

NGOs AND THE JUDICIARY WATCH DOG ACTIVITIES, INTERACTIONS, COLLABORATION, COMMUNICATION

COUNTRY REPORT
Republic of Macedonia
2015

Project partners:

POLAND



ALBANIA



CZECH REPUBLIC



MACEDONIA



SERBIA



SLOVAKIA



COUNTRY REPORT – Republic of Macedonia –

“NGOs and the judiciary - watch dog activities, interactions, collaboration, communication”

The project “NGOs and the judiciary - watch dog activities, interactions, collaboration, communication” is supported by the Visegrad Fund (www.visegradfund.org) and the Ministry of Foreign Affairs of the Republic of Korea (www.mofa.go.kr).



**Ministry of Foreign Affairs
Republic of Korea**

COUNTRY REPORT

– Republic of Macedonia –

“NGOs and the judiciary - watch dog activities, interactions, collaboration, communication”

Publisher: Coalition of civil associations

“All for Fair Trials”

Str. Macedonia 11/2-10, 1000 Skopje

Tel/fax: +389 2 6139874

E-mail: contact@all4fairtrials.org.mk

Web: www.all4fairtrials.org.mk

For the publisher: Mirjana Ivanova Bojadzieva, PhD
President

Author: Jasmina Dimitrieva, PhD

Editor: Aleksandra Bogdanovska, MA
Executive Director

Implementer: Coalition “All for Fair Trials”

Translation: Slavica Dimitrievska

Design and print: Daniel Mitkovski

Grafohartija

Circulation: 50

Contents

List of Abbreviations	4
Methodology	5
PAPT 1.....	6
Introduction.....	6
Short country information.....	7
Judicial system organization information.....	7
Types and examples of NGOs – courts interactions.....	9
PAPT 2.....	13
General questions on NGOs engagement in interaction, collaboration with the judiciary	13
Legal framework. Standing of NGOs.	19
PAPT 3.....	21
Monitoring of the judiciary by NGOs.....	21
NGOs monitoring, advocating and engaging in the legislative process regarding judiciary	23
Trial monitoring, trial observation, court watch	25
Involvement of NGOs in court trials	27
NGOs working in the field of access to information. Transparency.....	28
NGOs defending judiciary and judicial independence	29
Trainings and workshops for judges organized by expert NGOs.....	30
NGOs as organizations educating citizens about the judiciary	31
Any other form of NGOs – courts interactions that do not fit into previous types	32
International cooperation	32
PAPT 4.....	34
Country bibliography	34

List of Abbreviations

Academy - Academy of Judges and Public Prosecutors
ACLC - Association for Criminal Law and Criminology
ACCMIS - Automated Court Case Management Information System
CPJD - Council for Prevention of Juvenile Delinquency
CSRS - Civil Society Resource Centre
CvC - Dutch Centre for Conflict Management
ELSA - European Law Students Association
EPI - European Policy Institute
ESE - Association for Emancipation, Solidarity and Equality of Women
ECtHR – European Court of Human Rights
FOSM - Foundation Open Society – Macedonia
JC – Judicial Council
MJA – Macedonian Judges Association
MoJ –Macedonian Ministry of Justice
MYLA - Macedonian Young Lawyers Association
YEF - Youth Educational Forum

Methodology

The main methodology for the preparation of the report were legal and comparative analyses of the legal framework applicable to the judiciary and of relevant reports produced by the EU and the NGOs. In addition to the desk research, data were collected and collated through questionnaires addressed to the NGOs and to the courts, as well as by semi-structured interviews. The latter proved to be the most efficient method for data collection. Interviews were carried out with the key NGOs that work with and support the judiciary, as follows: 1. Association for Emancipation, Solidarity and Equality of Women – ESE; 2. Coalition “All for Fair Trials”; 3. Council for Prevention of Juvenile Delinquency (CPJD); 4. European Policy Institute (EPI); 5. Foundation Open Society – Macedonia (FOSM); 6. Helsinki Committee; 7. Institute for Human Rights; 8. Macedonian Young Lawyers Association (MYLA); 9. Organization for Protection of Consumers; 10. Zenith and 11. Centre for Legal Research and Analysis. Questionnaires were filled-in by Choice – Strumica, the Macedonian Judges’ Association (MJA) and MYLA. Three NGOs never replied to the kind request for a meeting or to fill-in the questionnaire.

The questions underlined in the report were discussed with seven judges from the basic courts, the Supreme Court and the Constitutional Court. The questionnaire was sent to the Judicial Council, the Academy for Judges and Public Prosecutors, to four basic courts, two appeals courts, and to the Higher Administrative Court. Some courts agreed to fill-in the questionnaire, only if that was approved by the Judicial Council. Other courts and institutions promised to fill-in the questionnaire, but no reply was received until the expiration of the deadline. The topic of the report was further discussed with the OSCE official working on the judiciary and representatives from the USAID-funded Judicial Strengthening Project.

Data were also gathered from three events that were attended by the representatives of the judiciary and NGOs where relevant topics for the judiciary were discussed. The events are the following: Final Conference of Network 23 and public events about the reports “Judicial Efficiency and Fulfilment of Fair and Just Adjudication” and “Analysis of the Independence of the Judicial Council –goal and challenges-” organized by the Coalition “All for Fair Trials” and by the Institute for Human Rights, respectively.

PAPT 1

Introduction

The Republic of Macedonia is a tiny country at the south – eastern edge of Europe. It is a parliamentary democracy, which gained its independence from ex-Yugoslavia in 1991.

The country has 27 basic courts, 4 appeal courts, and the Supreme Court. Administrative issues are dealt by the administrative courts, whereas constitutional and legislative concerns are addressed to the Constitutional Court.

The Judicial Council (JC) is the leading institution of the judiciary. It recruits, disciplines and dismisses the judges. The Academy of Judges and Public Prosecutors (the Academy) educates candidates for judges and provides compulsory continuous education. The Macedonian Association of Judges (MJA) is a voluntary association.

The judiciary struggles with a tarnished reputation. The publicly disclosed wiretapped conversations show political interference in the recruitment and promotion of judges, and pressures in individual cases. The judiciary struggles with proper enforcement of laws. It lacks funds and resources.

The cooperation, communication and interaction between the NGOs and judicial institutions take various forms. Most of the NGOs provide free legal aid to vulnerable and marginalized groups (asylum seekers, victims of domestic violence, Roma etc.). Some NGOs conduct strategic litigation (e.g. in anti-discrimination and LGBTs issues). They also submit initiatives for the review of the constitutionality and legality, draft legislative assessments and participate in working groups that aim to bring Macedonian law in compliance with the EU acquis.

There are also specialized NGOs in trial monitoring and court watch. Other monitor and report on the work of the JC and of the Constitutional Court. NGOs take part in public debates and discuss topical issues regarding the independence of the judiciary or individual court cases.

The NGOs face a number of difficulties, such as indifference and inactivity of the judiciary on NGO activities and recommendations regarding judicial sector, a lack of feedback from the judicial institutions, insufficient funding, and a high turnover of trained staff. Trial monitoring and roundtable discussions are the activities that are mostly welcomed by the judicial representatives. The public largely supports the NGO work in the judicial sector. The NGOs try to increase their leverage through networking and by taking part in regional and international projects.

Short country information

The Republic of Macedonia occupies a territory of 25,713km², with 2,062,294 inhabitants.¹ According to the last 2002 Census, the two major ethnic groups are Macedonians (64, 18%) and Albanians (25, 17%).

Macedonia gained its independence from ex-Yugoslavia on 8 September 1991. It is a parliamentary democracy based on people's sovereignty. In 1995, an Interim Accord with Greece enabled the country to become a UN member under the reference "the Former Yugoslav Republic of Macedonia".

During the beginning of 2014, there were 4,156 registered NGOs.² The Law on Associations and Foundations prescribes that an NGO may be set up by at least five citizens for non-profit and non-partisan activities.³ While their projects can be VAT exempt, the NGOs request for greater tax relieves was not accepted.⁴ Funding and sustainability remain one of the biggest problems of the NGO sector, which is mostly funded by international donors. The status of NGO of public interest, which facilitates access to public funds, is not attractive, as it provides the rights of access and audit to the Government with a few benefits for the NGOs. The members of the NGOs governing boards who are unemployed, and act *pro bono*, risk to be crossed out from the list of unemployed. This means that they can lose their social benefits, and are thus discouraged -to engage with the NGO sector. The NGOs fall under the scope of the Lustration Law. The wiretapped conversations show that several NGOs were placed under secret surveillance without an apparent legal justification.⁵

Judicial system organization information

The Constitutional Court reviews the constitutionality and legality of laws and secondary legislation, as well as acts upon individual complaints alleging violation of several human rights (the right not to be discriminated against, freedom of political association, freedom of expression and freedom of thought and believe).⁶ Its nine judges are elected by the Parliament.

At municipal level, there are 25 plus two specialized basic courts. The specialized basic court Skopje-I has state jurisdiction over serious crimes and corruption. There are four appeal courts, and the Supreme Court. The Administrative Court and the Higher Administrative Court have state jurisdiction.⁷

¹ Statistical Office of the Republic of Macedonia, *Macedonia in Figures 2013*, www.stat.gov.mk/Default_en.aspx, accessed 15 May 2015.

² USAID, *2014 CSO Sustainability Index For Central and Eastern Europe And Eurasia*, <http://www.usaid.gov/sites/default/files/documents/1863/FINAL.pdf>, accessed 10 July 2015 p.146.

