



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



## RECOMMENDATIONS

## Project partners:

POLAND



ALBANIA



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CZECH REPUBLIC



## RECOMMENDATIONS

MACEDONIA



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

SERBIA



SLOVAKIA



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



**Ministry of Foreign Affairs  
Republic of Korea**



## Introduction

*Present recommendations are a result of the project ‘NGOs and the judiciary - watch dog activities, interactions, collaboration, communication’ conducted between January 2015 and March 2016 with support of funding from the International Visegrad Fund and the Ministry of Foreign Affairs of the Republic of Korea. The Project provided a platform for an exchange of experiences and best practices involving six organizations from six different countries: the Czech Republic (CEELI Institute), Slovakia (VIA IURIS), Poland (INPRIS), Albania (Albanian Helsinki Committee), Macedonia (Coalition of Civil Associations “All for fair trials”) and Serbia (Lawyers' Committee for Human Rights – YUCOM). The organizations involved in the research represented two regions- the Western Balkans and the Visegrad countries. During the drafting phase of the project proposal, we assumed that the V4 countries (all having EU membership status) have already developed well-functioning approaches regarding the monitoring of the judiciary by civil society from which the Balkan states could benefit. However, as work on the project progressed; we became more and more aware that all six countries face similar problems as far as NGO-judiciary cooperation is concerned. What is important is that some of the countries managed to develop “best practices” which could serve as a source of inspiration for the others. This allowed us to formulate a number of recommendations and support them with good practice examples from all the states involved in the research.*

*While some of the problems are similar, priorities are different. For the Balkan states, such as Albania, Macedonia and Serbia, the EU accession process is at the forefront and it constitutes one of the most important (and efficient) factors making authorities adopt positive legislative changes. This differs them significantly from the V4 countries that have already acquired EU membership over ten years ago- in 2004- and do not feel such strong external pressure to continuously improve their legislation.*

*For all the countries one of the main concerns remains the issue of building mutual trust between civil society and the judiciary. It is an important and difficult endeavor that requires hard work and time, as well as adequate resources. This publication strives to turn this challenging venture into a “Mission Possible”. It formulates a number of recommendations of a general (systemic) character, as well as specific ones addressed at the judiciary and at NGOs. Every recommendation is followed by a number of best practice examples that can be a source of inspiration for improving legal frameworks and building better relationships between NGOs and the judiciary.*

The Authors

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## Methodology

*The present publication is a result of over a year of work involving all partner organizations. It has been elaborated on the basis of the research conducted by partners in their home countries, as well as based on the outcomes of a meeting of all organizations.*

*Each partner organization drafted a country report which served as an important source of knowledge as far as best practice examples are concerned. This was supplemented by needs analysis visits conducted by INPRIS in the Balkan region, as well as by a study visit and a working session held in October 2015 in Warsaw, Poland. During the working session in Poland all the partners proposed recommendations that have been, subsequently, included in the present publication. Such methodology, involving both desk research, as well as on-site visits, provided a solid basis for elaboration of recommendations and collection of best practice examples.*

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# Main recommendations:

## Recommendations of a general (systemic) character:

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1. The judicial system shall be open to NGOs' action in public interest law cases (*amicus curiae*, *actio popularis* etc.). The responsible ministries (usually the Ministry of Justice) shall, in cooperation with the judiciary and NGOs, prepare proposals of legal acts removing legal barriers faced by the third sector organizations willing to participate in legal proceedings.
2. The quality of the judiciary shall be a matter of public concern. The judiciary should be adequately funded to be able to do high quality work without being subject to any indirect financial constraints, but it should be also accountable to the public with regards to how the funds are spent.
3. Courts shall have facilities allowing for trial monitoring and access for the public.
4. Experience and capacity of non-governmental organizations shall be used in training judges both in judicial schools and outside.
5. State institutions with access to data on the system of justice (statistical data, court data, selection procedures, reports and analyses) shall, on a regular basis, make this data public.
6. It is valuable to establish cooperation between the judiciary and NGOs allowing for exchange of experience and timely feedback. Such cooperation can be of particular importance in educational projects what could involve national schools of the judiciary and in court watch activities.
7. It is encouraged that NGOs are represented in the official judicial bodies or bodies relevant for the operation of the judiciary and selection of judges (judicial councils, consultative bodies, other). Such representation will ensure that diverse positions are taken into account and that bodies relevant for the judiciary constitute a forum open for participation of a wide range of actors.
8. It is important to open more state-administrated financing possibilities dedicated to the system of justice for which NGOs, willing to conduct research on different aspects of the judiciary, could apply through open and transparent contests.
9. NGOs shall be able to provide an opinion in the public debate on the operation of the judiciary. Such public debate shall be substantive, aimed at problem-solving and knowledge- building.

