5. The Supreme Court, the Judicial Council of Macedonia and the Council of Public Prosecutors to ensure full transparency in their operations.
6. Adopting amendments to the existing laws in the area of effective responsibility of members of the Judicial Council of Macedonia, as well as in the area of providing critical transparency in the work of the two councils.
7. Providing an independent and effective remedy for candidates dissatisfied with the selection procedure, with the disciplinary proceedings and the procedure for dismissal of judges.
8. Compliance with the principle of equitable representation in the process of selection of judges and judicial associates.
9. Compliance with the right to a trial within a reasonable time, especially in cases where the procedures are provided as urgent.
10. Conducting activities to inform citizens about their rights and protection mechanisms, in order to gradually restore the confidence of citizens in the institutions. In this direction we need to strengthen the cooperation between institutions and citizens' associations and through joint public debates, events and brochures to inform citizens about the opportunities for initiating appropriate actions to protect their rights.
11. The Administrative Courts to start deciding on the merits, which will cut administrative procedures and protect the rights of citizens.
12. Changing the criteria for admission to the Academy of Judges and Public Prosecutors, so that applying to the Academy can become more accessible and attractive to potential applicants.
13. Upgrading the quality of the training provided to future judges and public prosecutors.
14. Increasing the judicial budget by allocating the designated funds in accordance with the Law on Judicial Budget.

## HUMAN RIGHTS

### Protection from torture and other cruel, inhuman or degrading treatment and punishment

In the past three years, the Helsinki Committee for Human Rights, which provides free legal assistance to victims and monitors court proceedings in which the defendants are public officials, has received dozens of complaints from citizens who have complained of physical and psychological torture by the police and other officials. Some of the victims were detained or convicted persons who have been subjected to torture in closed institutions (police stations, detention facilities, prisons and psychiatric institutions), far from the public eye. However, there have also been cases of torture by police officers who, in abuse of their power, brutally violated the basic rights and freedoms of citizens in their homes or in public.

One such example is the case of Zuher Ibraimov, a convict, who, after assaulting a police officer in Idrizovo prison, lost his spleen and one kidney, which was characterized as “serious bodily injury” rather than “torture”. The accused police officer spent three months in home detention and then returned to work, until his six-month prison sentence was increased to one and a half years by the court of the second instance. Meanwhile, Ibraimov was sent to serve his sentence in such living conditions that posed additional danger for further deterioration of his health.<sup>38</sup>

The remaining incidents were left unresolved and either countercharges were filed by the police or the victims in the proceedings were pressured into withdrawing their charges. An example of these incidents is the police harassment of Roma people in the residential area of “Topansko pole”, when several people were attacked and detained although they had not committed any crime.<sup>39</sup> Members of the special unit “Alpha” attacked a young boy in 2014 without any reason, and in another incident an underage member of the Roma community was beaten and degraded without

cause.<sup>40</sup> Despite the fact that torture against a minor was in question, neither the Public Prosecution nor the Ministry of Interior initiated official proceedings. These examples are indicative of the persistence of the phenomenon of impunity and solidarity of the public prosecution and the judiciary with the police.

The example of the hearing and speech impaired child, who was illegally placed in the Banja BANSKO Institution and who, as the public found out a few months later, had been tied with a rope to the bed and tortured, is indicative not only of the negligence of the state towards this vulnerable group but also of the fact that torture in detention facilities is still something very real. Although the Helsinki Committee filed a criminal complaint to the public prosecutor, it was dismissed as unfounded.<sup>41</sup>

In 2014 and 2015, four murders of women and girls and their relatives (including murders with service weapons) by partners who had previously been reported as perpetrators of domestic violence, the attacks against migrant-refugees and their accommodation in inhumane conditions,<sup>42</sup> as well as the case of the faecal pollution of the water supplied to the Kumanovo Prison<sup>43</sup> ended without an adequate reaction, or no reaction at all on the part of competent institutions.

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38 Helsinki Committee, Quarterly report on human rights in the country (April - June 2013), pp. 10-11 <http://www.mhc.org.mk/reports/145>

39 Ibid pp. 9-10.

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40 Helsinki Committee, Bimonthly Report on Human Rights in the Republic of Macedonia (April – May 2014), pp. 11-13. <http://www.mhc.org.mk/reports/219>

41 Helsinki Committee, Monthly Report on Human Rights in the Republic of Macedonia (January 2015), pp. 2-3. <http://www.mhc.org.mk/reports/271>

42 Helsinki Committee, Announcement: The State is Bound to Protect the Migrants, 2015 <http://www.mhc.org.mk/announcements/295>

43 Helsinki Committee, Announcement: Fecal water for the convicted and detained in the Kumanovo Prison, 2014, <http://www.mhc.org.mk/announcements/254>



## Respect for private and family life and communications

As of 9 February 2015, the Social Democratic Union of Macedonia held 36 press conferences in which they revealed information that the state services illegally monitored the communications of more than 20,000 citizens of the Republic of Macedonia, as well as that some government officials and people close to them had committed a number of crimes ranging from endangering security to malfeasance, criminal association and electoral fraud on a large scale. Of course, the question is raised as to whether, even if the recordings of these calls were made illegally, anyone has the right to release them and, if so, under what conditions they can do so.

When answering this question, we need to look at the European Court of Human Rights in the case "RADIO TWIST AS v. SLOVAKIA" (Application no. 62202/00), where the Court examines the limitations to the freedom of expression and information regarding the right to privacy. In this case, the domestic courts in Slovakia decided to punish the publication of unlawfully obtained conversation between two officials from the then government that contained allegations of corrupt behaviour on the part of those officials. On the one hand, we have a clash between the right to privacy of the participants in the talks, and on the other hand, the public's right to be informed and everyone's right to inform the public on matters of public interest.

In the reasoning of its judgment, the Court addressed the issue of the legality of the obtained conversation regarding the rights of the person who released it in public. In Macedonia, even according to the controversial indictment in the case of "Coup", Zoran Zaev is accused of using the illegally manufactured materials for illegal purposes and not that he himself made them illegally. In that context, the Court declares that the fact that the recording was made illegally by a third party is not sufficient to apply the exceptions to the freedom of expression (§62). Furthermore, the context of the conversations that have been published in relation to the right to privacy of the speakers is also subject to assessment. Here, we should bear in mind that Zaev used the recordings of the talks in two contexts: firstly, to prove that in the Republic of Macedonia there is a practice of illegal wiretapping by abuse of the state security apparatus; and secondly, to show

from the content of the talks that the holders of power in the Republic of Macedonia have committed a multitude of crimes. In that context, the Court stated that restrictions to acceptable criticism of a public figure, for example a politician, are broader compared with those of a private person. Unlike private persons, the words and deeds of public figures are inevitably and knowingly subjected to close scrutiny by journalists and the general public and, consequently, they need to demonstrate a higher degree of tolerance (§52). In a completely different case, "INCAL v. TURKEY" (41/1997/825/1031), the Court declared that the limits of acceptable criticism of the government are even broader, i.e., broader than those of politicians or other public figures. In a democratic system, the acts of government officials must be subject to detailed scrutiny not only by the legislative and judicial authorities but also by public opinion. Moreover, the dominant position held by the government poses a necessity of refraining from criminal proceedings, particularly when there are other ways of response to attacks or criticism by its opponents (§54). Thus, with regards to the published conversations, through the content of which Zaev wants to prove crimes committed by public officials or state institutions, there is no violation of privacy of the speakers, as long as the talks refer to matters related to their official duties or to specific crimes.

It is also necessary to mention the consideration of the Court when it comes to the investigation of the process of the unlawfully obtained talks. In fact, the investigative bodies in the country, the Public Prosecutor's Office and the Ministry of Interior, approach the case exclusively unilaterally, i.e., they simply investigate solely the thesis presented by the Government, that the recordings were illegally obtained and made by foreign services, with the help of individual employees of the Ministry of Interior. The Public Prosecution is not even considering the possibility that they might have been obtained through abuse of the powers of the state security services and abuse of the entire security system in the country. Moreover, this possibility is not even being taken into consideration by the mechanisms of control over the operation of the state security services. In the case of "RADIO TWIST A.S. v. SLOVAKIA", the Slovak authorities also did not investigate this possibility. The Court found that "this may appear surprising, given that the recording concerned a telephone conversation

between two high-ranking government officials and because a suspicion that the recording had been made through the abuse of official power could not a priori be excluded" (§60). In other words, the state may investigate in any direction it finds plausible, but it must not unconditionally, in advance, accept the position of the security services that they are acting solely in accordance with their authority and that they have not breached that authority, even in cases where there are obvious clues pointing to it.

According to Article 175 of the Law on Electronic Communications (LEC), operators are obliged to provide all the necessary technical conditions to allow monitoring of communications in their networks. According to Article 9 of the Law on Interception of Communications (LIC), an order for interception of communications to detect and prosecute offenders is issued by a competent judge and according to Article 260 of the Law on Criminal Procedure, the duration of this type of interception of communications may be up to 14 months. According to Articles 30 and 31 of the LIC, an order for interception of communications for the protection of the security and defence of the country is issued by a Chief Justice, and according to Article 33, this interception can last up to two years.

However, the problem occurs in the supervision of the legality when applying this measure. Under the LEC, the operator is not obliged to request to see the order of a competent court that would allow the authority competent for monitoring communications to apply the measure, nor to check, control or measure the overall monitored communications. The obligation of the operator is reduced to simply providing all the technical conditions for its implementation.

The only supervision of the work of operators in this area is carried out by the Agency for Electronic Communications and only at the request of a competent authority (Article 175, paragraph 10 LEC). This means that it is exactly the state service that needs to ask for supervision over the operator for the interception of communications. When it comes to monitoring the legality of the exercise of powers on the part of the Administration for Security and Counterintelligence (known as UBK) and the interception of communications by the Ministry of Interior and the Ministry of Defence, it is under the authority of the Commission supervising the work

of UBK and the Intelligence Agency under the Assembly of the Republic of Macedonia and the Commission supervising the implementation of the measures for interception of communications by the Ministry of Interior and Ministry of Defence.

The practice so far has shown that this supervision is ineffective in Macedonia. In 2008, Esad Rahic, former chairman of the Parliamentary Commission supervising the UBK and the Intelligence Agency in an interview with the weekly "Globus" said "Parliament is only pretending to have control over the secret services", although the official position is that the Parliament does have partial control over UBK. Tito Petkovski (also former chairman of the Commission) shares Mr. Rahic's opinion and blames it on the absence of will for cooperation on the part of the former Director of UBK, Sasho Mijalkov.

Article 19 of the Law on Prevention against Corruption is of particular importance, since it explicitly prohibits criminal prosecution or reference to any other liability of a person who has revealed data indicating the existence of corruption. Essentially, the fact that the content of the talks indicates possible cases of corruption is sufficient for the state to direct its focus on their content and their meaning, and not the alleged cooperation with foreign services in the process of their acquisition. This argument is also supported by the fact that the Criminal Code does not criminalize the use of information received from foreign services, but only disclosing information to such services and working towards their interest (Article 316 from the Criminal Code).

The abuse of powers by the UBK and the use of the wiretapping system for interest of the party in power was also established in the report of the expert group of the European Commission, which noted serious shortcomings in five areas: interception of communications, external supervision by independent bodies, judiciary, elections and the media.<sup>44</sup> In the area of communications they establish violation of professional ethics, the basic principles of risk management and a lack of knowledge of the sensitivity of intelligence tasks

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44 The full report of the expert group of the European Commission is available on the following link: [http://ec.europa.eu/enlargement/news\\_corner/news/news-files/20150619\\_recommendations\\_of\\_the\\_senior\\_experts\\_group.pdf](http://ec.europa.eu/enlargement/news_corner/news/news-files/20150619_recommendations_of_the_senior_experts_group.pdf)

within UBK. The apparent lack of trained service for the basic rights and rules of data protection is also a subject of concern. A further concern are the family connections between high-ranking politicians and high officials in UBK and the Public Prosecution Office, which, pursuant to Article 8 of the Law on the Public Prosecutor's Office, is obliged to inform the public about certain cases that it acts on, especially if they are of such nature that causes broader general public interest or if they are of importance for the exercise of the function of the Public Prosecutor's Office for protection from criminal or other illegal actions.

## Freedom of thought, conscience and religion

The freedom of belief and religious freedoms of citizens are guaranteed by international law or under the Universal Declaration of Human Rights, Articles 2, 16, 18, the International Covenant on Civil and Political Rights Article 18, the European Convention on Human Rights, Article 9, and the Constitution, Article 19, Amendment 7 and 8 and the Law on Religious Communities and Religious Groups. The Republic of Macedonia has noted three cases of restriction of the freedom of belief and religious freedoms in the attempts at registration of religious communities and religious groups - that of the Orthodox Ohrid Archbishopric (OOA), the Bektashi community and the Stavropegial monastery "St. John Chrysostom", represented by the Church of the True Orthodox Christians.

When it comes to the Orthodox Ohrid Archbishopric, the Republic of Macedonia has refused to register it as a church or a religious group since 2004. This constitutes a violation of Article 9 (freedom of religion), Article 11 (freedom of assembly and association) and Article 14 (prohibition of discrimination) of the European Convention on Human Rights. The Helsinki Committee has represented the OOA before the European Court of Human Rights since 2006 and is expecting judgment in the course of 2015. Apart from the discrimination and the administrative barriers faced by members of the church, who are publicly stigmatized and labelled "traitors, criminals and schismatic", Mr. Vranishkovski (Archbishop of OOA) is under continual criminal prosecution by the authorities. In

the past 11 years he has been sent to prison six times and is currently expecting the scheduling of a retrial for alleged money laundering, in which members of the OOA occur as defendants.

The Bektashi community is also running a dispute before the European Court of Human Rights related to the inability to register a religious community. The Primary Court has repeatedly prevented their registration due to an apparent lack of documents, with the last decision, which was negative, based on an alleged already existing community of the same kind. Although there is a registered Bektashi community that was granted permission in 2010, this is a different group and the Bektashi community has been required to be registered as an Islamic Bektashi Community since 2000, under a different name from the already registered community. In fact, the Islamic Bektashi Community has been struggling to register for more than 15 years and has been encountering red tape regulations and alleged documents required for registration that prevent the right of believers to freely exercise religious rights and freedoms.<sup>45</sup> The violations of the European Convention on Human Rights indicate a violation of Article 9 (freedom of religion), Article 11 (freedom of assembly and association) and Article 14 (prohibition of discrimination) identical to the case of OOA.

The Stavropegial monastery "St. John Chrysostom", represented by the Church of the True Orthodox Christians, founded by monks as physical persons who separated from the Macedonian Orthodox Church (MOC) in 2008, applied for registration of the above-mentioned church as a separate religious community/convent of citizens/believers from MOC. The decision of the Primary Court from 2009 did not allow the registration of the community because of alleged contravention with the Law on Religious Communities and Religious Groups, stating that they cannot be registered as a religious community because the religious sentiments of other believers would be damaged, but provided no explanation as to which believers and which religious communities would be affected by their registration. The Church of the True Orthodox Christians from the Monastery "St. John Chrysostom" attempted to form a civil

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45 The application to the European Court of Human Rights by the Islamic Bektashi Community: [http://hudoc.echr.coe.int/sites/eng/Pages/search.aspx?{"respondent":\["MKD"\],"article":\["9";"9-1";"9-2"\],"documentcollectionid2":\["CASELAW"\],"itemid":\["001-146470"\]}](http://hudoc.echr.coe.int/sites/eng/Pages/search.aspx?{)

association, yet this request was rejected too, with a decision giving them directions to register according to the Law on Religious Communities and Religious Groups. Henceforth, the appeals of this group were rejected by the higher court instances, and the Constitutional Court rejected the complaint of a violation of the equality of citizens as a constitutional principle, stating that they did not establish discrimination on the part of institutions. The case of this community is before the European Court of Human Rights in relation to Article 9 (freedom of religion), Article 11 (freedom of assembly and association) and Article 14 (prohibition of discrimination), as in the other two cases.<sup>46</sup>

This practice is indicative of the ban on registration of religious communities due to political decisions and the biased judiciary when it comes to registering communities that would be separated from the two largest religious communities - either the Macedonian Orthodox Church or the Islamic Religious Community - who believe that this registration would directly affect the legitimacy of the churches in the perception of the Christian and Muslim believers and lead to their possible affiliation to other communities.