³ Official Gazettes nos. 52/10 и 135/11.

⁴ Ognenovska, *Report on Collaboration between Government and NGO June 2012 – December 2014*, MCIC, 2015, p. 12.

⁵ The so-called „bomb” 37 <http://www.sdsm.org.mk/default.aspx?articleId=12111&mId=55&agId=6>, access 19 June 2015.

⁶ Article 110, Macedonian Constitution.

⁷ Law on the Courts, Official Gazette nos. 58/06, 35/08, U. no. 256/07, U no. 74/08, 150/10, U. no. 12/11.

In 2014, 656 active judges were assigned as follows: 484 at the basic courts, 30 at the Administrative Court, 109 at the appeals courts, 10 at the Higher Administrative Court and 23 at the Supreme Court.⁸ At the end of 2014, the number of judges went down to 608.⁹

The JC recruits, disciplines and dismisses judges. Its 15 members are appointed for a period of 6 years. Peer-judges elect eight members of JC, five members are elected by the Parliament (two out of five judges are nominated by the President of the Republic) in line with the equitable representation.¹⁰ There are two *ex officio* members: the Minister of Justice (a non-voting member) and the Supreme Court President.

The Academy educates candidates for judges and provides compulsory continuous judicial education.¹¹

The JC is the leading judicial institution. The Supreme Court as the highest court represents the judiciary. The MJA is a voluntary association, protecting the integrity of judges.

The country underwent several judicial reforms in order to strengthen independence and professionalism of the judges. They are appointed for life and their salaries are above average. However, publicly disclosed wiretapped conversations show political interference in the recruitment and promotion of judges, and pressures in individual cases adjudicated by certain judges. This prompted the European Commission to commission expert report and to call for urgent judicial reform.¹²

The judiciary is faced with the following challenges:¹³

1. To safeguard its independence, impartiality and quality when dealing with court cases, regardless of political pressures and sensitivity of cases;
2. To keep away from political pressures in recruitment, promotion, disciplining and dismissal of judges and other top judicial officials;
3. To enforce properly the laws regulating the judiciary, criminal procedure and enforcement of the European Court of Human Rights' (ECtHR) judgments;
4. To increase public confidence in the judiciary¹⁴ and in the Constitutional Court;¹⁵
5. To dispense justice fairly in all cases connected with public release of the wire-tapped materials, and to ensure judicial oversight of the surveillance of communications; and
6. To safeguard independent court budget.

The public survey from August 2014 shows low confidence in the judiciary.¹⁶ The JC and the Ministry of Justice (MoJ) consider an increase of public confidence their strategic goal.¹⁷

⁸ *Annual Statistics of the Republic of Macedonia*, 2014.

⁹ *2014 Annual Report of the Judicial Council*, pp. 11, 12 & 19.

¹⁰ Amendments XXII, XXV, XXVIII and XXIX of the Constitution, 7 December 2005.

¹¹ Law on Academy for Judges and Public Prosecutors, Official Gazette no. 20, 12 February 2015.

¹² Annex – Recommendations of the Senior experts' group, Annex B – Urgent reform priorities.

¹³ *2014 EC Progress Report*; GRECO Fourth Evaluation Report

http://www.coe.int/t/dghl/monitoring/greco/evaluations/round4/ReportsRound4_en.asp accessed 10 July 2015; The US State Department, *2014 Country report on Human Rights Practices* for Macedonia.

¹⁴ A number of judgments connected with terrorist cases or involving journalists provoked public protests.

¹⁵ *2015 Freedom House Report*.

¹⁶ Centre for Research and Policy-Making, <http://a1on.mk/wordpress/archives/458834>, accessed 19 June 2015.

¹⁷ *2014 Annual Report of JC*, pp. 42-43, *Strategic Plan of the Ministry of Justice 2014-2017*, part 3.23.1.3.

Types and examples of NGOs – courts interactions

Since the gaining of independence by Macedonia in 1991, the NGO sector started its steady growth with the support of foreign donors, like the American Bar Association-CEELI, the USAID, the EU programmes, the UNHCR. Regarding educational component, the MJA used to be the leader in offering continuous education to the judges until the Academy was established. Seminars and round table discussions with judges and other legal professionals are regularly organized by the Association of (ex-Business) Lawyers in Macedonia and Association for Criminal Law and Criminology (ACLC).

Other highlights of the past NGOs' work include:

1. The work of the women's rights organization ESE, which started developing its capacities to offer legal protection to women since 1994. It continuously offers free legal aid and counselling to victims of domestic violence;
2. The Civil Society Resource Centre's (CSRS) work with asylum seekers, mostly Roma, who fled Kosovo in 1999, and who were provided with free legal aid. CSRS followed cases of police brutality and represented clients before the ECtHR;
3. The human rights' legal protection continuously offered by the Helsinki Committee, which was registered in Macedonia in 1995; and
4. Comprehensive trial monitoring programmes, which started with the creation of the Coalition "All for Fair Trials" in 2003, and which assisted the country in its judicial and legal reforms.

The courts and judicial institutions (JC, the Academy) and NGOs continue to interact and cooperate in various ways, as follows:

1. Participation in court proceedings: The most frequent type of interaction between the courts and the NGO sector is through provision of free legal aid. The Law on Free Legal Aid¹⁸ stipulates that NGOs can also provide free legal aid. A number of them provide free legal aid in the courts and at the ECtHR.¹⁹

MYLA coordinates a network of NGOs that provide free legal aid to different categories of citizens. It provides legal aid to the asylum seekers and it conducts strategic litigation in anti-discrimination cases with the assistance of practicing lawyers. Several NGOs provide free legal aid to Roma, e.g., the National Roma Centre, Kumanovo and Roma SOS, Prilep. MYLA, in cooperation with the FOSM, and other NGOs from Kumanovo, Bitola etc., submits requests to the courts for information of public character to facilitate greater access to justice, and thus advocates greater transparency in judicial proceedings and improved public access to judgments.

The Helsinki Committee also provides free legal aid and conducts strategic litigation in a variety of cases connected to police brutality, freedom of assembly, lustration, etc., before domestic courts, and the ECtHR. Its members visit detainees upon

¹⁸ Official Gazette nos. 161/09 и 185/11.

¹⁹ http://www.pravda.gov.mk/documents/reg_zdr_pred_pravna_pomos.pdf, accessed 20 June 2015.

court's approval. This human rights' NGO is a member of the NGOs' network for protection against discrimination (together with ESE, Roma SOS, FOSM and other) which conducts strategic litigations in this type of cases. It submits initiatives for a review of the constitutionality and legality of the laws, e.g., the law regulating social benefits for persons with special needs, lustration law, and law on defamation. It reports on its findings in monthly, bi-monthly and annual general or thematic reports.

ESE is well-known women's rights NGO. It has been continuously providing support to the victims of domestic violence, free legal aid and counselling.

Whereas the Organization for Protection of Consumers provides preliminary legal aid, it does not represent the clients in the courts. By law, consumers' organizations can start class actions, but the system has not been tested, yet.

Environmental NGOs, like ED Vila Zora participate in proceedings requesting measurement of the environmental impact of a smelting factory. They also submit requests for the review of the constitutionality and legality of the environmental legislative framework to the Constitutional Court, e.g., the NGO Arsena.

In the past, the Coalition "All for fair trials" used to provide free legal aid to alleged victims of police brutality, and covered expenses for medical examinations under the "Human Rights Support Project". Transparency International-Macedonia provided legal advice to victims and witnesses of corruption.

2. Trial monitoring and court watch: Since its creation in 2003, the Coalition "All for fair trials" monitors trials from different areas including elections, anti-corruption and serious crimes, defamation cases, and prepares public reports, which are primarily addressed to the judiciary. Judges often contribute to the projects by providing analysis of the data gathered through monitoring. The Coalition "All for fair trials" also implements a court watch programme. ESE, which has a mission to protect women's rights, monitors domestic violence cases.

The Helsinki Committee throughout Macedonia also conducts trial monitoring in high profile cases involving a breach of fundamental rights. It monitors hate crimes incidents (e.g., LGBT related), but they rarely reach the courts. The Helsinki Committee monitors the work of the Constitutional Court, attends its sessions and makes analysis about its work.

Other trial monitoring projects include: a. the anti-corruption trial-monitoring programme of Transparency International-Macedonia, with judiciary as one of its pillars, and b. the court visit organized by the European Law Students Association (ELSA) for its members, where they are also briefed how to become court apprentices.

3. NGO support to justice sector reforms and the rule of law: The Rule of Law Council is a network of professional legal associations and NGOs, which contributes towards judicial independence, accountability and effectiveness by following the work of the judicial bodies, by building the capacities of NGOs and of legal professional

associations, as well as by the rule of law advocacy.²⁰ It educates the public and legal professionals about the changes in the criminal procedure. The membership is voluntary and free of charge. The MYLA, the Coalition “All for Fair Trials”, ELSA and the Court Administration Association are its members. The USAID Judicial Strengthening Project supports the network.

The NGOs and judges also cooperate and coordinate as members of various working groups that draft new legislation or provide input to the justice sector reform strategies. For instance, the mediation reform-working group included judges and representatives of EPI. Judges were members of the criminal procedure reform-working group along with other representatives of the Association for Criminal Law and Criminology, as well as of the working group that drafted changes of the electoral legislation that was coordinated by the NGO MOST. The CPJD, a judge-led NGO has also contributed towards a criminal law reform.

