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TRANSPARENCY AND OPENNESS:

THE CHALLENGE OF MODERNIZING THE JUDICIARY IN THE REPUBLIC OF MACEDONIA

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TRANSPARENCY AND OPENNESS:
THE CHALLENGE OF MODERNIZING THE JUDICIARY IN THE REPUBLIC OF MACEDONIA[1]

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1.INTRODUCTION

This document analyzes the applicable legislative framework designed to ensure transparent and open judiciary in the Republic of Macedonia, while offering guidelines for enhancing its transparency. In light of the fact that judiciary reforms are pursued under the influence of international processes, this document also presents a review of major international standards and developments in this area.

An in-depth analysis of the application of rules and practical problems arising in this respect in the Republic of Macedonia remains to be made in another document. This document does not cover administrative law judiciary and does not examine the work of the Judicial Council, albeit transparency in the election, promotion and dismissal of judges is an indispensable prerequisite for a quality judiciary.

A judiciary aiming at consolidating its authority and position as the third pillar of power in a democracy must abide by the principles of openness and transparency. It is often underlined that "Justice must not merely be done but must also be seen to be done", [2] while public trust is an important indicator of the status of the judiciary and of the situation of the justice system overall. Regretfully, EC Reports on the Republic of Macedonia underline that judicial independence has backslided and the public trust in public institutions has further eroded.[3] The last EC Progress Report clearly emphasizes that the situation has been backsliding since 2014 and achievements of the previous decade's reform process have been undermined.[4] Two of the priorities under the Urgent Reform Priorities, relating specifically to the justice system, are aimed exactly at consolidating the transparency of the judiciary, for example by strengthening the communication strategies, by which the Judicial Council and the highest instance courts would protect the independence of the judiciary, or for example by ensuring publication of all court judgments within the clear deadlines imposed by law (and by ensuring full "searchability" and ease of access). [5] The last EC Report on the Republic of Macedonia underlines the issue of online access to the jurisprudence, and in particular "searchability", which still needs to improve in line with the Urgent Reform Priorities. [6]

The need to promote transparency of the judiciary is also underscored in the Commentary on the Bangalore Principles of Judicial Conduct, which offers guidelines about various relevant mechanisms to be implemented in respective national legislations to this end.[7]

1 The initial draft of the Brief was presented at the policy dialogue held on 25 April 2017, under the Network 23+ Project, and representatives of the judiciary, Prosecutors' offices and of the Ministry of Justice attended.
2 2002 UN Bangalore Principles of Judicial Conduct, Article 3, paragraph 2.
3 Council conclusions on the Enlargement, Stabilisation, and Association Process, December 2015, p. 13.
4 European Commission, 2016 Progress Report on the Republic of Macedonia, November 2016, p. 5
5 Recommendations of the Senior Experts' Group on systemic Rule of Law issues relating to the communications interception revealed in spring 2015 (познат како Извештај на Прибе), стр.12 и Итни реформски приоритети, јуни 2015 година, стр.2.
6 European Commission, 2016 Progress Report on the Republic of Macedonia, November 2016, p. 14
7 Commentary on the Bangalore Principles of Judicial Conduct, available at : https://www.unodc.org/documents/corruption/publications_unodc_commentary-e.pdf .

Public opinion polls in the Republic of Macedonia reveal a low level of public trust in the judiciary. Consequently, both the Judicial Council and the Ministry of Justice have defined enhancing the public trust as their strategic goal.[8] This document is a contribution of the civil society in reaching that strategic goal. The document first defines the term "judicial information", and then it elaborates upon transparency and publicity of court proceedings, the application of these principles in the work of courts, and the relations among and between the judiciary, the civil society and the media.[9] In conclusion, the document offers proposals for legislative and practical steps to be undertaken with a view to enhancing the transparency and openness of the judiciary in the Republic of Macedonia.

2.WHAT IS JUDICIAL INFORMATION?

Defining the term "judicial information" is a precondition for regulating the regime of transparency and access to information in courts. Judicial information cannot be reduced only to information produced by judges in the course of their work, but it also relates to information available to courts. This includes information produced or used in the work of managerial bodies of the judiciary, such as the Judicial Council, as well as documents drafted/delivered to all parties involved in court proceedings, which make part of the court case file. The access to each type of judicial information differs. However, it is recommended that once cases are finalized, i.e. are put ad acta, the public at large should be provided access to information contained in the case file documents. The reasoning is that access to information must not be limited owing to historical, scientific or statistical reasons, despite the fact that ensuring such access requires a number of activities such as anonymization, selecting documents for which access may not be allowed, etc.[10]

3.TRANSPARENCY AND PUBLICITY OF COURT PROCEEDINGS

Openness of courts in the form of public hearings and public pronouncement of judgments is an important element of the right to a fair trial. Transparency of court proceedings, *inter alia*, ensures public scrutiny over the judiciary. In 2003, the Council of Europe, understanding the importance of transparency of court proceedings, adopted Recommendation Rec (2003) 13 of the Committee of Ministers to member states on the provision of information through the media in relation to criminal proceedings.[11]

8 2014 Annual Report of the Judicial Council pp. 42-43. 2014-2017 Strategic Plan of the Ministry of Justice, part 3.23.3. at Димитриева Јасмина, Невладините организации и судството – активности за надзор, интеракција, соработка и комуникација - Препораки, Коалиција на здруженија на граѓани „Сите за правично судење", Скопје, 2015 година. (Dimitrieva Jasmina, Non-Governmental Organizations and the Judiciary – activities for monitoring, interaction, cooperation and communication- Recommendations, Coalition of Citizens' Associations "All for Fair Trials", Skopje, 2015), p. 9.

9 In 2009, the Republic of Macedonia signed the Council of Europe Convention on Access to Official Documents, but it has not yet ratified it. The Convention covers access to documents of the judiciary. Hence, it would be realistic to expect that the Convention's ratification and entry into force for Macedonia would enhance the transparency of the judiciary.

10 Judges participating in the public debate entitled Advancing the Transparency of the Judiciary in the Republic of Macedonia, held on 25 April 2017, agree with this recommendation.

11 The Recommendations emphasize that journalists must be able to freely report and comment on the functioning of the criminal justice system, while respecting the principle of presumption of innocence, then judicial authorities or police services should make available information to the media, without discrimination, competent authorities should provide in courtrooms a number of seats for journalists, recordings in courtrooms must be in accordance with the law and with the permission of relevant judicial authorities, while respecting the rights of all present, journalists should have the right to get a copy of the publicly pronounced judgments. See: Council of Ministers, Council of Europe, 10 July 2003, Recommendation Rec (2003) 13 of the Committee of Ministers to member states on the provision of information through the media in relation to criminal proceedings.

3.1. The Right to a Public Hearing versus Privacy and Security

Court proceedings in the Republic of Macedonia are public. Publicity of court proceedings is a constitutionally guaranteed right, which according to Article 102 of the Constitution may be limited in cases determined by law. The Constitution furthermore sets forth that judgments shall be pronounced publicly, while publicity is further ensured by the participation of lay judges.[12] Constitutional public hearing guarantees are further strengthened with provisions of the European Convention for the Protection of Human Rights and Fundamental Freedoms. Hence, Article 6, paragraph 1 of this Convention envisages that public hearing is an integral element of the wider-scope right to a fair trial. Hence, in the Republic of Macedonia, the right to a public trial is protected with the highest-ranking legal norms.