## **Recommendations addressed at NGOs:**

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1. Judges' associations are a natural ally for NGOs. Judges' associations and non-governmental organizations shall make every effort in order to build efficient channels of communication. This will enable judges to understand NGOs and NGOs to better understand standpoints and opinions of judges.
2. Third sector organizations shall build coalitions of NGOs specialized in the same area (for instance, working on the issues of independence of judiciary) in order to pursue a common goal.
3. It is important that NGOs' research on the judiciary responds to the actual problems and provides results that can be used in courts' daily work or in the reform of the justice system.
4. *'Nothing about us without us'* - NGOs shall invite judges and judges' associations to analyze and comment on the outcomes of their work. It is valuable to consult ideas, research and conclusions with the group that they concern.

## **Recommendations addressed at the judiciary:**

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1. The transparency of judicial proceedings and regular monitoring of judicial governance, constituting prerequisites for the effective system of justice, shall be improved.
2. It is important that courts not only render justice but also demonstrate that justice has been given to people. The judiciary shall communicate with the society using common communication policy through accessible channels. They shall be, therefore, open to cooperation with NGOs with whose assistance they can communicate with the society.
3. Judges shall act in accordance with their professional and moral duty to take stand in case of any injustice or irregularities within the judiciary.
4. Judges shall play a key role in defining and providing judicial independence. They shall be ready to act if the judicial independence becomes a target of attacks. The ally in this process should be found in NGOs.

## Recommendations including best practice examples:

### Recommendations of a general (systemic) character:

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- 1. The judicial system shall be open to NGOs' actions in public interest law cases (amicus curiae, actio popularis etc.). The responsible ministries (usually the Ministry of Justice) shall, in cooperation with the judiciary and NGOs, prepare proposals of legal acts removing legal barriers faced by the third sector organizations willing to participate in legal proceedings.**

NGO participation in judicial proceedings, even if it consists only of monitoring, indirectly conveys a message to the court that the case it works on is an important one. Activities such as *actio popularis* or strategic litigation may lead to a tangible change in the legal system. This is why it is important to introduce legal instruments that will not hinder NGO participation in public interest law cases. It is, nevertheless, necessary to remember that such types of activity require special competences and a well-trained staff from an NGO.

In Macedonia, NGOs are actively engaged in court proceedings. According to the Macedonian law, everyone can initiate a review of the constitutionality and legality of laws and secondary legislation by the Constitutional Court. NGOs have submitted a number of such initiatives. However, almost never such initiative that had been submitted by the NGOs had been accepted.

Also in Poland many organizations are involved in strategic litigation and make use of amicus curiae briefs or join court proceedings. One of the most developed programs, in this regard, is the "Strategic litigation program" launched in 2004 by the Helsinki Foundation for Human Rights. The Foundation joins or begins strategically important judicial and administrative proceedings. This way, it aims to achieve breakthrough changes in practice and legislation.

- 2. The quality of the judiciary shall be a matter of public concern. The judiciary should be adequately funded to be able to do high quality work without being subject to any indirect financial constraints, but it should be also accountable to the public in regards to how the funds are spent.**

It goes without saying that the remuneration of judges and magistrates must remain commensurate with their professional responsibility and level of qualification. To preserve judicial independence and impartiality, the amount of judges' remuneration shall be guaranteed by law. In order to guarantee judicial financial autonomy, discussion on any amendments in those regards shall involve the judiciary. The judiciary shall be financed in a way allowing for proper management of the courts' caseload. The best solution is to involve the judiciary at all stages of the budgetary process.



With regards to funding of the courts, as those are public funds that courts operate on, it is important that courts are accountable to the public, spending the money in a transparent, easy to monitor way. In those regards NGOs can play an important watchdog role.

The importance of adequate funding of the judiciary has been emphasized in a report produced by a Polish NGO - Institute for Public Affairs. In its publication entitled 'Sądownictwo' (Judiciary), the Institute noted that while the mechanisms currently in force, safeguard the system against corruption, the access to public information is often hindered.

