

# NATIONAL INTEGRITY SYSTEM ASSESSMENT MACEDONIA



Kingdom of the Netherlands

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# NATIONAL INTEGRITY SYSTEM ASSESSMENT MACEDONIA

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# TABLE OF CONTENTS

|  |            |
|--|------------|
| <b>I. ABOUT THE NATIONAL INTEGRITY SYSTEM ASSESSMENT .....</b> | <b>15</b>  |
| <b>II. EXECUTIVE SUMMARY .....</b>                             | <b>25</b>  |
| <b>III. COUNTRY PROFILE .....</b>                              | <b>33</b>  |
| <b>IV. CORRUPTION PROFILE.....</b>                             | <b>41</b>  |
| <b>V. ANTI-CORRUPTION ACTIVITIES.....</b>                      | <b>47</b>  |
| <b>VI. NATIONAL INTEGRITY SYSTEM.....</b>                      | <b>53</b>  |
| 1. LEGISLATURE.....  | 53         |
| 2. EXECUTIVE .....   | 67         |
| 3. JUDICIARY .....   | 81         |
| 4. PUBLIC SECTOR.....  | 97         |
| 5. PUBLIC PROSECUTOR .....                                     | 111        |
| 6. LAW ENFORCEMENT AGENCIES.....                               | 121        |
| 7. ELECTORAL MANAGEMENT BODY .....                             | 133        |
| 8. SUPREME AUDIT INSTITUTION.....                              | 145        |
| 9. OMBUDSMAN.....  | 159        |
| 10. ANTI-CORRUPTION AGENCIES .....                             | 171        |
| 11. POLITICAL PARTIES .....                                    | 185        |
| 12. MEDIA .....  | 201        |
| 13. CIVIL SOCIETY .....  | 217        |
| 14. BUSINESS .....   | 225        |
| 15. STATE-OWNED ENTERPRISES.....                               | 241        |
| <b>VII. RECOMMENDATIONS.....</b>                               | <b>253</b> |
| <b>VIII. BIBLIOGRAPHY .....</b>                                | <b>261</b> |

# LIST OF ABBREVIATIONS

- **(AA)**  
CIVIL SERVANTS AGENCY
- **(AAVMS)**  
AGENCY FOR AUDIO AND AUDIO-VISUAL MEDIA SERVICES
- **(AG - ADVISORY GROUP)**  
AJM - ASSOCIATION OF JOURNALISTS OF MACEDONIA
- **(ALAC)**  
ADVOCACY AND LEGAL ADVICE CENTER
- **(AMAN)**  
MOVEMENT AGAINST PRICE INCREASES IN ELECTRICITY PROVISION
- **(BC)**  
BUDGETARY COUNCIL
- **(BIRN)**  
BALKAN INVESTIGATIVE REPORTING NETWORK
- **(BPS)**  
BUREAU FOR PUBLIC SECURITY
- **(CPC)**  
CRIMINAL PROCEEDINGS CODE
- **(CPT)**  
COMMITTEE FOR THE PREVENTION OF TORTURE
- **(CSO)**  
CIVIL SOCIETY ORGANIZATIONS
- **(DPA)**  
DEMOCRATIC PARTY OF ALBANIANS
- **(DUI)**  
DEMOKRATSKA UNIJA ZA INTEGRACIJA
- **(EC)**  
EUROPEAN COMMISSION
- **(ECCS)**  
ELECTORAL COMMISSION OF THE CITY OF SKOPJE
- **(EIDHR)**  
EUROPEAN INSTRUMENT FOR DEMOCRACY AND HUMAN RIGHTS
- **(ENER)**  
NATIONAL ELECTRONIC REGULATIONS REGISTRY OF THE REPUBLIC OF MACEDONIA
- **(EU)**  
EUROPEAN UNION
- **(ESPP)**  
ELECTRONIC SYSTEM FOR PUBLIC PROCUREMENT
- **(EUROSAI)**  
EUROPEAN ORGANISATION OF SUPREME AUDIT INSTITUTIONS
- **(GRECO)**  
GROUP OF STATES AGAINST CORRUPTION
- **(GS)**  
GENERAL SECRETARIAT
- **(ICC)**  
INTERNATIONAL COORDINATION COMMITTEE ON NATIONAL INSTITUTIONS FOR THE PROMOTION AND PROTECTION OF HUMAN RIGHTS
- **(IDSCS)**  
INSTITUTE FOR DEMOCRACY "SOCIETAS CIVILIS" - SKOPJE
- **(IFAC)**  
INTERNATIONAL STANDARD FOR FINANCIAL INFORMATION
- **(INTOSAI)**  
INTERNATIONAL ORGANIZATION OF SUPREME AUDIT INSTITUTIONS
- **(IRI)**  
INTERNATIONAL REPUBLICAN INSTITUTE
- **(ISSAI)**  
INTERNATIONAL STANDARDS OF SUPREME AUDIT INSTITUTIONS
- **(JBC)**  
JUDICIAL BUDGETARY COUNCIL
- **(JC)**  
JUDICIAL COUNCIL
- **(LAS)**  
LAW ON ADMINISTRATIVE SERVANTS
- **(LCS)**  
LAW ON CIVIL SERVANTS
- **(LFAPI)**  
LAW ON FREE ACCESS TO PUBLIC INFORMATION LP - LAW ON POLICE
- **(LLC)**  
LIMITED LIABILITY COMPANIES
- **(LPC)**  
LAW ON THE PREVENTION OF CORRUPTION
- **(LPCI)**  
LAW ON PREVENTION OF CONFLICTS OF INTEREST
- **(LPSE)**  
LAW ON PUBLIC SECTOR EMPLOYEES

- **(MAJ)**  
MACEDONIAN ASSOCIATION OF JOURNALISTS
- **(MAN)**  
MACEDONIAN JOURNALISTS ASSOCIATION
- **(MCIC)**  
MACEDONIAN CENTER FOR INTERNATIONAL COOPERATION
- **(MECS)**  
MUNICIPAL ELECTORAL COMMISSIONS
- **(MF)**  
MINISTRY OF FINANCE
- **(MISA)**  
MINISTRY OF INFORMATION SOCIETY AND ADMINISTRATION
- **(MOI)**  
MINISTRY OF INTERIOR
- **(MP)**  
MEMBER OF PARLIAMENT
- **(MRT)**  
MACEDONIAN RADIO TELEVISION
- **(MTV)**  
MACEDONIAN NATIONAL TV
- **(NBRM)**  
NATIONAL BANK OF THE REPUBLIC OF MACEDONIA
- **(NDI)**  
NATIONAL DEMOCRATIC INSTITUTE FOR INTERNATIONAL AFFAIRS
- **(NGO)**  
NONGOVERNMENTAL ORGANIZATION
- **(NHRI)**  
NATIONAL HUMAN RIGHTS INSTITUTIONS
- **(NIS)**  
NATIONAL INTEGRITY SYSTEM
- **(NPM)**  
NATIONAL PREVENTIVE MECHANISM
- **(OBS)**  
OPEN BUDGET SURVEY
- **(ODIHR)**  
OFFICE FOR DEMOCRATIC INSTITUTIONS AND HUMAN RIGHTS
- **(OECD)**  
ORGANISATION FOR ECONOMIC COOPERATION AND AND DEVELOPMENT
- **(PIFC)**  
PUBLIC INTERNAL FINANCIAL CONTROL
- **(POE)**  
PUBLICLY-OWNED ENTERPRISE
- **(PP)**  
PUBLIC PROSECUTOR
- **(PPO)**  
PUBLIC PROSECUTION OFFICE
- **(PRO)**  
PUBLIC REVENUE OFFICE
- **(RIA)**  
REGULATORY IMPACT ASSESSMENTS
- **(SAO)**  
STATE AUDIT OFFICE
- **(SCPC)**  
STATE COMMISSION FOR THE PREVENTION OF CORRUPTION
- **(SCFAPI)**  
COMMISSION FOR FREE ACCESS TO PUBLIC INFORMATION
- **(SCOOP)**  
SUPPORTING INVESTIGATIVE JOURNALISM
- **(SDSM)**  
SOCIJALDEMOKRATSKA PARTIJA NA MAKEDONIJA
- **(SEC)**  
STATE ELECTORAL COMMISSION
- **(SICPS)**  
SECTOR FOR INTERNAL CONTROL AND PROFESSIONAL STANDARDS
- **(SIOFA)**  
SECRETARIAT FOR THE IMPLEMENTATION OF THE OHRID FRAMEWORK AGREEMENT
- **(SIMS)**  
SPECIAL INVESTIGATIVE MEASURES
- **(SOE)**  
STATE-OWNED ENTERPRISES
- **(TAIEX)**  
TECHNICAL ASSISTANCE AND INFORMATION EXCHANGE' INSTRUMENT OF THE EUROPEAN COMMISSION
- **(UBK)**  
COUNTER-INTELLIGENCE DEPARTMENT
- **(UNCAC)**  
UNITED NATIONS CONVENTION ON ANTI-CORRUPTION
- **(UNDP)**  
UNITED NATIONS DEVELOPMENT PROGRAMME
- **(USAID)**  
UNITED STATES AGENCY FOR INTERNATIONAL DEVELOPMENT
- **(VMRO-DPMNE)**  
VNATRESNA MAKEDONSKA REVOLUCIONERNA ORGANIZACIJA – DEMOKRATSKA PARTIJA ZA MAKEDONSKOTO NACIONALNO EDINSTVO

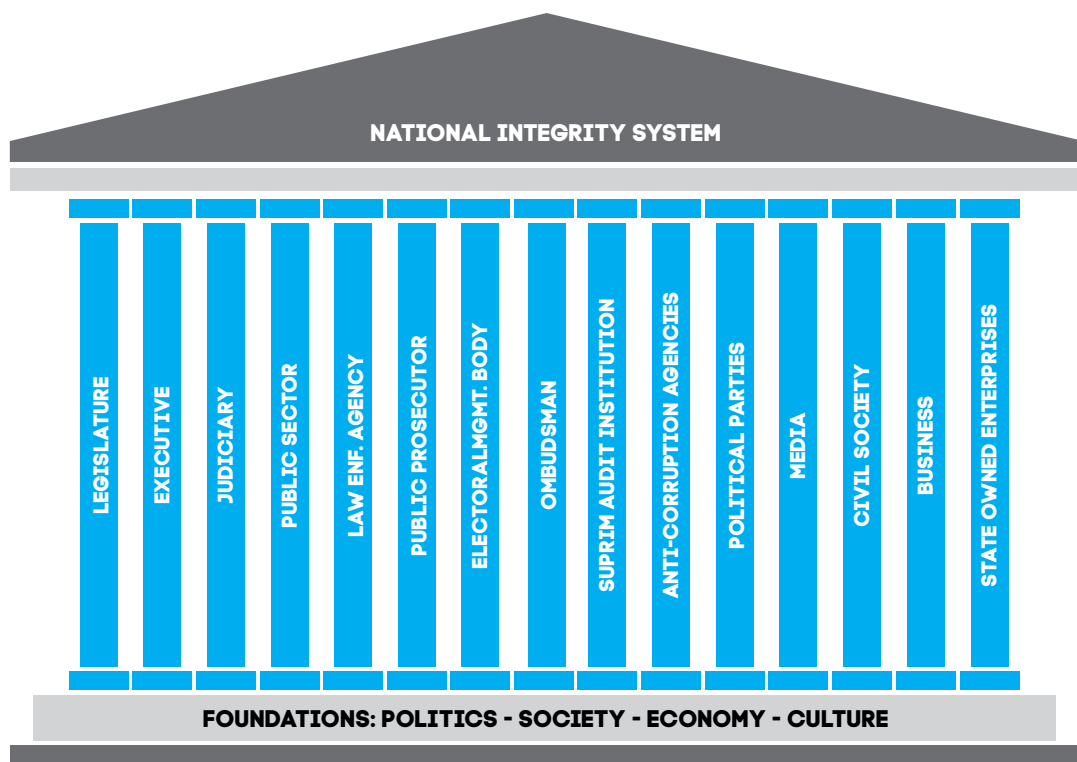






# I. ABOUT THE NATIONAL INTEGRITY SYSTEM ASSESSMENT

The National Integrity System assessment approach used in this report provides a framework to analyse both the vulnerabilities of a given country to corruption as well as the effectiveness of national anti-corruption efforts. The framework includes all principal institutions and actors that form a state. These include all branches of government, the public and private sectors, the media, and civil society (the ‘pillars’ as represented in the diagram below). The concept of the National Integrity System has been developed and promoted by Transparency International as part of its holistic approach to fighting corruption. While there is no blueprint for an effective system to prevent corruption, there is a growing international consensus as to the salient institutional features that work best to prevent corruption and promote integrity.



A National Integrity System assessment is a powerful advocacy tool that delivers a holistic picture of a country’s institutional landscape with regard to integrity, accountability and transparency. A strong and functioning National Integrity System serves as a bulwark against corruption and as a guarantor of accountability, while a weak system typically harbours systemic corruption and produces a myriad of governance failures. The resulting assessment yields not only a comprehensive outline of reform needs but also enables a deep understanding of their political feasibility. Strengthening the National Integrity System promotes better governance across all aspects of society and ultimately contributes to a more just society.

## DEFINITIONS

The definition of 'corruption' used by Transparency International is as follows:

**'The abuse of entrusted power for private gain. Corruption can be classified as grand, petty and political, depending on the amounts of money lost and the sector where it occurs.'**<sup>1</sup>

'Grand corruption' is defined as 'Acts committed at a high level of government that distort policies or the functioning of the state, enabling leaders to benefit at the expense of the public good.'<sup>2</sup> 'Petty corruption' is defined as 'Everyday abuse of entrusted power by low- and mid-level public officials in their interactions with ordinary citizens, who often are trying to access basic goods or services in places like hospitals, schools, police departments and other agencies.'<sup>3</sup> 'Political corruption' is defined as 'Manipulation of policies, institutions and rules of procedure in the allocation of resources and financing by political decision makers, who abuse their position to sustain their power, status and wealth.'<sup>4</sup>

## OBJECTIVES

The key objectives of the National Integrity System assessment are to generate:

- an improved understanding of the strengths and weaknesses of the Republic of Macedonia's National Integrity System within the anti-corruption community and beyond;
- momentum among key anti-corruption stakeholders in the Republic of Macedonia for addressing priority areas in the National Integrity System.

The primary aim of the assessment is therefore to evaluate the effectiveness of Macedonian institutions in preventing and fighting corruption and in fostering transparency and integrity. In addition, it seeks to promote the assessment process as a springboard for action among the government and anti-corruption community in terms of policy reform, evidence-based advocacy, or further in-depth evaluations of specific governance issues. This assessment should serve as a basis for key stakeholders in Macedonia to advocate for sustainable and effective reform.

## METHODOLOGY

In Transparency International's methodology, the National Integrity System is formed of 13 pillars. Two further pillars pertinent to Macedonia's integrity system have been added: state-owned enterprises and the Public Prosecutor's Office.

<sup>1</sup> Transparency International, *The Anti-Corruption Plain Language Guide*, (Berlin: Transparency International, 2009), p.14. [http://www.transparency.org/whatwedo/pub/the\\_anti\\_corruption\\_plain\\_language\\_guide](http://www.transparency.org/whatwedo/pub/the_anti_corruption_plain_language_guide) [accessed 21 December 2012].

<sup>2</sup> Ibid, p.23.

<sup>3</sup> Ibid, p.33.

<sup>4</sup> Ibid. p.35.



| CORE GOVERNANCE INSTITUTIONS | PUBLIC SECTOR AGENCIES                            | NON-GOVERNMENTAL ACTORS |
|------------------------------|---|-------------------------|
| Legislature                  | Public sector                                     | Political parties       |
| Executive                    | Law enforcement agencies                          | Media                   |
| Judiciary                    | Electoral management body                         | Civil society           |
| Public Prosecutor            | Ombudsman   | Business                |
|                              | Supreme audit institution                         | State-Owned Enterprises |
|                              | State Commission for the Prevention of Corruption |                         |

Each of the 15 pillars is assessed along three dimensions that are essential to its ability to prevent corruption:

- its overall capacity, in terms of resources and independence
- its internal governance regulations and practices, focusing on whether the institutions in the pillar are transparent, accountable and act with integrity
- its role in the overall integrity system, focusing on the extent to which the institutions in the pillar fulfil their assigned roles with regard to preventing and fighting corruption

Each dimension is measured by a common set of indicators. For every dimension the assessment examines both the legal framework of each pillar as well as the actual institutional practice, thereby highlighting any discrepancies between the formal provisions and reality in practice.

| DIMENSION                     | INDICATORS (LAW AND PRACTICE)               |
|-------------------------------|---|
| Capacity                      | Resources<br>Independence                   |
| Governance                    | Transparency<br>Accountability<br>Integrity |
| Role within governance system | Pillar-specific indicators                  |

The assessment does not seek to offer an in-depth evaluation of each pillar. Rather it seeks breadth, covering all relevant pillars across a wide number of indicators in order to gain a view of the overall system. The assessment also looks at the interactions between pillars, since any weaknesses in a single institution could lead to serious flaws in the entire system. Understanding the interactions between pillars helps to prioritise areas for reform.

In order to take account of important contextual factors, the evaluation is embedded in a concise analysis of the overall political, social, economic and cultural conditions – the ‘foundations’ – in which the 15 pillars operate.

|                 |                |                |                |
|-----------------|----------------|----------------|----------------|
| <b>POLITICS</b> | <b>SOCIETY</b> | <b>ECONOMY</b> | <b>CULTURE</b> |
|-----------------|----------------|----------------|----------------|

The National Integrity System assessment is a qualitative research tool. It is guided by a set of 'indicator score sheets' developed by Transparency International. These consist of a 'scoring question' for each indicator, supported by further guiding questions and scoring guidelines. The following scoring and guiding questions, used in assessing the resources available in practice to the judiciary, serve as but one example of the process:

|                            |   |
|----------------------------|---|
| <b>PILLAR</b>              | Judiciary   |
| <b>INDICATOR NUMBER</b>    | 3.1.2   |
| <b>INDICATOR NAME</b>      | Resources (practice)  |
| <b>SCORING QUESTION</b>    | To what extent does the judiciary have adequate levels of financial resources, staffing and infrastructure to operate effectively in practice?  |
| <b>GUIDING QUESTIONS</b>   | Is the budget of the judiciary sufficient for it to perform its duties? How is the judiciary's budget apportioned? Who apportions it? In practice, how are salaries determined (by superior judges, the constitution, law)? Are salary levels for judges and prosecutors adequate, or are they so low that there are strong economic reasons for resorting to corruption? Are salaries for judges roughly commensurate with salaries for practising lawyers? Is there generally an adequate number of clerks, library resources and modern computer equipment for judges? Is there stability of human resources? Do staff members have training opportunities? Is there sufficient training to enhance a judge's knowledge of the law, judicial skills including court and case management, judgment writing and conflicts of interest? |
| <b>MINIMUM SCORE (1)</b>   | The existing financial, human and infrastructural resources of the judiciary are minimal and entirely insufficient to carry out its duties effectively.   |
| <b>MID-POINT SCORE (3)</b> | The judiciary has some resources. However, significant resource gaps lead to a certain degree of ineffectiveness in carrying out its duties.  |
| <b>MAXIMUM SCORE (5)</b>   | The judiciary has an adequate resource base to effectively carry out its duties.  |

The guiding questions, used by Transparency International worldwide, were developed for each indicator by examining international best practices, as well as by using our own experience of existing assessment tools for each of the respective pillars, and by seeking input from (international) experts on the respective institutions. These indicator score sheets have provided guidance for the Macedonia assessment, but where appropriate the lead researcher has either added questions or left some questions unanswered, since not all aspects are relevant to the national context. The full toolkit with information on the methodology and score sheets is available on the Transparency International website.<sup>5</sup>

<sup>5</sup> [www.transparency.org/policy\\_research/nis/methodology](http://www.transparency.org/policy_research/nis/methodology). [accessed August 7, 2015].

To answer the guiding questions, the research team relied on four main sources of information: national legislation; secondary reports and research; interviews with key experts; and written questionnaires. Secondary sources included reliable reporting by national civil society organisations, international organisations, governmental bodies, think tanks and academia.

To gain an in-depth view of the current situation, a minimum of two key informants were interviewed for each pillar – at least one representing the pillar under assessment, and one who is an expert on the subject matter but external to it. In addition, more key informants, i.e. people ‘in the field’, were interviewed. Professionals with expertise in more than one pillar were also interviewed in order to gain a cross-pillar view.

## THE SCORING SYSTEM

While this is a qualitative assessment, numerical scores are assigned in order to summarise the information and to help highlight the key weaknesses and strengths of the integrity system. Scores are assigned on a 100-point scale in 25-point increments, including five possible values: 0, 25, 50, 75 and 100. The scores are intended to prevent the reader from becoming lost in details and to promote reflection on the system as a whole rather than focusing only on its individual parts. Indicator scores are averaged at the dimension level and the three dimensions scores are averaged to arrive at the overall score for each pillar, thus providing a general description of the system’s overall robustness.

|                    |        |
|--------------------|--------|
| <b>VERY STRONG</b> | 81–100 |
| <b>STRONG</b>      | 61–80  |
| <b>MODERATE</b>    | 41–60  |
| <b>WEAK</b>        | 21–40  |
| <b>VERY WEAK</b>   | 0–20   |

The scores are not suitable for cross-country rankings or other quantitative comparisons, due to differences in data sources across countries applying the assessment methodology and the absence of an international review board tasked to ensure comparability of scores.

## CONSULTATIVE APPROACH AND VALIDATION OF FINDINGS

The process of assessment in Macedonia included a strong consultative component, seeking to involve the key anti-corruption actors in government, civil society and other relevant sectors. The approach had two aims: to generate evidence and to engage a wide range of stakeholders with a view to building momentum, political will and civic demand for reform initiatives.

An Advisory Group was created to consult and advise on the NIS study and its implementation. The Advisory Group was composed of 13 individuals from civil society, government, the private sector, academia and the donor community. The group contained a broad cross-section of members in terms of political affiliation. The advisory group members attended the kick-off meeting for the presentation of the project, two advisory group meetings, and the National Integrity Workshop, which took place on 7 April 2016.

List of the Advisory Group (AG) members:

| <b>NIS ADVISORY GROUP</b>        |   |
|----------------------------------|---|
| <b>NAME</b>                      | <b>AFFILIATION</b>  |
| <b>Dr. Gordan Kalajdziev</b>     | President of the Helsinki Committee in the Republic of Macedonia; Professor, Saints Cyril and Methodius University of Skopje, Iustinianus Primus Faculty of Law |
| <b>Aleksandar Jovanovski, MA</b> | Institute for European Policy   |
| <b>Ljubica Nuri</b>              | MATTO Economic Chambers of Macedonia – Turkey   |
| <b>Olivera Cvetanovska</b>       | Former Counsellor at the Ministry of Economics (retired)  |
| <b>Teofil Blazevski</b>          | Journalist  |
| <b>Dr. Frosina Remenski</b>      | Professor at the Faculty of Security  |
| <b>Mane Kolev</b>                | Former member of the SCPC   |
| <b>Emina Nuredinovska</b>        | Macedonian Center for International Cooperation   |
| <b>Dr. Milka Ristova</b>         | Former Judge of the Supreme Court   |
| <b>Suzana Saliu, MA</b>          | Legislation/Ombudsman   |
| <b>Dr. Ivana Sumanovska</b>      | Associate Professor , Saints Cyril and Methodius University of Skopje, Iustinianus Primus Faculty of Law  |
| <b>Dr. Manfredas Limantas</b>    | EU Delegation in Skopje   |
| <b>Arlinda Idrizi</b>            | Embassy of the Kingdom of the Netherlands in the Republic of Macedonia  |

The Advisory Group (AG) met twice: on 19 October 2014 and 7 October 2015. At the first AG meeting, members reviewed the sources available for each of the separate pillars, including surveys, institutions' registries and reports from academia, civil society and other research institutions.

The issue of the lack of accurate statistical data in Macedonia was raised and AG members offered their support in obtaining statistical data. Those who work in academia offered to share survey data they had already collated. The AG members discussed the nature of State-Owned Enterprises (SOEs) that are neither entirely state-owned nor privately-held entities. The rights in SOEs are vested in the public, the government and also in the workers. 51% of the stock of some SOEs are held by companies that are ranked on the stock exchange, which creates different governance and compliance obligations.

On 29 October 2014, Transparency International Macedonia, together with the Head of the EUD in Macedonia, Ambassador Aivo Orav, held the kick-off meeting for the presentation of the project, including the methodology as well as the expected outcome.<sup>6</sup>

<sup>6</sup> [http://www.transparency.mk/index.php?option=com\\_content&task=view&id=1011&Itemid=57](http://www.transparency.mk/index.php?option=com_content&task=view&id=1011&Itemid=57) [accessed August 4, 2015].

The most challenging aspect of the project's implementation was the lack of cooperation from Macedonian institutions. The following institutions did not cooperate with the research team: the Parliament Secretariat (Legislature), the State Commission for the Prevention of Corruption (SCPC)<sup>7</sup> ; the Ministry of Interior (Law Enforcement); the Agency for Audio and Audio-Visual Services (Media). The EUD in Macedonia pointed out the requirement for the heads of these institutions to cooperate with EU-funded projects, but without any effect.

The scoring validation meeting was held on October 7, 2015. At the meeting there was unanimous agreement that the current methodology of weighting "Law" and "Practice" equally should be re-considered, because serious deficiencies in practice have a comparatively more harmful effect on a given area/institution than what the law in that area prescribes. It was proposed to add additional weighting for the aspect of "Practice" in order to better reflect the reality.<sup>8</sup>

Only the scores related to CSOs, the media, and the executive were amended after the discussion. Following a recommendation from the AG, the TI Macedonia research team provided a separate presentation of the "Law" and "Practice" scores.

The full report was reviewed and endorsed by the TI Secretariat, and an external academic reviewer provided extensive comments and feedback.

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<sup>7</sup> Representatives of SCPC only participated at the Workshop for the validation of the NIS assessment. They have offered to submit all necessary information until 11.04.2016 and unfortunately it was not realized during that period.

<sup>8</sup> Minutes from the AG meeting held on 07th October 2015.





2





## II. EXECUTIVE SUMMARY

Macedonia is at a critical juncture. A series of scandals concerning alleged illegal wiretapping by the Executive of thousands of political and state actors across Macedonia has, according to EU Commissioner Johannes Hahn, revealed “serious concerns about political interference and high level corruption”, and tipped the country into a crisis in 2015. Since February 2015, opposition leader Zoran Zaev has released a series of audio excerpts—what he calls “bombs”—from what the opposition claims are 670,000 secretly recorded conversations from more than 20,000 Macedonian telephone numbers. In the released recordings, top government officials are heard plotting how to rig votes, buy off judges and punish political opponents. Mr. Zaev said the recordings were made by the government and leaked to the opposition.<sup>9</sup> In May 2015, three top government officials resigned in accordance with the Przino Agreement. This EU-brokered agreement between the Prime Minister’s party and the opposition includes commitments for legal and institutional reform to ensure free elections and free media, as well as the creation of a Special Public Prosecution Office for investigating the illegalities and corruption indicated in the wiretapped conversations. General Elections were scheduled for April 24 2016 and the EU will evaluate the country after the elections on the basis of whether all reform priorities contained in the agreement were met and whether the polls were free and fair.<sup>10</sup>

The US Department of State’s Human Rights Report for Macedonia (2014) stated that there were credible reports during 2014 that members of the government interfered in high-profile cases, involving abuse of office, and misused official positions to intimidate key opposition leaders. Police and judicial corruption also remained a problem.<sup>11</sup> The most significant human rights problems stemmed from significant levels of corruption and from the government’s failure to fully respect the rule of law, including by continuing efforts to restrict media freedom, to interfere in the judiciary, and to ensure only selective prosecution. The judicial system is prone to political interference, inefficiency, favouritism toward well-placed persons, protracted judicial processes, violations of the right to public trial, as well as corruption.<sup>12</sup>

According to the EC Progress Report for Macedonia 2015<sup>13</sup> (EC PR 2015), the country has established the necessary legislative and institutional framework to fight corruption and has developed a track record over the last decade in both the prevention and prosecution of corruption. However, EC PR 2015 notes that “no progress has been achieved in the past year on the outstanding issues identified. Corruption remains widespread.” The report states that a lack of political will, together with political interference in the work of the relevant bodies, undermines the capacity to effectively address corruption and hampers the ability of institutions to act proactively and non-selectively, especially in high-level cases.<sup>14</sup> The report recommends that the country should pay particular attention in the coming year to creating an effective framework for the protection of whistle-blowers, in line with European standards and best practices.<sup>15</sup>

<sup>9</sup> [http://www.nytimes.com/2015/05/19/world/europe/macedonias-leaders-unable-to-resolve-festering-crisis.html?\\_r=0](http://www.nytimes.com/2015/05/19/world/europe/macedonias-leaders-unable-to-resolve-festering-crisis.html?_r=0)

<sup>10</sup> <http://www.balkaninsight.com/en/article/corruption-justice-top-agenda-in-commission-report-11-10-2015> [11.11.2015]

<sup>11</sup> <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/#wrapper>, p.15.

<sup>12</sup> <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/#wrapper>, p.1.

<sup>13</sup> Progress Report of the Republic of Macedonia 2015, European Commission, Brussels, p. 15 [Available at: [http://ec.europa.eu/enlargement/pdf/key\\_documents/2015/20151110\\_report\\_the\\_former\\_yugoslav\\_republic\\_of\\_macedonia.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2015/20151110_report_the_former_yugoslav_republic_of_macedonia.pdf)]

<sup>14</sup> Progress Report of the Republic of Macedonia 2015, European Commission, Brussels, p.15 [Available at: [http://ec.europa.eu/enlargement/pdf/key\\_documents/2015/20151110\\_report\\_the\\_former\\_yugoslav\\_republic\\_of\\_macedonia.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2015/20151110_report_the_former_yugoslav_republic_of_macedonia.pdf)].

<sup>15</sup> Progress Report of the Republic of Macedonia 2015, European Commission, Brussels, p.15 [Available at: [http://ec.europa.eu/enlargement/pdf/key\\_documents/2015/20151110\\_report\\_the\\_former\\_yugoslav\\_republic\\_of\\_macedonia.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2015/20151110_report_the_former_yugoslav_republic_of_macedonia.pdf)].

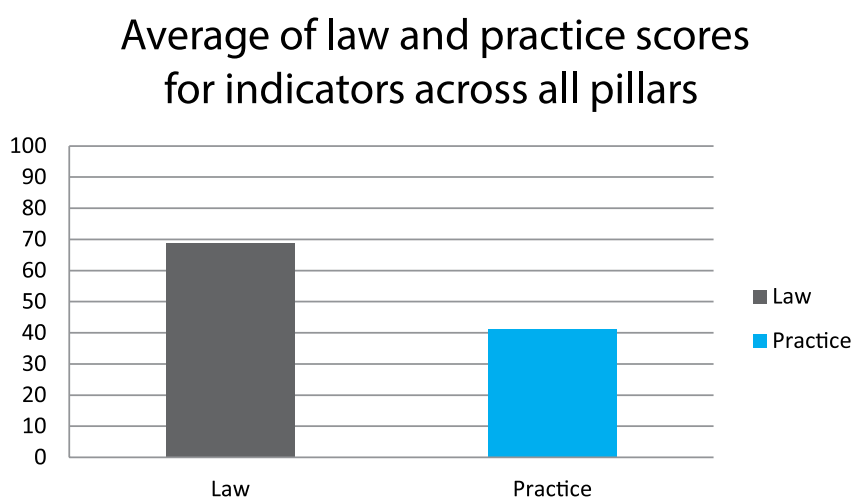
A public opinion survey conducted by the State Commission for the Prevention of Corruption (SCPC) in 2015 shows that the main causes of corruption are related to systemic problems (“*low incomes of civil servants*” and “*long and slow administrative procedures*”); inefficient and ineffective institutions (“*inefficient anti-corruption bodies*” and “*unclear rules with loopholes for manipulation*”); as well as widespread attitudes that corruption as normal behaviour.<sup>16</sup> This is exacerbated by relatively low levels of trust in institutions and widespread fear of sharing sensitive information, as confirmed by the answers given by citizens when they were asked to state the main reason for not reporting corruption: 20.3% of respondents cited a ‘*lack of trust in competent authorities*’ to take action as the main reason they would choose not to report corruption, while 17.0% stated that the main reason for not reporting corruption is ‘*fear of revenge and reprisal*’.<sup>17</sup>

## KEY FINDINGS

The National Integrity System Assessment shows that although there is a good legal framework for combating corruption in Macedonia, there is very weak implementation of anti-corruption laws. The institutions responsible for preventing and combating corruption are neither effectively managed nor sufficiently independent to tackle corruption. Furthermore, they lack integrity.

For example, the Republic of Macedonia has so far signed and ratified all relevant international treaties, adopted the necessary laws, and is incorporating the required standards, i.e. ‘the *acquis*’, to join the European Union. The existing legal framework is a starting point for effective international cooperation in judicial matters, investigations and assets recovery. Moreover, the Republic of Macedonia is among the first countries in the Western Balkans and EU candidate states to establish a State Commission for the Prevention of Corruption (November 2002), which is also in accordance with the United Nations Convention against Corruption that the country ratified in 2007.

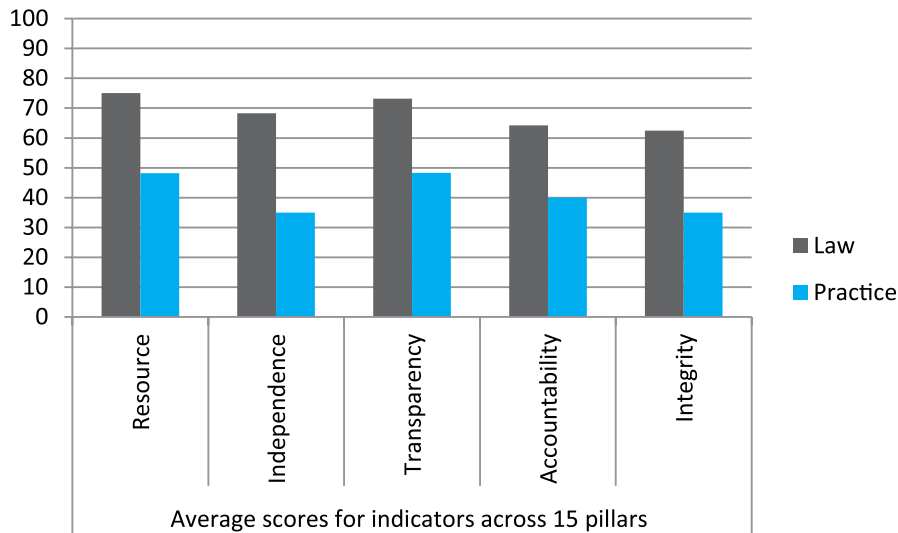
However, these mechanisms are not effective. The NIS study reveals a high level of disparity between the results of the indicators for ‘Law’ and ‘Practice’.



<sup>16</sup> State Commission for the Prevention of Corruption, 2015, Assessment of the level and nature of corruption and of the visibility and perception of anti-corruption policy, Skopje, EU Twinning project: “Support for efficient Prevention and Fight against Corruption”, p.7.

<sup>17</sup> State Commission for the Prevention of Corruption, 2015, Assessment of the level and nature of corruption and of the visibility and perception of anti-corruption policy, Skopje, EU Twinning project “Support to efficient Prevention and Fight against Corruption”, p.10.

There are generally sufficient resources and the levels of formal independence, transparency, accountability and integrity in most institutions are satisfactory. However, there are serious shortcomings in the practices of institutions, with the indicators on integrity, independence and accountability scoring the weakest results, as shown in the table below.



Even the State Commission for the Prevention of Corruption, which is elected by the Parliament and is independent by law, has significant issues with accountability, integrity and transparency, which explains its insignificant role in the fight against corruption. Together with limited institutional cooperation, a lack of rule of law, a lack of judicial independence and limited media freedom, the conditions are set to enable corruption to flourish unchecked in Macedonia.

## NIS PILLARS

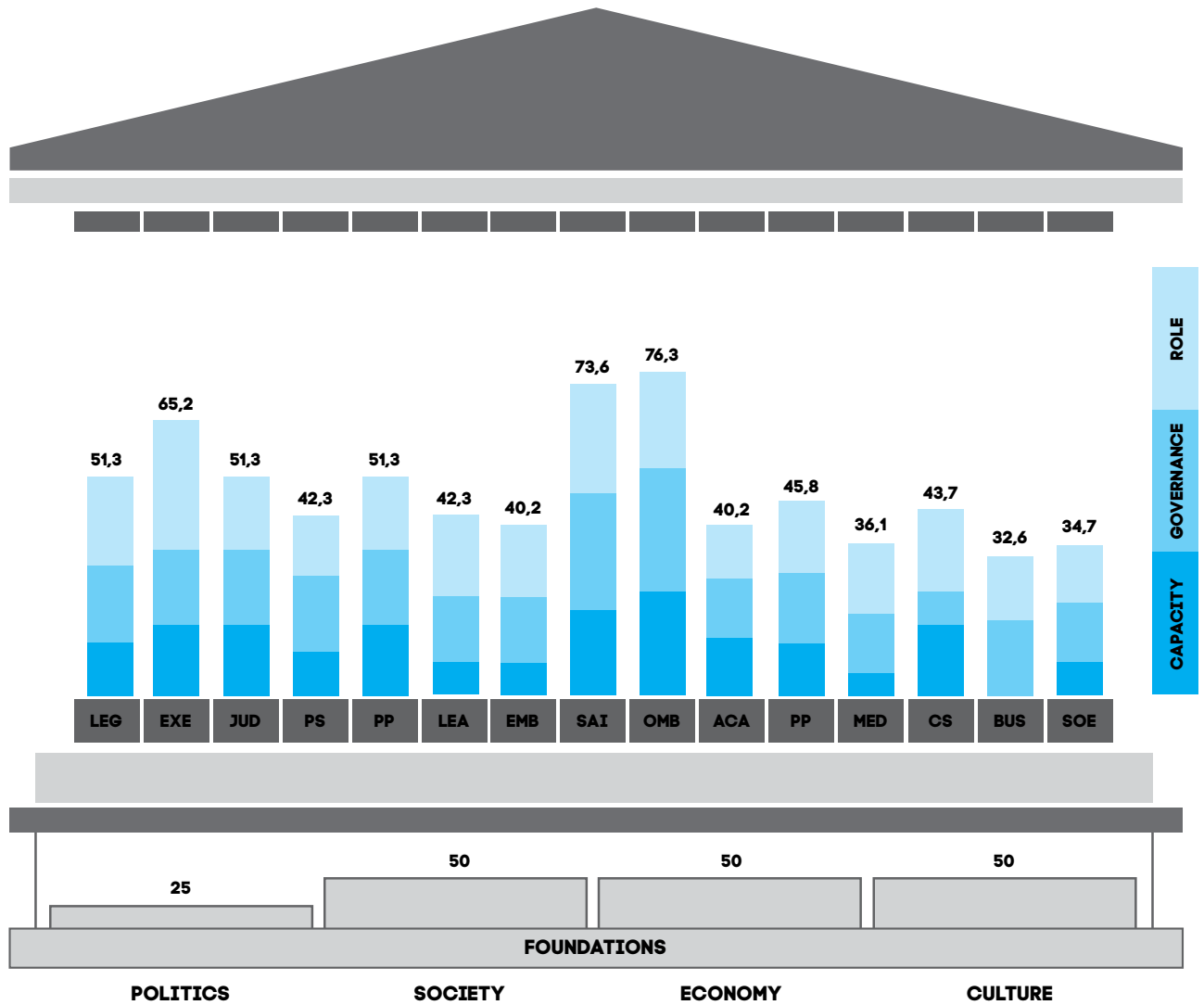
The Macedonian National Integrity System is characterized by the dominance of the executive branch and the weakness of other key institutions. The executive and the legislature are particularly strong in terms of their capacity and their role in fighting corruption. The executive is also highly independent, in fact too independent, although indicators demonstrate that the executive's internal governance structures, which ought to promote transparency, accountability and integrity, are very weak. The legislature is also weak in terms of its internal governance.

Shortcomings in the independence of the legislature and the judiciary, and their failure to oversee the executive, indicate critical deficiencies in the system of checks and balances. State institutions tasked with preventing and fighting corruption, i.e. the State Commission for the Prevention of Corruption and the Public Prosecutor, are extremely weak and lack both adequate resources and a robust system of internal governance. The weakness of state institutions demonstrates the complete absence of political will to tackle corruption.

This is of particular concern because the non-state actors that are supposed to serve as watchdogs, such as the media and business, rank as the weakest pillars in the Republic of Macedonia. Civil society actors and political parties score poorly across all indicators, especially those indicators concerning internal governance, and they have no capacity to exercise their ability to check and control the branches of government. Law enforcement agencies are not independent. They lack strong internal governance structures and do not carry out their role in investigating and prosecuting corruption.

The strongest pillars in the Republic of Macedonia, on the other hand, are the Supreme Audit Institution and the Office of the Ombudsperson, both independent institutions that attain the strongest scores of all pillars in internal governance indicators (transparency, accountability and integrity). The indicators demonstrate that the Supreme Audit Institution has sufficient capacity and plays a relatively strong role in the fight against corruption, although the Office of the Ombudsman lacks resources to carry out its duties.

### NATIONAL INTEGRITY SYSTEM



- (LEG)** LEGISLATURE
- (EXE)** EXECUTIVE
- (JUD)** JUDICIARY
- (PS)** PUBLIC SECTOR
- (PP)** PUBLIC PROSECUTOR
- (LEA)** LAW ENFORCEMENT AGENCIES
- (EMB)** ELECTORAL MANAGEMENT BODY
- (SAI)** SUPREME AUDIT INSTITUTION

- (OMB)** OMBUDSMAN
- (ACA)** ANTI CORRUPTION AGENCIES
- (PP)** POLITICAL PARTIES
- (MED)** MEDIA
- (CS)** CIVIL SOCIETY
- (BUS)** BUSINESS
- (SOE)** STATE OWNED ENTERPRISES





3





# III. COUNTRY PROFILE: THE FOUNDATIONS OF THE NATIONAL INTEGRITY SYSTEM

## THE FOUNDATIONS OF THE NATIONAL INTEGRITY SYSTEM IN MACEDONIA

Since the National Integrity System is deeply embedded in the country's overall social, political, economic and cultural context, a brief analysis of this context is presented here to enable a better understanding of how these factors impact upon integrity in Macedonia. There are four different 'foundations' of the system: political-institutional foundations, socio-political foundations, socio-economic foundations, and socio-cultural foundations.

### POLITICAL-INSTITUTIONAL FOUNDATIONS

TO WHAT EXTENT ARE THE POLITICAL INSTITUTIONS IN THE COUNTRY SUPPORTIVE TO AN EFFECTIVE NATIONAL INTEGRITY SYSTEM?

Score: **25**

Macedonia's legal framework guarantees the civil and political rights of citizens and provides for fundamental democratic processes; in practice, however, these legal provisions are violated. On 9 February 2015 a political scandal broke when the main opposition party accused that the government of having been involved in widespread illegal surveillance of the private communications of political actors and state officials. A political crisis ensued, in the course of which the EU brokered an agreement between the leaders of the four main political parties. As part of this agreement, a general election was scheduled take place in April 2016.<sup>18</sup>

The Macedonian Constitution and other laws provide for free and fair elections. However, shortcomings in election practices can lead to political crises in Macedonia. The Final Report of the OSCE/ODIHR Election Observation Mission on the presidential and parliamentary elections held in 2014 found that they were efficiently administered, including on Election Day. However, the report also criticised the ruling party's behaviour, including its exclusive access to administrative resources, major private media outlets and private financing. In addition, the report cited concerns about: inadequate separation of the ruling party's activities in its capacity as the government of the state and as a political party; allegations of voter intimidation; the inadequacy of the voter list; indirect control of the governing party over the media because of the state's dominance in the advertising market; the failure of the media to distinguish between coverage of state officials in their capacity as ministers and as candidates, which contributed to the blurring of the line between state and party; and the

<sup>18</sup> European Commission, 2015: p.6.

fact that the majority of monitored media was largely biased in favour of one ruling party and its presidential candidate while being mostly negative about the main opposition party and its candidate.<sup>19</sup>

Civil rights are guaranteed in the Constitution and other laws. The overall framework for the protection of fundamental rights is in place, but more focus needs to be placed on its effective implementation. The situation as regards freedom of expression continues to be highly problematic. This is in spite of the introduction of comprehensive new media legislation at the end of 2013 following extensive public consultations and advice from international organisations.<sup>20</sup>

The rule of law is formally guaranteed by the Constitution, wherein the doctrine of the separation of powers regulates relations between the parliament, the executive and the judiciary. The Constitution provides for Parliament's role in overseeing and holding the executive to account, and for the independence of the judiciary. **In practice, however, the rule of law is undermined by the dominance of the executive branch and the weaknesses of the legislature and the judiciary.**

The political crisis that has arisen as a result of the illegal surveillance scandal has threatened the foundations of democratic governance in Macedonia. The European Commission-brokered agreement between the ruling party and opposition parties is an opportunity to establish constructive political dialogue and rebuild trust and respect for the rule of law. Failure to do so will lead to a breakdown of parliamentary democracy in Macedonia.<sup>21</sup>

## SOCIO-POLITICAL FOUNDATIONS

TO WHAT EXTENT ARE THE RELATIONSHIPS AMONG SOCIAL GROUPS AND BETWEEN SOCIAL GROUPS AND THE POLITICAL SYSTEM IN THE COUNTRY SUPPORTIVE TO AN EFFECTIVE NATIONAL INTEGRITY SYSTEM?

Score: **50**

Macedonian society and politics are divided by the strong ethnic divisions between its Macedonian and Albanian citizens. There are no strong links between society and politics, due primarily to the weaknesses of civil society groups, political parties and unions.

There are 52 political parties registered in Macedonia, many of which are not active. Political elites dominate, power is concentrated in party leaders, and the main political players are divided between Macedonian and Albanian ethnic blocs. Furthermore, the recent political crisis between government and opposition parties demonstrates that party-political interests prevail over national interests.<sup>22</sup>

<sup>19</sup> Ibid., p.17.

<sup>20</sup> European Commission, *Progress Report of Macedonia 2014*, (Brussels: European Commission, 2014), p.17. [http://ec.europa.eu/enlargement/pdf/key\\_documents/2014/20141008-the-former-yugoslav-republic-of-macedonia-progress-report\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2014/20141008-the-former-yugoslav-republic-of-macedonia-progress-report_en.pdf) [accessed August 4, 2015].

<sup>21</sup> European Commission, 2015: pp.6–7.

<sup>22</sup> European Commission, 2014: p.6.

Progress on the protection of minorities continues to be hampered by insufficient financial and human resources and inadequate cooperation between the authorities concerned. A more proactive approach is needed to guarantee the ethnic, cultural and linguistic identities of all communities.<sup>23</sup> The Ohrid Framework Agreement, established in 2001 between political parties representing ethnic Macedonians and ethnic Albanians, provides the basis for inter-community relations. There is room for improvement in the areas of non-discrimination, fair representation, the use of languages, and education. There is a Commission for Prevention and Protection against Discrimination; however this Commission has insufficient financial and human resources to properly fulfil its mandate. The Law on Anti-Discrimination is still not in accordance with the *acquis*, as it does not explicitly prohibit discrimination in the area of employment and occupation.

The level of citizen participation in politics is low. There have been formal improvements in terms of legislation and consultation mechanisms, but civil society organisations continue to express concern about the difficult climate in which they operate and the limited commitment of the government to engage in dialogue.<sup>24</sup> Nevertheless, civil society groups coordinated activities in 2014/2015 to oppose the conviction of a journalist,<sup>25</sup> to oppose controversial education reform processes,<sup>26</sup> and to ensure the publication of the wiretapped communications<sup>27</sup> that exposed the extent of illegal surveillance. CSOs have organized joint activities with opposition political parties and have strengthened their activities on issues concerning anti-corruption, minority rights and EU integration. A protest against the Government organized on 17<sup>th</sup> May 2015 had a high turnout and managed for the first time to gather together citizens with different ethnic and social backgrounds.<sup>28</sup>

## SOCIO-ECONOMIC FOUNDATIONS

### TO WHAT EXTENT IS THE SOCIO-ECONOMIC SITUATION OF THE COUNTRY SUPPORTIVE TO AN EFFECTIVE NATIONAL INTEGRITY SYSTEM?

Score: **50**

Despite current political instability and corruption, Macedonia's transition to a market-based economy has been facilitated by a relatively high level of social and political stability that has enabled the economy to adapt to comprehensive reform measures. The Heritage Foundation<sup>29</sup> states that Macedonia's economic freedom has advanced by 1.1 points over the past five years, with notable score improvements in half of the 10 indicators of economic freedom, including business freedom, freedom from corruption, and trade freedom.

<sup>23</sup> European Commission, 2014: p.12.

<sup>24</sup> European Commission, 2014: p.12.

<sup>25</sup> [https://www.youtube.com/watch?v=vqOz3vJ0e\\_w](https://www.youtube.com/watch?v=vqOz3vJ0e_w)

<sup>26</sup> <http://www.studentskiplenum.org/>, European Commission, 2015: p.67.

<sup>27</sup> <http://gragjanite.mk/> European Commission, 2015: p.9.

<sup>28</sup> <https://www.google.cz/search?q=%D0%BF%D1%80%D0%BE%D1%82%D0%B5%D1%81%D1%82+%D0%BD%D0%B0+17+%D0%BC%D0%B0%D1%98&tbn=isch&tbo=u&source=univ&sa=X&ved=0ahUKEwiokJboyYbKAhXIRhQKHXFYA78QsAQIVA&biw=1024&bih=447> [accessed August 6, 2015].

<sup>29</sup> The Heritage Foundation, *2015 Index of economic freedom*, (Washington, D.C.: The Heritage Foundation, 2015), <http://www.heritage.org/index/country/macedonia> [accessed August 4, 2015].

Although Macedonia has made considerable progress in income growth and overall poverty reduction,<sup>30</sup> the UNDP 2014 Human Development Index (HDI) ranks Macedonia 84<sup>th</sup> out of 187 countries. The same survey found that economic inequalities persist, with some 33.3 percent of the population living below the poverty line.<sup>31</sup> In addition, individuals living above the income poverty line may still suffer deprivations in education, health and other living conditions. Over 37,000 families relied on social support in 2012, meaning that each member of these families lived on less than \$2 a day.<sup>32</sup> Experts state that the average net salary<sup>33</sup> recorded for Macedonia (361 EUR) does not reflect the extent of low salaries, since there are extremely high salaries that increase the average and distort reality.<sup>34</sup>

Macedonia does not compile official national statistics on poverty. Relevant data can only be found in reports compiled by international organizations. The last census was held in 2002,<sup>35</sup> while according to data published by the World Bank some 370,000 citizens had left the country by 2005, representing 18.2% of the population recorded in the 2002 consensus, and 500,000 citizens are working abroad. Remittances to Macedonia from citizens working abroad are a significant source of income for the Macedonian economy.<sup>36</sup>

Competitive flat tax rates and a permissive trade regime, buttressed by a relatively efficient regulatory framework, have encouraged the emergence of a dynamic private sector. However, long-term development will depend upon the implementation of deeper institutional reforms.<sup>37</sup>

In the Heritage Foundation's 2015 index of economic freedom, Macedonia scores 67.1, placing it as the 53rd freest economy in the 2015 Index. Its overall score has decreased by 1.5 points since 2014, with improvements in freedom from corruption and trade freedom outweighed by declines in labour freedom, business freedom, the management of government spending, and monetary freedom.

Macedonia's business sector benefits from the country's liberal framework, but corruption and cronyism are prevalent in public administration and procurement procedures, increasing costs for business and chilling foreign investment.<sup>38</sup> At the same time, companies face a number of significant problems, including limited access to capital and credit and an inability to rely on the courts for judicial remedies in disputes with authorities. The country's infrastructure has not improved, due primarily to the government's prioritisation of building grandiose monuments rather than roads or other infrastructure projects.<sup>39</sup>

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<sup>30</sup> Ibid.

<sup>31</sup> United Nations Development Programme, *2014 Human Development Report, Sustaining Human Progress: Reducing Vulnerabilities and Building Resilience* (New York: UNDP, 2014), p.181 <http://www.iq.undp.org/content/undp/en/home/librarypage/hdr/2014-human-development-report/> [accessed August 14, 2015].

<sup>32</sup> Ibid.

<sup>33</sup> <http://www.stat.gov.mk/> [accessed August 5, 2015].

<sup>34</sup> Prof. Zdravko Saveski for <http://www.makdenes.org/content/article/25240535.html> [accessed August 7, 2015].

<sup>35</sup> <http://www.stat.gov.mk/OblastOpsto.aspx?id=31> [accessed July 28, 2015].

<sup>36</sup> <http://www.globusmagazin.com.mk/?ItemID=1EADC6DA4B307842B7099F976DCABA7E> [accessed August 5, 2015].

<sup>37</sup> The Heritage Foundation, 2015: p.299

<sup>38</sup> Ibid.

<sup>39</sup> First and Second Report for "Skopje 2014", <http://opstinacentar.gov.mk/LinkClick.aspx?fileticket=FFWpQbLwYvc%3d&portalid=0&language=mk-MK> <http://opstinacentar.gov.mk/Portals/0/Documentatin/Banners/izvestaj%2011%2024.11.2013.pdf>

## SOCIO-CULTURAL FOUNDATIONS

TO WHAT EXTENT ARE THE PREVAILING ETHICS, NORMS AND VALUES IN SOCIETY SUPPORTIVE TO AN EFFECTIVE NATIONAL INTEGRITY SYSTEM?

Score: **50**

Economic development and social and cultural development are closely linked. Economic development is the means for societal change, and a number of key social and cultural factors are prerequisites for successful and sustained growth.<sup>40</sup>

According to a 2010 survey on Macedonian Social Values, the five most important values for citizens are: respect for human rights (15.6%); peace/non-violence (15.4%); democracy (13.3%); rule of law (10.4%); and respect for human life (10.0%).<sup>41</sup>

Values considered of lesser importance by citizens in the survey are accountability/transparency (2.1%) and self-realisation (2.9%).

<sup>40</sup> Kimio Uno, *Social and Culture Development Indicator*, Keio University Japan, 2004, <http://www.eolss.net/EolssSampleChapters/C11/E1-11-08/E1-11-08-TXT.aspx> [accessed July 28, 2015].

<sup>41</sup> Macedonian Center for International Cooperation, *Macedonian Social Values*, (Skopje: MCIC, 2010), p.5. <http://www.mcims.org.mk/images/docs/2011/macedonian-societal-values-2011.pdf> [accessed July 28, 2015].





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## IV. CORRUPTION PROFILE

Although nearly every government of Macedonia since the country became independent has claimed to prioritize the fight against corruption, graft remains widespread. Public expenditures are not fully transparent and there is no transparency of political party finances and public expenditures. Most citizens, moreover, are unwilling to report incidents of corrupt or illegal behaviour. As anticorruption efforts have stagnated, Macedonia's rating in Transparency International's Corruption Perception Index has increased<sup>42</sup> and Macedonia now ranks 66<sup>th</sup> out of 168 ranked countries.<sup>43</sup> In the past 69 percent of respondents to Transparency International's 2013 Global corruption Barometer<sup>44</sup> expressed the view that corruption has either remained the same or worsened between 2011 and 2013.

EU progress reports, which have been prepared yearly to monitor Macedonia's progress towards accession to the EU, have repeatedly cited the non-transparency of party finances and general public expenditures as significant problems.<sup>45</sup> Problems with the rule of law and corruption were noted in the 2014 progress report. The report concluded that corruption remained a "serious problem", especially in the areas of public procurement and political party funding. Even though the legal framework has been brought into line with European legislation over the past several years, implementation is still lagging behind. Maximum penalties for crimes of corruption, which could have a deterrent effect, are rarely used and the capacity of the courts to prosecute corruption cases is in need of significant improvement. Internal controls against corrupt behaviour in the state and in the public administration are weak.

The government project to redevelop buildings and erect monuments in Skopje, 'Skopje 2014', has been a source of controversy in Macedonia. The project has been criticized for the nationalist undertones evident in the choices made concerning architectural styles as well as the subjects and themes selected for statues and monuments. However, the predominant complaint concerns the immense cost of the project, which many believe is connected to public procurement fraud.<sup>46</sup> When the project was launched in 2008 it was projected to cost around €80 million. At a press conference in April 2013, the Ministry of Culture admitted that a total of €207 million had been spent on new buildings, monuments and sculptures. However, NGOs estimate that the government has spent well over twice that amount,<sup>47</sup> and opposition parties like SDSM insist that the figure is closer to €580 million.<sup>48</sup>

Upon his election in March 2013, the new (opposition) mayor of the Municipality of Centar initiated an inquiry Commission to discover how the money being diverted from the state budget for Centar to the Skopje 2014 project was being spent. In the period from 2007 to

<sup>42</sup> Transparency International, Corruption Perceptions Index 2014 (Berlin: Transparency International, 2014) <http://www.transparency.org/cpi2014/infographic/global> [accessed July 20, 2015]

<sup>43</sup> Transparency International, Corruption Perceptions Index 2015 (Berlin: Transparency International, 2015) <http://www.transparency.org/cpi2015> [accessed January 27, 2016].

<sup>44</sup> [http://www.transparency.org/gcb2013/country/?country=macedonia\\_%28fyr%29](http://www.transparency.org/gcb2013/country/?country=macedonia_%28fyr%29) [accessed July 21, 2015].

<sup>45</sup> European Commission, 2015: p.6. [http://ec.europa.eu/enlargement/pdf/key\\_documents/2015/20151110\\_report\\_the\\_former\\_yugoslav\\_republic\\_of\\_macedonia.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2015/20151110_report_the_former_yugoslav_republic_of_macedonia.pdf) [accessed November 15, 2015].

<sup>46</sup> Report Skopje 2014 web site of the Municipality Centar, Skopje <http://opstinacentar.gov.mk/> [http://www.transparency.org.mk/en/images/stories/publications/report\\_second\\_sk2014.pdf](http://www.transparency.org.mk/en/images/stories/publications/report_second_sk2014.pdf) [accessed September 19, 2015].

<sup>47</sup> [https://freedomhouse.org/report/nations-transit/2014/macedonia#\\_ftn69](https://freedomhouse.org/report/nations-transit/2014/macedonia#_ftn69) [accessed July 21, 2015].

<sup>48</sup> SDSM, <http://fokus.mk/sdsm-proektot-skopje-2014-namesto-80-chineshe-580-milioni-evra/> [accessed July 21, 2015].

2013 a total of 3,551,068,000.00 MKD (= EUR 58,023,986.00) was transferred from the central budget to the account of the Municipality of Centar for the construction of monuments and accompanying content, for which transfer there was not provided any legal justification. Such decisions can only be passed by parliament under Article 3 of the Law on Memorials and Monuments.<sup>49</sup> In November 2013, the Commission published its final report, which concluded that uncompetitive bidding procedures, cost overruns, lack of quality control and other irregularities had cost taxpayers at least €8 million. The ruling party, VMRO–DPMNE, dismissed the report as biased.<sup>50</sup>

Lack of transparency in public procurement processes poses a significant problem. According to a 2014 report by the Center for Civil Communications, a Skopje-based NGO,<sup>51</sup> 30% of public procurement contracts were concluded with only one company participating in the bidding process. The report also found that institutions avoided disclosing important information about bids, and although e-auction is mandatory in Macedonia, such auctions were not organized in 35 percent of the monitored procurements. Tenders were often annulled, and 328 contracts worth about €22.4 million were signed without tender processes taking place.<sup>52</sup>

There are, however, some positive developments. According to the Group of States against Corruption (GRECO), Macedonia implemented 10 out of 13 recommendations that GRECO had made in its previous round of evaluation of Macedonia's response to corruption, while the remaining 3 recommendations were partially implemented.<sup>53</sup> The recommendations concerned improvements in the criminal code related to prosecuting corruption and the transparency of political party funding. The 2013 TI Global Corruption Barometer<sup>54</sup> indicated that the percentage of people admitting to having paid a bribe in the 12 months prior to the report dropped by 4 percentage points to 17 percent compared to 2010, although overall the report indicated a one-point increase in perceived corruption in 2013.

<sup>49</sup> Two reports on Factual Situation in realization on the project Skopje 2014 and involvement of the Municipality Centar are published <http://opstinacentar.gov.mk/> [accessed July 20, 2015].

<sup>50</sup> [https://freedomhouse.org/report/nations-transit/2014/macedonia#\\_ftn69](https://freedomhouse.org/report/nations-transit/2014/macedonia#_ftn69) [accessed July 20, 2015].

<sup>51</sup> Center for Civil Communications, *Report on monitoring of the public procurement in Macedonia No.24*, (Skopje: Center for Civil Communications, 2015). <http://www.ccc.org.mk/images/stories/24m.pdf> [accessed July 30, 2015].

<sup>52</sup> Ibid.

<sup>53</sup> GRECO, *Third Evaluation Round Second Compliance Report on "the former Yugoslav Republic of Macedonia" "Incriminations (ETS 173 and 191, GPC 2)", "Transparency of Party Funding"* (Strasbourg: GRECO, 2014) [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoRC3%282014%292\\_Second\\_The%20former%20Yugoslav%20Republic%20of%20Macedonia\\_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoRC3%282014%292_Second_The%20former%20Yugoslav%20Republic%20of%20Macedonia_EN.pdf) [accessed July 30, 2015].

<sup>54</sup> Transparency International, *Global Corruption Barometer 2013*, (Berlin: Transparency International, 2013), [http://www.transparency.org/gcb2013/country/?country=macedonia\\_%28fyr%29](http://www.transparency.org/gcb2013/country/?country=macedonia_%28fyr%29) [accessed July 20, 2015].







5



## V. ANTI-CORRUPTION ACTIVITIES

Reporting corruption is still taboo in practice. According to a May 2015 survey published by the Center for Investigative Journalism, SCOOP Macedonia, hotlines for reporting bribery and corruption are not functioning.<sup>55</sup> The Ministry of Interior's Anti-Corruption Unit was reformed and given a higher profile as the 'Sector for the Fight against Corruption', but its status remains weak. Of only 19 positions allocated to the institution, over a third have still not been filled.

Although formally established in 2011, the Investigative Centre within the Public Prosecutor's Office for the 'Fight against Organised Crime and Corruption' has yet to become operational and no further Investigative Centres have been set up. Only around 40% of the 45 posts allocated to the State Commission for the Prevention of Corruption (SCPC) have been filled and the Commission has limited powers. Although the Ministry of Interior's 'Sector for Internal Control and Professional Standards' (SICPS) has been granted new powers in the area of promoting integrity, it still lacks independence.