## Freedom of expression, including media freedom and pluralism

Freedom of expression as a broader concept is a framework law covering the expression, speech and thought of citizens and media freedom and access to public information. Freedom of expression is not an absolute right and hence it can be restricted if it violates the rights of others or if it causes or spreads hate speech or is correlated with possible violations of national security, territorial integrity or public safety, protection of order and prevention of disorder and crimes, protection of health or morals, reputation or rights of others to prevent the spread of confidential information or to maintain the authority and impartiality of the judiciary. In accordance with international law, the Republic of Macedonia is obliged to respect these freedoms and rights or the Universal Declaration of Human Rights (Article 19), the International Covenant on Civil and Political Rights (Article 19), the European Convention on Human Rights (Article 10) or the European Charter of Human Rights (Article 11). The Republic of Macedonia faces criticism in the exercise of the above rights and their steady decline is noted in the reports of the European Commission on the progress of the country and other relevant organizations such as the OSCE/ODIHR,<sup>47</sup> Reporters Without Borders,<sup>48</sup> Freedom House on the freedom of media and others.<sup>49</sup> There is also a fair amount of criticism coming from non-governmental organizations operating in the country with regards to the freedom of expression and media pluralism, the criticism being that the pluralism of media in the country does not reflect the pluralism of information presented to the public. The general remarks refer to the decline of media freedom and media personnel and the increase in hate speech, as well as the limitation of the information that guarantees

47 Progress Report of the European Commission, 2014:[http://ec.europa.eu/enlargement/pdf/key\\_documents/2014/20141008-the-former-yugoslav-republic-of-macedonia-progress-report\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2014/20141008-the-former-yugoslav-republic-of-macedonia-progress-report_en.pdf). Elections Report 2014, OSCE/ODIHR: <http://www.osce.org/mk/odihr/elections/fyrom/118079?download=true>

48 World Press Freedom Index, Reporters without Borders, 2014/15: <http://index.rsf.org/#!/>

49 Media Freedom, Freedom House, 2014:[https://freedomhouse.org/report/freedom-press/2014/macedonia#.VXg\\_odKqgko](https://freedomhouse.org/report/freedom-press/2014/macedonia#.VXg_odKqgko). Review of Macedonia's decline in the area of media freedom, in accordance with the report of Freedom House: <http://www.pravdiko.mk/makedonija-na-117-mesto-sporod-slobodata-na-mediumite/>

46 Application to the European Court of Human Rights by the True Orthodox Christians:[http://hudoc.echr.coe.int/sites/eng/Pages/search.aspx#{"respondent":\["MKD"\],"article":\["9","9-1","9-2"\],"documentcollectionid2":\["CASELAW"\],"itemid":\["001-146472"\]}](http://hudoc.echr.coe.int/sites/eng/Pages/search.aspx#{)

criticism and diversity, especially on issues related to the rule of law and the functioning of the executive, legislative and judicial branches. After this general outline of the situation, the report cites information for each listed category of key importance to the freedom of expression and the related rights in their entirety.

## Freedom of expression

In accordance with the national law, freedom of expression is guaranteed by Articles 8 and 16 of the Constitution, which clearly state that censorship is forbidden. In a broader context, freedom of expression also includes the expression of diversity, ethnicity, religious freedoms and rights, the right to freedom of association and the right to protest. These related rights are reviewed further on in the text, while the specific violations of the freedom of expression concerning the failure to sanction hate speech, the failure to provide information to the public due to significant control over the private and state-owned media, the obvious pressure on media workers and the condemnation of critical thinking and other forms of expression targeted especially against the civil society and the LGBT (lesbian, gay, bisexual and transgender) community. The repeated attacks on civil society and the attempts to discredit its members were also worrying, especially the labelling and public incitement to violence towards the so-called traitors and mercenaries, which is in fact an attempt towards complete control over the information that the citizens should receive. Hate speech in the past three years has been rapidly increasing, especially hate speech targeted towards the critical public, civil society and the LGBT community. According to the research of the Committee and the monitoring of hate speech, there is also an abundance of hate speech on the basis of ethnicity. What is typical of hate speech is that it is present in some pro-government media, primarily internet based, and is spread in an organized manner through several websites and certain public figures. What is especially disquieting about hate speech is that it is not sanctioned, which encourages its increase.<sup>50</sup>

In addition, in 2015, there were physical attacks on activists and critical journalists, who are recognized by the general public because of their long-standing work or visibility in civil society. The Committee concluded that the long years of active campaigning against non-governmental organizations (NGOs) and labelling of them as “traitors”, “foreign mercenaries”, “Sorosoids” or “commies”, could result in violence. A case of assault on an activist from the “Freedom Square” NGO was registered.<sup>51</sup> For more discussion on the increase in attacks against journalists, see the following section Media Freedom and Access to Information.

## Media freedom and access to information

Continual decline in the access to information has been observed, by means of control over the media, especially through the public broadcasting service Macedonian Radio Television (MRT). Freedom of expression, the media and media workers are regularly the subject of criticism in the progress reports on the country by the European Commission. Complementing the reports on media freedom and the journalistic profession, the reports of OSCE/ODIHR on the extent of objective presentation of information to citizens, especially during elections, have noted a continuous decline in the quality of information, uniformity and bias in national media towards the executive branch. In the area of media freedom and in correlation to the freedom of expression, the following weaknesses have been highlighted:

- Interrupted dialogue between the executive power and the civil society organizations representing the interests of journalists and the media in general. At the end of 2013 and early 2014, in the absence of public debate and involvement of journalists' associations, a package of laws regulating the media was adopted, which was subjected to serious objections by the media workers:

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50 [www.govornaomraza.mk](http://www.govornaomraza.mk)

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51 Press release: <http://mhc.org.mk/announcements/284#.VXgrUNKqko>

first, the Law on Audio and Audiovisual Media Services,<sup>52</sup> which regulates the rights and obligations of broadcasters and responsibilities of the independent mechanism or the Agency for Audio and Audiovisual Media Services to control the implementation of undertaken obligations, and to grant and revoke licences to broadcasters or fine the media for non-compliance with the provisions of the law. Next, the Law on Media,<sup>53</sup> which regulates the basic principles and requirements to be met by the publishers of media, defines the concepts of editor and editorial board, the right of a journalist to express his/her opinion and attitude and refuse to execute a warrant or a task. The law also regulates the issues of protection of sources of information, the imprint, the publicity in the work of the media publisher and the right to respond to and correct published information.

– According to the reports from international and local organizations, the abuse of the powers of the independent mechanism of the Agency for Audio and Audiovisual Media Services is visible regarding the biased punitive policy towards critical media, the lack of diligence and subjectivity in the treatment and punishment of media during the elections of 2014, and the completely indiscriminating attitude towards the work of the public broadcaster, the Macedonian Radio Television because of the bias in its reporting and the breach of the Statute of the Public Service. Namely, MRT does not meet the standards set in the new legislation and has almost completely steered away from providing any critical and diverse information. A clear example of the work of the public service and its bias towards the executive branch is that it refrained from broadcasting any information to the public about the anti-government protests in the past three years with a particularly oblivious attitude towards those in 2015. MRT did not cover the student protests, the high school protests nor any of the other protests and completely ignored the press conferences of the opposition parties where the audio recordings of the largest scandal of wiretapping of citizens in the history of the Republic

of Macedonia were released. These events were not covered at all by the editorial staff of MRT in Macedonia, while the editorial board of the Albanian editorial staff did broadcast some information.<sup>54</sup> Hence, the pressure and control of the executive branch over the work of the public broadcaster that the citizens are bound to finance with a compulsory fee is absolutely blatant.

– **Censorship and self-censorship of journalists through the Law on Civil Liability for Defamation.**

Changes to the legislation in the field of media began in 2012 with the exclusion of journalists from criminal liability for damages to the reputation of a natural or legal person. In accordance with the European Convention on Human Rights and Freedoms and the practice of the European Court of Human Rights (Article 10), the need to adopt a law on civil liability for defamation was in the reform package for the Republic of Macedonia. The Law on Civil Liability for Defamation regulates civil liability for damage done to the reputation of a physical person or legal entity by defamation. The law guarantees the freedom of expression and information as one of the essential foundations for a democratic society. However, only one year after its adoption, its abuse by holders of high public office was noted, as they abused the law to take their revenge against the critical media and journalists. From the adoption of the Law on Civil Liability for Defamation in November 2012 until the end of 2014, as many as a third of the procedures conducted before the Skopje Court refer to proceedings in which journalists or media workers occur as involved parties. Most of these procedures (82, or 75%) have already been completed, and the other 28 (25%) are still ongoing. It is interesting to mention that, from the beginning of 2015 until the completion of this research, 26 new proceedings were initiated before the Primary Court Skopje 2, half of which (13) involve journalists and the media. Not a single hearing has been held for some of these cases because they are waiting for an answer to the complaint or assignment

52 Official Gazette of the Republic of Macedonia, no. 184 from 26 December 2013, Thursday LXIX, no. 4457: <http://www.slvesnik.com.mk/Issues/b063254742a44129b8dfe1221762ddb4.pdf>

53 Ibid., 7, no. 4458.

54 Report by the Media Development Center: [http://mdc.org.mk/izvestaj-4-monitoring-na-mediumsko-zakonodavstvo/crm\\_izvestaj\\_monitoring-na-avmu-mioa-mrt-sobranie-i-mediumi\\_-dek-2014](http://mdc.org.mk/izvestaj-4-monitoring-na-mediumsko-zakonodavstvo/crm_izvestaj_monitoring-na-avmu-mioa-mrt-sobranie-i-mediumi_-dek-2014)

of a judge to conduct the proceedings.<sup>55</sup> Hence, the pressure applied on journalists through the judiciary is clearly visible and leads to an increase in censorship and self-censorship in the freedom of expression, public information and the media in general.

- Bearing in mind the relations between the executive and judicial power, which was in fact confirmed with the audio recordings presented by the coalition of opposition parties, the courts awarded financial compensation to holders of public office in large amounts only for suing critical media and journalists. Moreover, editors and journalists close to the government often appeared as plaintiffs and defendants who the court decided on by summary proceedings and ruled in their favour. The most appalling examples which indicated bias of the court in cases where the plaintiffs or the defendants are public figures, particularly critical to the work of the executive authority in 2014 and 2015, are: the Director of the Administration for Security and Counterintelligence Sasho Mijalkov, who won his claim for insult and defamation and received a compensation claim totalling 9,000 EUR to be paid by the “Focus” daily.<sup>56</sup> In order for one of the most prestigious critical media in the country not to be extinguished, the funds were raised through a solidarity call for support from the citizens.
- The attacks against this media outlet and the judicial proceedings against its former editor Nikola Mladenov, who was killed in a car accident under suspicious circumstances, continued with the pressure on the newly appointed editor, the journalist Jadranka Kostova. Contrary to the actions against critical media and journalists, trying to win a lawsuit against public officials is a hellish experience. Namely, the court case of the Citizens for European Macedonia (CEM), an association of citizens who sued the Finance Minister Zoran Stavrevski and spokespersons of the ruling party VMRO-DPMNE, Alexander Bichikliski, and the Serbian Democratic Party, Malisha Stankovic, for defamation,

has been running since 2011. In the past four years the defendants have failed to appear at the hearings, and the court refuses to rule in absence, although it is authorized to do so.

- **Lack of legal protection and taking actions in accordance with the practice of the European Court of Human Rights:** The analysis of the court rulings according to the Law on Civil Liability of Defamation, which was aimed at strengthening the mechanisms for freedom of expression and freedom of the media, has given the opposite effect. Apart from the abuse of the legal solution by the holders of high public office, the judicial authorities have refused to follow the case law of the ECtHR. As was also concluded in the analysis of the NGO Infocenter within Network 23, the courts do not follow the principles, nor respect the constitutional rights, guaranteed by the European Convention on Human Rights. In fact, it can be concluded from the analysis that the courts either completely fail to, or very sparsely, apply the three-part test that is required in determining whether the conditions for restricting freedom of expression have been met. This test consists of the following: (1) The restriction must be prescribed by law; (2) The restriction must have a legitimate purpose; and (3) The restriction must be necessary in a democratic society. According to the cases that court proceedings were started for, courts most often refer to the legitimate aim of the three-part test, which, in essence, refers to the second paragraph of Article 10 from the European Convention on Human Rights and which contains a final list of objectives for the purpose of which the restriction on the right to freedom of expression may be imposed.<sup>57</sup>

The past practice and analysis of the adopted final judgments show that there is a worryingly dramatic difference in the operation of the court when it comes to the proceedings in which politicians/public officials occur as parties, as opposed to the cases where there is no such involvement, either as plaintiffs or as defendants. In the cases where a state official or a politician occurs as one of the parties, it is clear that they are conducted more speedily, i.e., there is a visible tendency for urgent action on the part

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55 Research by NGO Infocenter conducted within the Network 23 project: “What is the Price of Freedom of Expression?” (research on the implementation and impact of the Law on Civil Liability for Defamation on the freedom of expression in Macedonia), Skopje, April 2015.

56 Ibid., 10.

57 Ibid., 10.



of the court. Furthermore, in such cases the implementation of the European Convention and the practice of Strasbourg, which, *inter alia*, stipulates that public officials should have a higher threshold of tolerance for criticism, are inconsistent and are directed towards full protection of the reputation of the officials, at the expense of the freedom of expression.<sup>58</sup>

– Public discrediting, imprisonment and persecution of journalists for information and opinions expressed in public in the cases of journalists Tomislav Kezarovski and Jadranka Kostova. The case of the journalist Tomislav Kezarovski, who was accused of threatening a protected witness in a text published in 2008 on the “Liquidation” Case, was arrested in 2013, and then, through the abuse of detention, contrary to the European Court of Human Rights Convention, was kept under arrest for nearly two years.<sup>59</sup> In an extremely biased litigation, the journalist was sentenced to four years and six months,<sup>60</sup> while the denouement came in February 2015 with the decision by the Appellate Court in Skopje, which was 10 months overdue due to alleged bureaucratic labyrinths, violating Article 5 (right to liberty) and Article 6 (right to a fair trial).<sup>61</sup> Consequently, the long-awaited decision was adopted in January 2015, with a reduced prison sentence of two years, almost equal to the time spent in detention, which found journalist Kezarovski guilty.<sup>62</sup> Regarding the persecution of journalist Jadranka Kostova, the executive power used the so-called Law on Lustration and after her public voicing of an opinion on the case of Nikola Mladenov, she was immediately declared a collaborator of the secret services in the years 1991-93.<sup>63</sup> The pressure on critical journalists, such as Borjan Jovanovski and members of his family

and other journalists who are targets of threats and death is also increased, but these cases have so far remained unresolved by the Ministry of Interior.<sup>64</sup>

– **Corruption in the media:** the Republic of Macedonia does not adhere to the commitment to eliminate corruption in the media, which is a result of the ownership structure and the close relationship with the executive authority and party affiliation, which affects media freedom. Namely, a case study prepared by journalist Vlado Apostolov, member of the Independent Union of Journalists and Media (SSNM) has revealed that one of the main reasons for the decline of media freedom is precisely systemic corruption established through the media ownership structure and the financing through government media advertising campaigns.<sup>65</sup> The close personal relationship between the owners and members of the executive power, traced by Apostolov, was confirmed with the information in the audio recordings presented by the opposition parties. Namely, holders of high public office, such as the Chief of Staff of the Prime Minister of the Republic of Macedonia and the Head of the Administration for Security and Counterintelligence, are directly related to the national private media “Sitel”, “Kanal 5” and “Alfa” and are influencing the content, manner and time of publication of information on events of importance for the ruling party VMRO-DPMNE. Even more so, since the public broadcaster, through its management structure, is completely usurped by the executive branch and its editorial policy when providing public information to the citizens depends on their needs.<sup>66</sup> Although pursuant to the Law on Audio and Audiovisual Media Services (Article 38), party members and members of their immediate family must not be owners of media outlets and internet portals, this provision is completely disregarded. In the absence of an independent mechanism to control the ownership structure of the media and equal penalty policy, media

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58 *Ibid.*, 10, p. 16, conclusions from the analysis.