Monitoring of activities of all public actors in Poland has been brought onto a higher level by the Citizens Network Watchdog Poland. The Network conducts monitoring of the judiciary which does not bear compromises. The organization refers, in its activities, to the need to protect the right to know which involves openness and monitoring of key actors. Dealing with monitoring of functioning of the judiciary is a new idea in many countries and therefore organizations have to try to establish good relationships with judges, sell their activity to the public as positively as possible and be open for dialogue.

### **3. Courts shall have facilities allowing for trial monitoring and access for the public.**

Adequate court facilities are an important factor as far as access for the public and trial monitoring are concerned. Excessively small court rooms can make it impossible for the public to attend hearings and, thereafter, to conduct trial monitoring activities. Factors such as size of the court room, facilities adjusted for access of the disabled or conditions of the toilets, taken together, constitute an element of a general 'experience' of the court by the public.

In this regard it seems useful to refer to a bad practice example from Albania which is of such magnitude that the authors consider it necessary to refer to. In Albania many courts do not have facilities allowing for access of the public. Many court hearings take place in judges' offices. This happens often in the courts of the first instance and prevents access of the public as judges' offices do not provide adequate space to accommodate the monitors. Excluding the public from participating in court proceedings for the reason of lack of space found basis in the Order of the Minister of Justice no. 6777/5 of 30 September 2010 on implementation of the Regulation on courts' relationship with the public. The Order allows for the exclusion of representatives of the public and of the media from the courtroom if the courtroom is not large enough to accommodate them in order to observe court proceedings. Undoubtedly, such a practice has a negative impact on third sector-judiciary relations as it not only impedes trial monitoring but also leads to a negative feedback on the part of the NGOs.

In Poland, the Court Watch Poland Foundation, as part of its court monitoring methodology, included an assessment of court infrastructure. The Foundation argues that factors such as

architecture and location of the courts are an important element of court alienation. The Foundation emphasizes in its reports that insufficient infrastructure can make a court hearing not only unpleasant for an observer, but also constitutes an obstacle in finding a room and attending a hearing. Similar monitoring was conducted in Slovakia by Society for Open Courts. It also emphasized that location and organization of the judicial buildings is an important element for access of public to the courts.

#### **4. Experience and capacity of non-governmental organizations shall be used in training judges both in judicial schools and outside.**

Specialized non-governmental organizations can be a serious partner for the judiciary serving as a source of knowledge by providing training to judges. NGOs are usually specialized in specific, narrow areas and have good understanding of current national and international developments, access to knowledge, materials and know-how that they can share with judges during trainings. The third sector organizations, often advocating for legislative changes and involved in the process of drafting new laws, can provide valuable training for judges once the newly adopted legislation comes into place. Importantly, not every NGO but only well-established organizations disposing a high level of professionalism have a chance of being invited to train judges. For NGOs it often takes years to gain esteem and the level of professionalism allowing them to be perceived as serious partners by the judiciary.

While in the majority of Visegrad and Western Balkan countries, those are Judicial Schools responsible for training judges, it may be possible for NGOs to introduce their training into the Schools' curricula. In Macedonia, the European Policy Institute's (EPI) training on mediation became part of the regular School's curriculum after the Institute delivered lectures to judges in the Academy in the framework of the project "*Support to improving implementation of mediation in Macedonia*". The project contributed to the improvement of legal framework in the area of mediation and coordination between the main stakeholders involved in alternative dispute resolution (such as the judiciary, Ministry of Justice or Chamber of Mediators), as well as increasing awareness of mediation as a means to cut costs and reduce court backlog. The judges were not only interested in incorporating the mediation training into the Judicial School curriculum, but also cooperated in other project activities aimed at increasing the awareness of mediation.

Also, in Poland, NGOs provide and facilitate trainings not covered by curriculum of the National School of Judges and Prosecutors. For example, the Polish Society of Anti-Discrimination Law (PSAL) established a cooperation with the School in the area of vocational training of judges and prosecutors. The Nobody's Children Foundation has introduced a training module for judges, prosecutors and psychological experts in the area of participation of minors in the court proceedings. Finally, the project "Efficient Court", implemented jointly by the Judges' Association Justicia and the Helsinki Foundation for Human Rights, served as an inspiration for an extensive

program of pilot courts, conducted in the framework of the National School of Judiciary and Public Prosecution.