As regards *enforcement activities*, there was a 50% drop in convictions for corruption-related offences in 2013 (63 compared to 123 in 2012). 56 of these convictions related to abuse of public office and 3 related to bribery. The overall capacity of the courts to deal with corruption cases remains weak, especially regarding high-level cases, where proceedings are lengthy and inefficient.

The internal control system in central and local administration remains weak. Whistle-blowing mechanisms in public and private sectors have yet to be set up.

The Republic of Macedonia ratified the Council of Europe's Criminal Law Convention on Corruption (ETS 173) on 28 July 1999 and the Convention entered into force on 1 July 2002. The Additional Protocol to the Criminal Law Convention (ETS 191) was ratified on 14 November 2005 and entered into force on 1 March 2006. Amendments to the Criminal Code were adopted on 10 September 2009 in order, amongst other things, to bring corruption-related provisions closer in line with the Convention. In 2014 the Electoral Code was amended to address shortcomings highlighted by OSCE/ODIHR in relation to the financing of election campaigns, and the Criminal Code was amended to introduce the new criminal offence of illegal disbursement of state funds during elections. The Law on Management of Confiscated Assets was extended in scope to cover misdemeanour and administrative cases, and the rules on management of seized and confiscated assets were refined.

The recently introduced Law on the Prevention of Corruption (LPC) and the Law on Prevention of Conflicts of Interest (LPCI) provide a fairly sound basis for integrity rules and standards. They apply to all public officials, including Members of Parliament (MPs), judges and prosecutors.

<sup>55</sup> [https://freedomhouse.org/report/nations-transit/2014/macedonia#\\_ftn69](https://freedomhouse.org/report/nations-transit/2014/macedonia#_ftn69) [accessed July 20, 2015]. [http://www.transparency.org.mk/en/index.php?option=com\\_content&task=view&id=498&Itemid=30](http://www.transparency.org.mk/en/index.php?option=com_content&task=view&id=498&Itemid=30)

GRECO carried out a fourth round of evaluation in late 2013, covering corruption prevention in relation to MPs, judges and prosecutors. The OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions has not yet been ratified.

The State Commission for the Prevention of Corruption (SCPC) is the main anti-corruption body in Macedonia. The SCPC started work in November 2002 as a preventive anti-corruption body. The SCPC has 7 full-time Commissioners appointed by Parliament. The SCPC submits its annual report to parliament, the President of the Republic and the Government, as well as releasing it to the media. The SCPC has 26 employees in its offices and these staff are public servants. Its main focus is the collection and review of asset declarations and statements of conflict of interest. Legislation underpins its powers to oblige any persons to provide such information.

The SCPC is also responsible for the preparation of the anti corruption strategy as well as for monitoring its implementation. The first anti-corruption strategy was adopted in 2003, and the latest strategy covers the period 2016–2019. State institutions work with the SCPC both in the preparation and implementation of the strategy.

Citizen awareness and trust in the work of the SCPC is low. The SCPC receives a low number of citizen complaints (201 in 2013, 177 in 2012). It filed 9 requests to the Public Prosecutor's Office in 2013 to initiate criminal proceedings. Cases referred by the SCPC to the Public Prosecutor's Office have rarely led to successful prosecutions.

NGO's and the several new initiative by USAID launched in September 2013 aims to support civil society organizations and improve the integrity and accountability of state institutions. The programme includes a Corruption Monitoring System (CMS), which gathers information about the types, levels, and trends of corruption, as well as an anti-corruption platform, comprised of 15 CSOs working on anti-corruption, which became effective on 9 December 2014.<sup>56</sup>

<sup>56</sup> <http://www.mcms.org.mk/en/news-and-publicity/news/1604-platforma-za-antikorupcija.html> [accessed August 4, 2015].









6



# VI. NATIONAL INTEGRITY SYSTEM

## 1. LEGISLATURE

### SUMMARY

The Assembly of the Republic of Macedonia (Assembly) is formally independent, but in practice its independence is compromised. MPs may comply with obligations to submit statements of conflicts of interest and asset declarations, but their assets and interests are not regularly updated. There is no written code of conduct for ensuring the integrity of MPs that would address corruption and unethical practices. There are rules in place regarding gifts and hospitality, but there are no internal mechanisms for the supervision of these rules.

The forced removal from the Assembly of MPs and members of the media during the 2013 Budget debate on 24 December 2012 significantly affected the political scene and the work of the Assembly. An Inquiry Committee made recommendations on how to prevent further similar incidents. Following the political crisis arising from revelations of the Government's illegal mass surveillance activity, as well as corruption scandals, opposition parties refused to participate in Assembly work after the 2014 elections, until 1 September 2015 when the 'Przino Agreement' negotiated between the parties enabled the work of the Assembly to resume.<sup>57</sup>

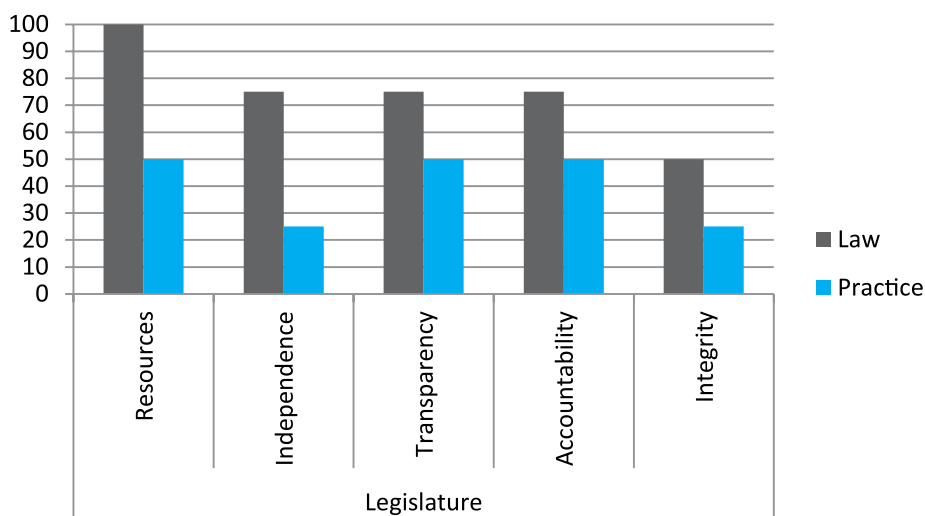
Legal provisions regulating the capacity and governance of the Assembly are generally adequate. In practice, however, the transparency of the legislative process needs to be improved, particularly in terms of public participation and consultation. The Assembly's independence is in question given that the public perception is that the Assembly is not fulfilling its responsibility for proper control of the Government/Executive. The table below presents the indicator scores assigned to the legislature in terms of capacity, governance, and its role in the national integrity system.

**OVERALL PILLAR SCORE: 51.3/100**

<sup>57</sup> The content of the Przino Agreement: <http://www.mkd.mk/makedonija/politika/dui-go-objavi-celosniot-dogovor-na-liderite-od-2-juni> [accessed August 4, 2015].

| DIMENSION                       | INDICATOR           | LAW | PRACTICE |
|---------------------------------|---------------------|-----|----------|
| <b>Capacity</b><br>62.5/100     | Resources           | 100 | 50       |
|                                 | Independence        | 75  | 25       |
| <b>Governance</b><br>54.1 / 100 | Transparency        | 75  | 50       |
|                                 | Accountability      | 75  | 50       |
|                                 | Integrity           | 50  | 25       |
| <b>Role</b><br>37.5/ 100        | Executive oversight |     | 25       |
|                                 | Legal reforms       |     | 50       |

Pillar score per Law and Practice



A solid legal framework underpins the Assembly. Laws guarantee adequate resources and formally provide for an independent, transparent Assembly that fulfils integrity requirements. Nonetheless, it is of concern that the legislature seriously lacks independence and integrity in practice.

## STRUCTURE AND ORGANISATION

The Assembly is comprised of 123 MPs elected for 4-year mandates by a proportional representation system. The Assembly adopts laws when the majority necessary for adoption is reached, as stipulated in the Constitution of the Republic of Macedonia. The Assembly adopts constitutional amendments, laws and resolutions, and also adopts its own internal rules, the State budget, ratifies international treaties, and calls for referendums.

The Assembly elects the Government, the President of the Assembly, and up to three Vice-Presidents. It also appoints and dismisses other holders of public offices, such as the Ombudsman, the Public Prosecutor, members of the State Commission for the Prevention of Corruption and the General State Auditor. The supervisory function of the Assembly includes powers to launch parliamentary inquiries, to call for votes of no confidence in the government or in ministers and to lodge motions of impeachment in the Constitutional Court

against the President of the Republic. The Assembly has 21 permanent working bodies and four councils: the National EU Integration Council, the Parliamentary Channel Council (The Council for Support of the Parliamentary TV Channel), the Budget Council and the Council for Inter-Ethnic Relations.

A newly elected Assembly took office on 10 May 2014. 34 opposition MPs were absent after having tendered their resignations in protest at the activities of the ruling party. The absence of opposition MPs from the Assembly hampered its work and its ability to provide the necessary conditions for debate and checks and balances. However, the ruling coalition maintains a stable majority.

## ASSESSMENT

### CAPACITY

#### 1.1.1 RESOURCES (LAW)

Score: **100**

**To what extent are there provisions in place that provide the legislature with adequate financial, human and infrastructure resources to effectively carry out its duties?**

The Law on the Assembly<sup>58</sup> and the Rules and Procedures of the Assembly of the Republic of Macedonia<sup>59</sup> regulate the human, infrastructure and financial resources required for the operation of the Assembly, including determining the procedures for calculating and allocating resources. The Budgetary Council (BC) of the Assembly proposes programmes to be included in the State Budget for the following year<sup>60</sup> and provides guidelines on drafting the Assembly budget. In cooperation with the Ministry of Finance, the BC proposes to the Government the finances required for the Assembly for the following three fiscal years, monitors the expenditures of the Assembly under the state Budget, and proposes reallocations of the funds approved by the state budget.<sup>61</sup> The Secretary General<sup>62</sup> elected by the Assembly manages the civil servants<sup>63</sup> who provide expert, administrative, technical and other services to the MPs.<sup>64</sup> The Assembly provides resources for e-parliament<sup>65</sup> services and a library.<sup>66</sup>

MPs are entitled to request and receive information from the Secretary General on issues that are important for the exercise of their office, and to request and receive information and expert assistance from staff on issues related to the work of the Assembly.<sup>67</sup>

<sup>58</sup> Official Gazette of RM, No. 104/2009.

<sup>59</sup> Rules and Procedures of the Assembly of RM, Official Gazette of RM, No. 91/2008, 119/2010.

<sup>60</sup> Law on the Assembly of RM, Official Gazette of RM, No. 104/2009, Article 27.

<sup>61</sup> Law on the Assembly of RM, Official Gazette of RM, No. 104/2009, Article 27.

<sup>62</sup> Law on the Assembly of RM, Official Gazette of RM, No. 104/2009, Article 41.

<sup>63</sup> Law on Civil Servants, Official Gazette of RM, Nos. 59/2000, 112/2000, 34/2001, 103/2001, 43/2002, 98/2002, 17/2003, 40/2003, 85/2003, 17/2004, 69/2004, 81/2005, 61/2006, 36/2007, 161/2008, 6/2009, 114/2009, 35/10, 167/10, 36/11, 6/12, 24/12, 15/13, 82/13, 106/2013), Article 3.

<sup>64</sup> Law on Assembly of RM, Official Gazette of RM, No. 104/09, Article 9.

<sup>65</sup> Law on Assembly of RM, Official Gazette of RM, No. 104/09, Article 42, Paragraph 9.

<sup>66</sup> Law on Assembly of RM, Official Gazette of RM, No. 104/09, Article 42, Paragraph 10.

<sup>67</sup> Rules and Procedures of the Assembly of RM, Official Gazette of RM, No. 91/2008, 119/2010, 130/2010, 23/2013

## 1.1.2 RESOURCES (PRACTICE)

Score: **50**

### To what extent does the legislature have adequate resources to carry out its duties in practice?

External donors provide substantial professional support to MPs. In 2014, the number of Assembly employees increased from 389 to 415.<sup>68</sup> MPs' salaries are paid regularly, though there have been reports of delays of up to 7 months in the payment of travel expenses.<sup>69</sup>

In practice, the final decision about the amount of the Assembly Budget lies with the Minister of Finance (MF).<sup>70</sup> Experience has shown that the Assembly typically encounters resistance from the Government when it requests additional funds.

The Parliamentary Institute has been established with external donor assistance from the National Democratic Institute for International Affairs (NDI).<sup>71</sup> It provides professional and independent research and analysis support to the Assembly,<sup>72</sup> as well as training and support for newly elected MPs.<sup>73</sup> More than 130 training sessions, seminars, workshops, conferences, and study visits for the professional development of civil servants of the Assembly were held in the period June 2011–March 2014<sup>74</sup>.

## 1.1.3 INDEPENDENCE (LAW)

Score: **75**

### To what extent is the legislature independent and free from subordination to external actors by law?

According to the Constitution, the Assembly of the Republic of Macedonia is independent and free from subordination to external actors. The organization and functioning of the Assembly are regulated by the Constitution and by the Rules of Procedure.<sup>75</sup> An MP's mandate cannot be revoked.

The Assembly can be dissolved when more than half the total number of MPs vote for dissolution.<sup>76</sup> Elections in such cases are to take place within 60 days of the dissolution of Parliament. No other authority can dissolve Parliament.

At the start of each Assembly session, the President of the Assembly proposes, and the Assembly votes on, the agenda.<sup>77</sup> An MP, or the Government in cases of urgent and pressing

<sup>68</sup> The Budget of the Republic of Macedonia, Official Gazette of RM, No. 180/2013, p.15.

<sup>69</sup> Interview with Marjancho Nikolov, former MP in the mandate period 2008-2011 and 2011-2014, Chair of Finance and Budget Committee and Vice-Chair of the Budget Council of the Assembly of the Republic of Macedonia, (face to face), 22 October 2014.

<sup>70</sup> Interview with Marjancho Nikolov, (face to face), 22 October 2014.

<sup>71</sup> Until June 24, 2011, NDI was implementing this project in partnership with the Institute for Parliamentary Democracy (IPD).

<sup>72</sup> Assembly of RM, *Report on the work of the Assembly of the seventh parliamentary mandate 25 June 2011– 5 March 2014*, (Skopje: Assembly of RM, 2014), p.183.

<sup>73</sup> European Commission, 2014: p.7. [http://ec.europa.eu/enlargement/pdf/key\\_documents/2014/20141008-the-former-yugoslav-republic-of-macedonia-progress-report\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2014/20141008-the-former-yugoslav-republic-of-macedonia-progress-report_en.pdf) [accessed 08 October 2014].

<sup>74</sup> Assembly of RM, 2014: pp.167–175.

<sup>75</sup> Constitution of RM, Official Gazette of RM, No. 52/1992, Article 61.

<sup>76</sup> Constitution of RM, Official Gazette of RM, No. 52/1992, Article 63.

<sup>77</sup> Rules and Procedures of the Assembly of RM, Official Gazette of RM, Nos. 91/2008, 119/2010, 130/2010, 23/2013, Article 69.



matters, may propose items for the Agenda, as well as postpone or withdraw items<sup>78</sup> after the convening of the session.<sup>79</sup>

The Assembly elects a President and one or more Vice-Presidents from the ranks of MPs by a by a majority vote of the total number of MPs.<sup>80</sup> The working bodies are elected from among MPs and are composed of at least five MPs that belong to one or more political parties.<sup>81</sup>

The police are not entitled to access the Assembly's premises without prior approval of the President of the Assembly.<sup>82</sup>

MPs are entitled to immunity.<sup>83</sup> They cannot be held to have committed a criminal offence or be detained on account of views they have expressed in the Assembly or the way they have voted in the Assembly. The Assembly decides if an MP should be stripped of his/her immunity on the basis of a report made by the Committee on Rules of Procedure and Mandatory-Immunity Issues.<sup>84</sup> An MP cannot be detained without the approval of the Assembly unless found committing a criminal offence for which a prison sentence of at least five years is prescribed. The Assembly can decide to invoke immunity for an MP without his/her request, should it be necessary for the performance of the MP's office. MPs cannot hold dual functions in other public or professional positions.<sup>85</sup>

#### 1.1.4 INDEPENDENCE (PRACTICE)

Score: **25**

##### **To what extent is the legislature free from subordination to external actors in practice?**

The independence of MP's is compromised by the electoral system in Macedonia, which grants party leaders a major role in the selection of MPs. MPs can be corralled into merely approving government policy.<sup>86</sup> The government proposes the majority of laws decided by the Assembly and MPs typically propose amendments to laws.<sup>87</sup> According to the website of the Assembly during the period 1st October to 31 December 2013, 49 (56% of 88) draft laws were determined at government meetings.<sup>88</sup> From 2011 to 2014 a total of 907 laws were adopted, of which the government proposed 888 (98%) and MPs proposed 19 (2%)<sup>89</sup>. There are no examples of the Assembly passing bills against the explicit will of the executive.

On the last Thursday of each month, MPs have the right to ask the President of the Republic, or any members of the Government or public officials, questions related to their work.<sup>90</sup> In

<sup>78</sup> Rules and Procedures of the Assembly of RM, Official Gazette of RM, No.119/2010, Article 70.

<sup>79</sup> Rules and Procedures of the Assembly of RM, Official Gazette of RM, Nos. 91/2008, 119/2010, 130/2010, 23/2013, Article 77.

<sup>80</sup> Law on the Assembly of RM, Official Gazette of RM, No. 104/2009, Article 17.

<sup>81</sup> Law on the Assembly of RM, Official Gazette of RM, No. 104/2009, Article 12.

<sup>82</sup> Law on the Assembly of RM, Official Gazette of RM, No. 104/2009, Article 43.

<sup>83</sup> Constitution of the RM, Article 17, Law on Assembly of RM, Articles 53–54, Rules of Procedure of the Assembly of RM, Article 64.

<sup>84</sup> Rules and Procedures of the Assembly of RM, Official Gazette of RM, Nos. 91/2008, 119/2010, 130/2010, 23/2013, Article 54.

<sup>85</sup> Law on the Assembly of RM, Official Gazette of RM, No. 104/2009, Article 7.

<sup>86</sup> Interview with Marjancho Nikolov, (face to face), Skopje, October 22, 2014.

<sup>87</sup> Interview with Voislav Stojanovski, PhD, Legal adviser, Helsinki Committee for Human Rights of the Republic of Macedonia, (face to face), Skopje, October 10, 2014.

<sup>88</sup> Macedonian Center for International Cooperation, *Mirror of Government, Following the openness of the drafting laws process Quarterly Report no. 1 for the period 01 October - 31 December*, (Skopje: Macedonian Center for International Cooperation, 2013).

<sup>89</sup> Assembly of RM, 2014: p.38.

<sup>90</sup> Rules and Procedures of the Assembly of RM, Official Gazette of RM, No. 91/2008, 119/2010, 130/2010, 23/2013, Article 37.

practice, MPs do question government ministers every month. Questions critical of the work of the executive do not receive adequate responses.<sup>91</sup>

The Government has persistently interfered in the activities of the Assembly. One notable example occurred on December 24, 2012, during the Assembly debate on the 2013 budget. Before the start of the session, opposition MPs were forcefully removed from the Assembly on account of their criticism of the amount of the budget and the procedure for adopting the budget. It was unclear whether special police units or the Assembly security service were responsible for the forced removal of the MPs.<sup>92</sup> The press were also removed from the Assembly. MPs adopted the Draft Budget for 2013 without the participation of opposition MPs. An ad hoc cross-party Committee of Inquiry was established by the President of the Assembly to investigate the incident; the Committee reported on 26 August 2013, noting that the Assembly lacked the capacity to handle disputes and issuing recommendations.<sup>93</sup> The working group was active until October 2013, when SDSM members suspended their participation in protest at the arrest of the chair of the Skopje Centar municipal council. As a result, the working group did not manage to complete its work on the Committee's recommendations, and in particular on changes to Parliament's rules of procedure.<sup>94</sup>

## GOVERNANCE

### 1.2.1 TRANSPARENCY (LAW)

Score: **75**

#### **To what extent are there provisions in place to ensure that the public can obtain relevant and timely information on the activities and decision-making processes of the legislature?**

The law requires the Assembly and its working bodies to provide information about their work to the public and for Assembly meetings to be open to the public.<sup>95</sup> However, the Assembly may exclude the public by a two-thirds majority vote of MPs.<sup>96</sup> Citizens and the media may also attend the sessions of the working bodies of the Assembly.<sup>97</sup> The Assembly provides information about its work, including that of working bodies and permanent delegations, to international organisations.<sup>98</sup> There are no legal restrictions on journalists reporting on the Assembly and MPs. Assembly acts, debates, discussions, official minutes and reports on the activities of working bodies must be made available to the media, unless the Assembly or a working body decides to examine an issue without the presence of the media.<sup>99</sup> The Assembly and working bodies may issue a press release once closed sessions have been held.

The Assembly operates a Parliamentary TV Channel<sup>100</sup> designed to inform and educate citizens about political life. The Assembly is required by law to operate a website containing

<sup>91</sup> Interview with Marjancho Nikolov, (face to face), Skopje, 22 October 2014.

<sup>92</sup> Helsinki Committee for Human Rights, *Special report on the 49th session of the Assembly of the RM held on 24 December 2012 - Developments in front of and inside the Assembly*, (Skopje: Helsinki Committee for Human Rights, 2013), p.14.

<sup>93</sup> <http://sds.org.mk/default.aspx?mId=55&agId=5&articleId=8530> [accessed 12 November 2014].

<sup>94</sup> European Commission, 2013: p.7. [http://ec.europa.eu/enlargement/pdf/key\\_documents/2014/20141008-the-former-yugoslav-republic-of-macedonia-progress-report\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2014/20141008-the-former-yugoslav-republic-of-macedonia-progress-report_en.pdf) [accessed 14 October 2014].

<sup>95</sup> Rules and Procedures of the Assembly of RM, Official Gazette of RM, Nos. 91/2008, 119/2010, 130/2010, 23/2013, Article 2.

<sup>96</sup> Constitution of RM, Official Gazette of RM, No. 52/ 1992, Article 70, and Rules and Procedures of the Assembly of RM, Official Gazette, Nos. 91/2008, 119/2010, 130/2010, 23/2013, Article 2.

<sup>97</sup> Rules and Procedures of the Assembly of RM, Official Gazette of RM, Nos. 91/2008, 119/2010, 130/2010, 23/2013, Article 226–227.

<sup>98</sup> Rules and Procedures of the Assembly of RM, Official Gazette of RM, Nos. 91/2008, 119/2010, 130/2010, 23/2013, Article 225.

<sup>99</sup> Rules and Procedures of the Assembly of RM, Official Gazette of RM, Nos. 91/2008, 119/2010, 130/2010, 23/2013, Article 228.

<sup>100</sup> Law on Assembly, Official Gazette of RM, No. 104/2009, Chapter IX: Parliamentary TV Channel, Article 32-35.

information on the organizational structure and work of the Assembly and its working bodies.<sup>101</sup> The Assembly is required to upload a bulletin on its work, as well as minutes and notes of sessions.<sup>102</sup> However, there is no legal requirement to publish draft laws discussed by the Assembly, though the Assembly may decide to do so if there is a special public interest.<sup>103</sup>

Voting records must be made public by use of technological devices or by raising hands,<sup>104</sup> except where secret ballots are held and the President of the Assembly announces the results and whether a proposal has been adopted or rejected.<sup>105</sup>

The Assembly provides office space for MPs to hold meetings with constituents every Friday.<sup>106</sup>

MPs are obliged to declare their assets to the State Commission for the Prevention of Corruption (SCPC) and to the Public Revenue Office (PRO). Changes in the assets of an MP or a family member must be reported to the SCPC and the PRO.<sup>107</sup> Failure to provide data or report changes, as well as the provision of incorrect data or where there are disproportionate increases in assets, may trigger a procedure to examine the MP's assets.

## 1.2.2 TRANSPARENCY (PRACTICE)

Score: **50**

To what extent can the public obtain relevant and timely information on the activities and decision-making processes of the legislature in practice?

The Assembly operates in a transparent manner. Assembly plenary and committee sessions are broadcast on the assembly television channel, although certain interlocutors refer to the fact that these sessions are held late at night when citizens cannot see them.<sup>108</sup>

The Assembly website is regularly updated with Assembly reports, including a weekly timetable of sessions, meetings and debates.<sup>109</sup> Draft agendas for Assembly sessions are promptly published on the website.<sup>110</sup> Draft laws are published on the website in a timely fashion.<sup>111</sup> The Assembly also shares information through Facebook,<sup>112</sup> Twitter<sup>113</sup> and YouTube.<sup>114</sup> In practice, although legislative sessions are generally open to the public and the media,<sup>115</sup> citizens do not have free access to the Assembly building<sup>116</sup>

<sup>101</sup> Rules and Procedures of the Assembly of RM, Official Gazette of RM, Nos. 91/2008, 119/2010, 130/2010, 23/2013, Article 233.

<sup>102</sup> Rules and Procedures of the Assembly of RM, Official Gazette of RM, Nos. 91/2008, 119/2010, 130/2010, 23/2013, Article 107, Paragraph 4.

<sup>103</sup> Rules and Procedures of the Assembly of RM, Official Gazette of RM, Nos. 91/2008, 119/2010, 130/2010, 23/2013, Article 230.

<sup>104</sup> Rules and Procedures of the Assembly of RM, Official Gazette of RM, Nos. 91/2008, 119/2010, 130/2010, 23/2013, Article 96.

<sup>105</sup> Rules and Procedures of the Assembly of RM, Official Gazette of RM, Nos. 91/2008, 119/2010, 130/2010, 23/2013, Article 103.

<sup>106</sup> Law on the Assembly, Official Gazette of RM, No. 104/2009, Article 36.

<sup>107</sup> Law on Prevention of Corruption, Official Gazette of RM, Nos. 28/2002, 46/2004, 126/2006, 10/2008, 161/2008, 145/2010, Article 34.

<sup>108</sup> Statement from a participant at the Verification workshop held on 07. 04. 2016.

<sup>109</sup> <http://www.sobranie.mk/pocetna.nspix> [accessed 22 October 2014].

<sup>110</sup> <http://www.sobranie.mk/dneven-informator.nspix> [accessed 22 October 2014].

<sup>111</sup> <http://www.sobranie.mk/materijali.nspix> [accessed 22 October 2014].

<sup>112</sup> <https://www.facebook.com/SobranieRM?fref=ts> [accessed 11 November 2014].

<sup>113</sup> <https://twitter.com/SobranieMK> [accessed 11 November 2014].

<sup>114</sup> <https://www.youtube.com/channel/UCD5qpVe9-yNv4Xu4b3EuKfW> [accessed 11 November 2014].

<sup>115</sup> Interview with Voislav Stojanovski, (face to face), Skopje, November 20, 2014.

<sup>116</sup> Statement from a participant at the Verification workshop held on 07. 04. 2016.

A survey on the work of the Assembly conducted for the period from 15 May to 15 June 2014 by the Institute for Democracy, Societas Civilis Skopje (IDSCS),<sup>117</sup> shows that 54.7% of respondents believe that lawmakers fail to inform citizens about their jobs, and that almost half of respondents (48.9%) think that their constituency MP is not available for meetings with citizens.<sup>118</sup>

The removal by force of MPs and the media during the 2013 budget debate on December 24 2012 marked a change in Assembly relations with the media and the public. A case brought by the Association of Journalists of Macedonia (AJM) to the Constitutional Court, alleging that the forced removal of journalists from the Assembly violated their freedom of expression, was dismissed. The court ruled that the journalists were asked to leave the gallery for their own safety and for the purpose of maintaining order. The AJM has referred the case to the European Court for Human Rights.

### 1.2.3 ACCOUNTABILITY (LAW)

Score: **75**

**To what extent are there provisions in place to ensure that the legislature has to report on and be answerable for its actions? Are there provisions for public consultation on relevant issues?**

According to the Constitution, the Constitutional Court checks the legislative activities of the Assembly and the President has the authority to not sign a law.<sup>119</sup> The Assembly is not obliged to consult the public in its decision-making processes. MPs enjoy immunity and cannot be prosecuted for their votes or views expressed in the Assembly.<sup>120</sup> The Assembly may organize public consultations on proposed laws, though it is not obliged to organize such consultations. Following a general debate, the Assembly may decide to task a working body with organising and timetabling a public debate on a proposed law that is of broader public interest.<sup>121</sup> The decision is to be published in a daily newspaper. The Assembly may invite experts to contribute to debates and each parliamentary group may hire external associates.<sup>122</sup> The working body will submit a report to the Assembly together with the proposed law for a second reading.<sup>123</sup>

The Constitutional Court has the right to repeal or invalidate a law if it determines that the law does not conform to the Constitution.<sup>124</sup> The decisions of the Constitutional Court are final and executive.<sup>125</sup>

MPs have the right and obligation to inform voters about the work of the Assembly.<sup>126</sup> Any person or legal entity can submit a petition or a proposal to state bodies, including the Assembly,<sup>127</sup> and is entitled to receive a response within 30 days.<sup>128</sup>

<sup>117</sup> The EU-funded project 'Parliament watch! Strengthening the political debate and deliberative discourse' conducted a national field survey about the perceptions of citizens for the work of the Assembly. The survey was conducted face to face on 1000 respondents, taking into account gender, age, ethnic, educational and spatial specifics of the population.

<sup>118</sup> <http://www.idscs.org.mk/en/running-projects/parliament-watch/519-national-survey-on-the-work-of-the-parliament-2014> [accessed 21 October 2014].

<sup>119</sup> Constitution of RM, Official Gazette of RM, No. 52/ 1992, Article 75.

<sup>120</sup> Constitution of RM, Official Gazette of RM, No. 52/ 1992, Article 64.

<sup>121</sup> Rules and Procedures of the Assembly of RM, Official Gazette of RM, No. 91/2008, 119/2010, 130/2010, 23/2013, Article 147.

<sup>122</sup> Rules and Procedures of the Assembly of RM, Official Gazette of RM, No. 91/2008, 119/2010, 130/2010, 23/2013, Article 145.

<sup>123</sup> Rules and Procedures of the Assembly of RM, Official Gazette of RM, No. 91/2008, 119/2010, 130/2010, 23/2013, Article 148.

<sup>124</sup> Constitution of RM, Official Gazette of RM, No. 52/ 1992, Article 112.

<sup>125</sup> Constitution of RM, Official Gazette of RM, No. 52/ 1992, Article 112.

<sup>126</sup> Law for the Members of Parliament, Official Gazette of RM, No 84/05, 161/2008, 51/11, 109/2014, Article 20.

<sup>127</sup> Law on Processing Petitions and Proposals, Official Gazette of RM, No. 82/2008, 13/2013, Article 1 and Article 3.

<sup>128</sup> Law on Processing Petitions and Proposals, Official Gazette of RM, No. 82/2008, 13/2013, Article 9.

## 1.2.4 ACCOUNTABILITY (PRACTICE)

Score: **50**

### To what extent do the legislature and its members report on and answer for their actions in practice?

The Assembly and its members do not effectively report on or answer for their actions in practice. Assembly debates lack substance, and official responses to petitions and enquiries are not effective.

The refusal by opposition MPs after the 2014 election to attend Assembly sessions in protest against the government further weakened the inclusive nature of Assembly work.<sup>129</sup> Since the return of the opposition to Parliament in September 2015, Assembly sessions have been notable for the lack of interaction between MPs and the poor exchange of arguments and opinions about legislative proposals.<sup>130</sup>

Working bodies may organise debates and discussions about draft laws, but overall these are not effective. The Standing Inquiry Committee on Human Rights and Freedoms held only one meeting between 2012 and 2014.

Citizens can request meetings with constituency MPs to make complaints or raise issues. However, meetings are often held on political party premises and many MPs do not have separate offices for constituency meetings.<sup>131</sup> Citizens have little or no possibility of meeting with the President of the Assembly.<sup>132</sup> There is little faith in politicians' commitment to citizens' issues and concerns.<sup>133</sup>

The immunity of MPs does not afford privileges to MPs but rather 'just gives enough space and freedom to vote and speak in the Assembly without fear'.<sup>134</sup> Between 2004 and 2014 the Assembly revoked parliamentary immunity on four occasions.<sup>135</sup>

There is a perception that the role of the Constitutional Court as a check and balance to the Assembly has weakened. Fewer judicial reviews were brought before the Court in 2014 as compared to 2013, and the Constitutional Court annulled or declared invalid fewer legal provisions and laws.<sup>136</sup>

<sup>129</sup> European Commission, 2014: p.6.

<sup>130</sup> Institute for Democracy "Societas Civilis" – Skopje (IDSCS), *Monitoring report of the quality of the Parliament's debate, Parliamentary watch -Strengthening political debate and deliberative discourse June – July 2014*. (Skopje: IDSCS, 2014). The IDSCS and the Institute for Central, Eastern Europe and Balkans (IECOB) starting from June 2014 are monitoring the quality of the debates in the Macedonian Parliament. The main findings in the first report of the monitoring of the quality of the parliament's debate in Macedonia are that in the monitoring period 19 June to 3 August 2014, which included 20 parliamentary sessions, the speeches of MPs were mostly supported with arguments.

<sup>131</sup> Interview with Marjancho Nikolov, (face to face), Skopje, October 22, 2014.

<sup>132</sup> Statement from a participant in the Verification workshop held on 07. 04. 2016.

<sup>133</sup> Interview with Marjancho Nikolov, (face to face), Skopje, October 22, 2014.

<sup>134</sup> Interview in daily newspaper *Nova Makedonija* with Osman Kadriu, law professor, Skopje, July 10, 2010. Available at: <http://novamakedonija.com.mk/NewsDetal.asp?vest=71010856167&id=9&prilog=0&setlzdanie=22030>.

<sup>135</sup> <http://www.novamakedonija.com.mk/NewsDetal.asp?vest=71010856167&id=9&setlzdanie=22030> [accessed 11 November 2014].

<sup>136</sup> Interview with Voislav Stojanovski, (face to face), Skopje, October 20, 2014.

## 1.2.5 INTEGRITY MECHANISM (LAW)

Score: **50**

### To what extent are there mechanisms in place to ensure the integrity of members of the legislature?

There are numerous legal provisions to ensure the integrity of MPs. However there is no unified written code of conduct for MPs<sup>137</sup> and there is no single independent body responsible for the ethics of MPs and the Assembly.

There are restrictions on MPs receiving gifts.<sup>138</sup> As officials, MPs may receive gifts that will become the property of the state and also may receive personal gifts up to the value of 200 euros, provided that the giver is from a foreign country, body, institution or international organization and that the gift is given as a souvenir or in solidarity or cooperation.<sup>139</sup>

The position of an MP is incompatible with the holding of other public functions or professions.<sup>140</sup> On terminating their office, MPs and other public officials are subject to post-employment restrictions preventing them from being employed for the following three years in a company over which they performed supervisory duties or established contractual relations whilst in office.<sup>141</sup>

There is a Law on Lobbying, but it places the responsibility for disclosing contacts and contents of meetings between officials and lobbyists on the lobbyists and not on MPs or other officials.<sup>142</sup> On the official side, there is only an obligation for a register of lobbyists to be kept by the Secretary-General of the Assembly.<sup>143</sup>

MPs have an obligation to declare their assets within 30 days upon taking office and also within 30 days upon the termination of their mandate. The 'Property Declaration Form' requires a detailed inventory of MPs' real estate, movable objects of greater value, stocks, claims and debts, as well as other property in their ownership, or in the ownership of their family.<sup>144</sup> The data contained in the Declarations is made publicly available, except for information protected by law.<sup>145</sup> Since 2012, officials must also make 'Statements of Interests'. The SCPC has the right to publish asset declarations and to initiate procedures for issuing fines against officials who fail to submit their asset declarations or their statements of interest.<sup>146</sup>

<sup>137</sup> GRECO, *Fourth Evaluation Round Corruption Prevention in Respect of Members of Parliament, Judges and Prosecutors, Evaluation report the Former Yugoslav Republic of Macedonia*, (Strasbourg: GRECO, 2014), pp.9

<sup>138</sup> Law on the Prevention of Conflict of Interest, Official Gazette of RM, No. 70/2007, and unified text Official Gazette 128/99, Articles 15 and 16.

<sup>139</sup> Law on Usage and Management of Assets Used and Managed by Government Bodies, Official Gazette of RM, No. 98/2008, 145/2010, 104/2013, Article 77.

<sup>140</sup> Law on the Assembly, Official Gazette of RM, No. 104/2009, Article 7, Paragraph 2.

<sup>141</sup> Law on Conflict of Interest, Official Gazette of RM, No. 70/2007, 128/99, Article 17, Paragraph 1.

<sup>142</sup> Official Gazette of the RM, No.106/08 and 135/11.

<sup>143</sup> GRECO, 2014: p.15.

<sup>144</sup> Law on the Assembly of RM, Official Gazette of RM, No. 104/2009, Article 15.

<sup>145</sup> Law on the Assembly of RM, Official Gazette of RM, No. 104/2009, Article 16.

<sup>146</sup> Law for the Prevention of Corruption, Official Gazette of RM, Nos. 28/2002, 46/2004, 126/2006, 10/2008, 161/2008, 145/2010, Article 36.

## 1.2.6 INTEGRITY MECHANISM (PRACTICE)

Score: **25**

### To what extent is the integrity of legislators ensured in practice?

The integrity of legislators is not sufficiently ensured in practice. A Code of Conduct has not yet been adopted by the Assembly, despite its adoption being a tenet of the 'March agreement'<sup>147</sup> that was made between the parties after the adoption of the report by the Inquiry Commission into the events surrounding the crisis in the Assembly during the 2013 budget debate on 24 December 2012. The Speaker of the Parliament declared that he would commit the current parliament to adopting the Code;<sup>148</sup> however, it has not yet been adopted.

MPs do not always respect the provisions contained in the Rules and Procedures of the Assembly related to conduct during Assembly sessions. For example, MPs speak and act on matters of their choosing, regardless of the topic of the Assembly session, and do not respect the rules for communicating in the Assembly.<sup>149</sup> A survey carried out by the Institute for Democracy "Societas Civilis" - Skopje (IDSCS) indicates that 52.6% of respondents believe that lawmakers use improper language in debates in some cases.

The Law on Lobbying has been criticized by civil society organizations for limiting their activities and their efforts to influence decision-making. The law has been ineffective. It was adopted in August 2008, but after seven years in operation there is still only one registered lobbyist. In GRECO's view there needs to be greater transparency over MPs' contacts with lobbyists and other third parties concerning on-going legislative proposals outside the meetings of the Assembly and its working bodies. GRECO recommends introducing rules on how MPs engage with lobbyists and other third parties who seek to influence the legislative process.<sup>150</sup>

In 2012, statements of interests of all 123 MPs were verified. A conflict of interest was discovered in four cases, involving the exercise of functions incompatible with a parliamentary mandate. In three of these cases the situation was resolved by the MP dropping the incompatible functions. In the fourth case, the MP received a warning from the SCPC for failing to stop their teaching activities at the SCPC's request. Subsequently, the dean of the institution in which the MP was teaching did not renew the MP's contract for the next academic year.<sup>151</sup> Nevertheless, in cases where the SCPC initiates misdemeanour proceedings for failure to submit asset declarations or statements of interest, the courts' weak application of the available penalties undermines its work and fails to send a sufficiently deterrent message to public officials who abuse the rules.<sup>152</sup>

There is no adequate register of gifts and hospitalities accepted by MPs, and no guidelines for MPs on giving and receiving gifts.<sup>153</sup>

<sup>147</sup> Agreement after the events of December 24.

<sup>148</sup> <http://www.independent.mk/articles/9500/Assembly+MPs+Code+of+Ethics+Has+Not+Been+Brought+Up+Yet>, [accessed 11 November 2014].

<sup>149</sup> Interview with Voislav Stojanovski, face to face, Skopje, October 20, 2014.

<sup>150</sup> GRECO, 2014: p. 56.

<sup>151</sup> GRECO, 2014: p. 17.

<sup>152</sup> European Commission, 2014: p.43.

<sup>153</sup> State Audit Office, 2012: p.5.

## ROLE

### 1.3.1 EXECUTIVE OVERSIGHT

Score: **25**

#### To what extent does the legislature provide effective oversight of the executive?

The lack of independence of the Assembly, together with its own lack of integrity, compromises the role of the Assembly in providing effective oversight of the executive. MPs are elected on the basis of party lists decided by political party leaders, which contributes to their unwillingness to hold the executive to account since a majority of MPs depend on the executive for their positions.<sup>154</sup>

The Constitution states that the Government and each of its members are accountable to the Assembly.<sup>155</sup> In principle, this is executed through the mechanisms of parliamentary questions, interpellation and dissolution of the Assembly, which automatically entails the dissolution of the Government. Parliamentary questions are ineffective; particularly since most opposition MPs were absent. The mechanism of interpellation of members of the Government or of public officials is rarely used. An interpellation may be made concerning the work of any public office holder, the Government and any of its members, as well as in relation to issues concerning the performance of state bodies.<sup>156</sup> Even when interpellations have been initiated, they have always ended unsuccessfully.<sup>157</sup>

A minimum of 20 MPs may propose the establishment of an Inquiry Committee.<sup>158</sup> Inquiry committees allow the Assembly ex-post control not only over the Government but also over other institutions. The findings of inquiry committees form the basis for proceedings to hold public office-holders to account.<sup>159</sup> The Assembly has set up a Standing Inquiry Committee for the protection of civil rights and freedoms. The Assembly has no specialized anti-corruption commission.

Inquiry Committees have been ineffective to date.<sup>160</sup> The perception is that they are set up to minimize tensions and to review situations but that their work does not result in effective changes.<sup>161</sup> The Standing Inquiry Committee for the Protection of Civil Rights and Freedoms does not have investigative or judicial functions. The Committee's findings are the basis for initiating accountability procedures for public office-holders; however, no such procedures have ever been initiated by the Committee.

A budget proposal is submitted to the Assembly after being prepared by the government. A debate is held on the draft budget and MPs have the authority to make amendments to the budget.<sup>162</sup> In practice, the Assembly does not participate in preparing the budget and MPs have no control over budget spending. The government is not obliged to report quarterly on budget spending. MPs are only informed on how the budget has been spent

<sup>154</sup> Interview with Marjancho Nikolov, (face to face), Skopje, October 22, 2014.

<sup>155</sup> Constitution of the Republic of Macedonia, Official Gazette No. 52/ 1992, Article 92.

<sup>156</sup> Constitution of the Republic of Macedonia, Official Gazette of RM, No. 52/ 1992, Article 72.

<sup>157</sup> Interview with Marjancho Nikolov, (face to face), Skopje, October 22, 2014.

<sup>158</sup> Constitution of RM, Official Gazette of RM, No. 52/1992, Article 76.

<sup>159</sup> Constitution of RM, Official Gazette of RM, No. 52/1992, Article 76.

<sup>160</sup> Open Society Foundation – Macedonia, *Parliamentary Control over the Government of the Republic of Macedonia*, (Skopje: Open Society Foundation – Macedonia, 2013), p.8.

<sup>161</sup> Interview with Marjancho Nikolov, (face to face), Skopje, October 22, 2014.

<sup>162</sup> Interview with Marjancho Nikolov, (face to face), Skopje, October 22, 2014.



after the completion of the final account. The Assembly does not have a formal procedure for reviewing the SAO's audit reports, and the interested MPs can study the SAO's reports only at the Assembly archives<sup>163</sup>.

### 1.3.2 LEGAL REFORMS

Score: **50**

#### To what extent does the legislature prioritize anti-corruption and governance as a concern in the country?

The Republic of Macedonia has an advanced legal framework for the fight against corruption. However, beyond the passing of anti-corruption legislation the Assembly has taken little interest in corruption matters. Despite the State Commission for the Prevention of Corruption having been in existence for 12 years, there has only been one Assembly debate on its annual reports. There have been no parliamentary debates on reports made by the State Audit Office, the Ombudsman or other state bodies.

The Electoral Code<sup>164</sup> has been amended to address shortcomings highlighted by the OSCE/ODIHR in relation to the financing of election campaigns, and the Criminal Code<sup>165</sup> has been amended to introduce the new criminal offence of illegal disbursement of state funds during elections. Substantial human and material resources are still needed in order for the prosecution service to ensure full implementation of the new Law on Criminal Procedure.<sup>166</sup> The Law on Management of Confiscated Assets has been extended to cover misdemeanour and administrative cases, and the rules on management of seized and confiscated assets have been refined. GRECO carried out a fourth round of evaluation in late 2013, covering corruption prevention in relation to MPs, judges and prosecutors.<sup>167</sup>

The following international legal instruments concerning corruption have been ratified: the Council of Europe's Criminal Law Convention on Corruption and the Civil Law Convention on Corruption; the Strasbourg Convention (Convention on Laundering, Search, Seizure and Confiscation of Proceeds of Crime); the UN Convention on Combating Trans-border Organized Crime and Protocols; the European Convention for Protection of Personal Data and the UN Convention on Anti-Corruption (UNCAC). The OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions has not yet been ratified.

### RECOMMENDATIONS

- R1.** The Assembly should hold to account the officials they appoint to lead anti-corruption institutions.
- R2.** The Assembly should review the implementation of international anti-corruption instruments such as UNCAC and the implementation of the national programme for the Prevention of Corruption and Conflict of Interest.

<sup>163</sup> Statement from a participant at the verification workshop held on 07. 04. 2016.

<sup>164</sup> Electoral Code, Official Gazette of RM, Nos. 40/2006, 136/2008, 148/2008, 155/2008, 63/2008, 44/11, 51/11, 142/12, 31/13, 34/13, 14/14, 196/15.

<sup>165</sup> Criminal Code, official Gazette of RM, Nos. 37/96, 80/99, 4/2002, 43/2003, 19/2004, 81/2005, 60/2006, 73/2006, 7/2008, 139/2008, 114/2009, 51/11, 135/11, 185/11, 142/12, 166/12, 55/13, 82/13, 14/14, 27/14, 28/14, 115/2014.

<sup>166</sup> European Commission, 2014: p.42.

<sup>167</sup> GRECO, 2014: p.2.



# 2. EXECUTIVE

## SUMMARY

The executive is the strongest pillar in terms of law and resources. The government is formed from a coalition of parties that have a majority in the Assembly. The government formed in June 2014 is a multi-ethnic coalition between VMRO-DPMNE<sup>168</sup> and DUI.<sup>169</sup> According to the Constitution, the executive is independent but subject to oversight by the Assembly. In practice, the Government has not been held to account due to the absence of the majority of opposition MPs as well as the control wielded over MPs by the political leadership that heads the government. There is a lack of rules to ensure the integrity of executive officials.

The legislative framework that governs policy-making responsibilities is in place. The structures and procedures that guide the executive’s role and functions are established, but there is a lack of transparency regarding the way in which the role and functions of the executive are implemented.

The executive branch is dominated by the ruling parties and executive activities are centralized. Civil servants are appointed on the basis of political connections rather than merit, and corruption is rife.

The table below presents the indicator scores summarizing the executive’s capacity, governance, and role within the Integrity system. The remainder of this chapter sets out a qualitative analysis of each indicator.

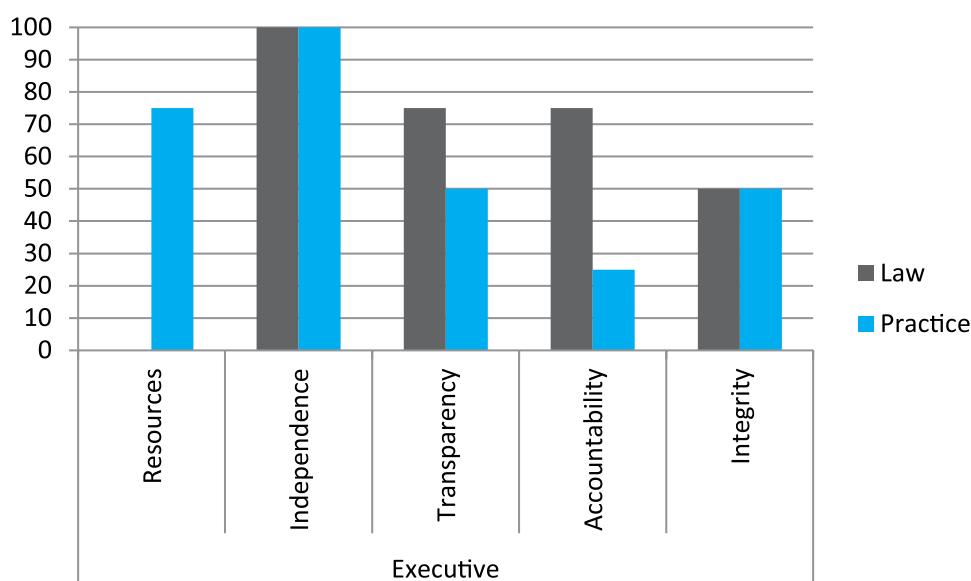
**OVERALL PILLAR SCORE: 65.2/100**

| DIMENSION                      | INDICATOR                | LAW | PRACTICE |
|--------------------------------|--------------------------|-----|----------|
| <b>Capacity</b><br>91.6/ 100   | Resources                | /   | 75       |
|                                | Independence             | 100 | 100      |
| <b>Governance</b><br>54.1/ 100 | Transparency             | 75  | 50       |
|                                | Accountability           | 75  | 25       |
|                                | Integrity                | 50  | 50       |
| <b>Role</b><br>50 / 100        | Public Sector Management |     | 50       |
|                                | Legal system             |     | 50       |

<sup>168</sup> Vnatesna Makedonska Revolucionerna Organizacija – Demokratska Partija za Makedonskoto Nacionalno Edinstvo (VMRO – DPMNE).

<sup>169</sup> Demokratska Unija za Integracija (DUI).

## Pillar score per Law and Practice



## STRUCTURE AND ORGANIZATION

Executive power is vested in the Government of the Republic of Macedonia (the Government), which is composed of the Prime Minister, four Deputy Prime Ministers and 21 Ministers. The Government is elected by a majority vote of all the members of the Assembly, and Ministers cannot be representatives in the Assembly. The President of the Republic of Macedonia appoints the Prime Minister, which appointment is subject to approval by the Assembly.

The General Secretariat (GS) is responsible for coordination, which includes preparing executive meetings, developing annual work programmes and strategic priorities, as well as monitoring and reporting on their performance, policy co-ordination, co-ordination of the Government's communication activities, and co-ordination of government relations with the Assembly, public institutions and NGOs.

Each ministry has legislative activities that are coordinated by the Secretariat for Legislation. The Secretariat provides opinions on the extent to which proposed legislation conforms with the Constitution and other laws and on the compatibility and harmonization of national legislation with the EU acquis, and advises on law-drafting techniques.

The Secretariat of European Affairs is responsible for the co-ordination of EU integration affairs. The Ministry of Finance develops the fiscal strategy, co-ordinates the preparation and monitoring of the budget, and provides opinions on fiscal impact assessments developed by the ministries. The Ministry of Information Society and Administration (MISA) is responsible for supervising the Regulatory Impact Assessments (RIAs) carried out by all ministries, or the competent ministry that should give a review of the received opinions.

The National Security Council, chaired by the President of the state, considers issues relating to the security and defence of the Republic and makes policy proposals to the Assembly and the Government in the area of national security.<sup>170</sup>

<sup>170</sup> Constitution of the Republic of Macedonia, *The President of the Republic is President of the Security Council of the Republic of Macedonia*, Article 86.

# ASSESSMENT

## CAPACITY

### 2.1.1 RESOURCES (PRACTICE)

Score: **75**

#### To what extent does the executive have adequate resources to effectively carry out its duties?

The executive has adequate human, technical and financial resources. Over the last three years the total budget of the Government and the number of employed staff has increased by over 48%.

The Government Service<sup>171</sup> is headed by a Secretary General who is assigned and dismissed by the Government.<sup>172</sup> The Government can establish permanent or temporary working bodies<sup>173</sup> as well as permanent consultative bodies to provide legal and economic advice,<sup>174</sup> and may establish an Audit committee as a permanent professional body.<sup>175</sup> The Government can form temporary bodies on specific issues.<sup>176</sup> The current executive has established six such temporary Commissions.

The executive has adequate human, technical and financial resources to fulfil its policy-making responsibilities, supported by modern information and communication technologies.<sup>177</sup> The size of the administration is larger than necessary,<sup>178</sup> in part due to party members being rewarded with public service positions, so much so that the government cannot provide decent working conditions, including desks and computers, for all staff.<sup>179</sup> There is a widely held perception that the public administration is party-affiliated and lacks transparency, and there is low confidence in the independence of state institutions.<sup>180</sup>

According to the state budget, the Government's operating costs amounted to EUR 14,592,081 in 2012, with 288 people employed,<sup>181</sup> in 2013 the total budget amounted to EUR 17,784,260, with 416 employed,<sup>182</sup> in 2014 the total budget of the General Secretariat of the Government amounted to EUR 19,661,642, with 427 employees.<sup>183</sup> Over the last three years the total budget of the Government and the number of employed staff have increased by over 48%.

<sup>171</sup> Government Decision No. 23-6094/1 on February 13, 2001, Official Gazette of the RM, No. 12/2001.

<sup>172</sup> Law on the Government of RM, Official Gazette of RM, No. 59/2000, 12/2003, 55/2005, 37/2006, 115/2007, 19/2008, 82/2008, 10/10, 51/11, 15/2013, Article 39, Paragraph 1.

<sup>173</sup> Rule of Procedure of the Government of RM, Official Gazette of the RM, No. 36/2008, Commission for Housing and Emigration Issues, Commission for Assigning Reviews Issues, Commission for Privatization Reviews and Commission for Special Production, Article 31.

<sup>174</sup> Rule of Procedure of the Government of RM, Official Gazette of the RM, No. 36/2008, Article 36.

<sup>175</sup> Rule of Procedure of the Government of RM, Official Gazette of the RM, No. 36/2008, Article 40.

<sup>176</sup> Commission for Information Technology, Commission for Fight against Illegal Production, Trafficking and Use of Drugs, Special Commission for Defining the Condition for Knowledge of Macedonian Language for Obtaining Citizenship of the Republic of Macedonia, UNESCO National Commission of the Republic of Macedonia and National Commission for the Fight Against Human Trafficking and Illegal Migration in the Republic of Macedonia.

<sup>177</sup> Interview with Magdalena, Shaldeva, independent expert and consultant (face to face), Skopje November 14, 2014.

<sup>178</sup> Maja Tomic, journalist, <http://www.utrinski.mk/?ItemID=F2821FF44E353A4A9866D6B4FDA68EEA>, [accessed 14 November 2014].

<sup>179</sup> Interview with Magdalena Shaldeva (face to face), Skopje, November 14, 2014.

<sup>180</sup> European Commission, 2014: p.8

<sup>181</sup> The Budget of the Republic of Macedonia, Official Gazette of RM, No.180/2011, p.22.

<sup>182</sup> The Budget of the Republic of Macedonia, Official Gazette of RM, No.167/2012, p.21.

<sup>183</sup> Ibid.

## 2.1.2 INDEPENDENCE (LAW)

Score: **100**

### To what extent is the executive independent by law?

The Government is independent, though it is also accountable to the Assembly in accordance with the principles of parliamentary democracy.

The President plays a ceremonial role and represents the state at official functions, but may not be involved with the day-to-day activities of the government.<sup>184</sup>

The Government is composed of the Prime Minister and ministers.<sup>185</sup> The Prime Minister is responsible for the overall organization of the executive and cooperates with other bodies, public enterprises and institutions.<sup>186</sup> The GS provides logistic and expert support to the government, ministries and other bodies of the state administration, especially concerning strategic priorities and policy analysis.<sup>187</sup> The Prime Minister is granted immunity and the Assembly decides on his or her immunity.<sup>188</sup> The office of Prime Minister or minister is incompatible with the holding of any other public office or profession.<sup>189</sup>

There are no legal provisions restricting the executive's activities in Macedonia and allowing the encroachment of other branches of government.

## 2.1.3 INDEPENDENCE (PRACTICE)

Score: **100**<sup>190</sup>

### To what extent is the executive independent in practice?

The executive is independent and even dominates governance in the Republic of Macedonia to the extent that it threatens the independence of the other two branches, i.e. the legislature and the judiciary. Many reports express concern that the executive branch controls the other two branches both directly and indirectly.<sup>191</sup> The political parties in the government have blurred the line between state and party, thus eroding trust in public institutions. There are also serious concerns about government control over public institutions and the media.<sup>192</sup>

The executive has politicized the institutions of state and interferes in decision-making processes. There is no oversight of its actions,<sup>193</sup> a failing in accountability that is exacerbated by the absence of the opposition in the Assembly. The recent accusations of the opposition

<sup>184</sup> Constitution of the Republic of Macedonia, Official Gazette of RM, No. 52/ 1992, Article 79.

<sup>185</sup> Law on the Government of RM, Official Gazette of the RM, Nos. 59/2000, 12/2003, 55/2005, 37/2006, 115/2007, 19/2008, 82/2008, 10/10, 51/11, 15/2013, Article 2.

<sup>186</sup> Law on the Government of RM, Official Gazette of the RM, Nos. 59/2000, 12/2003, 55/2005, 37/2006, 115/2007, 19/2008, 82/2008, 10/10, 51/11, 15/2013, Article 11.

<sup>187</sup> Law on the Government of RM, Official Gazette of the RM, Nos. 59/2000, 12/2003, 55/2005, 37/2006, 115/2007, 19/2008, 82/2008, 10/10, 51/11, 15/2013, Article 16.

<sup>188</sup> Constitution of RM, The Amendment XXIII, Official Gazette of the RM, No. 107/2005, Article 89.

<sup>189</sup> Constitution of the Republic of Macedonia, Official Gazette of the RM, No. 52/ 1992, Article 89.

<sup>190</sup> At an advisory meeting held on 07.10.2015, the advisory group remarked that this guiding question has no relevance in Macedonia and that this is the main reason why this indicator has a high score.

<sup>191</sup> SIGMA/OECD, "The Former Yugoslav Republic of Macedonia Assessment Report 2012", SIGMA Country Assessment Reports 2012/05, (Brussels: OECD, 2012), p.3.

<sup>192</sup> European Commission, 2014: p.5.

<sup>193</sup> Publicly revealed phone discussions on employment and decision-making processes.

that the government orchestrated a massive wiretapping of telephone communications of over 20,000 people indicates the extent of the executive's out-of-control dominance of political life in the Republic of Macedonia.<sup>194</sup> The President has not taken any action to prevent the illegal activity of the executive.

## GOVERNANCE

### 2.2.1 TRANSPARENCY (LAW)

Score: **75**

#### To what extent are there regulations in place to ensure transparency in relevant activities of the executive?

There are comprehensive legal mechanisms in place for ensuring the transparency of both the government's budget and the assets of executive officials. However, regulations concerning the transparency of the operation of the executive, such as the contents of cabinet meetings, are inadequate.

The Secretary General (SG) of the government chairs a weekly meeting of state secretaries (the "General Collegium"),<sup>195</sup> a body responsible for deciding if items submitted by ministries are ready to proceed to government sessions in which they can be voted on.<sup>196</sup> Voting in government sessions is generally public, with some issues being voted on in secret.<sup>197</sup> The SG is responsible for recording the minutes of government sessions.<sup>198</sup> Shorthand notes and tape recordings are made, except where classified information is discussed. There are regulations concerning how classified information is handled.<sup>199</sup> The minutes of the Government session are not public and only the Prime Minister may authorize the disclosure of shorthand notes and tapes.<sup>200</sup>

The Prime Minister is responsible for informing the public about the government's work and the implementation of the annual programme,<sup>201</sup> except concerning information about national security, official and business secrecy and the personal data of citizens, in accordance with the Law on Personal Data Protection.<sup>202</sup> Complaints to the Prime Minister are responded to by the office of the Prime Minister, and complaints addressed to the Government are responded to by the GS.<sup>203</sup>

The Ministry of Finance (MOF) develops the Fiscal Strategy,<sup>204</sup> co-ordinates the preparation and monitoring of the annual budget, and provides an opinion on fiscal impact assessments developed by the ministries. The budget of the Government is public and the MOF is responsible for the preparation of the state Budget and also for its submission to the

<sup>194</sup> Zoran Zaev, <http://www.slobodnaevropa.mk/content/news/26837839.html>.

<sup>195</sup> Rule of Procedure of the Government of RM, Official Gazette of the RM, No. 36/2008, Article 75, Paragraph 1.

<sup>196</sup> Rule of Procedure of the Government of RM, Official Gazette of the RM, No. 36/2008, Article 76, Paragraph 1.

<sup>197</sup> Law on the Government, Official Gazette of the RM, No. 59/2000, 12/2003, 55/2005, 37/2006, 115/2007, 19/2008, 82/2008, 10/10, 51/11, 15/2013, Article 20, paragraph (3).

<sup>198</sup> Rule of Procedure of the Government of RM, Official Gazette of the RM, No. 36/2008, Article 101, Paragraph 7.

<sup>199</sup> Rule of Procedure of the Government of RM, Official Gazette of the RM, No. 36/2008, Article 103, Paragraph 1.

<sup>200</sup> Rule of Procedure of the Government of RM, Official Gazette of the RM, No. 36/2008, Article 103, Paragraph 3.

<sup>201</sup> Rule of Procedure of the Government of RM, Official Gazette of the RM, No. 36/2008, Article 138, Paragraph 1.

<sup>202</sup> Law on the Government of RM, Official Gazette of the RM, No. 59/2000, 12/2003, 55/2005, 37/2006, 115/2007, 19/2008, 82/2008, 10/10, 51/11, 15/2013, Article 7, Paragraph 1.

<sup>203</sup> Rule and Procedure of the Government of RM, Official Gazette of the RM, No. 36/2008, Article 143.

<sup>204</sup> Budget law, Official Gazette of RM, No. 64/2005, 4/2008, 103/2008, 156/2009, 95/2010, 180/2011, 171/2012, Article 16, Paragraph 1.

Government.<sup>205</sup> Reports on the execution of the state Budget must be published on the website of the MOF on a monthly basis.<sup>206</sup> The MOF submits a report to the Government on the execution of the state budget covering its first six months, which it also publishes on the MOF website.<sup>207</sup> The state budget and its final account is adopted by Parliament and must be published in the Official Gazette.<sup>208</sup>

Executive branch officials are obliged to submit declarations of their assets to the SCPC and the Public Revenue Office, which are then made public.<sup>209</sup> Any increases in assets must also be reported.<sup>210</sup> A procedure to examine assets may be initiated against an official if s/he has failed to provide data or to submit a report on time, as well as if the data is incorrect or there is a disproportionate increase in assets.<sup>211</sup> Along with the initiation of the procedure, the PRO submits a proposal to the competent basic court for an interim measure prohibiting the official from disposing of the asset.<sup>212</sup>

## 2.2.2 TRANSPARENCY (PRACTICE)

Score: **50**

### To what extent is there transparency in relevant activities of the executive in practice?

The Government provides information on some of its activities and is active in using its website and social networks. However, only press releases and not full Government decisions or minutes from the sessions are published proactively. There is a lack of information about budget expenditure. There is a low level of transparency in the law-making process. There is no clear registry of the interests of elected and appointed officials, and this continues to hamper the effective oversight of assets and conflicts of interest.