59 Press release, 26 July 2013: <http://www.mhc.org.mk/announcements/143#.VXgTv9Kqqkp>

60 Press release, 23 October 2013: <http://www.mhc.org.mk/announcements/154#.VXgT7dKqqko>

61 Monthly report by MHC, November-December 2014: [http://www.mhc.org.mk/system/uploads/redactor\\_assets/documents/861/Dvomesecen\\_izvestaj\\_noemvri\\_dekemvri\\_2014.pdf](http://www.mhc.org.mk/system/uploads/redactor_assets/documents/861/Dvomesecen_izvestaj_noemvri_dekemvri_2014.pdf)

62 Monthly report by MHC, January 2015: <http://mhc.org.mk/reports/271#.VXgXAdKqqko>

63 Monthly report MHC, March 2015: <http://mhc.org.mk/reports/281#.VXgZo9Kqqko>

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64 The news coverage of the funeral wreath delivered to Borjan Jovanovski's home: <http://www.time.mk/c/5276636d22/skandalozono-mrtovecki-venec-ispraten-za-novinarot-borjan-jovanovski.html>

65 Case study: “Media, owners, journalists and workers' rights”, Independent Union of Journalists and Media Workers (SSNM), Skopje, 2015

66 *Ibid.*, 20.



freedom remains yoked by the executive branch, which dominates with its investment through advertisements of public interest in the media under its control, establishing allegiance in financial terms over the freedom of public information and the media in general. The government's non-transparency in the spending of public money on advertising campaigns and the establishment of this system was published only last year. As Apostolov said: "The government was not only non-transparent to its citizens, but was also concealing the information about its spending on advertisements from the European Commission."

– In the summer of 2013, Deputy Prime Minister Fatmir Besimi took on a commitment to the then Commissioner<sup>67</sup> Stefan Füle to submit the detailed information on the costs of the campaign, but after as many as six months later the European Commission acknowledged that it had received no such information. Last year, after five years of pressure from Brussels and the public in Macedonia, the government released the sums splurged on ads, but only for 2012, 2013 and for the first six months of 2014. During this period, the government ran a total of 27 media campaigns, which cost approximately 18 million EUR. With reference to these data, the Analysis of the Association of Journalists of Macedonia (AJM) states that there were no clear criteria when allocating the campaigns, in fact, the only condition there was had been violated. The government report said that one of the criteria for distribution of campaigns was the viewership and ratings of the media, but in which case why did "Alfa" TV air six times more government advertisements than "Sitel" in 2013, despite an audience that is nine times lower? With such great funds allocated to the media, the government makes a real intrusion and distorts the advertising market, which is detrimental in itself. The AJM analysis shows that the Government in 2013, with 7.2 million EUR, had purchased advertising space in the media equal to that purchased by Procter & Gamble, Coca-Cola and One, together.<sup>68</sup>

– According to the irregularities noted in the past three years, there has been inadequate distribution of forces in the competition between political parties in the country, unequal media coverage in favour of the ruling parties, disproportionate, irresponsible and corrupt practices by the ruling parties by collecting donations, applying pressures on the public administration as the biggest electorate body and a system of impunity that continuously violates voting rights.<sup>69</sup> Furthermore, in accordance with domestic and international observer organizations, bias in reporting for holders of high public office in favour of the ruling party was observed during the 2014 elections as well as unequal treatment in the promotion of political parties in the media, in favour of VMRO-DPMNE. The elections conducted in 2014 and the local elections in 2013 confirmed the suspicions of violations to the civil right to vote. In addition, all democratic processes were brought to complete stagnation. With the opposition leaving Parliament and not accepting the election results, a political crisis began that resulted in the release of the audio recordings of alleged corruptive and criminal affairs, election irregularities and influence over the media by the coalition parties in power.

– **Prohibition on information:** The right to inform the public when it comes to the work of the Constitutional Court is limited, considering the decision of the President of the Constitutional Court that the public hearings in the Constitutional Court may no longer be transmitted by audio and video recordings. This practice was assessed as censorship in informing the public on matters of public interest, such as the debate on the controversial changes to the Law on Abortion. As a reminder, this unprecedented decision adopted by the President was first made in June 2014, which was preceded by the decision of the Constitutional Court to reject the request for protection of freedoms and rights under Article 110, paragraph 3 of the Constitution concerning freedom of public expression and information about the events of 24 December 2012.<sup>70</sup>

67 A journalist research project on the ownership structure of the media in Macedonia <http://www.mediapedia.mk/>.

68 *Ibid.*, 20, p. 12.

69 Report, elections, 2014 OSCE/OIDHR: <http://www.osce.org/mk/odihr/elections/tyrom/118079?download=true>

70 [http://mhc.org.mk/system/uploads/redactor\\_assets/documents/764/Mesecen\\_Juni\\_2014.pdf](http://mhc.org.mk/system/uploads/redactor_assets/documents/764/Mesecen_Juni_2014.pdf)

## Freedom of assembly and association

Freedom of association and the right to protest as related rights are guaranteed by international and national legislation. In accordance with the international legal framework, these two complementary rights are included in the International Covenant on Civil and Political Rights, Articles 18, 19, 20, 21 and 22, as well as under the European Convention on Human Rights, Articles 9 and 11 and are also protected in accordance with national legislation. The Constitution of the Republic of Macedonia, in Articles 20 and 21, as well as the Law on Foundations and Associations of Citizens, the Law on Referendum and Other Forms of Direct Expression of the Citizens' Will and the Law on Public Gatherings guarantee the right to freedom of association and peaceful protest in correlation to the right to free expression. In the past three years Macedonia has seen attempts at prevention of public gatherings in various forms, as well as attempts to suppress the right to peaceful protest by the government. In its ongoing operations and in the reports it prepares by observing these rights, the Helsinki Committee for Human Rights has ascertained the following practices:

- Disturbance of public gathering or protest by police officers who are guarding the protest by setting up a cordon at the designated place for protest, as well as attempts to intimidate on the pretext that the free movement of citizens who do not protest is being hindered.
- Verbal provocations/offences by uniformed and non-uniformed police officers addressed to the citizens/organizers of the protests.
- Using the right to silence and not taking responsibility for the expressed verbal offences or use of force against citizens during a protest by police officers. A practice of police officers refusing to identify themselves by using the right to silence has been observed, withdrawing an officer from a protest and other methods that disable the initiation of proceedings for the case in front of a competent authority, the Internal Control Sector under Mol.
- Pressure and labelling of citizens as politically unsuitable and blaming them for affiliation with the parties from

the opposition, by means of active and simultaneous government campaigns against the citizens.

- Setting up a cordon (ring) of police officers around the protesting citizens. This practice needs to be monitored in future, bearing in mind that it has not been previously observed as typical when securing peaceful protests and public gatherings.
- Two cases of asking citizens for identification after the end of a protest and after having the citizens followed. This was the case with the protest of the redundant workers supported by the Civil Association "Solidarnost" and identifying one of the members of this organization, while in the second case it was a student who had used a "drone" to record the students' protests. Both cases were observed in 2014.
- A practice has been observed of seizing video and photo materials from citizens and journalists taken during protests in two cases. More specifically, the materials recorded by several journalists had been deleted during the violent demonstrations in the Gjorche Petrov residential area and at Bitpazar, both happening in 2014.
- Excessive and disproportionate force was used by police during peaceful protests and violent demonstrations. The Committee established excessive and disproportionate use of force during the peaceful protest of redundant workers held in February 2014 and the spontaneous protests of citizens in May 2015. In terms of violent demonstrations, excessive force was observed during the protests in the residential area of Gjorce Petrov on the occasion of the murder of a young man from the neighbourhood in May and in demonstrations against the verdict for the case dubbed "Lake Smilkovo" at the end of June 2014.
- Counter protests organized by the government as a tool for suppression of critical thought and association of citizens. Two cases were registered of more serious protests organized by VMRO-DPMNE through the executive power in the period from 2013 to 2015. First, the attacks on the Municipality of Centar by the Civil Association "Veritas" in June 2013. Taking into consideration that there are audio recordings of this

case, which the parties from the opposition released in 2015, it should be noted that no protester was identified and properly punished, and no holder of high public office was held responsible (Prime Minister Nikola Gruevski occurs as an organizer) for organizing demonstrations and abuse of the public authority on the part of all participants, some of whom are employed in the public administration. Second, with the beginning of the release of the recordings testifying for the criminal rule of the executive power, a counter-protest was organized by the Public Transport Company (PTE) in May 2015, by moving public transport buses in front of the head office of the opposition party SDSM.

- Labelling and public violation of the privacy, reputation, honour and dignity of a certain number of activists because of their visibility and perseverance continues to be one of the most common ways in which the executive power is trying to suppress the formal and informal movements, associations of citizens and peaceful protests. By establishing mechanisms instilling fear of labelling or affiliation of the citizens with the opposition parties, the government affects their choice not to practice their rights.<sup>71</sup>

## **Treatment of socially vulnerable persons, persons with disabilities and the principle of non-discrimination**

The international framework for human rights, ranging from the Universal Declaration of Human Rights, the International Covenants on civil, political, economic and social rights, the European Convention on Human Rights, as well as specific declarations and conventions that oppose all forms of discrimination, oblige the State to provide minimum conditions and to actively adopt inclusive public policies which would

reduce or eliminate discrimination in society.<sup>72</sup> The Charter of Fundamental Rights of the EU prohibits discrimination. The EU Directives 2000/43, 2000/78 and 2006/54 EC prohibit discrimination on grounds of sex, race or ethnic origin, religion or belief, disability, age or sexual orientation. As a candidate country, Macedonia has to transpose and implement these Directives. At the same time, the state has an obligation to recognize vulnerable and marginalized groups in order to enable a legal and policy framework that would ensure equal access to the rights and responsibilities. The Republic of Macedonia is facing a violation of equality as a constitutional principle according to the preamble on the minority, vulnerable and marginalized groups (see discrimination).

Regarding the situation of vulnerable and marginalized groups at the local level and within the framework of the project Network 23, the Coalition "Sexual and Health Rights of Marginalized Communities" conducted research in three municipalities: Centar, Strumica and Bitola, where it found there was formality in the implementation of the local action plans. The common denominator for all three municipalities is the existence of a formal framework of laws that are supposed to contribute towards achieving gender equality, improve the conditions for treating drug users and protection against discrimination of members of the LGBT community. Locally, a low level of knowledge of the situation was observed, leading to the inability to implement appropriate public policies that would make a substantial difference in the fight against discrimination. The established mechanisms such as commissions for equality between men and women, or action plans that aim to improve the healthcare for vulnerable groups are absent due to limited competences, lack of cooperation with independent mechanisms at the central level (Commission for Prevention and Protection against Discrimination, the Ombudsman) and local civil society organizations working in these areas. Additionally, the lack of knowledge about the needs of the people from the LGBT community cannot contribute to the creation of public policies that provide protection from the violence and forms of discrimination they may face. Furthermore, insufficient

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71 Monthly and annual reports of the Helsinki Committee which has conducted monitoring of all peaceful protests and demonstrations in the period from 2013 to 2015: <http://mhc.org.mk/pages/reports#.VXhDYNKqkko>

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72 Discrimination - Convention on the Elimination of All Forms of Discrimination against Women, United Nations; European Convention on Human Rights, Convention on the Elimination of All Forms of Racial Discrimination - Council of Europe and other accompanying conventions which ban discrimination in education, children's rights, etc.

sensitizing and (not) knowing the needs of marginalized and vulnerable groups on the part of members of the commissions, as well as the minimal cooperation with civil society organizations and experts impede access to justice and rights for these groups.<sup>73</sup>

### **LGBT community**

The discrimination and ignorant behaviour of the Public Prosecution in cases of attacks, violence, hate speech and hate crimes, and the systematic denial of the existence of the community on the part of the executive authority, according to the reports of the European Commission and NGOs that advocate LGBT rights, is the most pressing problem for the Republic of Macedonia. The community has faced six attacks on public events held in facilities or during the “March for Tolerance”, organized by the Helsinki Committee against all homophobia and transphobia in 2013. In the past two years, the community has been struggling with institutions and a judicial system that refuses to recognize structural and systemic violence, and at the same time protect against discrimination, including sexual orientation, as laid down in Article 3 from the Law on Prevention and Protection from Discrimination.<sup>74</sup> The intensified homophobic campaign in 2014 resulted in the constitutional draft amendments that attempted to completely suppress the community by strictly defining marriage as a union between one man and one woman.

Additionally, on 23 October 2014 the sixth attack was registered on a facility where a public event to mark the second anniversary of the LGBT Support Centre was held, which has been the target of attacks since its opening in October 2013. The constitutional amendments were discontinued due to the political crisis, but the fact that the executive authority continues with the public discrediting, discrimination and inciting violence against the community

is not to be undermined.<sup>75</sup> The Public Prosecution continues not to act ex officio, although the attacks on community are public information, and fails to recognize the crime and hate speech directed against the community.

### **Rights of people with intellectual or physical disabilities**

Freedom of movement and access to public transport for persons with physical disabilities in the Republic of Macedonia is not an issue of concern or priority for the central and local governments. Although Macedonia is committed to ensuring equal treatment and access to rights and justice without discrimination, this obligation is not reflected in the local communities and governments, and it complicates the lives of vulnerable groups by limiting freedom of movement and access to public services and goods. The results of the research “The New Streets in Skopje and the Fundamental Rights of Citizens”, conducted by “Ploshtad Sloboda” within this project, clearly indicates the disrespect for the rights to free and unimpeded movement of citizens with physical disabilities, who are unable to enjoy equal access to the freedom of movement and the public goods and services, since the physical barriers (parking of motor vehicles, streets not adapted for people with physical disabilities) in the so-called pedestrian areas, such as sidewalks and traffic signals, disable their independent, and in many cases even assisted, movement. The inadequate urban planning and sensitizing of the public authorities about the needs of this category of citizens, as well as the low public awareness about their existence, have led to complete disrespect for the constitutionally guaranteed rights, such as the right to freedom of movement and the equal access to rights and justice. Therefore, the public space itself opens the door for increased discrimination against this group of citizens.