Publicity and transparency of court proceedings are also guaranteed as fundamental principles under the Law on Courts (Article 6, paragraph 2 and Article 10), and are further elaborated in greater detail in other relevant laws.[13] Despite the fact that publicity of court proceedings is guaranteed, in the practice there are numerous obstacles to effectuate this guarantee, such as inaccessibility of courts, parties not being relevantly informed,[14] lack of interest, while the lack of appropriately spacious courtrooms is an especially grievous problem. In addition, there have been cases in which the judicial police have not allowed members of the immediate family of parties to on-going court proceedings to attend the public hearing or have requested journalists to produce special permissions.[15]

The practice shows that normative guarantees for public hearing will remain just words on paper if certain technical conditions are not fulfilled. ***Practical measures must be undertaken*** in this context, especially taking into consideration the experiences, which lead to the conclusion that the public trust is quite strong when the public monitors proceedings in given court cases.[16]

12 Article 103, paragraphs 2 and 3 of the Constitution.

13 Namely, Article 5 of the Law on Criminal Procedure defines public hearing as an integral part of the right to a fair trial, which is the fundamental principle of criminal proceedings. This Law furthermore explicitly envisages that the main hearing is public (Article 353, paragraph 1 of the Law on Criminal Procedure). Excluding the public in contravention to the law is a substantive violation of the provisions on criminal procedure (Article 415, paragraph 1, sub-paragraph 4). Similarly, the Law on Civil Procedure defines public trial as a fundamental principle of the procedure (Article 4), while envisaging that the main hearing is public (Articles 292 and 296). The Court Rules of Procedure supplement these provisions by setting forth the possibility that journalists- reporters and citizens attend main hearings at courts without having to possess a prior approval from the court (Article 104, paragraph 1).

14 Participants in the debate Advancing the Transparency of the Judiciary in the Republic of Macedonia, held on 25 April 2017, underlined that the fact that the public is not informed is a serious obstacle, i.e. interested persons do not have available information about their right to follow trials and how they can exercise this right.

15 Стојановски Воислав и Неда Чаловска, Основните граѓански и политички права и слободи, Хелсиншки комитет за човекови права, Скопје, 2014, стр. 29-32. (Stojanovski Voislav and Neda Chalovska, Fundamental Civil and Political Rights and Freedoms, Helsinki Committee for Human Rights, Skopje, 2014, pp. 29-32)

\16 Димитриева Јасмина, Невладините организации и судството – активности за надзор, интеракција, соработка и комуникација, Коалиција на здруженија на граѓани „Сите за правично судење", Скопје, година. (Dimitrieva Jasmina, Non-Governmental Organizations and the Judiciary – activities for monitoring, interaction, cooperation and communication, Coalition of Citizens' Associations "All for Fair Trials", Skopje, 2015) p. 30.

However, the right to a public hearing is not an absolute right. The Constitution stipulates excluding the public from a hearing, but only in cases determined by law. Furthermore, the European Convention on Human Rights sets forth exceptions to the right to a public hearing in the interests of morals, public order, or national security, to protect the interests of juveniles or private life or when publicity would prejudice the interests of justice.[17]

The Law on Criminal Procedure has a number of provisions regarding the issue of excluding the public from the main hearing or parts of it, with Article 354 envisaging more grounds for excluding the public than the European Convention on Human Rights. For example, Article 354 envisages exclusion of the public from the hearing if that is necessary in order to protect ***an official or an important business secret.***[18] However, it must be born in mind that justice is a **public concern**,[19] and therefore cases of exclusion of the public from court hearings must be kept to the minimum, which is necessary to preserve the values of a democratic society governed by the rule of law. It is understandable that a business secret is a sufficient ground to exclude the public in civil law proceedings. On the other hand, when it is a matter of criminal proceedings in which the public is much more interested and in which the requirements for criminal law protection are much more demanding, ***it should be considered whether a ground such as a business secret should remain as a ground permitting the exclusion of the public.*** It must be underlined that despite the fact that paragraph 2 of Article 355 of the Law on Criminal Procedure allows presence of official persons, scientific and public worker at hearings from which the public has been excluded for purposes of witness protection, in the practice, sitting judges do not allow the attendance by such persons.[20] This evidently casts a shadow of doubt on the principle of fair and just hearing, considering that there are valid reasons that the law does not prohibit in absolute terms the presence of the public in such cases. ***There must be measures undertaken to change this practice of courts in order to align it with the law.***

The Law on Civil Procedure envisages exclusion of the public from the main hearing or part of it if so required to protect an official, business or personal secret, then in the interest of the public order or morals (Article 293, paragraph 1). The possibility provided for under paragraph 2 of Article 293 to exclude the public if the order in the courtroom cannot be

17 The second sentence of paragraph 1 of Article 6 of the European Convention on Human Rights reads as follows: "Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice."

18 The public may be excluded ex officio or upon the proposal by the parties or the damaged party, while Article 356 of the Law on Criminal Procedure envisages that the decision for exclusion of the public is adopted by the trial chamber and that the decision must be elaborated and publicly declared. This solution allows for satisfying the public interest by explaining the reasons for excluding the public and by the public pronouncement of the decision. Thus, the court is limited in utilizing this legal possibility and on the other hand, the public is informed about the course of the court proceedings.

19 Судски совет на Холандија, The judiciary and the media in Netherlands, достапно на: Council for the Judiciary of the Netherlands, The judiciary and the media in Netherlands, available at: https://www.rechtspraak.nl/SiteCollectionDocuments/The-Judiciary-and-the-Media-in-the-Netherlands.pdf accessed on 20 March 2017, p. 2.

20 Стојановски Воислав и Неда Чаловска, Основните граѓански и политички права и слободи, Хелсиншки комитет за човекови права, Скопје, 2014, стр. 34-35. (Stojanovski Voislav and Neda Chalovska, Fundamental Civil and Political Rights and Freedoms, Helsinki Committee for Human Rights, Skopje, 2014, pp. 34-35)

maintained opens the door for abuse and depriving the public from information about the case. ***There must be consideration given to the possibility to remove this ground for excluding the public since it is unacceptable for a court not to be able to maintain the order in the courtroom,*** i.e. in such cases the hearing should be stayed and be held when conditions have been created for an orderly public hearing. In simple words, it is allowed to exclude the public only in exceptional cases of specific character, but the public cannot be excluded because the court is not well organized.[21]

In addition, the practice has shown that the decision to exclude the public cites only the grounds for excluding the public, without offering satisfactory reasoning about the exclusion.[22] Such practice must be changed.

3.3. Duty for Public Pronouncement and Publishing of Judgments

In pursuance with requirements set forth in Article 6 of the European Convention on Human Rights, in court proceedings in the Republic of Macedonia judgments are always pronounced publicly, even in cases in which the public has been excluded from the main hearing. Furthermore, the Law on Court sets forth the general duty of courts to publish pronounced judgments on their websites within a period of two days as of the day of their preparation and signing, in a manner defined by law (Article 99, paragraph 3).

The Law on Criminal Procedure envisages that "The judgment shall be passed and publicly declared on behalf of the citizens of the Republic of Macedonia." (Article 397, paragraph 2), and there are further provisions defining how the judgment shall be pronounced.[23] Even in cases in which the public has been excluded from the main hearing, the judgment is always pronounced publicly, exclusion of the public being allowed during the explanation of the reasoning for the judgment. (Article 405, paragraph 4).