On the international level, the Czech organization- Central and Eastern European Law Initiative Institute (CEELI) within the program 'The Central & Eastern European Judicial Exchange Network' brought together a number of young, reform-minded judges from 19 countries across the region (including Albania, Armenia, Bosnia & Herzegovina, Bulgaria, Croatia, the Czech Republic, Georgia, Hungary, Kosovo, Latvia, Lithuania, Macedonia, Moldova, Montenegro, Poland, Romania, Serbia, Slovakia and Ukraine) providing them with a platform for the exchange of good judicial practices on issues of judicial integrity and accountability and court efficiency.

**5. State institutions with access to data on the system of justice (statistical data, court data, selection procedures, reports and analyses) shall, on a regular basis, make this data public.**

The right to access data on the system of justice stems from the right to information which aims at making information available by providing equal access to it. The openness of public authorities to disclose information constitutes one of the prerequisites of a good state and helps to build mutual trust between the judiciary and citizens.

In Poland, Citizens Network Watchdog Poland is one of the main organizations advocating for a citizen's right to find out how government and state institutions work. Access to this information provides the opportunity to influence both decision-making and management of public assets. The Network deems it important to provide access to documents such as judgments and their justifications, contracts and information about additional incomes of judges, about the age and place of residence of judges as well as to any financial documents, including asset declarations, of judges. It effectively drew attention to the lack of user-friendly statistics on the justice system and continues advocating for the disclosure of judges' financial declarations. Especially the latter is a highly controversial issue because of its sensitive character as it interferes with the sphere of judges' private lives.

Another good practice example comes from Slovakia. Transparency International Slovakia opened a website 'otvorenesudy.sk' (open courts) which, by using publicly accessible data, provides information on the functioning of judiciary in the country. For example, using the list of judges names, it is possible to see what judgements particular judge issued. It is also possible to see type and number of cases judges deal with, as well as to get information about on-going selection/appointment procedures of judges with concrete names of candidates and positions they apply for.

In the Western Balkans, the Albanian Center for the Cases of Public Information (INFOÇIP) conducted a thematic evaluation on delays in court proceedings and in the delivery of judicial decisions. The research was conducted from 2014 – 2015 and envisaged the High Court, Appeal

Court of Tirana and First Instances Courts of Tirana and Durrës. Thanks to the access to data such as the dates of stand submission by the parties and the dates of court decisions communicated to the parties involved, the INFOÇIP processed the data in a way allowing for the identification of judges or judicial bodies that issued the decisions. As a result of the project, the Ministry of Justice carried out several inspections regarding judges for whom there were reported procedural irregularities, especially with regards to a delay on providing reasons in writing for judicial decisions.

**6. It is valuable to establish cooperation between the judiciary and NGOs allowing for exchange of experience and timely feedback. Such cooperation can be of particular importance in educational projects what could involve national schools of the judiciary and in court watch activities.**

In order to conduct activities in the area of the system of justice, it is indispensable to cooperate with persons who are part of the system of justice including judges, prosecutors, court and prosecutorial officials. Regular meetings, both on the part of civil society and the judiciary provides an opportunity for strengthening mutual trust and willingness to cooperate on both sides. Such meetings would be of particular importance if established on the level of national schools of judiciary – NGOs. It would ‘shorten the distance’ between both parties and positively influence the perception of transparency of their activities by confirming the willingness to conduct dialogue involving both parties.

In Serbia, YUCOM invited judges to take part in six panel discussions organized in Novi Pazar, Negotin, Valjevo, Niš, Novi Sad and Belgrade. During the interactive meetings the role of each of the three main actors of criminal proceedings – the judiciary, prosecution and the police in combating corruption were discussed. The participants talked about obstacles and prerequisites for more efficient criminal corruption proceedings as well as endeavored to establish a platform of communication and cooperation between the third sector and representatives of the system of justice. The meetings resulted in a common publication including observations and recommendations elaborated in the framework of the discussion.

In Poland, while there has not been developed a tradition of regular meetings, the Judicial School started organizing events for its students and inviting some NGOs (e.g. Court Watch Poland Foundation) to participate. It is advisable for this kind of approach to continue. Also, it is rather a norm nowadays that, when organizing events like conferences or seminars, the National Council of Judiciary (NCJ) invites representatives of chosen NGOs. NGOs participated, for instance, in a series of meetings devoted to the application of the ECHR judgments. So far, the NCJ organized three such meetings.