The Coalition “All for fair trials” provides reports with recommendations for legal reform and efficiency of justice, which are addressed to the judiciary. The Institute for Human Rights conducted a survey and made analysis of the use of legal remedies by the journalists.

NGOs also provide legislative assessments. Among other, the Institute for Human Rights provided assessment of the proposed Constitutional amendment XXXVIII, which foresees a change in the composition of the JC, and of the anti-discrimination law.

4. Following the work of the judicial institutions, assessments and reporting: The Institute for Human Rights followed election of a JC member from the category of “eminent lawyers” and JC’s election of judges for the purposes of the project “Independent Judiciary in the Republic of Macedonia – perceptions, hardships and challenges”.

While Zenith focused on the compatibility of the legislation from the justice sector with the EU acquis, the Centre for Legal Research and Analysis is in the process of developing a methodology to assess the judiciary based on selected indicators.

Twenty-two NGOs, including Coalition “All for fair trials”, MYLA, the Institute for Human Rights, the Helsinki Committee made a submission to the UN 2013 Universal Periodic Review regarding the judiciary and developed recommendations in this regard.

5. Training: Specific examples of trainings delivered by the NGOs include the Organization of Consumers, which delivers trainings to the judges in the Academy regarding practical aspects of the consumers’ protection. Another example is the training of trainers at the Academy targeting judges, which was organized by EPI. Judges are educators and presenters in the trainings and workshops organized by the ACLC. This Association brings together judges, prosecutors, law professors, lawyers and legal experts from the criminal law area.

²⁰ <http://www.zkp.mk>

The CPJD, organized seminars for judges, prosecutors, police, and lawyers on issues connected with juvenile justice. The Academy invites NGOs to attend its training (e.g. MYLA) and the Bar members (who may also be NGO activists).

6. Following the law enforcement and transposition of the EU acquis: NGOs make assessments and prepare reports addressed to the judiciary. For example, Zenith's "Analytical Report on Independence, Impartiality, Professionalism and Efficiency of the Judicial System", encompasses analysis of the EU acquis transposition from the judicial area in domestic laws.

The Network 23 is an NGO network that is coordinated by EPI. It monitors the acceptance of the EU acquis communautaire and the EU integration process seen from the perspective of the Chapter 23 - the judiciary and fundamental rights. The aim is to influence the implementation of respective polices. The network cooperates with individual judges.

7. Accountability: NGOs (e.g., the Helsinki Committee) submit complaints about the work of individual judges or courts to the JC. In 2014, NGOs submitted five complaints in total.²¹

²¹ The 2014 Annual Report of JC, p. 30.

PAPT 2

General questions on NGOs engagement in interaction, collaboration with the judiciary

Macedonia is going through a serious political crisis. The judiciary is not spared from doubts and allegations that it has been substantially controlled by the executive branch of the Government. A number of NGOs (e.g., Zenith) prepare analyses, surveys, identify problems and offer recommendations regarding compliance of the judicial sector with the international and EU standards on judicial independence. Results of the monitoring of JC's work by the Institute for Human Rights contribute towards detecting and understanding problems that surround recruitment, dismissal and promotion of judges. For example, the Institute for Human Rights monitored the work of the JC between November 2012 and April 2013 and concluded that there was no justification for the selection, or rejection of candidates for judges. In 2015, the Institute issued analysis on the independence of JC, and provided recommendations how to improve the disciplinary and dismissal procedures.

The Helsinki Committee, through its monitoring of the court case where 14 misdemeanour judges and 11 members of court administration were arrested for alleged breach of duties in October 2014, also contributes to understanding of the limits of the judicial discretion.

NGOs contribute towards public confidence in the court system by monitoring individual cases and trends, as well as by providing free legal aid. Their past participation in the judicial reform strategy is working group, the strategic litigation and measuring perceptions of judges about the Law on Criminal Procedure have an impact on the judicial and legal reforms. Other positive examples of NGOs' contribution towards greater transparency of the judiciary include court automation and access to judgments.

Experts from NGOs participate in public debates regarding topical issues for the judiciary, e.g., the wiretapped conversations that cast doubt on the independence of the judiciary as well as other high profile cases, and thus contribute towards delivery of balanced public information. The NGOs' requests for information from the Supreme Court about the enforcement of the ECtHR judgments also contribute to greater awareness of legal professionals and public about the existing problems. For example, the Network 23 produced and disseminated the analysis revealing that courts function with less funds than what the Law on the Court Budget stipulates.

Macedonia is ripe for another judicial reform, which will have to take place once the political crises are over. The EC experts have already provided the reform roadmap, and the Prime Minister reiterated his reform preparedness. It is expected that new judicial reform strategy will be fully in place in 2016. What is the biggest challenge is not the reform process itself, but whether it will succeed this time. To invest all the efforts, enthusiasm and funds into another unsuccessful judicial reform, can only be compared with walking in a dark tunnel without seeing the light. Therefore, the policy-makers should be open and rely on NGOs contributions in order to move beyond the current challenges.

However, it is a fact that the shortage of funds and strict donors' criteria limit NGOs engagement in the judicial sphere. A difficult communication with the JC, MJA and some of the courts (e.g., the administrative ones) which has been characterized as hierarchical, closed and distant is yet another limitation. The communication and cooperation mostly depend on who is the court president, or the presiding judge. Not too many judges seem interested, or informed about the work of the NGOs. Often, those public relations' officers communicate and attend NGO events. NGOs are concerned about the unwillingness of the judicial bodies to cooperate with the non-governmental sector in a more systematic manner, and to follow-up on their reports and recommendations. There are no examples of direct cooperation between NGOs and the courts as partners in a project.

For NGOs that provide free legal aid and conduct strategic litigation, there are several problems to overcome. For example, they are sometimes denied access to the case file, do not have sufficient time to prepare for the defence or are denied standing in the proceedings.

At any rate, the challenges of the judiciary underscore the need for trial monitoring. Legal experts in order to discern trends; identify procedural weaknesses; report on court practice; and examine consistent application of laws should monitor similar court cases. Fairness of the court proceedings in high profile cases needs constant monitoring by the NGOs. The need to monitor the JC is underscored in view of a number of weaknesses noticed, such as decisions without a proper signature, or date. Monitoring of the Constitutional Court is viewed as necessary in light of its decisions to reject several controversial cases.

Generally speaking, the MJA and the judges welcome trial monitoring and court watch in line with the principle of public trial. They consider it desirable for the monitors to be law graduates with a bar exam and with the knowledge of the courts' work. The reports should only refer to the public hearings that were monitored; they must be accurate and prepared by experts in order to be relevant for the courts. NGOs and courts should agree on cooperation modalities in this regard. There is an opinion that NGOs should not comment on the judgments, as there are higher appeals instances, and the NGOs do not have access to case-files.

The MJA considers that NGOs should monitor judges' recruitment, promotion and disciplinary proceedings, if they have the needed expertise and objectivity.

NGOs with long-standing experience in protection of human rights (e.g., the Helsinki Committee, the Coalition "All for Fair Trials") or with judges as their members (e.g. Institute for Human Rights, the CPDJ) have better record of cooperation and access to the courts.

The positive trend of NGOs networking in combating discrimination, trials monitoring, and support to the rule of law provides them with better leverage for lobbying and advocacy. For example, Network 23 addresses the challenges in chapter 23 devoted to judiciary, security and freedom as a part of the EU integration process. It is a network of NGOs, which includes EPI, Helsinki Committee for Human Rights and the Centre for Change Management, as well as a number of sub-grantees (e.g., the Coalition "All for fair trials") working towards joint goal.

Strategic litigations represent another positive trend in the NGO sector. Devoted NGOs strive to contribute towards building court practice for enhanced protection of human rights.

However, negative outcome of a court case may re-confirm a lack of legal protection, and thus discourage the applicants from seeking legal protection.

The number of NGOs, which focus on the EU integration, transposition of the EU acquis and policy-making increases, despite the stalled EU integration process. In addition, there is a drift towards establishing think tanks and providing expert services.

Generally speaking, cooperation and communication between NGOs may be adversely affected by a change of staff, or a lack of financial sustainability. Competitiveness to obtain funds and politization of the NGO sector are further obstacles to their cooperation and joint platforms. There is also a high turnover of staff in NGOs that affects their capacities and expertise, and thus creates needs for specialized trainings (e.g., reports writing, legal research and analysis).

As things stand now, it is difficult for NGOs to obtain institutional response or feedback for their reports, activities and recommendations from the judiciary. The courts rarely or never reply to questionnaires of the NGOs. Even endorsing the argument that judges may receive too many of such requests, still a more structured and coordinated response from the judiciary is missing. A strategy or guidance for cooperation and interaction with NGOs, which will clarify the contact and coordination points within the judiciary, and the applicable procedures for various types of interaction are needed. It will certainly help the courts handle the requests for cooperation and information from NGOs. A creation of a regular forum for cooperation, interaction and discussion of topical issues connected with the judiciary, will represent a benefit in this regard.

Furthermore, discussion forums and public debates with the participation of judges, NGO representatives, practicing lawyers, prosecutors, and members of the JC and of the Academy are missing. In this context, it is not clear which body represents the interests of the judiciary, i.e., the Supreme Court, the Academy, or the JC. The current situation suggests that JC is seen as the most powerful body in the judicial sector. For the same reason, it does not appear that it is perceived as a watchdog of the judicial independence and integrity (e.g., analyses of the Institute for Human Rights, the EC expert reports, the ECtHR judgment *Mitrinovski v. Macedonia*). It also appears that judges would prefer its more proactive involvement in support of the interests and status of the judges.