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73 The Coalition “Sexual and Health Rights of Marginalized Communities”: Analysis of the mechanisms for protection against discrimination of marginalized communities on a local level: Municipality of Bitola, Municipality of Strumica and Municipality of Centar, Skopje 2014/2015.

74 Annual report of the Network for Protection against Discrimination: <http://mhc.org.mk/reports/282#.Vbl0eqSqk0>, Skopje, 2014

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75 See footnote 69 *ibid.*62

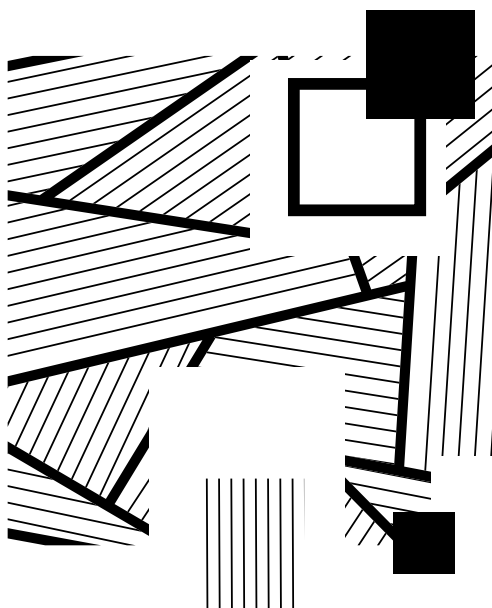
## Roma - freedom of movement, discrimination on grounds of race and ethnicity

According to the reports of the Network against Discrimination, the Roma people in the Republic of Macedonia are faced with high levels of discrimination, segregation and restriction of the freedom of movement at border crossings. Their access to rights and justice remains limited and ignored on the part of both competent courts, as well as the independent mechanism for protection against discrimination or the Commission for the Prevention and Protection against Discrimination. Despite the large number of complaints, in three years the Commission has not ruled on any of the complaints for segregation of Roma children in primary schools in Bitola. In addition, sending Roma people back from border crossings takes place on a large scale. The citizens from the Roma ethnic community have submitted complaints to NGOs because of their distrust in the institutions and the judiciary through which they can find information on racial and ethnic discrimination.<sup>76</sup> The Helsinki Committee conducted a situation testing” as a tool to prove systemic discrimination against citizens and racial profiling by border services. This attitude towards the Roma community is due to the unconstitutional practice established by the Ministry of Internal Affairs in 2013 as a justification for the increased number of asylum seekers for economic and social causes of Macedonian citizens in the Member States of the European Union. The tendency to send Roma citizens back from border crossings by institutions in the Republic of Macedonia continues to restrict the right of free movement of the citizens from this community.

## Gender equality and rights of women

There is a worrying trend of an increased number of reports of violence against women and domestic violence in 2014/15, which has resulted in an increased number of established femicide or murders committed by men in marriage or in a close personal relationship with women. According to reports of the Network against Violence against Women and Domestic

Violence, femicide is the most severe form of violence against women and may be a direct result of domestic violence or intimate partner violence.<sup>77</sup> In Macedonia in only the last year, there were four cases of femicide. These are murders of women and members of their families, committed by an intimate partner/husband/ex-husband, which occurred in the period from May to November 2014.<sup>78</sup> In addition, the state does not meet the requirements for providing proper protection for women victims of domestic and other violence. According to the reports of the European Commission and non-governmental organizations that make up the abovementioned network, we need fundamental changes in the legal framework for the protection of victims, improving the conditions in the shelter centres, as well as increased vigilance, professionalism and adequate response by police officers who come into contact with the victims.



<sup>76</sup> Annual report of the Network for protection against Discrimination for 2014: [http://mhc.org.mk/system/uploads/redactor\\_assets/documents/928/\\_\\_\\_\\_\\_2014.pdf](http://mhc.org.mk/system/uploads/redactor_assets/documents/928/_____2014.pdf)

<sup>77</sup> The term femicide denotes deliberate murder of a woman because she is a woman, yet the broader definition explains the term as murder of women and girls because of gender, torture or misogynist murder of women in the name of honour; murder aimed at women in the context of armed conflict, feticide, female genital mutilation leading to death. Femicide is committed by men, most often a current or former partner, is often preceded by long domestic abuse, threats and intimidation, sexual violence or situations where women are less powerful and have fewer resources than their partner.

<sup>78</sup> Source, Network for Protection of Women against Violence and Domestic Violence: <http://www.glasprotivnasilstvo.org.mk/05-12-2014-fizichko-nasilstvo-i-femitsid/>

# CONCLUSIONS AND RECOMMENDATIONS

## Conclusions

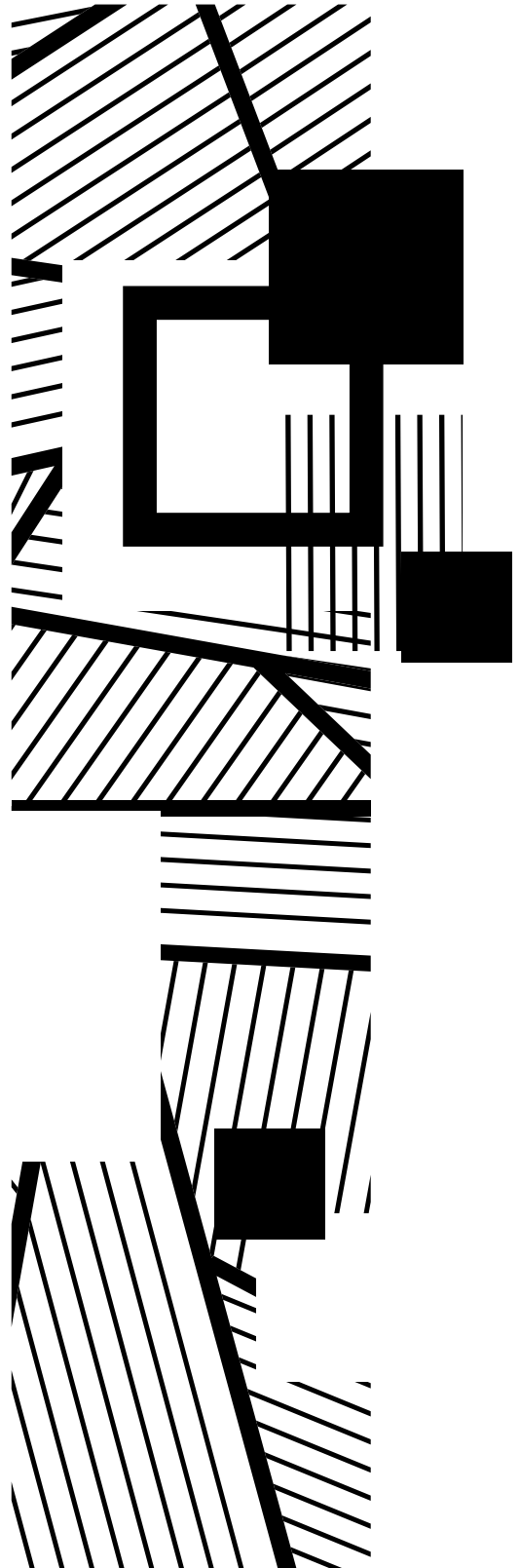
1. The state has failed to provide an adequate legal, medical, psychological and social support for victims of torture, does not implement a policy of zero tolerance for acts of torture and has not eradicated the phenomenon of impunity of public officials.
2. The ruling political party, by abusing the wiretapping system, has violated the fundamental rights of citizens, especially the right to privacy, the right to safety and security and the right to protection of personal data of at least 20,000 citizens. By abusing their official position and authorization, senior government officials have undertaken a large number of illegal actions, which point to corruption and violation of the principle of the legal state, separation of powers and the rule of law.
3. Increased pressure on civil society, the activists and representatives of civil society and structural stifling of the freedom of expression, association and the right to protest in 2014 and 2015, with the aim of discouraging any criticism against the government.
4. Increased number of registered cases of hate speech and hate crimes that are not recognized by the Public Prosecutor's Office, which has the authority to act ex officio if these cases are promoted by the media.
5. The freedom of media and access to information of public interest continue to be restricted by amendments to laws without the involvement of experts and the stakeholders. The pressure on critical journalists continues by imposing prison sentences, lustration processes or threats to their life and discrediting their honour and reputation by pro-government media.
6. The public broadcasting service has not complied with its legal obligations or international standards and the right of objectivity and diversity in placing public information. The Macedonian Radio and Television is under the control of the executive authority and a large number of private national media work under party directives of the ruling parties.
7. The Agency for Audio and Audiovisual Media Services, as an independent mechanism to control the media and objective information, has a selective approach in sanctioning critical media and works in favour of the pro-government media and the executive power. The policy of impunity for the media that violated the Election Code during the 2014 elections is especially pronounced.
8. The politicization of the Constitutional Court has resulted in the restriction of access to information to the public during the public hearings on matters of public interest.
9. The right to protest has been restricted by various forms of obstructing public gathering or continuation of the practice of labelling, insults and slander towards civic activists. Pro-government public information occupies a large scale and aims to discredit all the formal and informal movements that oppose the policies of the executive power. Police officers also limit the right to peaceful protest by disabling access to the institutions that the protesters are dissatisfied with. Cases of excessive and disproportionate use of force to disperse crowds have been registered.
10. The freedom of belief and religious freedoms for registration of denominations resulting from the Orthodox and Islamic religious communities seem impossible for citizens wishing to register a religious community under national legislation.
11. Violations of the right to freedom of information and media during elections affect the voting rights of citizens because of the corruption and the influence of the government over the media which causes manipulation, biased information launched to the citizens and unfair electoral competition between political parties.
12. Discrimination, violence against women and the LGBT community are characterized by a lack of access to rights and justice for vulnerable and marginalized groups in the country.
13. Freedom of movement and access to public goods and services are not available to citizens with physical disabilities due to the breach of standards by public authorities when making interventions in public space.

## Recommendations

1. Urgent implementation of the Directive 2012/29/EU for establishing minimum standards on the rights, support and protection of victims of crime, and mechanisms of supervision such as the Commission for the Protection of Freedoms and Rights of Citizens under the Assembly, the Internal Control Department at the Ministry of Interior and especially the Ombudsman, to take a proactive role in the protection against torture and act on hearsay and on their own initiative.
2. Ensuring efficient parliamentary supervision of UBK and strengthening the capacities of the Parliamentary Commission supervising UBK.
3. Compliance with the Constitution and the penal provisions in the Criminal Code on the exercising of the right of free expression on the part of police officers and holders of high public office, as well as their sanctioning in cases of obstruction of public gatherings or limiting free expression, association and other activities in the form of a peaceful protest.
4. The Public Prosecutor's Office to act ex officio in cases of hate speech and hate crime in accordance with the Criminal Code.
5. The Public Prosecutor's office to conduct a thorough investigation into the connections between the media and the executive power.
6. Inclusion of the expert public in the amendments to existing legislation in line with the international standards and stakeholders or journalists' associations and unions.
7. Proposing an increased number of independent experts and representatives of civil society organizations in the supervisory board of the public broadcasting service (MRT) and carrying out a full investigation for non-compliance with the Constitution and the laws covering media freedom, especially for non-compliance with international and national legal norms of objectivity and diversity when launching information of public character.
8. The Agency for Audio and Audiovisual Media Services to consistently pursue its role as an independent regulatory body, and especially to ensure the objectivity of the independent mechanism during the elections, and to implement the recommendations of the European Commission and OSCE/ODIHR regarding equal access to the policy of sanctioning the media.
9. Compliance with the practice of full audio and video transmission of the public hearings to ensure transparency and publicity in the work of the Constitutional Court, especially on matters of public interest.
10. Strengthening the mechanisms for external control of the Ministry of Interior when restricting the right to peaceful protest or public gathering if it is obstructed by police officers. At the same time, initiating proceedings for criminal liability for the use of excessive and disproportionate force by police officers during a protest and full depoliticization of the Ministry of Interior.
11. The registration of religious communities and respect for freedom of belief and religious freedoms to be allowed in line with the positive law practice of the European Court of Human Rights.
12. Vulnerable and marginalized communities:
  - Changes to the Law on Prevention and Protection against Discrimination and inclusion of sexual orientation as grounds for discrimination.
  - Improving access to justice for the Roma community, independent mechanisms for discrimination and final recognition of racial and ethnic discrimination, as well as restricting the right of free movement contrary to the constitutional principles and international law.
  - Improving the overall legal framework in line with international standards to prevent and protect women against violence and against domestic violence, in particular through increased participation of civil society in the drafting of an appropriate legal framework.
  - Increased activity of the Public Prosecutor and action taken in cases of violence, hate speech and hate crimes towards the LGBT community.

– Initiation of proceedings and investigations in order to initiate criminal responsibility for all parties involved in the six registered attacks on individuals as victims of hate crime by the competent courts and the Prosecutor's Office.

13. The executive authorities and local government to provide substantial participation of citizens in the decision-making on interventions in public space.





## PROCEDURAL RIGHTS

### Goal and methodology

As a result of the Stabilisation and Association Agreement signed between Macedonia and the European Union in 2001,<sup>79</sup> the Government adopted a National Programme for the Adoption of the *acquis*.<sup>80</sup> Before becoming a full member of the EU, during the accession negotiations, the Republic of Macedonia will be required to fully align the national law with the EU law. The overall objective of this analysis is to present the theoretical and practical development of criminal justice, with particular overview of some of the procedural rights in criminal proceedings, both in the EU and in the Republic of Macedonia. The specific objective refers to checking the alignment of the Macedonian legislation and practice with the EU legislation. The focus of the analysis is on the rights of translation and interpretation, notification and access to a lawyer in criminal proceedings, as well as the right to inform another person and a consular office about a case of detention. The choice of these specific rights is based on the already adopted EU Directives in the field of criminal justice.

The methods employed to achieve the said objective are legal research, comparison and legal reasoning and the empirical method. The method of legal research refers to the basic international instruments in the field of criminal justice arising from the United Nations, the Council of Europe and in particular the European Union, as well as research in the field of appropriate domestic legislation. The method of comparison is used to establish the connections, similarities and differences between international standards versus domestic legislation and the necessity of its approximation. The empirical method refers to determining the level of practical implementation of the already existing legal provisions in the Republic in Macedonia. For this purpose, the analyses of three of the partners in the Network 23 project were used, along with

the practice of the Helsinki Committee for Human Rights and other available studies.

### Summary of the EU legal framework

The European Union (EU) competence in the area of criminal justice began with the signing of the Maastricht Treaty in 1992. This agreement marked the creation of the “third pillar” of the Union<sup>81</sup>. The EU pledged “to respect the fundamental rights, as guaranteed by the European Convention on Human Rights” (ECHR) that will “constitute general principles” of EU law. According to the Maastricht Treaty, one of the objectives of the EU anticipated development of close cooperation in the field of “justice and internal affairs”, as well as through “judicial cooperation in criminal matters.” In 1997 the Treaty of Amsterdam was signed.<sup>82</sup> Through it, the EU set an even more ambitious goal - establishing “an area of freedom, security and justice.” The third pillar called “Justice and Home Affairs” was renamed “Police and judicial co-operation in criminal matters.” The Treaty introduced a new instrument called the “Framework Decision”. These decisions were allocated to Member States that were to amend their national legislation in order to achieve common goals. The thematic meeting of the EU in Tampere in 1999<sup>83</sup> resulted in the introduction of the principle of “mutual recognition of judicial decisions”. This principle was conceived as a “cornerstone of judicial cooperation.”