The Law on Courts envisages the duty of courts to publish adopted decisions on their web sites within a period of two days as of the day of their preparation and signing, in a manner defined by law. (Article 125, paragraph 3). There are provisions ensuring availability of all court judgments in printed or electronic format, except in cases in which the public has been excluded (Article 126, paragraph 1 of the Law on Criminal Procedure),[24] which on its part creates a bit of a confusion. Thus, according to Article 405 *of the Law on Criminal Procedure the judgment shall always be publicly pronounced, except when the reasoning of the judgment is explained. In such case,* ***it would seem logical that all judgments be available with partial reasoning or without reasoning in those cases in which the public has been excluded.***

21 The same as the Law on Criminal Procedure, the Law on Civil Procedure envisages that a trial chamber shall decide on the exclusion of the public by issuing a decision, which must be reasoned and publicly pronounced, and no special appeal is allowed against such a decision (Article 295). Excluding the public contrary to the law is a substantive breach of the provisions on civil procedure (Article 343, paragraph 2, sub-paragraph 12) and may serve as the ground for application of an extraordinary legal remedy, such as judicial review (Article 375. paragraph 1, sub-paragraph 1).

22 Review by Judge Ljiljana Ivanovska Shopova, President of the Skopje Appellate Court.

23 Article 405, paragraph 1 of the Law on Criminal Procedure reads as follows: "In the presence of the parties, their legal representatives, proxies and counsels, the presiding judge of the trial chamber shall read the judgment and briefly announce the reasoning behind the judgment."

24 Article 126, paragraph 1 of the Law on Criminal Procedure.

The Law on Civil Procedure stipulates that if the public has been excluded from the main hearing, the pronounced judgment will always be read publicly, while the court will decide whether and to which extent the public will be excluded during the explanation of the reasoning of the judgment (Article 325, paragraph 3). In addition, the Law prescribes the obligation of courts to publish their adopted decisions on their web sites within a period of two days as of the day of their preparation and signing, in a manner defined by law. (Article 326, paragraph 4).

3.4.Other Issues Relating to Publicity of Courts Regulated in Procedural Laws

It is important to underline that Article 554 of the Law on Criminal Procedure pays due attention to cases when the media have published or broadcast information about a person for whom at a later stage it has been established that the conviction was unfounded or who have been deprived of freedom without any grounds or unlawfully, and to cases in which the legal qualification of the crime has been changed. In such cases, Article 554 of the Law on Criminal Procedure provides for the possibility to publish a press release about the judgment, i.e. decision in question. This legal solution is greatly important not only for persons to whom the judgment in question relates and their reputation, but it is equally important for the public at large and for all persons working in the criminal law protection system.

In addition, Article 563 of the Law on Criminal Procedure ensures the possibility to cooperate with the media in cases when the Ministry of the Interior has issued a wanted warrant and notice about a certain person. This is an excellent legally ensured possibility, with relevant provisions explicitly envisaging that such warrants may be published in the media for purpose of "informing the public". It should be examined and analyzed to which extent theses provisions are applied. However, if experiences with a recent case are taken into consideration,[25] ***it is recommended that the public be obligatorily informed that there is a wanted warrant for certain specific persons, such as holders of public offices or persons*** suspected of being involved in crimes against public property. [26]

25 http://kanal77.mk/%D0%BF%D0%BE%D1%82%D0%B5%D1%80%D0%BD%D0%B8%D1%86%D0%B0%D1%82%D0%B0-%D0%B7%D0%B0-%D1%81%D0%B5%D0%B0%D0%B4-%D0%BA%D0%BE%D1%87%D0%B0%D0%BD-%D0%BD%D0%B5-%D0%B5-%D0%BE%D0%B1%D1%98%D0%B0%D0%B2%D0%B5%D0%BD/

26 With a view to protecting the wider public interest, Article 194-a of the Criminal Code envisages that a judgment for a crime from the group of Crimes against Marriage, Family and Youth, if perpetrated against a child who has not still reached the age of 14, shall be declared with due protection of the personal data of the victim. The publication is done upon the motion of the Public Prosecutor and this provision is of special importance for the protection of the rights of the child.

4. TRANSPARENCY AND PUBLICITY IN THE WORK OF COURTS

4.1. Transparency and Publicity under the Law on Courts and Court Rules of Procedure

The Law on Courts has a number of provisions relating to informing the public that are of interest. Hence, the Law on Courts allows that Presidents of Courts or a person tasked with public relations, i.e. the Spokesperson of the Court provide information to the public, while envisaging obligatorily establishment of a Public Relations Office. Furthermore, the Law envisages that the public at large is to be informed at least once a year about the results of the work of courts, which is quite interesting and unclear considering the fact that except for annual reports, other ways of fulfilling this obligation are not known to the public. [27]

Furthermore, it should be underlined that the Law prohibits parties to the proceedings and other participants in the proceedings to give information about the course, pursuance and outcome of the proceedings, but only when the Court has officially issued such a ban. Such a ban seems to be "empty threat". Considering media reporting and media appearance of numerous parties to proceedings and others involved in the proceedings, it seems that such a ban has never been issued. Hence, in cases in which the public is not excluded, and a ban on providing information about the course of the proceedings has been issued, the judge would have to provide reasoning for the ban, which on its part must not limit the freedom of expression and the right to access to information.

The need to inform the public relevantly has imposed the necessity to undertake a number of activities. Hence, Chapter V of the Court Rules of Procedure is dedicated to the communication with parties, other persons and institutions, while placing special importance on the establishment of a Public Relations Office.[28] It is equally important that the Rules of Procedure envisage obligatory publication of information about the time, place and case to be tried at an electronic notice board and in front of each courtroom. Regretfully, this obligation is not fully met,[29] which is quite concerning in light of the fact that lack of information by the public is one of the reasons preventing the public to follow the proceedings.[30]

Furthermore, the Court Rules of Procedure oblige the President of the Court or a person designated by the President of the Court for public relations to provide information to the public about the work of the court, i.e. about the course of proceedings in a given case "with a view to openly and objectively informing the public" (Article 102). In this context, it must be underscored that the Rules of Procedure provide for the possibility that the person in charge of public relations does not have to be a judge, but another employee of the court. This is the case in certain countries. [31] However, the comparative review shows that in most

27 Article 97 of the Law on Courts.

28 Article 101 of the Court Rules of Procedure.

29 Томшиќ Стојковска Аница, Судската ефикасност и остварувањето на фер и правично судење, Коалиција на здруженија на граѓани „Сите за правично судење", Скопје, февруари 2015 година, стр.24 (Tomshic Stojkovska Anica, Court Efficiency and Accomplishing a Fair and Just Trial, Coalition of Associations of Citizens All for Fair Trials, Skopje February 2015, p. 24.)

30 Participants in the public debate Advancing the Transparency of the Judiciary of the Republic of Macedonia, held on 25 April 2017, recommended that courts regularly publish the calendar of scheduled trials.