A memorandum for cooperation with the JC, Academy and/or the courts will improve the possibilities for the NGOs to provide and receive feedback, and it will guarantee the necessary commitments from both sides. Professional networking, joint specialized trainings, regular meetings, open debates and discussion forums between the judiciary and NGOs are indispensable to deepen their cooperation at all levels.

On the positive side, cooperation with individual judges and some courts regarding fair trial monitoring and preparation of legal analysis and research is at satisfactory level. A concrete example refers to a joint meeting between the Helsinki Committee and approximately 30 judges from the Basic Court - Skopje 1, where they discussed the NGOs' trial monitoring findings. The Constitutional Court invites NGOs at its preparatory meetings for controversial cases (e.g., lustration) and asks for their feedback.

The NGOs are members of the working groups drafting legislation, and provide analyses and reports, mostly with the support of the international community. In the past, with the OSCE support, the Coalition “All for fair trials” was a part of high level working meetings with the participation of the Supreme Court president and other judges, where Coalition’s reports and recommendations were discussed and taken into consideration for a legal reform. However, this forum did not stand the test of time.

The feedback provided from the NGOs is limited by the inactivity of a considerable number of judges and the hierarchical structure in the judiciary. Not all judges and other judicial representatives share information about the NGOs’ work in the judicial sector. A positive example in this regard is CPJD, as its President used to work in the NGO sector before becoming a judge. In addition, it seems that certain NGO members lack confidence in the quality of justice and vice versa.

On one hand, considering the alarming situation nowadays, it is clear that the judiciary needs the NGO support and feedback. On the other hand, there is a plethora of reports and analyses provided by the NGOs, with the limited absorption capacities of the judiciary. The NGOs findings and reports compete with the reports and findings of international and regional organizations like the EU, CoE, and OSCE. While the latter represent basis for judicial and legal reforms in the country, the NGOs’ outputs serve as supporting materials and source of information for the state bodies and for the international community. For example, the monitoring results of the Coalition “All for Fair Trials” about election-related court cases were regularly discussed at the meetings attended by the international community. Politicians, scientists and experts rely on the NGO reports and analyses for their research and public statements.

The public is insufficiently informed about the NGOs’ activities and projects in the judiciary, judging according to the citizens who request legal aid from the NGOs. The citizens have confidence in the NGOs and are supportive of their activities. They actively seek trial monitoring for their cases. While the MJA has not made a public survey, from its experience it concludes that general public views positively the NGOs’ involvement.

The MJA considers that cooperation between the judiciary and NGOs will improve by establishing a cooperation framework and joint meetings. Furthermore, the JC should create a framework for cooperation with NGOs and should lead the efforts to ensure a follow-up to the NGOs feedback.

The NGOs would clearly prefer to have an established forum with the courts and higher judicial bodies, for their feedback, and future and follow-up activities. Trainings and presentations for the judges about the NGOs work and added value that it can bring to the justice sector can create friendly environment for discussing the NGOs’ feedback. Public debates with the participation of NGOs help initiate and feed the debates centred on justice and freedom.

Leading NGOs and donors in the judicial sector reported that they did not have common projects or activities with MJA for the last few years. The Institute for Human Rights signed a memorandum for cooperation with the MJA, but without any follow-up. The prevailing reasons were in the MJA’s inactivity and a lack of interest for joint projects. A

number of judges expressed their wish to see the MJA more active in representing the interests of the judiciary, and providing a proper response to wiretapped conversations that show improper interferences with the judiciary. Furthermore, MJA should deal with other issues, such as inadequate media reporting that interferes with the presumption of innocence.

The MJA reiterates its openness to collaborate with the NGOs and to establish a cooperation framework, in order to fulfil its goals, i.e., independence and impartiality of the judiciary, protection of the dignity and reputation of the judicial function, promotion of the code of ethics and continuous education of judges. It had a joint project with FOSM on the analysis of detention decisions (2008-2010) and collaborated with MYLA in 2011, etc. The MJA sporadically invites members of the NGO sector at its events, for example the Association of Journalists, and attended conferences and events organized by Network 23.

Judicial bodies to their meetings, seminars, conferences on exceptional basis, invite the NGOs. There is a bigger likelihood that the NGOs will be invited to attend an event for the judiciary, when it is organized with the support of the international community.

There is no general rule that includes NGOs in the official judicial bodies. They are sporadically invited to take part in the working groups of the Ministry of Justice that draft legislation, and provide comments and inputs to the Parliamentary commissions. A highlight is the inclusion of the NGOs representatives in the working groups for development of a Strategy for judicial system reform for the period 2015–2019, established by the MoJ. In line with the EU requirement for greater transparency and inclusion of the civil sector regarding Chapter 23, the Government included civil society representatives in the working groups for the adoption of the EU acquis regarding specific issues. Furthermore, the CPJD president, as judge, is sitting in the working group that is responsible for the court automation.

The NGOs cooperate with practicing lawyers and members of the Bar Association in their legal aid and strategic litigation projects. Members of the Bar Association are sometimes included in the working groups that draft legislation, which are coordinated by the NGOs (e.g., the ACLC) and invited at trainings. The NGO projects, which aim to improve judicial and legal framework often include public prosecutors (e.g. election reform - NGO MOST, criminal law reform – ACLC). The NGOs also collaborate with the notaries, legal experts and representatives of the Ombudsperson institution.

Members of court registry maintain contacts with the NGOs through their Court Administration Association. This association is one of the members of the Rule of Law Council, along with other NGOs.

Neither the Academy's curriculum nor any other training covers in general terms the important role of the NGOs in the society, except for the general training on public trials, transparency and public relations offered at the Academy. The Academy offers lectures that tackle the role of the NGOs in the protection of the victims of domestic violence, of trafficking victims and the role of international NGOs, like the Helsinki Committee.

On a separate note, some judges criticize the NGO's work in the judiciary, as they deem their expertise in judicial matters insufficient. According to MJA, more and more NGOs

follow the work of the courts. However, not all of them have proper information about how the courts are organized and how the judges make their decisions. It was recommended to NGOs to contact the public information officers at the courts and obtain information they need. Other critical voices express a lack of confidence in the objectivity of the NGOs, out of fear of partization of the NGO sector. Requesting replies to a questionnaire from judges stands out as unpopular method for collection of information, regardless whether it is anonymous or not, allegedly because of past bad experience. All of the above indicates that confidence-building measures are urgently needed between the judiciary and the judges.

Some of the NGOs are think tanks, specialized in research with highly educated staff. NGOs regularly cooperate with law professors in terms of drafting analyses, reports and delivering trainings. The Association Zenith collaborates with the Macedonian Academy of Science and Arts, whose president is a distinguished law professor. Their cooperation encompasses endorsement of publications, possible joint projects and attendance of events. Other NGOs reported that the cooperation with the Macedonian Academy of Science and Arts is usually based on individual contacts with its members, who may be a member of an NGO, or providing expertise for a project. Several projects relating to legal reform encompassed scientists specialized in political relations, or sociologists. However, there is no continuous cooperation with different groups of social scientists or, for example with psychologists despite crosscutting issues. NGOs collaborate with social workers and psychologists in the projects for protection of vulnerable groups.

The annual reports of JC provide a picture about the efficiency of all courts in Macedonia and pinpoint the courts, which did not manage to deal with the backlog. It also gives aggregated data about the evaluations of the judges in each court. There is no ranking of the courts or judges.

In August 2013, the Institute for Human Rights published a comprehensive analysis about the independence of the judiciary. One chapter makes analysis of a survey about perceptions of the citizens in 14 basic courts. The Analysis provides a ranking of 5 to 6 courts based on the replies of the interviewed citizens. Several indicators were used in this regard, such as independence and impartiality of the courts, respect for the courts, transparency, efficiency, professionalism.²²

In 2015, the Government Unit earmarked public funds for the rule of law reform, fight against corruption and human rights protection for Coordination with the NGOs. The amount of the funds set aside is approximately 24,500 euro, whereas the amount of the individual grants is approximately 4,900 euro. There are opinions that NGOs by receiving such a grant oblige themselves to provide access to the Government to their activities, documents and funding, so they do not solicit them.

For instance, the Organization of the Consumers received a small grant (appr. 8,200 euro) from the Ministry of Economy. The Government adopted a programme for consumers' protection for 2015-2016, where it foresees small grants for NGOs working in the consumers' protection area. The Ministry of Economy published a call for small grant, and additional small allocations were foreseen for the consumers' protection NGOs. For example, there was a

²² http://www.ihr.org.mk/images/pub/Analiza_na_nezavisno_sudstvo_vo_RM.pdf, pp.90-96.

grant worth only 2,600 euro, but the cost to publish public call for the grant was estimated 500 euro.

The NGOs that combat domestic violence also receive state grants in order to offer legal protection. They receive allocations from the profit earned through the games of chance.²³ The same source of funding is used for the grants for associations of person with disability for legislative drafting and lobbying.

The judicial and legal reform, development of NGO sector and trainings at the Academy continue to be supported and funded mostly by foreign donors. The list of donors includes, among others, the USAID, the Judicial Strengthening Projects, the EU funds, OSCE, GIZ, Dutch Embassy, and British Embassy.

Legal framework. Standing of NGOs.

NGOs engage in a variety of ways in court proceedings, pre-criminal and administrative proceedings. Everybody, including NGOs, can initiate a review of the constitutionality and legality of laws and secondary legislation by the Constitutional Court (*actio popularis*). NGOs have already submitted a number of such initiatives, and thus, they play a role of a watchdog of the constitutional system.