The Government has an ambitious strategy to enhance transparency and increase the participation of the public in the policy-making process.<sup>213</sup> In practice, the Government has its own website that contains general information and on which is published every press release,<sup>214</sup> press conference,<sup>215</sup> speech,<sup>216</sup> and interview of Government members. The Government regularly posts information regarding implemented activities on social networks such as Facebook<sup>217</sup>, Twitter<sup>218</sup> and YouTube.<sup>219</sup> As part of improving service delivery, e-government and one-stop shops have been introduced.<sup>220</sup> The Government's annual

<sup>205</sup> Budget law, Official Gazette of RM, Nos. 64/2005, 4/2008, 103/2008, 156/2009, 95/2010, 180/2011, 171/2012, Article 14.

<sup>206</sup> Budget Law, Official Gazette of RM, No. 64/2005, 4/2008, 103/2008, 156/2009, 95/2010, 180/2011, 171/2012, Article 53, Paragraph 1.

<sup>207</sup> Budget law, Official Gazette of RM, Nos. 64/05, 04/08, 103/08, 4/08, 103/08, 156/09, 95/10 156/09, 95/10, 180/11 and 171/12, Article 53, Paragraph 4.

<sup>208</sup> Budget law, Official Gazette of RM, Nos. 64/2005, 4/2008, 103/2008, 156/2009, 95/2010, 180/2011, 171/2012, Article 54, Paragraph 1.

<sup>209</sup> Law on Prevention of Corruption, Official Gazette of RM, Nos. 28/2002, 46/2004, 126/2006, 10/2008, 161/2008, 145/2010, Article 33.

<sup>210</sup> Law on Prevention of Corruption, Official Gazette of RM, Nos. 28/2002, 46/2004, 126/2006, 10/2008, 161/2008, 145/2010, Article 34.

<sup>211</sup> Law on Prevention of Corruption, Official Gazette of RM, Nos. 28/2002, 46/2004, 126/2006, 10/2008, 161/2008, 145/2010, Article 36, Paragraph 3.

<sup>212</sup> Law on Prevention of Corruption, Official Gazette of RM, Nos. 28/2002, 46/2004, 126/2006, 10/2008, 161/2008, 145/2010, Article 36, Paragraph 5.

<sup>213</sup> SIGMA-OECD, *Public administration reform assessment of the Republic of Macedonia*, (Paris: SIGMA-OECD 2014), p. 4.

<sup>214</sup> <http://vlada.mk/soopstenija-blog?language=en-gb> [accessed 28 November 2014].

<sup>215</sup> <http://vlada.mk/pres-blog?language=en-gb> [accessed 28 November 2014].

<sup>216</sup> <http://vlada.mk/govori-blog?language=en-gb> [accessed 28 November 2014].

<sup>217</sup> <https://www.facebook.com/VladaMK> [accessed 28 November 2014].

<sup>218</sup> <https://twitter.com/VladaMK> [accessed 28 November 2014].

<sup>219</sup> <https://www.youtube.com/user/VladaMakedonija> [accessed 28 November 2014].

<sup>220</sup> European Commission, 2014: pp. 9.



reports and its report on its first 100 days of work are published.<sup>221</sup>

In addition, citizens are invited to submit ideas, suggestions and projects for all spheres of social life on the government website.<sup>222</sup> There are hotlines to report corruption in Customs, the Public Revenue Office, the Ministry of Transport and Communications, and the Ministry of Interior.<sup>223</sup>

In reality, however, the Government only publicly shares information that is in the interest of the Government.<sup>224</sup>

Ministers' asset declarations are not verified. TI Macedonia compared ministerial biographies with asset declarations and found that one minister stated in their biography that they were the manager of a company but did not declare this in the asset declaration they submitted to the SCPC.<sup>225</sup> The SCPC is obliged by law to take action in such cases, but refused to respond to requests for information on the case. In addition, there is no clear registry of elected and appointed officials, which hampers effective oversight of assets and conflicts of interests.<sup>226</sup> There are difficulties in tracking changes in the asset declarations of officials.<sup>227</sup>

The Government budget is prepared by the MOF and announced on its website. There is no quarterly report but only a final statement which is not published.<sup>228</sup>

The minutes of Government sessions are not public. The agenda is not published. There are press conferences after government meetings but only select information is presented.<sup>229</sup>

The Secretariat of Legislation seeks to improve legal drafting skills across the ministries. They have trained trainers in legal drafting and published two guidance documents setting out principles for the drafting of legislation and the transposition of the *acquis*.<sup>230</sup> However, there are no clear procedures regarding public participation and public debate in the policy-making and law-making processes.

Acts are often rapidly prepared by the Government and rules for preparing legislation are not always observed.<sup>231</sup> The speed with which legislation can be passed is striking: in some cases the entire policy process, from the submission of an idea to legislation and on to its adoption in the Assembly, has taken less than a month.<sup>232</sup> The Government takes advantage of invoking the short procedure for passing urgent laws in order to avoid broader public discussion.<sup>233</sup> In 2015 the Assembly adopted 4.2 laws per day of its operation.<sup>234</sup>

<sup>221</sup> <http://vlada.mk/node/9453?language=en-gb> [accessed 28 November 2014].

<sup>222</sup> <http://vlada.mk/node/23> [28 November 2014].

<sup>223</sup> <http://vlada.mk/node/138> [28 November 2014].

<sup>224</sup> Interview with Magdalena Shaldeva (face to face), Skopje, November 14, 2014.

<sup>225</sup> <http://vlada.mk/?q=node/61?language=mk> [accessed 26 January 2015].

<sup>226</sup> European Commission, 2014: pp. 42

<sup>227</sup> Interview Malinka Ristevska-Jordanova, (face to face), Skopje, November 12, 2014.

<sup>228</sup> Interview with Malinka Ristevska-Jordanova, (face to face), Skopje, November 12, 2014.

<sup>229</sup> Interview with Malinka Ristevska-Jordanova, (face to face), Skopje, November 12, 2014.

<sup>230</sup> SIGMA-OECD, 2014: pp.27

<sup>231</sup> Interview with Malinka Ristevska-Jordanova, (face to face), Skopje, November 12, 2014.

<sup>232</sup> SIGMA-OECD, 2014: p.27.

<sup>233</sup> Interview with Malinka Ristevska-Jordanova, (face to face), Skopje, November 12, 2014.

<sup>234</sup> Statement from a participant (MP) at the Verification workshop held on 07. 04. 2016.

## 2.2.3 ACCOUNTABILITY (LAW)

Score: **75**

### To what extent are there provisions in place to ensure that members of the executive have to report and be answerable for their actions?

There are adequate laws, including constitutional provisions, concerning the accountability of the executive. The Government is elected and can be dismissed by the Assembly by a majority of the total number of MPs.<sup>235</sup> There are several accountability mechanisms that make the executive accountable to the legislature, including parliamentary questions, interpellation, and a vote of no-confidence in the Government. The Parliament may set up review commissions, and there is a 'Code of Good Practice for the Participation of Civil Society in Policy-Making Processes'.<sup>236</sup> However, the Assembly does not have the capacity to ensure that the executive is answerable for its actions, and the high number of laws drafted using the short procedure prevents appropriate public debate.

The Government and each of its members are accountable to the Assembly.<sup>237</sup> A vote of no confidence in the Government may be initiated by a minimum of 20 MPs and can be adopted by a majority of all MPs. If a vote of no confidence in the Government is passed, the Government is obliged to submit its resignation.<sup>238</sup>

An official who is the subject of an interpellation may submit a written answer to the president of the Parliament within 15 days from the day of receiving the interpellation.<sup>239</sup> If the Parliament endorses the interpellation, it adopts an opinion to that effect.<sup>240</sup>

The right of MPs to ask questions of the government in the Assembly is one of their most important accountability mechanisms.<sup>241</sup> The members of the Government are obliged to give reasons for their actions and decisions.<sup>242</sup>

The Assembly may set up review commissions concerning any matter of public interest. The findings of such commissions form the basis for the initiation of proceedings to hold public officials to account.<sup>243</sup>

The participation of civil society in the law-making process is guaranteed by law.<sup>244</sup> A Code of Good Practice for the Participation of Civil Society in Policy-Making Processes was introduced in 2011,<sup>245</sup> and a second strategy for co-operation was adopted in 2012.<sup>246</sup>

Members of the executive are legally obliged to give reasons for their decisions, particularly during the law-making process. The draft regulatory impact assessment (RIA) report and

<sup>235</sup> Law on the Government of Macedonia, Official Gazette of the RM, No. 59/2000, 12/2003, 55/2005, 37/2006, 115/2007, 19/2008, 82/2008, 10/10, 51/11, 15/2013, Article 3 Paragraph 2.

<sup>236</sup> [http://www.nvosorabotka.gov.mk/sites/default/files/dokumenti/kodeks\\_na\\_dobri\\_praktikii.pdf](http://www.nvosorabotka.gov.mk/sites/default/files/dokumenti/kodeks_na_dobri_praktikii.pdf) [accessed 14 January 2015].

<sup>237</sup> Constitution of the Republic of Macedonia, and Article 4 (2), Law on the Government of RM, Article 92.

<sup>238</sup> Constitution of the Republic of Macedonia, Official Gazette of RM, No. 52/ 1992, Article 92.

<sup>239</sup> Rules and Procedure of the Assembly of RM, Official Gazette of RM, Nos. 91/2008, 119/2010, 130/2010, 23/2013, Article 46.

<sup>240</sup> Rules and Procedure of the Assembly of RM, Official Gazette of RM, No. 91/2008, 119/2010, 130/2010, 23/2013, Article 49, Paragraph 4.

<sup>241</sup> Rule and procedure of the Assembly of RM, Official Gazette of RM, No. 91/2008, 119/2010, 130/2010, 23/2013, Articles 37–44.

<sup>242</sup> Rule and procedure of the Government of RM, Official Gazette of the RM, No. 36/2008, Article 122.

<sup>243</sup> Constitution of the Republic of Macedonia, Official Gazette of RM, No. 52/ 1992, Article 76.

<sup>244</sup> SIGMA-OECD, 2014: p.12.

<sup>245</sup> Official Gazette of RM, No.99/2011.

<sup>246</sup> Government of RM, *Strategy for Cooperation of the Government with Civil Society 2012-17*, (Skopje: Government of RM, 2012).

the proposed legislation should be published on the ENER and ministry websites,<sup>247</sup> with exceptions for laws proposed using the urgent and short procedure.<sup>248</sup> Ministries can organize public debates in the course of the RIA application process and during the preparation of proposed legislation.<sup>249</sup> The announcement of a public debate should be published on the ENER and the ministry's website.

## 2.2.4 ACCOUNTABILITY (PRACTICE)

Score: **25**

### To what extent is there effective oversight of executive activities in practice?

The accountability mechanisms set out in the Constitution and the laws are not effective in practice. There is no separation of powers and the Assembly is completely dominated by the Prime Minister and his party. The Assembly does not scrutinize the actions of the executive.<sup>250</sup> In the period from September to December 2014, MPs asked 119 questions and received 94 answers.<sup>251</sup> After the return of the opposition to the Assembly, the number of parliamentary questions in the period January to December 2015 amounted to a total of 344 questions.<sup>252</sup>

The State Audit Office (SAO) audits executive bodies and its reports are subject to review by the Assembly. The Government was audited in 2012 to assess the effectiveness and efficiency of its internal controls.<sup>253</sup> Despite findings of inappropriate government expenditures<sup>254</sup> that should have been referred to the Public Prosecutor and to the SCPC, and despite the Assembly review of SAO aggregate annual reports, there is limited follow-up of SAO findings regarding individual ministries.<sup>255</sup>

The GS and the 'Unit for Cooperation with NGOs' officially co-ordinate government interaction with civil society organisations.<sup>256</sup> In practice, the Government annually allocates funds from the State Budget for financing the programme activities of CSOs. Examples of civil society participation include the establishment of a Council to promote cooperation and dialogue and to encourage the development of civil society,<sup>257</sup> including calls on civil society for contributions in preparing the Government's 2015 work programme.<sup>258</sup>

Although the ministries are obliged to publish all draft laws, in practice there are a number of legislative proposals that are not made available for public consultation.<sup>259</sup> From October 2013 to September 2014, 381 draft laws entered the Assembly for consideration, while only 201 draft laws were published on ENER in the same period.<sup>260</sup>

<sup>247</sup> Guidelines on Ministerial Procedures in the Process of Application of the Regulatory Impact, Article 17.

<sup>248</sup> Rule of procedure of the Government of RM, Official Gazette of the RM, No. 36/2008, Article 71, Paragraph 1.

<sup>249</sup> Guidelines on Ministerial Procedures in the Process of Application of the Regulatory Impact, Article 24.

<sup>250</sup> Interview with Magdalena Shaldeva (face to face), Skopje, November 14, 2014.

<sup>251</sup> <http://www.sobranie.mk/pratenicki-prashanja.nspix> [accessed 17 December 2014].

<sup>252</sup> <http://www.sobranie.mk/pratenicki-prashanja.nspix> [accessed 31 December 2015]

<sup>253</sup> No.10–110/6.

<sup>254</sup> <http://grid.mk/news/506565580/mol-k-vo-vladata-za-skandalozniot-revizorski-izveshtaj>, [accessed 21 December 2014].

<sup>255</sup> European Commission, 2014: p.9.

<sup>256</sup> <http://www.nvosorabotka.gov.mk/> [accessed 09 December 2014].

<sup>257</sup> Government of RM, Decision for establishment of Council to promote cooperation, dialogue and encourage the development of civil society, November 2014.

<sup>258</sup> Posted on: <http://www.nvosorabotka.gov.mk/>, [accessed 09 December 2014].

<sup>259</sup> Simona Ognenovska and Borjan Gjuzelov, *Mirror of the government: participation of the public in the process of preparation on law*, (Skopje, Macedonian Center for International Cooperation, 2014), p.45.

<sup>260</sup> *Ibid.*

In 2013, 155 of a total of 381 draft laws invoked the 'short procedure' and only a small number of these (32) were published on ENER.<sup>261</sup> The site is not properly updated and the public has little interest in it as a result. Those who are involved in these processes say that ENER enables laws to escape NGO scrutiny since, in order to have any influence, ENER would need to be constantly monitored.<sup>262</sup> In this regard the government does not genuinely seek to consult the public, including the business sector.<sup>263</sup>

The Government has also adopted a second action plan to achieve goals with Open Government Partnership.<sup>264</sup> The report is weak, however, as it does not give details of commitments made and does not identify areas where the Government can work to improve openness and accountability.<sup>265</sup>

Members of the executive are not held accountable for wrongdoing, and courts have been keen to uphold public officials' complaints of defamation<sup>266</sup> and to award substantial damages to senior officials.<sup>267</sup>

## 2.2.5 INTEGRITY (LAW)

Score: **50**

### To what extent are there mechanisms in place to ensure the integrity of members of the executive?

There are adequate laws promoting the integrity of officials; however, there is no mechanism to implement the laws effectively.<sup>268</sup> There is a Code of Conduct as well as anti-corruption provisions applicable to members of the Government and public officials. Government members and public officials are obliged to avoid any conflicts of interest, including arousing any suspicion of conflicts of interest.<sup>269</sup>

There are also provisions prohibiting government and public officials from receiving any gifts, services, assistance or other benefits in connection with the performance of their functions that could have an impact on their decisions.<sup>270</sup> An official is not allowed to accept gifts with a value exceeding EUR 200, or any money or securities, regardless of the amount, as well as any gold or other precious items.<sup>271</sup>

If an official is offered a gift, he/she is obliged to refuse it and to determine the identity of the offering party; if it is a gift that cannot be returned, he/she is obliged to report it to the

<sup>261</sup> Ognenovska and Gjuzelov, 2014: p.39.

<sup>262</sup> Ognenovska and Gjuzelov, 2014: p.39.

<sup>263</sup> Interview Malinka Ristevska-Jordanova, (face to face), Skopje, November 12, 2014.

<sup>264</sup> Annual report on the implementation of the Action Plan on Open Government Partnership. <http://www.opengovpartnership.org/country/macedonia> (accessed on 20 April 2015).

<sup>265</sup> Neda Korunovska, *Independent Reporting Mechanism Macedonia: Progress Report 2012–13*, (Skopje: Reactor—Research in Action, 2013).

<sup>266</sup> In the period from March 1 to June 15, 2014, the Center for Media Development followed 40 cases prosecuted in over 60 hearings in the Basic Court Skopje 2.

<sup>267</sup> Vera Koco and Margarita Caca Nikolovska, *Analysis of the provisions of the law on civil liability for insult and defamation*, (Skopje: Institute for Human Rights, 2012), p.5.

<sup>268</sup> European Commission, 2015: p.11 [http://ec.europa.eu/enlargement/pdf/key\\_documents/2015/20151110\\_report\\_the\\_former\\_yugoslav\\_republic\\_of\\_macedonia.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2015/20151110_report_the_former_yugoslav_republic_of_macedonia.pdf)

<sup>269</sup> Ethical code of members of the government of Macedonia and public officials appointed by the Government of Macedonia, (07.04.2010), Article 10.

<sup>270</sup> Ethical code of members of the government of Macedonia and public officials appointed by the Government of Macedonia, (07.04.2010), Article 13.

<sup>271</sup> Law on Prevention of Conflicts of interest, Official Gazette of RM, No. 70/2007, 144/2009, Article 15.

competent authority, to indicate any witnesses and other evidence, and within 48 hours at the latest to submit a written report of the event to the competent authority that elected or appointed him/her.<sup>272</sup> However, the rules of procedure do not provide for any entity to which an official could report the receipt of gifts and which would be competent to proceed with cases; nor indeed does it specifies the procedures by which cases should be processed.

Concerning 'revolving door' safeguards, officials are prohibited within three years after the termination of public duties, or after the termination of employment, to be employed by a company over which they had exercised supervisory functions or with which they had established a contractual relationship whilst performing their public duties.<sup>273</sup>

An official may not participate in the management or a supervisory board of a company, public enterprise, agency, fund or other organization, unless permitted by law.<sup>274</sup> However, there is an exception whereby a civil servant or a person with special duties and authorizations specified by law can be a member of the management board or the supervisory authority of a company.<sup>275</sup>

Officials are obliged to submit a statement concerning potential conflicts of interest to the SCPC within 30 days of their appointment.<sup>276</sup>

TI Macedonia has contributed to the widespread debate on recognising the role of whistleblowing in efforts to fight corruption. It also emphasised the need to introduce a law to protect persons who report wrongdoing. This issue was designated as a priority on the political agenda, and a Law for the Protection of Whistleblowers was adopted in November 2015.<sup>277</sup> This law offers extensive protection of whistle-blowers. Both public and private sector employees will have the possibility to report cases of illegal behavior to respective bodies.

## 2.2.6 INTEGRITY (PRACTICE)

Score: **50**

### To what extent is the integrity of members of the executive ensured in practice?

There is little information available about the implementation of integrity standards, except for the operation of the conflict of interest framework. Conflicts of interest of senior government officials are not adequately examined.<sup>278</sup>

There is no effective mechanism for monitoring the effectiveness of post-employment rules for government and public officials.<sup>279</sup> The SCPC is responsible for implementing the post-employment rules but has never published any information related to the issue.<sup>280</sup>

<sup>272</sup> Law on Prevention of Conflicts of interest, Official Gazette of RM, No. 144/2009, Article 16.

<sup>273</sup> Law on Prevention of Conflicts of interest, Official Gazette of RM, No. 144/2009, Article 17.

<sup>274</sup> Law on Prevention of Conflicts of interest, Official Gazette of RM, No. 144/2009, Article 18, Paragraph 1.

<sup>275</sup> Law on Prevention of Conflicts of interest, Official Gazette of RM, No. 144/2009, Article 18, Paragraph 2.

<sup>276</sup> Law on Prevention of Conflicts of Interest, Official Gazette No. 144/2009, Article 20-a.

<sup>277</sup> Law for the Protection of Whistleblowers, Official Gazette of RM, No.196/2015.

<sup>278</sup> [http://www.dksk.org.mk/index.php?option=com\\_frontpage&Itemid=1&limit=5&limitstart=5](http://www.dksk.org.mk/index.php?option=com_frontpage&Itemid=1&limit=5&limitstart=5), [accessed 28 December 2014].

<sup>279</sup> Interview Malinka Ristevska-Jordanova, (face to face), Skopje, November 12, 2014.

<sup>280</sup> Ibid.

## ROLE

### 2.3.1 PUBLIC SECTOR MANAGEMENT (LAW AND PRACTICE)

Score: **50**

#### To what extent is the executive committed to and engaged in developing a well-governed public sector?

Government ministers are bound by collective responsibility for government policies, although they are individually responsible for the conduct and performance of their own departments.<sup>281</sup> Ministers manage ministries and are responsible for the implementation of laws and other regulations.<sup>282</sup> The government supervises the work of the ministries.<sup>283</sup> The government has the duty to cancel or revoke any regulation or other ministerial or administrative act that is not in accordance with the law.<sup>284</sup>

The government must execute the decisions of the Constitutional Court in cases where the competent authorities fail to do so.<sup>285</sup> In practice, the Government exceeds the constitutional boundaries of its powers. These transgressions are difficult to prove, though the exposure of the wiretapping scandal has revealed some of the methods by which the Government is acting unconstitutionally.

The executive has mechanisms and bodies to manage the work of the civil service. Fines in the amount of EUR 1,500 to EUR 8,000 are imposed on the civil service for failure to introduce and implement standards to ensure quality in public service.<sup>286</sup> There are inadequate numbers of officials to manage and implement internal government controls.<sup>287</sup> There is insufficient monitoring of the implementation of policies.<sup>288</sup>

Ministers supervise the work of their officials; however, officials are selected on the basis of ethnical and political considerations rather than merit,<sup>289</sup> which jeopardizes their loyalty to the institutions.

### 2.3.2 LEGAL SYSTEM

Score: **50**

#### To what extent does the executive prioritise public accountability and the fight against corruption as a concern in the country?

<sup>281</sup> Law on the Government of RM, Official Gazette of the RM, Nos. 59/2000, 12/2003, 55/2005, 37/2006, 115/2007, 19/2008, 82/2008, 10/10, 51/11, 15/2013, Article 13.

<sup>282</sup> Law on the Government of RM, Official Gazette of the RM, Nos. 59/2000, 12/2003, 55/2005, 37/2006, 115/2007, 19/2008, 82/2008, 10/10, 51/11, 15/2013, Article 13.

<sup>283</sup> Law on the Government of RM, Official Gazette of the RM, No. 59/2000, 12/2003, 55/2005, 37/2006, 115/2007, 19/2008, 82/2008, 10/10, 51/11, 15/2013, Article 30, Paragraph 1.

<sup>284</sup> Ibid.

<sup>285</sup> Law on the Government of RM, Official Gazette of the RM, Nos. 59/2000, 12/2003, 55/2005, 37/2006, 115/2007, 19/2008, 82/2008, 10/10, 51/11, 15/2013, Article 37.

<sup>286</sup> Law for the introduction of quality management and a common framework for assessing the performance and providing services in the civil service, Official gazette No. 69/2013, Article 12 Paragraph 1.

<sup>287</sup> State Audit Office, *Final Report of the Auditor authorized for the Government of the Republic of Macedonia, No. 09-270/14*, (Skopje: State Audit Office, 2012).

<sup>288</sup> SIGMA-OECD, 2014: p.4.

<sup>289</sup> Interview Malinka Ristevska-Jordanova, (face to face), Skopje November 12, 2014.

The public sector is inadequately governed. Nepotism in the public sector is rife, since the ruling party has placed its own members at all levels of state-controlled institutions, a fact revealed by the transcripts of the wiretapped conversations.<sup>290</sup> The Government pledges to fight corruption but never implements any mechanisms to do so. As noted in the 2015 EC Progress Report: “more concrete results need to be seen in practice, both in terms of reduction and deterrence of corruption. The human and financial resources of the various enforcement bodies and supervisory agencies remain weak and their powers, status, independence and visibility need to be strengthened in order to engage in effective operations.”<sup>291</sup>

The latest report on the implementation of the state programme for the prevention of corruption (the anti-corruption strategy) showed that only 42% of 156 planned activities have been realized.<sup>292</sup> There is no assessment of the impact of those activities that have been implemented.

The excessive influence of the executive branch over the legislature and the judiciary has undermined government accountability by weakening the system of checks and balances. As noted in the EC Progress Report for 2015, public trust in anti-corruption bodies remains low and corruption continues to be a serious problem.<sup>293</sup> Anti-corruption legislation is simply ignored or not applied effectively.<sup>294</sup>

The latest legal and administrative reforms in the field of anti-corruption are the Electoral Code<sup>295</sup> and the Criminal Code.<sup>296</sup> The scope of the Law on Management of Confiscated Assets was extended. As noted in the GRECO Third Evaluation Round Compliance report, the current criminalization of acts of corruption largely meets the requirements of the Criminal Law Convention on Corruption.

The Law on Conflict of Interest was amended in January 2012 in response to the criticism in the EC 2010 Progress Report that interest statements are only compiled and registered but not verified.<sup>297</sup>

The European Commission plays a significant role in triggering anti-corruption reforms, which raises concerns about the durability and sustainability of anti-corruption legislation.<sup>298</sup>

## RECOMMENDATIONS

- R1.** The Government should take effective measures to provide a clear and updated list of elected and appointed officials.
- R2.** The Government should ensure effective accountability, integrity and ethical behaviour of ministers and executive officials.
- R3.** The Government should introduce citizen’s tools to provide insight into public spending and to increase the transparency of public spending.

<sup>290</sup> <http://www.balkaninsight.com/en/article/macedonia-tapes-reveal-massive-party-employment>, [accessed November 28, 2014].

<sup>291</sup> European Commission, 2014: p. 12.

<sup>292</sup> [http://dksk.org.mk/images/Drzavni\\_Programi/godisen\\_izvestaj\\_final.pdf](http://dksk.org.mk/images/Drzavni_Programi/godisen_izvestaj_final.pdf), [accessed November 28, 2014].

<sup>293</sup> European Commission, 2014: p.12.

<sup>294</sup> SIGMA-OECD, 2012: p.13.

<sup>295</sup> Electoral Code, Official Gazette of RM, Nos. 40/2006, 136/2008, 148/2008, 155/2008, 63/2008, 44/11, 51/11, 142/12, 31/13, 34/13, 14/14.

<sup>296</sup> Criminal Code, Official Gazette of RM, Nos. 37/96, 80/99, 4/2002, 43/2003, 19/2004, 81/2005, 60/2006, 73/2006, 7/2008, 139/2008, 114/2009, 51/11, 135/11, 185/11, 142/12, 166/12, 55/13, 82/13, 14/14, 27/14, 28/14, 115/2014.

<sup>297</sup> SIGMA-OECD, 2012: p.12.

<sup>298</sup> SIGMA-OECD, 2012: p.1.





# 3. JUDICIARY

## SUMMARY

The independence of the judiciary is legally guaranteed. In practice, however, the judiciary suffers from undue influence from the political leadership and the executive in criminal cases as well as in cases where the interests of the political leadership are at stake.<sup>299</sup> The selection and promotion of judges is politicized and the existing mechanisms for ensuring the transparency and impartiality of the process for selecting judges are ignored. The Judicial Council (JC) is weak and the judiciary does not ensure effective oversight of the executive branch. The Code of Judicial Ethics is not implemented and judges are not held to account.

On the positive side, the budget for the judiciary has increased significantly over recent years and judicial salaries are adequate, although the judiciary still lacks adequate infrastructure and staff. Despite the judiciary being perceived as performing well and acting independently in the majority of civil cases, the judiciary is considered to be the most corrupt branch of the government.

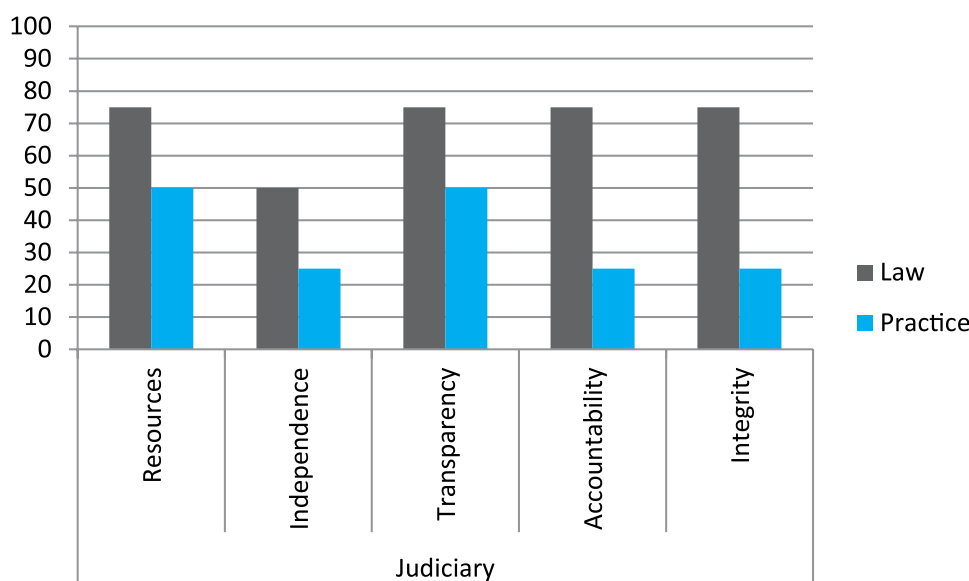
The table below sets out indicator scores that summarize the assessment of the judiciary in terms of its capacity, its internal governance, and its role within the Macedonian National Integrity System. An assessment of each indicator follows.

**OVERALL PILLAR SCORE: 51.3/100**

| DIMENSION                     | INDICATOR              | LAW | PRACTICE |
|-------------------------------|------------------------|-----|----------|
| <b>Capacity</b><br>50/100     | Resources              | 75  | 50       |
|                               | Independence           | 50  | 25       |
| <b>Governance</b><br>54,1/100 | Transparency           | 75  | 50       |
|                               | Accountability         | 75  | 25       |
|                               | Integrity              | 75  | 25       |
| <b>Role</b><br>50/100         | Executive oversight    |     | 50       |
|                               | Corruption Prosecution |     | 50       |

<sup>299</sup> Defamation law in Macedonia is notoriously vague, creating a pathway for powerful political actors to take journalists to court over investigative reporting, criticism, and unwanted comments. These have become common scare tactics used to stifle media, and particularly independent outlets such as *Fokus*, known for its critical investigative reporting on political institutions and lawmakers.

## Pillar score per Law and Practice



## STRUCTURE AND ORGANIZATION

The judiciary operates within a civil law system. There are five types of court: basic courts; courts of appeal; the Administrative Court; the Higher Administrative Court; and the Supreme Court of the Republic of Macedonia.<sup>300</sup> The Constitutional Court of the Republic of Macedonia upholds the constitution.<sup>301</sup>

There are 27 basic courts of the first instance operating in one or more municipalities, four courts of appeal,<sup>302</sup> and the Supreme Court, which is seated in the capital city of Skopje. Two of the basic courts are specialized courts. Skopje Basic Court I is a specialised criminal court in which a division was established in 2008 to adjudicate criminal offences concerning corruption and organised crime. Skopje Basic Court II is a specialised civil court. There is a separate Administrative Court, the decisions of which may be appealed to the Higher Administrative Court, and both of these courts are seated in Skopje. The Supreme Court is the highest domestic court to which matters may be appealed.

Judges, presidents of courts and lay judges are appointed and dismissed by the Judicial Council, which is also responsible for the discipline and promotion of judges. In 2015, a Council was established for establishing the facts and initiating procedures to ensure the accountability of judges (disciplinary proceedings and proceedings for unprofessional work under the law). From 2013, judges of first instance courts may only be selected from amongst graduates of the Academy for Judges and Public Prosecutors. An Association of Judges of Macedonia (AJM) represents the interests of judges and has established an Advisory Council to advise on the implementation of the Code of Judicial Ethics.

<sup>300</sup> Law on the Courts, Official Gazette of RM, No. 58/2006, 35/2008, 150/2010, (U.No.256/07, 74/08, 12/11).

<sup>301</sup> Constitution of the Republic of Macedonia, Article 108.

<sup>302</sup> In Bitola, Gostivar, Skopje and Stip.

# ASSESSMENT

## CAPACITY

### 3.1.1 RESOURCES (LAW)

Score: **75**

#### To what extent are there laws intended to ensure appropriate salaries and working conditions for the judiciary?

A law<sup>303</sup> establishes the system of judicial salaries. Judicial salaries are calculated according to type of court, judicial function, complexity of tasks, the level of responsibility of the judge, a judge's qualifications and the number of years of judicial experience.<sup>304</sup> The base salary for judges is in line with the salary of elected and nominated officials.<sup>305</sup> Judges are also entitled to benefits and reimbursements.<sup>306</sup> However, there is no adequate mechanism for securing salary adjustment with regard to inflation. Judicial salaries may only be reduced as a result of a disciplinary mechanism<sup>307</sup> and may not be reduced by law or a decision of a state authority.<sup>308</sup>

A separate law<sup>309</sup> regulates the preparation and execution of the judicial budget, as well as the procedure for the establishment and operation of the Judicial Budgetary Council (JBC). The judicial budget is a separate item of the state budget.<sup>310</sup> The judicial budget finances the Courts, the Judiciary Council and the Judicial Academy.<sup>311</sup>

The JBC consists of a president, who is also the president of the JC, and nine members.<sup>312</sup> The members of the JBC include the Minister of Justice and other high-level judiciary officials.<sup>313</sup> A decision of the JBC can be made with a majority of its members<sup>314</sup> and it drafts the judicial budget, distributes the budget, and prepares annual reports on the implementation of the budget.<sup>315</sup>

The JBC first prepares a budget proposal<sup>316</sup> in the amount of 0.8% of GDP. If the state budget needs to be rebalanced, the financial assets assigned for the judiciary cannot be decreased.<sup>317</sup> At least 2.5% of the budget must be allocated for the professional development of judges, court officers, judicial police and other court staff.<sup>318</sup> A judge has the right and

<sup>303</sup> Law on Judges' Salaries, Official Gazette of RM Nos. 110/2007, 103/2008, 161/2008, 153/2009, 67/10, 97/10, 135/11.

<sup>304</sup> Law on Judges' Salaries, Official Gazette of RM Nos. 110/2007, 103/2008, 161/2008, 153/2009, 67/10, 97/10, 135/11, Article 2 (1).

<sup>305</sup> Law on Judges' Salaries, Official Gazette of RM Nos. 110/2007, 103/2008, 161/2008, 153/2009, 67/10, 97/10, 135/11, Article 5(2).

<sup>306</sup> Law on Judges' Salaries, Official Gazette of RM Nos. 110/2007, 103/2008, 161/2008, 153/2009, 67/10, 97/10, 135/11, Article 12 (1).

<sup>307</sup> Law on Judges' Salaries, Official Gazette of RM Nos. 110/2007, 103/2008, 161/2008, 153/2009, 67/10, 97/10, 135/11, Article 2 (3).

<sup>308</sup> Law on Judges' Salaries, Official Gazette of RM Nos. 110/2007, 103/2008, 161/2008, 153/2009, 67/10, 97/10, 135/11, Article 2 (2).

<sup>309</sup> Law on Judicial Budget, Official Gazette of RM, No.60/03,37/06,103/08,145/10.

<sup>310</sup> Law on Judicial Budget, Official Gazette of RM, No.60/03,37/06,103/08,145/10, Article 108, Law on courts, Article 2.

<sup>311</sup> Law on Judicial Budget, Official Gazette of RM, No.60/03,37/06,103/08,145/10, Article 1, Paragraph 3.

<sup>312</sup> Law on Judicial Budget, Official Gazette of RM, No.60/03,37/06,103/08,145/10, Article 7.

<sup>313</sup> The President of the Supreme Court, the President of the Administrative Court, the presidents of the Courts of appeal in Skopje, Bitola, Gostivar and Stip, two Presidents from the basic courts nominated according to the Law on Courts and the Director of the Academy for Judges and Public Prosecutors.

<sup>314</sup> Law on Judicial Budget, Official Gazette of RM, No.60/03,37/06,103/08,145/10, Article 8.

<sup>315</sup> Law on Judicial Budget, Official Gazette of RM, No.60/03,37/06,103/08,145/10, Article 9.

<sup>316</sup> Law on Judicial Budget, Official Gazette of RM, No.60/03,37/06,103/08,145/10, Article 14 and 15.

<sup>317</sup> Law on Judicial Budget, Official Gazette of RM, No.60/03,37/06,103/08,145/10, Article 4.

<sup>318</sup> Ibid.

duty to undertake continuous vocational training during his/her judgeship.<sup>319</sup> The judicial academy organizes the training of judges and other justice sector officials.<sup>320</sup>

### 3.1.2 RESOURCES (PRACTICE)

Score: **50**

#### To what extent does the judiciary have adequate levels of financial resources, staffing, and infrastructure to operate effectively in practice?

During the last three years the judiciary has been adequately resourced,<sup>321</sup> albeit at a somewhat lower level than what is required, which can increase the risk of undue executive influence over the courts.<sup>322</sup> The total budget of the judiciary and the number of employed staff is variable: in 2014, for example, the budget of the judiciary was increased while the number of employees was reduced.<sup>323</sup> Gaps in financing have led to the Supreme Court not carrying out all of its legal review and supervisory functions over lower courts, and judges have not received per diem and travel expenses for attending professional meetings.<sup>324</sup>

By far the largest part of the judicial budget is spent on salaries. There are a total of 655 judges working in the courts.<sup>325</sup> The ratio of the total number of judges to the size of the population remains over 50% higher than the European average.<sup>326</sup> The salaries of the judges are adequate, though not attractive enough to retain the most highly qualified candidates.<sup>327</sup> Salary reductions as a disciplinary measure may only be imposed by the Judicial Council.<sup>328</sup>

The 2013 report of the State Audit Office (SAO) indicates that judges' accessibility to the basic tools necessary to do their job depends largely on the court.<sup>329</sup> Basic Court Skopje I, which deals with corruption and organized crime, generally does not have adequate resources and needs additional staff and modernized equipment. All basic courts lack legal advisors, dactylography, and updated legal texts, and courts are not yet fully computerized. Lay judges and experts are not paid on time.<sup>330</sup> In addition, physical access to Skopje Basic Court II, the busiest court in the country, is inadequate due to the absence of lifts and the lack of provision for people with special needs.

The initial budget for the judicial academy in 2014 was EUR 568,227,00, which was

<sup>319</sup> Law on the Courts, Official Gazette of RM, Nos. 58/2006, 35/2008, 150 /2010, (U.No.256/07, 74/08, 12/11), Article 54.

<sup>320</sup> Law on Academy for Judges and Public Prosecutors, Official Gazette of the Republic of Macedonia No. 88/2010, 166/2012, 26/2013, Article 1.

<sup>321</sup> The Budget of the Republic of Macedonia for 2012, Official Gazette of the RM, No.180/2011, p. 53; the Budget of the Republic of Macedonia for 2013, Official Gazette of the RM, No.167/2012, p.53; the Budget of the Republic of Macedonia for 2014, Official Gazette of the RM, No.180/2013, p. 59.

<sup>322</sup> Emina Nuredinovska, Marija Sazdevski, Borjan Gjuzelov, *Corruption Assessment Report for Macedonia* (Skopje: Macedonian Center for International Cooperation, 2014), p.54.

<sup>323</sup> According to the State Budget, the operating costs of the Judiciary in 2012 amounted to 30,085,502 EUR, with 2,999 employees; in 2013, the total budget was 29,583,268 EUR with 3,043 employees; and the total budget of the Judiciary for 2014 was 30,833,674 EUR with 2,965 employees.

<sup>324</sup> Interview with Milka Ristova, retired former judge of the Supreme Court in Macedonia, (face to face), Skopje, February 24, 2014.

<sup>325</sup> GRECO, 2014, published the following data: In 2012 there were 654 judges, of whom 494 judges worked at the basic courts, 103 judges at the courts of appeal, 29 judges at the Administrative Court, 12 judges at the Higher Administrative Court, and 16 judges at the Supreme Court. In addition, 1,844 lay judges have been elected to sit in court panels in the basic courts and courts of appeal (GRECO, 2014, p. 22).

<sup>326</sup> European Commission, 2014: p.41.

<sup>327</sup> Interview with Milka Ristova, retired former judge of the Supreme Court in Macedonia, (face to face), Skopje, February 24, 2014.

<sup>328</sup> Interview with Vladimir Panchevski (response to questionnaire), January 15, 2015.

<sup>329</sup> Interview with Milka Ristova, (face to face), Skopje, February 24, 2014.

<sup>330</sup> Ibid.

subsequently decreased after the budget rebalance to EUR 72,796,00.<sup>331</sup> The EC believes that the Academy budget should be increased, given its central role in improving the professionalism of the judiciary.<sup>332</sup>

The Judicial Council is responsible for compiling statistics for the judiciary.<sup>333</sup>

Modern, electronic case allocation and case management systems are gradually being installed in courts. However, there is a lack of trained staff to operate the systems.<sup>334</sup> Schedules of trials and hearings are displayed in courts.<sup>335</sup>

### 3.1.3 INDEPENDENCE (LAW)

Score: **50**

#### To what extent is the judiciary independent by law?

The Constitution guarantees the independence of the judiciary.<sup>336</sup> A decision to change the Constitution must be made by the Assembly by a two-thirds majority vote of the total number of MPs.

The JC is competent to appoint, promote, dismiss and discipline judges.<sup>337</sup> The JC selects judges for the basic courts from a ranked list of candidates provided by the judicial academy. There are different rules for the election of judges in higher courts, based on the professional qualities and reputation of candidates.<sup>338</sup> The JC elects judges by a vote of at least two thirds of the members of the JC with the right to vote.<sup>339</sup> Lay-judges are elected for a term of four years and may be re-elected.

Judges have tenure and may remain in office until they reach retirement age (64 for men, 62 for women). They may only be dismissed for reasons set out in the law (e.g. conviction for a crime, at the request of the judges themselves, or loss of ability to exercise their judicial functions)<sup>340</sup> and as a consequence of a disciplinary proceeding and/or a procedure for unprofessional conduct and bad faith in the exercise of the judicial office.<sup>341</sup> There is a right to appeal against disciplinary orders or measures made by the JC,<sup>342</sup> which appeal must be

<sup>331</sup> The Academy for Judges and Public Prosecutors, *Annual Report on the Work of the Academy for Judges and Public Prosecutors for 2014*, (Skopje: Academy for Judges and Public Prosecutors, 2014), <http://www.jpacademy.gov.mk/upload/lzvestai%20za%20Akademija/%D0%93%D0%9E%D0%94%D0%98%D0%A8%D0%95%D0%9D%20%D0%98%D0%97%D0%92%D0%95%D0%A8%D0%A2%D0%90%D0%88%202014.pdf> [accessed February 15, 2015].

<sup>332</sup> European Commission, 2014: p.41.

<sup>333</sup> Judicial Council of RM, *Report of the Judicial Council of RM for 2013*, (Skopje: Judicial Council of RM, 2014), p.20.

<sup>334</sup> Interview with Milka Ristova, (face to face), Skopje, February 24, 2015.

<sup>335</sup> <http://www.mio.gov.mk/?q=node/2045>, [accessed November 28, 2014].

<sup>336</sup> Constitution of RM, Official Gazette of RM, No. 52/ 1992, Article 98.

<sup>337</sup> Law on the Courts, Official Gazette of RM, No. 58/2006, 35/2008, 150/2010, (U.No.256/07, 74/08, 12/11), Article 41. The JC is competent for the appointment and dismissal of professional judges, lay judges and presidents of courts, monitoring and evaluating the work of judges, disciplinary measures and procedures, and the revocation of judges' immunity.

<sup>338</sup> Law on the Courts, Official Gazette of RM, No. 58/2006, 35/2008, 150/2010, (U.No.256/07, 74/08, 12/11), Article 46, and Law on Judicial Council, Official Gazette of RM, No.60/2006,150/2010,100/2011, Article 41.

<sup>339</sup> Law on Judicial Council, Official Gazette of RM, No.60/2006,150/2010,100/2011, Article 42.

<sup>340</sup> Constitution of RM, Official Gazette of RM, No. 52/ 92, Amendments to the Constitution of RM, Official Gazette of RM, No. 107/ 2005; upon the judge's request; if s/he permanently loses his/her capability of executing the judicial function, which shall be determined by the JC; if s/he fulfils the terms for retirement; if s/he has been sentenced with a final judgment for a criminal offence committed with premeditation to unconditional sentence of imprisonment of at least 6 months; and if s/he is elected or appointed to another public function, except when the judicial function is temporarily suspended under conditions determined by law. A judge may be dismissed because of a disciplinary breach that makes him/her unfit to serve as a judge as stipulated by law, or because of incompetent and unethical execution of judicial office under conditions set out by law.

<sup>341</sup> Law on Judicial Council, Official Gazette of RM, Nos. 60/2006,150/2010,100/2011, Article 53.

<sup>342</sup> Ibid.

addressed to the Council of Appeals<sup>343</sup> established by the Supreme Court and composed of nine members.<sup>344</sup> The President of the Supreme Court cannot be a member of the Council of Appeals. A decision of the Council of Appeals cannot be appealed to the Constitutional Court<sup>345</sup>.

A judge cannot be transferred against his/her will.<sup>346</sup>

The JC is composed of 15 members, of which the President of the Supreme Court and the Minister of Justice are *ex officio* members and eight members are elected by judges from their ranks.<sup>347</sup> The other five members are elected by the Assembly: more precisely, three members are elected by the Assembly and two members are nominated by the President of the RM and elected by the Assembly, one of whom must be a member of communities that do not constitute a majority in the RM.

The Venice Commission has recommended removing the Minister of Justice and the President of the Supreme Court from membership of the JC.<sup>348</sup> GRECO also recommends that the Minister of Justice should not be a member of the JC in order to strengthen the independence of the judiciary against undue political influence.<sup>349</sup> A bill has been submitted to the Assembly to amend the Constitution to this effect, which proposes replacing the two officials with two more judges, bringing the number of judges that may be elected to the JC to 10, three of whom must be from non-majority ethnic communities.<sup>350</sup> The Venice Commission has noted the inappropriateness of changing the constitution in the absence of the opposition in the Assembly, given that constitutional changes require the broadest possible support. At present, the members of the JC are elected for a term of six years with the right to one re-election. Under the 2014 draft Amendment, members of the JC would have no right to consecutive re-election.<sup>351</sup>

According to the Venice Commission, the dominance of judges in the membership of the JC creates 'a risk of corporatism' and the JC should not be insulated from external oversight. Furthermore, the Venice Commission recommends reducing the number of members of the JC.

### 3.1.4 INDEPENDENCE (PRACTICE)

Score: **25**

#### To what extent does the judiciary operate without interference from the government or other actors?

The independence of the judiciary is compromised. There is political interference in the appointment of judges as well as in the adjudication of criminal cases and cases where the

<sup>343</sup> Council for Decisions on Appeals of the Judicial Council.

<sup>344</sup> Three judges of the Supreme Court of the Republic of Macedonia, four judges of the four appellate courts, and two judges of the court in which the judge works against whom proceedings are brought.

<sup>345</sup> Law on Judicial Council, Official Gazette of RM, Nos. 60/2006,150/2010,100/2011, Article 96.

<sup>346</sup> Law on the Courts, Official Gazette of RM, Nos. 58/2006, 35/2008, 150/2010, (.No.256/07, 74/08, 12/11, Article 39 (6).

<sup>347</sup> Law on Judicial Council, Official Gazette of RM, No.60/2006,150/2010,100/2011, Article 6. Three of them must be members of communities that do not constitute a majority in the RM.

<sup>348</sup> European Commission for Democracy through Law (Venice Commission), *Opinion on the seven amendments to the constitution of FYROM, concerning, in particular, the judicial council, the competence of the constitutional court and special financial zones*, Adopted by the Venice Commission at its 100th Plenary Session (Rome: European commission, October 10–11, 2014), p.20.

<sup>349</sup> GRECO, 2014: p. 24.

<sup>350</sup> Draft amendments XXXIII, XXXIV, XXXVI, XXXVIII and XXXIX on the Constitution of the RM.

<sup>351</sup> Venice Commission, 2014, p.12.

Government's interests are at stake, such as in cases of defamation or electoral disputes.<sup>352</sup> The wiretapped conversations revealed high-level discussions about the appointment and promotion of judges, conversations in which it was revealed that the Minister of the Interior kept a list of eligible candidates for judges and issued orders about whom to promote and whom to prevent from being appointed to senior positions.<sup>353</sup>

The Judicial Council is perceived as not acting independently from executive influence.<sup>354</sup> The JC's appraisal of judicial performance is selective and the executive and political parties influence the appointment, promotion and dismissal of judges.<sup>355</sup> Political interference in the judiciary has been revealed by the publication of wiretapped telephone conversations involving politicians and the President of the JC.<sup>356</sup> The President of the Basic Court – Skopje 1 nonetheless maintains that “there is no reallocation of judges, either through promotions or demotions, as a result of the content of their decisions”.<sup>357</sup>

There is a high number of dismissals of judges. The Disciplinary Council is a body of appeal established by the Supreme Court. It is composed of three Supreme Court judges, four Appellate Courts judges and two other judges. The participation of judges in the reviewing mechanism is perceived to affect its independence, as they are seen as following the wishes of the JC rather than independently assessing the facts presented for supporting a dismissal.

One example of dismissals concerns the ‘Justicia’ case in 2014, in which the public prosecutor filed criminal charges against 14 judges of the Basic Court - Skopje 1, and against 11 judicial officers from the same court, alleging ‘abuse of power and authority’. The President of the JC announced the temporary suspension of the judges. The incident has been perceived as an example of undue external interference by the executive in judicial proceedings.<sup>358</sup>

The grounds for dismissal of judges are often not provided. In one case a judge was dismissed 17 days before his retirement.<sup>359</sup> In an interview with the author, the President of the Basic Court – Skopje 1 stated that there are no examples of judges having been suspended without reasons being given for their removal and that in only a few cases have judges been dismissed before the expiration of their mandate.<sup>360</sup>

According to the EC Progress Report 2014, judges' security of tenure needs to be safeguarded by amending the legislation related to discipline and dismissal, which is overly complex. The EC recommends addressing the poor performance of judges through remedial measures such as organisational improvements and training rather than dismissal orders or disciplinary penalties.<sup>361</sup> In fact the system for holding judges to account has been made more complex by the introduction of the ‘Council for establishing the accountability of judges’.<sup>362</sup>

<sup>352</sup> Iliina Mangova, *Is The Anticorruption Model Delivering Results in Macedonia? – Key Factors that Make a Model Successful*, (Skopje: Institute for Democracy “Societas Civilis” – Skopje (IDSCS), 2013), p. 81.

<sup>353</sup> <http://novatv.mk/index.php?navig=8&cat=18&vest=21055> [accessed 19 March 2015 ].

<sup>354</sup> Interview with Milka Ristova, (face to face), Skopje, February 24, 2014.

<sup>355</sup> Margarita Caca Nikolovska, *Analysis of the independence of the judiciary of the Republic of Macedonia – perceptions, difficulties and challenges*, (Skopje: Institute for Human Rights (IHR) - Skopje, 2013), p 146.

<sup>356</sup> Conversation between the President of the JC and the Chief of the PM Cabinet; conversation between coalition partners from the Albanian and Macedonian bloc; and also a conversation between the Minister of Interior, who emphasised the possession of a notebook with the names of persons approved as appropriate to be elected as judges; and a conversation among the UBK Director and two candidates for judges who have since been elected and now work as judges.

<sup>357</sup> Interview with Vladimir Panchevski, (response to the questionnaire), Skopje, January 15, 2015.

<sup>358</sup> Interview with Milka Ristova, (face to face), Skopje, February 24, 2014.

<sup>359</sup> The first decision was not yet final when he retired; but despite the fact that the judge had retired, waged procedure for his responsibility for unprofessional and unethical activities, and the Supreme Court has decided on the specific case. Interview with Milka Ristova, (face to face), Skopje, February 24, 2014.

<sup>360</sup> Interview with Vladimir Panchevski, (response to the questionnaire), Skopje, January 15, 2015.

<sup>361</sup> European Commission, 2014: p.39.

<sup>362</sup> Official Gazette of RM, No.20/2015.

The EC Progress Report of 2014 states that there are “questions about possible political influence over certain court proceedings”. According to a survey of judges carried out by the Institute for Human Rights, 71.5% of judges questioned stated that there is frequent or partial influence from other branches of government in the adjudication of cases. 27 judges believed such interference to be a common practice, whereas 18 judges considered this to be an exceptional occurrence.<sup>363</sup>

## GOVERNANCE

### 3.2.1 TRANSPARENCY (LAW)

Score: **75**

**To what extent are there provisions in place to ensure that the public can obtain relevant information on the activities and decision-making processes of the judiciary?**

Judges are obliged to submit asset declarations to the SCPC. These declarations are then made publicly available.<sup>364</sup>

The president of the court, or a judge assigned by the president, may provide information on the process of particular cases. Each court must post daily information setting out case numbers, the name of the presiding judge in each case, and the date, time and courtroom in which the proceeding will take place. Courts are obliged, at least once a year, to inform the public about the results of the work of the courts.<sup>365</sup>

According to the Constitution, court hearings and announcements of verdicts must be held publicly.<sup>366</sup> However, the public can be excluded in cases determined by law.<sup>367</sup> For instance, the public can be excluded from a part or the whole of a trial if exclusion is deemed necessary to maintain public order, to protect morality, to protect the personal and private life of the accused, the witness or the damaged person, or to protect the interests of a minor.<sup>368</sup> Even in proceedings where the public has been excluded from a trial, however, the verdict has to be made public. The latest amendments to the Law on Courts require that judicial decisions be published on the court’s website within two days of the decision having been signed.<sup>369</sup>

The law does not require transcripts of courtroom proceedings to be maintained. Instead of transcripts, minutes must be taken throughout the course of the courtroom proceedings, which minutes must record all the crucial issues.<sup>370</sup> Minutes are not available to the general public: only parties that participate in a case have the right to examine and make copies of the case file. Any others who desire access to the case file must seek permission from a judge, the President of the council<sup>371</sup> or the President of the court.<sup>372</sup>

The courts must establish an office of public relations which, upon the request of an interested party, may provide further information about decisions that have been published

<sup>363</sup> Nikolovska, 2014: p.137.

<sup>364</sup> Law for the Prevention of Corruption, Official Gazette of RM, Nos. 28/2002, 46/2004, 126/2006, 10/2008, 161/2008, 145/2010, Article 33.

<sup>365</sup> Law on the Courts, Official Gazette of RM, Nos. 58/2006, 35/2008, 150/2010, (U.No.256/07, 74/08, 12/11), Article 97.

<sup>366</sup> Constitution of RM, Official Gazette of RM, No. 52/ 92, Article 102.

<sup>367</sup> Constitution of RM, Official Gazette of RM, No. 52/ 92, Article 102.

<sup>368</sup> Law on Criminal Procedure, Official Gazette of RM, Nos. 15/ 97, 44, 2002, 74/ 2004, 83/ 2008, 67/ 2009, Article 382.

<sup>369</sup> Law for Amending and Supplementing the Law on Courts, Official Gazette of RM, No. 150/ 2010, Article 36.

<sup>370</sup> Rules and Procedures on Courts, Official Gazette of RM, No.66/2013, Article 191.

<sup>371</sup> In certain cases, the Judicial council consists of three or five judges

<sup>372</sup> Rules and Procedures on Courts, Official Gazette of RM, No.66/2013, Article 93.



on the court's website.<sup>373</sup> The court administration may organise larger spaces in which to accommodate public during trials that are of high public interest.<sup>374</sup>

Journalists and citizens are permitted to attend public hearings without first seeking the approval of the court. In criminal proceedings, the President of the Supreme Court decides whether visual and audio reporting and photography may be reproduced publicly by the media.<sup>375</sup>

Information on the appointment, relocation and removal of judges is not required to be made public but can be found in reports and on court websites.

### 3.2.2 TRANSPARENCY (PRACTICE)

Score: **50**

#### To what extent does the public have access to judicial information and activities in practice?

Access to court sessions is ensured in practice. Access to information is often restricted, however, and not all court judgments are published in a timely manner.

All courts publish regular reports on their activities, costs and methods of management.<sup>376</sup> All reports submitted by the courts to the Supreme Court are available on the website of the Supreme Court.<sup>377</sup> Courts publish decisions and provide statistical data.<sup>378</sup> Decisions are not always published on websites in a timely manner.<sup>379</sup> Courts have Public Relations and Media Departments and some courts also use social media such as Facebook to enable citizens to ask questions and receive answers.<sup>380</sup>

Transcripts or other confidential records of court hearings are available to the public by application in accordance with the Law on Free Access to Public Information; however, the court decides how much information will be made available in accordance with the obligations set out in the Law on Classified Data.<sup>381</sup>

Courtrooms are generally open to and able to accommodate the public and the media. Judges normally allow members of the public and the media to be present during proceedings, except when the rules state that the public should be excluded. The media must seek approval from the President of the Court to record proceedings.<sup>382</sup>

The judiciary's website is regularly updated with information on press conferences, the schedule of ongoing trials, the biographies of judges, financial reports, court statistics and anonymized final judgments.<sup>383</sup> There is a 'Questions and Answers' tool for citizens to ask questions about certain judicial procedures.<sup>384</sup> In practice, the general public is not informed about the appointment, relocation and removal of judges.<sup>385</sup>

<sup>373</sup> Rules and Procedures on Courts, Official Gazette of RM, No.66/2013, Article 102.

<sup>374</sup> Rules and Procedures on Courts, Official Gazette of RM, No.66/2013, Article 101.

<sup>375</sup> Rules and Procedures on Courts, Official Gazette of RM, No.66/2013, Article 104.

<sup>376</sup> Interview with Vladimir Panchevski, (response to the questionnaire), Skopje, January 15, 2015.

<sup>377</sup> <http://www.vrhoven.sud.mk/VSUD/MatraVSUD.nsf/PravnaPodelba.xsp> [accessed 18 March 2015].

<sup>378</sup> <http://www.osskopje1.mk/Novosti.aspx?novost=348> [accessed 16.01.2015].

<sup>379</sup> [http://www.dzlp.mk/mk/upraven\\_sud](http://www.dzlp.mk/mk/upraven_sud), <http://www.osohrid.mk/Novosti.aspx?novost=13>, [accessed 18.03.2015].

<sup>380</sup> Such as the Basic Court – Skopje 1, <https://www.facebook.com/pages/Osnoven-Sud-Skopje-1/172569432792924>. [accessed 12.03.2015].

<sup>381</sup> Interview with Vladimir Panchevski, (response to questionnaire), Skopje, January 15, 2015.

<sup>382</sup> Interview with Vladimir Panchevski, (response to questionnaire), Skopje, January 15, 2015.

<sup>383</sup> <http://www.osskopje1.mk/Novosti.aspx?novost=348> [accessed 16 January 2015].

<sup>384</sup> <http://www.osskopje1.mk/Novosti.aspx?novost=348> [accessed 16 January 2015].

<sup>385</sup> Interview with Milka Ristova, (face to face), Skopje, February 24, 2014.

### 3.2.3 ACCOUNTABILITY (LAW)

Score: **75**

#### To what extent are there provisions in place to ensure that the judiciary has to report and be answerable for its actions?

Judges are required by law to give reasons for their decisions. The legal framework is complex and contains extensive provisions regarding complaints and disciplinary sanctions against judges. Judges enjoy a high level of immunity from prosecution, which immunity extends to all types of crimes.

Every judicial decision must include details of the case, a judgment and reasoning.<sup>386</sup> Judgements without reasoning may be abolished. If more than 20% of the total number of cases resolved by a judge within a calendar year are abolished, or more than 30% of the total number of resolved cases are altered, the judge is considered to be unprofessional.<sup>387</sup> The Law on Courts also prohibits unprofessional conduct and bad faith in the exercise of the judicial function; such conduct including, for example, biased conduct of court proceedings, delay of court proceedings without justified grounds, deliberate violation of the rules for fair trials, and the public presentation of case information and data where no final decision has been taken.<sup>388</sup>

Judges are subject to sanctions under Article 359 of the Criminal Code on “Illicit enrichment and concealment of property” if they provide false or incomplete information on their asset declarations. In accordance with the Law on Courts, failure to declare assets or interests and concealment of property also constitute disciplinary violations, for which the judge may be held accountable in a disciplinary procedure. The disciplinary measures for such violations include a written notice, a public reprimand, or a salary reduction in the amount of 15% to 30% of the monthly salary of a judge for a period of one to six months.<sup>389</sup>

Judges enjoy immunity in the exercise of their judicial office.<sup>390</sup> A judge may not be held criminally accountable for an opinion held in court or a ruling. A judge may not be detained without approval of the JC, unless found perpetrating a crime that is sanctioned by a penalty of imprisonment of at least five years. A revocation of the immunity of a judge is decided following an urgent procedure by the JC with a two-thirds majority of the total number of its members. The JC may also decide to apply the immunity of a judge even when the judge has not invoked such immunity, if the JC considers this to be necessary for the execution of the judicial function.

The Law on the JC sets out two parallel procedures for establishing the liability of a judge for a disciplinary violation or for unprofessional and unethical performance in judicial office. Both procedures are initiated by a request from a member of the JC, the president of the court where the judge works, the president of a higher court, or a general session of the Supreme Court. Both procedures are urgent, confidential and conducted *in camera*. The JC may decide to conduct the procedure in open court at the request of the judge against whom the procedure is conducted. Both procedures are very similar, the only difference being that

<sup>386</sup> Law on the Courts, Official Gazette of RM, Nos. 58/2006, 35/2008, 150/2010, (U.No.256/07, 74/08, 12/11).

<sup>387</sup> Law on the Courts, Official Gazette of RM, Nos. 58/2006, 35/2008, 150/2010, (U.No.256/07, 74/08, 12/11), Article 75.

<sup>388</sup> Law on the Courts, Official Gazette of RM, Nos. 58/2006, 35/2008, 150/2010, (U.No.256/07, 74/08, 12/11), Article 75.