- 7. It is encouraged that NGOs are represented in the official judicial bodies or bodies relevant for the operation of the judiciary and selection of judges (judicial councils, consultative bodies, other). Such representation will ensure that diverse positions are taken into account and that bodies relevant for the judiciary constitute a forum open for participation of a wide range of actors.**

By looking at the country reports delivered by the project partners, it seems obvious that in none of the countries there exists a well-established practice of inviting NGO representatives to sit in official judicial bodies relevant for the judiciary. It is problematic as presence of NGOs in such bodies could provide a wider perspective which may lead to positive changes in the justice sector. While NGOs are represented occasionally in consultative bodies, there is no practice of ensuring their regular presence by, for example, nominating one representative of the third sector to each body with relevance for the judiciary. For example, Slovak law makes it possible for an NGO representative to sit in the official judicial bodies (such as the Judicial Council or disciplinary senates) but, so far, no one from the third sector has been offered such a position.

A good practice example comes from Albania where NGOs are, on a regular basis, represented in the State Commission on Legal Aid. The Commission is composed of five members out of which one represents the non-governmental sector. Such a composition allows NGO representatives to provide an opinion on issues falling within the scope of works of the Commission such as free legal aid allowing for a better access to courts.

- 8. It is important to open more state-administrated financing possibilities dedicated to the system of justice for which NGOs, willing to conduct research on different aspects of the judiciary, could apply through open and transparent contests.**

NGOs' activities related to the judiciary are usually of a limited character due to the lack of funding. It is, therefore, encouraged that state institutions that dispose such financial means, provide third sector organizations with adequate funding opportunities. The funding shall be distributed through open and transparent contests preceded by calls for proposals. It shall also be ensured that such funding does not go to the 'state NGOs' but is distributed on the basis of impartial criteria.

For Visegrad countries such as Poland, the Czech Republic and Slovakia, since their accession to the European Union, the NGO sector has been confronted with a considerable decrease in foreign financial funding. It is, therefore, important to provide other financing opportunities. Referring back to the Czech Republic- the judiciary is not included within the list of sixteen key areas in which the government offers funding for NGOs. The areas eligible for funding, such as human rights, equal opportunities, consumers' protection and discrimination, are indirectly connected to the judiciary so they could envisage judiciary-profiled projects which would have one of the eligible areas as their primary focus, but the main focus on the judiciary would be,

anyway, lacking. Similarly- Poland, the Czech Republic's neighbour country, does not offer financing opportunities for projects focused on the judiciary. In 2015 the Polish Ministry of Justice (MoJ) launched the special program of collaboration between the MoJ and NGOs providing a potential for funding in form of donations or co-funding. The program has been just launched and we shall wait with assessing it as a good or bad practice until it is fully implemented.

Financing problems persist not only in the Visegrad countries. In Albania there are not many domestic funding opportunities. State funding is provided through ministries and through the Agency for the Support of Civil Society, but there is lack of clear rules and transparent procedures as far as the distribution of grants is concerned. Moreover, financing distribution procedures are included in the internal regulations of the respective ministries what contributes to the whole process with even more vagueness.

**9. NGOs shall be able to provide an opinion in the public debate on operation of the judiciary. Such public debate shall be substantive, aimed at problem-solving and knowledge- building.**

Public debate is a very significant tool in any decision-making process. By allowing different actors to express their opinions on topics, such as the judiciary, we ensure that well-informed decisions are made. Also, authorities that are held accountable and are supervised through public debate are less prone to abuse their power. NGOs are an important actor participating in public debate and can lead to a positive change in the judiciary. For example, in Poland there is lack of reasonable public debate on the judiciary. The judiciary often becomes a victim of attacks and populist arguments. In Macedonia lack of public debate on issues of the judiciary remains one of the most important problems together with lack of cooperation or discussions on the state of the system of justice.

In the Czech Republic, Transparency International, conducted a project "Transparency and independent performance of judiciary", which aimed at facilitating public debate and an exchange of views between the judiciary and politicians. Transparency International proved that it could successfully play a role of facilitator or mediator between political representation and judiciary representatives as an organization respected by both groups and with high impact on public debate.