Most of NGOs provide preliminary legal counselling, but they hire a member of the Bar Association who represents their clients in the courts. The Law on Free Legal Aid authorizes NGOs to provide preliminary free legal aid in court and administrative proceedings with the funding from the state, provided that they have at least one employee who passed the bar exam. Only members of the Bar Association can provide free legal aid in court proceedings. The Law on Free Legal Aid is not applicable to compulsory defence in criminal cases or justice delinquency, which falls under the scope of other laws.

The Law on Prevention and Protection from Domestic Violence²⁴ and Regulation on the Implementation of the Measures for Protection of the Victims of Domestic Violence²⁵, stipulates that victims of domestic violence can be directed to NGOs that provide free legal aid.

The 2011 Law on Civil Procedure²⁶ stipulates that anyone with “legal interest” may acquire the status of third party that “interferes” i.e., participates in the procedure and makes submissions. An example of such participation is the Network for Protection against Discrimination that was allowed to act as an “intervener” in one anti-discrimination case in the Gostivar court.

The 2011 Law on Consumers’ Protection (Art. 31-e and f) gives the right to an “authorized body”, which protects the rights of the consumers to start a class action. A separate act should designate who will be the “authorized body”, but it has not been enacted,

²³ Official Gazette no. 7, 16 January 2015, Chapter IV.

²⁴ Official Gazette nos. 138/14, 22/15, Article 27.

²⁵ Official Gazette no. 17/15, Article 16.

²⁶ Articles 194-197.

yet. The Law is clear foreign and international associations of consumers can start that class action when certain criteria are fulfilled.

NGOs also submit criminal complaint to the public prosecutor or ask for initiation of misdemeanour procedures. Other activities include NGOs submitting complaints to the JC regarding judges' misconduct, and requests for public information to the courts and administrative bodies.

NGOs visit detainees upon approval of a competent judge, and upon request of a detained person. They used to engage in regular meetings with the Ministry of Internal Affairs, asked for a regular update about particular cases and discussed breaches of discipline and law by the police.

The Organization of Consumers shared specific problems regarding participation in the court proceedings. It does not provide free legal aid in the court, because of court fees. If there were no court fees for at least small claims, or if there was a way of sustainable funding for legal representation, the Organization of Consumers stood ready to start class actions.

The Helsinki Committee reported only one occasion when the police did not let a trial observer attend a public hearing.

PAPT 3

Monitoring of the judiciary by NGOs

NGOs in Macedonia monitor judiciary in several important ways. In August 2013, as a result of the monitoring of the work of JC, the Institute for Human Rights issued a publication “Analysis of the Independence of the Judiciary of Republic of Macedonia – Perceptions, Difficulties and Challenges”. The publication contains, among others, the findings of the Institute about the work of the JC. The institute monitored how the JC dealt with the huge number of complaints against judges and courts, and according to what criteria it recruited judges. The selection of the JC members falling under the criteria of “eminent lawyers” was also monitored and commented.

In addition, the Institute for Human Rights monitored the recruitment of judges in the Supreme Court, in the Constitutional Court and of the JC members seen from the media perspective. Furthermore, the work of the Constitutional Court regarding individual complaints about a breach of human rights was analysed.

There were complaints that in some courts the judges were not allowed to fill-in the questionnaires mailed to them within the framework of the project. In the Constitutional Court, only 2 out of 15 judges replied to the Institute’s questionnaire. In addition, the Institute regretted that no comments or feedback was ever received from the JC, or from any other judicial representative regarding the conclusions and recommendations in this regard.

Between November 2014 and April 2015, the Institute continued its monitoring of the JC work in cooperation with the Helsinki Committee and the Centre for Change Management. Within the framework of the EU funded Network 23, it implemented the project “Independent Judicial Council of the Republic of Macedonia – Goals and Challenges”. The analyses are based on the monitoring of the JCs sessions, the procedures for recruitment, dismissal and disciplining of judges, quantitative data, questionnaires submitted to the members of the JC, interviews with the judges, and a public survey about the perceptions of citizens on the independence of the JC. The Institute had a difficulty to obtain responses from the JC members for its research, and the Supreme Court denied access to some decisions. The findings about the JS’s work are included in 2015 “Analysis on the Independence of the Judicial Council of Republic of Macedonia-Goal and Challenges” which was promoted in July 2015. While an MJA representative attended the event, no member of the JC was present.

Between 2010 and 2011, Transparency International-Macedonia implemented a regional project – CINAP funded by the EU. The NGO measured corruption in the judiciary based on pre-determined indicators pertaining to institutional set-up and legal framework. The 2011 publication “EU Anti-Corruption Requirements: Measuring Progress in the Judiciary, Public Administration and Legislature in the Republic of Macedonia” is an output of that project.²⁷

²⁷ Available in English at http://www.transparency.mk/en/index.php?option=com_content&task=blogsection&id=6&Itemid=36 accessed 13 July 2015.

The FOSM monitors the work of the judiciary in the context of free access to information. It follows the work of the judicial bodies for its projects on access to public information and the law watch, i.e. the implementation of selected laws. For example, it noted that the administrative court did not receive any feedback regarding the enforcement of its decisions by the administrative bodies.

Furthermore, the FOSM examined the work of the Supreme Court regarding its reactions to the ECtHR judgments delivered against Macedonia. In general, FOSM considers that there are no problems to obtain judgments or other information from the courts. On a separate note, the courts' web pages with a database of judgments are not user friendly. The CPJD president participates in the ongoing process aiming to improve access to judgments and to make court web sites more user-friendly.

In 2014, the NGO Zenith published a comparative assessment of the administrative justice in Macedonia and Montenegro, which was conducted with use of the EU tool - the EU Justice Scoreboard. This publication entitled "Increasing the efficiency of Macedonia's and Montenegro's justice system - Introducing an innovative EU monitoring and evaluation mechanism in the sphere of administrative law" contains results of a comprehensive assessment of administrative justice in Macedonia, based on several indicators, such as quality, efficiency and independence.

Under Network 23, the NGO Novus-Strumica monitored the work of the Strumica Basic Court and released its analysis on the independence and objectivity of the judiciary in the municipality of Strumica in 2015. The analysis was conducted from the European integration perspective, in light of the requirements of the Chapter 23.

Between 2015 and 2017, the Centre for Legal Research and Analysis is implementing a project aimed at developing indicators for measuring performance of the judiciary based on the EU mechanisms. The project foresees a broad consultation process with the stakeholders and a web forum. In 2013 and 2014, the Centre for Legal Research and Analysis conducted user satisfaction survey in the territories within the jurisdiction of Skopje, Stip and Gostivar Appeals Courts. They measured satisfaction with and importance of the selected services of the citizens found in and around the courts, as well as of the practicing lawyers. EU funded the surveys and they should be made public, shortly.

NGOs' cooperation and communication with courts and judges varies from one court to another and from one NGO to another. Some court presidents and judges are more open to discussions with the NGOs about their findings and the problems that the judiciary faces at this moment. Others fall victims of self-censorship, meaning they avoid meeting the NGO representatives or discussing any issues or problems with them.

Reportedly, it is easier for NGOs to obtain information from the international community present in Macedonia, than from the judiciary itself. The same statement appears valid for the implementation of the projects, which are prevalently funded by the international community in the justice sector. Time and again, it has proven difficult to obtain feedback from the courts or other judicial institutions, or responses to a questionnaire from the judges.

Regardless of the level of cooperation, a comprehensive monitoring of the judiciary must be performed by NGOs, in view of the upcoming judicial reform. Unlike previous judicial reforms²⁸, when there were only a few NGOs with few capacities, the NGO sector now is much more developed. The Government should take advantage of the institutional memory and expert capacities of NGOs for achieving sustainable results in the judicial sector, as well as for preserving the EU integration perspective.

NGOs monitoring, advocating and engaging in the legislative process regarding judiciary

The Government strategy for cooperation with NGOs and its action plan (2012-2017)²⁹ promotes greater inclusion of NGOs in the law making, especially regarding approximation of laws with the EU.³⁰ Nevertheless, it identifies a lack of expertise and financial capacities in the NGO sector vis-a-vis law making.

In general, NGOs can submit their comments on laws or draft legislation through single national electronic registry of regulation (ENER).³¹ How and whether the Government considers them is unclear. NGOs can also lobby for legislative changes in line with the Law on Lobbying, but there are few accomplishments so far.

The Association Zenith focuses on inclusion of citizens in the policy making and developing, *inter alia*, legal and judicial frameworks compatible with the EU standards and best practices. Its '2014 Analytical Report on Independence, Impartiality, Professionalism and Efficiency of the Judicial System' represents an important contribution towards transposition of the EU acquis in Macedonia. The Report, *inter alia*, concludes that the laws were largely aligned with the respective EU acquis from the technical viewpoint. What was missing was a proper implementation of the legal framework applicable to judiciary.

Zenith is included in the working group of the MoJ focusing on the EU acquis. Moreover, it has developed the rules of procedure for the working group for the chapter judiciary and fundamental rights, regarding cooperation and information - sharing with institutions and other stakeholders.

The FOSM also follows the legislative process regarding the EU approximation legislative agenda. In addition, it funded and published analysis about the enforcement of the ECtHR judgments in Macedonia in 2013. The analysis "Judgments (should be) implemented" calls upon the Government and the Constitutional Court to embark on a comprehensive legal reform so that the ECtHR judgments can be implemented.