<sup>389</sup> Law on the Courts, Official Gazette of RM, Nos. 58/2006, 35/2008, 150/2010, (U.No.256/07, 74/08, 12/11), Article 77, Paragraph 12, and Article 78.

<sup>390</sup> Constitution of RM. Official Gazette of RM, No. 52/ 92, Article 100.

the procedure for unprofessional and unethical performance in judicial office is time-barred if more than five years have elapsed from the date on which the violation was committed. The procedure for disciplinary violation is time-barred when more than three years have elapsed since the violation was committed.

The JC is the body that is competent for disciplinary procedures against judges.<sup>391</sup> The JC establishes a Disciplinary Commission that conducts the disciplinary procedure.<sup>392</sup> The Commission gathers information and evidence and submits a proposal to the JC stating whether the disciplinary procedure should be conducted or suspended.<sup>393</sup>

If the JC decides that a procedure should be conducted, this decision is submitted to the initiator and the judge and the file are referred to the Disciplinary Commission that conducts the procedure.<sup>394</sup> The procedure can end with the suspension of the procedure, the imposition of a disciplinary measure, or the dismissal of the judge.<sup>395</sup> Judges can appeal against the decision.<sup>396</sup> The appeal is decided upon by a council established by the Supreme Court<sup>397</sup> and the final decision is posted on the JC's website.

### 3.2.4 ACCOUNTABILITY (PRACTICE)

Score: **25**

#### To what extent do members of the judiciary have to report and be answerable for their actions in practice?

Judges frequently fail to give reasons for their judgments. There are a high number of complaints about the work of judges, suggesting that it is easy to make complaints about judges. Complaints are not always handled in a transparent manner. There are concerns about political pressure exerted on the disciplinary process to dismiss certain judges.

Citizens frequently use their right to file complaints against the conduct of judges.<sup>398</sup> The Secretary-General of the JC is responsible for dealing with complaints against judges and courts by citizens and legal entities.<sup>399</sup> In 2013, out of a total of 1,061 complaints the JC found that only 41 complaints and allegations were grounded.<sup>400</sup>

Disciplinary procedures are expedited urgently and conducted in private, unless the judge who is the subject of the procedure requests that the procedure be held publicly.<sup>401</sup> The latest amendments<sup>402</sup> to the disciplinary procedure do not address the concerns expressed by GRECO<sup>403</sup> about the lack of proportionality of the Judicial Council in disciplinary procedures against judges and about the exertion of political pressure to dismiss certain judges. GRECO emphasizes that, in accordance with European standards, "judges should not be personally accountable where their decision is overruled or modified on appeal".

<sup>391</sup> Law on Judicial Council, Official Gazette of RM, No.60/2006,150/2010,100/2011, Article 56.

<sup>392</sup> Ibid.

<sup>393</sup> Law on Judicial Council, Official Gazette of RM, No.60/2006,150/2010,100/2011, Article 58.

<sup>394</sup> Details are regulated in the Rulebook for the Procedure of the Disciplinary Liability of the Judges Judicial Council, January 30, 2007.

<sup>395</sup> Judicial Council, meeting held on 31 January 2007.

<sup>396</sup> Law on the Courts, Official Gazette of RM, Nos. 58/2006, 35/2008, 150/2010, (U.No.256/07, 74/08, 12/11), Articles 74, 76, 78.

<sup>397</sup> Law on the Courts, Official Gazette of RM, No. 58/2006, 35/2008, 150/2010, (U.No.256/07, 74/08, 12/11), Article 96.

<sup>398</sup> Interview with Milka Ristova, (face to face), Skopje, February 24, 2014.

<sup>399</sup> Law on the Judicial Council, Official Gazette of RM, Nos. 60/2006,150/2010,100/2011, Article 31.

<sup>400</sup> Judicial Council of the Republic of Macedonia, 2013: pp.27–28.

<sup>401</sup> Judicial Council of RM, 2013: p.10.

<sup>402</sup> Law for Amending the Law on the Judicial Council of the Republic of Macedonia, Official Gazette of RM, No.20/2015.

<sup>403</sup> GRECO, 2014: p.2 Judicial Council of RM, 2013: p.10.

GRECO recommends (i) that disciplinary infringements applicable to judges be clearly defined and that the range of sanctions be extended to ensure better proportionality, and (ii) that the dismissal of a judge should only be possible for the most serious cases of misconduct, thereby ensuring the abolition of the possibility of dismissing a judge solely on the basis that one of his/her decisions is found to be in violation of the right to a trial within a reasonable time.<sup>404</sup> The new 'Commission for establishing the facts and initiation of procedure for accountability of judges' does not currently implement these GRECO recommendations.<sup>405</sup>

### 3.2.5 INTEGRITY MECHANISM (LAW)

Score: **75**

#### To what extent are there mechanisms in place to ensure the integrity of members of the judiciary?

There are extensive rules in place concerning the integrity of judges. The Code of Judicial Ethics does not provide clear guidance on implementing integrity measures. There are no rules to prevent judges from entering the private sector after their resignation or dismissal.

Being a judge is incompatible with performing other public functions and professions or with being a member of a political party. Political organisation and political activity in the judiciary is prohibited by Article 100 of the Constitution.<sup>406</sup>

Judges are subject to the Law on the Prevention of Corruption and the Law on Conflict of interest. Judges have an obligation to disclose their assets and to declare any changes in their assets in a timely manner.<sup>407</sup> Asset declarations are submitted to the SCPC and to the PRO. Every increase in assets, regardless of whether the change refers to the judge or to a member of his/her family, has to be reported to the SCPC and the PRO.<sup>408</sup> A procedure to examine a judge's assets may be initiated if there is a failure to provide data or to report changes in assets, or if incorrect data has been provided, or if there are disproportionate increases in property.<sup>409</sup> Judges, like other officials, are obliged to provide a statement certified by a public notary revoking bank secrecy provisions concerning all domestic and foreign bank accounts.<sup>410</sup>

The first (2006) and second (2014) Code of Judicial Ethics were adopted by the Association of Judges of Macedonia (AJM).<sup>411</sup> The Code of Judicial Ethics is a collection of ethical principles and rules of conduct that are to be respected by every member of the AJM during the execution of their function.<sup>412</sup> An Advisory Council within the AJM, at the request of judges or the AJM, advises on the implementation of the Code, including how to handle conflicts of interest and corruption.<sup>413</sup> Not all judges are members of the AJM and the Code is not binding on all

<sup>404</sup> GRECO, 2014: p.38.

<sup>405</sup> Ibid.

<sup>406</sup> Law on the Courts, Official Gazette of RM, No. 58/2006, 35/2008, 150/2010, (U.No.256/07, 74/08, 12/11), Article 52 Paragraph 6.

<sup>407</sup> Law on Prevention of Corruption, Official Gazette of RM, Nos. 28/2002, 46/2004, 126/2006, 10/2008, 161/2008, 145/2010, Article 33 – a, Paragraph 1.

<sup>408</sup> Law on Prevention of Corruption, Official Gazette of RM, Nos. 28/2002, 46/2004, 126/2006, 10/2008, 161/2008, 145/2010, Article 34.

<sup>409</sup> Law on Prevention of Corruption, Official Gazette of RM, Nos. 28/2002, 46/2004, 126/2006, 10/2008, 161/2008, 145/2010, Article 36.

<sup>410</sup> Law on Prevention of Corruption, Official Gazette of RM, Nos. 28/2002, 46/2004, 126/2006, 10/2008, 161/2008, 145/2010, Article 36.

<sup>411</sup> The Macedonian Judges Association is a non-governmental organization, of which active and retired judges in the Republic of Macedonia can become members on a voluntary basis, as can judges from the Republic of Macedonia appointed to international courts.

<sup>412</sup> <http://www.mja.org.mk/>, [accessed 16 February 2015].

<sup>413</sup> Interview with Nikolcho Nikolovski, Skopje, February 06, 2015.

judges. A unified code that applies to all judges is required. There is no clear procedure in the Code regulating the acceptance of gifts and other advantages.

Receiving gifts is regulated by several legislative acts. The Law on Courts prohibits judges from receiving gifts or other benefits related to the exercise of their judicial office,<sup>414</sup> and it is considered a disciplinary violation to receive such benefits.<sup>415</sup> The Law on the Prevention of Corruption prohibits judges from receiving gifts, as well as any promise of a gift.<sup>416</sup> However, officials can receive personal gifts up to the value of EUR 200, provided the giver is a foreign country, body or institution, or an international organization.<sup>417</sup>

There are no post-employment restrictions applicable to judges. Practitioners have confirmed<sup>418</sup> that the existing regulations do not impose any post-employment restrictions and that a judge can be appointed to any position (both in the public or private sector) after the termination of their judicial function.<sup>419</sup>

Articles 28 and 29 of the LPC oblige public officials to inform the SCPC if, after the end of their office, they undertake certain commercial activities in the field in which they used to work. The rules do not state that they are also applicable to judges, nor does the law contain any sanction in case officials do not respect these provisions.<sup>420</sup>

### 3.2.6 INTEGRITY MECHANISM (PRACTICE)

Score: **25**

#### To what extent is the integrity of members of the judiciary ensured in practice?

The integrity of the members of the judiciary is not ensured in practice.

The Code of Judicial Ethics consists of principles, but it does not provide guidance to judges.

Judges generally respect the obligation to disclose their assets,<sup>421</sup> however, there is a widespread failure to update the declarations regularly.<sup>422</sup> Declarations are published on the website of the SCPC, but there is no mechanism in place with which to accurately track the actual changes in judges' assets, especially since the website does not publish the date on which the declaration of assets was submitted or subsequently amended.<sup>423</sup> The SCPC reports that the number of cases concerning issues with judges' asset declarations and statements of conflicts of interest decreased to 31 in 2013<sup>424</sup> as compared to 71 in 2012.<sup>425</sup>

Regulations governing judicial conflicts of interest are generally adhered to in practice. Judges understand that if they do not exempt themselves from cases in which they have a conflict of interest, any verdict they reach may be abrogated on the ground of that conflict of interest.

<sup>414</sup> Law on the Courts, Official Gazette of RM, No. 58/2006, 35/2008, 150/2010, (U.No.256/07, 74/08, 12/11), Article 58.

<sup>415</sup> Law on the Courts, Official Gazette of RM, No. 58/2006, 35/2008, 150/2010, (U.No.256/07, 74/08, 12/11), Article 77.

<sup>416</sup> Law on Prevention of Corruption, Official Gazette of RM, No. 28/2002, 46/2004, 126/2006, 10/2008, 161/2008, 145/2010, Article 30.

<sup>417</sup> Law on Usage and Management of Assets Used and Managed by Government Bodies, Official Gazette of RM, No. 8/ 2005, Article 77.

<sup>418</sup> Interview with Milka Ristova, (face to face), Skopje, February 24, 2015.

<sup>419</sup> Ibid.

<sup>420</sup> Law on Prevention of Corruption, Official Gazette of RM, No. 28/2002, 46/2004, 126/2006, 10/2008, 161/2008, 145/2010, Article 29.

<sup>421</sup> Interview with Milka Ristova, (face to face), Skopje, February 24, 2015.

<sup>422</sup> Ibid.

<sup>423</sup> SCPC, [Available from [http://www.dksk.org.mk/imoti\\_2/](http://www.dksk.org.mk/imoti_2/)]

<sup>424</sup> SCPC, Annual Report for 2013, (Skopje: SCPC, 2013), p.24.

<sup>425</sup> SCPC, Annual Report for 2013, (Skopje: SCPC, 2013), p.24.

Judges themselves often request exemption from cases.<sup>426</sup>

In practice, there are not many judges who leave the judiciary for the private sector. Nevertheless, GRECO encourages the authorities to address the issue of post-employment restrictions for judges, for example by updating the Judicial Code of Ethics. However, this issue is not addressed in the new Code of Judicial Ethics adopted in December 2014.

Judges are obliged to submit statements of interest to the SCPC. In 2013, the SCPC verified statements of interest<sup>427</sup> and initiated misdemeanour proceedings against 32 judges for failure to submit statements of interest.<sup>428</sup> In only two cases did the verification process indicate that judicial interests were not compatible with the role of a judge (the two cases involved a judge of the Constitutional Court and a judge of the Court of Appeal in Bitola).<sup>429</sup>

The provisions that oblige judges to report gifts and hospitalities are not applied in practice, and judges overall do not report any gifts or hospitalities they may have received.<sup>430</sup>

Despite several changes made to the legal framework in order to increase the independence and integrity of the judiciary, there is a perception that there are high levels of corruption in the judicial system. Some 74% of citizens believe that judges are corrupt. This perception of citizens is a result of various features of the judicial system.<sup>431</sup>

## ROLE

### 3.3.1 EXECUTIVE OVERSIGHT

Score: **50**

#### To what extent does the judiciary provide effective oversight of the executive?

The Constitutional Court can repeal or invalidate any laws that it determines to be incompatible with the Constitution and can hold the President of the Republic to account.<sup>432</sup> The decisions of the Constitutional Court are final.<sup>433</sup>

The Administrative Court has jurisdiction to review the actions and decisions of the executive. However, the executive does not sufficiently respect or implement court decisions concerning the exercise of its power.

### 3.3.2 PROSECUTION OF CORRUPTION

Score: **50**

#### To what extent is the judiciary committed to fighting corruption through prosecution and other activities?

<sup>426</sup> Interview with Milka Ristova, (face to face), Skopje, February 24, 2015.

<sup>427</sup> SCPC, 2013: pp. 37–38.

<sup>428</sup> European Commission, 2014: p.42.

<sup>429</sup> SCPC, 2013: pp.37–38.

<sup>430</sup> Interview with Milka Ristova, (face to face), Skopje, February 24, 2015.

<sup>431</sup> Nuredinovska, Sazdevski, Gjuzelov, 2014: p.10.

<sup>432</sup> Constitution of RM, Official Gazette of RM, No. 52/ 1992, Article 108.

<sup>433</sup> Constitution of RM, Official Gazette of RM, No. 52/ 1992, Article 112.

The judiciary lacks a track record of handling high-level corruption cases. Greater interagency cooperation is needed to identify problem areas in anticorruption efforts.<sup>434</sup>

In 2008, a section was established within Basic Court 1 to specialize in cases concerning corruption and organised crime.<sup>435</sup> This section is competent for the following violations of the criminal code by public officials: abuse of official position and power; accepting bribes of significant value; and illegal mediation.<sup>436</sup> Skopje Basic Court 1 also has a specialized department for international legal assistance.<sup>437</sup>

According to information from Skopje Basic Court 1, in 2012 the court worked on 1,768 cases of organized crime (including 97 cases of corruption), of which 1,615 cases were concluded. From 2007 to 2013 the Department of Organized Crime in Basic Court 1 registered 866 cases of corruption, of which 466 were concluded. The EC Progress Report of 2014 notes a 50% reduction in judgments concerning corruption offences (63 compared with 123 in 2012), out of which 56 convictions for abuse of duty, and 3 for bribery.<sup>438</sup>

## RECOMMENDATIONS:

- R1.** The Judicial Council should ensure full implementation of the principle of merit-based appointment and promotion of judges in order to strengthen the independence, impartiality and integrity of the judiciary.
- R2.** A unified Code of Judicial Ethics, with guidelines for its implementation, should be developed and applied to all judges.
- R3.** Rules and procedures for judges should be established concerning the acceptance of gifts, hospitality and other advantages.

<sup>434</sup> European Commission, 2014: p.11.

<sup>435</sup> Law amending the Law on the Courts, Official Gazette of RM, No. 35/2008.

<sup>436</sup> Law on the Courts, Official Gazette of RM, Nos. 58/2006, 35/2008, 150/2010, (U.No. 256/07, 74/08, 12/11), Article 32.

<sup>437</sup> Interview with Vladimir Panchevski, (response to the questionnaire), Skopje, January 15, 2015.

<sup>438</sup> Emilija Tupandziska-Gjorgjevska, *Report on monitoring the risks of corruption and organized crime*, (Skopje: Macedonian Center for International Cooperation, 2015), p.40.





# 4. PUBLIC SECTOR

## SUMMARY

The legal framework regarding the independence, transparency, accountability and integrity of the public sector is comprehensive; however, the implementation of this framework is weak. The existing laws and bodies set up to ensure ethical behaviour on the part of public sector employees are not effective. These include various codes of conduct, gift and hospitality regulations, post-employment restrictions, conflict of interest policies and integrity bodies. Provisions are applied selectively.

The state is the largest single employer in Macedonia, primarily due to a lack of job opportunities in the private sector. The Government’s practice of creating new posts for socially disadvantaged people, as well as rewarding its political party members with public sector positions, has artificially inflated the size of the public service. Employment on the basis of political membership is considered a normal practice in the country. There is no state institution that addresses the issue of the party-political domination of the public sector. The current funds for the public service are not in accordance with requirements.

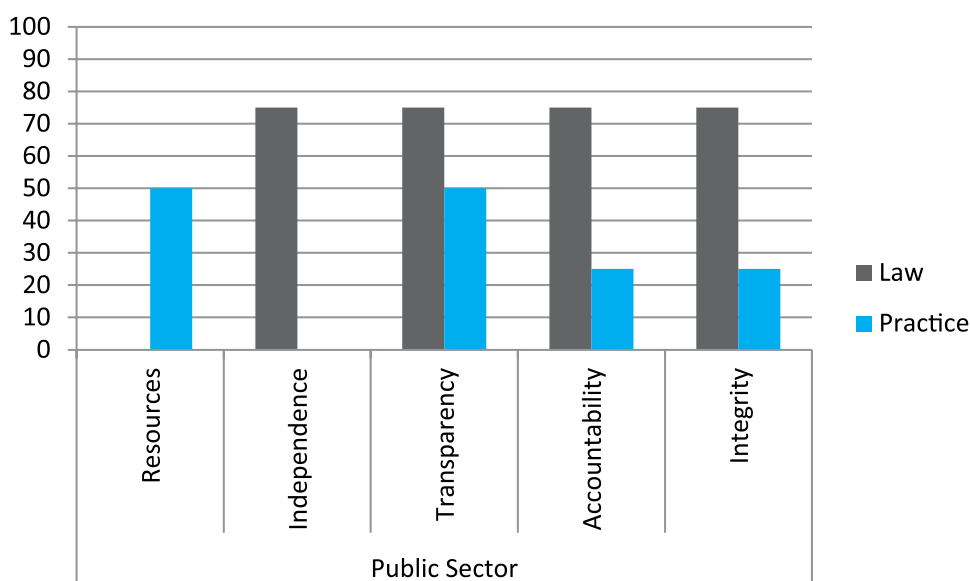
There are no procedures to supervise the implementation of contracts awarded under public procurement processes.

**OVERALL PILLAR SCORE:**



| DIMENSION                       | INDICATOR  | LAW | PRACTICE |
|---------------------------------|--|-----|----------|
| <b>Capacity</b><br>41.6 / 100   | Resources  | /   | 50       |
|                                 | Independence   | 75  | 0        |
| <b>Governance</b><br>54.1 / 100 | Transparency   | 75  | 50       |
|                                 | Accountability   | 75  | 25       |
|                                 | Integrity  | 75  | 25       |
| <b>Role</b><br>31.25 / 100      | Public education   |     | 25       |
|                                 | Cooperate with the public institutions, CSOs and private agencies in preventing/ addressing corruption |     | 25       |
|                                 | Reduce corruption risks by safeguarding integrity in public procurement                                |     | 50       |
|                                 | Oversight of SOEs  |     | 25       |

## Pillar score per Law and Practice



## STRUCTURE AND ORGANISATION

At the time of preparing this analysis, the legal framework for public service is based on two main laws: the Law on Civil Servants<sup>439</sup> and the Law on Public Servants.<sup>440</sup> The term 'public administration' has a broader scope than 'state administration'. The public administration includes employees and institutions in the field of education, health, culture, science, and welfare activities.

In February 2014, the Law on Administrative Servants (LAS) and the Law on Public Sector Employees (LPSE) were introduced. The LAS elaborated the procedures for filling new jobs through employment, promotion and mobility based on the principles of expertise, competence, equal approach and transparency. The LAS obliges public servants to undertake generic and specialized training, and also introduces the concept of mentorship and a performance management system.

The Ministry of Information Society and Administration (MISA) is responsible for the coordination of public administration reform; however, its coordination is weak.<sup>441</sup> The Agency for Administration, which is responsible for the implementation of civil/public service legislation, is an autonomous state body accountable to the Assembly.

Rules on conflicts of interest are found in Codes of Ethics for Civil/Public Servants as well as in the Law on Prevention of Conflicts of Interest, the Law on Prevention of Corruption and the Law on the Usage and Disposal of Items in State Ownership.<sup>442</sup>

<sup>439</sup> Official Gazette of RM, Nos. 59/2000, 112/2000, 34/2001, 103/2001, 43/2002, 98/2002, 17/2003, 40/2003, 85/2003, 17/2004, 69/2004, 81/2005, 61/2006, 36/2007, 161/2008, 6/2009, 114/2009, 35/10, 167/10, 36/11, 6/12, 24/12, 15/13, 82/13, 106/2013), Article 3.

<sup>440</sup> Law on Public Servants, Official Gazette of the RM, Nos. 52/2010, 36/2011, 6/2012, 24/2012, 15/2013, 82/2013, 106/2013 and 132/2014.

<sup>441</sup> European Commission, 2015: p.11.

<sup>442</sup> Law on the Usage and Management of Assets Used and Managed by Government Bodies, Official Gazette of RM, Nos. 98/2008, 145/2010, 104/2013.

# ASSESSMENT

## CAPACITY

### 4.1.1 RESOURCES (PRACTICE)

Score: **50**

#### To what extent does the public sector have adequate resources to carry out its duties effectively?

In the past five years the Government has introduced four packages of anti-crisis measures for the public sector.<sup>443</sup> In 2014 the Government introduced a temporary ban on new positions in the state administration and public sector, and this ban is still in force.<sup>444</sup> The Government also prohibited the filling of vacancies arising due to retirement in order to make savings in the State Budget.<sup>445</sup> Exceptions to the ban are positions related to the National Programme for the Adoption of EU Legislation and commitments concerning the employment of members of non-majority communities made under the Ohrid Framework.<sup>446</sup> In reality, however, the number of public servant positions has continued to increase.<sup>447</sup> Restrictions were imposed on salary increases and expenditures were reduced.<sup>448</sup> There is a prohibition on the procurement of items such as furniture, equipment and vehicles, and a decrease in the number of official trips.

The funds for the public service are not defined by its needs and its functions, but rather the needs of political parties to employ their members.<sup>449</sup>

In November 2014, the members of the administration received a 4% increase in salaries, made possible by a law adopted through the short procedure which enables the executive to bypass consultations on the issue. The 2015 State Budget is the largest budget to have been passed to date (EUR 3 billion).<sup>450</sup>

The state is the largest employer mainly on account of a lack of opportunities for employment in the private sector.<sup>451</sup> The Government's practice of creating new posts for socially disadvantaged people and employments on political grounds has artificially inflated the public service.

The MISA is responsible for improving human resources management. In a survey conducted by MISA to measure employees' engagement and satisfaction in 85 state institutions, to which more than 80% of civil/public servants responded, the results were found to be in line with the international average level of satisfaction in the state administration.<sup>452</sup>

<sup>443</sup> <http://arhiva.vlada.mk/?q=node/2749> [accessed on November 25, 2014].

<sup>444</sup> Ibid.

<sup>445</sup> Ibid.

<sup>446</sup> Ibid.

<sup>447</sup> <http://prijava.aa.mk/default.aspx> [accessed on November 25, 2014].

<sup>448</sup> <http://arhiva.vlada.mk/?q=node/2749> [accessed on November 25, 2014].

<sup>449</sup> Interview with Malinka Ristevska Jordanova, Director of the European Policy Institute, former state advisor in the Secretariat for European Affairs, 19.12.2014 (face to face).

<sup>450</sup> [http://faktor.mk/archives/123155?utm\\_source=rss&utm\\_medium=rss&utm\\_campaign=budzet-2015-zgolemenite-plati-i-penzii-nabildaa-budzet-od-3-milijardi-evra](http://faktor.mk/archives/123155?utm_source=rss&utm_medium=rss&utm_campaign=budzet-2015-zgolemenite-plati-i-penzii-nabildaa-budzet-od-3-milijardi-evra) [accessed on November 25, 2014].

<sup>451</sup> <http://www.makdenes.org/content/article/25207114.html>, The State is the Biggest Employer [accessed on November 24, 2014].

<sup>452</sup> Sigma/OECD, *Assessment 2013*, (Brussels: Sigma/OECD, 2013), p. 11. [http://www.sigmaxweb.org/publicationsdocuments/FYROMAssessment\\_2013.pdf](http://www.sigmaxweb.org/publicationsdocuments/FYROMAssessment_2013.pdf) [accessed December 23, 2014].

## 4.1.2 INDEPENDENCE (LAW)

Score: **75**

### To what extent is the independence of the public sector safeguarded by law?

There are detailed procedures for employing public servants in accordance with a transparent process based on applicants' professionalism and competency. These procedures also require that the employment processes for public sector employees respect the principle of equitable representation of ethnic community members.<sup>453</sup>

Public sector employees are obliged to perform their activities conscientiously, professionally and efficiently in an orderly and timely manner in accordance with the Constitution and law.<sup>454</sup> Civil/public servants are obliged to perform their jobs impartially, without being influenced by political parties, their own political beliefs or personal financial interests, and are obliged to protect the reputation of the public sector.<sup>455</sup> Public sector employees may not participate in election campaigns or in other public events of a similar nature during office hours, nor is it allowed for them to wear or place symbols of a political party in their offices.<sup>456</sup>

Public servants may be disciplined for any failure to follow these rules by the disciplinary commission that is formed by the manager or secretary of the institution. They have a right to file an appeal<sup>457</sup> before a competent court, trade union or other competent body.<sup>458</sup>

The Civil Service body, the AA, decides upon appeals and complaints of civil/public servants as a second instance body, and performs other activities determined by law.<sup>459</sup>

## 4.1.3 INDEPENDENCE (PRACTICE)

Score: **0**

### To what extent is the public sector free from external interference in its activities?

The politicization of the public sector is a serious concern.<sup>460</sup> Public servants are frequently demoted, especially after a change in government.<sup>461</sup> Public servants are often re-assigned to positions of lower rank and responsibility, freeing the higher positions for other public

<sup>453</sup> Law on Civil Servants, Official Gazette of the RM, Nos. 59/2000, 112/2000, 34/2001, 103/2001, 43/2002, 98/2002, 17/2003, 40/2003, 85/2003, 17/2004, 69/2004, 81/2005, 61/2006, 36/2007, 161/2008, 06/2009, 114/2009, 35/2010, 167/2010, 36/2011, 6/2012, 24/2012, 15/2013, 82/2013, 106/2013 and 132/2014, as well as Constitutional Court decisions; Law on Public Servants Official Gazette of RM, No. 52/2010, 36/2011, 6/2012, 24/2012, 15/2013, 82/2013, 106/2013 and 132/2014. Decisions of the Constitutional Court of the Republic of Macedonia, U. no. 83/2010 of 8 June 2011, published in the Official Gazette of RM, No 86/2011; U. no. 77/2011 of 2 September 2011, published in the Official Gazette of RM, No 132/2011; U. no. 184/2011 of 15 February 2012, published in the Official Gazette of RM, No. 27/2012, U. no. 221/2011 of 11 March 2012, published in the Official Gazette of RM, No. 53/2012; U. no. 42/2012 of 9 May 2013, published in the Official Gazette of RM, No. 70/2013, U. no. 55/2012 of 24 April 2013, published in the "Official Gazette of the Republic of Macedonia" no. 75/2013 and U. no. 63/2013 of 8 October 2014, published in the "Official Gazette of the Republic of Macedonia" no. 156/2014.

<sup>454</sup> Ibid.

<sup>455</sup> Code of Ethics of Civil Servants, Official Gazette of RM, No. 59/2000, 112/2000, 34/2001, 103/2001, 43/2002, 98/2002, 17/2003, 40/2003, 85/2003, 17/2004, 69/2004, 81/2005, 61/2006, 36/2007, 161/2008, 06/2009, 114/2009, 35/2010, 167/2010, 36/2011, 6/2012, 24/2012, 15/2013, 82/2013, 106/2013 and 132/2014, as well as Constitutional Court decisions; Code of Ethics of Public Servants (Official Gazette of RM, No. 133/2011, 139/2011)

<sup>456</sup> Ibid.

<sup>457</sup> Ibid.

<sup>458</sup> Ibid.

<sup>459</sup> Ibid.

<sup>460</sup> European Commission, 2014: p.7.

<sup>461</sup> Sigma/OECD, *Public Service and the Administrative Framework Assessment*, (Brussels: Sigma/OECD, 2008).

servants to fill through “re-assignments”.<sup>462</sup> The law enabling demotions in certain situations is abused.<sup>463</sup> Although the possibility of such demotions are provided for by law, it is only in specific situations that they are permissible (for example, in the case of an “unsatisfactory” rating in a performance appraisal or as a result of organisational changes involving cuts in positions).

There are no institutions dedicated to safeguarding the public sector from political interference. Employment on the basis of political membership is considered a “normal” practice.<sup>464</sup> The Ombudsman has on occasion addressed the issue of the politicization of the public sector through its reports and by making recommendations, though these recommendations are not acted upon.<sup>465</sup> Neither the President, the Assembly nor the MISA have addressed this issue.<sup>466</sup>

Appointments are made on the basis of lists of party members prepared by the ruling political parties without taking into consideration the qualifications and competencies of the candidates. Members of political parties pass civil service exams with maximum scores and committees for selecting public servants award maximum points to interviewed candidates, giving those candidates high rankings in the list of people eligible for appointment to public sector positions.<sup>467</sup>

The obligation to ensure equal representation of the various minority groups in the public sector also enables partial recruitment practices. The political parties representing such minorities have always been a part of coalition governments.<sup>468</sup> The Secretariat for the Implementation of the Ohrid Framework Agreement (SIOFA) is responsible for the management of a budgetary sub-programme (K-5) aimed at the recruitment of civil/public servants from minority groups. Numerous members of various minorities have been recruited by the SIOFA under this programme.<sup>469</sup> Selected candidates have since been transferred to the ministries or state organizations while the real staffing needs of institutions have not been taken into account.<sup>470</sup>

In 2000, the Civil Servants Agency (the AA) was established as an autonomous state body accountable to the Assembly. As an independent body it should protect the interests of the public service. However since MISA took responsibility for the coordination of public administration reform, the AA's independence has been weakened and it does not protect the interests of the public service.<sup>471</sup> MISA has been criticised for ineffectiveness and there are doubts as to whether it will effectively coordinate the public administration and push through public administration reform.<sup>472</sup>

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<sup>462</sup> Ibid.

<sup>463</sup> Sigma/OECD, *Public Service and the Administrative Framework Assessment*, (Brussels: Sigma/OECD, 2008).

<sup>464</sup> Annex 2: Institution: Public Administration, National Integrity System Assessment.

<sup>465</sup> Interview with Malinka Ristevska Jordanova, Director of the European Policy Institute, former state advisor in the Secretariat for European Affairs, 19.12.2014 (face to face) and Dragi Celevski, state advisor in the Ombudsman's Office 19.12.2014 (face to face); Ljupco Farmakoski, former state advisor in the Ministry of Information Society and Administration, interview by e-mail (24.12.2014).

<sup>466</sup> Ibid.

<sup>467</sup> Interview with Ljupco Farmakoski, former state advisor in the Ministry of Information Society and Administration, interview by e-mail (24.12.2014).

<sup>468</sup> Sigma/OECD, *Public Service and the Administrative Framework Assessment*, (Sigma/OECD, 2008).

<sup>469</sup> Ibid.

<sup>470</sup> European Commission, 2014: p.8.

<sup>471</sup> Interview with Malinka Ristevska Jordanova, Director of the European Policy Institute, former state advisor in the Secretariat for European Affairs, 19.12.2014 (face to face).

<sup>472</sup> SIGMA/OECD, 2012: p.8. [http://www.sigmaweb.org/publicationsdocuments/fYRoM\\_Assess\\_2012.pdf](http://www.sigmaweb.org/publicationsdocuments/fYRoM_Assess_2012.pdf).

## GOVERNANCE

### 4.2.1 TRANSPARENCY (LAW)

Score: **75**

#### To what extent are there provisions in place to ensure transparency in financial, human resource and information management of the public sector?

Senior public sector officials must submit asset declarations and statements of their domestic and foreign bank accounts to the SCPC.<sup>473</sup> Public sector officials within municipality administrations and the administration of the City of Skopje are obliged to submit asset declarations to the body in which they are employed.<sup>474</sup> All data contained in asset declarations, apart from data that may legally remain confidential, should be published on the website of the SCPC.<sup>475</sup>

A procedure to examine asset declarations may be initiated by the PRO if an official fails to submit an asset declaration, or if data is missing from the asset declaration, or if data is incorrect or incomplete, or if changes to assets have not been reported.<sup>476</sup> The PRO can also apply to a first instance court for a temporary measure prohibiting the disposal of assets.<sup>477</sup>

There is a procedure to ensure access to public information and records. Each official holder of information is obliged to inform the public of their contact information and how to submit a request for access to information.<sup>478</sup> Holders of information are as follows: the bodies of the state administration; the bodies of the municipalities; the City of Skopje and the municipalities in the city of Skopje; the institutions and public services; public enterprises; and legal entities and natural persons performing public authorizations.<sup>479</sup> Each holder of information is obliged to enable cost-free access to information.<sup>480</sup>

The law determines the information that is obliged to be made public, and holders of information or other official information operation persons are obliged to assist members of the public in their search for information.<sup>481</sup> The holder of information is obliged to respond immediately to a request from an applicant for information, or within 30 days of acceptance of the request.<sup>482</sup> If the holder of information does not provide access to the information to the applicant, the request is considered to have been rejected and an appeal may be submitted.<sup>483</sup>

There are no rules regarding how records pertaining to public procurement processes are managed.<sup>484</sup>

<sup>473</sup> Law on Prevention of Corruption, Official Gazette of RM, Nos. 28/2002; 46/2004; 126/2006; 10/2008; 161/2008 and 145/2010). Decisions of the Constitutional Court of the Republic of Macedonia U.no.190/2002 of 30 April 2003, published in the Official Gazette of RM, No. 33/2003; U.no. 44/2005 of 21 September 2005, published in the Official Gazette of RM, No. 89/2005 and U.no. 160/2006 of 10 January 2007, published in the Official Gazette of RM, No. 7/2007.

<sup>474</sup> Ibid.

<sup>475</sup> Ibid.

<sup>476</sup> Ibid.

<sup>477</sup> Ibid.

<sup>478</sup> Law on Free Access to Public Information, Official Gazette of RM, No. 13/2006, 86/2008, 6/2010 and 42/2014.

<sup>479</sup> Ibid.

<sup>480</sup> Ibid.

<sup>481</sup> Ibid.

<sup>482</sup> Ibid.

<sup>483</sup> Ibid.

<sup>484</sup> Law on Public Procurement, Official Gazette of RM, No. 136/2007, 130/2008, 97/2010, 53/2011, 185/2011, 15/2013, 148/2013, 160/2013, 28/2014, 43/2014 and 130/2014, Article 14, Paragraph 1.

The Government appoints and dismisses directors managing state administrative bodies, state secretaries and general secretaries.<sup>485</sup> A vacant job in the civil/public service is filled through a public as well as an internal advertisement; the transfer of a civil/public servant; the reassignment of a civil/public servant within the same body to another job at the same position; or through the transfer of an employee from the state and local authorities or other state bodies or institutions.<sup>486</sup>

The AA publishes the vacancy advertisement on its webpage and in at least two daily newspapers, of which one is a daily newspaper published in Macedonian and one is a daily newspaper published in the language spoken by at least 20% of the citizens that speak an official language other than Macedonian.<sup>487</sup>

## 4.2.2 TRANSPARENCY (PRACTICE)

Score: **50**

### To what extent are the provisions on transparency in financial, human resource and information management in the public sector implemented effectively?

The number of complaints received by the Commission for Free Access to Public Information (SCFAPI) primarily against state administrative bodies, local authorities and the judiciary, decreased by more than half in 2013.<sup>488</sup> Three quarters of the complaints related to a failure to respond promptly to requests for information.<sup>489</sup> However, in order for the Law on Free Access to Public Information (LFAPI) to be enforced efficiently, the SCFAPI needs to have the capacity and the power to impose penalties for misdemeanours.<sup>490</sup>

In practice, high-ranking public officials do not declare all their assets.<sup>491</sup> Although their declarations are made public on the SCPC's website, a number of cases have been reported of misleading or incomplete declarations, as well as declarations made extemporarily.<sup>492</sup>

NGOs such as the Centre for Civil Communications and Transparency International regularly monitor randomly selected procurements from state and local contract authorities and have identified the following concerns: excessive qualification criteria for bidders; insufficient or tailored tender documents; inappropriate technical specifications; and wrongful bid-point allocation. These problems are partly due to lack of knowledge on the part of the responsible authorities, but also partly due to bad intent on the part of contracting authorities.<sup>493</sup>

<sup>485</sup> Law on the Government of the RM, Official Gazette of RM, No. 59/2000, 12/2003, 55/2005, 37/2006, 115/2007, 19/2008, 82/2008, 10/2010, 51/2011, 15/2013 and 139/2014). Decision of the Constitutional Court of the Republic of Macedonia U. no. 131/2000 dated 31 March 2001, published in Official Gazette of RM, No. 26/2001.

<sup>486</sup> Law on Civil Servants, Official Gazette of the RM, No. 59/2000, 112/2000, 34/2001, 103/2001, 43/2002, 98/2002, 17/2003, 40/2003, 85/2003, 17/2004, 69/2004, 81/2005, 61/2006, 36/2007, 161/2008, 6/2009, 114/2009, 35/2010, 167/2010, 36/2011, 6/2012, 24/2012, 15/2013, 82/2013, 106/2013 and 132/2014). Decisions of the Constitutional Court of the Republic of Macedonia: U. no. 186/2000 of 04.04.2001 published in the Official Gazette of RM, No. 30/2001; U. no. 132/2001 of 18.12.2002 published in the Official Gazette of RM, No. 100/2002; U. no. 37/2003 of 17.12.2003 published in the Official Gazette of RM, No. 84/2003; U. no. 37/2008 of 10.09.2008 published in the Official Gazette of RM, No. 118/2008; U. no. 66/2008 of 24.09.2008 published in the Official Gazette of RM, No. 128/2008 and U. no. 206/2008 of 23.12.2009 published in the Official Gazette of RM, No. 1/2010. Law Amending the Law on the Government of the Republic of Macedonia, Official Gazette of RM, No. 10/2010.

<sup>487</sup> Ibid.

<sup>488</sup> European Commission, 2014: p.9.

<sup>489</sup> Ibid.

<sup>490</sup> Ibid.

<sup>491</sup> SIGMA-OECD, Sigma Assessment 2008.

<sup>492</sup> Ibid.

<sup>493</sup> SIGMA-OECD, 2013: p.50 [http://www.sigmaxweb.org/publicationsdocuments/FYROMAssessment\\_2013.pdf](http://www.sigmaxweb.org/publicationsdocuments/FYROMAssessment_2013.pdf) [accessed on December 1, 2014]

There is no timely and comprehensive information provided on public procurement processes. Some institutions have not submitted reports on awarded contracts, even several months after contracts have been rewarded,<sup>494</sup> which breaches the Law on Public Procurement that obliges institutions to publish reports on awarded contracts within the Electronic System for Public Procurement (ESPP) within 30 days.<sup>495</sup> Furthermore, the institutions do not submit reports on completed contracts in accordance with an obligation introduced in May 2013.<sup>496</sup> For instance, only 6 reports were submitted to the ESPP in 2013, whereas 18,000 tenders had been advertised in that year.<sup>497</sup>

Vacancies are always publicly advertised; however, the recruitment procedure is not constantly fair and appointments are often not based on merit.<sup>498</sup>

### 4.2.3 ACCOUNTABILITY (LAW)

Score: **75**

#### **To what extent are there provisions in place to ensure that public sector employees have to report and be answerable for their actions?**

The law on the protection of the whistleblowers was adopted on 9<sup>th</sup> November 2015, but its effective implementation has not begun yet.<sup>499</sup>

If a civil servant violates their official duties they may be subject to a disciplinary procedure. Depending on the nature of the violation, disciplinary measures may be imposed. If the violation of the official duty also entails criminal liability, the disciplinary procedure for establishing the civil/public servant's liability must take place within two years of the date on which the violation was made known.<sup>500</sup>

The Citizen's Charter is a declaration by state administrative bodies to provide access to standardized services to citizens.<sup>501</sup> Citizens are asked to assess the adequacy of the provision of services.<sup>502</sup>

Within the project "Scoreboard (Assess the Administration)", the MISA has installed a device in service-providing institutions to enable citizens to evaluate the quality of over-the-counter services of employees, as well as these employees' levels of courtesy, communication and responsiveness (by pressing one of three buttons on the device: green, yellow, red, indicating satisfied, neutral, and dissatisfied, respectively).<sup>503</sup>

The State Administrative Inspectorate conducts inspections of the implementation of labour laws.<sup>504</sup> The inspector is obliged to act upon the request of an employee to investigate labour relation rights and safety at work.<sup>505</sup>

<sup>494</sup> <http://www.ccc.org.mk/images/stories/k20m.pdf> Fourth Quarterly Report on the Public Procurement in the Republic of Macedonia, Report No.20, May 2014, [accessed on December 1, 2014].

<sup>495</sup> Ibid.

<sup>496</sup> Ibid.

<sup>497</sup> Ibid.

<sup>498</sup> SIGMA-OECD, 2012 [http://www.sigmaweb.org/publicationsdocuments/fYRoM\\_Assess\\_2012.pdf](http://www.sigmaweb.org/publicationsdocuments/fYRoM_Assess_2012.pdf) [accessed on December 1, 2014], p.7.

<sup>499</sup> Workshop „The legal and institutional framework for protecting of the whistleblowers in Macedonia“, organized by Transparency International - Macedonia , 11.04.2016, Hotel „Stone Bridge“ in Skopje.

<sup>500</sup> Law on Administrative Servants, (Official Gazette of RM, No.27/2014 and 199/2014), Article 78 paragraph (3).

<sup>501</sup> <http://www.mio.gov.mk/?q=node/2614> [accessed on December 1, 2014].

<sup>502</sup> Ibid.

<sup>503</sup> <http://semafor.mioa.gov.mk/semafor/frontPage> [accessed on December 1, 2014]

<sup>504</sup> Law on Labour Inspection, Official Gazette of the RM, No. 97/97, 164/2013.

<sup>505</sup> Ibid.



State administrative bodies are obliged to establish a unit for internal audits to perform annual financial audits, regularity audits, audits of internal control systems, performance audits and IT audits.<sup>506</sup>

The State Audit Office conducts a regularity audit that assesses the compliance of public sector work with laws, by-laws and internal acts.<sup>507</sup>

The AA submits an annual report to the Assembly on its operations of the preceding year, which report must be adopted at the latest by the end of the first quarter of the current year.<sup>508</sup>

#### 4.2.4 ACCOUNTABILITY (PRACTICE)

Score: **25**

##### **To what extent do public sector employees have to report and be answerable for their actions in practice?**

The SCPC and the SAO, as well as the Public Procurement Bureau, have an important role to play in preventing corruption in public procurement.<sup>509</sup> The SAO investigates irregularities and the SCPC submits files to the Public Prosecutor's Office. However, no records are maintained of actions taken. The system is ineffective in preventing corruption in the public procurement process: the same irregularities occur year after year without action being taken to improve the system.

There are no existing mechanisms for handling citizens' complaints about the public sector, and the state oversight mechanisms are weak.

The AA has a mechanism to handle complaints by public sector employees about their workplace. There are no records of how malpractices by public sector employees are handled.

The Assembly does not hold the AA to account in any meaningful way. There is no special Assembly committee to review AA reports and the annual reports of the Agency are approved by the Assembly in a plenary session without any substantial debate.<sup>510</sup>

#### 4.2.5 INTEGRITY MECHANISMS (LAWS)

Score: **75**

##### **To what extent are there provisions in place to ensure the integrity of public sector employees?**

There are Codes of Ethics for public servants as well as rules on conflicts of interest for public servants.<sup>511</sup> Public servants are provided with a copy of the Code of Ethics and their

<sup>506</sup> Law on Internal Financial Control, Official Gazette of the RM, No. 90/09, Article 30

<sup>507</sup> Law on State Audit, Official Gazette of the RM, No. 66/2010, 145/2010.

<sup>508</sup> Law on Civil Servants, Official Gazette of the RM, No. 59/2000, 112/2000, 34/2001, 103/2001, 43/2002, 98/2002, 17/2003, 40/2003, 85/2003, 17/2004, 69/2004, 81/2005, 61/2006, 36/2007, 161/2008, 06/2009, 114/2009, 35/2010, 167/2010, 36/2011, 6/2012, 24/2012, 15/2013, 82/2013, 106/2013 and 132/2014, as well as Constitutional Court decisions.

<sup>509</sup> MCIC, 2014: p.95.

<sup>510</sup> SIGMA-OECD 2013: [http://www.sigmaweb.org/publicationsdocuments/FYROMAssessment\\_2013.pdf](http://www.sigmaweb.org/publicationsdocuments/FYROMAssessment_2013.pdf)

<sup>511</sup> These are stipulated in the Law on Prevention of Conflict of Interest and Law on Prevention of Corruption and the Law on Usage and Disposal of Items in State Ownership, as mentioned under Pillar Anti-corruption Agencies (integrity mechanisms – law) as well as the Ethical Code for Civil Servants and the Ethical Code for Public Servants.

oath of office.<sup>512</sup> Bribery in the course of carrying out responsibilities related to elections is a disciplinary offence and bribery in the public sector is a criminal offence.<sup>513</sup> In the same provisions, receiving gifts or other benefits is also a disciplinary offence.

The legal framework for asset declarations and conflict-of-interest statements is in place. However, the laws are repetitive and frequently overlap.<sup>514</sup> The Law on Civil Servants and the Law on Public Servants, as well as the Law on Public Procurement, also contain regulations with regard to ethics and conflicts of interest deriving from the Law on the Prevention of Conflicts of Interest and the Law on the Prevention of Corruption.<sup>515</sup>

#### 4.2.6 INTEGRITY MECHANISMS (PRACTICE)

Score: **25**

##### To what extent is the integrity of public sector employees ensured in practice?

Public opinion in the country is divided as to the success of the fight against corruption in the public administration.<sup>516</sup> Compared to four years ago, The number of citizens who believe that corruption in public administration has decreased is slightly higher than the number of citizens who believe that corruption has increased.<sup>517</sup> However, 23.8% believe that corruption has remained at the same level it was four years ago.<sup>518</sup> Citizens perceive corruption to be widespread in public procurement decision-making processes, in the awarding of concessions and licences, and in public sector employment and promotions.<sup>519</sup> Corruption is perceived as being most prevalent at the central level of the public administration.<sup>520</sup>

The existing codes of conduct, gift and hospitality regulations, post-employment restrictions, conflict-of-interest policies and integrity bodies are not effective in ensuring ethical behaviour on the part of public sector employees, and the application of these provisions is selective.<sup>521</sup>

In 2013, three training courses in anti-corruption and ethics were conducted for 67 public servants, while in 2014 two such training courses were conducted for 22 public servants.<sup>522</sup>

In 2012, the number of reported cases of corruption in procurement processes more than doubled in comparison to the previous year: 28 cases (2011: 12), and 12 persons were convicted for procurement-related crimes and misdemeanours in 2012 (there were no convictions in 2011 and 2010).<sup>523</sup>

<sup>512</sup> Law on Civil Servants Official Gazette of RM, No. 59/2000, 112/2000, 34/2001, 103/2001, 43/2002, 98/2002, 17/2003, 40/2003, 85/2003, 17/2004, 69/2004, 81/2005, 61/2006, 36/2007, 161/2008, 6/2009, 114/2009, 35/10, 167/10, 36/11, 6/12, 24/12, 15/13, 82/13, 106/2013), Article 3.

<sup>513</sup> Law on Prevention of Corruption.

<sup>514</sup> SIGMA-OECD, 2013: [http://www.sigmaweb.org/publicationsdocuments/FYROMAssessment\\_2013.pdf](http://www.sigmaweb.org/publicationsdocuments/FYROMAssessment_2013.pdf) [accessed on December 1, 2014].

<sup>515</sup> Ibid.

<sup>516</sup> Transparency International - Macedonia, *Promoting Transparency and Accountability in Public Institutions*, (Skopje: Transparency International Macedonia, SCPC and OSCE, 2012).

<sup>517</sup> Ibid.

<sup>518</sup> Ibid.

<sup>519</sup> Ibid.

<sup>520</sup> Ibid.

<sup>521</sup> Interview with Malinka Ristevska Jordanova, Director of the European Policy Institute, former state advisor in the Secretariat for European Affairs, 19.12.2014 (face to face).

<sup>522</sup> Contribution to the EC Progress Report (Chapter 23 Judiciary and Fundamental Rights), Secretariat for European Affairs.

<sup>523</sup> SIGMA-OECD, 2013: p.50 [http://www.sigmaweb.org/publicationsdocuments/FYROMAssessment\\_2013.pdf](http://www.sigmaweb.org/publicationsdocuments/FYROMAssessment_2013.pdf) [accessed on December 1, 2014].

## ROLE

### 4.3.1 PUBLIC EDUCATION

Score: **25**

#### **To what extent does the public sector inform and educate the public on its role in fighting corruption?**

A special toll-free line (199) for reporting complaints, including complaints about corruption, was established in 2007.<sup>524</sup> The Mol is responsible for the management of this toll-free line. 3,945 cases have been reported to date.<sup>525</sup> The Ministry of Transport and Communications lists the number on its website. The Ministry of Labour and Social Policy, as well as the Customs Administration, have their own toll free lines for the public to make complaints and report corruption.<sup>526</sup> The PRO has its own complaints hotline (198), but so far no cases of corruption have been reported, although unprofessional behaviour on the part of its employees has been reported.<sup>527</sup> The Ministry of Defence has its own complaints telephone line.<sup>528</sup>

### 4.3.2 COOPERATION WITH THE PUBLIC INSTITUTIONS, CSOS AND PRIVATE AGENCIES IN PREVENTING/ADDRESSING CORRUPTION

Score: **25**

#### **To what extent does the public sector work on anti-corruption initiatives with public watchdog agencies, business and civil society?**

There is, at best, sporadic cooperation of the public sector with CSOs and the business sector on anti-corruption projects initiated by the international community. For example, the MCIC has cooperated with the SCPC as part of the USAID Anti-Corruption Programme.<sup>529</sup> TI-M and MCIC have been involved in the preparation of the State Programme for the Prevention of Corruption and in its implementation.

However, the SCPC only selectively cooperates with CSOs, even those that are partners in the USAID Anti-Corruption Programme. For example, the SCPC refused to cooperate with Transparency International – Macedonia in developing the present NIS study of Macedonia.

<sup>524</sup> <http://www.mkd.mk/makedonija/politika/telefonskite-linii-za-prijavuvanje-mito-i-korupcija-se-mrtvi> 'The toll-free lines are "dead"' [accessed on December 4, 2014].

<sup>525</sup> Ibid.

<sup>526</sup> Ibid.

<sup>527</sup> Ibid.

<sup>528</sup> Ibid.

<sup>529</sup> Interview with Emina Nuredinoska, Head of Department, Macedonian Center for International Cooperation, interview by email on 3.10.2014.

### 4.3.3 REDUCING CORRUPTION RISKS BY SAFEGUARDING INTEGRITY IN PUBLIC PROCUREMENT

Score: **50**

**To what extent is there an effective framework in place to safeguard integrity in public procurement procedures, including review and complaint mechanisms and meaningful sanctions for improper conduct by both suppliers and public officials?**

The law establishes four types of procedures for awarding public procurement contracts: open procedure: restricted procedure: competitive dialogue; and negotiated procedures.<sup>530</sup>

In 2013, the procedure used in 68% of public procurements was the open procedure.<sup>531</sup> The national public procurement system has a simplified competitive procedure. Tenders must be published on the ESPP.<sup>532</sup> In 11% of public procurement contracts, the negotiated procedure was used. There are some exemptions to the requirement of open bidding, in line with EU rules.<sup>533</sup>

The law provides rules to ensure objectivity in the process of selecting contractors.<sup>534</sup> The tenderer prepares the tender in accordance with the tender documentation.<sup>535</sup> The evaluation commission is obliged to take minutes of the procedure for the public opening of a tender.<sup>536</sup> Tenders that have not been subjected to a public opening of tenders cannot be subject to evaluation.<sup>537</sup> The evaluation commission checks the completeness and the validity of documentation and prepares a written report regarding the tender procedure.<sup>538</sup> The contracting authority is obliged to keep full records of the procedure for a period of at least 5 years after the completion of the contract.<sup>539</sup>

The law provides for the use of standard bidding documents.<sup>540</sup>

In 2014, a new oversight body, the Public Procurement Council, became operational.<sup>541</sup> The most economically advantageous tender can only be chosen with the approval of the Public Procurement Council. This system is not in accordance with the EU acquis. The obligation for contracting authorities to obtain consent from the Public Procurement Council prior to publishing a contract notice creates an unnecessary administrative burden.<sup>542</sup>

The State Appeals Commission is an independent state body that hears appeals concerning the procedure for awarding contracts as well as appeals against decisions by the Public

<sup>530</sup> Law on Public Procurement, Official Gazette of the RM, Nos.136/2007, 130/2008, 97/2010, 53/2011, 185/2011, 15/2013, 148/2013, 160/2013, 28/2014, 43/2014 and 130/2014.

<sup>531</sup> MCIC, 2014: p.91.

<sup>532</sup> Law on Public Procurement, Official Gazette of the RM, Nos.136/2007, 130/2008, 97/2010, 53/2011, 185/2011, 15/2013, 148/2013, 160/2013, 28/2014, 43/2014 and 130/2014.

<sup>533</sup> Ibid.

<sup>534</sup> Ibid.

<sup>535</sup> Ibid.

<sup>536</sup> Ibid.

<sup>537</sup> Ibid.

<sup>538</sup> Ibid.

<sup>539</sup> Ibid.

<sup>540</sup> Rulebook on the Content of Tendering Documentation, Official Gazette of the RM, No. 19/2008.

<sup>541</sup> Law on Public Procurement, Official Gazette of the RM, Nos.136/2007, 130/2008, 97/2010, 53/2011, 185/2011, 15/2013, 148/2013, 160/2013, 28/2014, 43/2014 and 130/2014, Article 12.

<sup>542</sup> Ibid.

Procurement Council.<sup>543</sup> The total number of cases it handled in 2013 decreased from 585 in 2012 to 553 in 2013. The Commission has a resolution rate of 95%.<sup>544</sup> The main reason for the rejection of appeals is that they have not been lodged in due time, as for example an appeal concerning the tender documentation that is only raised at the time of the selection decision.<sup>545</sup> The Commission has inadequate human and financial resources.<sup>546</sup>

The SCPC, SAO and the Ministry of Economy (regarding concessions and Public-Private Partnership) also have legal competence to oversee public procurement.<sup>547</sup>

There are no procedures for the supervision of contract implementation.

The Public Procurement Bureau is the main policy-making and training institution for public procurement matters. The Bureau now employs 20 full-time staff and one director, with a budget for 2013 of 770,000 EUR based on the state budget and its own income (e.g., revenues from users of the e-procurement system). Since 2012 there has been a significant budget increase from 504,000 to 770,000 EUR, which is needed for the further development of the e-procurement system. The PPB receives all data regarding conducted contract award procedures and makes most of the data (e.g. publication notices and tender documentation) available to all interested stakeholders. Thus it contributes to the transparency and integrity of the entire system. This data is not only used to prepare detailed statistical reports but also serves as the basis for further (legislative) measures. Published tender documents are also used by other CAs as models for their procurements.<sup>548</sup>

There are minimum requirements regarding the professional qualifications of persons who perform professional activities in the field of public procurement.<sup>549</sup> The law states that staff in charge of making evaluations must be different from those responsible for the elaboration of the terms of reference of bidding documents and must be different from those undertaking oversight activities.<sup>550</sup> Moreover, the law requires clarifications and amendments during the bidding process to be shared among all bidders, and this rule is implemented in practice.<sup>551</sup>

All bidders must be informed about the decisions taken during the bidding process.<sup>552</sup> Contracting authorities are obliged to publish contract award notices 30 days after the contract is concluded.<sup>553</sup> Authorities are obliged to maintain registers and statistics on contracts.<sup>554</sup> All data regarding awarded contracts is made public and available online (<https://e-nabavki.gov.mk>).<sup>555</sup>

<sup>543</sup> Law on Public Procurement, Official Gazette of the RM, Nos.136/2007, 130/2008, 97/2010, 53/2011, 185/2011, 15/2013, 148/2013, 160/2013, 28/2014, 43/2014 and 130/2014.

<sup>544</sup> European Commission, 2014: p.25.

<sup>545</sup> Ibid.

<sup>546</sup> European Commission, 2014: p.30.

<sup>547</sup> Law on Public Procurement, Official Gazette of the RM, No.136/2007, 130/2008, 97/2010, 53/2011, 185/2011, 15/2013, 148/2013, 160/2013, 28/2014, 43/2014 and 130/2014.

<sup>548</sup> Sigma Assessment 2013: p.147.

<sup>549</sup> Law on Public Procurement, Official Gazette of the RM, No.136/2007, 130/2008, 97/2010, 53/2011, 185/2011, 15/2013, 148/2013, 160/2013, 28/2014, 43/2014 and 130/2014.

<sup>550</sup> Ibid.

<sup>551</sup> Ibid.

<sup>552</sup> Law on Public Procurement, Official Gazette of the RM, No.136/2007, 130/2008, 97/2010, 53/2011, 185/2011, 15/2013, 148/2013, 160/2013, 28/2014, 43/2014 and 130/2014, Article 167.

<sup>553</sup> Ibid.

<sup>554</sup> Ibid.

<sup>555</sup> Public Procurement Bureau, *Annual Report of the Public Procurement Bureau 2013*, (Skopje: Public Procurement Bureau, 2013). [http://javni-nabavki.finance.gov.mk/bjn-portal/wordpress/wp-content/uploads/lzvestaj\\_na\\_BJN\\_za\\_2013.pdf](http://javni-nabavki.finance.gov.mk/bjn-portal/wordpress/wp-content/uploads/lzvestaj_na_BJN_za_2013.pdf) [accessed on 5.12.2014].

Bidders that have participated in a public procurement procedure have the right to view the report of the procedure.<sup>556</sup> Some institutions do not submit reports on awarded contracts in a timely fashion.<sup>557</sup> This breaches the Law on Public Procurement, where it is stipulated that the institutions are obliged within 30 days to publish reports on awarded contracts to the Electronic System for Public Procurement.<sup>558</sup>

#### 4.3.4 OVERSIGHT OF SOEs

Score: **25**

#### To what extent does the State have a clear and consistent ownership policy of SOEs and the necessary governance structures to implement this policy?

The Government does not have a clear and consistent ownership policy over SOEs and there is no clear governance structure that can be closely monitored. There is no independent centralised co-ordinating unit created by the State to exercise its ownership function over SOEs.

Individual SOEs are accountable to ministries in which policies relevant to the SOE's sector are formulated. This often leads to conflicts of interest due to the right of ministers to appoint members of the SOE's governing and oversight structures. It also leads to a situation in which policy decisions related to SOEs often comply with the political needs of the ruling political establishment, such as needs for employment, the construction of roads and other utilities relevant for citizens' everyday life. The long-term interests and budgets of SOEs are determined in line with political programmes and campaigning needs rather than with the actual needs of the SOEs.

### RECOMMENDATIONS

- R1.** A mechanism should be established (either a parliamentary committee or a new or existing agency) for regular (even monthly or quarterly) oversight of new employments in public administration.
- R2.** Authority and procedures for the supervision of contract implementation should be established.

<sup>556</sup> Law on Public Procurement, Official Gazette of the RM, No.136/2007, 130/2008, 97/2010, 53/2011, 185/2011, 15/2013, 148/2013, 160/2013, 28/2014, 43/2014 and 130/2014.

<sup>557</sup> Center for Civil Communications, *Fourth Quarterly Report on the Public Procurement in the Republic of Macedonia, Report No.20*, (Skopje: Center for Civil Communications, 2014), <http://www.ccc.org.mk/images/stories/k20m.pdf> [accessed on December 1, 2014]

<sup>558</sup> Ibid.

# 5. LAW ENFORCEMENT AGENCIES

## SUMMARY

The Ministry of Interior oversees the operation of the police service in Macedonia.

Two separate laws, the Law on Police and the Law on Internal Affairs,<sup>559</sup> regulate the work of the Ministry of Interior (Moi). The EC<sup>560</sup> has assessed that Macedonia has developed a good model of police organization, based on the major police reform started 15 years ago and continuing today.<sup>561</sup>

The Moi is one of the most powerful and influential authorities in Macedonia and is allocated a significant portion of the state budget.

Corruption has been tackled to some degree in the police through the introduction of preventive measures. The introduction of special investigative measures (SIMs)<sup>562</sup> has assisted in the resolution of corruption cases in the public administration as well as the health sector. The introduction of swifter administrative processes, such as in the issuing of IDs, passports and other documents, has brought limited progress. Amongst the public, there is a strong perception that corruption is rampant in law enforcement.<sup>563</sup>

**OVERALL PILLAR SCORE: 51.3/100**

| DIMENSION                      | INDICATOR              | LAW | PRACTICE |
|--------------------------------|------------------------|-----|----------|
| <b>Capacity<br/>50/100</b>     | Resources              | /   | 50       |
|                                | Independence           | 75  | 25       |
| <b>Governance<br/>54.1/100</b> | Transparency           | 75  | 50       |
|                                | Accountability         | 75  | 25       |
|                                | Integrity              | 75  | 25       |
| <b>Role<br/>50/100</b>         | Corruption prosecution |     | 50       |

<sup>559</sup> Law on Police, Official Gazette of the RM, No.114/2006, 6/2009, 45/2012, 41/2014, 33/2014 and Law on Internal Affairs, Official Gazette of the RM, No.42/14, 116/14, 22/2015.