The Charter of Fundamental Rights of the EU (CFREU) was adopted in 2000.<sup>84</sup> CFREU applies to both the EU institutions as well as the Member States in cases where they are implementing EU law. Articles 47-50 guarantee procedural rights to an effective remedy, fair trial and the presumption of innocence. Article 52 states: “In so far as this Charter contains rights which correspond to rights contained in the ECHR, the meaning and scope of those

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79 [http://www.sep.gov.mk/data/file/SSA/SSA\(1\).pdf](http://www.sep.gov.mk/data/file/SSA/SSA(1).pdf)

80 The latest eighth revision of the programme is available at: <http://www.sobranie.mk/WBStorage/Files/00nppaa2014narativenobjavuvanje.pdf>

81 Treaty on European Union, Official Journal of the European Union, C 191, 29 July 1992.

82 Treaty of Amsterdam Amending the Treaty on European Union, the Treaties Establishing the European Communities and Related Acts, Official Journal of the European Union, C 340, 10 November 1997.

83 Council of the European Union. Tampere European Council, 15-16 October 1999, Presidency Conclusions (not published in the Official Journal of the European Union).

84 Official Journal of the European Union, C 364, 18 August 2000.

Rights will be the same as those laid down by the ECHR.” However, the EU has the competence to provide a “more comprehensive protection”. Up until 2009, CFREU had no binding legal force, but Article 6 (1) from the Treaty of Lisbon gave it “the same legal significance” as that of the basic EU treaties. In 2004, the European Commission adopted a Draft Framework Decision on certain procedural rights in criminal proceedings.<sup>85</sup> The proposal consisted of five fundamental rights (access to legal aid, free interpretation and translation, providing assistance for individuals who are unable to follow the proceedings, the right to communication and notification of suspects and defendants of their rights by providing a “Letter of Rights”).<sup>86</sup> The proposal was not adopted due to the disapproval of six member states, which found it to be too “ambitious” and that “it would only replace the rights guaranteed by the ECHR”. For this reason, it was agreed to take the approach “step by step” by gradually adopting separate legal instruments, separately for each procedural law.

The Treaty of Lisbon entered into force on 1 December 2009.<sup>87</sup> Through this treaty the EU gained clear competence in the field of criminal procedural law relating to persons suspected or accused of committing a crime. Thus, the alignment of the manner of conducting criminal proceedings throughout the EU became possible. The legal acts in this area are adopted in the form of mandatory “Directives” instead of “Framework Decisions”. For the first time in its history, the EU has competence to adopt minimum rules in the form of directives that can apply to “the rights of individuals in criminal procedure” as well as “mutual admissibility of evidence”. In 2010 the “Stockholm Programme”<sup>88</sup> was adopted, which refers to the strengthening of the procedural rights of suspects and defendants in criminal proceedings. The Stockholm Programme calls for a strategy that will be based on “solidarity and expediency” and “direct EU policy towards the harmonization of substantive and procedural criminal

law”. In the period from 2010 to 2013 three directives were adopted - Directive 2010/64/EU on the right to interpretation and translation in criminal proceedings,<sup>89</sup> Directive 2012/13/EU on the right to inform the criminal proceedings,<sup>90</sup> and Directive 2013/48/EU on the right of access to a lawyer.<sup>91</sup> Apart from these directives, three other directives concerning the procedural safeguards for children suspects and defendants in criminal proceedings, previous legal assistance to suspects and defendants who are deprived of liberty, and the presumption of innocence and the right to be present during the criminal proceedings are also in the process of adoption.<sup>92</sup> Only the adopted directives have been addressed for the purposes of this analysis. Considering the fact that the provisions of the analysed directives concerning the European arrest warrant are in direct correlation with the Framework Decision 2002/584/JHA from 2002<sup>93</sup> and that they would also require sound analysis in relation to the European arrest warrant, they have been omitted from this analysis.

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85 COM(2004) 328 final, Brussels, 28 April 2004.

86 COM(2004) 328 final, Brussels, 28 April 2004.

87 Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union, Official Journal of the European Union C 115, 9 May 2008.

88 Official Journal of the European Union C 115, 4 May 2010.

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89 Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings (OJ L 280, 26.10.2010, p.1).

90 Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings (OJ L 142, 1.6.2012, p.1).

91 Directive 2013/48/EU of the European Parliament and the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and European arrest warrant proceedings and on the right to have a third party informed upon deprivation of liberty, and to communicate with third persons and with consular authorities (OJ L 294, 6.11.2013, p. 1).

92 [http://europa.eu/rapid/press-release\\_MEMO-13-1046\\_en.htm](http://europa.eu/rapid/press-release_MEMO-13-1046_en.htm)

93 2002/584/JHA: Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States, Official Journal L 190, 18/07/2002 p. 1.

## Right to liberty and security

In the course of recent years there have been continuous remarks regarding the imposing and extension of the measure of detention by judges, the length of the measure, the failure to use milder alternative measures, the overcrowding, the living conditions and the inadequate health care. Although the domestic legislation and international standards require that detention be used as an exception, and not as a rule, the duration to be reduced to the shortest time necessary and to always first consider the possibility of using more lenient preventive measures, there is a general feeling that detention is sometimes used as a punitive measure and in certain cases as a method of intimidation.

Detention lasts too long (42% of prisoners spend more than five months in detention centres) and there is insufficient use of alternative measures. Judicial supervision gives no results. According to the Criminal Procedure Code, all individuals deprived of their liberty have: instant access to an independent lawyer of their choice; to receive, at their request, an independent medical examination; and can be contacted by a family member. These provisions of the Criminal Procedure are, however, sometimes not complied with by the authorities. The waiting part is particularly real when it comes to instant access to an independent medical examination, which is almost never provided.

Detention is sometimes used as a punishment, or is intended to intimidate the suspects/accused - indicative of this are the cases where detention is imposed for lesser crimes, especially the last case with the convicted participants in the protest on 5 May 2015, which was held in front of the Government of the Republic of Macedonia. More than 42 persons were arrested in the incident, most of whom were held in several police stations in Skopje for 24 hours. A large number of the detainees were not part of the group that clashed with the police and some of them did not even participate in the protest. Fifteen persons were placed in detention, one person was granted house arrest and two of them escaped. Five of the detained persons were students, two of whom were representatives of the Student Plenum.

The persons were suspected of involvement in a mob that prevents an officer from performing an official act (Article 384 paragraph 1 of the Criminal Code). The penalty for this offence ranges from three months to three years, since it is considered a lighter criminal offence for which, on principle, the measure of detention is not to be imposed, but other alternative measures should be used to provide presence.

We believe that such decisions lead to limitation of the right to protest, especially as the reason for detention stated that the detainees could repeat the crime since new protests had been announced. Also, decisions on custody and initiation of criminal proceedings against students can be considered as a warning to other citizens who want to take part in the protests held in this period. In comparison, no lawsuits were initiated against the participants in the violent protests against the Municipality of Centar, held in 2014, which is why we believe that there is selective justice.

In the period from 22 May to 6 June, the main hearings were held for the three groups of protesters who were criminally prosecuted and, except for two of the defendants, all the others pleaded guilty and therefore most of them were sentenced with a suspended sentence of three months which would not be effectuated if they did not repeat the offence. One of the defendants, who pleaded guilty, was sentenced to 10 months because of prior conviction for the same offences. Only two of the protesters did not plead guilty and the court sentenced one of them to imprisonment for two years and four months because of prior convictions and the second person was given a suspended sentence of seven months' imprisonment, which will not be effectuated if the person does not commit another crime within the next two years.

## Equal access to justice

Given the need for greater accessibility to institutions for the citizens of the Republic of Macedonia with lower financial and social standing and at the same time bearing in mind specifically the principle of equal access to justice, on 28 December 2009 the Law on Free Legal Aid was adopted and it came into force on 7 July 2010.

According to this law, the right to free legal aid is available to the Macedonian citizens with permanent residence in the country who are welfare recipients, recipients of the disability allowance, who do not generate any income based on earnings or income from real estate, who receive the lowest pension and are living in households with two or more dependents, and families or single parents with one or more minor children who are entitled to child benefit.

The right to free legal aid is also available to children at risk and children for whom there are grounds to suspect that they have committed an action considered to be a crime according to the law, or an offence in the proceedings for protection of the rights and interests of children before the Ministry of Internal Affairs and the Centre for Social Work in cases and under conditions determined by the Law on Justice for Children. In addition, asylum seekers are also entitled to free legal aid, as well as persons who have been granted asylum, internally displaced persons, and displaced or exiled persons residing in the territory of the Republic of Macedonia, foreign nationals, people without citizenship who are legally residing in the Republic of Macedonia as well as citizens of a Member State of the European Union.

The law regulates the following forms of free legal aid: preliminary legal aid and legal assistance in administrative and judicial proceedings. Preliminary legal assistance is provided by the regional offices of the Ministry of Justice and authorized associations, while lawyers provide legal assistance in judicial and administrative proceedings.

The application for legal aid is granted in all judicial and administrative procedures, provided that it concerns matters of interest for the seeker of legal aid in the area of rights of social, health, pension and disability insurance, labour relations, protection of children, victims of domestic violence,

protection of victims of criminal offences, the protection of victims of human trafficking, recognizing the right to asylum and property-legal issues. It cannot be granted if the applicant or a member of his/her family living in the same household has property that amounts to or exceeds five average gross monthly salaries in the Republic of Macedonia in the previous month.

The application for free legal aid is submitted in person or by mail to 34 regional offices of the Ministry, on a special form accompanied by a statement on the financial and social standing of the applicant and the family members living in the same household, as well as a statement of consent allowing insight into all the data on their assets. The Minister of Justice decides upon the submitted requests.

Free legal aid is funded from the budget of the Ministry of Justice. The financial assets are allocated to the payment of remuneration to lawyers for legal aid in accordance with the Tariff for awards and reimbursement of lawyers reduced by 30% and the reimbursement of the costs to the authorized association for legal assistance in accordance with the tariff for Compensation of the costs for the work of associations of citizens for carrying out preliminary legal aid.

Considering the restrictive provisions of this Act in relation to the provision of free legal assistance, in the years since its implementation many analyses were prepared that confirm the fact that the law does not meet the real needs of citizens for free legal aid. Hence, the law does not allow all citizens to have equal access to justice. The article of the law which states that free legal aid cannot be granted if the applicant or a member of his/her family living in the same household has property that amounts to or exceeds the amount of five average gross salaries in the Republic of Macedonia in the previous month is particularly controversial, since it means that legal aid may not be used by people who own a home or real estate worth more than 2,500 EUR. The abovementioned Article particularly limits the possibility for citizens who are at social risk and whose sustenance is threatened to exercise the right to free legal aid.

The latest analysis regarding this law, prepared by the civil association "Equal Access", shows that there are a growing number of people who seek, but also get, free legal aid (FLA)

and yet this number does not correspond to the number of persons who are at social risk. The analysis states that the budget allocated to FLA for 2013 at the Ministry of Justice was 414,409.00 MKD allocated for compensation of lawyers and associations of citizens and, if this is divided by the total population of the Republic of Macedonia, we would get an average of approximately 0.20 MKD per capita. This amount would be higher if we take into account the estimated total budget for the implementation of FLA calculated in this analysis in terms of costs and would amount to approximately 11.23 MKD per capita. The amounts for 2014 underwent minimal increase and 0.37 MKD per capita or 11.40 MKD from the estimated budget. In the Republic of Macedonia in 2013, according to the State Statistical Office, there were 34,612 household recipients of social assistance, of whom 8,233 were households headed by women, with total household members (together with the heads of the household) of 131,185 - 59,708 of whom were women. If we make a correlation between the recipients of social assistance and the budget for FLA for 2013, it can be concluded that recipients of social assistance would receive approximately 11.00 MKD per household on average, or approximately 50.00 MKD for women householders. However, these amounts would be greater if we take into consideration the total estimated cost of implementing FLA calculated in this analysis, 669.73 MKD per household, or approximately 2,815.59 MKD per woman householder. The benefit also applies to the household members.

There is no available data on the recipients of social assistance for 2014.

However, the figures show that the effectiveness of the money spent is lower if it is taken into consideration that only 75 of the applicants for free legal aid in 2013 (114 in 2014), were granted free legal aid. If the number of citizens who exercised this right is compared with the budget of the Ministry of Justice of 414,409.00 MKD in 2013, it turns out that on average every applicant for free legal aid was supposed to get approximately 5,525.00 MKD, i.e., 5,676.00 MKD for female applicants (73). The total budget increased in 2014, but the number of approved applications also increased, so from a total budget of 770,701.00 MKD on average each applicant should have received 6,760.53 MKD, or, if we take into consideration the number of women who exercised this

right (97), they should have received approximately 7,945.00 MKD on average.

For the purposes of this analysis we also conducted interviews with citizens, canvassing their level of awareness about this law, which especially affects the exercising of the right to free legal aid. The main conclusion from the interviews is that citizens are not sufficiently informed about the existence of this law, the conditions and manner of exercising this right. In addition, citizens who had exercised this right were not satisfied with the lawyers who were assigned to them because their cases were not given sufficient attention, assuming that this was because of the amount reduced by 30%, which the lawyers receive for these cases.

It is especially important that this law does not stipulate discrimination as an area for approval of free legal aid, which is why problems arise when initiating proceedings for determining and protection against discrimination, especially among marginalized groups and communities, including the Roma population.

## **Right of access to a lawyer in criminal proceedings**

Article 14 (3) (d) ICCPR, 6 (3) (c) ECHR and 47 CFREU stipulate that everyone has the right to defend himself/herself in person or through legal assistance of his/her own choosing and if the person does not have sufficient means to pay for legal assistance, they must be given a free lawyer when the interests of justice require it. In a recent judgment of the ECHR, which is a milestone in this area, it is stated that the right to a fair trial requires that, as a rule, access to a lawyer should be provided from the first interrogation of the suspect by the police.<sup>94</sup> Providing a lawyer, among other things, serves as a protective measure to prevent extortion of confession of guilt by torture or other abuses. In its Concluding Observations on Georgia, the Human Rights Council confirmed that any suspect "must have immediate access to a lawyer".<sup>95</sup> According to the

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94 *Salduz v Turkey* (36391/02), 27 November 2008, para. 55.

95 UN Human Rights Committee (HRC), UN Human Rights Committee: Concluding Observations, Georgia, 5 May 1997, CCPR/C/79/Add.75, 5 May 1997, CCPR/C/79/Add.75, para. 27.

UN, the assistance from a lawyer must be provided “without any restrictions, influences, pressures or undue interference from any party.”<sup>96</sup> In cases where the suspect or the accused state that they would prefer to be represented by a lawyer, the authorities must stop the interrogation until a lawyer is provided. Article 8 of the ECHR (right to privacy) guarantees the privilege of confidentiality between the defendant and his/her defence counsel. According to the practice of the ECHR the relationship between the defendant and his/her counsel is of a private and confidential character.<sup>97</sup>

## Directive 2013/48/EU on the right of access to a lawyer

Directive 2013/48/EU on the right of access to a lawyer, which will come into force on 27 November 2016,<sup>98</sup> is the third Directive adopted in the area of procedural criminal law after the entry into force of the Lisbon Treaty. Apart from guaranteeing the right of access to a lawyer, the Directive also refers to the right to have a third person informed of the deprivation of liberty and communicate with that person, as well as the right to inform and communicate with the diplomatic and consular missions during the arrest (Article 1). The preface of the Directive states that it builds on Articles 3 (prohibition of torture), 5 (right to liberty and security), 6 (right to a fair trial) and 8 (right to respect for private and family life) from the ECHR. Directive 2013/48/EU also calls on Directive 2012/13/EU on the right of notification about criminal proceedings, which, as was previously described, allows suspects and accused persons to be informed about the right of access to a lawyer, as well as that persons who are arrested or detained should be promptly provided with a written Letter of Rights containing information on the right of access to a lawyer. In addition, the Directive calls on the Guidelines of the European Council for Child-Friendly Justice from 2010,<sup>99</sup> thus promoting the rights of children.