In relation to the EU acquis, EPI in cooperation with the Helsinki Committee and Centre for Change Management organized two workshops for the sub-grantees of Network 23. The workshops focused on monitoring and evaluation of public polices, and development, structure and content of Chapter 23 on judiciary and fundamental rights.

²⁸ Judicial System Reform Strategy for the period 2004–2007.

²⁹ http://www.nvosorobotka.gov.mk/index.php?option=com_docman&task=doc_view&gid=126&Itemid=37, accessed 11 July 2015, p. 25.

³⁰ The 2014 EC progress report deplors its inadequate implementation, p. 10.

³¹ <https://ener.gov.mk> accessed 11 July 2015.

The EPI's project entitled "Support to improving implementation of mediation in Macedonia" is a good example of an NGO participation in the law - making. It was implemented between December 2011 and July 2013. As a result, the mediation legal framework was enhanced, the cooperation and coordination between the main stakeholders was enhanced (the Judiciary, Ministry of Justice, Chamber of Mediators) and capacities of the court system for referral to mediation were strengthened. EPI worked on the popularization of the mediation among judges, as a means to cut costs and the court backlog. A training on mediation was provided to the judges through the Academy. The risk of lowering the number of court cases through mediation with a high number of judges may have contributed to the judges' lack of interest for mediation. On the positive side, the judges cooperated on the project activities to increase the popularity of mediation.

Furthermore, the Institute for Human Rights issued opinions on the Law on Civil Liability for Libel and Insult in 2012, and legislative assessments of the draft Constitutional Amendment³², of the 2015 JC-connected laws and of the anti-discrimination law with the initiative to amend it.

The NGO Polio Plus, submitted the first successful citizens' legislative initiative to the Parliament with the aim to improve the rights of persons with disabilities. Nowadays, it concentrates on the legislative changes with the goal to enhance labour rights of persons with a disability, to combat discrimination and enhance implementation of the rights of persons with a disability at local level.

As to the professional associations, the Association of the Court Administration is very active in protecting the interest and status of its members. It lobbies and submits legislative proposals regarding the Law on the Court Service. However, it managed to meet the Minister of Justice for the first time only in April 2015, despite its repeated requests. The Association has 1,200 members.

NGOs also participate in public debates on topical issues of importance for the judiciary, such as abortion, lustration etc. Six NGOs that provide free legal aid requested the Minister of Justice to take part in the preparation of the Judiciary Strengthening Strategy (2014-2017).

On the positive side, the inclusion of the civil sector in the upcoming work regarding judiciary and fundamental rights (chapter 23) by the Government gives a possibility to forge cooperation with the civil sector and use of its expertise. As a drawback, a fear was expressed that transparency and inclusiveness in the law - making may be abused by anti-government or pro-government NGOs. Thus, confidence must be built on all sides.

Problems in communication and obtaining information from certain institutions in their research relating to judiciary, e.g., the Ministry of Internal Affairs, were reported by NGOs. A lack of, or delayed follow-up to important projects causes a loss to already acquired benefits, resources and expertise. Whereas there are established ways on soliciting for NGOs' input to legislation, they are either supported by the international community or based on previous contacts. In addition, it is unclear to what extent NGOs' comments are taken into

³² See the CoE Venice Commission's opinion CDL-REF(2014)030 and CDL-REF(2014)026 and 030.

consideration, especially at a later stage of the legislative process. Even if their comments were accepted by the working groups established by the respective Ministry, they might be excluded at a later stage without any justification. Furthermore, citizens' initiative for adoption of legislation by the Parliament foresees a high ceiling (10,000 signatures) in order to be effective.³³ Reportedly, NGOs did not receive any feedback regarding their reports or analyses despite the huge amount of work invested in the projects. To sum up, it is difficult for NGOs to find their way through the legislative labyrinth for their inputs to be taken seriously and their work to be validated by the State bodies.

Trial monitoring, trial observation, court watch

The Coalition "All for Fair Trials" is well known for its comprehensive systematic and thematic trial monitoring, reports and recommendations addressed to the judiciary. To mention only a few of its trial monitoring achievements: a long-term programme on monitoring of court cases relating to corruption and other serious crimes; court cases against journalists accused of defamation and insult; and election-related cases. It has published over 29 trial observation reports, analyses and recommendations. In 2015, it published "Judicial effectiveness in the application of fair trial standards" and "Implementation of international fair trial standards". The Coalition enjoys a reasonably good cooperation with the courts, especially with the Basic Court Skopje 1, which is the first instance court for all serious crimes. The Coalition also started a court watch project, with lay - persons observing trials.

The NGO Choice – Strumica, is a member of the Coalition "All for fair trials". It monitors court proceedings when free legal aid is provided. The monitoring contributes towards proper implementation of the procedures and lawful actions of the courts.

The Helsinki Committee conducts trial monitoring of the cases alleging violation of some of fundamental rights, such as freedom of expression, freedom of association, religious belief, right to life, freedom from torture. In 2014, it published the report "Fundamental civil and political rights and liberties - Analysis of trials monitored for the period of 01.09.2013 through 30.06.2014". The report refers to the cases monitored in the following areas: prohibition of torture; non-discrimination; freedom of expression; and presumption of innocence. Another project "Monitoring the work of the Constitutional Court and assessing its capacity to review constitutional complaints" is being implemented between March 2015 and July 2016. The project activities, among other, encompass monitoring of and reporting about the sessions of the Constitutional Court, granting of free legal aid and enforcement of the Constitutional Court decisions. The Helsinki Committee monitors the sessions of the Constitutional Court also in order to assess its capacities in case the proposal to introduce a constitutional complaint goes through.

ESE cooperates with the courts in the past two years regarding the gender-based violence and protection from discrimination against women. In cooperation with two more NGOs, ESE monitors court cases and provides analysis of its findings. ESE builds bridges with the courts by disseminating and discussing their analyses with judges, and by constantly keeping the dialogue with the judiciary alive.

³³ Article 71 of the Constitution.

At the early beginnings of the trial monitoring, NGOs were sometimes required to ask for permission to monitor court proceedings, or to notify the court in advance of their presence. Nowadays, the monitors are admitted to the courts without any problems. The court always enters into minutes the presence of the monitors. The Helsinki Committee prefers to notify the courts of their presence at a trial, as a written note is included in the case-file, and thus helps their watchdog activities. In particular, the written note confirms that the trial was monitored, and the judges put more efforts into a trial, knowing that it is a subject of public reporting. NGOs need a special permission in order to monitor proceedings held *in camera*, e.g., court cases relating to minors, rape victims. As a rule, NGOs that monitor court proceedings review closed cases and get access to the case files, except during investigations.

NGOs struggle with lack of statistics regarding various cases, e.g., mediation, domestic violence, consumers' protection due to the weaknesses of the Automated Court Case Management Information System (ACCMIS). They also struggle trying to identify ways adequate channels to communicate with some judicial bodies and MJA.

Some judges welcome trial monitoring by NGOs, as it contributes to greater transparency of the judicial proceedings. Access to case files should be granted in balance with the requirement for data protection.

Judges and NGO representatives converge on the point that trial monitors must be highly professional, objective and knowledgeable. As a constraint, NGOs struggle with financial sustainability, which makes it difficult to find good trial monitors. NGOs also need continuous training on trial monitoring, on the EU standards for judiciary, on fund-raising and on legal research and analysis. Mixed trainings with judges and joint round table discussions will forge cooperation. Communication with public media needs also to be addressed by courts and NGOs.

NGOs and judges need a boost to improve their dialogue. Some consider that judges are not aware of the international commitments and of sensitive matters in gender-based violence cases. Others consider that judges did not have much time to engage with NGOs, as they were given high quotas for the cases, and their work was evaluated based on quantitative data. There are also opinions that current system of evaluation of judges in combination with the JS's power to hire, punish and fire reduced their independence. Any communication with the judiciary always goes through the president of the court, who decides who will take part in the project. There is no feedback from the judiciary, no coordinated actions or joint projects between NGOs and the judiciary. The NGO sector is still not perceived as a partner by the judiciary. As a bottom-line, the current judicial environment is not conducive to deepen the cooperation between the judiciary and NGOs.

On the positive side, general public has higher confidence in the judiciary when trials are monitored. Parties to proceedings request NGOs to monitor their cases. However, NGOs struggle trying to find continuous funding for their activities, which limits the number of cases that they can monitor.

Involvement of NGOs in court trials.

As mentioned above, a number of NGOs (MYLA, ESE, Helsinki Committee, etc.) provide free legal aid to different categories of citizens, e.g., victims of gender - based violence, Roma. Under the project “Legal Aid and Representation of persons of interest for UNHCR” MYLA provides free legal aid to asylum-seekers. The First Children's Embassy Megjashi, provides free legal aid to abused children, and services SOS telephone line free of charge. The NGO Choice – Strumica provides free legal aid to victims of police brutality. Healthy Options Project Skopje (HOPS) provides free legal counselling for sex workers regarding ill-treatment from individuals, issues with the police and lawsuits.

In addition to free legal aid, strategic litigation is conducted in discrimination cases based on sexual orientation by the Helsinki Committee's LGBT support centre. MYLA also engages in strategic litigation regarding discrimination cases within the framework of the project “Combating discrimination through strategic litigation – Strengthening the role of the CSOs”. Clients are represented before all domestic courts and before the ECtHR. For the first time one of the domestic courts found a discrimination on the basis of disability in 2015. In this case, MYLA provided free legal aid to the victim.