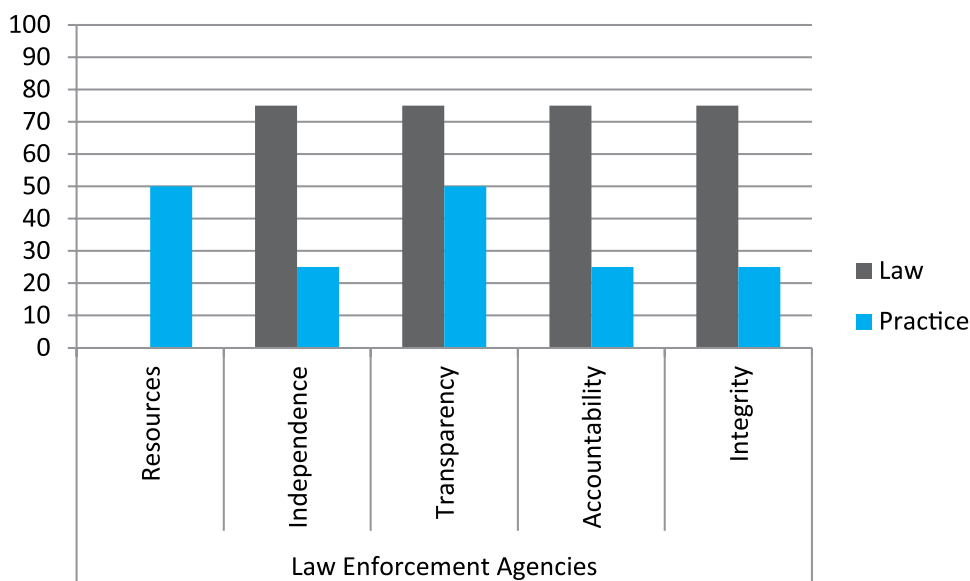
<sup>560</sup> European Commission, 2014: [http://ec.europa.eu/enlargement/countries/strategy-and-progress-report/index\\_en.htm](http://ec.europa.eu/enlargement/countries/strategy-and-progress-report/index_en.htm)

<sup>561</sup> European Commission, 2015: pp.18 "A major **police reform** started 15 years ago and reforms continue in specific areas.

<sup>562</sup> In 2004.

<sup>563</sup> [https://www.unodc.org/documents/data-and-analysis/statistics/corruption/Corruption\\_report\\_fYR\\_Macedonia\\_FINAL\\_web.pdf](https://www.unodc.org/documents/data-and-analysis/statistics/corruption/Corruption_report_fYR_Macedonia_FINAL_web.pdf), pp.12, 23.

## Pillar score per Law and Practice



## STRUCTURE AND ORGANIZATION

The Ministry of Interior (Mol) is responsible for law enforcement and is one of the three largest ministries in Macedonia in terms of employees.<sup>564</sup> Structural reforms in the police (overseen by the Bureau for Public Security in the Ministry of Interior) were undertaken by the European Commission between 2002 and 2007. The policing model was developed in partnership with German police experts, based on best EU practices. The principles of the Ohrid Framework Agreement were integrated into the new policing concept, and priority was given to transparency and the decentralization of the organization of the police.

The legal basis for the organization and operation of the police are found in the Law on Police and the Law for Internal Affairs.<sup>565</sup> The Law for Internal Affairs regulates the relations between the different units in the Ministry of Interior as well as the status of police officers and other employees.

The Law on Internal Affairs sets out the responsibilities of the Bureau for Public Security, which is responsible for the police. The police maintain public order and are responsible for criminal investigations, including the activities of the special police forces. They are also responsible for cases of organized crime and corruption, which are under the responsibility of the Department for Organized Crime.<sup>566</sup> The Public Prosecutor cooperates with the Department for Organized Crime.<sup>567</sup> The police service operates throughout the territory of the whole country.<sup>568</sup> The model of policing is based on de-concentration rather than decentralization.

The Counter-Intelligence Department (UBK) is responsible for security and counterintelligence.<sup>569</sup> The UBK is granted police powers, as well as the possibility of using special investigative measures (SIM), which grants them a superior status to the criminal police.

<sup>564</sup> The Ministry of Education and Science and the Ministry of Health.

<sup>565</sup> Law on Police, Official Gazette of the RM, No. 114/2006, 6/2009, 45/2012, 41/2014, 33/2014 and Law on Internal Affairs, Official Gazette of the RM, No. 42/14, 116/14, 22/2015.

<sup>566</sup> Law on Police. Official Gazette of the RM, Nos. 114/2006, 6/2009, 45/2012, 41/2014, 33/2015, Article 17 and 18.

<sup>567</sup> Law on Police. Official Gazette of the RM, Nos. 114/2006, 6/2009, 45/2012, 41/2014, 33/2015, Article 18, Paragraph 3.

<sup>568</sup> Law on Police, Official Gazette of the RM, Nos. 114/2006, 6/2009, 45/2012, 41/2014, 33/2015, Article 17.

<sup>569</sup> European Commission, 2014: [http://ec.europa.eu/enlargement/countries/strategy-and-progress-report/index\\_en.htm](http://ec.europa.eu/enlargement/countries/strategy-and-progress-report/index_en.htm) [accessed August 15, 2015].



## ASSESSMENT

### CAPACITY

There are more than 11,000 employees in the MoI, including police and civil servants.<sup>570</sup>

The Law on Internal Affairs regulates the relations between the units in the Ministry as well as the status of police officers and other employees. However, significant chapters have been transferred to the more recent Law on Police. Most other countries in the region have replaced the Law for Internal Affairs with the Law on Police, but Macedonia has so far operated both laws without conflict between the two.

#### 5.1.1 RESOURCES (PRACTICE)

Score: **50**

#### **To what extent do law enforcement agencies have adequate levels of financial resources, staffing, and infrastructure to operate effectively in practice?**

The Ministry of Interior receives one of the highest allocations of financial resources from the state budget. Despite the intention of the police reform process to trim the number of people employed in the police service, there remains the perception that the Ministry of Interior is still overstaffed, mostly with candidates who support the ruling political parties.<sup>571</sup>

Police officers are trained extensively through special courses and workshops both in the country and abroad. In recent years (2012–2014), training has focused on the new criminal justice legislation<sup>572</sup> which concerns the new role of the Public Prosecutor in Criminal Procedure and significantly changes the role of the police in the pre-trial procedure.<sup>573</sup>

In 2015 the MoI was allocated 5.86% of the state budget (155,607 million euros out of a total budget of 2.654 billion euros), which covered the costs of 10,925 planned employees (an average of 12,341 euros per person).<sup>574</sup> In 2014, the MoI received 6.23% of the budget (160,346 million euros out of a total of 2,573 billion euros) with 10,859 employees (an average of 12 552 euros per person).<sup>575</sup> The budget and the salaries are adequate for the purpose of attracting qualified and committed staff.

The salaries of police officers are regulated by law, which includes salary categories based on level and type of responsibilities.<sup>576</sup> Police officers can also receive bonuses for extended working hours if they work more than 40 hours per week.<sup>577</sup>

<sup>570</sup> Statement published on 02.03.2015 <http://vesti.mk/read/news/4776957/1791589/stavreski-do-jankulovska-nie-sme-ludaci-troshime-na-chokolado-a-nemame-leb> [accessed August 15, 2015].

<sup>571</sup> Interview with a former high-level police officer in the Police Academy.

<sup>572</sup> Interview with a professor from the Faculty of Security involved in training of law enforcement at the Academy of Judges in the period 2012–2014.

<sup>573</sup> Law on Criminal Procedure, officially entered into force as of 1 December, 2013, Official Gazette of RM, No. 150/2010.

<sup>574</sup> [http://www.finance.gov.mk/files/u6/BUDZET\\_2015\\_ZA\\_OBJAVUVANJE\\_21-10-2014.pdf](http://www.finance.gov.mk/files/u6/BUDZET_2015_ZA_OBJAVUVANJE_21-10-2014.pdf), p.30 [accessed July 27, 2015].

<sup>575</sup> <http://finance.gov.mk/files/BUDZET%202014%20FINALNA%20VERZIJA%2019.12.2013.pdf>, p.29 [accessed July 27, 2015].

<sup>576</sup> Clarification developed and improved through the Police Reform Process (2007).

<sup>577</sup> Law on Police. Official Gazette of the RM, Nos. 114/2006, 6/2009, 45/2012, 41/2014, 33/2015, Article 102.

However, despite the Mol's significant budget, there is a lack of basic equipment and infrastructure materials such as vehicles, computers and communication equipment.<sup>578</sup>

With regard to anti-corruption capacity, the EC Progress Report 2014 states that "The Ministry of Interior's Anti-Corruption Unit was upgraded as a Sector for the Fight against Corruption, but its status remains weak; only 19 posts are allocated to it, of which over a third still have to be filled. Substantial human and material resources are still needed in order for the prosecution service to ensure full implementation of the new Law on Criminal Procedure that provides a basis for creating judiciary police units composed by the employees of the other law enforcement agencies."<sup>579</sup> According the EC 2015 staffing in the Department for the Fight against Serious and Organised Crime at the Ministry of Interior continued to increase, with 10 new employees hired.<sup>580</sup>

## 5.1.2 INDEPENDENCE (LAW)

Score: **75**

### To what extent are law enforcement agencies independent by law?

The independence of law enforcement agencies is guaranteed by law. The Law on Police (LP) regulates the relationship of police officers with political activity.<sup>581</sup> According to the law, it is forbidden for a police officer to establish, lead or be a member of the management of a political party, though it is not forbidden for them to be a member of a political party. Police officers cannot organize political activities on police premises or display political symbols in their office, and cannot wear a uniform during political demonstrations unless they are on duty.

A modern personnel management system is in place that enforces a system of employment and promotion based on merit and professional competence. The system details the procedures for recruitment, promotion, evaluation and dismissal. Selection is based on open competition. Experience with training courses organised by international organisations is considered to be an advantage.

The Director of the Bureau for Public Security (BPS), according to the law, must hold an internationally recognized certification of English language skills and undertake a psychological examination and a test for integrity.<sup>582</sup> Whilst intending to promote professionalism, these conditions can severely restrict the pool of candidates.

The Director of the BPS and the Director of the Counterintelligence Directorate are appointed by the Government upon a proposal by the Minister of Interior.<sup>583</sup> The Director can be dismissed at his/her request, or if he/she is convicted of a crime that has a penalty of more than 6 months imprisonment, or because of reckless or unprofessional behaviour in the course of his/her work.

<sup>578</sup> In several interviews held with persons at senior and executive police level in 2013 and 2014, it is mentioned that there is no budget for gas and that the police patrols and interventions have been terminated or reduced and are located only in the urban areas: there is no budget for hitting police premises, the inventory of the police stations has collapsed; the quality of printed papers is typically bad due to there being no cartridges in printers, etc.

<sup>579</sup> European Commission, 2014: p.43.

<sup>580</sup> European Commission, 2015: p.64.

<sup>581</sup> Law on Police, Official Gazette of the RM, No. 114/2006, 6/2009, 45/2012, 41/2014, 33/2015, Article 105.

<sup>582</sup> Law for Amending the Law on Police, Official Gazette of the RM, No.41/2014, Article 1.

<sup>583</sup> Law in Internal Affairs, Official Gazette of the RM, No. 42/14, 116/14, 22/2015, Article 14 and 17, and Law on Police, Official Gazette of the RM, No. 114/2006, 6/2009, 45/2012, 41/2014, 33/2015, Article 16.

### 5.1.3 INDEPENDENCE (PRACTICE)

Score: **25**

#### To what extent are law enforcement agencies independent in practice?

The independence of the police is jeopardized by close relationships between police officers and the ruling political parties.<sup>584</sup> There is a perception that the police are under the influence of the political leadership. Political influence on police actions is visible when the police are dealing with political opponents of the ruling parties. In cases where the role of the police is to assist public administrative bodies in carrying out their responsibilities (for example in the revenue service), the police will often take a dominant role.<sup>585</sup> The 2014–2015 Amnesty International report on Macedonia states that the “...current government structure has too much influence on the police and judiciary”.<sup>586</sup>

The wiretapped conversations revealed that the former Minister of the Interior, Mrs. Gordana Jankuloska, who held the position for 9 years, and the then UBK Director, exerted influence on administrative and criminal justice authorities to take certain actions and decisions.<sup>587</sup> The perception prevails that in order to become a police officer candidates need a recommendation from the ruling parties.<sup>588</sup>

The Ohrid Framework Agreement acknowledged the urgent need to secure equal representation in the police force of all communities in Macedonia. A strict timetable was developed to recruit ethnic Albanians into the police force. Ethnic Albanian political parties provided the names of candidates. The Ohrid Agreement requirement of proportionate representation of minorities in the state administration, whilst a necessary post-conflict reform to secure peace, has encouraged political influence in police recruitment processes and also created a situation wherein police officers are more loyal to the political party/ leadership than to police leaders.<sup>589</sup>

## GOVERNANCE

### 5.2.1 TRANSPARENCY (LAW)

Score: **75**

#### To what extent are there provisions in place to ensure that the public can access relevant information on law enforcement agency activities?

The Law on Police contains few articles regarding the transparency of police work. The police reforms introduced between 2003 and 2007 established the position of police spokespersons

<sup>584</sup> <http://composite-project.eu/> [accessed July 25, 2015].

<sup>585</sup> [http://www.dw.de/%D0%B7%D0%B0%D0%B5%D0%B2-%D0%BF%D1%80%D0%B0%D0%B2%D0%BE%D1%81%D1%83%D0%B4%D1%81%D1%82%D0%B2%D0%BE-%D0%B3%D0%BE-%D0%BA%D0%BE%D0%BD%D1%82%D1%80%D0%BE%D0%BB%D0%B8%D1%80%D0%B0-%D1%82%D1%80%D0%BE%D1%98%D0%BA%D0%B0%D1%82%D0%B0-%D0%B3%D1%80%D1%83%D0%B5%D0%B2%D1%81%D0%BA%D0%B8-%D0%BC%D0%B8%D1%98-%D0%B0%D0%BB%D0%BA%D0%BE%D0%B2-%D0%B8-%D1%98%D0%B0%D0%BD%D0%BA%D1%83%D0%BB%D0%BE%D1%81%D0%BA%D0%B0/a-18328431?maca=maz-TB\\_maz\\_utrinski-5917-xml-mrss](http://www.dw.de/%D0%B7%D0%B0%D0%B5%D0%B2-%D0%BF%D1%80%D0%B0%D0%B2%D0%BE%D1%81%D1%83%D0%B4%D1%81%D1%82%D0%B2%D0%BE-%D0%B3%D0%BE-%D0%BA%D0%BE%D0%BD%D1%82%D1%80%D0%BE%D0%BB%D0%B8%D1%80%D0%B0-%D1%82%D1%80%D0%BE%D1%98%D0%BA%D0%B0%D1%82%D0%B0-%D0%B3%D1%80%D1%83%D0%B5%D0%B2%D1%81%D0%BA%D0%B8-%D0%BC%D0%B8%D1%98-%D0%B0%D0%BB%D0%BA%D0%BE%D0%B2-%D0%B8-%D1%98%D0%B0%D0%BD%D0%BA%D1%83%D0%BB%D0%BE%D1%81%D0%BA%D0%B0/a-18328431?maca=maz-TB_maz_utrinski-5917-xml-mrss) [accessed July 15, 2015]

<sup>586</sup> *Utrinski Vesnik*, 26 February, 2015, p.2.

<sup>587</sup> <http://sds.org.mk/default.aspx?articleId=11768&mlid=55&agId=5> [accessed July 18, 2015].

<sup>588</sup> Interview with a former professor in the Police Academy, Skopje.

<sup>589</sup> Interview with a former director of the Police Academy.

in all eight police districts, as well as the border police, in an effort to make the work of the police more transparent.

According to the Law on the Prevention of Corruption, the Minister of Interior<sup>590</sup> and Ministry Directors,<sup>591</sup> as well as other heads of units, officials or responsible persons, are obliged to submit detailed asset declarations to the SCPC and the PRO. Police officers must also submit asset declarations. The declarations of high-level police officials are made publicly available by the SCPC.<sup>592</sup>

The Ministry of Interior is subject to the Law on Free Access to Information of a public character.<sup>593</sup> However, there are no provisions that would enable the public to obtain relevant information on the organisation and functioning of the police and other law enforcement agencies. There are no laws that enable the public to obtain information on law enforcement decisions that concern them and on how these decisions are made. There are no special provisions to enable victims of crimes to access their case files.

## 5.2.2 TRANSPARENCY (PRACTICE)

Score: **50**

### To what extent is there transparency in the activities and decision-making processes of law enforcement agencies in practice?

On the Ministry of Interior website strategic documents as well as updated information are posted.<sup>594</sup> The Mol is one of the first state institutions to have opened a Facebook account to communicate with the public, which was regarded as a positive step by the public and the police.<sup>595</sup> However the information is limited and there are few visits to the Mol Facebook profile.

There is a lack of transparency concerning employment procedures in the police. Some posts are not publicly announced and selection procedures are not transparent.

In terms of enabling the public free access to information, the Ministry of Interior is considered one of the least responsive state institutions.<sup>596</sup> According to the 2014 Annual Report of the Commission on Free Access to information of a public character, there were 1.620 requests for information from the state institutions in Macedonia, of which 223 (13,7) were addressed to the Mol, but there is no information as to the number of the requested information.<sup>597</sup>

The former Minister of Interior and the former Director of the UBK are implicated in the wiretapping scandal that broke in February 2015 when the opposition leader revealed that thousands of citizens had been the subject of interceptions of their communications,

<sup>590</sup> [http://dksk.org.mk/imoti\\_2/detail.php?detail=9250&search=&ime=%D0%93%D0%BE%D1%80%D0%B4%D0%B0%D0%BD%D0%B0&prezime=&funkcija=&institucija](http://dksk.org.mk/imoti_2/detail.php?detail=9250&search=&ime=%D0%93%D0%BE%D1%80%D0%B4%D0%B0%D0%BD%D0%B0&prezime=&funkcija=&institucija) [accessed July 25, 2015].

<sup>591</sup> [http://dksk.org.mk/imoti\\_2/detail.php?detail=1826&search=&ime=%D0%A1%D0%B0%D1%88%D0%BE&prezime=&funkcija=&institucija](http://dksk.org.mk/imoti_2/detail.php?detail=1826&search=&ime=%D0%A1%D0%B0%D1%88%D0%BE&prezime=&funkcija=&institucija) [accessed July 17, 2015].

<sup>592</sup> Law for the Prevention of Corruption, Official Gazette of RM, Nos. 28/2002, 46/2004, 126/2006, 10/2008, 161/2008, 145/2010, Article 33.

<sup>593</sup> [http://www.stat.gov.mk/pdf/SlobodenPristapDoInformacii/zakon\\_za\\_informacii.pdf](http://www.stat.gov.mk/pdf/SlobodenPristapDoInformacii/zakon_za_informacii.pdf), Article 1, [accessed July 17, 2015].

<sup>594</sup> <http://www.mvr.gov.mk/> [accessed August 2, 2015].

<sup>595</sup> <https://www.facebook.com/pages/Ministerstvo-Za-Vnatreshni-Raboti/600356086757609> [accessed July, 27 2015].

<sup>596</sup> *Utrinski Vesnik*, February 18, 2015, p.2.

<sup>597</sup> Annual Report of the Commission on Free Access to information, p.21, <http://www.komspi.mk/wp-content/uploads/2014/07/%D0%93%D0%9E%D0%94%D0%98%D0%A8%D0%95%D0%9D-%D0%98%D0%97%D0%92%D0%95%D0%A8%D0%A2%D0%90%D0%88-2014-%D0%9A%D0%9E%D0%9D%D0%95%D0%A7%D0%9D%D0%9E.pdf>

including leading politicians, journalists and academics.<sup>598</sup>

The law enforcement agencies have not been diligent in reporting to the Ombudsman or to a Parliamentary Commission.<sup>599</sup>

The asset declarations of some high-level police officials were considered incomplete and the SCPC launched a procedure to check their asset declarations.<sup>600</sup> However, the finding of this procedure was that nothing has not been appropriately declared.

### 5.2.3 ACCOUNTABILITY (LAW)

Score: **75**

#### **To what extent are there provisions in place to ensure that law enforcement agencies have to report and be answerable for their actions?**

Accountability provisions concerning the police cover both internal<sup>601</sup> and external<sup>602</sup> accountability.

Internal oversight of the police is largely carried out by a special unit located in the Ministry of Interior, i.e., the unit for professional standards and internal control.<sup>603</sup> This unit is responsible for investigating the exercise of police powers, especially in cases where deadly force has been used. The special unit is organizationally based in the Cabinet of the Minister, though it is obliged to perform its duties independently. It has the duty to investigate the quality of professional standards and corruption in the police.

If a citizen has a complaint about police behaviour, he/she may submit a complaint to the Ministry of Interior, which is obliged to investigate and respond in writing within 30 days.

External oversight is carried out by the Assembly and the Ombudsman. The Assembly, through the Parliamentary Commission, oversees the Department for Counterintelligence. The Commission is obliged to submit a report on its work to the Assembly at least once a year. The Commission reviews this report and submits its conclusions to the government.<sup>604</sup>

Once every four years, at the request of the Director, senior police officers review the organizational structure of the police and policing methods.<sup>605</sup>

Law enforcement officers do not enjoy immunity from criminal procedures.

<sup>598</sup> The case is in early stage of Prosecutor investigation. <http://sdsr.org.mk/default.aspx?mld=55&agld=5&articleId=11701> [accessed August 2, 2015].

<sup>599</sup> Mr.Tito Petkovski: <http://www.ereporter.com.mk/mk-mk/Details.aspx?Title=18803> [accessed July 25, 2015].

<sup>600</sup> State Commission for the Prevention of Corruption, Announcement of findings, [http://www.dksk.org.mk/index.php?option=com\\_content&task=view&id=228&Itemid=36](http://www.dksk.org.mk/index.php?option=com_content&task=view&id=228&Itemid=36) [accessed July 25, 2015].

<sup>601</sup> Law on Internal Affairs, Official Gazette of the RM, Nos. 42/14, 116/14, 22/2015, Article 38.

<sup>602</sup> Law on Internal Affairs, Official Gazette of the RM, Nos. 42/14, 116/14, 22/2015, Articles 39 and 40.

<sup>603</sup> Sector for professional standards and internal control.

<sup>604</sup> Law on Internal Affairs, Official Gazette of the RM, Nos. 42/14, 116/14, 22/2015, Article 39.

<sup>605</sup> Law on Police, Article 15.

## 5.2.4 ACCOUNTABILITY (PRACTICE)

Score: **25**

### To what extent do law enforcement agencies have to report and be answerable for their actions in practice?

There is undue political influence on the mechanisms intended to support the accountability of police and law enforcement. The police have been criticised for breaching the principle of the presumption of innocence in their readiness to report on and reveal details of cases concerning opposition politicians and political opponents of the current government. The Assembly committee that supervises the work of the counterintelligence service was completely banned from performing its oversight function due to political interference.<sup>606</sup>

The Committee for the Prevention of Torture (CPT) has visited and reviewed the situation in Macedonia 11 times, generating oversight and review of police behaviour that has resulted in positive reforms to police practices.<sup>607</sup>

The location of the unit for professional standards and internal control in the cabinet of the Minister of Interior raises the issue of the independence of the unit. The publication of the wiretapped conversations indicated that the Head of the Unit, Mrs. Stanchevska, and the Minister of Interior, Mrs. Gordana Jankuloska, abused police authority during the elections.<sup>608</sup>

The Assembly is ineffective in providing external oversight of the police. There is no effective independent institution that acts as an external control mechanism of the police.<sup>609</sup>

In practice, the law enforcement officials are not immune from criminal proceedings. In 2014, the Unit for Internal Control submitted 17 criminal cases against 25 employees for crimes, including abuse of official duty and corruption.<sup>610</sup>

## 5.2.5 INTEGRITY MECHANISM (LAW)

Score: **75**

### To what extent is the integrity of law enforcement agencies ensured by law?

The Law on Police regulates the integrity of the police. When a future police officer joins the police, s/he must sign a statement pledging to respect the Constitution, the laws of the Republic of Macedonia and the standards of police ethics, as well as commit him/herself to carrying out police duties in a conscientious and orderly manner.<sup>611</sup>

According to Article 104 of the Law on Police, police officers may undertake work and earn income additional to their police work under certain conditions and so long as such work is

<sup>606</sup> 'Who controls whom in the Intelligence arena in Macedonia?' [http://www.analyticamk.org/images/stories/newsletters/2012/1201\\_final.pdf](http://www.analyticamk.org/images/stories/newsletters/2012/1201_final.pdf), *Analitika*, Newsletter, 2012, Skopje, 2012 [accessed July 25, 2015].

<sup>607</sup> <http://www.cpt.coe.int/documents/mkd/2008-31-inf-eng.pdf>, p. 18 [accessed July 25, 2015].

<sup>608</sup> <http://b2.mk/news/barabite-od-snimkite-na-jankulovska-tepale-za-vreme-na-izbori-vo-ohrid?newsid=STTg>, [accessed August 2, 2015].

<sup>609</sup> The Macedonian Code of Police Ethics is based on the Council of Europe Code of Ethics (2001), officially promoted in 2004, <http://www.legislationline.org/documents/action/popup/id/5719> [accessed August 2, 2015].

<sup>610</sup> 2014 Annual Report for the Unit for the Internal Control and Professional Standards, <http://www.mvr.gov.mk/DesktopDefault.aspx?tabindex=0&tabid=130> [accessed July 17, 2015].

<sup>611</sup> Law on Police. Official Gazette of the RM, Nos. 114/2006, 6/2009, 45/2012, 41/2014, 33/2015, Article 100.

not in conflict with police work. A Code of Police Ethics exists to regulate conflicts of interest, promote honesty and professional and service-oriented policing.<sup>612</sup> There are no laws on conflicts of interest for police officers; instead, conflicts of interest are covered by the Code of Police Ethics, which is not a binding document. The Code includes rules on gifts and hospitality; however, there is no clear procedure for reporting gifts and hospitality or for overseeing the procedure. There are post-employment restrictions due to the confidential nature of police work.<sup>613</sup>

High-level police officials appointed by the government are subject to the same asset declaration obligations as other public officials.

## 5.2.6 INTEGRITY MECHANISM (PRACTICE)

Score: **25**

### To what extent is the integrity of members of law enforcement agencies ensured in practice?

The Ministry of Interior proactively supports projects to train and educate police officers.<sup>614</sup>

The Police publish disciplinary measures taken against police officers. According to the 2014 Annual Report of the MOI 188 disciplinary cases were initiated and four (4) officials were suspended until the finalization of proceedings against them. Only 64 officials were punished with a fine and 19 received written warnings. The disciplinary mechanism is not considered to be independent.

There has been little progress in preventing political activities in police premises. There are indicators that some police officers are still being used to promote and implement political party objectives during elections.<sup>615</sup>

The police have been found to cover up irregularities in their work, as evidenced by cases such as 'Neskovski' in 2011 and 'Gorce Petrov' in 2014.<sup>616</sup> Politicians' police security details have been found to have violated public order without facing disciplinary proceedings or other sanctions.<sup>617</sup>

## ROLE

### 5.3.1 PROSECUTION OF CORRUPTION

Score: **50**

### To what extent do law enforcement agencies detect and investigate corruption cases in the country?

<sup>612</sup> The Macedonian Code of Police Ethics is based on the Council of Europe Code of Ethics (2001) officially promoted in 2004, <http://www.legislationline.org/documents/action/popup/id/5719> [accessed July 15, 2015].

<sup>613</sup> Law on Police. Official Gazette of the RM, Nos. 114/2006, 6/2009, 45/2012, 41/2014, 33/2015, Article 114. [accessed July 15, 2015].

<sup>614</sup> Annual Report of the MOI and the Sector for Police Training.

<sup>615</sup> <http://www.dailymotion.com/video/x2lkqrs> [accessed August 2, 2015]

<sup>616</sup> [http://fokus.mk/kako-mvr-se-obiduvashе-da-ja-sokrie-vistinata-za-ubistvoto-na-martin-neshkoski/http://www.mhc.org.mk/system/uploads/redactor\\_assets/documents/700/2014\\_1.pdf](http://fokus.mk/kako-mvr-se-obiduvashе-da-ja-sokrie-vistinata-za-ubistvoto-na-martin-neshkoski/http://www.mhc.org.mk/system/uploads/redactor_assets/documents/700/2014_1.pdf) [accessed August 5, 2015].

<sup>617</sup> <http://www.dnevnik.mk/?ItemID=7397DC17DAD1D24AB1CDEC97DC10E553> [accessed July 15, 2015].

There is a strong legal and institutional framework to investigate corruption. However, while law enforcement agencies do investigate corruption cases, their work is generally reactive rather than proactive, and focuses only on a small number of cases and rarely results in charges and successful convictions.

The legislative framework on corruption has been harmonized and developed with Special Investigative Measures (SIM) to augment police powers in investigating corruption. However, the police do not effectively use their powers in this regard, especially concerning corruption involving political parties.

In 2013, the Public Prosecutor's Office for Organized Crime received 136 new criminal reports against 478 perpetrators.<sup>618</sup> According to the statistical data of Skopje Basic Court I, only 97 cases related to corruption were handled in 2012, out of 1,768 cases of organized crime and corruption.<sup>619</sup>

## RECOMMENDATIONS

- R1.** The Ministry of Interior should introduce effective rules on conflicts of interest for police officers.
- R2.** The Ministry of Interior should ensure the application of effective controlling mechanisms for the implementation of the Code of Police Ethics and the rules on gifts and hospitality.
- R3.** The Ministry of Interior needs to establish effective mechanisms to prevent political activities on police premises, including a whistleblowing mechanism, in order to strengthen police officers' ability to resist undue political interference and to reinforce their ability to resist being instrumentalised during elections as tools of political parties.

<sup>618</sup> MCIC, *Corruption and Organized Crime Threat Monitoring Report*, (Skopje: MCIC, 2014), p.12.

<sup>619</sup> Ibid.



# 6. PUBLIC PROSECUTOR

## SUMMARY

The 2010 Criminal Proceedings Code (CPC) changed the legal system in Macedonia from an inquisitorial system that takes the form of a judge-led inquiry into a case, to an adversarial system that pits the prosecution against the defence. Prosecutors have had to take on a completely new role. However, the prosecution system lacks the resources necessary to fully implement the new law and to enable prosecutors to carry out all their new duties. The prosecution system also faces challenges related to its transparency and integrity.

The prosecution system is not independent in practice. The so-called 'Putsch case',<sup>620</sup> as well as revelations from the recent wiretapping scandal, have shown that the prosecution is unduly influenced by the ruling political parties. There is a lack of public confidence and trust in the integrity of the State Public Prosecutor and there are demands for his resignation. The prosecution is accused of selective enforcement<sup>621</sup> of the law, as well as of being susceptible to political influence on prosecution decisions. A Special Prosecutor was formed on 15 September 2015 with the purpose of investigating allegations of high-level wrongdoings and corruption.

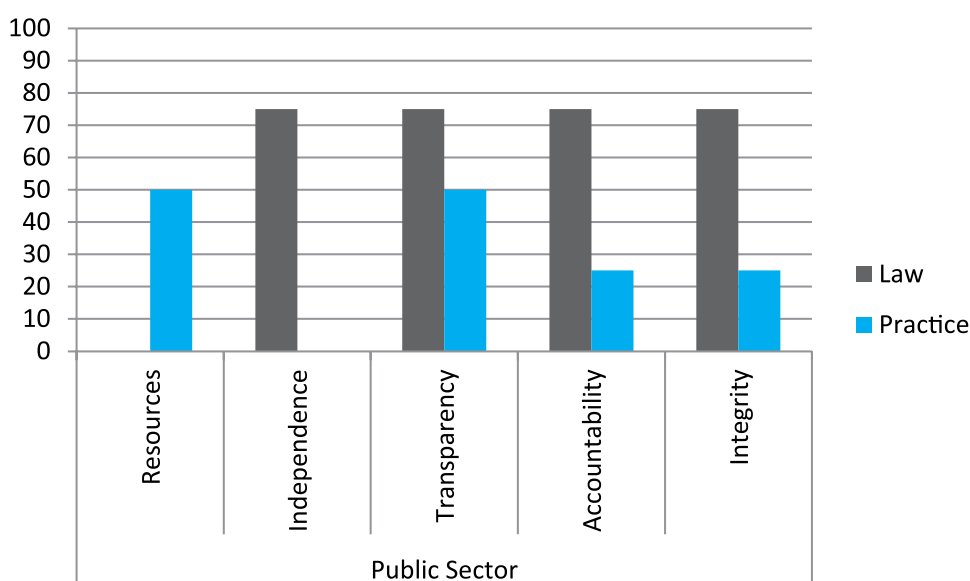
**OVERALL PILLAR SCORE: 42.3/100**

| DIMENSION                     | INDICATOR      | LAW | PRACTICE |
|-------------------------------|----------------|-----|----------|
| <b>Capacity</b><br>56.2/100   | Resources      | 75  | 50       |
|                               | Independence   | 50  | 50       |
| <b>Governance</b><br>45.8/100 | Transparency   | 50  | 25       |
|                               | Accountability | 50  | 50       |
|                               | Integrity      | 75  | 25       |
| <b>Role</b><br>25/100         | Role           |     | 25       |

<sup>620</sup> <http://www.time.mk/c/5c4850a18a/sudbinata-na-slucajot-puc-neizvesna.html> Macedonia's chief opposition leader was charged by police in January 2015 with conspiring with a foreign intelligence service to overthrow the Government. Zoran Zaev, leader of the Social Democrats, denied the charges, saying the authorities were trying in vain to prevent the publication of what he says is incendiary evidence of criminal wrongdoing by the Government of Prime Minister Nikola Gruevski.

<sup>621</sup> Interview with Professor Gordan Kalajdziev, <http://novatv.mk/index.php?navig=8&cat=16&vest=21103> <http://www.independent.mk/articles/13918/EU+Voices+Concern+about+Macedonia's+Political+Situation+after+Espionage+Arrests> [accessed June 5, 2015].

## Pillar score per Law and Practice



## STRUCTURE AND ORGANIZATION

The work of the Public Prosecution Office (PPO) in the Republic of Macedonia is regulated by the Law on the Public Prosecution Office<sup>622</sup> and the Law on the Council of Public Prosecutors.<sup>623</sup> The Public Prosecution Office is an autonomous state body with the primary aim of prosecuting perpetrators of criminal acts. The Council of Public Prosecutors was established in 2007 in order to ensure and guarantee the independence of public prosecutors in performing their duties. The Council is comprised of 11 members who are elected in different ways. Ex officio members of the Council include the Public Prosecutor of the Republic of Macedonia and the Minister of Justice. One member of the Council is elected by the public prosecutors in the Public Prosecutors' Office of the Republic of Macedonia; one member is elected by each region of the Higher Public Prosecution Offices; one member of the Council is elected from the minority communities; and three members of the Council are elected by the National Assembly of the Republic of Macedonia.

The organizational structure of the prosecution mirrors the structure of the courts. The Public Prosecutor of the Republic of Macedonia acts only before the Supreme Court of the Republic of Macedonia. The Higher Public Prosecution Office has rights of audience before the appellate courts and is organized regionally in the same four regions as the Appellate Courts. The Basic Public Prosecution Office acts before the courts of first instance.

The Public Prosecution Office for the Prosecution of Organized Crime and Corruption was established for prosecuting organized crime and cases of corruption throughout the whole territory of the Republic of Macedonia and it acts before a specialized department of the Court of First Instance in Skopje. The Public Prosecutor (PP) leads the pre-trial procedure and has authority over law enforcement officers from the Police, the Financial Police and Customs<sup>624</sup>.

<sup>622</sup> Official Journal of the Republic of Macedonia, No. 150 from 12.12.2007 and No. 150 from 3.09.2008.

<sup>623</sup> Council of Ministers Recommendation, No. (2009)19, the Role of Public Prosecutors in the Criminal Justice System.

<sup>624</sup> Law on Public Prosecution, Official Gazette of the RM, Nos.150/2007,11/2008, Article 30.

## ASSESSMENT

### CAPACITY

#### 6.1.1 RESOURCES (LAW)

Score: **75**

##### **To what extent are there laws intended to ensure appropriate salaries and working conditions for prosecutors?**

The budget and salaries of the Public Prosecution are regulated by the Law on Public Prosecution.<sup>625</sup> The salaries and other allowances of public prosecutors are set at the same level as those of judges. The law also regulates that these salaries cannot be reduced unless determined by law. The Minister of Justice determines the amount and means of payment of these salaries.<sup>626</sup> Salaries are determined on the basis of rank, type of prosecutorial office, scientific degrees, competence, training and education.<sup>627</sup> There is no mechanism to secure salary adjustment, though the law provides for appropriate salaries to protect the prosecutor from any undue influence on his/her decisions.<sup>628</sup> The reforms of the judiciary in Macedonia significantly improved the salaries of judges and prosecutors as compared with other civil servants as a measure intended to prevent corruption.

The Public Prosecution has a separate budget line in the state budget.<sup>629</sup> This budget is apportioned by the Ministry of Finance, which is obliged to seek the opinion of the Public Prosecution office before submitting the proposal to the Assembly.<sup>630</sup> The Public Prosecution is legally obliged to participate in this process.<sup>631</sup> The distribution of the budget is executed by the Public Prosecution in cooperation with the Prosecutorial Council.

#### 6.1.2 RESOURCES (PRACTICE)

Score: **50**

##### **To what extent does the Public Prosecutor have adequate levels of financial resources, staffing, and infrastructure to operate effectively in practice?**

According to the Annual Report of the PPO, the budget of the Public Prosecutor's office is insufficient for it to perform its duties.<sup>632</sup> Salary levels for prosecutors are adequate.

There is a lack of staff in Public Prosecution offices, including not only an inadequate number of prosecutors but also an insufficient number of advisers, trainees, administrative workers and technicians. There is insufficient office space and library resource, although there is satisfactory and modern computer equipment.<sup>633</sup>

<sup>625</sup> Law on Public Prosecution, Official Gazette of the RM, Nos.150/2007,11/2008, Articles 88 and 52.

<sup>626</sup> Law on Public Prosecution, Official Gazette of the RM, Nos.150/2007,11/2008, Article 54.

<sup>627</sup> Law on Public Prosecution, Official Gazette of the RM, Nos.150/2007,11/2008, Article 52.

<sup>628</sup> Law on Public Prosecution, Official Gazette of the RM, Nos.150/2007,11/2008, Article 52, p.3.

<sup>629</sup> Law on Public Prosecution, Official Gazette of the RM, Nos.150/2007,11/2008, Article 88.

<sup>630</sup> Law on Public Prosecution, Official Gazette of the RM, No.150/2007,11/2008, Article 88, p. 3

<sup>631</sup> Law on Public Prosecution, Official Gazette of the RM, No.150/2007,11/2008, Article 88, p. 2.

<sup>632</sup> PPO, *Annual Report of the PPO 2013*, (Skopje: PPO, 2013), p. 65.

<sup>633</sup> PPO, 2013: p.65

There is lack of experience and knowledge amongst prosecutors, which is manifested through a failure to take a proactive approach to prosecuting cases. Political authorities influence the prosecution of cases. The Public Prosecution office has long been marginalized and neglected by the state in all aspects.<sup>634</sup>

According to the EC Progress Report 2015: “The Investigative Centre within the PPO for the Fight against Organized Crime and Corruption, formally established in 2011, became operational, employed 9 support staff in 2014 and a further 13 in 2015, equipped with IT and audio-visual recording facilities, and started to function.”<sup>635</sup>

The recent mass wiretapping scandal raises the issue of the capacity of the Public Prosecution to handle the situation. The Public Prosecution requested international monitoring and support from the European Commission to deal with the Putsch and the wiretapping cases on the basis that such assistance would ensure transparency of the prosecution process.<sup>636</sup> This request, though apparently welcomed by the ruling party<sup>637</sup> as well as by the opposition,<sup>638</sup> has been denied with the explanation that it is for the Macedonian judiciary and prosecution to handle the cases arising from the scandal themselves.<sup>639</sup>

The Public Prosecutor has been sharply criticized by CSOs, the media and the opposition for stoking the Putsch process and for suppressing the processes related to wiretapping. There are frequent calls from the public and opposition for the resignation of the Public Prosecutor.<sup>640</sup>

### 6.1.3 INDEPENDENCE (LAW)

Score: **50**

#### To what extent is the Public Prosecutor independent by law?

There are some legal provisions concerning the independence of the Public Prosecutor, though they are not comprehensive. The independence of the Public Prosecutor is not explicitly stated in the Constitution, although GRECO’s evaluation of the Public Prosecutor’s Office did accept that its institutional independence and functional autonomy are guaranteed by the Constitution and by law.<sup>641</sup> The Government’s role in proposing the candidate for State Prosecutor after considering the opinion of the Council of Public Prosecutors threatens the independence of the State Prosecutor.<sup>642</sup> The State Prosecutor is appointed and dismissed by the Assembly for a period of 6 years, with the right of re-appointment.<sup>643</sup> The other public prosecutors are elected by the Council of Public Prosecutors without any limitations on the duration of their mandate.

The Council of Public Prosecutors is an independent body which guarantees the independence of public prosecutors in the execution of their functions. It was established in 2007 by the

<sup>634</sup> Professor Gordana Kalajdziev, *Effective Defense in Criminal Proceedings in the Republic of Macedonia, Law Watch Analyses*, (Skopje: FOS Macedonia, 2014).

<sup>635</sup> European Commission, 2014: p.42

<sup>636</sup> <http://www.telegraf.mk/aktuelno/makedonija/258313-obvinitelstvoto-dobi-odgovor-od-brisel> [accessed May 15, 2015]

<sup>637</sup> DUI, the main Albanian party in the ruling coalition, was the first to propose international monitoring.

<sup>638</sup> *Utrinski vesnik*, 16<sup>th</sup> of March, 2015.

<sup>639</sup> <http://www.mkdnews.com/2015/03/evropskata-komisija-go-odbi-baranjeto-na-zvrlevski/> [accessed May 17, 2015].

<sup>640</sup> *Vest, Utrinski Vesnik*, 16<sup>th</sup> of March, 2015

<sup>641</sup> GRECO, 2014: pp.42

<sup>642</sup> Constitution of the RM, Official Gazette of RM, No. 52/91, Article 106.

<sup>643</sup> Constitution of the RM, Official Gazzete of RM, No. 52/91, Article 106.

Law on the Council of Public Prosecutors.<sup>644</sup> Responsibilities previously within the remit of judges under the former inquisitorial system have now been delegated to public prosecutors. The system is in line with prosecution systems in other countries in South-East Europe.

According to the LPP,<sup>645</sup> the PPO is an autonomous state body that is required to perform its work legally, impartially and fairly, respecting and protecting freedom and human rights, with the primary aim of prosecuting perpetrators of criminal acts.<sup>646</sup> The LPP provides criteria for the employment and promotion of public prosecutors based on professional competence, continuous education and mentorship.<sup>647</sup>

According to the LPP, the Council is obliged to develop and implement a 'Rulebook on Evaluation of the Work of the Public Prosecutors'. The Public Prosecutor for organized crime and corruption is evaluated only by the State Prosecutor. The public prosecution office for organized Crime and corruption submits its annual report to the State Prosecutor, who then presents it to the Assembly.

The law states that no person or authority is allowed to instruct prosecutors to prosecute or to discontinue prosecution in an individual case.<sup>648</sup> Furthermore, public prosecutors are prohibited from participating in political organizations and political activities.

#### 6.1.4 INDEPENDENCE (PRACTICE)

Score: **50**

##### **To what extent does the Public Prosecutor operate without interference from the government or other actors?**

Even though the legal framework has improved, there are concerns regarding the independence of the PP in practice, especially in terms of its independence from political influence. The criteria for appointment of the PP are clear, as set out in the LPP (Articles 40–47), but there is evidence of political influence in the appointment process.<sup>649</sup>

Public prosecutors are required to be independent in performing their duties. However, there have been alleged instances of undue external and political influence on public prosecutors. In one criminal case, the Deputy Prime Minister was accused of a crime related to official duties. The wiretapped transcripts revealed by the opposition indicate that the Minister of Interior allegedly intervened in this case to request that the Public Prosecutor prevent the indictment against the Deputy Prime Minister. The Public Prosecutor decided not to pursue the case.<sup>650</sup>

In another case, the leader of the opposition accused the Prime Minister of corruption. The Prime Minister brought a civil suit against the leader of the opposition for defamation. Public prosecutors did not bring forward any criminal proceedings concerning the allegation of corruption.<sup>651</sup>

<sup>644</sup> Official Gazette of the RM, No. 150/2007.

<sup>645</sup> Law on Public Prosecution, Official Gazette of the RM, No.150/2007,11/2008, Article 5.

<sup>646</sup> The identical values are noted in the Code of Ethics of the Public Prosecutors of the Republic of Macedonia, Official Gazette of the RM, No. 194, 25/12/2014.

<sup>647</sup> Law on Public Prosecution, Official Gazette of the RM, No.150/2007,11/2008, Article 45.

<sup>648</sup> Law on Public Prosecution, Official Gazette of the RM, No.150/2007,11/2008, Article 5.

<sup>649</sup> In the audio tapes presented by the opposition party, the PP urged the Minister of Interior to ask the coalition partner from DUI to agree on the appointment of a certain person of Macedonian ethnicity to be appointed to a senior PP position in PPO Skopje, <https://www.youtube.com/watch?v=mhZl6wQdvnI> [accessed May 8, 2015]

<sup>650</sup> Recordings published in February 2015. <https://www.youtube.com/watch?v=bEdyLTATg9g> [accessed on May 7, 2015].

<sup>651</sup> Makedonska Banka case. Nikola Gruevski vs. Zoran Zaev: <http://novatv.mk/index.php?navig=8&vest=16477&cat=2>; <http://www.24vesti.mk/javnoto-obvinitelstvo-nema-da-pokrene-postapka-za-sluhajot-%E2%80%9Emakedonska-banka%E2%80%9C> [accessed May 15 2015].

## GOVERNANCE

### 6.2.1 TRANSPARENCY (LAW)

Score: **50**

**To what extent are there provisions in place to ensure that the public can obtain relevant information on the activities and decision-making processes of the Public Prosecutor?**

The Law on Public Prosecution sets out the organizational structure of the public prosecution system. The transparency mechanisms in the public prosecution system are weak. The Public Prosecutor for Prosecuting Organized Crimes and Corruption, as well as other public prosecutors,<sup>652</sup> are required to provide access for the public and the media to information about crime and other issues under the Public Prosecutor's responsibility.

Prosecutors have an obligation to submit asset declarations, and these are made publicly available by the SCPC.<sup>653</sup> Prosecutors are also obliged to update their declarations regarding any changes to their assets.<sup>654</sup> Similar to the system in place for judges, these declarations are submitted to the SCPC and to the Public Revenue Office (PRO). The follow-up and examination procedure is the same.<sup>655</sup> A statement certified by a notary is deposited along with the declaration, detailing bank accounts and waiving bank secrecy requirements for all accounts in domestic and foreign banks.

The 2010 Criminal Procedure Code (CPC) requires the public prosecution to undertake more active role in public presentation of its work.<sup>656</sup>

The Code of Ethics<sup>657</sup> for public prosecutors entails transparency obligations. Public prosecutors are to give the media as much detailed information as is legally permissible while maintaining respect for the rights of victims, any damaged persons, as well as suspected or prosecuted persons.<sup>658</sup>

The rights of defendants and defence lawyers to access their case files is unduly limited. Article 79.1 of the CPC entitles defence lawyers to review records and evidence in the course of proceedings. However, the subsequent article limits the right of access only to material held by the public prosecution that is related to proceedings attended by the defence. The defence is not granted access to records and evidence concerning witness interviews.<sup>659</sup>

The CPA takes the positive step in obliging state authorities to disclose evidence that favours the defence, as well as evidence against them.<sup>660</sup>

<sup>652</sup> Law on Public Prosecution, Official Gazette of RM, No.150/2007,11/2008, Article 8.

<sup>653</sup> Law on the Prevention of Corruption, Official Gazette of RM, Nos. 28/2002, 46/2004, 126/2006, 10/2008, 161/2008, 145/2010, Article 33.

<sup>654</sup> Law on the Prevention of Corruption, Official Gazette of RM, Nos. 28/2002, 46/2004, 126/2006, 10/2008, 161/2008, 145/2010, Article 33 – a (1).

<sup>655</sup> See page: [http://www.dksk.org.mk/images/Drzavni\\_Programi/%D0%93%D0%9E%D0%94%D0%98%D0%A8%D0%95%D0%9D%20%D0%98%D0%97%D0%92%D0%95%D0%A8%D0%A2%D0%90%D0%88-2014-%D0%94%D0%9A%D0%A1%D0%9A.pdf](http://www.dksk.org.mk/images/Drzavni_Programi/%D0%93%D0%9E%D0%94%D0%98%D0%A8%D0%95%D0%9D%20%D0%98%D0%97%D0%92%D0%95%D0%A8%D0%A2%D0%90%D0%88-2014-%D0%94%D0%9A%D0%A1%D0%9A.pdf) [accessed May 25, 2015].

<sup>656</sup> [http://meta.mk/?p=54922&upm\\_export=doc](http://meta.mk/?p=54922&upm_export=doc) [accessed May 28, 2015].

<sup>657</sup> Code of Ethics of the Public Prosecutors of the Republic of Macedonia, Official Gazette of RM, No.194/2014.

<sup>658</sup> Code of Ethics of the Public Prosecutors of the Republic of Macedonia, Article 15.

<sup>659</sup> Kalajdziev, 2014: p.85

<sup>660</sup> Kalajdziev, 2014: p.56

## 6.2.2 TRANSPARENCY (PRACTICE)

Score: **25**

### To what extent does the public have access to information on the activities and decision-making processes of the Public Prosecutor in practice?

The Public Prosecutor's Office is considered one of the least transparent institutions in the Republic of Macedonia.<sup>661</sup>

In politically sensitive cases, the Public Prosecution does not provide clear information to the public. In adopting the 2014 Annual Report of the Public Prosecution Office, some MPs expressed concern about the lack of transparency of the work of the public prosecution and stated that neither the Assembly nor the public has information about how prosecutors perform their responsibilities.<sup>662</sup> The Chair of the Prosecutorial Council has stated that their annual report is not analytical but only a statistical presentation of the Council's activities.<sup>663</sup>

Asset declarations are published on the SCPC website. However, there is no mechanism in place to enable accurate tracking of changes in assets due to the fact that the date of submission of the declaration is not subsequently amended to reflect changes.<sup>664</sup> However, prosecutors generally respect the obligation to disclose their assets.<sup>665</sup>

Regarding the 'Putsch' case and the opposition project known as 'The Truth about Macedonia' (or 'Bombs'), the State Prosecutor issued a statement warning the media about the possible legal consequences of publishing information that could be used as evidence by criminal justice institutions. The State Prosecutor told journalists that they would face punishment if material they publish "becomes the subject of further criminal proceedings".<sup>666</sup> The statement was criticized by the media, human rights activists, citizens and criminal justice experts as an attempt to prevent media freedom. The U.S. Embassy in Macedonia issued a statement expressing "concern" at the warning, and stressing the media's role in presenting information that is in the public interest: "We are concerned that the media in Macedonia may interpret the statement of the Public Prosecutor's Office to mean that it should not be playing this important role," he said, urging authorities to make clear the "narrow circumstances" in which information may be treated as an official secret.<sup>667</sup> The OSCE also expressed concern regarding this issue.<sup>668</sup>

Nonetheless, Macedonian National TV (MTV) cited the statement as a reason not to publish the content of press conferences held by the opposition regarding the "Bombs".

The type and levels of information provided to defence lawyers and defendants is decided by the CPC. Survey results indicate that only 11% of respondents report that detailed information is provided, 21% are not informed, and 68% of the respondents say that summarized information is provided.<sup>669</sup>

<sup>661</sup> MCIM Report.

<sup>662</sup> Pavle Trajanov, 03.07.2014.

<sup>663</sup> <http://sitetel.com.mk/sobraniето-go-usvoi-godishniot-izveshtaj-za-rabotata-na-sovetot-na-javnite-obviniteli> [accessed -May 15, 2015].

<sup>664</sup> SCPC, available at [http://www.dksk.org.mk/imoti\\_2/](http://www.dksk.org.mk/imoti_2/) [accessed May 15, 2015].

<sup>665</sup> Interview with Milka Ristova, (face to face), 24.02.2014.

<sup>666</sup> <http://www.reuters.com/article/2015/02/06/us-macedonia-opposition-usa-idUSKBN0LA28420150206> [accessed May 15, 2015].

<sup>667</sup> <http://www.reuters.com/article/2015/02/06/us-macedonia-opposition-usa-idUSKBN0LA28420150206> [accessed May 8, 2015].

<sup>668</sup> <http://libertas.mk/> [accessed May 8, 2015].

<sup>669</sup> Kalajdziev, 2014: p.138.

The Public Prosecutor's Office has a public communication unit tasked with collecting all information from prosecutorial offices and distributing it to the media in a timely manner.<sup>670</sup>

The information posted on the PP website<sup>671</sup> is limited, rather general and not up-to-date.

The 2014 Annual Report of the SCPC reports that the measures in the national anti-corruption strategy concerning the transparency of the Public Prosecutor's Office have not been implemented.<sup>672</sup>

### 6.2.3 ACCOUNTABILITY (LAW)

Score: **50**

#### **To what extent are there provisions in place to ensure that the public prosecutor has to report and be answerable for its actions?**

The Public Prosecution Office, the Assembly, the executive and the judiciary all have obligations to hold the public prosecution system to account.

High-level public prosecutors supervise lower-level prosecutors and the prosecution for organized crime is supervised by the State Prosecutor.<sup>673</sup> The procedure for supervision is set out in a rulebook adopted by the Prosecutorial Council. The Council has also adopted rules for evaluating the performance of public prosecutors, which is also conducted by high-level prosecutors evaluating lower-level prosecutors.<sup>674</sup>

The Prosecutorial Council has also adopted disciplinary rules for prosecutors. Breaches of the disciplinary rules are reviewed by a 5-member committee appointed by the State Prosecutor.<sup>675</sup> However, there is no independent body to investigate complaints against prosecutors, and public prosecutors do not enjoy immunity from criminal procedures.<sup>676</sup>

The LPP sets out the circumstances in which public prosecutors may be dismissed, including convictions of prosecutors by the courts for offences that result in prison sentences with a minimum of six months, or that result in other criminal sanctions that make the prosecutors unworthy of their position.<sup>677</sup>

The State Prosecutor is accountable to the Assembly for his/her work and all the work of the prosecution service.<sup>678</sup> The State Prosecutor submits the annual report about the crime situation in Macedonia to the Assembly. There is no legal obligation for the report to be debated in the Assembly.<sup>679</sup>

<sup>670</sup> <http://www.mkd.mk/makedonija/politika/javnoto-obvinitelstvo-dobi-oddelenie-za-odnosi-so-javnosta> [accessed May 5, 2015].

<sup>671</sup> <http://www.jorm.org.mk/> [accessed May 5, 2015].

<sup>672</sup> <http://www.akademik.mk/wp-content/uploads/2015/04/GODISHEN-IZVESHTAJ-2014-DKSK.pdf> [accessed May 27, 2015], p.18

<sup>673</sup> Law on Public Prosecution, Official Gazette of RM, No. 150/2007, Article 21.

<sup>674</sup> Law on Public Prosecution, Official Gazette of RM, No. 150/2007, Article 21.

<sup>675</sup> Law on Public Prosecution, Official Gazette of RM, No. 150/2007, Article 72.

<sup>676</sup> Law on Public Prosecution, Official Gazette of RM, No. 150/2007, Article 65.

<sup>677</sup> Law on Public Prosecution, Official Gazette of RM, No. 150/2007, Article 65.

<sup>678</sup> Law on Public Prosecution, Official Gazette of RM, No. 150/2007, Article 20.

<sup>679</sup> Law on Public Prosecution, Official Gazette of RM, No. 150/2007, Article 24



## 6.2.4 ACCOUNTABILITY (PRACTICE)

Score: **50**

### To what extent do prosecutors report and answer for their actions in practice?

The public prosecution is perceived to be one of the least transparent institutions. Many other institutions and groups, including the Ombudsman,<sup>680</sup> the State Commission for the Prevention of Corruption,<sup>681</sup> MPs,<sup>682</sup> CSO groups working in the field of human rights, and the media have all expressed dissatisfaction with the public prosecution system. Some allegations of crime have been made against the State Prosecutor for abuse of official duty.<sup>683</sup>

The State Prosecutor is annually questioned by the Assembly about the work of the public prosecution system; however, full and frank answers are not forthcoming.<sup>684</sup>

According to GRECO, the disciplinary regime applicable to prosecutors needs to be reviewed. Some of the grounds for the dismissal of prosecutors, such as “improper conduct towards individuals, state organs or other legal entities in relation to the performance of the functions or otherwise”, or “violation of the non-discrimination principle on any grounds”, are formulated in a very vague manner, and infringements should be clearly defined. GRECO also recommends that the range of available sanctions should be extended to ensure better proportionality and, in particular, that the dismissal of a prosecutor should only be possible for the most serious cases of misconduct.<sup>685</sup>

According to Article 271 of the Law on CPC, the Assembly has a legal obligation to review the use of ‘Special Investigative Measures’ (SIMs). The State Prosecutor has submitted the report on SIMs applied in 2014.<sup>686</sup>

There is political influence on the appointment process of public prosecutors. When a former State Prosecutor was questioned about his discussion with the Minister of Interior concerning the appointment of a judge’s son as a public prosecutor, he stated that the Prosecution is autonomous but not independent and that cooperation with the executive in this regard is absolutely legitimate.<sup>687</sup>

Claims of selective enforcement and political influence on prosecution decisions persist.<sup>688</sup>

<sup>680</sup> Mr. Idzet Memeti wrote letters to the Security Service (UBK), the Agency for Electronic Communications, Public Prosecutors and Assembly requesting information related to the “putsch” and “bomb” affairs: <http://www.utrinski.mk/?ItemID=1340CFE228DB2C46A40386FB3C82D988&commentID=631311&pLikeVote> [accessed March 3, 2015].

<sup>681</sup> <http://24vesti.mk/drzhavnata-komisija-za-sprechuvanje-korupcija-so-zabeleshki-za-rabotata-na-instituciite> [accessed March 15, 2015].

<sup>682</sup> <http://www.utrinski.mk/?ItemID=1340CFE228DB2C46A40386FB3C82D988&commentID=631311&pLikeVote=1> [accessed March 15, 2015].  
[http://www.sakam.info/liljana-popovska-pobara-odgovor-od-marko-zvrlevski-za-napadite-na-lgbti-zaednicata-25-12-2014.html?utm\\_content=buffer46089&utm\\_medium=social&utm\\_source=facebook.com&utm\\_campaign=buffer](http://www.sakam.info/liljana-popovska-pobara-odgovor-od-marko-zvrlevski-za-napadite-na-lgbti-zaednicata-25-12-2014.html?utm_content=buffer46089&utm_medium=social&utm_source=facebook.com&utm_campaign=buffer) [accessed March 15, 2015].

<sup>683</sup> <http://www.time.mk/c/577ef565d8/stojance-angelov-ke-podnese-krivicna-prijava-protiv-zvrlevski.html> [accessed March 27, 2015].

<sup>684</sup> <http://plusinfo.mk/vest/9384/popovska-do-zvrlevski-dali-obvinitelite-znaat-shto-se-covekovi-prava> [accessed May 5, 2015].

<sup>685</sup> GRECO, 2014: p.52.

<sup>686</sup> <http://sky.mk/makedonija/432392-pavle-trajanov-pobara-oddrzhuvanje-na-sobraniska-sednica-na-koja-kje-se-rasprava-za-aktuelnata-kriza> [accessed March 27, 2015].

<sup>687</sup> <http://plusinfo.mk/vest/19103/shvrgovski-za-dojce-vele-obvinitelstvoto-e-samosto-en-organ-no-ne-e-nezavisen> [accessed March 27, 2015].

<sup>688</sup> The Minister of Justice recently stated that he suffered from political pressure, *Utrinski Vesnik*, 16<sup>th</sup> of March, 2015.

## 6.2.5 INTEGRITY (LAW)

Score: **75**

### To what extent are there mechanisms in place to ensure the integrity of prosecutors?

The Code of Ethics of Public Prosecutors was recently adopted.<sup>689</sup> The Code includes commitments to honesty, transparency of asset declarations,<sup>690</sup> and a policy to prevent conflicts of interest and corruption.<sup>691</sup> It also contains rules on gifts and hospitality, as well as guidance against inappropriate public appearances by prosecutors.<sup>692</sup> There is a post-employment restriction obliging prosecutors to respect professional secrecy upon ending employment with the PPO.<sup>693</sup>

The salary of public prosecutors is defined in law as an amount which will protect him/her from pressure and influence on his/her work and making decisions.<sup>694</sup>

There are also rules on conflicts of interest.<sup>695</sup>

## 6.2.6 INTEGRITY (PRACTICE)

Score: **25**

### To what extent is the integrity of members of the judiciary ensured in practice?

It is difficult to assess the effectiveness of the existing Code of Ethics of Public Prosecutors because there is no implementing mechanism in place. Similarly, there is no implementing mechanism or oversight of the rules on gifts, asset declarations and statement of conflicts of interest.<sup>696</sup>

The Council of Public Prosecutors dismissed one public prosecutor on the grounds of a disciplinary offence and another on the ground of a criminal offence.<sup>697</sup> In 2014, the SCPC established one case where the prosecutor failed to report interests in accordance with the Law on Conflicts of Interest.<sup>698</sup>

The public prosecution service lacks integrity and is perceived as not being capable of responding to the illegal wiretapping scandal.<sup>699</sup>

<sup>689</sup> Code of Ethics of the Public Prosecutors of the RM, Official Gazette of the RM, No 194/2014.

<sup>690</sup> Code of Ethics of the Public Prosecutors of the RM, Official Gazette of the RM, No 194/2014, Articles 3 and 4.

<sup>691</sup> Code of Ethics of the Public Prosecutors of the RM, Official Gazette of the RM, No 194/2014, Article 4.

<sup>692</sup> Code of Ethics of the Public Prosecutors of the RM, Official Gazette of the RM, No 194/2014, Article 6.

<sup>693</sup> Code of Ethics of the Public Prosecutors of the RM, Official Gazette of the RM, No 194/2014, Article 9.

<sup>694</sup> Law on Public Prosecution, Official Gazette of RM, No. 150/2007, Article 52.

<sup>695</sup> Law on Public Prosecution, Official Gazette of RM, No. 150/2007, Article 62.

<sup>696</sup> GRECO, 2014: p.6.

<sup>697</sup> Council of the Public Prosecution of the Republic of Macedonia, *Annual Report for 2014*, p.5.

<sup>698</sup> State Commission for the Prevention of Corruption, *Annual Report for 2014*, (Skopje: State Commission for the Prevention of Corruption, 2015).

<sup>699</sup> The Democratic Alliance of Macedonia party, Mr. Pavle Trajanov

## ROLE

### 6.3.1 ROLE

Score: **25**

#### **To what extent does the Public Prosecutor investigate and prosecute corruption cases in the country?**

The implementation of the new CPC in December 2013 brought important changes in the respective roles and relations of all participants in criminal procedure, including a more active leading role for the Public Prosecutor in the pre-investigative and investigative process, with control over the police and other law enforcement bodies.