96 General Comment No. 13, Article 14 (Administration of Justice), Equality before the Courts and the Right to a Fair and Public Hearing by an Independent Court Established by Law, 13 April 1984, para. 9.

97 *Campbell v the United Kingdom* (13590/88), 25 March 1992, para. 48.

98 <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1433872282373&uri=CELEX:32013L0048>

99 [http://www.coe.int/t/dghl/standardsetting/childjustice/default\\_en.asp](http://www.coe.int/t/dghl/standardsetting/childjustice/default_en.asp)

The Directive applies to suspects and accused persons in criminal proceedings and starts to apply from the moment when the person is notified by the authorities, *ex officio* or otherwise, that they are suspects or accused of committing a crime, regardless of whether that person was detained. The Directive is applicable until the end of the procedure. End of the procedure means the final decision with regards to the question of whether the person committed the offence, including, where applicable, the sentencing and the resolution of an appeal. In addition, the Directive applies under the same conditions to people who are not suspects or charged, but who gain the status of suspects or accused persons during interrogation by the police [Article 2(1)(3)].

### a) The right of access to a lawyer

The authorities should ensure that suspects and accused persons have the right of access to a lawyer at a time and in a manner that will allow these individuals to exercise their right of defence in a practical and effective way. The right is to be provided without any undue delay. Suspects and accused persons should have access to a lawyer in one of these cases, as early as possible at that certain point of time:

- before the interrogation by the police or the judicial authority;
- after the completion of the investigation or procedure of collecting evidence from the investigators;
- without undue delay after the arrest; and
- when they are called to appear before a court with criminal jurisdiction, within a reasonable time before they appear in court.

For successful realization of the right of access to a lawyer, the authorities should provide the following to the suspected and accused persons:

- the right to personally meet and communicate with the lawyer who represents them, including a meeting prior to the interrogation by the police or another judicial authority;
- the right to have their lawyer be present and participate effectively during the interrogation. The participation is to be of such a nature as not to be detrimental to the effective use of this right. In cases in which the lawyer

participated in the interrogation, such participation should be recorded; and

- the right for their lawyer to be present during the investigative or other procedure for collecting evidence, in case they are allowed to be present during these procedures, especially during:
- - identification of persons or items;
- - confrontations; and
- - reconstruction of the event.

Exceptions to these rules are possible only in exceptional circumstances and during the pre-trial, i.e., investigative proceedings and only when such exceptions are justified in the light of the particular circumstances of the case, based on one of these compelling reasons:

- where there is a necessity to prevent a serious threat to the life, liberty or physical integrity of a person; and
- where taking immediate action by the investigative authorities is essential to prevent a significant risk to the criminal proceedings.

The directive guarantees the confidentiality of communication between the suspects and accused persons and their defence counsel. Communication, in the least, should include meetings, correspondence and telephone conversations. The right of access to a lawyer is contained in Articles 1-4 of the Directive.

## **b) The right to have a third person informed of the deprivation of liberty**

The authorities should ensure that suspects and accused persons deprived of their liberty, if they wish so, have the right, without undue delay, to choose at least one person to be informed of their arrest. In cases where the suspect or accused person is a child, the authorities should allow the holder of parental responsibility to be notified immediately after their arrest, about the arrest, as well as the reasons for their detention. An exception to this rule is possible only when the notice would be contrary to the best interests of the child and in such a case another appropriate adult should be notified. The term “child” in the Directive means a

person under 18 years of age. Apart from the specific rules concerning children, the authorities should take into account the special needs of vulnerable suspects and defendants in exercising the rights guaranteed by the Directive (Article 13).

The authorities may temporarily waive the application of the right to have a third person informed with regards to the specific circumstances of the case, based on one of these compelling reasons:

- when there is a necessity to prevent a serious threat to the life, liberty or physical integrity of a person; and
- where taking immediate action by the investigating authorities is critical for the prevention of considerable danger to the criminal procedure.

If the authorities decide to waive the application of the right to have a third person informed of the deprivation of liberty, they are bound to provide that an appropriate authority responsible for protecting the welfare of children is notified about the detention without undue delay. In addition, the authorities are bound, without undue delay, to provide the right to communication with third persons to the suspects and accused persons, such as, for example, a relative of their choice. The right to have a third person informed of the deprivation of liberty and communicate with that person is contained in Articles 5 and 6 of the Directive.

## **c) The right to communicate with consular authorities**

For suspects and accused persons who are not citizens of the given country and are deprived of their liberty, the authorities should provide the right to notify the consular mission and provide immediate communication with this office if these people agree to it. In cases where suspects and accused persons possess two or more citizenships, they can choose which consular office will be notified, or which office they will communicate with. Apart from the right of notification and communication, the suspects and accused persons have the right to be visited by consular officials, to discuss and to correspond with them and be granted the right to legal representation provided by the consular office.

#### **d) Temporary concessions and waivers of the right to information and communication**

If the authorities decide to temporarily derogate from the provision of the rights of notification communication, such concessions should be:

- proportionate and not go further than necessary;
- with a strict time limit;
- not based solely on the type and severity of the alleged offence; and
- without prejudice to the overall fairness of the proceedings.

Temporary concessions regarding the right of communication between the suspects and accused to other persons may be approved only by a properly reasoned decision, taken by the judicial or other authority and subject to judicial review. Any such decision must be recorded.

In the case of suspects and defendants giving up their right to information and communication, such waivers are to be allowed only when the authorities ensure that:

- the suspect or accused person, orally or in writing, through clear and sufficient notice has been informed about the contents of the relevant law and the possible consequences of refraining from using it; and
- the cancellation is done voluntarily and unequivocally.

The cancellation, which may be requested verbally or in writing, should be recorded and include an explanation of the circumstances under which it was requested. The authorities should ensure that suspects and accused persons are able to withdraw the application and to inform them of such a possibility. Temporary concessions and the cancellation of the right to information and communication are contained in Articles 8 and 9 of the Directive.

#### **Right of access to a lawyer in criminal proceedings in the Republic of Macedonia**

Article 12 of the Constitution stipulates that the person summoned, detained or deprived of liberty shall have the right to an attorney in the course of the police and court procedure. The right of access to a lawyer (counsel) in criminal proceedings is regulated in Article 71 LCP, which states that any person suspected or accused of a crime has a right to counsel during the criminal proceedings against him/her. Prior to the first interrogation or another action that such an obligation is prescribed for according to this law, the person must be advised about his/her right to counsel of his/her own choosing whom they privately consult and that the counsel may attend the trial. According to Article 78 LCP, the defence counsel is entitled to take any action that may be taken by the defendant for the benefit of the accused.

The right of access to a lawyer is also laid down in the Law on Police, which in Article 34 states that the defendant is entitled to representation and counselling by a lawyer during the police procedure. In addition, Article 43 of the Law on Police stipulates that the written invitation calling on citizens to collect the necessary information required to carry out police work, among other things, contains advice on the right to an attorney in police procedure, while Article 63 indicates that in the process of recognition, apart from the police officers who perform this method and the suspect who is being identified, the counsel of the suspect may also be present. According to Article 206 of LCP, if the accused does not have a lawyer or is unable to get in touch with him/her, he/she will receive the list of lawyers on call compiled by the Bar Association of the Republic of Macedonia. If the defendant initially did not want an attorney, but later expresses a desire for a lawyer, the interrogation will be temporarily stopped and will resume when the accused receives a lawyer to consult with. According to Article 90 of the Law on Justice for Children,<sup>100</sup> the defence of a child is mandatory at all stages of judicial proceedings.

According to the Committee for the Prevention of Torture of the Council of Europe, the records of detainees in the police stations that were visited in 2010 speak of the fact that the vast majority of the prison inmates have no access

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<sup>100</sup> Official Gazette of the Republic of Macedonia, no. 148/2013.



to a lawyer. The committee cites the police station "Gazi Baba" (in which access to a lawyer was provided to only 44 of the 752 detainees, which is less than 6%) as an example. The situation with the police stations "Bitpazar" and "Centar" in Skopje was similar. According to the law enforcement officials who spoke to members of the Committee, access to a lawyer was usually provided only when the detained person could pay for representation. The police station in Veles was referred to as an exception to this rule, since they kept a list of lawyers representing ex officio and who the detainees could call.<sup>101</sup>

Within the Network 23 project, the partner organization Coalition "All for Fair Trials" monitored the implementation of international standards for fair trial in the Primary Court Skopje 1. The analysis implies that in 42 monitored court proceedings the defendant had their own attorney, while in two cases an attorney had been appointed ex officio. In four cases, or 7%, the defendant did not have an attorney, but the procedure was conducted as an offence that did not require mandatory defence.<sup>102</sup> Regarding the advice for free legal aid by a lawyer, in 15 cases the defendants were advised about this right, while in 10 cases they were not advised. According to the Coalition, the small number of people advised about this right leads to a conclusion that the courts did not always check whether the defendant is financially capable of covering the costs of the defence. Observers noted that in only 53% of the procedures the attorneys were capable of providing high-quality defence and did not leave an impression of inadequately representing their clients.<sup>103</sup>

Within the project Network 23, the partner organization Center for Strategy and Development PAKTIS - Prilep implemented the project "System of Alternative Measures with Special Overview of its Implementation in the Municipality of Prilep".<sup>104</sup> From interviews conducted with 12 lawyers, the conclusion is that in the course of their

day-to-day work they had not used the possibility of Article 58 b (3) LCP for convicts who have been sentenced with up to 90 daily fines or 1,800 EUR in MKD or imprisonment of up to three months to apply for commutation by community service.

When asked for the reasons for the sparse use of an attorney in police stations from the analysis of effective defence in criminal proceedings in the Republic of Macedonia, 48% of respondents said that the suspects were not correctly informed about the right to counsel, 18% said that the police deliberately deterred them by manipulation, threats, etc., and 9% said that citizens do not trust lawyers. When asked whether police or prosecutors assist the suspects or defendants to find counsel, 47% said sometimes, 29% always, 24% often. When asked whether there is a regular scheme or plan for calling a lawyer in emergencies, in order to ensure the right to counsel of the arrested person, even when that person cannot afford a lawyer, 30% said that there is a list prepared by the Bar Association, 23% said no, but the person is given an insight into the general registry/directory of lawyers, 20% said that counsel is hired by the family/relatives of the suspect, and 13% said that the court has a list of lawyers that it cooperates with. When asked whether the suspect can consult a lawyer before the first interrogation, 67% said always, 22% sometimes, 6% never and 5% often. When asked whether the lawyer is allowed to advise the person during interrogation, 37% said always, 26% never, 21% sometimes and 16% often.<sup>105</sup>

Within the Network 23 project, the partner organization Association of Finance Officers of Local Governments and Public Enterprises conducted the project "Tracing the sources of funding for the judiciary, the amount of funds provided and their impact on the independence of the judiciary in the Republic Macedonia".<sup>106</sup> According to the research, in the area of unsettled liabilities there was continual occurrence of unsettled liabilities relating to claims for treatment of detainees and bills for lawyers engaged ex officio. These types of expenditure accounted for approximately 5.46% to 34.85% in certain courts. From the analysis of the annual accounts and annual reports of the

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101 <http://www.cpt.coe.int/documents/mkd/2012-04-inf-eng.pdf>, para. 18.

102 Implementation of the international standards for fair trial - Report on the period from November 2014 - April 2015, p. 25. Available at: [http://all4fairtrials.org.mk/Main\\_files/Standardi\\_2015\\_MKD.pdf](http://all4fairtrials.org.mk/Main_files/Standardi_2015_MKD.pdf)

103 *Ibid.*, pp. 26-27.

104 The analysis prepared within the project is still not publicly available.

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105 See footnote 113.

106 The analysis prepared within the project is still not publicly available.

judicial budget, the Association concluded that in courts, the cost for attorneys are one of three major types of overdue liabilities (including contractual services and utilities). Those three types of expenditure accounted for almost 95% of the total amount of matured, but unpaid, claims. According to the Association, such a size and structure determines the need for further streamlining of other costs and for providing additional resources to cover those costs. Such conclusions deter experienced lawyers from offering their services and also affect the quality of representation of accused persons.

#### **a) Right to have a third person and a consular office notified about the detention**

Article 34 of the Law on Police stipulates that when exercising the police authorisation to summon, arrest, and detain, the police officer must immediately notify the person in a language they understand, among other things, about the right of the suspect or defendant to have a member of his family or a close person informed about the detention or arrest. According to Article 69 from LCP, the person will be advised about the right to have a member of the family or a close person, i.e., a consular office of the country that the person is a citizen of, informed about the arrest or detention. If necessary, the detained or arrested person will be provided with adequate medical treatment. Article 159 from LCP stipulates that the arrested or detained person must be informed about the right to inform the family or another person of his choice about the detention. In addition, Article 161 LCP states that a person who is a foreign citizen has the right to contact the diplomatic or consular mission of his/her country. Police will help him/her get in touch with the diplomatic and consular mission or other official with diplomatic status who represents the interests of his/her country. For each detained person, the officer admitting them opens a separate record which shall contain information on, among other things, the time when the person was advised of his rights, when they contacted their family, attorney, doctor and diplomatic or consular mission. The defendants may call on these rights at any given time during their detention.

Pursuant to Article 175 CCP, the court is bound to inform the family of the detainee within 24 hours of the detention unless the person opposes this. The competent authority

for social work will also be informed about the detention, so that if necessary they can take measures to take care of children and other family members that the detainee takes care of. Article 178 stipulates that the heads of diplomatic and consular missions in the country, upon the approval of the judge conducting the preliminary procedure who conducts the investigation, are entitled to visit the detainee unsupervised and talk to the detained citizen of their country. Approval for visits is requested from the Ministry of Justice. According to Article 98 of the Law on Justice for Children, a child is summoned through his parents or guardians, unless this is not possible because of the need for urgent action or other circumstances. The parents, legal representatives or guardian authority shall be immediately notified about the summoning of the child, within not later than two hours.

When asked whether the arrested person may inform a third party about the detention in the analysis of effective defence in criminal proceedings in the country, 47% of the respondents said always, 23% sometimes, 18% often, 12% never. When asked whether the person may contact a third party, 41% said never, 25% always, 17% sometimes, 17% often. When asked whether the arrested person may notify his/her diplomatic mission, 41% said always, 29% often, 18% sometimes, 12% often. When asked whether the police help the person to find contact information about his/her diplomatic or consular mission with regards to his/her arrest, 34% said always, 33% sometimes, 20% often, 13% never. When asked whether the person detained may always communicate with the diplomatic mission, 36% said always, 36% often, 14% sometimes, 14% never.