31 Some countries have press judges at the national/regional level. Such countries are Austria, Bulgaria, Denmark, England and Wales, Hungary, Netherlands, Norway, Poland and Romania. Italy, England and Scotland do not have local press judges, which perhaps is a reflection of the definition of judicial competences. In Italy, the only national spokesperson is not a serving judge, but an official attached to the High Council. In other countries yet, persons in charge of public relations are press officers and communications advisors. This is the case with Ireland, Lithuania, and Scotland.

European countries public relations is the task for so-called press-judges. In this regard, ***it is recommended that persons in charge of public relations have regular annual meetings at which they would exchange experience about their work. In addition, there should be rules set for the work and role of spokespersons, and they should undergo relevant training on relations with the media and journalists. There is an especially important recommendation that spokespersons follow the media outlets and react using websites and social networks.***[32] The recommendation is a result of the need to relevantly inform the public, while careful consideration of the above stated recommendation clearly leads to the conclusion that it is necessary to undertake specific activities in this area.[33]

It is interesting that Article 93 of the Court Rules of Procedure recognizes the right to inspect the case file documents only to the parties to the case and ***other persons having a legal interest,*** and this matter is decided upon by the President of the Court Chamber/ single judge sitting, i.e. by the President of the Court or by a person authorized ***by the President of the Court when it is a matter of archived cases.*** This issue requires greater attention and consideration. Civil society organizations in Macedonia emphasize that the access to case files should be facilitated, while taking into consideration and balancing such access with personal data protection requirements.[34] For example, from the scientific point of view, certain case files might be of specific public interest in view of the fact that case law already has the status of a source of law. Proving a vested legal interest might by an obstacle, i.e. it could be used as an excuse to limit the access to case files. The applicable legal solution needs to be reviewed and the number of persons that may have certain access to case file documents should be expanded, especially when it comes to ***archived cases.***

4.2. Special Rules Ensuring Publicity of Work of Courts

The Law on Court Case Management was adopted in 2010. This Law, inter alia, regulates issues of publicity in the work of courts. The Law has important provisions, which (should) ensure greater transparency of courts. Thus, the Law stipulates publication of both legally final and non-final judgments with appropriate anonymization, removal of rulings after the legally prescribed periods have elapsed, and allows printing of judgments, without being able to make any changes to them.

It is interesting that Article 10 of the Law on Court Case Management stipulates that judgments in cases in which the public has been excluded are not to be published. This raises dilemmas considering that judgments are always pronounced publicly.[35] Perhaps the

32 European Network of Councils for the Judiciary, Justice, Society and the Media, available at: https://www.encj.eu/images/stories/pdf/GA/Dublin/encj_report_justice_society_media_def.pdf, accessed on 23 March 2017, pp. 4-6.

33 At the public debate entitled Advancing the Transparency of the Judiciary of the Republic of Macedonia, held on 25 April 2017, the President of the Association of Judges and his Deputy underlined the need that judges adopt a more pro-active approach to informing the public.

34 Димитриева Јасмина, Невладините организации и судството – активности за надзор, интеракција, соработка и комуникација, Коалиција на здруженија на граѓани „Сите за правично судење", Скопје, година. (Dimitrieva Jasmina, Non-Governmental Organizations and the Judiciary – activities for monitoring, interaction, cooperation and communication, Coalition of Citizens' Associations "All for Fair Trials", Skopje, 2015) p. 29.

35 In addition, both in criminal and in civil procedures, even when the public is excluded, official persons, scientific and public workers may attend the hearing (Article 294 of the Law on Civil Procedure and Article 354 of the Law on Criminal Procedure).

possibility could be considered of publishing an anonymized judgment, from which the reasoning is also removed. However, considering the scientific or academic interest of certain persons, it might be of importance to know whether a judgment has been adopted in a specific case, whether the adopted judgment was convicting one or exculpatory one, what punishment has been ordered, etc. ***The solution to prescribe an absolute ban on publication of judgments in cases in which the public has been excluded perhaps is not the best solution in terms of transparency and openness.*** In the present situation, interested members of the public will be deprived of the answer to the question whether a judgment has been pronounced in a specific case of interest.

Another interesting provision is the provision of paragraph 6, Article 10, according to which the manner of publication and search of judgments of courts on the courts' websites is to be regulated by a document of the executive power, i.e. the Minister of Justice. Presuming that in the drafting i.e. adoption of such a document judges and other experts have been consulted, then the issue that arises is how the implementation of the Law on Court Case Management could be monitored and whether the Ministry has the required resources to appropriately follow the implementation of this Law with a view to undertaking measures when the Law is not implemented. Finally, there is the question of whether the executive power, i.e. the Ministry of Justice should be competent for this issue, or it would be better to make this issue part of the competences of the Judicial Council of the Republic of Macedonia.

Article 11 of the Law on Court Case Management is especially important for ensuring transparent judiciary, considering that this Article stipulates that the Supreme Court shall keep a database of legally final and non-final judgments, in their entirety without anonymization of data about the parties and other participants in the proceedings, with limited access to such a database. This is a logical solution in light of the significance of such a database. However, it is interesting that the Law grants wide scope authorities to the President of the Supreme Court to adopt a document, which will define the access to court judgments and to single-handedly decide on requests of individual interested persons for access to the database.

In light of the fact that there is no information about hitherto experiences of persons who have requested access to the case law, and having in mind the negative experiences when the decision making power is in the hands of one person, perhaps it would be better to consider the possibility that ***the document defining the levels of access to the case law be adopted at a plenary session of the Supreme Court of the Republic of Macedonia, while individual requests for access should be decided upon by a panel of judges at the Supreme Court.*** This would eliminate the possibility for arbitrariness of the President of the Supreme Court in deciding upon access requests.

It must also be underlined that Article 13 of the Law on Court Case Management regulates the obligation of the Public Relation Office to issue a copy of the court judgment, which has been published on the court's website, to interested persons. This obligation can be fulfilled provided that the judgment has been published in good time. Consequently, ***this solution***

too must be amended considering the fact that courts' websites are not regularly updated with the latest judgments. Furthermore, there is the question why the right to get a copy of the judgment is linked with the judgment's posting on the court's website when it would be logical to condition this right with the public pronouncement of the judgment. Hence the recommendation of the Council of Europe that journalists should be allowed, on a non-discriminatory basis, to make or receive copies of publicly pronounced judgments.[36]

In pursuance with the Law on Court Case Management, in 2011, the Minister of Justice adopted ***Instructions on the Manner of Publication and Searching Court Judgments on Courts' Websites,*** which define in detail the manner of anonymizing various data from court judgments.[37] Regretfully, Article 2 of the Instructions does not cover the damaged party, i.e. the victim as part of the group of persons whose personal data will be anonymized (witnesses, expert witnesses, psychologists, etc.). Regardless of the fact whether such a solution has been adopted intentionally or unintentionally, it is recommended to re-examine it and to adopt relevant legislative amendments. In addition, it should be considered whether data about expert witnesses should be anonymized since the in the adoption of judgments, the court must take into consideration expert witnesses' statement and counter expert witnesses' statements, i.e. findings and opinions of professionals in a given field.

Furthermore, provisions of Article 4 of the Instructions envisage the manner in which to anonymize names of state administration bodies, administrative organizations, institutions, and units of local self-government. In light of the fact that it is a matter of state institutions funded under the state budget the work of which is of special public interest, ***consideration should be given to the possibility of amending the provisions of this Article.*** Namely, in cases of a state secret, the public will be excluded, and in accordance with the law, judgments in such cases will not be published. Consequently, in all other cases there ***is no justification to anonymize the name of the institution in question.*** In simple terms, the public has the right to receive information about cases in which state bodies are parties to court cases.