The Public Prosecutor has legal powers to investigate corruption cases and does not need approval from other institutions to investigate and prosecute certain corruption cases. The powers of prosecutors with regard to corruption cases are adequate (e.g. search warrants, arrest, access to personal information, using SIMs). There is a set of clear criteria according to which prosecutors decide whether or not to prosecute corruption cases.

However, due to lack of transparency the public prosecutor is publically criticized for being unwilling to initiate corruption investigations.<sup>700</sup> There is a perception that a case initiated by the police ('Putsch') is pursued more vigorously than the cases based on the opposition ('Bombs'). CSOs cooperating on the 'Platform for the Fight against Corruption' have called for the Public Prosecution to commence investigations and prosecutions of the persons who authorized illegal phone-tapping.<sup>701</sup>

## RECOMMENDATIONS

- R1.** The Public Prosecutor Council should establish an effective mechanism to implement the Code of Ethics.
- R2.** The Public Prosecution should ensure accurate and timely presentation of information concerning the prosecution of corruption cases, as well as of cases related to the illegally wiretapped conversations.

<sup>700</sup> Nova TV, interview with prof. Gordan Kalajdziev <http://novatv.mk/index.php?navig=8&cat=16&vest=21103> [accessed March 27, 2015].

<sup>701</sup> <http://alsat.mk/News/13527/nevladini-organizacii-baraat-istraga-za-aferata-so-prislushuvawe> [accessed March 27, 2015].



# 7. ELECTORAL MANAGEMENT BODY

## SUMMARY

The State Electoral Commission (SEC) is an independent body responsible for the oversight of elections. However, the assessment found its role in overseeing election processes to be very limited. The members of the State Election Commission, under the new amendments of the Electoral Code on 10 November 2015, have to be appointed according to the new regulation. i.e. three members from the Government, three from the opposition, and three experts<sup>702</sup>. The performance, independence, integrity and willingness of the SEC to investigate electoral violations is strongly affected by the composition of its membership, which has resulted in the SEC's work being strongly politicized. The transparency and accountability of the work of the SEC in the last election was weaker compared to previous election cycles.

The overall score based on the indicators is very low.

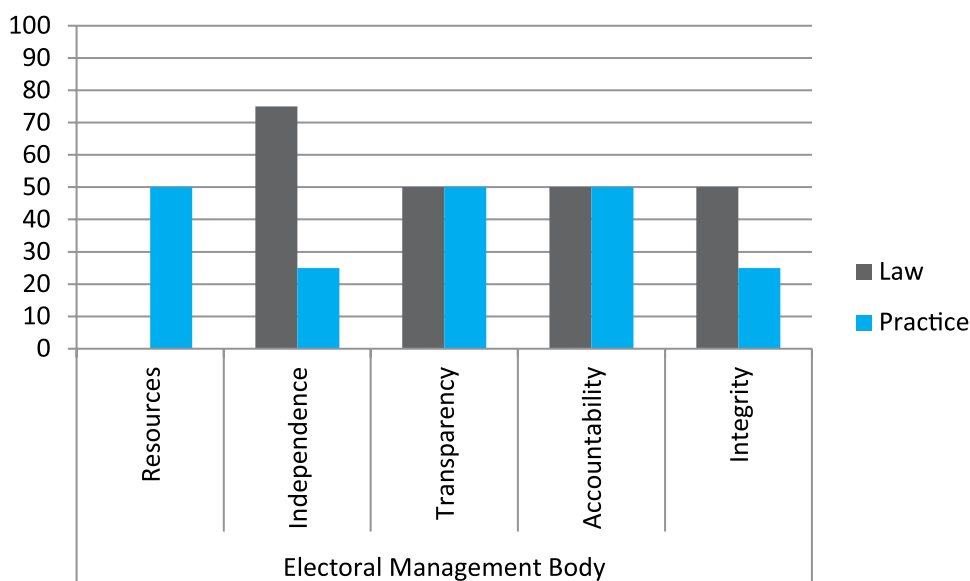
The table below presents the indicator scores that summarize the assessment of the SEC in terms of their capacity, their internal governance, and their role within the Macedonian integrity system. The following part of this section provides qualitative analysis for each indicator.

**OVERALL PILLAR SCORE: 40.2/100**

| DIMENSION                       | INDICATOR               | LAW | PRACTICE |
|---------------------------------|-------------------------|-----|----------|
| <b>Capacity</b><br>50 / 100     | Resources               |     | 50       |
|                                 | Independence            | 75  | 25       |
| <b>Governance</b><br>45.8 / 100 | Transparency            | 50  | 50       |
|                                 | Accountability          | 50  | 50       |
|                                 | Integrity               | 50  | 25       |
| <b>Role</b><br>25 / 100         | Campaign regulation     |     | 25       |
|                                 | Election Administration |     | 25       |

<sup>702</sup> Electoral Code of RM, Official Gazette of RM, No. 196/2015, Article 5 and 6.

## Pillar score per Law and Practice



## STRUCTURE AND ORGANISATION

Macedonia has five levels of electoral administration: the State Election Commission (SEC); Municipal Electoral Commissions (MECs); the Electoral Commission of the City of Skopje (ECCS); electoral boards; and electoral boards for voting in diplomatic representations.<sup>703</sup> The formal rules, powers and responsibilities of the administration are detailed in the Electoral Code. The SEC prepares and administers elections for the President of the Republic, MPs, mayors and councillors. The SEC also conducts referendums, prescribes guidelines and standards for conducting elections, and trains and supervises electoral authorities. The members of the SEC are appointed by the Assembly by a two thirds majority of the total number of MPs.<sup>704</sup> The SEC is composed of a President, Vice-president and 7 members.<sup>705</sup> The members of the SEC are appointed for a period of five years and have the right to be re-elected. There must be an appropriate and equal representation of nationalities. There must also be equal representation of citizens on the MEC, the ECCS and all electoral boards where 20% of the citizens are from different national groups. The SEC Secretariat is managed by a General Secretary who is responsible for performing administrative and technical issues. The employees of the SEC Secretariat hold the official status of civil servants.

<sup>703</sup> Electoral Code of RM, Official Gazette of RM, Nos. 40/06, 148/08, 155/08, 44/11, 51/11, 142/12, 31/13, 34/13 and 32/14, Article 17.

<sup>704</sup> Electoral Code of RM, Official Gazette of RM, Nos. 40/06, 148/08, 155/08, 44/11, 51/11, 142/12, 31/13, 34/13 and 32/14, Article 27.

<sup>705</sup> Electoral Code of RM, Official Gazette of RM, No. 196/2015, Article 5.

## ASSESSMENT

### CAPACITY

#### 7.1.1 RESOURCES (PRACTICE)

Score: **50**

#### To what extent does the electoral management body (EMB) have adequate resources to achieve its goals in practice?

The SEC has adequate human and technical resources.<sup>706</sup> The SEC support service has increased from 7 employees at its inception<sup>707</sup> to 26 employees in the central office and 72 employees in regional units.<sup>708</sup> According to interlocutors, high quality technical equipment has been donated by the OSCE to enable the electronic archiving of data.<sup>709</sup> However, there is no official report of this donation.

The SEC is financed by an allocation from the State Budget which varies according to whether elections are taking place. As presented in Table 1, in the last three years the budgets of the SEC decreased by 2.4%.<sup>710</sup> According to the Vice-President of the SEC and one of its members, the funds allocated for elections are sufficient, while the regular budget for daily work does not cover the planned activities set out in the Strategic Plan.<sup>711</sup>

**Table No.1**

|      | <b>TOTAL</b>  | <b>ELECTIONS</b> | <b>SEC</b>  |
|------|---------------|------------------|-------------|
| 2014 | 4,923,024 EUR | 3,990,731 EUR    | 932,292 EUR |
| 2013 | 3,189,593 EUR | 2,252,682 EUR    | 936,910 EUR |
| 2012 | 955,430 EUR   | /                | 955,430 EUR |

The findings of the OSCE/ODIHR international election observation mission, which was carried out for the presidential and early parliamentary elections in Macedonia in 2014, stated that “consideration should be given to enhancing the resources of the SEC secretariat to ensure it has sufficient capacity to undertake its duties in an efficient manner”.<sup>712</sup>

<sup>706</sup> Interview with Aleksandar Novakoski, former president of the SEC in 2009–2011, face to face interview 07.04.2014.

<sup>707</sup> Interview with Aleksandar Novakoski, former president of the SEC in 2009–2011, face to face interview 07.04.2014.

<sup>708</sup> Organizational structure of the SEC [http://www.sec.mk/files/Vnatresna\\_organizacija\\_DIK\\_PT.pdf](http://www.sec.mk/files/Vnatresna_organizacija_DIK_PT.pdf) [accessed March 28, 2015].

<sup>709</sup> Interview with Aleksandar Novakoski, former president of the SEC in 2009–2011, face to face interview 07.04.2014.

<sup>710</sup> SEC Official Budget.

<sup>711</sup> Interview with Subhi Jakupi, PhD, Vice-President of the SEC, and Violeta Duma, a member of the SEC on 23.04.2015.

<sup>712</sup> The Republic of Macedonia’s Presidential and Early Parliamentary Elections, 13 and 27 April, 2014, OSCE/ODIHR Election Observation Mission Final Report, p.26.

## 7.1.2 INDEPENDENCE (LAW)

Score: **75**

### To what extent is the electoral management body independent by law?

The SEC has the status of a separate legal entity.<sup>713</sup> The members of the SEC are appointed by the Assembly.<sup>714</sup> SEC members proposed by political parties may be members of political parties but cannot be members of the management of political parties, while SEC members who are not elected through the proposal of political parties cannot be members of any political party at least in the past 2 years and cannot have been candidates for public office in the state or in local government.<sup>715</sup> The appointment of the Secretary General of the SEC is regulated by the Law on Administrative Servants.<sup>716</sup> The Secretary-General's mandate ends at the same time as the mandate of the President of the SEC.<sup>717</sup> Recruitment is conducted transparently and based on merit and the principle of equitable representation of community members.<sup>718</sup>

The Electoral Code states that the SEC president and its members shall execute their duties independently, responsibly, and in good faith in accordance with their competencies as determined by the Code.<sup>719</sup> The SEC's Strategic Plan emphasizes that the SEC's decision-making must be impartial, factual and independent.<sup>720</sup>

The staff of the SEC are obliged to perform their activities conscientiously, professionally and efficiently in an orderly and timely manner in accordance with the Constitution and law.<sup>721</sup>

## 7.1.3 INDEPENDENCE (PRACTICE)

Score: **25**

### To what extent does the electoral management body function independently in practice?

According to Subhi Jakupi, the Vice-President of the SEC, and Violeta Duma, an SEC member, the SEC's independence is most endangered during elections, this being due to the opportunities that arise for the exertion of influence by political parties when the SEC is taking decisions concerning

<sup>713</sup> Electoral Code of RM, Official Gazette of RM, Nos. 40/06, 148/08, 155/08, 44/11, 51/11, 142/12, 31/13, 34/13 and 32/14, Article 26, Paragraph 6.

<sup>714</sup> Electoral Code of RM, Official Gazette of RM, Nos. 40/06, 148/08, 155/08, 44/11, 51/11, 142/12, 31/13, 34/13 and 32/14, Article 27.

<sup>715</sup> Electoral Code of RM, Official Gazette of RM, No. 196/2015, Articles 5 and 6.

<sup>716</sup> Law on administrative/civil servants, Official Gazette of RM, No. 27/2014, Article 23, Paragraph 7.

<sup>717</sup> Law on administrative/civil servants, Official Gazette of RM, No. 27/2014, Article 23, Paragraph 9.

<sup>718</sup> Law on Civil Servants, Official Gazette of the RM, Nos. 59/2000, 112/2000, 34/2001, 103/2001, 43/2002, 98/2002, 17/2003, 40/2003, 85/2003, 17/2004, 69/2004, 81/2005, 61/2006, 36/2007, 161/2008, 06/2009, 114/2009, 35/2010, 167/2010, 36/2011, 6/2012, 24/2012, 15/2013, 82/2013, 106/2013 and 132/2014, as well as Constitutional Court decisions; Law on Public Servants, Official Gazette of the RM, Nos. 52/2010, 36/2011, 6/2012, 24/2012, 15/2013, 82/2013, 106/2013 and 132/2014. Decisions of the Constitutional Court of the RM, U. no. 83/2010 of 8 June 2011, Nos. 86/2011; U. no. 77/2011 of 2 September 2011, No. 132/2011; U. no. 184/2011 of 15 February 2012, published in the "Official Gazette of the Republic of Macedonia" no. 27/2012, U. no. 221/2011 of 11 March 2012, published in the Official Gazette of the RM, No. 53/2012; U. no. 42/2012 of 9 May 2013, published in the Official Gazette of the RM, No. 70/2013, U. no. 55/2012 of 24 April 2013, published in the Official Gazette of the RM, No. 75/2013 and U. no. 63/2013 of 8 October 2014, published in the Official Gazette of the RM, No. 156/2014.

<sup>719</sup> Electoral Code of RM, Official Gazette of RM, Nos. 40/06, 148/08, 155/08, 44/11, 51/11, 142/12, 31/13, 34/13 and 32/14, Article 19, Paragraph 1.

<sup>720</sup> SEC, *Strategic plan of State Election Commission in the period 2012-2016*, (Skopje: SEC, 2012).

<sup>721</sup> Law on administrative/civil servants, Official Gazette of RM, No. 27/2014.



complaints about the electoral process.<sup>722</sup> Before the 2014 elections, Mr. Jakupi noted that there were certainly cases of political involvement.<sup>723</sup> The Council of Europe in 2011 warned against the danger of politicising the SEC's work and underlined the importance of impartiality and a non-partisan approach to the Committee's work.<sup>724</sup>

In the view of the civil society group, MOST, the SEC members made party-political comments and breached their obligations to remain neutral during the election process in 2014.<sup>725</sup> However, the head of the OSCE/ODIHR Observation Mission, Mr. Geert-Hinrich Ahrens<sup>726</sup> whilst criticizing the biased media coverage during the 2014 elections as well as the non-separation of state and party activities, did praise the successful work of the SEC during the elections.<sup>727</sup> The OSCE/ODIHR declared that the elections had been conducted "efficiently" despite inconsistencies and ambiguities in the electoral legislative regulations, concerns about the accuracy of the electoral rolls, and the ineffectiveness of the mechanism for resolving election disputes, amongst other failings.<sup>728</sup>

A former President of the SEC, Mr. Novakoski, has explicitly criticized political party influence in the work of the SEC: "the SEC can work in a professional and non-partisan way, because the members are elected by a two-thirds majority in Parliament. Unfortunately, the SEC is currently working under party directives." According to Judge Violeta Duma, a member of the SEC nominated by the opposition: "the SEC members always vote following the interest of their political party and not according to the facts." Novakoski noted cases where the presence of SEC members at political party headquarters undermined the independence and impartiality of its work.<sup>729</sup> In the opinion of all interlocutors, the method of electing SEC members enables political parties to influence their work.<sup>730</sup>

## GOVERNANCE

### 7.2.1 TRANSPARENCY (LAW)

Score: **50**

#### **To what extent are there provisions in place to ensure that the public can obtain relevant information on the activities and decision-making processes of the EMB?**

According to the Electoral Code,<sup>731</sup> the work of electoral bodies is public. There is no other legal provision that provides for transparency in the SEC or that provides for reporting requirements such as submitting or publishing annual reports.

<sup>722</sup> Interview with Subhi Jakupi, PhD, Vice-President of the SEC, and Violeta Duma, a member of the SEC, on 23.04.2015.

<sup>723</sup> <http://www.balkaneu.com/ibna-interviewsec-ready-elections-parties-respect-electoral-code/> [accessed 28.03.2015].

<sup>724</sup> Observation of the early parliamentary elections in the Republic of Macedonia (5 June 2011), Ad hoc Committee of the Bureau of the Assembly, Rapporteur: Mr Jean-Charles GARDETTO, Group of the European People's Party, p.4.

<sup>725</sup> MOST, *Domestic monitoring of the 2014 presidential and early parliamentary elections*, (Skopje: MOST, 2014), p.11.

<sup>726</sup> <http://www.independent.mk/articles/3841>

ODIHR+Presidential+Elections+Efficiently+Administered%2C+Final+Assessment+after+Runoff [accessed 31.03.2015].

<sup>727</sup> Ibid.

<sup>728</sup> European Parliament resolution of 11 March 2015 on the 2014 Progress Report on the Republic of Macedonia (2014/2948 (RSP)), Paragraph 15, <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P8-TA-2015-0064+0+DOC+XML+V0//EN> [accessed 31.03.2015].

<sup>729</sup> Interview with Aleksandar Novakoski, former president of the SEC in 2009–2011, face to face interview 07.04.2014.

<sup>730</sup> Interview with Aleksandar Novakoski, former president of the SEC in 2009–2011, face to face interview 07.04.2014.

<sup>731</sup> Electoral Code, Official Gazette of RM, Nos. 40/06, 148/08, 155/08, 44/11, 51/11, 142/12, 31/13, 34/13 and 32/14 Article 24, Paragraphs (1) and (2).

The transparency rules that do exist relate only to the election period. According to the SEC's Rules and Procedures, the work of the SEC is public, and authorized representatives from party lists and accredited observers have the right to participate in working sessions.<sup>732</sup> During elections the SEC keeps minutes of its sessions and publishes the approved minutes on its website within 48 hours of the date of their adoption<sup>733</sup>.

The Act of calling an election must be passed by the President of the Parliament and be submitted to the SEC, the Ministry of Foreign Affairs, and the Ministry of Justice.<sup>734</sup> Elections are publicly announced and the SEC provides posters to be prominently displayed.<sup>735</sup>

The SEC has to publish the addresses of polling stations in the daily press<sup>736</sup> and provide the media with data regarding the number of voters registered in the signed Voters' List, i.e. the electoral roll.<sup>737</sup> It is the SEC's duty to update and maintain the data in the electoral roll, based on data from birth registries, registries of residence and citizenship, as well as other official records and through direct inspection.<sup>738</sup> The Ministry of Interior also submits data to the SEC about citizens who should be included on the electoral roll.<sup>739</sup> The SEC has no legal rights to intervene in the submitted electoral roll and is obliged only to display the consolidated electoral roll for public inspection in its district and local offices no later than 15 days after the calling of the elections.<sup>740</sup> The SEC must inform citizens through the media about the place and the duration of the inspection, the manner of the inspection and the possibility for entering, adding or deleting data in the electoral roll.<sup>741</sup>

The organiser of the election campaign is required, immediately and no later than 30 days after the end of the election campaign, to submit to the SEC a comprehensive financial report on the election campaign.<sup>742</sup> The financial report must be submitted to the State Audit Office (SAO) and the State Commission on the Prevention of Corruption (SCPC), and these bodies must publish the report on their websites.<sup>743</sup>

Decisions related to complaints and lawsuits regarding the election process must be published on the website of the Administrative Court, the SEC, the Municipal Election Commissions, and the Election Commission of the City of Skopje.<sup>744</sup>

The SEC has the authority to publish the initial results of the elections consecutively, as they receive them electronically,<sup>745</sup> and to announce the final results of the voting immediately and no later than 24 hours from the day they become final.<sup>746</sup>

<sup>732</sup> Rules and Procedures of the SEC, decision of 4 July 2006 by the SEC, Article 51.

<sup>733</sup> Law on Amendments to the Election Code, Official Gazette of the RM, No. 14.2014, Article 31, Paragraph 43-b.

<sup>734</sup> Electoral Code, Official Gazette of RM, Nos. 40/06, 148/08, 155/08, 44/11, 51/11, 142/12, 31/13, 34/13 and 32/14, Article 12, Paragraphs (1) and (2).

<sup>735</sup> Electoral Code, Official Gazette of RM, Nos. 40/06, 148/08, 155/08, 44/11, 51/11, 142/12, 31/13, 34/13 and 32/14, Article 13.

<sup>736</sup> Electoral Code, Official Gazette of RM, Nos. 40/06, 148/08, 155/08, 44/11, 51/11, 142/12, 31/13, 34/13 and 32/14, Article 31, Paragraph 28.

<sup>737</sup> Electoral Code, Official Gazette of RM, Nos. 40/06, 148/08, 155/08, 44/11, 51/11, 142/12, 31/13, 34/13 and 32/14, Article 31, Paragraph 31.

<sup>738</sup> Electoral Code, Official Gazette of RM, Nos. 40/06, 148/08, 155/08, 44/11, 51/11, 142/12, 31/13, 34/13 and 32/14, Article 42.

<sup>739</sup> Electoral Code, Official Gazette of RM, Nos. 40/06, 148/08, 155/08, 44/11, 51/11, 142/12, 31/13, 34/13 and 32/14, Article 43, Paragraph 1.

<sup>740</sup> Electoral Code, Official Gazette of RM, Nos. 40/06, 148/08, 155/08, 44/11, 51/11, 142/12, 31/13, 34/13 and 32/14, Article 51.

<sup>741</sup> Electoral Code, Official Gazette of RM, Nos. 40/06, 148/08, 155/08, 44/11, 51/11, 142/12, 31/13, 34/13 and 32/14, Article 51.

<sup>742</sup> Electoral Code, Official Gazette of RM, Nos. 40/06, 148/08, 155/08, 44/11, 51/11, 142/12, 31/13, 34/13 and 32/14, Article 85, Paragraph 1.

<sup>743</sup> Electoral Code, Official Gazette of RM, Nos. 40/06, 148/08, 155/08, 44/11, 51/11, 142/12, 31/13, 34/13 and 32/14, Article 85, Paragraphs (3) and (4).

<sup>744</sup> Electoral Code, Official Gazette of RM, Nos. 40/06, 148/08, 155/08, 44/11, 51/11, 142/12, 31/13, 34/13 and 32/14, Article 150, Paragraph 4.

<sup>745</sup> Municipal Election Commissions, i.e. the Election Commission of the City of Skopje.

<sup>746</sup> Electoral Code, Official Gazette of RM, Nos. 40/06, 148/08, 155/08, 44/11, 51/11, 142/12, 31/13, 34/13 and 32/14 Article 135.

## 7.2.2 TRANSPARENCY (PRACTICE)

Score: **50**

### To what extent are reports and decisions of the electoral management body made public in practice?

The SEC has an accessible website with information regarding the election process, elections and press conferences. There is no relevant information regarding the everyday work of the SEC between the elections.<sup>747</sup> Annual Reports are not published on the SEC website after their adoption by the Assembly. Only the minutes of SEC working sessions related to elections and relevant decisions are published on the website.

In the view of a former SEC president, the SEC sessions are merely pro-forma, since they are influenced by political parties and there is no real discussion within the decision-making process.<sup>748</sup>

Civil society organizations have analysed the transparency of the SEC's work during the last two election cycles and have concluded that the transparency of the SEC's work has declined, since during the most recent election cycle, 16 out of a total 46 sessions were held without the presence of the media or accredited observers.<sup>749</sup> However, the OSCE/ODIHR Report notes that "the preliminary results of both rounds of voting in 2014 were posted on the SEC website as they were received, with a breakdown of the vote by municipality and polling station, which is an important transparency measure."<sup>750</sup>

The electoral roll is placed on the SEC website and updated with new data provided by the State Statistical Office.<sup>751</sup>

## 7.2.3 ACCOUNTABILITY (LAW)

Score: **50**

### To what extent are there provisions in place to ensure that the EMB has to report and be answerable for its actions?

According to the Electoral Code, the SEC is accountable to the Assembly;<sup>752</sup> however, the law does not contain adequate provisions regulating the political and financial accountability of the electoral commission..

The Electoral Code extends the right to all election candidates to file complaints at various stages of the process, including complaints regarding voter registration, candidate registration, campaigning, media coverage, voting and tabulation. Voters have the right to file complaints only on voter registration and on violations of their voting rights on Election Day.<sup>753</sup>

<sup>747</sup> <http://www.sec.mk/index.php?lang=mk> [accessed 31.03.2015].

<sup>748</sup> Interview with Aleksandar Novakoski, former president of the SEC in 2009–2011, face to face interview 07.04.2014.

<sup>749</sup> MOST, 2014: p.11.

<sup>750</sup> OSCE/ODIHR, *Election Observation Mission Final Report, The Republic of Macedonia Presidential and Early Parliamentary Elections*, 13 and 27 April, 2014, (Skopje: OSCE/ODIHR, 2014), p.3.

<sup>751</sup> <http://izbirackispisok.gov.mk/> [accessed 15.04.2015].

<sup>752</sup> Electoral Code, Official Gazette of RM, Nos. 40/06, 148/08, 155/08, 44/11, 51/11, 142/12, 31/13, 34/13 and 32/14 Article 31, Paragraph 25.

<sup>753</sup> OSCE/ODIHR, 2014: p.19.

There are several legal provisions that enable review of SEC decisions.

No later than 15 days after the calling of the elections, the SEC has to display the consolidated electoral roll in its district and local offices for public inspection<sup>754</sup> and to decide upon citizens' requests to enter, add or delete data in the list. A citizen may file a lawsuit against a decision referred to the Administrative Court within 24 hours of receiving the decision.<sup>755</sup> A final decision of the Administrative Court on an appeal to enter, change and delete data becomes an integral part of the electoral roll confirmed by the SEC.<sup>756</sup>

The Electoral Code extends the right to all electoral contestants to file complaints at various stages of the process, including on voter registration, candidate registration, campaigning, media coverage, and voting and tabulation. The SEC has jurisdiction to investigate allegations and to act on a complaint within a period not exceeding 7 days from the date of submission of the complaint.<sup>757</sup>

The SEC is also obliged to submit a report to the Assembly on the administered elections and a financial overview of the administered elections and to publish this report on its website.<sup>758</sup> However, there are no legal provisions regarding the comprehensiveness of the report that should be submitted to the Assembly.

The SEC, the SAO and the SCPC have signed a Memorandum of Understanding<sup>759</sup> that governs the implementation of the provisions on the financing of election campaigns.

In the SEC there is an Internal Audit unit to perform financial auditing; however, there is no legal requirement for the SEC to carry out an independent audit. The institutions are subject to an audit if this is planned for in the annual working programme of the SAO.<sup>760</sup>

## 7.2.4 ACCOUNTABILITY (PRACTICE)

Score: **50**

### To what extent does the EMB have to report and be answerable for its actions in practice?

According to former SEC vice-president, Mr. Jakupi, the SEC has an obligation to hold a session upon a suggestion from a member of the SEC.

The SEC prepares reports on the results of each electoral cycle and a report on the work of the SEC in the electoral period. Reports must be submitted to the Assembly and are published on the SEC website.<sup>761</sup>

The accountability of the SEC between election activities is very low. Citizens have criticized the SEC for not responding efficiently to complaints and appeals, in the pre-election period

<sup>754</sup> Electoral Code, Official Gazette of RM, Nos. 40/06, 148/08, 155/08, 44/11, 51/11, 142/12, 31/13, 34/13 and 32/14 Article 49.

<sup>755</sup> The Administrative Court shall decide upon the lawsuit referred to in Paragraph 2 of this article within 24 hours of receiving the complaint.

<sup>756</sup> Electoral Code, Official Gazette of RM, Nos. 40/06, 148/08, 155/08, 44/11, 51/11, 142/12, 31/13, 34/13 and 32/14, Article 51, Paragraph 4.

<sup>757</sup> Electoral Code, Official Gazette of RM, Nos. 40/06, 148/08, 155/08, 44/11, 51/11, 142/12, 31/13, 34/13 and 32/14, Article 69-a.

<sup>758</sup> Electoral Code, Official Gazette of RM, Nos. 40/06, 148/08, 155/08, 44/11, 51/11, 142/12, 31/13, 34/13 and 32/14, Article 31, Paragraph 25.

<sup>759</sup> Law Amending the Electoral Code, Official Gazette of the RM, No. 142/2012.

<sup>760</sup> Law on the State Audit, Official Gazette of the RM, Nos. 66/10, 145/2010, 12/2014, 43/2014.

<sup>761</sup> SEC, 2012: p.8.

as well in the post-election period.<sup>762</sup> The SEC publishes decisions regarding complaints on its website.

The Democratic Party of Albanians (DPA) and GROM have submitted lawsuits to the Administrative Court, but these have been rejected.<sup>763</sup> The main OSCE/ODIHR recommendation on the handling of complaints during the last elections in 2014 was that: “the SEC should resolve all complaints and appeals in an impartial manner, free from political considerations.”<sup>764</sup>

## 7.2.5 INTEGRITY (LAW)

Score: **50**

### To what extent are there mechanisms in place to ensure the integrity of the electoral management body?

In Macedonia there is no Code of Conduct for electoral officials: the Code of Ethics for Civil Servants applies only to SEC officials.<sup>765</sup> This code outlines the basic principles of behaviour and performance of civil servants. SEC employees have no obligation to sign a declaration to uphold ethical principles and there are no obligations on them vis-a-vis the principle of political non-partisanship. There is a Code of Conduct for election observers.<sup>766</sup>

Asset declarations and conflicts of interest rules are regulated by laws<sup>767</sup> that are applicable to SEC members and staff who have the status of civil servants.<sup>768</sup>

The SEC, with a two-thirds majority from the total number of members, may submit a proposal to the Parliamentary Committee on Election and Appointment Affairs for dismissing a member due to unprofessional and unsound execution of the responsibilities of their office.<sup>769</sup> SEC members must not be members of the management organ of a political party.<sup>770</sup>

There are no specific rules on gifts for SEC officials, but officials must abide by the rules applicable to civil servants.<sup>771</sup> If an official has been offered a gift related to performing his/her public duty, he/she is obliged to refuse it and to determine the identity of the bidder, and if it is a gift which can not be returned, they are obliged to report it to the competent authority no later than 48 hours.<sup>772</sup>

Regarding post-employment restrictions, an official may not, during his/her term of office and within five years after the end of office, acquire rights in or be employed by an entity which was either under his/her supervision or with which he/she had a contractual relationship.<sup>773</sup>

<sup>762</sup> Interview with Aleksandar Novakoski, former president of the SEC in 2009–2011, face to face interview 07.04.2014.

<sup>763</sup> MOST, *Domestic monitoring of the presidential and early parliamentary elections 2014*, (Skopje: 2014, MOST), p.21.

<sup>764</sup> OSCE/ODIHR, 2014: p.26.

<sup>765</sup> Official Gazette of RM, No. 129/2011, Decision on 19.09.2011, Ministry of Information Society and Administration.

<sup>766</sup> SEC, 27.02.2014, <http://www.sec.mk/files/kodeks2014.PDF> [accessed 31.03.2015].

<sup>767</sup> Law on the Prevention of Corruption, Law on the Prevention of Conflicts of Interest and the Law on the Usage and Disposal of Items in State Ownership

<sup>768</sup> Law on the Prevention of Conflicts of Interest, Official Gazette of the RM, Nos.70/2007, 114/2009, 128/2009.

<sup>769</sup> Electoral Code, Official Gazette of RM, Nos. 40/06, 148/08, 155/08, 44/11, 51/11, 142/12, 31/13, 34/13 and 32/14, Article 28, Paragraph 2.

<sup>770</sup> Electoral Code, Official Gazette of RM, Nos. 40/06, 148/08, 155/08, 44/11, 51/11, 142/12, 31/13, 34/13 and 32/14, Article 27, Paragraph 1.

<sup>771</sup> Law on the Usage and Disposal of Items in State Ownership, Official Gazette of the RM, Nos. 8/05, 150/07, 35/11 and 166/12.

<sup>772</sup> Law on the Prevention of Conflicts of Interest, Official Gazette of the RM, Nos.70/2007, 114/2009, 128/2009.

<sup>773</sup> Ibid.

## 7.2.6 INTEGRITY (PRACTICE)

Score: **25**

### To what extent is the integrity of the electoral management body ensured in practice?

The integrity of SEC members is not adequately ensured and there is limited information regarding SEC employees at local level. There is only a code of conduct for election observers, not for election officials.

Published phone conversations from the illegal wiretapping recordings have revealed that electoral lists were stolen in order to check on voter turnout in local elections in the Municipality of Centar in Skopje.<sup>774</sup>

## ROLE

### 7.3.1 CAMPAIGN REGULATION

Score: **25**

### Does the electoral management body effectively regulate the financing of candidates and political parties?

The law provides a number of mechanisms regulating campaigns, some of which are the responsibility of the SEC. Campaign regulation has been effective in practice.

In January 2014, a number of Electoral Code provisions were amended to address OSCE/ODIHR recommendations.<sup>775</sup> The OSCE/ODIHR urges the authorities to investigate alleged irregularities both before and during the elections.<sup>776</sup>

The threshold for campaign donations from legal persons has recently been set at 50,000 EUR, replacing the previous threshold of 5% of the donor's annual income in the previous year. This is in line with recommendations made by OSCE/ODIHR and MOST. There still remains a gap in the law, however, since there is no deadline specifying when the account for the election campaign must be closed. This leaves room for misuse.<sup>777</sup> The SEC can bring proceedings for irregularities in campaign financing.<sup>778</sup>

The mechanism for monitoring campaign financing is weak.<sup>779</sup> The SAO became the main oversight body for political financing in 2011 as a result of GRECO recommendations. The reports published by the SAO on election financing are not in accordance with the laws and standards for audits. The law also grants authority to the SAO and the SCPC to review the banking transactions of parties and candidates. However, neither of these institutions adequately executes their responsibilities to control political financing.<sup>780</sup>

<sup>774</sup> <http://novatv.mk/index.php?navig=8&cat=2&vest=20819>

<sup>775</sup> OSCE/ODIHR, 2014: pp. 25–26

<sup>776</sup> European Parliament resolution of 11 March 2015 on the 2014 Progress Report on the Republic of Macedonia (2014/2948 (RSP), Paragraph 15. <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P8-TA-2015-0064+0+DOC+XML+V0//EN> [accessed March 23, 2015].

<sup>777</sup> MOST, 2014: p.9.

<sup>778</sup> Interview with Aleksandar Novakoski, former president of the SEC in 2009–2011, face to face interview 07.04.2014.

<sup>779</sup> GRECO, *Third Evaluation Round Evaluation Report on the Republic of Macedonia*.

<sup>780</sup> Taseva, 2013: p. 54.

## 7.3.2 ELECTION ADMINISTRATION

Score: **25**

### Does the EMB ensure the integrity of the electoral process?

According to the law, the SEC is obliged to inform and educate the public about the manner of voting and the exercise of the right to vote.<sup>781</sup> The SEC also conducts campaigns and prints promotional materials that are disseminated among citizens.<sup>782</sup> However, the SEC is not capable of ensuring the integrity of the electoral process. A survey by UNDOC in 2011 on corruption in Macedonia asked citizens whether they were exposed to vote-buying, and the resulting data shows that an average of 5 per cent of citizens at the last local elections and 5 per cent at the last national elections were asked to vote for a certain candidate or political party in exchange for a concrete offer of money, goods or favours.<sup>783</sup>

The right to monitor elections belongs to accredited election observers, with accreditations granted by the SEC.<sup>784</sup> Accreditation for observers can be given to national civic organizations registered at least one year prior to the elections.<sup>785</sup> The most frequent irregularity reported by MOST observers during the 2014 election was the practice by party observers of reading aloud voters' names, recording the voters in front of polling stations. The second round of voting in the 2014 election was characterized by an increased intensity of political party efforts to mobilize the vote, which in some cases resulted in pressure on voters to go out and vote.<sup>786</sup>

Concerns were also raised about the management and accuracy of the electoral roll. Within the SEC, a working group was established to revise the electoral roll in order to update it in relation to deceased persons and citizens living abroad that hold valid passports. Besides the members of the SEC, the working group consisted of representatives from the state institutions, the largest political parties, as well as international and national organizations.<sup>787</sup>

One of the consequences of updating the electoral roll was a disparity between the number of voters on the electoral roll for the presidential elections and the number of voters on the electoral roll for the early parliamentary elections. The number of voters registered on the electoral roll for the presidential elections was 1,779,572, while the number of voters registered on the electoral roll for the early parliamentary elections was 1,780,128.<sup>788</sup> Questions regarding the scope and accuracy of the electoral roll in Macedonia have been discussed for many years, and in 2014 the public inter-institutional debate more strongly addressed the issue of who is competent to prepare an updated list of voters.<sup>789</sup> If the SEC finds irregularities in the electoral roll, the SEC is obliged to submit a report to the Ministry of Interior, which may make a decision to delete an entry on the electoral roll.<sup>790</sup>

<sup>781</sup> Electoral Code, Official Gazette of RM, Nos. 40/06, 148/08, 155/08, 44/11, 51/11, 142/12, 31/13, 34/13 and 32/14, Article 31, Paragraph 15.

<sup>782</sup> [http://www.sec.mk/index.php?option=com\\_content&view=article&id=229&catid=39&Itemid=1262&lang=mk](http://www.sec.mk/index.php?option=com_content&view=article&id=229&catid=39&Itemid=1262&lang=mk)

<sup>783</sup> UNODC, *Corruption in the Former Yugoslav Republic of Macedonia: Bribery as experienced by the population*, (Vienna: UNODC, 2011), p.5.

<sup>784</sup> Electoral Code, Official Gazette of RM, Nos. 40/06, 148/08, 155/08, 44/11, 51/11, 142/12, 31/13, 34/13 and 32/14, Article 162-a.

<sup>785</sup> Electoral Code, Official Gazette of RM, Nos. 40/06, 148/08, 155/08, 44/11, 51/11, 142/12, 31/13, 34/13 and 32/14, Article 161.

<sup>786</sup> MOST, 2014: p. 7.

<sup>787</sup> The working group determined that the Voters List of citizens, who hold valid IDs, latest by 24th February 2013, consists of 1,743,403 citizens, i.e. 77,719 citizens less than in 2011. The SEC was running a campaign on the national broadcasting service to inform citizens who do not hold valid IDs that they will not be able to vote without valid documents.

<sup>788</sup> MOST, 2014: p.14.

<sup>789</sup> CIVIL, *Elections 2014: Democracy Disqualified*, (Skopje: CIVIL, 2014), p. 27.

<sup>790</sup> Interview with Subhi Jakupi, PhD, Vice-President of the SEC, and Violeta Duma, a member of the SEC, on 23.04.2015.

The CSO CIVIL monitors reported cases during the 2014 elections in which people were brought to polling stations by vans and buses. There are allegations that a number of voters from Pustec in Albania who voted as diaspora in Albania also voted in the election in Macedonia.<sup>791</sup>

On 10 March 2014, Macedonia's opposition leader Zoran Zaev called on the government to resign immediately after releasing recordings of alleged conversations between top ruling party officials<sup>792</sup> about printing IDs, dispatching people across the country to vote, stealing election material, and even shutting down elevators so that elderly people could not go out to vote.<sup>793</sup>

## RECOMMENDATIONS

- R1.** The SEC should be provided with the authority and capacity to create and effectively maintain the electoral roll.
- R2.** A Code of Conduct for electoral officials should be adopted and implementation mechanisms should be established.

<sup>791</sup> <http://www.balkaninsight.com/en/article/polls-close-in-macedonia-s-double-elections> [accessed 15.04.2015].

<sup>792</sup> One conversation featured the voices of the chief of the secret police and the Transport Minister plotting to steal sealed electoral material between two rounds of an election, and another wiretapped conversation about printing ID cards, featuring the Interior Minister. The tapes also include conversations about dispatching fake voters across Macedonia, using dead voters' names for voting, as well as acknowledgments by the Interior and Finance Ministers that what the party is doing "is not right".

<sup>793</sup> <http://www.balkaninsight.com/en/article/macedonia-awaits-more-evidence-of-election-trickery> [accessed 15.04.2015].



# 8. SUPREME AUDIT INSTITUTION

## SUMMARY

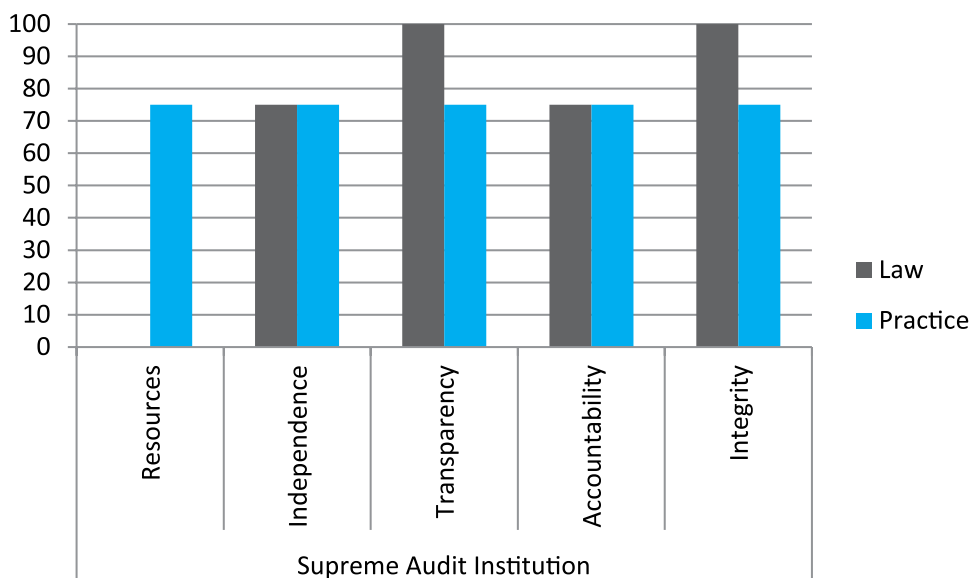
There is a solid legal basis for the supreme audit institution, the State Audit Office (SAO), though its authority is not anchored in the Constitution. The Law regulates the SAO's functions and sets out a broad mandate to conduct regularity and performance audits, as well as to access all necessary information. In practice, the SAO has the freedom to decide on the subject of an audit and its contents and adheres to international professional standards in the course of its work. Regarding governance, the SAO has procedures in place to ensure transparency, accountability and integrity. In practice, its reports are factually correct and all reports are prepared and submitted in a timely manner. Furthermore, the SAO has developed mechanisms for the follow-up of recommendations to ensure the appropriate implementation of recommendations made in audit reports.

The table below presents the indicator scores which summarize the assessment of the SAO in terms of its capacity, its internal governance, and its role within the Macedonian integrity system. The following part of the section provides qualitative analysis for each indicator.

**OVERALL PILLAR SCORE:** **73.6/100**

| DIMENSION                       | INDICATOR                              | LAW | PRACTICE |
|---------------------------------|--|-----|----------|
| <b>Capacity</b><br>75 / 100     | Resources                              | /   | 75       |
|                                 | Independence                           | 75  | 75       |
| <b>Governance</b><br>83.3 / 100 | Transparency                           | 100 | 75       |
|                                 | Accountability                         | 75  | 75       |
|                                 | Integrity                              | 100 | 75       |
| <b>Role</b><br>62.5 / 100       | Effective financial audits             |     | 50       |
|                                 | Detecting and sanctioning misbehaviour |     | 75       |

## Pillar score per Law and Practice



## STRUCTURE AND ORGANIZATION

The SAO was established in 1997 and started its activities in 1999 after the appointment of the first General State Auditor in 1998. Today the SAO is the country's central external audit institution in charge of auditing expenditures at all government levels. The State Audit Law<sup>794</sup> defines the SAO's functions and the scope of its audit work.

The SAO's organisational structure is hierarchical and subject-related. The SAO is accountable to the Assembly, which also appoints the General State Auditor for a non-renewable nine-year term. The highest management level is the General State Auditor and the Deputy General State Auditor. The units directly subordinate to the top management are the General State Auditor's cabinet, the internal audit unit and the public relations unit.

The SAO has seven departments, of which five are responsible for financial audits according to the annual work programme. Apart from the seven audit departments, the SAO has departments for audit methodology and quality control, for IT-audit, for legal and general affairs and public relations, and for finance, as well as two units reporting directly to the General State Auditor or the Secretary General of the SAO: the unit for internal audit (so far without staff) and the unit for human resource management (with only one staff member). The allocation of tasks to individual organisational units is governed by a schedule of responsibilities.

<sup>794</sup> Official Gazette of RM, Nos. 66/10, 145/10, 12/14, 43/14.

# ASSESSMENT

## CAPACITY

### 8.1.1 RESOURCES (PRACTICE)

Score: **75**

#### To what extent does the audit institution have adequate resources to achieve its goals in practice?

The SAO has adequate resources to achieve its goals in practice. It has a sufficient budget and competent staff. The SAO's operations are financed by the Budget of the RM. The budget is prepared by the SAO itself and submitted for adoption to the Assembly, which votes separately on the SAO's budget.<sup>795</sup> The State Audit Law states that the budget shall be prepared within the framework of the annual limits in compliance with the established fiscal strategy.<sup>796</sup> This procedure allows the Assembly to decide separately on the budget of the SAO and therefore gives an opportunity for the SAO to explain and justify its budget requests. In this way budgetary autonomy is ensured to a satisfactory level.<sup>797</sup>

Prior to the new State Audit Law (2010), the Audit Authority for auditing the instrument for pre-accession assistance was operating in the framework of the SAO. Following the adoption of the new State Audit Law in May 2010, the Law on Audit Authority<sup>798</sup> was also adopted, and the Audit Authority was officially separated from the SAO as an independent legal entity with a separate budget. Thus, from 2011 till now, approved funds in the budget of SAO have increased.<sup>799</sup>

|      | <b>TOTAL BUDGET OF SAO</b> | <b>FROM THE CENTRAL BUDGET OF RM</b> | <b>FROM DONATIONS</b> |
|------|----------------------------|--------------------------------------|-----------------------|
| 2012 | 1,493,365 EUR              | 1,493,365 EUR                        | /                     |
| 2013 | 1,473,430 EUR              | 1,473,430 EUR                        | 95,008 EUR            |
| 2014 | 1,542,764 EUR              | 1,542,764 EUR                        | 54,796 EUR            |
| 2015 | 1,909,024 EUR              | 1,534,634 EUR                        | 309,349 EUR           |

The total budget of the SAO in 2015 amounted to EUR 1,909,024 EUR, 80% of which are funds provided by the central state budget, while the remaining 20% are provided by donations.

During its 15 years of operation, the SAO has received technical assistance from a twinning arrangement with the Netherlands Court of Audit through a World Bank funded project. A new twinning project is planned for the period starting in 2015.<sup>800</sup>

<sup>795</sup> State Audit Law, Official Gazette of RM, Nos. 66/10,145/10, 12/14, 43/14, Article 12, Paragraphs (1) and (2).

<sup>796</sup> State Audit Law, Official Gazette of RM, Nos. 66/10,145/10, 12/14, 43/14, Article 12, Paragraph (3).

<sup>797</sup> OECD/SIGMA, 2012: p.49.

<sup>798</sup> Official Gazette of RM, Nos. 66/10,145/10, 12/14, 43/14.

<sup>799</sup> Respond to the questioner Tanja Tanevska, Auditor General, 22.06.2015.

<sup>800</sup> OECD/SIGMA, 2012: p.45.

In addition, the SAO has cooperated with the Office of the Auditor General of Norway to improve the efficiency and quality of audits by introducing an audit management system (AMS).

According to Mrs. Tanja Tanevska, the Auditor General,<sup>801</sup> in 2015 the SAO had 93 employees, authorized state auditors, state auditors and administrative support staff. State audits are carried out by 82 auditors, of which 70 have acquired the title of authorized state auditor. The majority of the employees (96%) have a university degree, and the percentage of employees with a master's degree is increasing.<sup>802</sup>

Training for SAO employees is performed according to the annual programme of the SAO. In 2014, the SAO organized training in the following areas: the basics of state auditing; performance audits; the framework for Public Internal Financial Control; strengthening ethics; the latest amendments to the Public Procurement Law; and the use of upgraded SAO IT infrastructure.<sup>803</sup>

Mrs. Tanja Tanevska, Auditor General, stated that: "in terms of the professional capacity development of employees, the SAO has organized several trainings for budgets and budget beneficiaries, public funds and local government units and public enterprises."<sup>804</sup>

According to the SAO, the employees have an average of 5 years of work experience and the turnover of staff is exceptionally low. The SAO have almost no cases where employees change job for another position in the public sector.<sup>805</sup> However, there is a concern regarding the SAO's capacity for performance auditing and its ability to exercise control over political financing. Considering its mandate to perform all types of audits and the fact that performance auditing is gradually being developed, its resources are not sufficient to fully cover its mandate.<sup>806</sup>

## 8.1.2 INDEPENDENCE (LAW)

Score: **75**

### To what extent is there formal operational independence of the state audit institution?

The SAO makes continuous efforts to have the Constitution amended in order to assure that its role in the state architecture is guaranteed.<sup>807</sup> On 27 June 2014, the Government proposed to the Parliament a package of seven Constitutional Amendments that included the safeguarding of the independence of the SAO. However, the package of amendments was prepared in a very short time and without the necessary implementing legislation. Its compatibility with the EU *acquis* and with European standards is being assessed.<sup>808</sup> The Venice Commission notes that the amendments to the Constitution were proposed in the absence of the opposition in the Parliament, which is not the most opportune moment for introducing political amendments.<sup>809</sup> Concerning Draft Amendment XXXVI, the Venice Commission further noted that in order to avoid politicization of the office of the "principal

<sup>801</sup> Mrs. Tanja Tanevska, Auditor General Respond to the NIS questioner, 22.06.2015.

<sup>802</sup> *Ibid*

<sup>803</sup> SAO, 2014: p.1 [http://www.dzr.mk/en/Uploads/2013\\_SAO\\_Annual%20Report.pdf](http://www.dzr.mk/en/Uploads/2013_SAO_Annual%20Report.pdf) [accessed 15.06.2015].

<sup>804</sup> SAO, 2013: p.6.

<sup>805</sup> Respond to the questioner Tanja Tanevska, Auditor General, 22.06.2015.

<sup>806</sup> European Commission, 2014: p.9

<sup>807</sup> OECD/SIGMA, 2012: p.16.

<sup>808</sup> European Commission, 2014: p.5.

<sup>809</sup> European Commission for Democracy through Law (Venice Commission), 2014: p.4.

State auditor” it would be worth considering his or her election and dismissal by a qualified majority of votes.<sup>810</sup>

The independence of the SAO was ensured with the first State Audit Law adopted in 1997.<sup>811</sup> Since then, the Law has undergone several modifications and amendments. The New State Audit Law was adopted in 2010 to comply with the Mexico Declaration on the Independence of Supreme Audit Institutions<sup>812</sup> and the Lima Declaration of Guidelines on Auditing Precepts.<sup>813</sup> The new Law strengthens the position and the role of the SAO as an independent supreme audit institution of Macedonia responsible for conducting state audits. In fact, the new Law fully complies with international standards, European legislation and international best practice.<sup>814</sup> However, the Constitution does not regulate the relationship between the SAO and the legislature. The SAO is independent in its operations<sup>815</sup> and this is reflected in the provisions concerning the adoption of the work programme and other competences of the General State Auditor.<sup>816</sup> According to the law, the SAO submits its Annual Programme for Operation with the purpose of informing the Assembly, and no other body or institution can affect and influence the SAO agenda.<sup>817</sup> In addition, the SAO has the freedom to decide on the subject of an audit and has mechanisms for the follow-up of recommendations to ensure appropriate implementation of recommendations given in audit reports.<sup>818</sup> The Annual Programme for Operation contains an action plan for its realization as well as a list of entities to be audited.<sup>819</sup>

The SAO endeavours to achieve complete independence from the executive and legislative branches of government, as well as to obtain sufficient funding, which latter is a prerequisite for the effective execution of its responsibilities.<sup>820</sup> As stated in the SAO’s Code of Ethics,<sup>821</sup> independence from audited entities and other outside interest groups is indispensable for auditors.

The SAO has financial independence and the authority to manage its own resources.<sup>822</sup> The Law for amending and supplementing the state audit law<sup>823</sup> has three new articles and a new section for SAO employees specifying that the SAO has two categories of employees: civil servants who perform specialized work in the field of audit, planning, finances, accounting, IT and other work within the competences of the SAO; and employees who do not have the status of civil servants and who perform auxiliary work.<sup>824</sup> According to the Law on Civil Servants, recruitment is to be conducted in a transparent procedure based on qualifications and competence and applying the principle of equitable representation of community members.<sup>825</sup> The General State Auditor sets the requirements and organizes the examination to authorize state auditors.<sup>826</sup>

<sup>810</sup> European Commission for Democracy through Law (Venice Commission), 2014: p.11.

<sup>811</sup> State Audit Law Official Gazette of the RM, No. 65/97.

<sup>812</sup> <http://www.intosai.org/issai-executive-summaries/view/article/issai-10-the-mexico-declaration-on-sai-independence-eger.html> [accessed 15.06.2015].

<sup>813</sup> State Audit Law, Official Gazette of the RM, No. 66/2010.

<sup>814</sup> State Audit Law, Official Gazette of the RM, Nos. 66/10,145/10, 12/14, 43/14 Article 18; Rulebook on the manner of conducting state audit, Official Gazette of RM, No. 158/2011, Article 2.

<sup>815</sup> State Audit Law, Official Gazette No. 66/10,145/10, 12/14, 43/14, Article 3, Paragraph 4.

<sup>816</sup> State Audit Law, Official Gazette No. 66/10,145/10, 12/14, 43/14 Article 9.

<sup>817</sup> State Audit Law, Official Gazette No. 66/10,145/10, 12/14, 43/14 Article 23.

<sup>818</sup> State Audit Law, Official Gazette of RM, Nos. 66/10,145/10, 12/14, 43/14 Article 2, Paragraph 2.

<sup>819</sup> Rulebook on the Manner of Conducting State Audit, Official Gazette of RM, No. 158/2011 Article 3.

<sup>820</sup> State Audit Office, *Development Strategy 2013–2017*, (Skopje: SAO, 2012), p.6.

<sup>821</sup> Code of Ethics, State Audit Office, December 2006, p.3.

<sup>822</sup> State Audit Law, Official Gazette of RM, Nos. 66/10,145/10, 12/14, 43/14, Article 12.

<sup>823</sup> Official Gazette of RM, No.145/10.

<sup>824</sup> Official Gazette of RM, No.145/10, Article 13-a.

<sup>825</sup> Law on Administrative Servants, Official Gazette of RM, No. 27/2014.

<sup>826</sup> Section II–a Employees of the State Audit Office, State Audit Law, Official Gazette of RM, Nos. 66/10,145/10, 12/14, 43/14.

The General State Auditor and the Deputy are elected and dismissed by the Assembly.<sup>827</sup> The General State Auditor must meet specific requirements to ensure independence: he/she must not hold any other public office or occupation, nor be a member of a political party authority, Management Board, Supervisory Board, or any other body of another legal entity, and must not have been subject to a misdemeanour sanction in the course of his/her duties.<sup>828</sup>

The mandate of the General State Auditor and his/her deputy is nine years, without the right for re-election.<sup>829</sup> General State Auditors are protected by law against removal from office without a relevant justification.<sup>830</sup> They cannot be held criminally liable or detained for the views, opinions and recommendations they state regarding audits.<sup>831</sup>

### 8.1.3 INDEPENDENCE (PRACTICE)

Score: **75**

#### To what extent is the State Audit Institution free from external interference in the performance of its work in practice?

The Auditor General emphasized in the last annual report that the “priorities remain amending the constitution to guarantee the independence of the SAO and establishing a regular and effective mechanism for the reviewing of audit reports by the Assembly.”

During the period from 2009 to 2015, the SAO conducted two audits of the Government (in 2009 and 2012), as well as one audit of the Secretariat for Legislation under the Government in 2014.

There is some concern that even though there is no direct interference of the Government in the work of the SAO, there are close relations between the SAO and the Government.<sup>832</sup> In the process of the election of the Auditor General in 2007, the opposition expressed hope that the candidate’s former engagement as an advisor to the former PM’s cabinet would not hamper her ability to work objectively when examining how the Government spends public money for advertising campaigns.<sup>833</sup>

According to the 2013 SAO Annual Report, the implementation of International Standards of Supreme Audit Institutions (ISSAI) is one of the most important strategic objectives of the SAO. An Assessment Report on compliance with the ISSAI was prepared and used as the basis for preparing a Strategy for ISSAI implementation (during 2014). In line with the Guidelines on Audit Quality Assurance, during 2013 a professional team of authorized state auditors conducted quality assurance on three audits from the previous year,<sup>834</sup> while in 2014 the SAO conducted four quality assurance audits.<sup>835</sup> These reports are solely for internal use.

The Auditor General noted that there are no examples of political influence or interference in the work of the SAO and state audits, nor any examples of political engagement by the staff of the SAO.

<sup>827</sup> State Audit Law, Official Gazette of RM, Nos. 66/10,145/10, 12/14, 43/14, Article 4 (3).

<sup>828</sup> State Audit Law, Official Gazette of RM, Nos. 66/10,145/10, 12/14, 43/14, Article 5, Paragraphs (4) and (5).

<sup>829</sup> State Audit Law, Official Gazette of RM, Nos. 66/10,145/10, 12/14, 43/14, Article 4, paragraph 4.

<sup>830</sup> State Audit Law, Official Gazette of RM, Nos. 66/10,145/10, 12/14, 43/14, Articles 6 and 7.

<sup>831</sup> State Audit Law, Official Gazette of RM, Nos. 66/10,145/10, 12/14, 43/14, Article 11.

<sup>832</sup> Interview with Malinka Ristevska-Jordanova, (face to face), 12.11.2014.

<sup>833</sup> [HTTP://UTRINSKI.MK/DEFAULT.ASP?ITEMID=402516FB7FC8254D9FF519811800A653](http://UTRINSKI.MK/DEFAULT.ASP?ITEMID=402516FB7FC8254D9FF519811800A653) [accessed 12.06.2015]

<sup>834</sup> SAO, 2013: p.15

<sup>835</sup> SAO, 2014: p.15

## GOVERNANCE

### 8.2.1 TRANSPARENCY (LAW)

Score: **100**

**To what extent are there provisions in place to ensure that the public can obtain relevant information on the relevant activities and decisions by the SAI?**

The SAO prepares an annual programme for the operation of the SAO, a draft as well as a final audit report, and an annual report detailing the audits it has conducted during the year, as well as giving information on the operation of the SAO.

The annual programme for the operation of the SAO is presented to the Assembly for information purposes.<sup>836</sup> An Annual Report of conducted audits is submitted and reviewed by the Assembly during a debate before its final conclusions are adopted,<sup>837</sup> while all other audit reports are also submitted but not discussed in the Assembly.<sup>838</sup>

The SAO has a communication strategy,<sup>839</sup> the primary goals of which are to increase the interest and motivation of MPs in audits and to provide feedback to the Committee for Financing and Budget on the activities undertaken concerning audit reports.<sup>840</sup> The General State Auditor must publish the final audit reports and the comments on the website of the SAO.<sup>841</sup> The SAO is required to work in a transparent manner and to inform the public about its work, especially concerning the state budget and the financial reports of political parties. The SAO prepares an audit report on the state budget and submits it to the Assembly.<sup>842</sup>

The SAO is also responsible for the supervision of political party finance,<sup>843</sup> and thus is obliged to publish annual political party financial reports, including full details of donations.<sup>844</sup>

### 8.2.2 TRANSPARENCY (PRACTICE)

Score: **75**

**To what extent is there transparency in the activities and decisions of the audit institution in practice?**

The SAO has a positive reputation due to its transparent practices and its productivity.<sup>845</sup> The publication of final audit reports on the SAO's website has had a key role in promoting transparency. In 2014, a total number of 202,536 visits to the SAO's website was registered, most of them to access final audit reports.<sup>846</sup>

<sup>836</sup> State Audit Law, Official Gazette of RM, Nos. 66/10,145/10, 12/14, 43/14, Article 23.

<sup>837</sup> State Audit Law, Official Gazette of RM, Nos. 66/10,145/10, 12/14, 43/14, Article 33, Paragraphs (3) and (4).

<sup>838</sup> State Audit Law, Official Gazette of RM, Nos. 66/10,145/10, 12/14, 43/14, Article 33.

<sup>839</sup> Communication Strategy of the State Audit Office for the period 2008–2012,

<http://www.dzr.mk/en/Uploads/ENG%20-%20Communication%20Strategy%20of%20SAO%202008%20-2012.pdf> [accessed 26.06.2015].

<sup>840</sup> Communication Strategy of the State Audit Office for the period 2008–2012, p.8.

<sup>841</sup> State Audit Law, Official Gazette of RM, Nos. 66/10,145/10, 12/14, 43/14, Article 30, paragraph 2.

<sup>842</sup> State Audit Law, Official Gazette of RM Nos. 66/10,145/10, 12/14, 43/14, Article 34, paragraph 4.

<sup>843</sup> Electoral Code of RM, Official Gazette of RM, Nos. 40/06, 148/08, 155/08, 44/11, 51/11, 142/12, 31/13, 34/13 and 32/14, Article 85.

<sup>844</sup> Electoral Code of RM, Official Gazette of RM, Nos. 40/06, 148/08, 155/08, 44/11, 51/11, 142/12, 31/13, 34/13 and 32/14, Article 85 –b.

<sup>845</sup> Bundes Rechnungshaf, *Peer Review, Concerning the Macedonia SAO Final Report*, gz. 15-2007-1009, (Skopje: Bundes Rechnungshaf, 2007), p. 56.

<sup>846</sup> SAO, 2014: p.93. [http://www.dzr.mk/Uploads/DZR\\_GI\\_2014.pdf](http://www.dzr.mk/Uploads/DZR_GI_2014.pdf) [accessed 29.06.2015].

In practice, all legally required documents prepared by the SAO are publicly available. The following information is available through the SAO's website: annual reports;<sup>847</sup> annual programmes;<sup>848</sup> regularity audits and performance audits;<sup>849</sup> information about the SAO; applicable regulations and standards; reports of political parties; public procurement procedures; and links to relevant international institutions.<sup>850</sup> There is also a mechanism to enable citizens to pose questions and make suggestions.