## Right to an interpreter and translator in criminal proceedings

Article 14 (3) (f) of the International Covenant on Civil and Political Rights (ICCPR) and 6 (3) (f) ECHR guarantee the right to a free translator and interpreter for suspects and defendants in cases where they do not understand the language or languages used in the national court. The translation of the verbal and partially the written part of the procedure is essential for the person against whom the criminal procedure is conducted and who must be acquainted with criminal charges against him/her. According to the Human Rights Committee under the United Nations, this right is “of particular importance in cases in which ignorance or difficulties in understanding the language used in court can constitute a major obstacle to the realization of the rights of defence.”<sup>107</sup> According to the ECHR, even if the defendant’s lawyer gives up on this right, the judge who conducts the procedure is “the ultimate guardian of the fairness of the proceedings” and, as such, must take “extraordinary care” for the rights of the accused, especially upon the realization that he/she does not understand or has difficulty understanding the language of the proceedings.<sup>108</sup> Consequently, not providing an interpreter during the criminal proceedings equals a violation of Article 6 of the ECHR.

On the other hand, the authorities are not obliged to provide interpretation if the defendant speaks the language of the proceedings, but wants to address the authorities in another language. According to the Human Rights Committee of the United Nations, if “the person is able to adequately understand and express himself/herself in the official language,”<sup>109</sup> the authorities are not required to provide interpretation. Neither during nor at the end of the procedure does the state have a right to require from the suspects or accused persons to pay for translation or interpretation. This applies to cases in which the accused

has been convicted. ECtHR established violation of Article 6 of the ECHR in a case in which the government asked the inmates to cover the costs of interpretation during the trial.<sup>110</sup>

## Directive 2010/64/EU on the right to interpretation and translation in criminal proceedings

Directive 2010/64/EU on the right to interpretation and translation in criminal proceedings, which came into force on 27 October 2014,<sup>111</sup> was the first Directive adopted in the area of procedural criminal law after the entry into force of the Lisbon Treaty. In the preface of the Directive it is stated that it was adopted in order to facilitate the application of the right to a fair trial in the sense of Article 6 of the ECHR and its interpretation by the practice of the ECHR. According to the Directive, the right to translation and interpretation in criminal proceedings applies from the moment that the person is notified by the authorities ex officio or otherwise, that he/she is suspected or accused of committing a criminal offence, up until the conclusion of the proceedings. The end of the procedure means the final decision related to the question of whether the person committed the offence, including, where applicable, the sentencing and the resolution of an appeal [Article 1 (2)]. This right is provided free of charge, regardless of the final outcome of the criminal proceedings (Article 4).

### a) Right to interpretation

For suspects and accused persons who do not understand the language of criminal proceedings, the Directive requires that an interpreter be provided before the investigative and judicial authorities, including the police interrogation, all court hearings and necessary interim hearings. The right of interpretation, in cases when it is necessary in order to protect the fairness of the proceedings, should be also provided in the communication between the suspected or accused person and his legal counsel related to any

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107 General Comment No. 13, Article 14 (Administration of Justice), Equality before the Courts and the Right to a Fair and Public Hearing by an Independent Court Established by Law, 13 April 1984, para. 13.

108 *Cuscani v the United Kingdom* (32771/96), 24 September 2002, para. 39.

109 *Yves Cadoret, Hervé Le Bihan v France* (323/1988), 11 April 1991, para. 5.6.

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110 *Luedicke, Belkacem and Koç v Germany* (6210/73, 6877/75 and 7132/75), 28 November 1978, para. 50.

111 <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1433806057348&uri=CELEX:32010L0064>

interrogation or hearing during the proceedings or when submitting an appeal or other procedural motion. This right includes appropriate assistance for persons with hearing or speech impediment. The authorities must also provide a procedure or a mechanism to determine whether the suspect or accused person understands and speaks the language of the criminal proceedings and where he/she needs the assistance of an interpreter. In addition, the state should provide an opportunity to the suspected or accused person to challenge the decision by which it was determined that there was no need of an interpreter, as well the possibility for a complaint about the quality of interpretation, if a person believes that it is not sufficient to protect the fairness of the proceedings. All these rights related to interpretation are contained in Article 2 of the Directive.

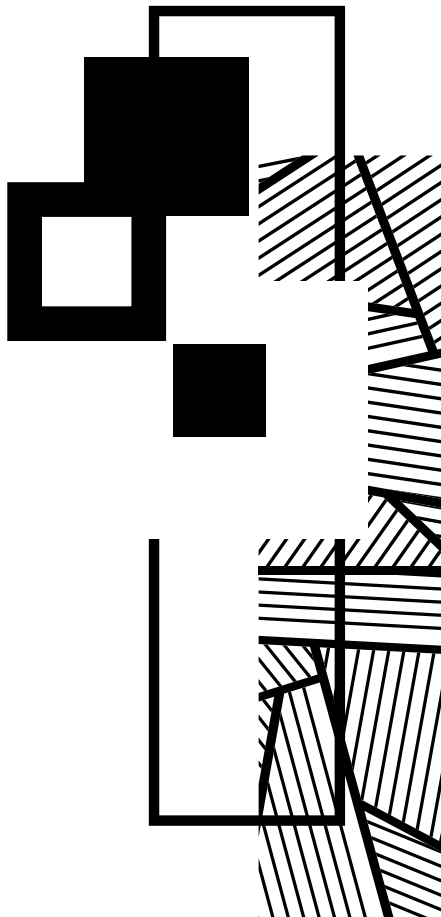
### **b) Right to translation of documents of essential importance**

The right to translation of essential documents refers to the translation of all documents that are considered essential to ensure the rights of defence and to protect the fairness of the proceedings. Essential documents, in terms of the Directive, are considered any decisions depriving a person of liberty, criminal charges or prosecution proposal/act and any judgment. Depending on the case, the authorities are expected to decide whether another document could be considered essential in the procedure, while the suspected or accused person and his/her defence are allowed to submit a duly substantiated request to exercise this right. However, this does not apply to essential parts of documents that are not relevant to enable the suspected or accused person to be aware of the case against him/her. In such a case, the person or his counsel have the opportunity to challenge the decision establishing that there is no need for translation of a document or part thereof. As an exception to these general rules for written translation of documents, it is possible to provide oral translation or oral summary, provided that such translation does not jeopardize the fairness of the proceedings. Any waiver of this right must be conditioned with notification, legal advice or otherwise informing the suspected or accused person of the consequences of the waiver, and determining whether it is unequivocally on a voluntary basis. The right to

translation of essential documents is contained in Article 3 of the Directive.

### **c) Quality of interpretation and translation and trainings**

In order for the interpretation and translation to be of such quality as to ensure the fairness of the proceedings, the State shall endeavour to establish a register or registers of independent translators and interpreters with the appropriate qualifications. Once established, these registers should be made available to the defence and the authorities. The state should also provide interpreters and translators to be reliable in terms of what they have come to know during their work. Finally, the authorities should ask those in charge of training of judges, prosecutors and judicial staff involved in criminal proceedings to pay special attention to the particularities of communicating with the assistance of an interpreter, in order to ensure efficient and effective communication. The quality of interpretation and translation is contained in Article 5 and the training in Article 6 of the Directive.



## Right to a translator and interpreter in the criminal proceedings in the Republic of Macedonia

According to Article 8 of the Law on Criminal Procedure (LCP),<sup>112</sup> the official language during criminal proceedings is Macedonian and its Cyrillic alphabet. Another official language spoken by at least 20% of the population can also be used in the procedure. This right includes the use of the alphabet of that language. Considering that the Albanian community is the only one that is represented with more than 20% of the population, the Albanian language and its Albanian alphabet are considered the official language.<sup>113</sup> The right to an interpreter or translator is contained in Article 9 of the LCP, which stipulates that the defendant<sup>114</sup> who speaks a language other than Macedonian has the right to use his/her language and his/her alphabet in the proceedings. In addition, in the proceedings before the court, the defendant is entitled to free assistance of an interpreter or translator. The directory of permanent court interpreters is updated by the Ministry of Justice.<sup>115</sup> It is evident from this directory that, in Macedonia, judicial interpretation and translation is provided in only 25 languages. The authority conducting the procedure shall provide interpretation of what is presented by the person and others, as well as what is written in the documents and other written evidence.

The authority conducting the procedure will provide written translation of the written materials of relevance for the proceedings or for the defence of the accused. The person who does not speak the language of the court is advised of the right to an interpreter or translator. This instruction and the statement of the person are recorded in the minutes before

the body conducting the proceedings. The translation is done by a court interpreter, i.e., translator. Article 10 of the LCP stipulates that citizens who speak an official language other than Macedonian (Albanian) and other persons who do not speak or understand the Macedonian language and its Cyrillic alphabet may submit their motions in their own language and its alphabet. Such submissions are then translated and distributed to the parties ex officio. The defendant who does not understand the language of the proceedings is provided with translation of the indictment in the language that he/she had used in the procedure. Article 211 stipulates that the interrogation of the defendant shall be conducted through an interpreter in cases envisaged by the LCP.

According to Article 38 of the LCP, translators and interpreters can theoretically be excluded if there are circumstances that cause doubt as to their impartiality. The interpreter or translator, if they had been involved in the procedure, will need to sign the report on the procedure in accordance with Article 92 of the LCP. Article 211 stipulates that the interrogation of the defendant shall be conducted through an interpreter in cases envisaged by the LCP. If the defendant has a hearing impediment, he/she will be asked questions in writing, if he/she has a speech impediment, he/she will be asked to answer in writing. If the interrogation cannot be performed in this manner, a person who can communicate with the accused will be called as an interpreter (Article 221). The interpreter must take an oath to faithfully translate the questions directed to the accused and the statements that he/she provides. According to Article 449, one of the conditions for repeating the procedure is if it is proven that the verdict was based on a false testimony of the interpreter or translator.

A specific case from the practice of the Helsinki Committee for Human Rights of the Republic of Macedonia is case K-617/14 against the defendant B.S., a 21-year-old member of the Roma community, conducted before the Primary Court in Kumanovo and the Appellate Court in Skopje. Three citizens of Afghanistan, a country with two languages in official use, Dari and Pashto, were the damaged party in the case. It is evident from the case file, as well as during the main hearing, that only one of the three victims had very basic and insufficient knowledge of English and that an interpreter from Macedonian into English was present at the hearings. The other two victims

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112 Official Gazette of the Republic of Macedonia, no. 150/2010 and 100/2012.

113 In accordance with Chapter IV from the Law on Use of Languages spoken by at least 20% of the citizens in the Republic of Macedonia and the local government units (Official Gazette of the Republic of Macedonia, no. 101/2008 and 100/2011).

114 According to Article 21(2) LCP, "accused" means a person against whom an indictment has been confirmed, an indictment filed, a request for a security measure has been submitted, a private lawsuit has been filed or a proposal for a penal order has been filed. The term accused in the LCP is used as a general term for a suspect, convicted and sentenced.

115 <http://www.pravda.gov.mk/sudskipreveduvaci/>

spoke no English, and their interrogation was done in such a way that the court interpreter first interpreted to the victim with poor knowledge of English, who then in turn translated to the other two victims, whereby they talked to him and he talked to the interpreter, who talked to the other participants in the proceedings. Additional evidence that the victims did not speak English was the statement of one the witnesses, who during the main hearing testified that, although he had a poor knowledge of the English language, he addressed the victims in that language, and he realized that they did not speak good English too. Through this method, it was not possible to verify the statements of the victims to any extent, which resulted in arbitrary and incomplete insight into the facts and the imposition of a custodial sentence. Although, according to Article (415) (1) (12) of the LCP, substantial violation of the provisions of the criminal procedure occurs when the court violated the provisions on the use of language in the proceedings, the Court of Appeal in Skopje through ruling Kzh. no. 1737/14 confirmed the verdict, merely reducing the sentence.

## Right to information in criminal proceedings

The right to information in criminal proceedings imposes an obligation on the authorities to inform the suspected or accused person of his rights during the proceedings. These persons should be informed of the full set of rights guaranteed by international and domestic law. Such notification, depending on the circumstances and the stage of the case, can refer to the following rights: on the reasons for arrest or detention, access to a lawyer, free legal assistance, interpretation and translation rights to remain silent, not to testify against himself/herself, right to have another person or consular office informed about the deprivation of liberty, right to call and interrogate witnesses, right to present evidence or to propose their collection, compensation for unlawful or unjustified detention, etc.

## Directive 2012/13/EU on the right to information in criminal proceedings

Directive 2012/13/EU on the right to information in criminal proceedings, which entered into force on 2 June 2014,<sup>116</sup> is the second directive adopted in the field of procedural criminal law after the entry into force of the Lisbon Treaty. In the preface to the Directive it is stated that references in this Directive to suspects or accused persons who are arrested or detained should be understood to refer to any situation where, in the course of criminal proceedings, suspects or accused persons are deprived of liberty within the meaning of Article 5(1)(c) ECHR, as interpreted by the case-law of the European Court of Human Rights.<sup>117</sup> The Directive lays down rules concerning the right to information of suspects or accused persons, relating to their rights in criminal proceedings and to the accusation against them (Article 1). The rules deriving from this Directive apply from the time persons are made aware by the competent authorities, or in another way, that they are suspected or accused of having committed a criminal offence until the conclusion of the proceedings, which is understood to mean the final determination of the question whether the suspect or accused person has committed the criminal offence, including, where applicable, sentencing and the resolution of any appeal (Article 2):

### a) The right to information about rights

According to the Directive, all suspects or accused persons are provided promptly with information concerning at least the following procedural rights, in order to allow for those rights to be exercised effectively:

- the right of access to a lawyer;
- any entitlement to free legal advice and the conditions for obtaining such advice;

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116 <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1433812388644&uri=CELEX:32012L0013>

117 Everyone has the right to liberty and security. No one shall be deprived of his/her liberty except on the basis of law in the following cases: the lawful arrest or detention to bring him/her before the competent legal authority on reasonable suspicion of having committed an offence or when there are compelling reasons to prevent him/her from committing a crime or the crime to flee.

- the right to be informed of the accusation, in accordance with Article 6;
- the right to interpretation and translation; and
- the right to remain silent.

The information provided for shall be given orally or in writing, in simple and accessible language, taking into account any particular needs of vulnerable suspects or vulnerable accused persons. The right to information about right is contained in Article 3 of the Directive.

### **b) Letter of Rights on Arrest**

Suspects or accused persons who are arrested or detained should be provided promptly with a written Letter of Rights by the authorities. They should be given an opportunity to read the Letter of Rights and should be allowed to keep it in their possession throughout the time that they are deprived of liberty. In addition to the information set out in Article 3, the Letter of Rights referred to in paragraph 1 of this Article shall contain information about the following rights as they apply under national law:

- the right of access to the materials of the case;
- the right to have consular authorities and one person informed;
- the right of access to urgent medical assistance; and
- the maximum number of hours or days suspects or accused persons may be deprived of liberty before being brought before a judicial authority.

In addition, the Letter of Rights should also contain basic information about any possibility, under national law, of challenging the lawfulness of the arrest; obtaining a review of the detention; or making a request for provisional release. The Letter of Rights shall be drafted in simple and accessible language. An indicative model Letter of Rights is set out in Annex I of this analysis. Suspects or accused persons should receive the Letter of Rights written in a language that they understand. Where a Letter of Rights is not available in the appropriate language, suspects or accused persons shall be informed of their rights orally in a language that they understand. A Letter of Rights in a language that they understand shall then be given to them

without undue delay. The right to information about the right to a Letter of Rights is contained in Article 3 of the Directive.