One can get an insight into the issue of how these Instructions are implemented by visiting the new judicial internet portal www.sud.mk wherefrom all interested persons can get various types of information. The section entitled 'Court Judgments' offers the possibility to search court judgments.[38] It can be noticed that judgments are anonymized. However, the question arises how many of the pronounced judgments are posted on the portal, i.e. how

36 Council of Ministers, Council of Europe, 10 July 2003, Recommendation Rec (2003) 13 of the Committee of Ministers to member states on the provision of information through the media in relation to criminal proceedings.

37 As regards this issue, the European Network of Councils for the Judiciary recommends that judicial decisions should be made available for the general public, along with search facility for the judgments, as well as publication of brief summary (abstract) of the judgments, especially for cases of special public interest, finally recommending anonymizing judgments. Almost all countries anonymize judgments upon their publication for the public. Only in England and Wales all names and places are published.

38 Participants in the public debate entitled Advancing the Transparency of the Judiciary of the Republic of Macedonia, held on 25 April 2017, underlined that both anonymized and non-anonymized judgments are posted on websites of courts, without any information whether the judgments are legally final or not. Posting judgments in such a manner creates confusion among the expert public.

regularly the portal is updated with the latest judgments. Hence, in the period from 1 January to 15 March 2017, the Skopje I First Instance Court posted a total number of 33 cases, the Skopje II First Instance case posted 23 judgments, the Bitola First Instance Court posted 456 judgments, the Shtip First Instance Court posted 180 judgments, the Tetovo First Instance Court posted only 6 judgments, while the Strumica First Instance Court posted 365 judgments.[39] It is not realistic that the two largest courts in the country publish such a modest number of judgments. The question is whether the problem consists of insufficient resources (staff and equipment) and/or whether courts are not well organized to timely fulfil their legal obligations. Non-governmental organizations have already noted that courts complain about lack of (appropriate) staff that could carry the weight of the IT technology system in courts. [40]

In this context, it must be emphasized that not all court judgments are published in all countries. It is recommended that decisions of the Supreme Court and higher instance courts be posted on the internet, as well as a selection of important judgments. The sitting judge makes the selection of judgments in some countries, while in some countries a committee of judges makes the selection; some countries apply selection criteria, with on-going public debates about the possibility of posting all judgments. In case a selection of published judgment is made, it is recommended that every court appoint a special committee of judges who decide which decisions should be posted, while the selection criteria would be made public.[41] However, this cannot imply restriction of the right to access to information regarding judgments, which are not part of judgments selected for posting.

It must be mentioned that under the Urgent Reform Priorities, the EU recommends posting of all judgments, which is reasonable considering the state of play in the judiciary and the level of public access to judgments. However, if it is accepted that courts are overburdened and do not have sufficient number of staff, perhaps it would be better to post only a brief summary of certain judgments made on a predesigned form, for example in small claims civil law cases, while interested members of the public could easily be given a copy of the judgment.

4.3. Internet Portal of Courts in the Republic of Macedonia

The practice of implementing the Law on Court Case Management when it comes to previous websites of courts shows that the system was overloaded and slow, the search tools were inappropriate and inefficient.[42] Therefore, changes have been made and websites of courts are now incorporated in a single internet portal www.sud.mk.[43]

39 This has been established based on access and review of the website on 21 March 2017.

40 Унифицирање на судската практика во Македонија: можности наспроти предизвици. - Скопје : Центар за правни истражувања и анализи, 2015. (Harmonizing the Case Law in Macedonia: Possibilities versus Challenges, Skopje, Centre for

41 Legal Research and Analysis, 2015).
European Network of Councils for the Judiciary, Justice, Society and the Media, available at:

42 https://www.encj.eu/images/stories/pdf/GA/Dublin/encj_report_justice_society_media_def.pdf.

43 Websites of individual courts were functional until the beginning of April 2017. Some of the websites of some courts have not posted the link to the new internet portal, offering only information, which has not been updated for a long period.

The analysis of the courts' portal www.sud.mk produces the following findings:

-Partial information – in the section about laws entitled Legislation, not all amendments to laws have been posted, for example the amendments to the Law on the Judicial Council;[44]

-Inappropriate sources – the Legislation section contains laws that have not been taken over from the Official Gazette of the Republic of Macedonia, which is the only relevant source, especially for the expert circles; [45]

-There are numerous titles of sections (for example Background, Strategic Plan, IT-judiciary, Expert Bodies and Presentations, Bulletins, Collections) which do not have any content;[46]

-Different courts provide different explanation about what is considered information of public interest.[47]

It is good that the courts' Internet portal offers information of public character about each court, listing as well the designated spokespersons and contact information for the public. However, the internet portal **www.sud.mk** needs to be regularly updated and harmonized information of public interest is to be posted. Hence, ***it is recommended that the internet portal offer information and links about court appointed translators, interpreters, expert witnesses, appraisers and lay judges. Furthermore, the portal should also contain information about services that citizens can get from courts, for example issuance of a certificate of non-conviction, as well as explanation about the relevant procedure in this respect and the formal conditions to acquire the service. The lack of information for persons who would like to follow public hearings as to how they can exercise their right must be rectified. In this context, it is recommended to publish announcements for their attendance in order to ensure an appropriately spacious courtroom, if possible. It is also necessary to provide detailed explanation about the type of court information that may be made available to the public and how to get access to such information.***

44 The correction of 2006 and the 2011 amendments are lacking.

45 Laws already posted on the website www.pravo.org.mk are posted.

46 For example, if you open the section called "Strategic Plan" there is information that there is one document entitled the "Standard Lorem Ipsum clause which is used ever since the 1500's – Bitola Appellate Court" and when you try to open the document, you get the notification: „This is a dummy PDF".

47 For example, the Bitola First Instance Court includes job vacancy announcements and the Reports on the work of the Court, which is not the case with the Skopje I First Instance Court.

5. THE JUDICIARY, CIVIL SOCIETY AND THE MEDIA

The present situation with the relations between the judiciary and the civil society is not satisfactory for a democratic society. Despite the fact that non-governmental organizations underline that their observers are admitted to courtrooms and their attendance is put on record, yet there are numerous other problems, such as inappropriate statistics, which is owed to the deficiencies of the Automated Information System for Court Case Management (AKMIS),[48] lack of communication, not trusting non-governmental organizations and similar. Thus, the civil society emphasizes the need for adoption of a strategy for cooperation with non-governmental organizations, and establishment of a regular forum for cooperation and discussion about thematic judiciary related issues.[49]

The relations between the judiciary and the media are very important in terms of bringing the judiciary closer to citizens. The media offer an outlet for informing the public and for providing explanations about judiciary related issues. The media is the tool that can strengthen or weaken the trust in the judiciary. Therefore, it is very important how the relations between the judiciary and the media are regulated.[50]

In certain countries, the relations are regulated in the form of rules or protocols,[51] while in other countries, such as Denmark, these issues are regulated under a law. Regardless of how the relations between the judiciary and the media are regulated, their relations need to ensure ***complete and correct informing the public about legal issues by objectively and impartially presenting relevant facts.*** The rules should be of internal obligatory character for judges so that the judiciary could speak with one voice to the public.[52] Furthermore, it is recommended that the rules be drafted in consultations with relevant professionals (judges, prosecutors, lawyers), while precisely defining a list of sanctions in case of a violation, such as for example temporary ban on accreditation. It would be useful to update and adapt the rules as needed following meetings/conferences of spokespersons and journalists and it is recommended to conduct polls among judges and journalist as a way of acquiring information in this respect. The general recommendation is for the judiciary to adopt a proactive approach towards the media, which should be a special task of the Judicial Council in the country with a view to helping courts in their contacts with the media. Judges need to be strictly limited in their public statements about their pending cases, but on the other hand, in most European countries questioning the performance of an individual judge in the media is not allowed.[53]In this context, ***it is recommended to organize trainings on***

48 The deficiencies of the Automated Information System for Court Case Management (AKMIS) were mentioned by Lazar Nanev, Ph.D., Deputy President of the Association of Judges at the public debate entitled Advancing the Transparency of the Judiciary of the Republic of Macedonia, held on 25 April 2017.