One SAO staff member is responsible for public relations and website administration.<sup>851</sup> The SAO publishes articles and comments on its work in newspapers and other media. However, the SIGMA assessment report for 2012 stated that: "so far the SAO has not been active in drawing media attention to audit reports, fearing that such attention would provoke biased and politicised reactions, without positive influence on the SAO and its reports."<sup>852</sup>

Annual reports about conducted audits and the operation of the SAO are submitted in a timely manner and reviewed by the Assembly, while the other audit reports are also submitted but not subject to review by the Assembly.<sup>853</sup>

The SAO is obliged to conduct audits of the finances of all political parties. Following the 2013 municipal elections and the 2014 early parliamentary and presidential election, all audits of political party financial reports, including campaign donations, were published on the SAO website.<sup>854</sup> In its 2014 annual report, the SAO notes that it: "effectively kept track of the financial reporting of political parties by monitoring the process of submitting annual financial statements, annual accounts and reports from the register of donations."<sup>855</sup> However, GRECO makes a sceptical assessment of the SAO's role in overseeing party political finance, holding that, "this body was still not adequately equipped to assume a leading role in the effective supervision, investigation and enforcement of political financing regulations. In particular, human and financial resources."<sup>856</sup>

*For more see: Political parties' pillar*

## 8.2.3 ACCOUNTABILITY (LAW)

Score: **75**

### To what extent are there provisions in place to ensure that the SAO has to report and be answerable for its actions?

The SAO is obliged to submit its annual programme for operation for the following year to the Assembly by no later than December of the current year.<sup>857</sup> The annual programme for operation contains an action plan as well as a list of entities to be audited.<sup>858</sup>

<sup>847</sup> <http://www.dzr.mk/DesktopDefault.aspx?tabindex=0&tabid=1099> [accessed 24.06.2015].

<sup>848</sup> <http://www.dzr.mk/DesktopDefault.aspx?tabindex=0&tabid=1098> [accessed 24.06.2015].

<sup>849</sup> <http://www.dzr.mk/DesktopDefault.aspx?tabindex=0&tabid=1092> [accessed 26.06.2015].

<sup>850</sup> <http://www.dzr.mk/en/DesktopDefault.aspx> [accessed 26.06.2015].

<sup>851</sup> Respond to the questioner by Tanja Tanevska, Auditor General, 22.06.2015 and SAO annual report 2014, p.93 [http://www.dzr.mk/Uploads/DZR\\_GI\\_2014.pdf](http://www.dzr.mk/Uploads/DZR_GI_2014.pdf) [accessed 29.06.2015].

<sup>852</sup> OECD/SIGMA, 2012: p.51.

<sup>853</sup> <http://www.dzr.mk/DesktopDefault.aspx?tabindex=0&tabid=1> [accessed 29.06.2015].

<sup>854</sup> <http://www.dzr.mk/DesktopDefault.aspx?tabindex=0&tabid=1073> [accessed 26.06.2015]

<sup>855</sup> SAO, 2014: p.38.

<sup>856</sup> GRECO,2014: p.6.

<sup>857</sup> State Audit Law, Official Gazette of RM, Nos. 66/10,145/10, 12/14, 43/14, Article 23.

<sup>858</sup> State Audit Law, Official Gazette of RM, Nos. 66/10,145/10, 12/14, 43/14, Article 3, Rulebook on the manner of conducting state audits, Official Gazette of RM, No. 158/2011, Article 23.



The SAO is obliged to prepare an annual report on conducted audits and the operation of the SAO, though there are no legal requirements regarding the content of the report. The SAO must submit its report of the previous year to the Assembly for review by no later than 30 June of the current year.<sup>859</sup> The Assembly is obliged to review the report and adopt conclusions upon it, after which the SAO submits the final audit reports.<sup>860</sup> The SAO also prepares an audit report on the state budget and submits the report to the Assembly.<sup>861</sup>

The audit of the accounts of the SAO is carried out by a private audit company that is selected by and paid for by the Assembly.<sup>862</sup> The audit company can access the complete accounting records of the SAO.<sup>863</sup> The audit report must be submitted to the Assembly and to the SAO by no later than 30 June of the current year.<sup>864</sup> The Assembly reviews the SAO audit report conducted by the audit company.<sup>865</sup>

There are no legal provisions that allow an administrative body audited by the SAO to appeal against audit results. However, there are opportunities to contest audit results before they are finalised. SAO submits draft audit reports to the legal representatives of the auditee. Objections may be made within 30 days of receiving the report and are examined by the audit team before the final report is made.<sup>866</sup>

Internally within the SAO there are procedures in place to ensure a harmonized and coordinated approach. Each report is discussed in a meeting chaired by an Advisor to the General Auditor. This meeting body consists of three Assistant General State Auditors: the head of the Audit Department; the head of the Audit Methodology Department; and another member of the SAO who was not involved in preparing the audit.<sup>867</sup> This body discusses the draft final report, the comments from the auditee, and the reactions of the auditors to the comments.<sup>868</sup>

## 8.2.4 ACCOUNTABILITY (PRACTICE)

Score: **75**

### To what extent does the SAI have to report and be answerable for its actions in practice?

The annual report of the SAO includes extensive information about the activities of the SAO, including its budget, strategic documents and their implementation, audit standards and information on audit methodology, its collaboration with state institutions and its audit activities (number of audits, audit reports, subjects of audits, recommendations from audit reports and their implementation, audited public revenues and public expenditures and findings about public supplies).<sup>869</sup>

<sup>859</sup> State Audit Law, Official Gazette of RM, Nos. 66/10,145/10, 12/14, 43/14, Article 33 Paragraph (1).

<sup>860</sup> State Audit Law, Official Gazette of RM, Nos. 66/10,145/10, 12/14, 43/14, Article 33.

<sup>861</sup> State Audit Law, Official Gazette of RM, Nos. 66/10,145/10, 12/14, 43/14, Article 34.

<sup>862</sup> Official Gazette of RM, No.145/2010.

<sup>863</sup> State Audit Law, Official Gazette of RM, Nos. 66/10,145/10, 12/14, 43/14, Article 38, Paragraph (4).

<sup>864</sup> State Audit Law, Official Gazette of RM, Nos. 66/10,145/10, 12/14, 43/14, Article 38, Paragraph (5).

<sup>865</sup> State Audit Law, Official Gazette of RM, Nos. 66/10,145/10, 12/14, 43/14, Article 38, Paragraph (6).

<sup>866</sup> Response to the question by Tanja Tanevska, Auditor General, 22.06.2015.

<sup>867</sup> OECD/SIGMA, 2012: p.49 <http://dx.doi.org/10.1787/5jz2rqjfx68q-en> [accessed 29.06.2015].

<sup>868</sup> Ibid.

<sup>869</sup> Response to the questioner by Tanja Tanevska, Auditor General, 22.06.2015.

In 2014, in accordance with the SAO Law, the SAO submitted all final audit reports to the Assembly.<sup>870</sup> The Annual Report for 2014 gives an overview of coverage, opinions and types of audits, and provides a summary of the annual state budget audit and other important audits. The report also contains a summary of the activities of the SAO and the audited accounts of the SAO.<sup>871</sup>

The Assembly reviewed and approved the SAO's 2013 Annual Report and concluded that the SAO had carried out its activities in accordance with international standards.<sup>872</sup> In addition, the Assembly recommended that auditees should implement SAO recommendations and strengthen their control systems. The Assembly endorsed the recommendations proposed in the audit reports to the executive to improve systemic weaknesses in audited institutions and recommendations to harmonize legal provisions where they overlap or cause confusion.<sup>873</sup>

The relations of the SAO with the Assembly have been a matter of concern due to the fact that reports do not receive the systematic attention they deserve. A Memorandum of Cooperation between the SAO and the Assembly was signed in June 2013, and this should contribute to establishing a permanent mechanism for reviewing audit reports by the competent Assembly committee.<sup>874</sup>

Despite the shortcomings of the Assembly's review of audits, audited institutions consider audit reports useful, and audit reports have a direct impact on auditees.<sup>875</sup> Audit opinions are considered to be well-founded and recommendations are considered useful.<sup>876</sup>

## 8.2.5 INTEGRITY MECHANISMS (LAW)

Score: **100**

### To what extent are there mechanisms in place to ensure the integrity of the audit institution?

The SAO adopted a Code of Ethics in 2006.<sup>877</sup> The competences of the SAO, its organization and procedures for conducting audits, are in compliance with the auditing standards of the INTOSAI and the rules of the INTOSAI Code of Ethics.<sup>878</sup>

The Code of Ethics applies to individual auditors, the head of the SAO, executive officers, and all individuals working for the SAO who are involved in audit work. Auditors have a duty to adhere to the provisions of the Code.<sup>879</sup> The Code stresses Integrity, independence and objectivity, confidentiality and competence.<sup>880</sup> The Code obliges SAO staff to maintain irreproachable standards of professional conduct, to make decisions with the public interest in mind, and to apply absolute honesty in carrying out their work.<sup>881</sup>

<sup>870</sup> SAO, 2014: p.15.

<sup>871</sup> SAO, 2014: p.33.

<sup>872</sup> State Audit Law, the Mexico Declaration on SAI Independence and the Lima Declaration of Guidelines on Auditing Precepts.

<sup>873</sup> SAO, 2014: p.15.

<sup>874</sup> SAO, 2013: p.6.

<sup>875</sup> MCIC, 2014: p.57.

<sup>876</sup> OECD/SIGMA, 2012: pp. 49/50.

<sup>877</sup> Code of Ethics, SAO, December 2006, General Provisions, p.2.

<sup>878</sup> State Audit Law, Official Gazette of RM, Nos. 66/10,145/10, 12/14, 43/14, Article 18.

<sup>879</sup> Code of ethic, SAO, December 2006, General Provisions, p.2.

<sup>880</sup> Ibid.

<sup>881</sup> INTOSAI 30, Integrity, paragraph 12, p.5.

The SAO is obliged to be politically neutral. Since the SAO works closely with political institutions, including the executive, political parties and the Assembly, it is important that auditors maintain their independence and resist political influence in order to discharge their audit responsibilities in an impartial way.<sup>882</sup>

There are also rules regarding conflicts of interest. According to the Code of Ethics, the auditors should protect their independence and avoid any possible conflicts of interest by refusing gifts or gratuities which could influence or be perceived as influencing their independence and integrity.<sup>883</sup>

The Code of Ethics requires that auditors should avoid all relationships with managers and staff of the audited entity and with any other parties that might influence, compromise or threaten the ability of auditors to act and be seen to be acting independently.<sup>884</sup> Auditors should not use their official position for private purposes and should avoid relationships that involve a risk of corruption or which may raise doubts about their objectivity and independence.<sup>885</sup>

## 8.2.6 INTEGRITY MECHANISMS (PRACTICE)

Score: **75**

### To what extent is the integrity of the audit institution ensured in practice?

The SAO is a member of the EUROSAI working group on audit and ethics whose mandate is to promote the importance of ethical behaviour and integrity within supreme audit institutions. In practice, SAO employees adhere to the ethical principles set out in the Code of Ethics.<sup>886</sup>

The SAO is a leader in the region, having organized workshops on integrity and how SAO staff can implement and respect Codes of Ethics.<sup>887</sup> There have been two reported cases of violation of the Code of Ethics, specifically cases of conflicts of interest. In both cases, sanctions took the form of a decrease in salary for a certain period.<sup>888</sup>

There is, however, no designated body responsible for oversight and control of integrity mechanisms, which weakens the effectiveness of preventive anti-corruption measures.<sup>889</sup>

## ROLE

### 8.3.1 EFFECTIVE FINANCIAL AUDITS

Score: **50**

### To what extent does the state audit institution provide effective audits of public expenditure?

<sup>882</sup> Code of Ethics, Independence, p.3.

<sup>883</sup> Code of Ethics, SAO, December 2006, Conflict of Interest, p.6.

<sup>884</sup> Code of ethic, SAO, December 2006, Conflict of Interest, p.3.

<sup>885</sup> INTOSAI 30, Conflicts of Interest, paragraph 23, p.6.

<sup>886</sup> Good and successful communication is the responsibility of each employee of the State Audit Office 2008-2012, p.5.

<sup>887</sup> Response to the questioner by Tanja Tanevska, Auditor General, 22.06.2015.

<sup>888</sup> Ibid.

<sup>889</sup> Neda Korunovska, *Independent Reporting Mechanism Macedonia: Progress Report 2012–13*, (Skopje: Reactor, Research in Action, 2013), p.11. [http://www.opengovpartnership.org/sites/default/files/Macedonia\\_OGP\\_IRM\\_Public\\_Comment\\_\(English\)\\_0.pdf](http://www.opengovpartnership.org/sites/default/files/Macedonia_OGP_IRM_Public_Comment_(English)_0.pdf) [accessed 17.06.2015].

The SAO conducts regularity audits and performance audits<sup>890</sup> of state entities/institutions, as stipulated by law.<sup>891</sup> Following an audit procedure, the state auditor prepares and submits a draft audit report to the legal representative of the auditee and to the person accountable for the auditee in the audited period,<sup>892</sup> who then has 30 days within which to submit comments.<sup>893</sup> The state auditor then prepares a final audit report which is sent to the auditee, submitted to the Assembly, and published on the website of the SAO.<sup>894</sup> The report contains the comments from the auditee. The legal representative of the auditee should inform the SAO and the authority responsible for its supervision and control about any measures undertaken in relation to the findings and recommendations of the audit reports, and this informing should be performed within 90 days of the date of receipt of the final report.<sup>895</sup>

When in the course of an audit the authorized state auditor assesses that the auditee has committed a violation or criminal act, he/she must immediately inform the competent authorities.<sup>896</sup>

The SAO conducted 103 audits in 2014 (the same number as in 2013): 17 financial and compliance audits; 6 performance audits; and 80 performance audits on the Public Internal Financial Control (PIFC) System. 116 audit reports were issued (155 audit reports in 2013): 30 financial audit reports, 80 performance audit reports on the PIFC System, and 6 performance audit reports.<sup>897</sup>

The reports of the audit findings are comprehensive. In 2014 the SAO performed an assessment of the conformity of SAO methodological acts and established practices with the requirements and standards established by the ISSAI. The results showed a high degree of compliance (71%).<sup>898</sup> Mrs. Tanja Tanevska, the General Auditor, stressed that: "in order to improve the degree of compliance the SAO has prepared two manuals - for regularity and for performance audit - and the final stage is a new manual on follow-up audit."

If an authorized body requests a presentation of audit reports that have been submitted to the Assembly, the SAO will make a presentation in a timely manner.<sup>899</sup>

The executive is audited by the SAO and the report is subject to review by the Assembly. There is limited follow-up by the executive to the recommendations contained in the SAO reports.<sup>900</sup>

In line with its 2014 annual programme, the SAO conducted 86 performance audits covering 147 entities.<sup>901</sup> The number of performance audits carried out annually has significantly increased over the years.<sup>902</sup> All performance audits focus on the quality and quantity of public resources and services in areas where significant financial risks are identified. Audit recommendations are directed at improving the quality of the output and services provided

<sup>890</sup> State Audit Law, Official Gazette of RM, Nos. 66/10,145/10, 12/14, 43/14, Article 18 (2).

<sup>891</sup> State audits shall be conducted on the Parliament of the Republic of Macedonia, the President of the Republic of Macedonia, the Budget of the Republic of Macedonia and the budgets of the municipalities, budget beneficiaries, budget spending units, public enterprises, trade companies where the state is dominant shareholder, agencies and other institutions established by law, other institutions financed by public funds, the National Bank of the Republic of Macedonia, political parties financed by Budget funds, State Audit Law, Official Gazette of RM, Nos. 66/10,145/10, 12/14, 43/14, Article 22, (1).

<sup>892</sup> State Audit Law, Official Gazette of RM, No. 66/10,145/10, 12/14, 43/14, Article 30 (1).

<sup>893</sup> State Audit Law, Official Gazette of RM, No. 66/10,145/10, 12/14, 43/14, Article 30 (2).

<sup>894</sup> State Audit Law, Official Gazette of RM, No. 66/10,145/10, 12/14, 43/14, Article 31.

<sup>895</sup> State Audit Law, Official Gazette of RM, No. 66/10,145/10, 12/14, 43/14, Article 32.

<sup>896</sup> State Audit Law, Official Gazette of RM, No. 66/10,145/10, 12/14, 43/14, Article 35.

<sup>897</sup> SAO, 2014: p.19.

<sup>898</sup> Respond to the questioner Tanja Tanevska, Auditor General, 22.06.2015.

<sup>899</sup> Respond to the questioner Tanja Tanevska, Auditor General, 22.06.2015.

<sup>900</sup> European Commission, 2014: p. 9.

<sup>901</sup> SAO, 2014: p.50.

<sup>902</sup> From three in 2007-2009 to six in 2010 and seven in 2011 - 2013 the same number is foreseen SIGMA 2012, p.47.

by the state audit institution. The recommendations should be constructive, directed at addressing the causes of identified problems and aimed at parties who have responsibility for undertaking measures. In order to monitor the follow-up on recommendations made in audit reports, each audit reviews what the auditee has done with the recommendations from the previous audit.<sup>903</sup>

The SAO has no mandate to impose sanctions. According to ISSAI 10, the SAO must follow up on the activities undertaken by responsible persons in response to issues raised in audit reports.

In 2014, the SAO conducted follow-up reviews on the status of implementation of recommendations given in final audit reports from 2013 and 2014 in order to identify the level of implementation. The reviews covered 53 auditees (37 auditees in 2013) and the recommendations of 70 final audit reports (57 audit reports in 2013).<sup>904</sup> In its 2014 audits, the SAO made 833 recommendations and found a level of implementation of around 65%.<sup>905</sup>

In recent years the SAO has reinforced its monitoring of political party financing. According to the Electoral Code, the SAO has an obligation to conduct an audit of the financial reports within 60 days of their submission.<sup>906</sup> There are concerns regarding the SAO's capacity for performance audits and control over political financing. The EC Progress Report (2013) pointed out that: "the SAO still did not have adequate human and financial resources to efficiently perform its new functions of financial supervision of political parties and election campaigns."

### 8.3.2 DETECTING AND SANCTIONING MISBEHAVIOUR

Score: **75**

#### Does the audit institution detect and investigate misbehaviour of public officeholders?

The State Audit Law contains provisions which allow auditors access to all necessary documents and data, access to the premises of the auditee, oblige auditees to co-operate with auditors, even within strict timelines, and fine legal persons and responsible persons in an audited entity if they fail to submit documents or otherwise hamper the work of the auditors.<sup>907</sup>

According to the law, the SAO has the authority to examine documents and reports, as well as accounting and financial procedures and electronic data and information systems, for the purpose of determining whether financial reports present an accurate assessment of auditees' financial position and financial activities.<sup>908</sup> In practice this means that the SAO also has the authority to examine reports of the internal and public internal financial control and access reports of checks conducted by the financial management and control system. The SAO can also examine the financial transactions defined as public revenues and public expenditures, and can assess the use of funds in terms of the achieved economies, efficiency and effectiveness, and the measures taken by the subject of the audit.<sup>909</sup> According to the

<sup>903</sup> OECD/SIGMA, 2012: p.49.

<sup>904</sup> SAO, 2014: p. 22.

<sup>905</sup> Ibid.

<sup>906</sup> Electoral Code, Official Gazette of RM, Nos. 40/06, 148/08, 155/08, 44/11, 51/11, 142/12, 31/13, 34/13 and 32/14, Article 85.

<sup>907</sup> State Audit Law, Official Gazette of RM, Nos. 66/10, 145/10, 12/14, 43/14, Article 24 and 25.

<sup>908</sup> MCIC, 2014: p.57.

<sup>909</sup> Respond to the questioner Tanja Tanevska, Auditor General, 22.06.2015.

SIGMA assessment report: “the SAO auditors do not encounter any problems in receiving the necessary information and co-operation.”<sup>910</sup> Non-compliance can be sanctioned with a fine.<sup>911</sup>

The SAO’s institutional framework for monitoring political campaign financing was created in 2012. The election campaign-funding of political parties, as well as their annual funding, is subject to external supervision by the SAO. If the SAO finds irregularities in the financial report of the election campaign, which is contrary to the provisions of the Electoral Code, it has the right to request the initiation of misdemeanour proceedings or charges by a competent public prosecutor within 30 days from the date of the determination of irregularities.<sup>912</sup>

In 2014, the SAO received 33 annual financial statements, 32 annual accounts, and 33 reports from the register of donations, from a total of 55 political parties.<sup>913</sup> For those political parties that did not submit financial statements for 2013, the SAO recommended that the Minister of Justice cease regular annual budget funding of the political parties. The Minister of Justice did cease the funding and some political parties subsequently submitted financial statements.<sup>914</sup>

The SAO is a signatory of the Protocol for Cooperation for the Prevention and Repression of corruption and conflicts of interest.<sup>915</sup> The SEC, SAO and SCPC are not entitled to impose sanctions but can forward cases to the competent courts by initiating misdemeanour or criminal proceedings.<sup>916</sup> The SAO can either submit an initiative for a misdemeanour procedure or a report to the competent public prosecutor if it establishes that there are irregularities in reports.

## RECOMMENDATIONS

**R1.** The Assembly should increase the SAO’s supervision and sanctioning mechanisms in order to strengthen its role and effectiveness in the supervision of public expenditure.

### COMMENT

The SAO should be taken as an example for most or all of the other pillars. It can serve as a model for the comparison of all institutions’ capacities (in terms of resources) and to develop general guidance as to what is required in order to perform duties adequately in an efficient manner.

<sup>910</sup> OECD/SIGMA, 2012: p.46.

<sup>911</sup> State Audit Law, Official Gazette of RM, Nos. 66/10, 145/10, 12/14, 43/14, Article 30 (3).

<sup>912</sup> Electoral Code, Official Gazette of RM, Nos. 40/06, 148/08, 155/08, 44/11, 51/11, 142/12, 31/13, 34/13 and 32/14, Article 85 (7).

<sup>913</sup> For those political parties that did not submit financial statements for 2013, SAO submitted a proposal to the Minister of Justice upon which the Minister brought a decision for ceasing regular annual Budget funding of these political parties. The decision had an impact and some political parties subsequently submitted financial statements. This decision initially covered 35 political parties that failed to meet the obligations for financial reporting for 2013, i.e. that had not submitted a report from the register of received donations, or an annual account or annual financial statement. SAO, 2014: p.38

<sup>914</sup> Official Gazette of RM, No. 189/2014, <http://www.slvesnik.com.mk/Issues/a17ac0e2f2c243c1bdf936f059bf66fe.pdf>

<sup>915</sup> Signed on 25 December 2007 between the State Commission for the Prevention of Corruption, the Public Revenue Office, the Public Prosecution Office of the Republic of Macedonia, the Ombudsman of the Republic of Macedonia, the Judicial Council of the Republic of Macedonia, the Ministry of Interior, the State Audit Office, the Customs Administration, the Financial Police, the Directorate for Money Laundering Prevention and the State Bureau for Geodetic Operations .

<sup>916</sup> State Audit Law, Official Gazette of the RM, Nos.66/10, 145/2010, 12/2014, 43/2014.

# 9. THE OMBUDSMAN

## SUMMARY

The Ombudsman has an important role to play in protecting citizens’ basic human rights.

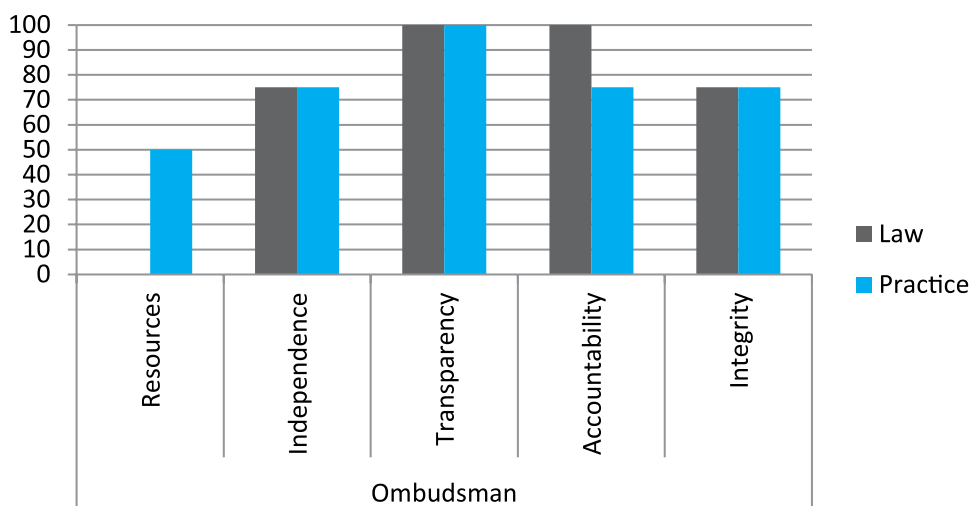
The legal and institutional basis of the Ombudsman is well organized. The NIS assessment finds that the Ombudsman is one of the strongest pillars of the Macedonian NIS and has high levels of transparency and accountability. In practice, however, the Ombudsman has difficulties with resources and staff that must be addressed in order to perform its duties.

The table below presents the indicator scores which summarize the assessment of the Ombudsman’s office in terms of its capacity, its internal governance, and its role within the Macedonian integrity system. The following part of this section provides qualitative analysis for each indicator.

**OVERALL PILLAR SCORE:**  **76.3/100**

| DIMENSION                       | INDICATOR               | LAW | PRACTICE |
|---------------------------------|-------------------------|-----|----------|
| <b>Capacity</b><br>66.6 / 100   | Resources               | /   | 50       |
|                                 | Independence            | 75  | 75       |
| <b>Governance</b><br>87.5 / 100 | Transparency            | 100 | 100      |
|                                 | Accountability          | 100 | 75       |
|                                 | Integrity               | 75  | 75       |
| <b>Role</b><br>75 / 100         | Investigation           |     | 75       |
|                                 | Promoting good practice |     | 75       |

## Pillar score per Law and Practice



## STRUCTURE AND ORGANIZATION

The office of Ombudsman was established in 1997. The office and independence of the Ombudsman is guaranteed by the Constitution.<sup>917</sup> Following the constitutional obligations contained in the Ohrid Framework Agreement,<sup>918</sup> a new Law on Ombudsman was enacted in 2003<sup>919</sup> by which the institution was decentralized and regional offices were established. The organization of the Ombudsman has been determined in accordance with the Law on Ombudsman and other by-laws.<sup>920</sup>

The Ombudsman's headquarters is in Skopje and there are six regional offices in Bitola, Kicevo, Kumanovo, Strumica, Tetovo and Stip. Following the 2009 amendments to the Law,<sup>921</sup> separate departments were established for the protection of the rights of children and persons with disabilities, for the protection of citizens against discrimination and for ensuring equitable representation, and for protection against torture and other cruel, inhuman or degrading treatment or punishment. Each deputy is responsible for separate thematic units: civil rights and freedoms and rights of members of communities; rights for social protection and social security; economic rights and regulations; the right to work, environmental rights and consumers' rights.

Following Constitutional Amendment XII,<sup>922</sup> the Ombudsman is entitled to nominate members of the Inter-Community Relations Commission for communities that do not have representatives, as established by the Constitution. Nominations are made after consulting the relevant representatives of those communities.<sup>923</sup>

<sup>917</sup> Constitution of the Republic of Macedonia, Official Gazette of the RM, No. 52/91, Article 77.

<sup>918</sup> Ohrid Framework Agreement, adopted on 13.08.2001

<sup>919</sup> Law on the Ombudsman, Official Gazette of the RM, No.60/2003.

<sup>920</sup> Law on Ombudsman, Official Gazette of RM, No. 7/1997, Rulebook on the Ombudsman and By-Law on the form, content and procedure for issuance, usage and confiscation of the official cards of the Ombudsman, his deputies and the employees in the Ombudsman's Professional Service. <http://ombudsman.mk/EN/competence/rulebook.aspx>

<sup>921</sup> Official Gazette of RM, No. 114/2009.

<sup>922</sup> Amendment XII, Official Gazette of RM, No. 91/2001.

<sup>923</sup> Constitution of the RM, Official Gazette of RM, No. 52/91.



With the ratification of the Optional Protocol to the Convention against Torture in 2008,<sup>924</sup> the Ombudsman was given a mandate to assume the role of a National Preventive Mechanism (NPM), and this became operational in 2011.

The International Coordination Committee on National Institutions for the Promotion and Protection of Human Rights (ICC)<sup>925</sup> accredited the Ombudsman with status B in October 2011, which means that the institution is in partial compliance with the Paris Principles<sup>926</sup> relating to the status of national institutions vested with the competence to protect human rights.<sup>927</sup>

## ASSESSMENT

### CAPACITY

#### 9.1.1 RESOURCES (PRACTICE)

Score: **50**

#### To what extent does the Ombudsman have adequate resources to achieve its goals in practice?

The Ombudsman is financed by the state budget on a yearly basis. Over the last three years, the budget of the Ombudsman has increased by 19%. In 2013 the Ombudsman received EUR 1,046,048; in 2014 the budget was increased by 9.8% to EUR 1,160,260, while the predicted budget for 2015 was EUR 1,183,349. However, the Ombudsman's annual report states that: "the budget of the Ombudsman has not provided funds for the promotion of human rights and liberties. The Ombudsman is facing difficulties in providing translations and publications of the reports because of lack of finances."<sup>928</sup>

The Ombudsman does not participate in the preparation of the Budget, despite the law stating that the Ombudsman should explain the grounds for requested funds at the budget session of the Assembly.<sup>929</sup>

According to the 2014 Annual Report of the Ombudsman, the approved funds for this office are not sufficient and this limits the work of the institution in the promotion of human rights and freedoms.<sup>930</sup> Initiatives to promote human rights have been financed to date by the 'Technical Assistance and Information Exchange' instrument of the European Commission (TAIEX), the Embassy of the Kingdom of the Netherlands in Macedonia, the Office for Democratic Institutions and Human Rights (ODIHR), and the OSCE Mission to Skopje, but never with budget support.<sup>931</sup> The Ombudsman's responsibilities regarding the National

<sup>924</sup> Law on Ratification on Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT), Official Gazette of RM, No. 165/2008.

<sup>925</sup> <http://nhri.ohchr.org/EN/AboutUs/ICCAccreditation/Pages/default.aspx> [accessed 29.06.2015].

<sup>926</sup> <http://nhri.ohchr.org/EN/AboutUs/ICCAccreditation/Documents/Chart%20of%20the%20Status%20of%20NHRIs%20%2823%20May%202014%29.pdf> [accessed 01.06.2015]

<sup>927</sup> <http://www.ohchr.org/EN/ProfessionalInterest/Pages/StatusOfNationalInstitutions.aspx> Adopted by General Assembly resolution 48/134 of 20 December 1993.

<sup>928</sup> The Ombudsman - National Institution for Protection of Human Rights, *Annual report on the level of respect, promotion and protection of human rights and freedoms 2013*, (Skopje: Ombudsman, 2013), pp. 132

<sup>929</sup> Ibid.

<sup>930</sup> Ombudsman, *Annual Report of the Ombudsman 2014*, (Skopje: Ombudsman, 2014), pp.115 <http://ombudsman.mk/upload/Godisni%20izvestai/GI-2014/GI%202014.pdf>

<sup>931</sup> Ibid.

Preventive Mechanism that implements the Convention against Torture cannot be carried out because it does not have insufficient staff or finance for this task.<sup>932</sup>

In practice, the financial assets approved for the Ombudsman are always much smaller than the amounts requested. In 2015, the Ombudsman's basic costs were covered but there was no money for professional training for employees, publications, translations and so forth. Further financial pressure is exerted when the Government attempts to use supplementary budgets to cut already-allocated funds when implementing anti-crisis measures.<sup>933</sup>

In the course of 2013, seven Ombudsman deputies were employed in the headquarters and the six regional offices. The Professional Service Unit of the Ombudsman has 78 employees.<sup>934</sup> The Ombudsman's Secretary General manages the Professional Service Unit. Employees have appropriate skills and expertise.

However, the Ombudsman is facing a shortage of human resources.<sup>935</sup> The trend over recent years has been that approval is not granted to fill vacancies or create new positions. The number of employees in the Administrative Office is constantly decreasing. Remuneration is not adequate and it is difficult to hire and retain specialized and professional staff.<sup>936</sup>

## 9.1.2 INDEPENDENCE (LAW)

Score: **75**

### To what extent is the ombudsman independent by law?

The legal framework provides for a number of mechanisms aimed at ensuring the Ombudsman's independence; however, there are some deficiencies that might threaten the office's independence and impartiality. There are also limits on what the ombudsman can investigate.

The Ombudsman was established in the Constitution in 1991. Under the legal framework, the Ombudsman is independent and self-governing in the performance of its function.<sup>937</sup>

The Ombudsman protects the constitutional and legal rights of citizens when there have been violations by state administration bodies or other bodies and organizations with public mandates.<sup>938</sup> The Parliament adopted the first Law on the Public Attorney (Ombudsman) in 1997, and the Law was amended in 2003 in order to eliminate discrepancies and to create guarantees for the independence of the institution.<sup>939</sup>

The Ombudsman is elected by the Assembly upon nomination by the competent Assembly committee with a vote by the majority of the total number of MPs.<sup>940</sup> The Ombudsman is appointed for a period of eight years, with the right to one re-election.<sup>941</sup> The position is

<sup>932</sup> Ibid.

<sup>933</sup> Interview with Ixhet Memet, the Ombudsman of RM, face to face, 03.07.2015.

<sup>934</sup> According to the qualification structure of the employees, 63 have higher education while 12 have secondary education. Of these, 45 are women and 30 are men. The Ombudsman institution employs: 31 Macedonians, 31 Albanians, 2 Roma, 3 Serbs, 3 Vlachs, 2 Bosnians, one Turk and one Croat.

<sup>935</sup> Interview with the Ombudsman Ixhet Memeti, conducted by Dr. Slagjana Taseva on 03 July 2015.

<sup>936</sup> Interview with Ixhet Memet, the Ombudsman of RM, face to face, 03.07.2015.

<sup>937</sup> The Ombudsman Law, Official Gazette of RM, No. 60/2003, 114/2009, Article 3.

<sup>938</sup> Constitution of the Republic of Macedonia, Official Gazette of RM, No. 52/91, Article 77.

<sup>939</sup> Official Gazette of RM, No. 60/2003.

<sup>940</sup> The Ombudsman Law, Official Gazette of RM, No. 60/2003, 114/2009, Article 5.

<sup>941</sup> Ibid.

not compatible with performing another public function or profession, or with political party membership.<sup>942</sup>

The Ombudsman is elected according to clear professional criteria, including on the basis of previous work in the field of the protection of citizens' rights.<sup>943</sup> There are similar criteria for electing the Deputy Ombudsmen.<sup>944</sup> Persons elected to the position of Deputy Ombudsman should be drawn from all communities in the Republic of Macedonia, as well as meeting the professional criteria.<sup>945</sup> The Ombudsman's salary is at the same level as that received by a member of the Government.<sup>946</sup>

The employees/staff in the Ombudsman office have the status of civil servants and their recruitment is organised by the State Agency for Administration.<sup>947</sup> The Ombudsman is entitled to decide on how to conduct proceedings.<sup>948</sup>

The Ombudsman may be removed from office in the followings instances: if he/she requests removal; if he/she is convicted for a criminal offence that results in at least six months of imprisonment; if he/she is medically certified as having lost the psychophysical ability to perform the function of Ombudsman; if he/she is eligible for retirement; or if in carrying out his/her duties she/he has acted in an unprofessional, biased or negligent manner.<sup>949</sup>

The Ombudsman is obliged to protect citizens against the unjustified prolongation of court proceedings or unprofessional performance on the part of the courts, but may not infringe upon the independence and autonomy of the judiciary. The Ombudsman will not take action in cases for which court proceedings are pending, except for the abovementioned cases.<sup>950</sup>

### 9.1.3 INDEPENDENCE (PRACTICE)

Score: **75**

#### To what extent is the Ombudsman independent in practice?

According to the EC Progress Report 2013, the Ombudsman works as an independent organ for the protection of citizens' rights.<sup>951</sup>

The Ombudsman has been criticised by human rights groups for not investigating the incident when journalists and MPs were expelled from an Assembly session on the budget on 24 December 2012.<sup>952</sup> After the Association of Journalists submitted a complaint, the Ombudsman stated that he had no jurisdiction to act, however he did react in the media by denouncing this kind of behaviour towards the journalists. The Helsinki Committee, in

<sup>942</sup> The Ombudsman Law, Official Gazette of RM, No. 60/2003, 114/2009, Article 8.

<sup>943</sup> The Ombudsman Law, Official Gazette of RM, No. 60/2003, 114/2009, Article 6.

<sup>944</sup> Ibid.

<sup>945</sup> Ibid.

<sup>946</sup> As well as the Chairman of the working body of the Parliament, the President of the Supreme Court, the Public Prosecutor, judges of the Constitutional Court, the Governor of the National Bank of the RM, the Secretary of the Assembly and the Secretary of the Government

<sup>947</sup> Law on administrative/civil servants, Official Gazette of RM, No. 27/2014, Article 14.

<sup>948</sup> The Ombudsman Law, Official Gazette of RM, No. 60/2003, 114/2009, Article 38.

<sup>949</sup> The Ombudsman Law, Official Gazette of RM, No. 60/2003, 114/2009, Article 9.

<sup>950</sup> The Ombudsman Law, Official Gazette of RM, No. 60/2003, 114/2009, Article 12.

<sup>951</sup> European Commission, 2013: p.9.

<sup>952</sup> Helsinki Committee for Human Rights of the RM, *Special report on the 49th session of the Assembly of the Republic of Macedonia held on 24.12.2012 - "Developments before and inside the Assembly"*, (Skopje: Helsinki Committee for Human Rights of the RM, 2013), p.2. <http://www.mhc.org.mk/reports/100#> [accessed 01.06.2015].


reviewing the situation, held that the Ombudsman did have jurisdiction and failed to protect the constitutional and legal rights of citizens. Following the incident, the independence of the Ombudsman has been questioned.<sup>953</sup>

The International Coordination Committee on National Institutions for the Promotion and Protection of Human Rights (ICC) have accredited the Ombudsman as being in partial compliance with the Paris Principles.<sup>954</sup> The six main criteria for National Human Rights Institutions (NHRI) stemming from the Paris Principles are as follows: 1. a mandate “as broad as possible”, based on universal human rights standards and including the dual responsibility to both promote and protect human rights, covering all human rights; 2. independence from government; 3. independence guaranteed by the constitution or by legislation; 4. adequate powers of investigation; 5. Pluralism, including through membership and/or effective co-operation; and 6. adequate human and financial resources.

No Ombudsmen have been removed from their position before the end of their term. Only the current Ombudsman has been re-elected. There are no cases of the Ombudsman engaging in political activity or conducting other activities prohibited by law, or holding positions that might compromise the independence of the institution.

## GOVERNANCE

### 9.2.1 TRANSPARENCY (LAW)

Score:  100

#### **To what extent are there provisions in place to ensure that the public can obtain relevant information on the activities and decision-making processes of the Ombudsman?**

The Ombudsman is obliged to respect the privacy and confidentiality of information concerning persons who make submissions.<sup>955</sup>

The Ombudsman submits an Annual Report to the Assembly by 31 March of each year.<sup>956</sup> The Ombudsman informs the Assembly about the level of respect, improvement and protection of the constitutional and legal rights of citizens, and about the extent of respect of the principles of non-discrimination, and the extent of adequate and equitable representation of community members.<sup>957</sup> The Law provides that the annual report must be published and released to the media, bearing in mind considerations of confidentiality.<sup>958</sup> For specific matters within his/her scope, the Ombudsman may prepare special reports.<sup>959</sup>

The Ombudsman prepares an annual report on the National Preventive Mechanism and is obliged to publish and distribute this report.<sup>960</sup> The annual report concerns the National Preventive Mechanism’s mandate to visit, report on, and make recommendations to the

<sup>953</sup> Helsinki Committee for Human Rights of the RM, *Monthly report on human rights in the Republic of Macedonia, January 2013*, (Skopje: Helsinki Committee for Human Rights of the RM, 2013), p. 3. Available at: [http://www.mhc.org.mk/system/uploads/redactor\\_assets/documents/306/Monthly\\_Report\\_JANUARY\\_2013.pdf](http://www.mhc.org.mk/system/uploads/redactor_assets/documents/306/Monthly_Report_JANUARY_2013.pdf) [accessed June 01, 2015].

<sup>954</sup> Accredited by the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights, accreditation status as of 28 January 2014 [http://www.ohchr.org/Documents/Countries/NHRI/Chart\\_Status\\_NIs.pdf](http://www.ohchr.org/Documents/Countries/NHRI/Chart_Status_NIs.pdf) [accessed June 05, 2015]

<sup>955</sup> The Ombudsman law, Official Gazette of RM, No. 60/2003, 114/2009, Article 18.

<sup>956</sup> Rules of Procedure of the Ombudsman, Article 56.

<sup>957</sup> The Ombudsman Law, Official Gazette of RM, No. 60/2003, 114/2009, Article 36.

<sup>958</sup> The Ombudsman Law, Official Gazette of RM, No. 60/2003, 114/2009, Article 36.

<sup>959</sup> The Ombudsman Law, Official Gazette of RM, No. 60/2003, 114/2009, Article 37.

<sup>960</sup> Rules of Procedure of the Ombudsman, Article 20.

authorities, organizations and institutions concerning the conditions for achieving the rights of persons to whom the freedom of movement is limited.<sup>961</sup>

The Ombudsman is obliged to inform the public about its activities through its website, press releases, conferences, annual reports, and through other methods.<sup>962</sup> Information must be released with respect for the rules protecting the privacy of complainants and others.<sup>963</sup>

The Ombudsman website publishes information of a general character, including: the legal framework of the office, the organizational structure, its competences and methods of work, its services for citizens, case work, and guidelines on how to reach the Ombudsman and how to submit a complaint.<sup>964</sup>

The Ombudsman and the Deputy Ombudsman are required to file a detailed asset declaration.<sup>965</sup> There are no legal provisions regulating the involvement of the public in the activities of the Ombudsman, for example through public consultations or the establishment of public councils and advice committees.

## 9.2.2 TRANSPARENCY (PRACTICE)

Score: **100**

### To what extent is there transparency in the activities and decision-making processes of the Ombudsman in practice?

The Ombudsman provides the public with access to information of different types, such as general information about the institution and its activities. The website publishes information about its field of work,<sup>966</sup> annual reports,<sup>967</sup> special reports,<sup>968</sup> and opinions. Information is published on the website in three languages: Macedonian,<sup>969</sup> Albanian,<sup>970</sup> and English.<sup>971</sup> The official website is regularly updated with information regarding its work on complaints,<sup>972</sup> the national preventive mechanism,<sup>973</sup> and promotional as well as international activities.<sup>974</sup>

The Ombudsman publishes information in a timely manner, despite there being no legal obligation to do so.<sup>975</sup> The Ombudsman provides data on the number of complaints received, on ongoing and processed complaints, as well as descriptions of cases.

According to the *Shadow Report on Non-Discrimination*, some representatives from the regional offices believe that the establishment of the regional offices has brought the institution of Ombudsman closer to the public and this has led to an increased number of complaints.<sup>976</sup>

<sup>961</sup> The Ombudsman law, Official Gazette of RM, No. 60/2003, 114/2009, Article 31 –b.

<sup>962</sup> Rules of Procedure of the Ombudsman, Article 54.

<sup>963</sup> Rules of Procedure of the Ombudsman, Article 54.

<sup>964</sup> Rules of Procedure of the Ombudsman, Article 55.

<sup>965</sup> Law on Prevention of Corruption, Official Gazette of RM, Nos.28/2002, 46/2004, 126/2006, 10/2008, 161/2008 and 145/2010, Articles 33 and 34.

<sup>966</sup> [http://ombudsman.mk/EN/ombudsman\\_work/field\\_of\\_work.aspx](http://ombudsman.mk/EN/ombudsman_work/field_of_work.aspx) [accessed June 15, 2015]

<sup>967</sup> [http://ombudsman.mk/EN/annual\\_reports.aspx](http://ombudsman.mk/EN/annual_reports.aspx) [accessed June 15, 2015]

<sup>968</sup> [http://ombudsman.mk/EN/special\\_reports.aspx](http://ombudsman.mk/EN/special_reports.aspx) [accessed June 15, 2015]

<sup>969</sup> <http://ombudsman.mk/MK/default.aspx> [accessed June 15, 2015]

<sup>970</sup> <http://ombudsman.mk/SQ/default.aspx> [accessed June 15, 2015]

<sup>971</sup> <http://ombudsman.mk/EN/default.aspx> [accessed June 15, 2015]

<sup>972</sup> [http://ombudsman.mk/EN/ombudsman\\_work/practice/information.aspx](http://ombudsman.mk/EN/ombudsman_work/practice/information.aspx) [accessed June 15, 2015]

<sup>973</sup> [http://ombudsman.mk/EN/submit\\_a\\_complain.aspx](http://ombudsman.mk/EN/submit_a_complain.aspx) [accessed June 15, 2015]

<sup>974</sup> <http://ombudsman.mk/EN/default.aspx> [accessed June 15, 2015]

<sup>975</sup> Interview with Ixhet Memet, Ombudsman of RM, face to face, 03.07.2015

<sup>976</sup> Center for Research and Policy-Making (CRPM), *Shadow Report on non-discrimination*, (Skopje: CRPM, 2012), p.27.

However, it is unclear whether the increase in the number of complaints is due to the greater presence of Ombudsman offices or to a deterioration of human rights and freedoms.

The Ombudsman and the Deputies have published their asset declarations on the website of the State Commission for the Prevention of Corruption (SCPC).<sup>977</sup>

### 9.2.3 ACCOUNTABILITY (LAW)

Score: **100**

#### To what extent are there provisions in place to ensure that the Ombudsman has to report and be answerable for its actions?

The Ombudsman is accountable to the Assembly, which is required to review its annual report in a public session attended by representatives of the Government.<sup>978</sup> The annual report is a public document and contains the Ombudsman's findings regarding the level of respect for the human rights and freedoms of citizens, a description of the main problems, statistical data, information on processed and ongoing complaints, a description of specific cases of violations, as well as a report of the other activities of the Ombudsman.<sup>979</sup> The Ombudsman may also submit special reports to bodies within local government.

The Ombudsman's activities are not subject to judicial review by the courts.

Public service accountability mechanisms, including protection for whistle-blowers, are applicable to the staff of the Ombudsman.<sup>980</sup>

### 9.2.4 ACCOUNTABILITY (PRACTICE)

Score: **75**

#### To what extent does the Ombudsman report and to what extent is the Ombudsman answerable for its actions in practice?

The Ombudsman submits its annual reports to the Assembly in a timely manner and its reports are discussed in Assembly sessions with Government representatives.<sup>981</sup>

In addition to annual reports, the Ombudsman has published over 30 thematic reports concerning non-discrimination and equitable representation, prisons, health, children, education, social welfare, pension and disability insurance, and the police.<sup>982</sup>

The Ombudsman submits information every three months to the Government concerning the number and type of requests submitted by the Ombudsman to government bodies. This has contributed to the expedition of some Ombudsman procedures. However there are government bodies that do not cooperate with the Ombudsman and/or hinder the Ombudsman's work.<sup>983</sup>

The Ombudsman regularly informs the public about its work and meets with citizens, which

<sup>977</sup> [http://www.dksk.org.mk/imoti\\_2/](http://www.dksk.org.mk/imoti_2/) [accessed June 15, 2015].

<sup>978</sup> The Ombudsman Law, Official Gazette of RM, No. 60/2003, 114/2009, Article 36.

<sup>979</sup> Rules of Procedure of the Ombudsman, Article 56.

<sup>980</sup> Law on the Prevention of Corruption, Official Gazette of RM, Nos. 28/2002, 46/2004, 126/2006, 10/2008, 161/2008, 145/2010.

<sup>981</sup> Assembly of the Republic of Macedonia, Committee on the Political System and Inter-Ethnic Relations, No. 12-2429, July 1, 2014, p. 209 <http://www.sobranie.mk/materialdetails.nsp?materialId=e1297e5b-14f9-4591-88ec-b0c07a39e3ba> [accessed June 01, 2015].

<sup>982</sup> Ixhet Memeti, 2012, *Ombudsman of the Republic of Macedonia: Institutional character*, (Skopje: The Ombudsman of the RM, 2012), p. 205 [http://studiorum.org.mk/evrodijalog/16/pdf/Evrodijalog\\_br\\_16\\_4\\_I-Memeti\\_ENG.pdf](http://studiorum.org.mk/evrodijalog/16/pdf/Evrodijalog_br_16_4_I-Memeti_ENG.pdf) [accessed June 01, 2015].

<sup>983</sup> Ombudsman, 2014: p. 150

contributes to the public oversight of the Ombudsman's activities.<sup>984</sup>

To date there have not been any cases of whistleblowers within the Office of the Ombudsman.<sup>985</sup> The Law on the Protection of Whistle-blowers, of November 2015, empowers the Ombudsman in terms of protected outdoor applications.<sup>986</sup>

## 9.2.5 INTEGRITY MECHANISMS (LAW)

Score: **75**

### To what extent are there provisions in place to ensure the integrity of the ombudsman?

There is no written Code of Conduct for the office of the Ombudsman, though by law the Ombudsman declares that he/she will perform the Ombudsman function conscientiously and responsibly, and will abide by the Constitution and laws.<sup>987</sup> The position of Ombudsman is not compatible with performing another public function or profession, or with membership of a political party.<sup>988</sup>

The staff of the Ombudsman, who have the status of civil servants, are subject to the Code of Ethics for Civil Servants.<sup>989</sup> The code contains broad rules relating to respect for the principles of legality, professional integrity, efficiency, effectiveness and dedication in performing their official duties. Breaches of the Code qualify as grounds for termination of employment.<sup>990</sup> Included in the Code are principles concerning conflicts of interest that are applicable to Ombudsman staff.<sup>991</sup> Elected officials and appointees, including the Ombudsman and the Deputies, are subject to the Law on the Prevention of Conflicts of Interest. There are no rules regarding gifts specifically for staff of the Ombudsman office; however, they must abide by the rules on gifts applicable to civil servants.<sup>992</sup> Similarly, the staff of the Ombudsman is subject to the same post-employment restrictions as other civil servants.<sup>993</sup>

The Ombudsman is obliged to respect the privacy and confidentiality of information concerning complainants.<sup>994</sup> The Ombudsman is obliged to handle complaints conscientiously, impartially, efficiently and responsibly.<sup>995</sup> The Ombudsman must notify a complainant within 15 days of receipt of a complaint as to whether a procedure will be initiated in their case.<sup>996</sup>

## 9.2.6 INTEGRITY MECHANISMS (PRACTICE)

Score: **75**

### To what extent is the integrity of the Ombudsman ensured in practice?

<sup>984</sup> Interview with Ixhet Memet, the Ombudsman of RM, face to face, 03.07.2015

<sup>985</sup> Ibid.

<sup>986</sup> Law on protection of Whistle-blowers Official Gazzete 196/2015.

<sup>987</sup> The Ombudsman law, Official Gazette of RM, No. 60/2003, 114/2009, Article 7.

<sup>988</sup> The Ombudsman law, Official Gazette of RM, No. 60/2003, 114/2009, Article 8.

<sup>989</sup> Code of Conduct of Civil Servants, Official Gazette of RM, No. 129/2011.

<sup>990</sup> Code of Conduct of Civil Servants, Official Gazette of RM, No. 129/2011, Article 1 (1).

<sup>991</sup> Code of Conduct of Civil Servants, Official Gazette of RM, No. 129/2011, Article 9.

<sup>992</sup> "If an official has been offered a gift related to performing his/her public duty, he/she is obliged to refuse it, to determine the identity of the bidder and, if it is a gift which cannot be returned, to report it to the competent authority no later than 48 hours of receipt. The Law on Prevention of Conflict of Interests, Official Gazette of the RM, Nos.70/2007, 114/2009, 128/2009, Article 16.

<sup>993</sup> "An official may not, during his/her term of office and within five years after the end of office, acquire rights in an entity which was under his/her supervision, or in a contractual relationship.

<sup>994</sup> The Ombudsman Law, Official Gazette of RM, No. 60/2003, 114/2009, Article 18.

<sup>995</sup> The Ombudsman Law, Official Gazette of RM, No. 60/2003, 114/2009, Article 17.

<sup>996</sup> The Ombudsman Law, Official Gazette of RM, No. 60/2003, 114/2009, Article 20 and 22.

The integrity of the Ombudsman is ensured through the process of appointment by the Parliament. In practice, if a Deputy Ombudsman is not allowed to act in a certain process due to a conflict of interests, the Ombudsman makes a decision on which of the other Deputy Ombudsmen will process the case.<sup>997</sup>

The integrity mechanisms work well and the rules regarding conflicts of interest and the receiving of gifts are fully respected by employees at the Ombudsman office.<sup>998</sup> There are no examples of Ombudsman staff having violated the Code of Conduct.<sup>999</sup>

Closed cases are classified according to the type of case and according to the file numbers in separate folders. In this regard, the Ombudsman passes an internal act every year that regulates which cases are of permanent value and which are to be kept for a limited period.<sup>1000</sup>

## ROLE

### 9.3.1 INVESTIGATION

Score: **75**

#### To what extent is the Ombudsman active and effective in dealing with complaints submitted by the public?

The procedure for lodging complaints with the Ombudsman is straightforward. Any citizen may submit a complaint to the Ombudsman (in person or through a representative).<sup>1001</sup> A complaint may be delivered personally or by mail, fax or email to the Ombudsman's office or be made orally at the office. The filing of the complaint is free of charge. The complaint must be intelligible and legible and fulfil certain conditions,<sup>1002</sup> but it may be in any language used by the citizen and in any script.<sup>1003</sup> There is a form available for making complaints but there is no obligation to use it.<sup>1004</sup> If the complaint is not understandable and does not contain necessary facts and evidence, the Ombudsman will request clarification from the complainant within between 8 and 30 days.<sup>1005</sup>

The Ombudsman must respect the privacy and secrecy of complainants' data, and must further seek to ensure that none of its activities result in harmful consequences for the complainant as a result of reprisals by the organ which the complainant alleges has violated his/her right.<sup>1006</sup>

The Ombudsman receives an increasing number of complaints year on year.<sup>1007</sup>

<sup>997</sup> Interview with Ixhet Memet, the Ombudsman of RM, face to face, 03.07.2015.

<sup>998</sup> Interview with Uranija Pirovska, Executive director of the Helsinki Committee of the Republic of Macedonia, former employee in the office of the Ombudsman, face to face, 10.11.2015.

<sup>999</sup> Interview with Ixhet Memet, the Ombudsman of RM, face to face, 03.07.2015.

<sup>1000</sup> Interview with Uranija Pirovska, Executive director of the Helsinki Committee of the Republic of Macedonia, former employee in the office of the Ombudsman, face to face, 10.11.2015.

<sup>1001</sup> The Ombudsman Law, Official Gazette of RM, No. 60/2003, 114/2009, Article 13, paragraph 1.

<sup>1002</sup> The Ombudsman Law, Official Gazette of RM, No. 60/2003, 114/2009, Article 16. The complaint must be signed and contain personal data (first name, last name, address, phone, etc.). Also, it must contain the circumstances, facts, and evidence that the complaint is based on (resolution, decision, appeal, conclusion, statement, certificate, opinion, etc.); the organ, i.e. the organization, as well as the official the complaint refers to; the act (resolution, decision, statement, etc.) by means of which the right was violated must also be listed; Finally, the complaint should contain an account of the legal remedies the complainant has lodged, if any.

<sup>1003</sup> Rules of Procedure of the Ombudsman, Article 33.

<sup>1004</sup> [http://ombudsman.mk/en/search/673/how\\_can\\_i\\_submit\\_a\\_complaint\\_.aspx](http://ombudsman.mk/en/search/673/how_can_i_submit_a_complaint_.aspx) [accessed June 9, 2015]

<sup>1005</sup> Rules of Procedure of the Ombudsman, Article 34.

<sup>1006</sup> The Ombudsman law, Official Gazette of RM, No. 60/2003, 114/2009, Article 18.

<sup>1007</sup> <http://www.independent.mk/articles/15789/Macedonian+Ombudsman+More+and+More+Citizens+Ask+for+Institution%27s+Help#sthash.8mWx19aF.dpuf> [accessed June 9, 2015]



| Number of complaints received |      |      |      |      |      |      |
|-------------------------------|------|------|------|------|------|------|
| Source: Annual reports        |      |      |      |      |      |      |
| 2008                          | 2009 | 2010 | 2011 | 2012 | 2013 | 2014 |
| 3022                          | 3632 | 4043 | 4256 | 4346 | 3780 | 4249 |

In 2014, the Ombudsman received 4,995 complaints, of which 746 were carried over from the year before.<sup>1008</sup> The Ombudsman took legal action in 72 cases (or 1.77% of cases), while 72 (or 1.77%) cases were resolved in another manner, and 6 or 0.14% of cases were anonymous.<sup>1009</sup> The largest numbers of complaints concerned the judicial system (901, or 21.20%), consumer rights concerning public utility and other fees (486, or 11.43%), and finances and financial operations (407, or 5.58%).<sup>1010</sup> The majority of complaints were submitted from residents of Skopje.<sup>1011</sup> Outside of the capital, the highest numbers of complaints came from places where the regional offices of the Ombudsman are located.<sup>1012</sup>

The Ombudsman's office is active in its role as the National Preventive Mechanism under the Optional Protocol to the Convention against Torture.

The level of follow-up of the Ombudsman's recommendations by state bodies is high, at around 80%.

The Ombudsman's office may initiate procedures at its own initiative if it assesses that the constitutional and legal rights of citizens are violated or if the principles of non-discrimination and equitable representation of community members in the bodies.<sup>1013</sup> According to the annual report of the Ombudsman in 2014, however, only 27 (0.6%) of the total number of 4,249 cases were investigated on the initiative of the Ombudsman.<sup>1014</sup> The current Ombudsman has stated, however, that he has launched a procedure on his own initiative concerning the illegal mass wiretapping case. He has submitted questions about the case to the Public Prosecution Office, the Administration for Security and Counterintelligence (UBK), the Agency for Electronic Communications, and the Assembly, including questions as to who gave the orders for the wiretapping, who supervised it, and whether the employees monitoring the communications acted in accordance with the law. He is waiting for a response from the institutions.<sup>1015</sup>

According to the Helsinki Committee for Human Rights,<sup>1016</sup> survey respondents perceive the Ombudsman (27%) as an institution to which they can turn in order to protect their human

<sup>1008</sup> From the procedures completed upon 4.062 complaints, a procedure was not initiated for 878 complaints or 21.61% of cases, for 1.920 cases or in 47.27% of the cases the procedure was suspended, while for 1,114 or 27.42% of the complaints the Ombudsman identified violations of human rights and liberties, and the interventions by the Ombudsman were accepted.

<sup>1009</sup> Ombudsman, 2014: pp 149

<sup>1010</sup> Then follow: from labour relations 299 or 7.04%; social protection 279 or 6.57%; from the penal correctional and juvenile correctional facilities 274 or 6.45%; from the property-legal area 239 or 5.62%; pension and disability insurance 221 or 5.20%; from the area of protection of rights in police procedures 173 or 4.07%; urban planning and construction 168 or 3.95%; healthcare 125 or 2.94%; protection of rights of children 124 or 2.92%; citizens statuses and other internal issues 85 or 2.00%; electoral rights 78 or 1.84%; non-discrimination and adequate and equitable representation 66 or 1.55%; residential relations 36 or 0.85%; environment 26 or 0.61%; education, science, culture and 21 or 0.49%; persons with special needs 11 or 0.26%; as well as from other areas where the Ombudsman received 230 or 5.41% of complaints. The Ombudsman, *Annual report on the level of respect, promotion and protection of human rights and freedoms* 2014, pp. 123, 124

<sup>1011</sup> or 1.655, then they are followed by complaints from submitters from: Bitola, Kumanovo, Kicevo, Tetovo, Stip, Ohrid and other major urban communities, as well as from other countries.

<sup>1012</sup> Ombudsman, 2014: pp. 143

<sup>1013</sup> The Ombudsman Law, Official Gazette of RM, No. 60/2003, 114/2009, Article 13, paragraph 2.

<sup>1014</sup> <http://ombudsman.mk/upload/Godisni%20izvestai/GI-2014/GI%202014.pdf> [accessed June 15, 2015]

<sup>1015</sup> <http://www.independent.mk/articles/15789/Macedonian+Ombudsman+More+and+More+Citizens+Ask+for+Institution%27s+Help#sthash.8mWx19aF.dpuf> [accessed June 9, 2015]

<sup>1016</sup> The research conducted within the Project: Increasing the transparency and improving the rule of law by monitoring and reporting violations of human rights in the RM implemented by the Helsinki Committee for Human Rights of the RM and supported by the Foundation Open Society Macedonia. The Institute of Social Sciences and Humanities - Skopje, conducted an empirical research on the public opinion of the residents of eight regions in the RM from 9 to 30 December 2014.

rights.<sup>1017</sup> A former Member of Parliament, Suzana Saliu, is of the opinion that the increased number of complaints to the Ombudsman indicates increasing confidence amongst citizens in the Ombudsman institution.<sup>1018</sup> The question remains as to whether this is actually the case or whether there has been a deterioration in the protection of human rights and freedoms.<sup>1019</sup>

The Ombudsman's office has an outreach programme that involves raising awareness and educational and advisory work.<sup>1020</sup>

### 9.3.2 PROMOTING GOOD PRACTICE

Score: **75**

#### To what extent is the Ombudsman active and effective in raising awareness within government and amongst the public about standards of ethical behaviour?

In recent years, the Ombudsman has devoted particular attention to raising the awareness of the state administration about the importance of respecting the rights of citizens. Several workshops have been organized for representatives of state agencies and civil society organizations.<sup>1021</sup>

The Ombudsman's annual reports and special reports are detailed and largely provide insight into the work of the institutions under examination. In individual cases, recommendations and general remarks are presented to the relevant institutions.<sup>1022</sup>

Recommendations are not adequately implemented and the Ombudsman does not have sufficient resources to work effectively with institutions and to assist them in implementing recommendations. The Ombudsman and the Assembly do not cooperate well on the annual reports submitted by the Ombudsman. There is no feedback from the Assembly and its working bodies on Ombudsman reports.<sup>1023</sup>

## RECOMMENDATIONS

- R1.** The Law on the Ombudsman needs to be amended in order to ensure full compliance with the Paris Principles relating to human rights bodies, notably to extend the Office's mandate to include the promotion of human rights.
- R2.** The Ombudsman's office requires increased financial and human resources in order to fulfil its competences.
- R3.** The Government and the Parliament should introduce a legal provision making it mandatory to follow-up on recommendations of the Ombudsman within clear deadlines; appropriate sanctions should be introduced for failure to follow up recommendations.

<sup>1017</sup> Helsinki Committee for Human Rights of the Republic of Macedonia, *Research on the citizens' understanding and awareness of human rights and protection mechanisms in case of their violation*, (Skopje: Helsinki Committee for Human Rights of the Republic of Macedonia, 2015), p.75. [http://www.mhc.org.mk/system/uploads/redactor\\_assets/documents/903/Istrazuvanje\\_Razbiranje\\_na\\_covekovi\\_prava\\_MK\\_EN\\_AL.pdf](http://www.mhc.org.mk/system/uploads/redactor_assets/documents/903/Istrazuvanje_Razbiranje_na_covekovi_prava_MK_EN_AL.pdf) [accessed June 15, 2015].