### **c) Right to information about the accusation**

Suspects or accused persons shall be provided with information about the criminal act they are suspected or accused of having committed by the authorities. The information shall be provided promptly and in such detail as is necessary to safeguard the fairness of the proceedings and the effective exercise of the rights of the defence. In addition, at the latest on submission of the merits of the accusation to a court, the authorities are to provide detailed information provided in the accusation, including the nature and legal classification of the criminal offence, as well as the nature of participation by the accused person. The right to information about the accusation is contained in Article 6 of the Directive.

### **d) Access to the materials of the case**

In cases when a person is arrested and detained at any stage of the criminal proceedings, the authorities shall ensure that documents related to the specific case in the possession of the competent authorities that are essential to challenging effectively, in accordance with national law, the lawfulness of the arrest or detention, are made available to arrested persons or to their lawyers. The access to the materials on the case shall be granted in due time to allow the effective exercise of the rights of the defence and at the latest upon submission of the merits of the accusation to the judgment of a court. Where further material evidence comes into the possession of the competent authorities, access shall be granted to it in due time to allow for it to be considered. By way of derogation to these rules, provided that this does not prejudice the right to a fair trial, access to certain materials may be refused if such access may lead to a serious threat to the life or the fundamental rights of another person, or if such refusal is strictly necessary to safeguard an important public interest, such as in cases where access could prejudice an ongoing investigation or seriously harm the national security of the Member State in which the criminal proceedings are instituted. Member States shall ensure that, in accordance with procedures in national law, a decision to

refuse access to certain materials in accordance with this paragraph is taken by a judicial authority, or is at least subject to judicial review. The right to access to the materials of the case is contained in Article 7 of the Directive.

## **Right to information in criminal proceedings in the Republic of Macedonia**

Article 12 of the Constitution stipulates that the freedom of humans is inviolable and that the person summoned, apprehended or detained shall immediately be aware of the reasons for the summons, apprehension or detention and on their rights established by law and he/she may not be required to give a statement. According to Article 34 of the Law on Police,<sup>118</sup> in exercising police powers of summoning, apprehending, arresting and detention, the police officer must immediately notify the person in a language which he/she understands, of the reasons for the summons, arrest, apprehension or detention and clearly state the right to remain silent, the right to consult a lawyer, the right to a lawyer during the police procedure, the right to medical assistance if the person requires it, as well as the right to have a member of the family or close person informed about the deprivation of liberty. The right to medical assistance, if necessary or requested by the defendant, is also laid down in Article 69 (3) LCP, and Article 160 (6) LCP, which stipulates that medical examination will be required whenever the person complains of injury, pain or illness. The admissions officer at the police station should always ask if the person suffers from any illness and whether he/she is subject to any medical treatment or is taking certain medication.

Article 69 LCP stipulates that the accused must be first clearly instructed about the right to remain silent and the right to privately consult with a lawyer and a counsel of his choice during the interrogation. Pursuant to Article 70 of the LCP, each defendant has the right to sufficient time and adequate facilities to prepare his/her defence, and especially to have access to files and be familiar with the evidence against him/her and in his/her favour. Additionally, in

accordance with Article 79, during the criminal proceedings, the counsel has the right to review the materials and the evidence and to examine and obtain copies of the minutes and other records of the actions that the defence was entitled to attend and which are kept by the Public Prosecution. With regards to a possible detention, according to Article 169 LCP, the decision on custody shall be delivered to the person being addressed immediately and not more than six hours after his presentation before the judge of the preliminary investigation.

Article 206 from the LCP stipulates that, prior to any court hearing, the accused shall be informed and advised as to:

- what he/she is accused of and what is the basis of the suspicion that stands against him/her;
- that he/she is not obliged to present his defence or to answer questions, but if he/she makes a statement, it can be used in the proceedings against him/her;
- that he/she can have an attorney according to his/her own choosing, with whom he/she can privately consult and who may attend the trial;
- that he/she can plead on the case that he/she is charged with and present all facts and evidence that are in his/her favour;
- that he/she has the right to insight into the materials of the case and the objects that were seized;
- that he/she has the right to free assistance of an interpreter or translator if he/she cannot understand or speak the language used in the examination; and
- that he/she has the right to be examined by a physician in case of need of medical treatment or the determination of possible police excesses.

The accused may voluntarily waive some of these rights, but his/her trial may not start if the statement that waives some of the rights is not taken down in writing and signed by him/her. The person may not waive the right to counsel if defence is mandatory. If action has been taken contrary to any of these rules, the statement of the accused may not be used during the trial.

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118 Official Gazette of the Republic of Macedonia, no. 114/2006, 6/2009, 145/2012, 41/2014 and 33/2015.



In a recent analysis, titled "Effective defence in criminal proceedings in the Republic of Macedonia", when asked: "Is, in practice, the person informed of his/her rights before being interrogated?" out of 90 respondents - representatives of the police and judicial authorities - 63% answered always, 26% sometimes, 11% never.<sup>119</sup> When asked: "How, in practice, is the accused informed of his/her rights?" 74% responded "orally", 21% "in writing" and 5% said "the person is not informed." When it comes to the right to access to the materials of the case, 24% said that it was provided, 41% that it had not been provided, 35% that it had sometimes been provided. On the right to inform the consular office and another person, 72% answered yes, 17% no and 11% not always. On the right to medical care, 58% said yes, 10% no and 32% not always. On the right to counsel, 56% said yes and 44% no. When asked: "In practice, is the ban on the use in court of statement by the accused, who, prior to being examined, had not been informed about their rights, effective?", 80% answered yes and 20% no.<sup>120</sup>

## CONCLUSIONS AND RECOMMENDATIONS

### Conclusions

1. In certain cases the measure of detention is used as a punishment or intimidation. Detention lasts too long and there is insufficient use of alternative measures.
2. There is overcrowding in detention facilities and conditions are inhuman and degrading.
3. The Law on Criminal Procedure, the Law on Police and the Law on Justice for Children largely contain the solutions provided by the minimum standards for the protection of procedural rights of suspects and accused persons at the EU level. Despite this positive conclusion, the problems with the exercise of the procedural rights are related to the application of the legislation in practice. An additional problem is the paucity of empirical research through which it would be possible to come to conclusions relevant to the actual application of procedural rights.
4. The legal provisions concerning the right to interpretation and translation in criminal proceedings are not clear enough in terms of when exactly the suspects or accused persons are to be provided with this right. This particularly applies to the previous procedure conducted before the police and/or prosecutor's office. The problems in the implementation of this right in practice refer to the Directory of set permanent court interpreters, according to which the translation or interpretation is provided in only 25 languages, as well as providing a translator or interpreter in a language which the accused has only basic knowledge of.
5. There is no mechanism for determining whether the suspect or accused person understands and speaks the language of the criminal proceedings, whether they need the help of an interpreter and whether the translation and interpretation are of such quality that they provide protection to the fairness of the proceedings. Interpreters and translators may be excluded only if the court finds them to be biased. Additionally, there is no possibility of an appeal by means of which the suspect or accused person may contest the decision determining that there was no need of an interpreter.

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<sup>119</sup> Goran Kalajdziev and others, Foundation Open Society Macedonia, June 2014, p. 76.

<sup>120</sup> Ibid., pp. 77-78.

6. There are no expressly stated “essential documents” that must be translated and which, according to Directive 2010/64/EU, are always the basis of the decision for detention, the criminal charges, the indictment or proposal, any judgment, as well as other documents that could be regarded as essential. Because of this situation, the right of suspects, defendants and their lawyers to submit a reasoned request to exercise this right is also not expressly provided for.
7. The training programmes of the Academy of Judges and Public Prosecutors does not include mandatory training on the right to interpretation and translation in criminal proceedings and therefore judges and prosecutors cannot be expected to have adequate knowledge about the specifics of communication using an interpreter.
8. The National legislation does not stipulate that suspects and accused persons are to be informed of the right to free legal aid and the conditions under which it can be obtained, nor is there a provision through which the police would be bound to inform the persons deprived of their liberty about the right to an interpreter and translator. There is no provision specifying that the police and other judicial authorities should take account of any special needs of vulnerable persons suspected or accused. In practice, the courts do not provide information on these rights, either orally, or in writing.
9. The Law on Legal Aid does not cover all poor persons and does not provide equal access to justice for disadvantaged citizens. Discrimination is not envisaged as an area that free legal assistance can be provided for.
10. The police and prosecutors are not obliged to present a Letter of Rights to suspects or accused persons promptly and in writing, before the first interrogation, as required by Directive 2012/13/EU.
11. In national legislation there is no express provision through which the police would be bound to provide access to the materials of the case that are considered essential to effectively challenge the lawfulness of the arrest or detention to the person arrested or detained.
12. In the national legislation there is no express provision that would stipulate that the right of access to a lawyer applies to persons who are not suspects or charged,

but who may gain this status during the process of interrogation by the police, in the sense of Directive 2013/48/EU. In addition, there is no special provision stipulated to the needs of vulnerable suspects and defendants in exercising their rights guaranteed by the Directive.

## Recommendations

1. The judges who decide on imposition and extension of the measure of detention, in cases of minor offences, should consider the fact that those are not severe crimes and should not result in the imposing of this measure, especially when it comes to young people who have not previously committed a crime.
2. The conditions in detention facilities to be improved and the exercise of the minimum rights of detainees to be provided, in accordance with the Law on Criminal Procedure and international standards.
3. In future amendments to the Law on Criminal Procedure, the Law on Police and the Law on Justice for Children, it is necessary to bear in mind the need for approximation between national legislation and minimum standards for the protection of procedural rights of suspects and accused persons at EU level. For successful implementation of the existing and necessary solutions, a comprehensive empirical analysis of the current application of the rights in criminal proceedings is necessary. One such analysis would necessarily involve all stakeholders, such as representatives of the judiciary, prosecutors, relevant ministries, researchers, civil society, as well as individuals who are or were suspects and defendants in criminal proceedings.
4. It is necessary to restate or clarify the legal provisions concerning the right to interpretation and translation in criminal proceedings regarding the moment from which the suspects or accused persons have the right to be provided these rights, i.e., providing these rights at the beginning of the preliminary procedure which is conducted in the police and/or at the prosecutor's office. The authorities should make efforts to include translators

and interpreters in the Directory of set permanent court interpreters who have knowledge of languages other than the 25 languages that there already are translators or interpreters for. In practice, the translator and interpreter should speak the native language of the accused, not a language that the defendants only partially understand.

5. It is necessary to develop a legal and practical mechanism for ascertaining whether the suspect or accused person understands and speaks the language of the criminal procedure, whether they need the help of an interpreter and whether the translation and interpretation are of such quality that provides protection to the fairness of the proceedings. Such a mechanism should also apply to the control of the quality of translation or interpretation and in case it is low, the interpreter or translator is to be replaced.
6. It is necessary to adopt a legal provision according to which the decision to arrest, the criminal charges or indictment proposal, any judgment, as well as other documents that may be considered essential, would be considered documents that must be translated, as well as a possibility for the suspects, defendants and their lawyers to request such translation through a proper and reasoned motion.
7. The training programmes of the Academy of Judges and Public Prosecutors must introduce a module for mandatory training on the right to interpretation and translation in criminal proceedings, by which judges and prosecutors will gain adequate knowledge about the peculiarities of communication with the assistance of an interpreter.
8. It is necessary to adopt legal provisions through which suspects and accused persons will be notified of the right to free legal aid and the conditions under which it can be obtained, as well as determine the responsibility for the persons deprived of their liberty to be informed of the right to an interpreter and a translator during police procedures. It is necessary to adopt a provision by which it would be established that the police and other judicial authorities should take into account any special needs of vulnerable persons who are suspects or accused. In order to implement this recommendation in practice, it is advisable to have brochures in several international languages on the premises of the police and judicial authorities through which defendants might become familiar with this law. The Law on Free Legal Aid must be amended in a way that will facilitate the criteria for obtaining free legal aid. Discrimination is to be introduced as an area in which free legal assistance can be provided.
9. It is necessary to introduce a "Letter of Rights" into the national legislation, which should be presented in writing to suspects and accused persons in a timely manner, in plain and understandable language, whereby they will be given the opportunity to read it and keep it during their arrest. Apart from informing the accused of their fundamental rights, the letter should also contain information about the maximum number of hours or days during which the suspect or accused person may be deprived of liberty before being brought before a court, about the possibility to challenge the lawfulness of the arrest, i.e., detention, and the possibility of applying for parole.
10. It is necessary to adopt a provision in the national legislation through which the police would be bound to provide access to materials of the case that are considered essential to effectively challenge the lawfulness of the arrest or detention to the person arrested or detained.
11. It is necessary to adopt a provision in national legislation through which the right of access to a lawyer shall also apply to persons who are not suspects or charged, but may gain such status during the process of investigation by the police, and provisions that shall provide a special attitude towards the needs of vulnerable suspects and defendants when exercising their rights during the criminal proceedings.

## **ANNEX I - Indicative model of the Letter of Rights**

The sole purpose of this model is to assist national authorities in drawing up their Letter of Rights. Member States are not bound to use this model. When preparing their Letter of Rights, Member States may amend this model in order to align it with their national rules and add further useful information. The Member State's Letter of Rights must be given upon arrest or detention. This, however, does not prevent Member States from providing suspects or accused persons with written information in other situations during criminal proceedings.

### **YOU HAVE THE FOLLOWING RIGHTS**

#### **A. ASSISTANCE OF A LAWYER/ENTITLEMENT TO LEGAL AID**

You have the right to speak confidentially to a lawyer. A lawyer is independent from the police. Ask the police if you need help to get in contact with a lawyer; the police shall help you. In certain cases the assistance may be free of charge. Ask the police for more information.

#### **B. INFORMATION ABOUT THE ACCUSATION**

You have the right to know why you have been arrested or detained and what you are suspected or accused of having done.

#### **C. INTERPRETATION AND TRANSLATION**

If you do not speak or understand the language spoken by the police or other competent authorities, you have the right to be assisted by an interpreter, free of charge. The interpreter may help you to talk to your lawyer and must keep the content of that communication confidential. You have the right to translation of at least the relevant passages of essential documents, including any order by a judge allowing your arrest or keeping you in custody, any charge or indictment and any judgment. You may in some circumstances be provided with an oral translation or summary.

#### **D. RIGHT TO REMAIN SILENT**

While questioned by the police or other competent authorities, you do not have to answer questions about the alleged offence. Your lawyer can help you to decide on that.

#### **E. ACCESS TO DOCUMENTS**

When you are arrested and detained, you (or your lawyer) have the right to access essential documents you need to challenge the arrest or detention. If your case goes to court, you (or your lawyer) have the right to access the material evidence for or against you.

#### **F. INFORMING SOMEONE ELSE ABOUT YOUR ARREST OR DETENTION/INFORMING YOUR CONSULATE OR EMBASSY**

When you are arrested or detained, you should tell the police if you want someone to be informed of your detention, for example a family member or your employer. In certain cases the right to inform another person of your detention may be temporarily restricted. In such cases the police will inform you of this.

If you are a foreigner, tell the police if you want your consular authority or embassy to be informed of your detention. Please also tell the police if you want to contact an official of your consular authority or embassy.

#### **G. URGENT MEDICAL ASSISTANCE**

When you are arrested or detained, you have the right to urgent medical assistance. Please let the police know if you are in need of such assistance.







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Скопје



ЦЕНТАР ЗА  
УПРАВУВАЊЕ СО  
ПРОМЕНИ

 ХЕЛСИНШКИ 

КОМИТЕТ ЗА ЧОВЕКОВИ  
ПРАВА НА РЕПУБЛИКА  
МАКЕДОНИЈА