49 Димитриева Јасмина, Невладините организации и судството – активности за надзор, интеракција, соработка и комуникација, Коалиција на здруженија на граѓани „Сите за правично судење", Скопје, 2015 година, стр. 16-17 и 25-30. (Dimitrieva Jasmina, Non-Governmental Organizations and the Judiciary – activities for monitoring, interaction, cooperation and communication, Coalition of Citizens' Associations "All for Fair Trials", Skopje, 2015) pp. 16-17 and 25-30.
At the public debate entitled Advancing the Transparency of the Judiciary of the Republic of Macedonia, held on 25 April 2017,

50 Judge Shpend Devaya underlined that neither the Code of Conduct for Judges or the Code of Ethics of Journalists contain provisions relating to the manner of use of social networks. He recommended that relevant amendments and supplements be introduced to these two Codes of Conduct.

51 Belgium, the Netherlands, Austria, Hungary, Bulgaria, Lithuania, Norway, Romania and Spain.

52 Rules different from those applied for the Public Prosecutor's Office are recommended for the judiciary

53 In Austria, comments in the media about individual performance of judges in specific cases are officially forbidden.

transparency for judges and court clerks, but also for journalists and media workers, then posting various information of interest to the public on websites, organizing open days of the judiciary, facilitating organized visits by groups, preparation of special materials for secondary school students and university students, etc.[54]

As early as 2003, the Council of Europe recommended trainings about court proceedings for journalists, to be organized in cooperation with educational institutions and courts.[55] In the Republic of Macedonia, there is an especially evident need for such trainings considering that it has been established that there are only a small number of journalists who possess solid knowledge about the judiciary and legal matters and who report on judiciary related topics.[56] Considering the lack of information about trainings that journalists have attended on these issues,[57] we welcome the steps announced by the ***Academy for Judges and Public Prosecutors to be undertaken in cooperation with the Association of Journalists to this end, and especially the planned organization of round tables and working meetings.***[58] ***Continual cooperation is recommended that would also cover meetings between judges and journalists, drafting of manuals, etc.***

With reference to the above stated, the ***legally prescribed obligation of the Judicial Council of the Republic of Macedonia must be mentioned, i.e. the Judicial Council is to "to care for the reputation of the judges and the trust of the citizens in the judiciary".***[59] With the aim of enhancing the transparency, in 2016, the Judicial Council published the Handbook for Public Relations of Courts.[60] On the other hand, judges themselves consider that the Judicial Council is not transparent in its work and that it rarely guarantees judicial independence and autonomy. [61] An examination of the work of the Judicial Council shows that the Judicial Council itself is not sufficiently transparent and open to the public.[62] **The current situation demands comprehensive measures to be undertaken within the judiciary in the Republic of Macedonia, primarily within the Judicial Council, followed by the design and application of a strategic approach of the judiciary towards the issue of public relations.**

54 European Network of Councils for the Judiciary, Justice, Society and the Media, available at: https://www.encj.eu/images/stories/pdf/GA/Dublin/encj_report_justice_society_media_def.pdf accessed on 23 March 2017, pp. 17-20.

55 Council of Europe, Declaration on the provision of information through the media in relation to criminal proceedings, adopted by the Committee of Ministers on 10 July 2003.

56 Цаца – Николовска Маргарита и др., Анализа на независноста на судството во Република Македонија, Институт за човекови права, Скопје, 2013 година, стр. 121. (Caca-Nikolovska Margarita et al., Analysis of the Independence of the Judiciary in the Republic of Macedonia, Institute for Human Rights, Skopje 2013, p. 121).

57 An especially important publication is the handbook: Димовски Саше и др., Јавност во кривичната постапка, Скопје, ОБСЕ, 2014 година. (Dimovski Sashe et al., Publicity in Criminal Procedures, Skopje, OSCE 2014).

58 See: http://www.jpacademy.gov.mk/novosti/10156.

59 Article 31, sub-paragraph 15 of the Law on the Judicial Council.

60 The Handbook on Public Relations of Courts is on the list of information of public character published by the Judicial Council.

61 Цаца – Николовска Маргарита и др., Анализа на независноста на судството во Република Македонија, Институт за човекови права, Скопје, 2013 година, стр. 121. (Caca-Nikolovska Margarita et al. Analysis of the Independence of the Judiciary of the Republic of Macedonia, Institute for Human Rights, Skopje 2013, p. 121).

62 Институт за човекови права, Мониторинг извештај за работата на Судскиот совет на РМ – Извештај бр.1, Скопје, февруари 2017 година. (Institute for Human Rights, Monitoring Report about the Work of the Judicial Council of the Republic of Macedonia- Report No. 1, Skopje, February 2017).

5.1.Media Reporting Methods

Article 360 of the Law on Criminal Procedure prohibits film and television recording inside the courtroom and as an exception, the President of the Supreme Court of the Republic of Macedonia may allow such recording at a specific main hearing.[63] The Law on Criminal Procedure prescribes that even if the recording has been approved, due to justified reasons, the trial chamber can still decide specific parts of the main hearing not to be recorded. In practice, the permission issued by the President of the Supreme Court is not fully observed, i.e. camera operators are removed from the courtroom before the main hearing after they have recorded a brief footage, and it is especially important that they are removed without a proper decision to that end. [64]

An important issue with respect to media reporting methods is that the Court Rules of Procedure envisage the possibility for audio and video recording and taking photographs, which are allowed in criminal law, civil law and in administrative law cases, provided that relevant permissions have been issued.[65] In criminal cases, it is necessary to acquire permission for broadcasting or publishing the recorded material to the public (reproducing), as well. Particularly problematic provisions are those envisaging acquiring written consent from the parties to civil law court proceedings to be recorded, since such consent is very difficult to obtain.[66] The possibility should be considered to abolish this requirement for acquiring written consent in certain civil law proceedings, which are of special public interest, for example cases of defamation and offense involving politicians or journalists.

In addition, the Court Rules of Procedure contain provisions defining the procedure for acquiring the permission (Article 105). It is interesting that paragraph 1 of Article 106 of the Rules of Procedure de facto provides the grounds for dismissing the request for recording owing to several reasons (public interest and trust, the character of the case, and safety of all involved in the proceedings). The said provisions need to be reviewed considering that the Rules of Procedure already envisage sufficient grounds to limit the recording. [67] Hence, the reasons for dismissal of the request for recording permission ***should be limited only to the issue of safety of participants in the proceedings***, while not leaving room for subjective assessment.