In Slovakia, a number of NGOs (including Alliance Fair Play, Transparency International Slovakia and Via Iuris) act as an independent voice in the public debate commenting on issues of the judiciary. Moreover, Via Iuris organizes annual expert conferences on access to justice that are widely attended by judges. Through those activities it was possible to successfully use this exchange of opinions as a tool allowing for raising public awareness on the system of justice.

## Recommendations addressed at NGOs:

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- 1. Judges' associations are a natural ally for NGOs. Judges' associations and non-governmental organizations shall make every effort in order to build efficient channels of communication. This will enable judges to understand NGOs and NGOs to better understand standpoints and opinions of judges.**

Judges' associations can play a role of a natural ally and intermediary between the judiciary and the third sector. Judges' associations, being quite open for contact, can be an important partner for NGOs. Usually well-established and renowned NGOs are in the best position to communicate their recommendations and ideas to the judges' associations. But such communication shall not overlook smaller organizations which often have interesting and useful ideas to share with them.

In Poland, organizations such as Institute for Law and Society (INPRIS) and the Helsinki Foundation for Human Rights (HFHR) collaborated on a number of project with judges' associations. Their cooperation envisaged common initiatives such as conferences (e.g. a conference organized jointly by INPRIS and Judges' Association THEMIS in the Supreme Court on reasoning in judicial decisions), workshops (e.g. Judges' Association THEMIS and INPRIS' series of seminars for judges and NGOs on antidiscrimination law) and research (e.g. the project 'Efficient Court. Collection of Best Practices' conducted jointly by the HFHR and Judges' Association IUSTITIA). Also, in Slovakia two organizations, that is Alliance Fair Play and Via Iuris, in cooperation with the Judges Association for Open Justice organized trainings on judicial ethics for judges. Such a mixed participation of different actors reinforces the overall influence of the training activities.

In the Western Balkans, the Macedonian Judges' Association (MJA) worked on a joint project with the Foundation Open Society-Macedonia (FOSM). The project was conducted from 2008-2010 and focused on analysis of detention decisions. The cooperation of the judges' association also involved judges' participation in events organized by NGOs and vice versa.

- 2. Third sector organizations shall build coalitions of NGOs specialized in the same area (for instance, working on the issues of independence of judiciary) in order to pursue a common goal.**

The participation of NGOs in multi-stakeholder groups allows them to have their voice better heard by decision-makers. From the perspective of governments, coalitions provide an opportunity to engage in a coordinated voice, rather than multiple NGOs presenting their opinions separately. Coalitions representing multiple NGOs, some of which are well-established and renowned, have a better chance to lead to a desired change than a single NGO acting on its own.

Creating a coalition in a pursuit of a common goal can be of a great significance for those NGOs dealing with the issues of the judiciary.

A good example of such 'federalization' of NGOs is the Macedonian Coalition "All for Fair Trials". The Coalition is composed of 19 NGOs that undertook to monitor court proceedings throughout the country in order to ensure the observance of the right to a fair trial, strengthen public confidence in the judiciary and initiate legal reforms. The Coalition established a forum allowing for an exchange of views between NGO representatives and judges. This platform of communication enabled NGOs to have their reports and recommendations discussed with representatives of the judiciary.

In Poland, INPRIS enters into coalitions with other NGOs such as the Helsinki Foundation for Human Rights and Polish section of the International Commission of Jurists in order to conduct monitoring of election and nomination of candidates for public positions in Poland. The monitoring envisages election of the Justices of the Constitutional Court, Prosecutor General, Ombudsman and the Chief Commissioner for Protection of Personal Data. The Coalition has issued a number of calls in relation to the recent election of judges to the Constitutional Court. The documents were widely discussed in the media, as well as cited in the Parliament what emphasizes the potential of such multi-stakeholder coalitions. Similarly, in Slovakia a coalition of NGOs monitored a procedure of selection of candidates for judges.

**3. It is important that NGOs' research on the judiciary responds to the actual problems and provides results that can be used in courts' daily work or in the reform of the justice system.**

Research conducted by non-governmental organizations may both catalyze and facilitate reform of the justice system. NGOs, by providing data and analyses addressing the actual problems faced by the judiciary, can contribute to the authorities' well-thought-out decisions as far as any systemic reforms are concerned. But also on the level of courts' daily work such research may prove to be valuable. An example of such empirical research comes from Poland where the Court Watch Poland Foundation launched a program of citizen monitoring of district courts in 2010. Since its inception there have been conducted 14,500 trial observations (2,500 in the first cycle, 5,000 in the second and 7,000 in the third cycle). The observations from the first and the second cycle led to a change which was noticeable in the third cycle of the research. For example, the Organization pointed out that, while in the second cycle only 46% of all court sessions started on time, in the third this number increased to 55%. Judges were also more willing to apologize for or to explain reasons for delays. It was also significantly less common for prosecutors to enter the courtroom and stay inside with the judge while other participants stayed outside. The Court Watch noted that the improvement was more evident in the courts that were monitored with greater intensity during the two first cycles.