The Helsinki Committee will represent, for the first time, a minor who was ill-treated while in custody of the State, before the ECtHR. The issue is that the minor is an orphan under a guardianship of a state body, which contributed to his ill-treatment.

In 2013, the Network for Protection against Discrimination was allowed by the Basic Court - Gostivar to appear as an “intervener” in an anti-discrimination case, which was filed with the court.

Regarding *actio popularis*, NGOs submit requests for review of the constitutionality and legality of various acts. Furthermore, the Law on the Environment stipulates that environmental NGOs may start proceedings against decisions of the administrative bodies, which approve or reject certain project having an impact on the environment.³⁴ Environmental NGOs, like Arsenia, submit a number of complaints and requests to competent bodies about the presence of arsenide in the drinking water in Gevgelija and keep abreast of the respective court proceedings. The Front 21/42 provides legal counselling to NGOs and citizens on available legal remedies regarding the environmental problems.

Whereas class action can hypothetically be submitted in consumers' cases, the Organization for Protection of Consumers has never attempted to make any court action. It only provides pre-court free legal aid.

MYLA in view of its experience in strategic litigation participated in the preparation of several analyses and reports. In particular, it co-authored the analysis on the implementation of the Law on Criminal Procedure, a survey for the web and external resources for e-justice in the courts, and a report on the perceptions on the Law on Criminal Procedure. It also collaborated with the Centre for Legal Research and Analysis in the preparation of the

³⁴ Article 89(1) of the consolidated text of the Law.

Analysis of the Strategic Litigation in Court Proceedings in the area of discrimination, in 2014.³⁵

NGOs struggle with different problems. Some NGO lawyers complained that they were not provided with sufficient time to prepare for defence, and were not given access to case-files during the investigation, in order not to endanger its confidentiality. Other complain that judges are very conservative and lack sensitivity on issues such as discrimination. Most of the NGOs consider that judges are under political pressures to decide cases in favour of the state or in accordance with state policies.

In cases on consumer protection, court fees are excessive even for small claims. The head office of the NGO Arsena was stoned. Reportedly, there are pressures in order not to warn against environmental risks.

NGOs working in the field of access to information. Transparency.

The FOSM developed a comprehensive programme on access to data including access to judgments and general information of the courts and judiciary. It also funds law watch publications that focus on the implementation of laws. The 2013 law watch analysis entitled “Six Years Later: Is the Wall of Silence Cracking?” focuses on free access to public information and communication, among others, with the judiciary. The FOSM also funds a very useful web site, which provides guidance and information on how to get access to public information. It contains a detailed database about the requests for information submitted by this Foundation and replies received from the Supreme Court, administrative court, JC and the Constitutional Court.³⁶

The Youth Educational Forum (YEF) between 2010 and 2011 implemented a project at the Law Faculty-Skopje, which provided guidance and assistance to students about the Law on Access to Public Information.

The Helsinki Committee informed that they regularly submit requests for public information, and regularly receive replies without any problem.

The Institute for Human Rights pointed out that for their recent monitoring of the work of JC, they were denied access to certain decisions by the Supreme Court Panel dealing with judges’ dismissal appeals under the justification that they had contained classified information.

In 2006-2007, the CPJD piloted a project in the Kavadarci court by creating the court’s web site and by making the judgments available. Its president (a judge) is a member of the working group, which designs courts’ websites. Since the CPJD contributed a great deal to the court automation and in the court information management system (ACCMIS), its president retained a key role in functioning of the system.

As to detected weakness, the FOSM noted that no misdemeanour procedures were identified against the holders of information that ignored the ruling of the relevant Commission

³⁵ It is available in Macedonian at http://cpia.mk/web/wp-content/uploads/2014/08/lzveshtaj_diskriminacija_A5_2014-1.pdf

³⁶ <http://www.foi.org.mk/index.php?lang=en>

compelling them to provide access to public data. It also noted that judges were the most difficult group when asked to fill-in a questionnaire, which is consistent with the remarks of other NGOs. Hypothetical abuse of data was a justification provided in order to deny access to public data. All of the above indicates a lack of trust from the judiciary.

Furthermore, FOSM's research shows that financial information about the use of public money was the hardest to get. Requesting unreasonably high fees for a simple information like a number of the registered NGOs in Macedonia, operates as a barrier to public information.

It is a fact that the transparency of the judiciary has increased in the past few years, with the help of the NGO sector. However, the EC Progress reports 2012-2014 underscore the need for greater transparency within the judiciary, in line with the principle that the justice must not only be done, but to be seen to be done. Although access to judgments and court information is a step in the right direction, that is not sufficient. When the public is reassured that judges sitting on the bench are impartial and independent, only then the court transparency will lead to increased public confidence.

NGOs defending judiciary and judicial independence

The Rule of Law Council (the Council) is a network of professional legal associations and citizens' associations created by MYLA, ELSA, the Court Administration Association and the Coalition "All for Fair Trials". Its goals are to work towards judicial independence, accountability and effectiveness. The Council follows the efficiency of the judiciary, promotes life learning, builds capacities of other NGOs and liaises with similar associations from the EU. The highest body is the Secretariat with one representative per organization.

In 2014, the Institute for Human Rights, in cooperation with OSCE, prepared analysis on effectiveness of legal remedies in the procedures relating to recruitment, dismissal and disciplining of judges. It also regularly publishes "Legal Dialogue", which contains articles on the independence and effectiveness of the justice.

The Association Zenith in its analytical report on independence, impartiality, professionalism and efficiency of the judicial system (mentioned above) offers a set of valid recommendations on how to improve and safeguard judicial independence and its impartiality. Its other publications offer interesting analysis of the justice sector seen from the perspective of the EU integration. For example, the 2014 policy brief looks at the effects of the EU conditionality regarding judicial independence in Macedonia.

Through their monitoring work, NGOs have detected that funds allocated to the court budget "disappear" (basically are spent on other priorities). This corroborates the statements of the court presidents and judges about lack of human and other resources, with negative effects on the quality of the justice.

In October 2014, 14 misdemeanour judges and 11 members of the court registry were arrested for alleged abuse of position. The Helsinki Committee issued a public statement, considering the arrest, which was covered by the media, as pressure exercised on the judiciary by the executive power.

Trainings and workshops for judges organized by expert NGOs

In Macedonia, there is no expert NGO that would continuously deliver specialized trainings, or organize workshops for judges, although such a need is apparent in order to close gaps in the trainings offered by the Academy. It can also contribute towards more consistent court practice, and be more flexible regarding their training needs.

The Organization of the Consumers and EPI deliver lectures in the Academy on consumers' protection and mediation, respectively. The EPI's training on mediation became part of the regular curriculum in the Academy. The MYLA used to deliver trainings to the judges in cooperation with the Academy on combating discrimination, but this is no longer the case.

In 2010 and 2011, the Coalition "All for Fair Trials" organized two joint educational activities with the Academy. It helped to organize trainings delivered by experts from Italy and Croatia. An expert from the Helsinki Committee in cooperation with the OSCE delivered presentation on hate crimes in 2014. The ACLC and MLA, as associations of legal professionals, continue to deliver trainings and organize workshops for judges and other legal professionals.

In the past, the MJA conducted continuous education for judges until judicial education was taken over by the Academy. Now, the courses for the judges that count as part of their continuous education are delivered in the Academy.

It seems that the number of NGOs that collaborate with the Academy started to shrink. Reportedly, the Academy preferred to be heavily involved in the organizational aspects of the project, which have already been determined by the donor. In view of sporadic cooperation between NGOs and the Academy, which is mostly occurring with the support of the international community, it is advisable to increase the influence of NGOs on the Academy's curricula.

Some considered that the recruitment of trainers in the Academy was not transparent. Now and again, the same judges were recruited as trainers.

It seems that there is no space for an expert NGO that would provide continuous education to judges in the current institutional set-up. Even the MJA stopped providing trainings for judges. The compulsory courses are only registered when they are taken at the Academy. In addition, it would be difficult for an expert NGO to be financially sustainable, as donors would clearly prefer to allocate funds to the Academy. The only comparative advantage of such an NGO would be to offer classes, which are not foreseen by the Academy, but of interest to the judges, or to organize study visits and paid courses for the judges abroad. Distance learning might be another option.

NGOs as organizations educating citizens about the judiciary

There are several examples of civic education about the judiciary and legal procedures as follows:

- 1) YEF has been working on the street law programmes since 1998. It published a number of publications addressed to pupils and high-school students, e.g. “One Ordinary Democratic day of Curious Slobodan with Ms Justice” in 2012, “Anti-discrimination in high school”. In 2015, it organized mock trials with high school students in Skopje and Veles.
- 2) The EPI project devoted to mediation contained a number of awareness raising activities for citizens regarding the benefits of mediation vis-à-vis judicial proceedings throughout the country. The main aim was to increase the number of mediations by educating public about the procedure and its benefits.
- 3) The Judicial Strengthening Project supported the efforts of ELSA to enhance public information and education through the publication of two brochures. The first one devoted to the organization of the court system in Macedonia was designed as civic education for high school level students. Court visits were also organized. The high school students had an opportunity to participate in a mock labour trial and were introduced into the functioning of the electronic recording system. The second brochure entitled “Juvenile Justice System—Prevention Instead of Punishment” is an overview of the system for juvenile justice. A total of 1,500 copies were printed in Macedonian and Albanian languages, and were distributed to the courts, ELSA members, high school students and other interested institutions and associations.
- 4) FOSM (one of the YEF donors) within the framework of the clinical programme “We Study Law”, published a comprehensive guide for street law in 2006, and delivered trainings for young people throughout Macedonia. The aim was to strengthen legal culture. In 2010, FOSM funded the publication “Guide for Young; Basic Civil and Political Rights” to clarify these concepts and to encourage young people to seek respect for their human rights.
- 5) Within the project “Access to Justice in the Republic of Macedonia”³⁷ MYLA hosts access to justice portal together with six other NGOs in order to educate and inform citizens about free legal aid.
- 6) Last, but not least, the Rule of Law Council, educates citizens about legislative changes, i.e. the Law on Criminal Procedure. The awareness raising campaign about the law reaches citizens through public and social media.