63 At the public debate entitled Advancing the Transparency of the Judiciary of the Republic of Macedonia, held on 25 April 2017, Voislav Stojanovski, Ph.D., underlined that in the practice an approval for recording is issued to anyone that submits a request to this end, which on its part represents the first violation, and then the making of recordings violates the principle of presumption of innocence.

64 Стојановски Воислав и Неда Чаловска, Основните граѓански и политички права и слободи, Хелсиншки комитет за човекови права, Скопје, 2014, стр. 32-33. (Stojanovski Voislav and Neda Chalovska, Fundamental Civil and Political Rights and Freedoms, Helsinki Committee for Human Rights, Skopje, 2014, pp. 32-33) .

65 Article 104, paragraphs 2, 3 and 4 stipulate the following: "Visual (video) and sound (audio) recording, reporting and photographing in criminal proceedings and publishing/broadcasting (reproducing) of the recordings shall be subject to approval by the President of the Supreme Court of the Republic of Macedonia, based on previous opinion given by the President of the Chamber, judges, in a manner envisaged by law. Visual (video) and sound (audio) recording, reporting and photographing in civil law proceedings and in administrative law proceedings shall be subject to approval by the President of the Court, upon previous opinion of the sitting judge and with written consent of the parties to the case. Outside the proceedings, recording and photographing in the building of the court shall be subject to the approval of the President of the Court, who is in charge of the facility."

66 Стојановски Воислав и Неда Чаловска, Основните граѓански и политички права и слободи, Хелсиншки комитет за човекови права, Скопје, 2014, стр. 34. (Stojanovski Voislav and Neda Chalovska, Fundamental Civil and Political Rights and Freedoms, Helsinki Committee for Human Rights, Skopje, 2014, p. 34).

It is important to emphasize that the Court Rules of Procedure also envisage provision of appropriate conditions for media crews and it is especially interesting that the provisions in question mention specific types of equipment. [68] Namely, in addition to making a reference to video or TV cameras, audio systems and photo-cameras which may be brought in the courtroom by the media outlet that has been granted permission, the Rules of Procedure also mention **cell phones and computers**, referring to them as "recording and other equipment" which "are not allowed to produce distracting effects". Hence, the Rules of Procedure do not explicitly prohibit their use, which leads to the logical conclusion that they may be freely used. In addition, there are no provisions on the use of social networks, although in practice certain entities in the justice system are already using them, for example the Special Prosecutors' Office.

However, the Skopje I First Instance Court has its own separate Rules of Conduct in the Court, which is quite understandable having in mind the area of jurisdiction of this Court and the character of cases it tries. However, despite the fact that it is stated that it is matter of an unofficial document, which has only informative purposes, the document prohibits carrying and bringing into the courtroom, cell phones, computers or other equipment that can be used for recording.[69] This runs contrary to the Court Rules of Procedure. Therefore, if special publicity rules are necessary for the Skopje I First Instance Court, ***then there must be an intervention, i.e. relevant amendments to the Court Rules of Procedure.***

The Rules of Procedure envisage the possibility for operation and reporting using a closed circuit TV (Article 109 of the Court Rules of Procedure), then photographing and recording in the court, while the making of such recordings available to the public must be subject to approval of the President of the Court (110). The management of the process of photographing / recording in a courtroom is the task of the President of the Court Chamber/

67 Article 106, paragraph 3 of the Court Rules of Procedure envisages the following: "Recording and photographing in the court may be interrupted or limited: - upon the request of parties, and following a decision of the court, at any time; - if the court has adopted a decision to exclude the public from part of the proceedings as regards certain procedural activity, on legally prescribed grounds; - if the witness- the victim of the crime so requests, for the entire duration of his/her statement; - if the court shall find that a participant in the proceedings could be exposed to danger, ridicule, damage or if obstacles could arise in applying constraint measures or if this is obligatorily demanded by the character of evidence to be presented (hearing of protected witnesses, juveniles, etc)."

68 Article 107 of the Rules of Procedure stipulates the following: "The approval for media coverage of the trial shall mean that appropriate courtroom has been provided. In the courtroom, there shall be a separate section for media outlet teams and observers, separated by enclosures or specially designated, if possible having a separate entrance. In order to facilitate the seating in the specially designated section of seats in the courtroom, journalists and observers shall inform the court about their intention to attend. The court clerk, i.e. officer of the judicial police shall exert due care that persons who have the necessary approval take their designated place, ensuring as well that journalists and observers, who do not need a special approval, also take their place. Upon the request of the judge, the court clerk, or an officer of the judicial police, journalists shall produce their accreditations and state the name of the media outlet for which they are reporting. It shall be prohibited to grant advantage to any media outlet in issuing approvals or in respect of the seating in the specially designated sitting area of the courtroom. The media outlet that has filed a request for approval to cover the trial may be allowed to bring into the courtroom one video or TV camera, one audio system and two photo-cameras (with two slides at the most), and one person each shall be operating the above referred to type of equipment." Article 108 stipulates the following: "In the course of the recording, cameramen and photographers must not move, make movements or take positions that could distract the attention or disrupt the order in the courtroom. Microphones and other relevant equipment shall be installed prior to the start of the proceedings at a position, which shall be determined by the judge. Microphones must be equipped with a pause button. Recording and other equipment (cell phones, computers) must not produce effects that distract the attention. The equipment may not be brought into or taken out of the courtroom without the approval of the judge or the President of the court chamber.

69 See: http://www.sud.mk/wps/wcm/connect/osskopje1/99fef36f-3c20-4f0a-8a91-56a7fa731684/Pravla+na+odnesuvanje.pdf?MOD=AJPERES&CVID=llvt83H

judges (Article 111).

Comparative experiences with respect to the issue of audio and video recording vary to a great degree,[70] but it can be said that the prevailing rule is that limitations are much stricter in criminal law proceedings, even when recording is allowed. The European Network of Councils for the Judiciary recommends that when allowing video recording there should be special measures taken to protect non-professionals (like suspects, witnesses, lay judges and jurors) from being filmed, then broadcasting should usually not be allowed live, and it is desirable to have comprehensive and precise guidelines on audio and video recording.[71]

The comparison of solutions regarding the use of cell phones and computers is particularly interesting. In the majority of countries, the use of cell phones in courtrooms is prohibited to some degree.[72] ***It is recommended that in the regulation of smart phones, and other communication devices, strict guidelines ought to be issued as to when use is permitted and the procedure in the event of a breach.*** Journalists are usually allowed to bring and use their own computer in to the courtroom.