In Slovakia, two NGOs- Alliance Fair Play and Via Iuris, conduct monitoring of the Judicial Council what allows them to observe any situations of malfunctioning within this body. These activities include also monitoring of disciplinary proceedings against judges what enabled those organizations to document instances of misuse of disciplinary proceedings.

A bit further south-east from Slovakia, in Macedonia, the Centre for Legal Research and Analysis is implementing a project aimed at developing indicators for measuring performance of the judiciary. The project analyses Macedonian courts' practices on the background of the principles of inclusiveness and transparency by taking into account judges' independence, professionalism and training and is inspired by the American Bar Association's Judicial Reform Index (JRI). It foresees a broad consultation process with the stakeholders and a web forum. As it is still underway, the assessment of its real implications will be conducted in the future, but the initiative itself seems plausible.

**4. 'Nothing about us without us' - NGOs shall invite judges and judges' associations to analyze and comment on the outcomes of their work. It is valuable to consult ideas, research and conclusions with the group that they concern.**

NGOs shall aim to establish a culture of cooperation between them and judiciary. They shall present conclusions of their research in form of discussion or working meeting, not as 'recommendations to be implemented'. The former would allow for mutual dialogue and for building understanding between the two groups. For example, there could be consultative meetings organized where judges of the specific court or division of the court that was monitored by an NGO could participate. Judges should not feel as if they are being scrutinized. Instead, they need to be part of the civil society initiative aimed at improving the system of justice.

A good practice example comes from Macedonia. The Coalition All for Free Trials invited judges to comment on the results of monitoring of crime and corruption cases. The report from the project was published, its results were presented to and discussed with judges and legal professionals in June 2015.

In Albania, the Analysis of Justice System in Albania drafted in the framework of the justice reform process by high level experts of the Ad Hoc Parliamentary Committee on Justice System Reform, benefited from contributions from all important stakeholders (including NGOs). The Analysis was drafted in a way allowing for an accurate screening of the statistics, publications and recommendations delivered by domestic actors, such as local NGOs active in the judicial field. The document, including such extensive and reliable data encompassing views of different actors in the field of the judiciary, provided basis for an oriented reform determined by the real needs and problems of the system, outside the short-term political agenda.

## Recommendations addressed at the judiciary:

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- 1. The transparency of judicial proceedings and regular monitoring of judicial governance, constituting prerequisites for the effective system of justice, shall be improved.**

Monitoring of judicial proceedings may increase public accountability of the judicial system. By being transparent and allowing presence of observers during proceedings, courts show the public how they perform their social functions. The presence of observers helps to eliminate bad practices and promotes good practice examples. It is, nevertheless, important to put a clear distinction between “court watch” and attempts to exercise supervision over judges. To reach those ends, it is important that NGOs remember about legal limitations on the transparency of court proceedings.

The usefulness of such monitoring was demonstrated in the project *“Monitoring of the Judicial Council of the Slovak Republic”* implemented by the Slovak organization- Alliancia Fair-play. Since 2011, Alliancia has been attending sessions of the Judicial Council of the Slovak Republic assessing its activities. The project was of a big importance as it was implemented in the period when the Slovak judiciary was in crisis because of the controversial policy of the Ministry of Justice. Alliancia Fair-play noted that the role of the Judicial Council degenerated as it became a tool for suppression of values such as independence and high professional standards within the judiciary. The Organization played an important watchdog role by providing information from the Council sessions to the public in forms of comments on social networks as well as on blogs.

In Serbia, YUCOM implemented a project *“Regional action against corruption: Support to the judiciary in fight against corruption in the Western Balkans”*. The project envisaged monitoring of criminal trials in three Western Balkan countries- Croatia, Bosnia and Herzegovina and Serbia. The Project proved that civil society can be a coercive factor and a partner to the judiciary and to other state mechanisms in the fight against corruption. It highlighted the importance of establishing a good level of communication and coordinated action between all actors involved in the fight against corruption, including state authorities, courts and non-governmental organizations.