³⁷ <http://pristapdopravda.mk>

Any other form of NGOs – courts interactions that do not fit into previous types

In 2014 within the project “The Courthouse for 21 Century”, the CPJD managed to equip the first mock trial courtroom at the Shtip Law Faculty with the assistance of foreign donors. The courtroom will be used for mock trials organized with participation of students, as well as for real court hearings of the Appeals Court, as it is equipped with modern court equipment.

Women’s rights’ NGOs like ESE or La Strada Open Gate are active in the protection of victims of domestic violence and of trafficking of human beings. ESE published a manual for judges on how to proceed with cases of domestic violence.

International cooperation

The EU delegation to Macedonia, the OSCE and the USAID-funded projects (e.g., Strengthening of the Judiciary) fund and support a number of NGOs to engage in judicial reform with the aim to strengthen judicial independence and build its capacities, to offer specialized trainings, to increase transparency and to support complex legal and judicial reforms.

Examples of international cooperation include:

- 1) A project implemented by the MYLA with the UNHCR aiming to provide asylum seekers, refugees and persons with subsidiary protection with free legal aid. The activities are focused on improving the quality of legal representations and on developing national asylum practices. This project, which started in 2010, is even more important nowadays in view of the current refugee influx to the Western Balkans.
- 2) Network 23 cooperates with NGOs from the Balkan region. Speakers from Bulgaria – the Foundation European Institute in Sofia, Croatia – Gong/Platform 112 - Zagreb, Montenegro – the Institute Alternativa in Podgorica and Serbia – Centre for European Policies in Belgrade shared their experience regarding Chapter 23. They presented the EU integration perspectives of their countries at the final conference of Network 23 that took place in July 2015.
- 3) EPI for the purposes of the “MATRA Project Support to improving implementation of mediation” cooperated with the Asser Institute – the Hague. A high standard of trainings for the judges was maintained due to contributions made by the Dutch trainers. Another objective was knowledge transfer from the Dutch cooperation partner. Asser Institute appointed an expert from the Dutch Centre for Conflict Management (CvC) who provided on-spot expertise and advice during the workshop on Mid-term plan for Promotion and Implementation of Mediation. The Dutch experts who contributed to the lively expert discussion attended the round table Quality Standards of Mediation in Macedonia.

- 4) Transparency International-Macedonia was included in a regional anti-corruption project Advocacy and Legal Advice Centres (ALACs) between 2011 and 2012 in South Eastern Europe, supported by the Transparency International. The project offers legal aid while collecting information, in order to identify the weaknesses in the system and lobby for successful prosecution of corruption. The ALACs are engaged in facilitating the corruption reporting, legal counselling, awareness raising and capacity building.
- 5) The Organization for Protection of Consumers is a member of the Consumers International since 1998. In 2009, they cooperated on a project that focused on boosting market competition and consumers' purchasing powers. The Organization is a member of network of the European Consumer Organization BEUC since 2000, and benefited from its trainings in 2008. It is also a member of the European Voice for Standardization – ANEC.
- 6) One of the judges (the CPJD president) is a member of the Central and Eastern European Judicial Exchange Network supported by the CEELI Institute Prague. He participates in the meetings and other events organized by the network in support of independence of the judiciary. The Macedonian representative is engaged with materializing the possibility for organizing a joint conference in Macedonia.
- 7) Macedonia is a member of the Regulatory Judicial Authorities of the Balkan Area, which seeks to establish a cooperation of the Balkan Judicial Authorities on selected topics. This Authority cooperates with the European Network of Councils for Judiciary, and it is used as a resource for NGOs. The Macedonian representatives attend its regular conferences.
- 8) In the past, the MJA used to collaborate with the European Judges' Association and took part in its conferences. The MJA publically supported the Resolution of the European Judges' Association dated 16 May 2015, which requires release of two Turkish judges who were detained under the allegations that they released a suspect.
- 9) Regarding students' and youth international cooperation, ELSA-Macedonia has an observer status of the European Law Students Association and participates in some of its activities. For example, the ELSA's Student Trainee Exchange Programme (STEP) also covers Macedonia. The Association of the European Students' Structures (AEGEE) is a full member of the AEGEE – Europe. Its aim is to help the inclusion of Macedonian students in educational programmes, e.g., through summer courses/universities. The YEF is a member of international and regional anticorruption networks and International Debate Education Network. It also implemented a project with CoE on freedom of expression.

PAPT 4

Country bibliography

- Bojadzievska, Bogdanovska, *Implementacija na megunarodnite standardi za fer i pravicno sudenje (Implementation of International Standards for Just and Fair Trials)*, Coalition All for Fair Trials, 2015
- Centre for Legal Research and Analysis, *Analiza za stratesko vodenje na predmeti vo sudska postapka od oblasta na diskriminacijata (Analysis of the Strategic Litigation in Court Procedure in the Area of Discrimination)*, MYLA, 2014
- Chalovska and others, *Pravosudstvoto i temelnite prava vo Republika Makedonija (The Judiciary and Fundamental Rights in the Republic of Macedonia)*, Helsinki Committee for Human Rights, 2015
- Coalition All for Fair Trials, *Covekovite prava vo policiska postapka (Human Rights in Police Procedure)*, Coalition All for Fair Trials, 2012
- EPI, “Chapter 23 The Judiciary and Fundamental Rights, Why are they the Key to the EU Accession?”
- Foundation Open Society - Macedonia, *Six Years Later: Is The Wall Of Silence Cracking*, Foundation Open Society - Macedonia, 2013
- Foundation Open Society – Macedonia, *Essential Formality: twenty second quarterly accession watch report*, Foundation Open Society – Macedonia, 2014
- Institute for Human Rights, *Analiza na nezavisnosta na sudski soveto na Republika Makedonija – stremez i predizvici- (Analysis of Independent Judicial Council of the Republic of Macedonia – Goal and Challenges)* published on the web, 2015
- Kalajdziev, *Efektivna odbrana vo krivicnata postapka vo Republika Makedonija (Effective defense in criminal procedures in the Republic of Macedonia)* Foundation Open Society, 2014
- Kocevski and others, *Izvestaj za primenata na zakonot za besplatna pravna pomos vo 2013 (Report on the Implementation of the Free Legal Aid Law in 2013)*, MYLA, 2014
- Korunovska and other, *Pravните potrebi u patom do pravdata vo Republika Makedonija (Legal Needs and Road to Justice in the Republic of Macedonia)* Foundation Open Society, 2013
- Kos and others, *Increasing The Efficiency Of Macedonia’s And Montenegro’s Justice System Introducing An Innovative EU Monitoring And Evaluation Mechanism In The Sphere Of Administrative Law*, Zenith, 2014
- Macedonian Women’s Rights Centre –Shelter Centre, *Monitoring of Court Proceedings*, Macedonian Women’s Rights Centre –Shelter Centre, 2010
- Najchevska and others, *Presudite (treba da) se implementiraat (Judgments (should be) implemented)*, Foundation Open Society - Macedonia, 2013

- Nanev and others, *Proceduri za postapuvanje so dete-zrtva (Procedures to Deal with Child-Victim) Council for Prevention of Juvenile Delinquency*, 2014
- Nechev, *Judicial Independence in Macedonia: How Effective is EU Rule of Law Conditionality in the Access Process*, Zenith Policy Brief, 2014
- Network for protection from discrimination, *Izvestaj na mrežata za zaštita od diskriminacija (Report of the Network for protection from Discrimination)*, Network for protection from discrimination, 2014
- Ogdenovska, *Report on Collaboration between Government and NGO June 2012 – December 2014*, Macedonian Centre for International Cooperation, 2015
- Sharkovski, *Vodic niz zakonot za združenija i fondacii (Guide to the Law on Associations and Foundations) Foundation for development of Local Community Stip (...)*
- Stojanovski and others, *Основните граѓански и политички права и слободу (Basic Civil and Political Rights and Freedoms) Helsinki Committee for Human Rights*, 2014
- Taseva and others, *EU Anti-Corruption Requirements: Measuring Progress in the Judiciary, Public Administration and Legislature in the Republic of Macedonia*, Academic print, 2011
- Tomishic - Stojkovska, *Sudskata efikasnost i ostvaruvanjeto na fer i pravicno sudenje (Judicial Efficiency and Fulfilment of Fair and Just Adjudication)*, Coalition All for Fair Trials, 2015
- Tsatsa – Nikolovska and others, *Analiza na nezavisnosta na sudstvoto vo Republika Makedonija – percepcii, poteshkotii i predizvici (Analysis of the Independence of the Judiciary in Macedonia – perceptions, difficulties and challenges)*, Institute for Human Rights, 2013
- Zenith and others, *Independence, Impartiality, Professionalism and Efficiency of the Judicial System*, Zenith, 2014
- Zenith, *Rules of Procedure of the Working Group 23 – Judiciary and Fundamental Rights*,
- Foundation Konrad Adenauer in Republic of Macedonia, 2013