Furthermore, there is use of social networks such as Facebook, Twitter, and Flickr by the judiciary of some countries (Denmark, Norway, Spain and Lithuania), which is considered as an opportunity to interact with the public. It is recommended to develop a strategy, including target groups and goals for the use of each social media, which will be aimed at informing, educating and engaging citizens. It is underlined that judges should limit the contents posted on social networks relating to their private life to the minimum with a view to preserving the dignity of the judiciary,[73] while a breach of the ethic rules should be sanctioned with disciplinary measures.[74]

70 Thus, cell phones are banned from the courtroom outright in Bulgaria, Romania, and Portugal, while in England and Wales, the use of a mobile phone in court is an offence. Some countries allow cell phones, but prohibit their use for recording, photographing or reporting (Austria, Denmark, Italy, Romania and Turkey). Lithuania allows only recording by the parties for their needs. Recording is not allowed in England, except for sessions of the Supreme Court, which are live broadcast. In Belgium, Denmark, Portugal, Poland, Hungary and Norway, audio and visual recording in general is not allowed, except in certain cases, which are of special public interest. Norway allows recording in civil law proceedings, but not in criminal law proceedings. The Netherlands allows recording only upon the opening of the hearing, reading the indictment and when the closing notes are delivered, while the judge decides on the issue of recording during other stages of the proceedings. Romania allows recording only of the first couple of minutes of the proceedings. Spain and Sweden allow recording with certain limitations. In England and Wales and in Spain there is CCTV recording, which is very expensive and therefore not accepted, i.e. practiced by many countries.

71 European Network of Councils for the Judiciary, Justice, Society and the Media, available at: https://www.encj.eu/images/stories/pdf/GA/Dublin/encj_report_justice_society_media_def.pdf, accessed on 23 March 2017, p. 10.

72 The ban is applied in Bulgaria, Denmark, England and Wales, Hungary, Ireland, Norway, Portugal, Romania and Turkey. In Austria, Ireland and Slovenia the control is left to judges. In Lithuania, only audio recording is allowed, and video recording using cell phones by the parties to the proceedings is banned. In the Netherlands, photographing using a cell phone is banned, and in fact in the two most protected courtrooms in Rotterdam and in Amsterdam use of cell phones is completely banned. Netherlands and Italy do not prohibit the use of cell phones, but their use may be limited by judges.

73 It must be underlined that in pursuance with the Bangalore Principles of Judicial Conduct, a judge shall exhibit and promote high standards of judicial conduct in order to reinforce public confidence in the judiciary, which is fundamental to the maintenance of judicial independence. See 2002 UN Bangalore Principles of Judicial Conduct.

74 European Network of Councils for the Judiciary, Justice, Society and the Media, available at: https://www.encj.eu/images/stories/pdf/GA/Dublin/encj_report_justice_society_media_def.pdf, accessed on 23 March 2017, pp. 6-11.

6.CONCLUSIONS AND RECOMMENDATIONS

There are a number of measures undertaken in the Republic of Macedonia with a view to modernizing the judiciary in following with contemporary trends of more transparent judiciary work. However, there remain a number of pending issues, which make room for undertaking efforts to enhance the remains and transparency. In this context, it must be born in mind that the results of the judiciary do not depend only on the work of judges, but on a number of relevant stakeholders that have a direct or indirect impact on the courts' performances, and in this case, on the transparency and publicity of courts.

The following is recommended:

·The judiciary needs to apply a strategic approach to public relations, involving all relevant stakeholders in the design of such an approach (the Judicial Council, courts, the Ministry of Justice, the Association of Judges, lawyers, journalists and others), which on its part will ensure the possibility to set the rules for the courts' relations with citizens, non-governmental organizations and the media.

·The Judicial Council and the Supreme Court are to ensure that the judiciary speaks openly and transparently with the public with a unison voice, while protecting judicial independence and organizing regular forums and meetings with civil society organizations and journalists.

Courts, the Judicial Council, the Academy for Judges and Public Prosecutors, journalists' associations:

·Are to undertake more practical measures (regular trainings on transparency for the judiciary and judicial staff, but also for journalists and media workers, organizing open days of the judiciary, facilitating organized group visits, specially designed materials for secondary school students and university students, etc.).

·Are to undertake measures to ensure conditions for public hearings: appropriate spatial conditions, access to courts and courtrooms for people with physical disabilities, informing the public about the possibility to attend public hearings, training the judicial police, etc.

The Ministry of Justice, the Parliament, courts:

·Are to re-examine whether "business secret" should remain as a ground to exclude the public in criminal law hearings;

·Are to re-examine whether "if the order cannot be maintained in the courtroom" should remain as a ground to exclude the public from civil law proceedings.

·Are to review the provisions on availability of judgments under Article 126 of the Law on Criminal Procedure, i.e. consider the possibility to ensure availability of judgments, with partial or without containing the reasoning, also in cases in which the public has been excluded.

·Are to envisage under the Law on Criminal Procedure obligatory informing of the public if a wanted warrant has been issued in certain cases, such as cases involving holders of public offices.

·Are to adopt relevant legislative amendments, which envisage that the defining of the levels of access and the access to the case law are to be regulated under a document to be adopted at a general session of the Supreme Court of the Republic of Macedonia and that individual requests for access are to be decided upon by a panel of judges of the Supreme Court.

·Are to amend Article 13 of the Law on Court Case Management in order that the right to get a copy of the judgment is conditioned by the fact whether the judgment has been already publicly pronounced and not by the fact whether the judgment has been posted on the courts' websites.

·Are to amend the Instruction on the Manner of Publication and Search of Judgments on Website of Courts, envisaging that state administration bodies and public institutions will not be anonymized, i.e. that they will be anonymized only in cases involving a state secret.

·Are to review the manner in which judgments are published, i.e. whether it would be appropriate to publish only a brief summary of certain judgments, while interested members of the public may freely get a copy of such judgments in their entirety.

·Are to adopt legislative amendments in order to increase the number of persons that may have access to case files of archived cases.

·Are to supplement the Court Rules of Procedure with amendments, which envisage the type of information that is to be obligatorily published on courts' websites, with a view to harmonizing the type of content hosted by websites of each of the courts. In this context, it should be envisaged that information about the financial operations of courts and their annual reports are to be obligatorily published.

·Are to supplement the Court Rules of Procedures with provisions, which envisage the organization and contents to be covered for organized group visits to courts. This will enable visitors to get information about the movement of cases in the court, the procedures, the manner of analyzing and processing cases, and adopting court judgments, as well as the periods envisaged in this respect, physically and virtually for courts of all instances.

·Are to supplement the Court Rules of Procedure by introducing provisions envisaging the obligation of judges to continually and in good time submit information to the Courts' Spokespersons and to the Public Relations Office, which operates under the authorities of the President of the Court.

·Are to supplement the Court Rules of Procedure with provisions, which will elaborate and define in greater detail the work of the Public Relations Office.

·Are to supplement the Court Rules of Procedure by introducing provisions envisaging standard reports to be drafted for monitoring the implementation of the Law on Court Case Management.

·Are to amend the provisions of the Court Rules of Procedure, which define the grounds to deny the request for permission for recording, i.e. such grounds should be reduced to the minimum and should limit the room for subjective assessment of requests.

·Are to introduce rules in the Court Rules of Procedure regulating the issue of use of cell phones, computers, and other devices that can be used to make recordings in the courtroom, especially if it is necessary that more restrictive rules in this respect be applied in the Skopje I First Instance Court.

Courts are to:

·Allow attendance by representative of the scientific and expert circles at hearings from which the public has been excluded in accordance with the law. Courts are furthermore to fulfil the obligation for compulsory publication of the place, time and courtroom where the hearing will take place.

·Persons designated for public relations at courts are to meet regularly, at least once a year to exchange experiences in their work.

·Permissions for recording in courtrooms should be fully abided by and the provisions requiring getting the consent of parties to civil law cases should be reviewed.

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