“Court-watch” activities may lead to establishing cooperation between courts and NGOs what has been proved by the activities of the Polish Society of Anti-Discrimination Law (PSAL). PSAL built partnerships with courts in order to research court records and interview judges. One of the good practices applied in the course of the proceedings was to inform the presidents of courts of a project before undertaking any concrete project activities. This resulted in establishing effective cooperation between PSAL and courts allowing them to obtain research material.

- 2. It is important that courts not only render justice but also demonstrate that justice has been given to people. The judiciary shall communicate with society using common communication policy through accessible channels. They shall be, therefore, open to cooperation with NGOs with whose assistance they can communicate with the society.**

It is impossible to bring society and the judiciary closer without participation, consent and willingness of the latter. Such lack of communication is a reason for very low trust rates of citizens towards courts. Courts are often not willing to explain their work to the public what makes citizens feel that they are distant and unfriendly. This is where NGOs come into play. Third sector organizations may serve as an intermediary between the judiciary and society by organizing trainings, conferences and conducting street law projects.

In Poland, the Polish Association of Legal Education was involved in facilitating a street law project. The project involved young students of the law faculties who conducted training sessions about the work of the judiciary in Poland. Trainings were held in places such as schools, prisons or libraries. The specific character of the project made it possible for both trainers and participants to benefit by increasing their knowledge and awareness of the role and work of courts.

In another Visegrad country- Slovakia- the Human Rights League has considerable experience in educating citizens about the judiciary. For example, it conducts Asylum Law Clinic for students of the law faculty of Trnava University. The Clinic is an optional two-term course during which students can attend court hearings in cases related to asylum and foreigners. This allows students to gain insight into the work of the courts and application of law in practice. Another Slovak organization, Via Iuris organized human rights trainings for law students. The organization presented human rights issues with reference to case-law and provided students with an opportunity to participate in trial simulations. Those initiatives provided young people with a grasp of work of the judiciary.

- 3. Judges shall act in accordance with their professional and moral duty to take a stand in case of any injustice or irregularities within the judiciary.**

Judges should act in accordance with the codes of ethics as far as their own conduct is concerned. But they shall also be aware that they have a moral duty to react if any irregularities, for example corruption, appear within the judiciary. They shall take adequate steps if they become aware of any such situations. This is very important in order to maintain judicial independence, impartiality, and avoid impropriety. Moreover, as the judiciary is a group quite closed to anyone from the outside, it is important that judges react to certain situations. They are often better placed, in this regard, than NGOs who remain on the outside.

It is particularly relevant when judicial crises, such as the one in Macedonia, takes place. The Macedonian wiretapping scandal, which casted doubts as far as the independence of judiciary is concerned, involved mainly reactions from the side of NGOs. The third sector organizations participated in public debates in order to contribute to the delivery of balanced information. What was lacking was the coordinated reaction of the judiciary which would, in a firm way, relate to the misconduct of those who were wiretapped.

In Slovakia, in reaction to the passive role of the Slovak Association of Judges, an alternative Association of Judges 'For Open Justice' was founded. The newly created association is open to public debate and promotes discussion on judicial ethics. It has become known for being open to speak about problems within the judiciary what distinguished it from the Slovak Association of Judges which generally did not take any position with regard to the issues of misconduct. Not surprisingly, the association of Judges 'For Open Justice' rapidly gained public trust.

**4. Judges shall play a key role in defining and providing judicial independence. They shall be ready to act if the judicial independence becomes a target of attacks. The ally in this process should be found in NGOs.**

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The judiciary, exposed to any external pressure that can have a negative impact on its independence and impartiality, can find an ally in NGOs. NGOs' declarations and appeals targeting any such issues can attract a lot of attention and, thereafter, contribute toward a well-informed debate on the situation of judiciary in the country.

In Albania, where the associations of judges and prosecutors are active in protecting the interest of the judiciary, NGOs take a position only in cases that constitute grave violations or serious incidents involving the judiciary, such as impairment with impartiality or independence of judges.

In Poland, the Helsinki Foundation of Human Rights regularly issues opinions and statements in defense of judicial independence. For example, it conducts strategic litigation in case of assistant judges who received positive feedback from the National Council of the Judiciary for being appointed judges but whose appointment was refused by the president.