<sup>1018</sup> Assembly of the Republic of Macedonia, Committee on Political System and Inter-Ethnic Relations, No. 12-1813/, 9 May 2013 file:///C:/Users/Dona/Downloads/izvestaj\_naroden\_pravobranitel.pdf [accessed June 15, 2015]

<sup>1019</sup> Kenan Hasip, MP in the Macedonian Assembly, Committee on Political System and Inter-Ethnic Relations, No. 12-1813/, 9 May 2013 <http://www.sobranie.mk/materialdetails.nspx?materialId=e1297e5b-14f9-4591-88ec-b0c07a39e3ba>

<sup>1020</sup> Ixhet Memeti, 2012: p.209.

<sup>1021</sup> Ixhet Memeti, 2012: p. 209.

<sup>1022</sup> Ombudsman, 2014: p.132.

<sup>1023</sup> Interview with Ixhet Memeti, the Ombudsman of RM, face to face, 03.07.2015.

# 10. ANTI-CORRUPTION AGENCIES

## SUMMARY

The State Commission for the Prevention of Corruption (SCPC) is responsible for the implementation of three major anti-corruption laws.<sup>1024</sup> At the same time, however, the SCPC lacks sufficient resources to fulfil its competences. A code of conduct for members of the SCPC has not been developed. According to the law, the role of the SCPC is to coordinate anti-corruption policy and preventive anti-corruption mechanisms. In practice, however, the SCPC is not competent to coordinate overall anti-corruption activities and does not wield enough power to oversee institutions such as the Ministry of Interior and the Public Prosecutor's Office. The SCPC is perceived as being non-transparent and not proactive in pursuing cases, and as having weak cooperation with stakeholders.

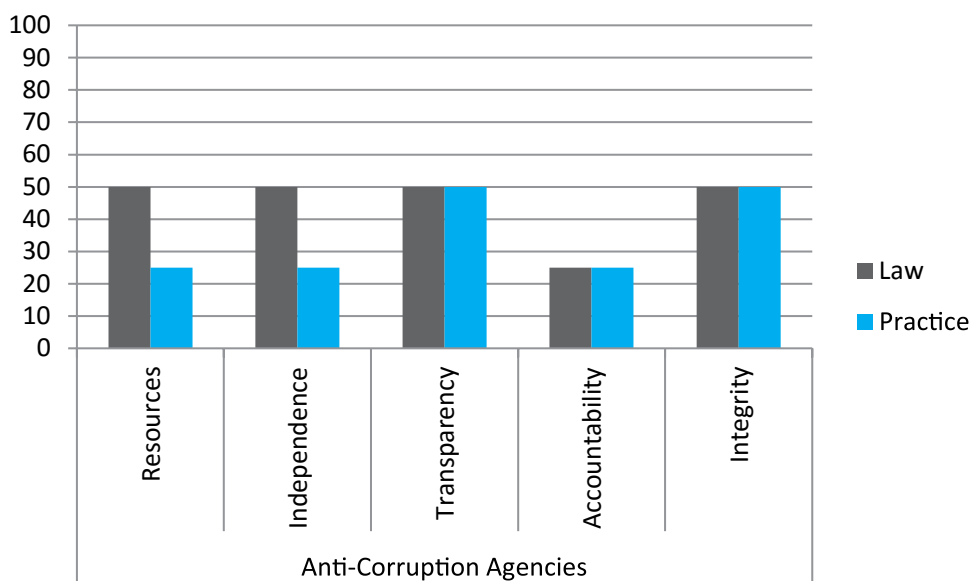
There are no special requirements for additional integrity tests for members of the SCPC and its Secretariat. Checking asset declarations and overseeing conflicts of interest are the main activities of the SCPC; however, these responsibilities are performed in a random manner. The SCPC undertakes some educational activities, but it does not assess their impact. Public trust in the SCPC's independence and impartiality is low.

**OVERALL PILLAR SCORE: 40.2/100**

| DIMENSION                       | INDICATOR      | LAW | PRACTICE |
|---------------------------------|----------------|-----|----------|
| <b>Capacity</b><br>37.5 / 100   | Resources      | 50  | 25       |
|                                 | Independence   | 50  | 25       |
| <b>Governance</b><br>41.6 / 100 | Transparency   | 50  | 50       |
|                                 | Accountability | 25  | 25       |
|                                 | Integrity      | 50  | 50       |
| <b>Role</b><br>41.6 / 100       | Prevention     |     | 50       |
|                                 | Education      |     | 50       |
|                                 | Investigation  |     | 25       |

<sup>1024</sup> Law on Prevention of Corruption, Law on Prevention of Conflicts of Interest, and Law on Lobbying

## Pillar score per Law and Practice



## STRUCTURE AND ORGANISATION

The SCPC was established by the Assembly in 2002. It is autonomous and independent. Its main functions are to prevent corruption and to conduct anti-corruption education and public awareness-raising.

The SCPC is composed of 7 members appointed by the Assembly for a four-year term with the right to one re-election. SCPC members enjoy the status of appointed officials and are accountable to the Assembly.

The SCPC Secretariat is managed by the General Secretary and is responsible for administrative and technical issues. The employees of the SCPC Secretariat hold the official status of civil servants.

## ASSESSMENT

### CAPACITY

#### 10.1.1 RESOURCES (LAW)

Score: **50**

**To what extent are there provisions in place that provide anti-corruption agencies with adequate resources to effectively carry out their duties?**

The financial resources for the functioning of the SCPC are provided by the State Budget.<sup>1025</sup> The SCPC proposes its own budget to the Ministry of Finance (MF).<sup>1026</sup> The State Budget is flexible and provides for reallocations in the course of the fiscal year. However, there is no formal guarantee of fiscal stability for the SCPC over time.

<sup>1025</sup> The Law on Prevention of Corruption, Official Gazette of the RM, No. 46/2004, Article 48-b.

<sup>1026</sup> The Law on Prevention of Corruption, Official Gazette of the RM, No.28/2002, Article 49.

## 10.1.2 RESOURCES (PRACTICE)

Score: **25**

### To what extent does the ACA have adequate resources to achieve its goals in practice?

The SCPC does not have adequate and sufficient resources to accomplish its duties as a driving force in the fight against corruption.<sup>1027</sup> This lack of adequate resources may indicate a lack of political will to strengthen the SCPC.<sup>1028</sup>

The budget of the SCPC has increased over the years; however, the budget is only sufficient to cover staff salaries and running costs and does not allow for conducting other legal possibilities such as study visits and hiring experts.<sup>1029</sup> The organogram of the SCPC is less than 50% filled with 23 employees out of 51 envisaged. Therefore, it has been argued that the Government should allocate additional budget funds for the SCPC in order to increase the fight against corruption on the top of its agenda.<sup>1030</sup>

In 2012, the SCPC's budget was 356,980 EUR.<sup>1031</sup> In 2013, after a budget rebalance, it received 400,681 EUR. International donors also add to the SCPC's budget. For example, additional resources to undertake an educational project on 'Anti-corruption activities for primary school pupils' have been provided by UNDP, the OSCE and the EC.<sup>1032</sup>

The employment of SCPC Secretariat staff is pursuant to the Law on Civil Servants (LCS) and the procedure is the same as for all civil servants in state administration bodies and municipalities.<sup>1033</sup> Candidates are obliged to pass a practical exam which consists of multiple-choice questions related to the basic provisions of the three laws that fall within the SCPC's competence. The adequacy of this test has been questioned in EC Progress Reports.<sup>1034</sup>

For certain positions, civil servants are obliged to undertake psychological tests that also include an examination of their integrity.<sup>1035</sup> Beyond this there are no specific ethics screenings for candidates applying for employment in the SCPC.

All civil servants, including those in the SCPC's Secretariat, have a right to professional training and improvement, pursuant to the needs of the institution.<sup>1036</sup> Civil servants are provided with generic training,<sup>1037</sup> but there is no specific career development and training programme for civil servants in the SCPC Secretariat.

<sup>1027</sup> SCPC Annual report 2010 p. 4;

<sup>1028</sup> Ibid p. 34.

<sup>1029</sup> Ibid.

<sup>1030</sup> Interview with Emina Nuredinoska, Head of Department, Macedonian Center for International cooperation, interview by email on 3.10.2014.

<sup>1031</sup> SCPC, *Annual Report for 2012*, (Skopje: SCPC, 2012), p.9. <http://www.dksk.org.mk/images/godisenizvestaj2012.pdf> [accessed on 3.10.2014]

<sup>1032</sup> Ibid.

<sup>1033</sup> Law on Civil Servants, Official Gazette of the RM, Nos. 59/2000, 112/2000, 34/2001, 103/2001, 43/2002, 98/2002, 17/2003,40/2003, 85/2003, 17/2004, 69/2004, 81/2005, 61/2006, 36/2007, 161/2008, 6/2009, 114/2009, 35/10, 167/10, 36/11, 6/12, 24/12, 15/13, 82/13 and 106/13.

<sup>1034</sup> European Commission, 2014: p.8.

<sup>1035</sup> Ibid.

<sup>1036</sup> Ibid.

<sup>1037</sup> Ibid.

### 10.1.3 INDEPENDENCE (LAW)

Score: **50**

#### To what extent are the anti-corruption agencies independent and free from subordination to external actors by law?

The SCPC is an independent legal body<sup>1038</sup> with the competence to determine the measures it will take to prevent corruption in state bodies and to prevent conflicts of interest. It has overarching responsibility for the State Programme for the Prevention and Repression of Corruption and Conflicts of Interest.<sup>1039</sup>

The members of the SCPC are officials appointed by the Assembly for a term of office of four years, with a right to one re-appointment. The members of the SCPC are appointed from among prominent experts in the field of law, finance and anti-corruption. From its members the SCPC elects a president for a one-year term of office, with a right to one re-election.<sup>1040</sup>

With regards to the selection of SCPC members, the Assembly publishes the announcement, and in the process of making an appointment must abide by the principle of equitable representation of the members of the communities in the Republic of Macedonia. The announcement is published in the Official Gazette and in at least two daily newspapers (one in Macedonian language and one in a second language spoken by at least 20% of citizens speaking an official language other than Macedonian).<sup>1041</sup>

According to the Rules of the Procedure of the Assembly, the Committee on Elections and Appointments should review and discuss the list of candidates and their biographies, though this rarely happens in practice.<sup>1042</sup> The majority decides upon the previously prepared and delivered list, and the procedure is the same for appointments of other officials.<sup>1043</sup>

A person can be appointed a member of the SCPC if he/she is a citizen of the Republic of Macedonia with permanent residence in the country, possessing a university degree in the fields of legal and financial affairs, has dealt with anti-corruption in his/her profession, and has at least eight years of working experience.<sup>1044</sup>

The president of the SCPC is appointed by the members of the SCPC and can be dismissed upon his/her request before the expiration of his/her term of office. In such a case, the SCPC elects a president for the remaining mandate.<sup>1045</sup> A post in the SCPC is professional and if a person elected to be a member of the SCPC is employed elsewhere, their working post will be suspended from the date of their appointment to the SCPC until the date of termination of their tenure as a member of the SCPC.<sup>1046</sup>

A member of the SCPC can be dismissed by the Assembly on his/her own request, or if he/she is sentenced for a criminal offence liable to effective imprisonment lasting more than 6

<sup>1038</sup> The Law on Prevention of Corruption, Official Gazette of the RM, Nos. 28/2002, 46/2004, 126/2006, 10/2008, 161/2008 and 145/2010, Article 1.

<sup>1039</sup> Ibid.

<sup>1040</sup> Law on Prevention of Corruption, Official Gazette of the RM, No.145/2010.

<sup>1041</sup> Law on Prevention of Corruption, Official Gazette of the RM, No.145/2010, Article 48-b.

<sup>1042</sup> Interview with Goran Misovski, former MP and member of the Committee for Elections and Appointments, face to face, 6.10.2014.

<sup>1043</sup> Interview with Goran Misovski, former Member of Parliament (MP) and member of the Committee for Elections and Appointments, face to face, 6.10.2014.

<sup>1044</sup> Law on Prevention of Corruption, Official Gazette of the RM, No.126/2006, Article 48-a.

<sup>1045</sup> Law on Prevention of Corruption, Official Gazette of the RM, No.126/2006, Article 48-c.

<sup>1046</sup> Ibid.

months, and if permanently loses the ability to perform his/her duties.<sup>1047</sup> The SCPC decides whether the conditions for dismissal are met through a majority vote of its members, and submits an initiative for the dismissal of a member to the Assembly.<sup>1048</sup>

There are no legal provisions for restrictions on political and other activities of the president of the SCPC so as to ensure the president's independence and neutrality, and there are no provisions granting immunity for members of the SCPC.

The members of the SCPC receive the same salary as other elected and appointed officials of equal rank.<sup>1049</sup>

#### 10.1.4 INDEPENDENCE (PRACTICE)

Score: **25**

##### To what extent is the ACA independent in practice?

Although SCPC members were granted professional status in 2011, "public confidence in its independence remained fragile".<sup>1050</sup> The legal status of the SCPC as an independent legal entity is considered to be a mechanism in itself for protection of the SCPC from political interference.<sup>1051</sup> As mentioned above, there are legal provisions concerning professionalism and the necessity of operating in a non-partisan manner; in practice, however, many opinions and analyses have questioned the actual application of the independence established according to the law.<sup>1052</sup> A clear indication of the politicization of the SCPC is apparent in the lack of investigations of high-level corruption cases.<sup>1053</sup>

The president of the SCPC elected in 2007 was re-elected for two more years, which was a clear case of violation of the law, given that at that time there was no provision in the law for re-election of the president of the SCPC.<sup>1054</sup> In March 2010, the opposition Social Democratic Party (SDSM) proposed interpellation for the then-president of the SCPC on account of her lack of work on crime and corruption, though this proposal was not accepted by the Parliament.<sup>1055</sup>

Public trust in the SCPC's independence and impartiality is assessed as low.<sup>1056</sup> Unlike the first mandate of the SCPC,<sup>1057</sup> which initiated the majority of its investigations, the second mandate has taken a reactive approach and its leadership has lost credibility.<sup>1058</sup> The SCPC's work is perceived as being heavily politically influenced.<sup>1059</sup>

<sup>1047</sup> Law on Prevention of Corruption, Official Gazette of the RM, No.126/2006, Article 48-d.

<sup>1048</sup> Ibid.

<sup>1049</sup> Law on Prevention of Corruption, Official Gazette of the RM, No.145/2010.

<sup>1050</sup> European Commission, *Progress Report of the Republic of Macedonia 2011*, (Brussels: European Commission, 2012), [http://ec.europa.eu/enlargement/pdf/key\\_documents/2011/package/mk\\_rapport\\_2011\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2011/package/mk_rapport_2011_en.pdf), pp.14 [accessed 23.10.2014].

<sup>1051</sup> Interview with Dragan Malinovski, former president of SCPC (face to face), 8.10.2014

<sup>1052</sup> Interview with Goran Misovski, former MP and member of the Committee for elections and appointments, face to face, 6.10.2014.

<sup>1053</sup> Ibid.

<sup>1054</sup> Transparency International, *Global Corruption Barometer 2008*, (Berlin: TI, 2008) [http://www.transparency.org.mk/index.php?option=com\\_content&task=view&id=317&Itemid=78](http://www.transparency.org.mk/index.php?option=com_content&task=view&id=317&Itemid=78); [accessed 23.10.2014]

<sup>1055</sup> Mangova, 2014: p. 85.

<sup>1056</sup> European Commission, 2014: p.15.

<sup>1057</sup> First mandate November 2002 – February 2007

<sup>1058</sup> Mangova, 2014: p.85

<sup>1059</sup> Ibid.

There are concerns about “the criteria used by the Assembly”<sup>1060</sup> in the selection of SCPC members. In April 2011, the Commission on Election and Appointment selected the 7 members of the SCPC without the support and presence of the opposition. There is no clear procedure for the appointment of SCPC members and the appointments were controversial given that some of the members had already served in the SCPC and one lacked the experience required by law. During the course of the SCPC’s term, the President was dismissed before the end of his term of office without adequate explanation.<sup>1061</sup>

## GOVERNANCE

### 10.2.1 TRANSPARENCY (PRACTICE)

Score: **50**

**To what extent are there provisions in place to ensure that the public can obtain relevant and timely information on the activities and decision-making processes of the anti-corruption agencies?**

The Law provides that the SCPC has authority to inspect all agreements, public procurements and other contracts, and should submit a report to the Assembly of the Republic of Macedonia on the inspections it has performed within a period of 30 days. The SCPC can also submit a special report on the possible abuse of budget funds, public funds and funds from public enterprises and other legal entities which dispose of state capital to the Assembly, within a period of three months from the day that elections have ended. The report is to be made available to the media.<sup>1062</sup>

The SCPC is obliged to submit an annual report to the Assembly, the President and the Executive on its operation and on the measures and activities undertaken by the Assembly concerning the work and recommendations of the SCPC. This report should be made available to the media.

The Law on Free Access to Information of a Public Character covers the SCPC as an information-holder, among other state bodies (for more information, see the transparency section under the Public Sector pillar), and in that regard it is obliged to provide information-seekers with requested information of a public character.<sup>1063</sup> Due to the law not making explicit what kind of information may be excepted from being made publicly available, the SCPC can decide which information should be released.<sup>1064</sup>

### 10.2.2 ACCOUNTABILITY (LAW)

Score: **50**

**To what extent is there transparency in the activities and decision-making processes of the ACA in practice?**

<sup>1060</sup> [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round4/GrecoEval4\(2013\)4\\_TheFYROMacedonia\\_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round4/GrecoEval4(2013)4_TheFYROMacedonia_EN.pdf), p.54 [accessed on 23.10.2014].

<sup>1061</sup> <http://daily.mk/makedonija/voislav-zafirovski-razreshen-od-antikorupciska-1>, “Voislav Zafirovski dismissed from Anti-Corruption Commission” [accessed on 23.2014].

<sup>1062</sup> Ibid.

<sup>1063</sup> Law on Free Access to Public Information, Official Gazette of the RM, Nos. 13/2006, 86/2008, 6/2010 and 42/2014.

<sup>1064</sup> Law on Prevention of Corruption, Official Gazette of the RM, Nos. 28/2002, 46/2004, 126/2006, 10/2008, 161/2008, 145/2010, Article 49 (2).



The SCPC has been criticized for its low profile in terms of its visibility as a driving force in the fight against corruption.<sup>1065</sup> It has been recommended that the SCPC increase its visibility and improve its communication with civil society organizations (CSOs) and create allies in its promotion of integrity throughout the country.<sup>1066</sup>

The SCPC is not at all cooperative. The spokesperson rarely answers the phone, and as the telephone numbers of the SCPC members are no longer available on the website, it is hard to get in touch with them.<sup>1067</sup> TI-M's experience of the SCPC in relation to this study and other activities is very negative, showing that the only way to communicate with the SCPC is by way of an official letter that will be reviewed during an official SCPC session, and that there is no possibility of communicating by email or phone.

Since 2003, the annual reports of the SCPC have been published on its website upon their adoption by the Assembly.<sup>1068</sup> The reports contain information on the implementation of the Law and the State Programme for the Prevention and Repression of Corruption; activities for the prevention of corruption; monitoring of the assets of officials; implementation of the Law on Conflicts of Interest; project activities; education; inter-institutional cooperation; public relations; and activities according to the responsibilities of the SCPC under the FAOI Law. The information given in the SCPC's annual reports since 2007 has often been of a technical nature. For example, when reporting on actions taken in cases of conflicts of interest and asset declarations, statistics are presented without information about the profiles of the persons investigated (whether government officials or opposition representatives).<sup>1069</sup>

The SCPC's annual reports provide only vague and incomplete information on the SCPC's public relations work. For example, the SCPC states that it has published on its website 48 items of information regarding their day-to-day activities, corruption cases and conflicts of interest.<sup>1070</sup> However, most of the published information on the SCPC's website is related to conferences, round tables, etc., rather than activities and initiatives that have been undertaken.<sup>1071</sup> The annual reports also contain vague information about interviews the SCPC has given to various media;<sup>1072</sup> on the website, however, only three interviews have been published.<sup>1073</sup>

The number and the agenda of SCPC sessions, as well as the number of press conferences given, are not mentioned in the annual reports, which is not the case with the reports up to the year 2006, in which there was clear information about the number of SCPC sessions. The public does not have any insight into the SCPC's activities and is not aware of its competences.<sup>1074</sup>

In 2013, of 21 requests for free access to information, 20 requests were positively answered and one request was rejected. 4 appeals were submitted, of which 3 were accepted and one was rejected as ungrounded.<sup>1075</sup> An appeal can be submitted if the party is not satisfied with the answer provided. Three SCPC decisions have been changed after actions brought by the Commission for Free Access to Public Information (CFAPI).

<sup>1065</sup> OECD/SIGMA, *Report on integrity from 2009*, (Brussels: OECD, 2009).

<sup>1066</sup> *Ibid.*

<sup>1067</sup> *Ibid.*

<sup>1068</sup> [http://www.dksk.org.mk/index.php?option=com\\_content&task=blogcategory&id=18&Itemid=47](http://www.dksk.org.mk/index.php?option=com_content&task=blogcategory&id=18&Itemid=47) [accessed on 23.10.2014].

<sup>1069</sup> <http://www.dksk.org.mk/images/godisen%20izvestaj%20dsk%202013.pdf> SCPC Annual Report 2013 [accessed 23.10.2014].

<sup>1070</sup> *Ibid.*

<sup>1071</sup> *Ibid.*

<sup>1072</sup> *Ibid.*

<sup>1073</sup> <http://www.dksk.org.mk/>

<sup>1074</sup> Interview with the former MP and member of the Committee for elections and appointments, Goran Misovski (face to face), 06.10.2014.

<sup>1075</sup> <http://www.dksk.org.mk/images/godisen%20izvestaj%20dsk%202013.pdf> SCPC Annual Working Report 2013, p.49

### 10.2.3 ACCOUNTABILITY (LAW)

Score: **25**

#### To what extent are there provisions in place to ensure that the anti-corruption agencies report on and are answerable for their actions?

According to the law, the SCPC is obliged to submit an annual report on its operation to the Assembly, the President of the Republic of Macedonia, the Government and the media.<sup>1076</sup> The law also stipulates that the SCPC must inform the public of the measures and activities taken and their results when the SCPC deems it necessary to inform the public.<sup>1077</sup>

In the SCPC there is a Unit for Internal Audit<sup>1078</sup> to perform financial audits, regularity audits, audits of the internal control systems, audits of performance, and an IT audit which is performed once a year.<sup>1079</sup> There is no legal requirement for the SCPC to carry out an independent audit.

The State Audit Office (SAO) performs an obligatory annual audit of the Budget of the Republic of Macedonia. The budgets of the funds and the institutions are subject to a random/irregular audit if envisaged in the Annual Working Programme of the SAO.<sup>1080</sup>

The law does not stipulate a possibility for citizens to file complaints on the work of the SCPC and there are no citizen oversight committees. However, MPs can use Assembly sessions to pose questions regarding the day-to day activities and competencies of the SCPC as an institution responsible to the Assembly.<sup>1081</sup>

There are no judicial review mechanisms for the work of the SCPC. A whistleblowing policy has still not been adopted.

Regarding cases of conflicts of interest, the Misdemeanours Court is competent for carrying out misdemeanour procedures.<sup>1082</sup>

### 10.2.4 ACCOUNTABILITY (PRACTICE)

Score: **25**

#### To what extent do anti-corruption agencies have to report and be answerable for their actions in practice?

The head of the SCPC has to account for the activities of its staff and the issues that are discussed at SCPC meetings. Apart from annual reports, the SCPC has a discretionary right to inform the public about other activities.

The SCPC's annual reports are discussed in the Assembly. The opposition typically makes substantial criticisms, though these are not followed up.<sup>1083</sup> The opposition criticizes the SCPC

<sup>1076</sup> Amendments to the Law on Prevention of Corruption, Official Gazette of the RM, No.46/2004, Article 48

<sup>1077</sup> Law on Prevention of Corruption ("Official Gazette of the Republic of Macedonia", No.28/2002, Article 49

<sup>1078</sup> Available on their web site <http://dksk.org.mk/> [accessed on 1.10.2014]

<sup>1079</sup> Law on Internal Financial Control, Official Gazette of the RM, Nos. 90/09, Article 30 [accessed on 23.10.2014]

<sup>1080</sup> Law on the State Audit, Official Gazette of the RM, Nos. 66/10, 145/2010, 12/2014, 43/2014

<sup>1081</sup> Rules of the Procedure of the Parliament, Official Gazette of the RM, No.91/08, 119/2010, 130/2010, 23/2013, Article 37.

<sup>1082</sup> Law on Prevention of Conflict of Interests, Official Gazette of the RM, No.70/2007, 114/2009, 128/2009

<sup>1083</sup> <http://www.redup.mk/site/out/739706-godishniot-izveshtaj-na-antikorupciska-pred-pratenicite> The Annual Report of the SCPC in front of the MPs [accessed on 11.12.2014]

for its lack of transparency as well as for the lack of information it provides about its work.<sup>1084</sup>

There is no whistleblowing policy for the SCPC, though a whistleblowing policy is envisaged within the ongoing Twinning Project.<sup>1085</sup> Furthermore, a Law on Whistleblowers is being developed.<sup>1086</sup>

The president of the SCPC has been called to answer Assembly questions only once, in 2009.<sup>1087</sup> The issue concerned the SCPC's failure to examine the audit reports of the Ministry of Interior, the Ministry of Justice, the Ministry of Transport and Communications, the Ministry of Foreign Affairs, and audits in several municipalities, as well as the conflict of interest of the then-president of the SCPC.<sup>1088</sup> The SCPC stated that it acted in accordance with the law and there was no further discussion or outcome.

## 10.2.5 INTEGRITY MECHANISMS (LAW)

Score: **50**

### To what extent are there mechanisms in place to ensure the integrity of members of anti-corruption agencies?

There is no Code of Conduct for the SCPC. Nevertheless, asset declarations, conflict of interest rules and other integrity matters are regulated by a number of laws which are applicable to SCPC members and staff, namely in the Law on Prevention of Corruption, the Law on the Prevention of Conflicts of Interest, and the Law on the Usage and Disposal of Items in State Ownership. In case there is a suspicion of a conflict of interest involving an SCPC member, an opinion is required from the Committee for Elections and Appointments in the Assembly.

SCPC officials are not allowed to receive any gifts while performing public duties, except personal gifts in the amount of a maximum of 200 EUR given by a representative of a foreign state, state body institution or international organization, as a souvenir or as an act of international cooperation and solidarity.<sup>1089</sup>

If an official has been offered a gift related to performing his/her public duty, he/she is obliged to refuse it, to determine the identity of the bidder and, if it is a gift which cannot be returned, to report it to the competent authority within 48 hours.<sup>1090</sup>

Regarding post-employment restrictions, an SCPC official may not, during his/her term of office and within five years after the end of office, acquire rights in an entity which was under his/her supervision or contractual relationship.<sup>1091</sup> SCPC officials are obliged to inform the SCPC if after the end of their term of office they undertake certain commercial activities in the field in which they used to work.<sup>1092</sup> The provisions on post-employment restrictions are also applicable to SCPC members.

<sup>1084</sup> Ibid.

<sup>1085</sup> "Support of the effective prevention and fight against corruption", under the Instrument for Pre-Accession Assistance (IPA) 2010, with the Federal Republic of Germany as a twinning partner, which commenced on 23.09.2014 [http://www.dksk.org.mk/index.php?option=com\\_content&task=blogcategory&id=58&Itemid=154](http://www.dksk.org.mk/index.php?option=com_content&task=blogcategory&id=58&Itemid=154) [accessed on 23.10.2010].

<sup>1086</sup> The Strategy for Public Administration Reform (misa.gov.mk).

<sup>1087</sup> [http://www.dksk.org.mk/index.php?option=com\\_content&task=view&id=166&Itemid=33](http://www.dksk.org.mk/index.php?option=com_content&task=view&id=166&Itemid=33) Parliamentary question, 26.11.2009 [accessed on 23.10.2014].

<sup>1088</sup> Ibid.

<sup>1089</sup> Law on Usage and Disposal of Items in State Ownership, Official Gazette of the RM, No.8/05, 150/07, 35/11 and 166/12.

<sup>1090</sup> Law on Prevention of Conflict of Interests, Official Gazette of the RM, No.70/2007, 114/2009, 128/2009.

<sup>1091</sup> Ibid.

<sup>1092</sup> The Law on Prevention of Corruption, Official Gazette of the RM, No.

The psychological test which examines aspects of the integrity of candidates for the civil service is rather formal and is carried out by the Agency of Administration, and is envisaged only for the top three selected candidates for certain posts for entrance in the civil service. The results and the opinions on candidates are then submitted to the respective institution that published the vacancy.<sup>1093</sup> However, there are no special requirements for additional integrity tests for SCPC members and the SCPC Secretariat.

## 10.2.6 INTEGRITY MECHANISMS (PRACTICE)

Score: **50**

### To what extent is the integrity of anti-corruption agencies ensured in practice?

The asset declarations of SCPC members are not published.<sup>1094</sup> Nevertheless, in light of the fact that the public is entitled to know the assets of officials, the SCPC considers the current practice of publishing data from asset declarations as proper and supports it in the interest of the public at large.<sup>1095</sup> However, their asset declarations as public officials are not available to the public.<sup>1096</sup>

There is no regular training on integrity issues for SCPC staff, though financial and expert support is provided by the EC Technical Assistance and Information Exchange instrument (TAIEX).<sup>1097</sup>

While being employed full-time in the SCPC, a former president of the SCPC became a manager of Macedonian National Television (MTV), which is a public enterprise, at the same time as holding the position of SCPC president.<sup>1098</sup> In light of this case, and given the fact that there is no code of conduct, that there is no registry of gifts and that asset declarations are not published by SCPC members, the SCPC does not fulfil ethical standards.

## ROLE

### 10.3.1 PREVENTION

Score: **50**

### To what extent do the anti-corruption agencies engage in preventive actions in the fight against corruption?

<sup>1093</sup> Law on Civil Servants, Official Gazette of the RM, Nos. 59/2000, 112/2000, 34/2001, 103/2001, 43/2002, 98/2002, 17/2003, 40/2003, 85/2003, 17/2004, 69/2004, 81/2005, 61/2006, 36/2007, 161/2008, 6/2009, 114/2009, 35/2010, 167/2010, 36/2011, 6/2012, 24/2012, 15/2013, 82/2013, 106/2013 and 132/2014. Decisions of the Constitutional Court of the RM: U. no. 186/2000 of 04.04.2001, Official Gazette of the RM No. 30/2001; U. no. 132/2001 of 18.12.2002, Official Gazette of the RM No. 100/2002; U. no. 37/2003 of 17.12.2003, Official Gazette of the RM No. 84/2003; U. no. 37/2008 of 10.09.2008, Official Gazette of the RM No. 118/2008; U. no. 66/2008 of 24.09.2008, Official Gazette of the RM, No. 128/2008 and U. no. 206/2008 of 23.12.2009, Official Gazette of the RM No. 1/2010. Law Amending the Law on the Government of the RM, Official Gazette of the RM, No. 10/2010.

<sup>1094</sup> We have filed a request for access to public information to the Parliament to submit us the asset declarations of the SCPC members (the request was submitted on 2.10.2014).

<sup>1095</sup> Regional School of Public Administration, *Comparative study – Income and Asset Declarations in Practice, ReSPA-Network for Ethics and Integrity*, (Danilovgrad: ReSPA, 2013), p.203. file:///D:/Local%20Disk%20C/Downloads/Comparative%20study%20-%20Income%20and%20asset%20declarations%20in%20practice%20-%20web.pdf

<sup>1096</sup> TI Macedonia has issued a request for free access to information of a public character to the Assembly to provide us with the asset declarations of the members of the SCPC.

<sup>1097</sup> [http://www.dksk.org.mk/images/stories/pdf/prog\\_rab\\_2013.pdf](http://www.dksk.org.mk/images/stories/pdf/prog_rab_2013.pdf) SCPC Annual Working Programme 2013, p.11.

<sup>1098</sup> <http://utrinski.mk/?ItemID=A541DA7A8B53624383BE7C7986E0842D>, Mirjana Dimovska, new manager of the Macedonian Television [accessed 3.10.2014].

The SCPC's main role is to prevent corruption. It adopts the State Programme for the Prevention and Repression of Corruption and its Action Plan; adopts its Annual Working Programme; provides opinions on draft laws related to the prevention of corruption; initiates control over the financial operations of the political parties, the Union and the CSOs; initiates procedures for dismissal, demotion and other measures of responsibility of the officials and legal entities; acts upon cases of conflicts of interest; notifies and monitors the property conditions of officials; cooperates with other state bodies in the prevention of corruption; and cooperates with international organizations in the prevention of corruption.<sup>1099</sup>

The SCPC also adopts the State Programme for the Prevention of Conflicts of Interests and its Action Plan; provides opinions on draft laws related to the prevention of conflicts of interest; checks declarations of conflicts of interest; reviews case of conflict of interest cases and cooperates with state bodies regarding conflicts of interest.<sup>1100</sup> It also supervises the lobbying process<sup>1101</sup> and collects and publishes the financial reports of political parties in the electoral process.<sup>1102</sup>

2014 was an election year and the SCPC received over 400 declarations of assets. The SCPC initiated 50 misdemeanour procedures and submitted 60 requests to the Public Revenue for examination of assets.<sup>1103</sup>

Interlocutors state that there are shortcomings in the procedure for appointment of SCPC members, that there is a failure to process high-profile corruption cases and apparent selectivity in the cases chosen for investigation.<sup>1104</sup> Moreover: "the SCPC has been hampered in recent years by insufficient proactivity in tackling corruption and helping develop a culture of integrity and avoidance of conflicts of interest."<sup>1105</sup>

The SCPC's ability to sanction officials who do not respect rules regarding conflicts of interest is weak. It is not empowered to impose penalties other than 'public warnings' for conflicts of interest, following the annulment of parts of the law by the Constitutional Court in 2010. In addition, the absence of a registry of interests of elected and appointed officials continues to hamper the effective control of assets and conflicts of interest.<sup>1106</sup> The SCPC has practical difficulties in securing complete data and has to invest additional efforts and resources in order to realize its competencies concerning the monitoring and sanctioning of officials who have violated the law.<sup>1107</sup> Appropriate measures should be introduced in order to "ensure a more in-depth scrutiny of statements of interest and asset declarations".<sup>1108</sup>

Although the SCPC can give opinions on draft laws that have significance in the fight against corruption, the Ministry of Justice is the body responsible for legislative reforms in the anti-corruption field. The SCPC is only included in the working groups on drafting the relevant legislative acts and in the consultative process.

<sup>1099</sup> Law on Prevention of Corruption, Official Gazette of the RM, Nos. 28/2002, 46/2004, 126/2006, 10/2008, 161/2008 and 145/2010.

<sup>1100</sup> Law on Prevention of Conflict of Interests, Official Gazette of the RM, No.70/2007, 114/2009, 128/2009.

<sup>1101</sup> Law on Lobbying, Official Gazette of the RM, No. 106/08

<sup>1102</sup> Electoral Code, Official Gazette of the RM, No. 32/2014

<sup>1103</sup> [http://www.dksk.org.mk/images/Drzavni\\_Programi/%D0%93%D0%9E%D0%94%D0%98%D0%A8%D0%95%D0%9D%20%D0%98%D0%97%D0%92%D0%95%D0%A8%D0%A2%D0%90%D0%88-2014-%D0%94%D0%9A%D0%A1%D0%9A.pdf](http://www.dksk.org.mk/images/Drzavni_Programi/%D0%93%D0%9E%D0%94%D0%98%D0%A8%D0%95%D0%9D%20%D0%98%D0%97%D0%92%D0%95%D0%A8%D0%A2%D0%90%D0%88-2014-%D0%94%D0%9A%D0%A1%D0%9A.pdf) [accessed on October 8, 2014].

<sup>1104</sup> Interview with Sashka Cvetkovska, journalist in NOVA web TV (novatv.mk) (face to face), 2.10.2014.

<sup>1105</sup> [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round4/GrecoEval4\(2013\)4\\_TheFYROMacedonia\\_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round4/GrecoEval4(2013)4_TheFYROMacedonia_EN.pdf), pp.54 [accessed on October 23, 2014].

<sup>1106</sup> Ibid

<sup>1107</sup> ReSPA, 2013: pp. 203 p.100-101

<sup>1108</sup> [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round4/GrecoEval4\(2013\)4\\_TheFYROMacedonia\\_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round4/GrecoEval4(2013)4_TheFYROMacedonia_EN.pdf) [accessed on 23.10.2014], p.54

Even though the SCPC cooperates with the relevant state bodies and international institutions regarding the prevention of corruption, it is not competent to coordinate overall anti-corruption activities. The SCPC receives and responds to requests for advice on anti-corruption from the public and other government agencies. The SCPC has no employees assigned to conduct research and as regard to studies and reports the SCPC produces only its annual reports.

The IRI Survey on Macedonian Public Opinion found that: 22% of citizens think that the SCPC does not contribute at all in solving the problems of the country; 24% think the SCPC does not contribute; 23% think that they neither contribute nor not contribute; 17 % think that the SCPC contributes towards solving problems; 4% think they contribute greatly; and the remaining 11% do not know.<sup>1109</sup>

The competences and activities of the SCPC should be improved and its role in the overall anti-corruption context should be better defined.<sup>1110</sup>

### 10.3.2 EDUCATION

Score: **50**

#### **To what extent do the anti-corruption agencies engage in educational activities regarding fighting corruption?**

The SCPC is regularly engaged in educational activities. These activities are mainly project-based and are not included in SCPC's Annual Program.

In 2012, the SCPC initiated the project 'Anti-Corruption Education for Primary School Pupils'. It has since been recommended that anti-corruption curricula be introduced in schools across the country.<sup>1111</sup>

In cooperation with the Ministry of Information Society and Administration in 2013, three training courses were held for 67 civil servants on the topic of 'Anti-corruption measures and ethics in the civil service',<sup>1112</sup> and in 2014<sup>1113</sup> two training courses were held for 22 civil servants. In 2013, the SCPC and the Academy for Judges and Prosecutors organised anti-corruption training activities that reached more than 700 participants. Despite these initiatives, the SCPC does not assess the impact of its educational activities, and much remains to be done as regards capacity-building and raising citizens' awareness.<sup>1114</sup>

The SCPC has signed a Memorandum for Mutual Support in the Prevention of Corruption and Conflicts of Interest with 21 CSOs in the non-governmental sector. However, in practice, during the last process for State Programme creation, the SCPC selectively cooperated with the CSOs, by selecting those less critical to its work. A clear example is the SCPC's lack of cooperation with TI Macedonia.

<sup>1109</sup> International Republican Institute, 2014: p. 32.

<sup>1110</sup> MCIC, 2014: p.63

<sup>1111</sup> SCPC, 2013: p.44 [<http://www.dksk.org.mk/images/godisen%20izvestaj%20dsk%202013.pdf>].

<sup>1112</sup> Ibid.

<sup>1113</sup> Contribution to the EC Progress Report (Chapter 23 Judiciary and Fundamental Rights), Secretariat for European Affairs

<sup>1114</sup> EC, 2014: pp. 43

### 10.3.3 INVESTIGATION

Score: **25**

#### To what extent do the anti-corruption agencies engage in investigations regarding alleged corrupt actions?

Instead of being the driving force in the fight against corruption, the SCPC is largely reactive in practice.

The SCPC only has the competence to undertake administrative investigations. It initiates procedures before the competent bodies regarding the financial working of political parties, trade unions and CSOs. It also initiates criminal proceedings where there are irregularities in the use of state capital by elected and appointed officials, responsible persons in public enterprises and legal entities.<sup>1115</sup>

Regarding investigations into high-profile cases, the SCPC under its first mandate<sup>1116</sup> issued 44 initiatives for criminal investigation, while the second composition initiated 60 cases, including, for the first time, high-level corruption cases, whereas the third composition of the SCPC has not initiated any high-level corruption cases.<sup>1117</sup> In 2013 the SCPC referred 9 cases to the Public Prosecutor's Office (PPO) to initiate criminal proceedings, but those cases have not led to successful prosecutions. The PPO needs to provide more feedback in order to ensure a higher success rate.<sup>1118</sup>

The SCPC also failed to react upon the findings of the State Audit Office regarding the unclosed accounts in the amount of 4 million EUR of the leading party VMRO-DPMNE during the elections in 2011, although according to the law it should have opened a case.<sup>1119</sup>

### RECOMMENDATIONS

- R1.** The SCPC should adopt an internal Code of Conduct for its members that are elected by Parliament and should establish effective mechanisms for the implementation of this code.
- R2.** SCPC members should ensure that their own asset declarations are made public in accordance with the Law for the Prevention of Corruption.
- R3.** The SCPC should ensure the publication of the case law and explanations of its decisions, especially of decisions related to political financing, conflicts of interest and asset declarations.
- R4.** The SCPC should publish other reports which, in accordance with the law, it should meet its legal obligation to submit to the Assembly such as the report on financing of political campaigns.

<sup>1115</sup> Law on Prevention of Corruption, Official Gazette of the RM, No.28/2002, Article 55.

<sup>1116</sup> The first composition of the SCPC worked in the period November 2003 to February 2007.

<sup>1117</sup> Mangova, 2014: pp.83, 86 and 87.

<sup>1118</sup> EC, 2014: p.42.

<sup>1119</sup> Interview with Goran Misovski, former MP and member of the Committee for elections and appointments, face to face, 6.10.2014





# 11. POLITICAL PARTIES

## SUMMARY

The Constitution provides for political pluralism and guarantees freedom of association to exercise and protect political rights. Citizens may freely establish political parties.

According to the Unified Court Register of Political Parties, there are currently 52 political parties registered in Macedonia, and 4 in the progress of being registered.<sup>1120</sup> There is a strong division between the main political players into two ethnic blocs, and all parties are dominated by elites with a great concentration of power in party leaders.

The 2013, amendments were introduced to the Law on the Financing of Political Parties, partially addressing the recommendations made by GRECO and OSCE/ODIHR to determine the institutions included in the controlling mechanism. However, the legislation concerning political parties, in particular the transparency of political party funding, is not effective.

In 2015, Macedonia faced a severe political crisis when a mass wiretapping surveillance programme, was revealed.

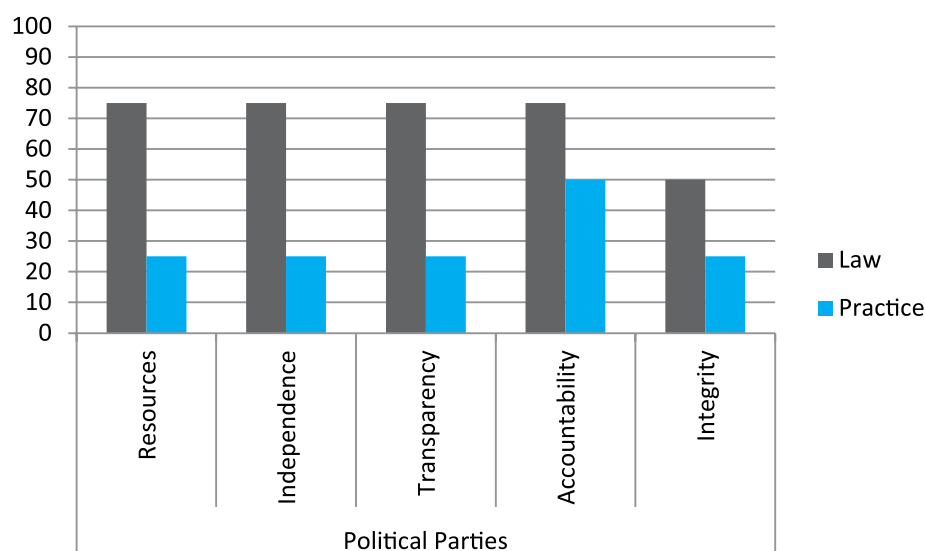
The table below presents the indicator scores which summarize the assessment of the political parties in terms of their capacity, their internal governance, and their role within the Macedonian integrity system. The following part of this section provides qualitative analysis for each indicator.

**OVERALL PILLAR SCORE: 45.8/100**

| DIMENSION                     | INDICATOR                               | LAW | PRACTICE |
|-------------------------------|---|-----|----------|
| <b>Capacity</b><br>50 / 100   | Resources                               | 75  | 25       |
|                               | Independence                            | 75  | 25       |
| <b>Governance</b><br>50 / 100 | Transparency                            | 75  | 25       |
|                               | Accountability                          | 75  | 50       |
|                               | Integrity                               | 50  | 25       |
| <b>Role</b><br>37.5 / 100     | Interest aggregation and representation |     | 50       |
|                               | Anti-corruption commitment              |     | 25       |

<sup>1120</sup> Basic Court Skopje II – Skopje, 27.05.2015

## Pillar score per Law and Practice



## ASSESSMENT

### CAPACITY

#### 11.1.1 RESOURCES (LAW)

Score: **75**

#### To what extent does the legal framework provide an environment conducive to the formation and operations of political parties?

The Macedonian legal framework provides an environment conducive to the formation and operations of political parties. Political pluralism is guaranteed by the constitution, and free, direct and democratic elections are provided for by law.<sup>1121</sup> Citizens are guaranteed freedom of association to exercise and protect their political, economic, social, cultural and other rights and convictions. Citizens may freely establish, join and resign from political parties. A political party may be established by at least 1,000 citizens of Macedonia who have voting rights and who have given their signatures for the establishment of a political party.<sup>1122</sup> There is no legal restriction regarding party ideology. According to the Constitution, the programmes and activities of political parties may not be directed towards the violent destruction of the constitutional order or the encouragement or incitement of military aggression or ethnic, racial or religious hatred or intolerance.<sup>1123</sup>

Any adult or legally capable citizen may become a member of a political party by giving a signature for voluntary membership.<sup>1124</sup> Political parties are obliged to submit notary-verified individual signatures. A political party must be established at a founders' assembly at which a decision on its establishment, programme and statute will be adopted and its bodies

<sup>1121</sup> Constitution of the Republic of Macedonia, Official Gazette of RM, No. 52/ 1992, Article 8.

<sup>1122</sup> Law on political parties, Official gazette of RM, No. 76/04, 5/07, 8/07, 5/08, 23/13, Decision of the Constitutional court No. 57/07, 60/07, Article 11 paragraph (1).

<sup>1123</sup> Constitution of the Republic of Macedonia, Official Gazette of RM, No. 52/ 1992, Article 20.

<sup>1124</sup> Law on political parties, Official gazette of RM, No. 76/04, 5/07, 8/07, 5/08, 23/13, Decision of the Constitutional court No. 57/07, 60/07, Article 11.

elected.<sup>1125</sup> Political parties are obliged to record their name, the name of their president and other officials, as well as the address of their headquarters in a court register.<sup>1126</sup> A Unified Court Register of Political Parties is kept in Basic Court Skopje II.<sup>1127</sup> A political party is obliged to submit a request for inclusion in the Court Register within 30 days of the day of its foundation,<sup>1128</sup> and this request must be supported by relevant documentation.<sup>1129</sup> If the court determines that the request for inclusion in the Court Register is complete, the court is then obliged to adopt a determination on including the political party in the Court Register within 15 days from the day on which the request was submitted.<sup>1130</sup> The political party commences working and acquires the capacity of a legal entity on the day of its registration.<sup>1131</sup>

If the court determines that the request for including the political party in the Court Register is incomplete, i.e. the programme and the statute do not contain the issues determined by Law, it invites the submitter of the request to supplement the request for inclusion in the Court Register within 30 days. Unless the submitter of the request for inclusion in the Court Register provides satisfactory additional information, the Court will reject the request for inclusion in the Court Register.<sup>1132</sup> An appeal is possible within 15 days of the day the determination is received.<sup>1133</sup> The law also provides a procedure for the dissolution of a political party,<sup>1134</sup> as well as the possibility for an appeal.<sup>1135</sup>

The political parties are financed by public and private sources.<sup>1136</sup> The public sources of funding represent 0.06% of the state budget. Political parties may use the funds solely for achieving their aims as defined by law, statute and other acts of the party.<sup>1137</sup> Of this total, funds in the amount of 30% are allocated equally to all political parties that have won at least 1% of the votes of the turnout at the last elections for representatives in the Assembly held at national level, or at the last local elections held for self-government units. The remaining 70% are allocated to political parties whose candidates are elected as representatives in the

<sup>1125</sup> Law on political parties, Official gazette of RM, No. 76/04, 5/07, 8/07, 5/08, 23/13, Decision of the Constitutional court No. 57/07, 60/07, Article 14 paragraph (1).

<sup>1126</sup> Law on political parties, Official gazette of RM, No. 76/04, 5/07, 8/07, 5/08, 23/13, Decision of the Constitutional court No. 57/07, 60/07, Article 17 paragraph (1).

<sup>1127</sup> Law on political parties, Official gazette of RM, No. 76/04, 5/07, 8/07, 5/08, 23/13, Decision of the Constitutional court No. 57/07, 60/07, Article 17-a.

<sup>1128</sup> Law on political parties, Official gazette of RM, No. 76/04, 5/07, 8/07, 5/08, 23/13, Decision of the Constitutional court No. 57/07, 60/07, Article 18 paragraph (1).

<sup>1129</sup> The following shall be enclosed with the request for inscribing in the Court Register: minutes for the work of the foundation assembly, which includes the date and the place of holding the foundation assembly; decision on establishment; statement for establishment; programme; statute; decision on election of the political party bodies with the personal name of the president of the political party, i.e. of the person who shall represent the political party and the name of the person, i.e. persons liable for the material and financial operation shall be stated; originals or copies of the citizenship certificate of the founders verified by a notary public and photo in colour of the art and graphical design of the symbol of the political party.

<sup>1130</sup> Law on Political Parties, Official Gazette of RM, Nos. 76/04, 5/07, 8/07, 5/08, 23/13, Decision of the Constitutional court Nos. 57/07, 60/07, Article 21 paragraph (1).

<sup>1131</sup> Law on Political Parties, Official Gazette of RM, No. 76/04, 5/07, 8/07, 5/08, 23/13, Decision of the Constitutional court No. 57/07, 60/07, Article 26 paragraph (2).

<sup>1132</sup> Law on Political Parties, Official Gazette of RM, No. 76/04, 5/07, 8/07, 5/08, 23/13, Decision of the Constitutional court No. 57/07, 60/07, Article 20.

<sup>1133</sup> Law on Political Parties, Official Gazette of RM, No. 76/04, 5/07, 8/07, 5/08, 23/13, Decision of the Constitutional court No. 57/07, 60/07, Article 25 paragraph (2).

<sup>1134</sup> When a political party submits a request for deletion from the Court Register, on the basis of legally valid determination on deletion of the political party from the Court Register, adopted by the Court on the basis of this Law, when the political party is forbidden to act by a legally valid determination, in accordance with the provisions of this Law, when the body determined by the statute of the political party adopts a decision on merging with another political party, when the number of the members of the political party is decreased and when the Constitutional Court of the RM determines that the programme or the statute of the political party are not in compliance with the Constitution.

<sup>1135</sup> Law on Political Parties, Official Gazette of RM, No. 76/04, 5/07, 8/07, 5/08, 23/13, Decision of the Constitutional court No. 57/07, 60/07, Article 31 paragraph (7).

<sup>1136</sup> Law on Political Parties, Official Gazette of RM, No. 76/04, 5/07, 8/07, 5/08, 23/13, Decision of the Constitutional court No. 57/07, 60/07, Article 7.

<sup>1137</sup> Law on Political Parties, Official Gazette of RM, No. 76/04, 5/07, 8/07, 5/08, 23/13, Decision of the Constitutional court No. 57/07, 60/07, Article 9.

Assembly, proportionate to the number of elected representatives, and to political parties whose candidates were elected as councillors at the last local elections held, proportionate to the number of councillors elected.<sup>1138</sup> In addition, according to a 2015 legal amendment, the state budget provides funds of 280,000 EUR for annual funding of party research.<sup>1139</sup>

The list of permitted private sources of party financing is diverse and includes monetary and non-monetary means: membership fees, donations (money, material means or services), gifts, contributions, donations, sponsorships, legates and sale of promotional and propaganda materials.<sup>1140</sup> The annual membership fee for one party member cannot be higher than the average national salary in the previous year. For 2015, this was MKD 21,104 (343 EUR).<sup>1141</sup>

Political parties may receive donations in the form of money, tangible assets or services<sup>1142</sup>. Non-monetary donations are allowed if, in accordance with statute, they are to be used for party activities. The provision of free-of-charge services for a political party, as well as the provision of services for political parties paid by a third party, are to be considered as donations. The service provider is obliged to notify the political party of the value of the provided service.<sup>1143</sup> The same principle applies to selling goods and providing services to political parties for prices below the market prices. The difference between the market value and the invoiced price is considered a donation; with the 2012 legal amendments, an obligation was introduced for the donor to submit the invoice to the party. The political party is obliged to return to the donor everything of value that exceeds the established limit on donations. The law expressly forbids political parties to accept donations from anonymous or unidentified sources. If the party receives money from an unidentified donor it has to transfer this money to the state budget immediately.<sup>1144</sup>

In order to finance an election campaign, political parties may only receive private funding in the form of membership fees, individual donations up to the equivalent of 5,000 EUR in MKD, or up to 5 % of the total income of the previous year from legal entities.<sup>1145</sup>

Following an amendment to the law, the Ministry of Finance is now obliged to provide guidelines and annual training for political parties on applicable financing regulations.<sup>1146</sup>

## 11.1.2 RESOURCES (PRACTICE)

Score: **25**

### To what extent do the financial resources available to political parties allow for effective political competition?

Although political parties in Macedonia are financed from various sources, including party subscriptions and donations,<sup>1147</sup> there is a major discrepancy in distribution between the ruling parties and the opposition parties. Parties in coalition with the ruling parties receive more donations, while small opposition parties have financial problems that impact significantly on their functioning, operational activities and ability to sustain themselves.<sup>1148</sup> These problems have undermined effective political competition.

<sup>1138</sup> Law on Financing of Political Parties, Official Gazette of RM, No. 76/04, 86/08, 161/08, 96/09, 148/11, 142/12, 23/13, Article 10.

<sup>1139</sup> Law on Amendments to the Law on Financing of Political Parties, No.23/2013, Article 10-a.

<sup>1140</sup> Law on Financing of Political Parties, Official Gazette of RM, No. 76/04, 86/08, 161/08, 96/09, 148/11, 142/12, 23/13, Article 13.

<sup>1141</sup> State Statistical Office, <http://www.stat.gov.mk/> [accessed on May 8, 2014]

<sup>1142</sup> Law on Financing of Political Parties, Official Gazette of RM, No. 76/04, 86/08, 161/08, 96/09, 148/11, 142/12, 23/13, Article 15.

<sup>1143</sup> Ibid.

<sup>1144</sup> Law on Financing of Political Parties, Official Gazette of RM, Nos. 76/04, 86/08, 161/08, 96/09, 148/11, 142/12, 23/13, Article 16.

<sup>1145</sup> Electoral Code, Official Gazette of RM, Nos. 40/06, 148/08, 155/08, 44/11, 51/11, 142/12, 31/13, 34/13 and 32/14, Article 83.

<sup>1146</sup> GRECO, 2014: Paragraph (27), p.5.

<sup>1147</sup> Interview with Kire Buzliev, Vice President of the Liberal Party of Macedonia, face to face, 11.05.2015

<sup>1148</sup> Interview with Sonja Mirakovska, Organizational Secretary of the NSDP, a former member of Parliament in period 2008-2011, 2011-2014, face to face, 11.05.2015.

On the basis of the reports submitted by the political parties to the State Audit Office, the ruling party VMRO-DPMNE<sup>1149</sup> received donations in the amount of 185,040 EUR in 2013,<sup>1150</sup> while in 2014 it received donations in the notably larger amount of 1,656,719 EUR.<sup>1151</sup> The coalition partner from the Albanian bloc, DUI,<sup>1152</sup> has received donations of 90.220 EUR in 2013,<sup>1153</sup> while in 2014 the donations amounted to 36,851 EUR.<sup>1154</sup> Donations to opposition parties are smaller: for example, the largest opposition party, SDSM,<sup>1155</sup> received 5,185 EUR<sup>1156</sup> in 2013 and 8,878 EUR<sup>1157</sup> in 2014, and the small Liberal Party of Macedonia received donations of only 276 EUR<sup>1158</sup> in 2013. Several other political parties did not receive any donations in 2014.<sup>1159</sup>

| <b>POLITICAL PARTIES</b> | <b>DONATIONS 2013</b> | <b>DONATIONS 2014</b> |
|--------------------------|-----------------------|-----------------------|
| VMRO-DPMNE               | 185,040 EUR           | 1,656,719 EUR         |
| DUI                      | 90,220 EUR            | 36,851 EUR            |
| SDSM                     | 5,185 EUR             | 8,878 EUR             |
| Liberal Party            | 276 EUR               | 715 EUR               |

Individuals and the businesses sector are afraid to donate to opposition parties for fear of retribution by the ruling party and the institutions under its control.<sup>1160</sup> It is well known that companies which do not collaborate with the ruling party are faced with oppression.<sup>1161</sup> The leaked wiretapped phone conversations reveal abuse of power by the ruling party VMRO-DPMNE, including the closing of private companies, restaurants and cafes, and the imposition of fines on companies that refuse to collaborate with the Government.<sup>1162</sup>

Public sources are the only source of financing for smaller political parties. Private donations have almost totally dried up. Some parties have introduced membership fees, but this does not bring in much revenue because of the small number of members in opposition political parties.<sup>1163</sup> Public funding provided by the state budget is often not paid on time. The law does not clearly specify the way in which the money allocated to finance parties' research should be shared by parties.<sup>1164</sup>

The Ministry of Finance has issued two manuals on how to complete annual and campaign financing reports.<sup>1165</sup>

<sup>1149</sup> Internal Macedonian Revolutionary Organization – Democratic Party for Macedonian National Unity.

<sup>1150</sup> [http://www.dzr.mk/Uploads/11\\_DONACII\\_2013\\_VMRO\\_DPMNE.pdf](http://www.dzr.mk/Uploads/11_DONACII_2013_VMRO_DPMNE.pdf) [accessed on May 13, 2014].

<sup>1151</sup> [http://www.dzr.mk/Uploads/6\\_VMRO\\_DPMNE\\_2014.pdf](http://www.dzr.mk/Uploads/6_VMRO_DPMNE_2014.pdf) [accessed on March 14, 2016].

<sup>1152</sup> Democratic Union for Integration.

<sup>1153</sup> [http://www.dzr.mk/Uploads/6\\_DONACII\\_2013\\_DUI.pdf](http://www.dzr.mk/Uploads/6_DONACII_2013_DUI.pdf) [accessed on May 10, 2014].

<sup>1154</sup> [http://www.dzr.mk/Uploads/4\\_Demokratska\\_unija\\_integracija\\_DUI\\_komplet.pdf](http://www.dzr.mk/Uploads/4_Demokratska_unija_integracija_DUI_komplet.pdf) [accessed on March 14, 2016].

<sup>1155</sup> Social-Democratic Union of Macedonia.

<sup>1156</sup> [http://www.dzr.mk/Uploads/8\\_DONACII\\_2013\\_SDSM.pdf](http://www.dzr.mk/Uploads/8_DONACII_2013_SDSM.pdf) [accessed on May 10, 2014].

<sup>1157</sup> [http://www.dzr.mk/Uploads/5\\_SDSM\\_5.pdf](http://www.dzr.mk/Uploads/5_SDSM_5.pdf) [accessed on March 14, 2016].

<sup>1158</sup> [http://www.dzr.mk/Uploads/9\\_DONACII\\_2013\\_Liberalna\\_partija.pdf](http://www.dzr.mk/Uploads/9_DONACII_2013_Liberalna_partija.pdf) [accessed on May 10, 2014].

<sup>1159</sup> [http://www.dzr.mk/Uploads/3\\_Demokratska\\_partija\\_Albancite\\_DPA\\_2014.pdf](http://www.dzr.mk/Uploads/3_Demokratska_partija_Albancite_DPA_2014.pdf) [accessed on March 14, 2016].

<sup>1160</sup> Interview with Sonja Mirakovska, Organizational Secretary of the NSDP, a former member of Parliament in the periods 2008-2011, 2011-2014, face to face, 11.05.2015.

<sup>1161</sup> <http://libertas.mk/%D1%82%D1%80%D0%B0%D0%BD%D1%81%D0%BA%D1%80%D0%B8%D0%BF%D1%82-6-%D0%B1%D0%BE%D0%BC%D0%B1%D0%B0-22-%D0%BC%D0%B8%D1%82%D0%B5-%D0%BD%D0%B8%D0%BA%D0%BE-%D0%BF%D0%B5%D1%82%D1%80%D0%BE%D0%BB/> [accessed on May 12, 2014].

<sup>1162</sup> <http://telma.com.mk/vesti/zaev-vlasta-vleguva-od-laga-vo-laga-za-da-ja-sochuva-kozhata> [accessed on May 13, 2014].

<sup>1163</sup> Interview with Sonja Mirakovska, Organizational Secretary of the NSDP, a former member of Parliament in period 2008-2011, 2011-2014, face to face, 11.05.2015.

<sup>1164</sup> Ibid

<sup>1165</sup> Published in the Official Gazette of RM, No. 21/2013.

### 11.1.3 INDEPENDENCE (LAW)

Score: **75**

Score: 75

#### To what extent are there legal safeguards to prevent unwarranted external interference in the activities of political parties?

The state authorities have legal power to order the banning of a political party. This may occur if the Constitutional Court determines that the programme or statute of a political party is not in compliance with the Constitution, in which case the Basic Court Skopje, as a court for political party registration, adopts a decision on the dissolution of the political party.<sup>1166</sup> On the basis of this decision, the Court will delete the political party from the Court Register.<sup>1167</sup> If the activity of the political party is contrary to the Law on Political Parties,<sup>1168</sup> the competent public prosecutor shall file a motion for prohibition of the activity of the political party.<sup>1169</sup> The competent public prosecutor can also file a motion for prohibition of a political party if it is included in the Court Register on the basis of false data,<sup>1170</sup> or if the name and the symbols of the political party are not in accordance with the law.<sup>1171</sup> An appeal against the decision may be heard by the Court of Appeals, which decides on the appeal within eight days of receiving the appeal. If the decision to prohibit the political party is upheld, the Court will delete the political party from the Court Register.<sup>1172</sup>

The freedom and independence of political parties is guaranteed<sup>1173</sup> and further ensured with the prohibition of financing from foreign sources (governments, international institutions, authorities and organisations of foreign states and other foreign persons); political parties are thus not allowed to receive funds in foreign banks and financial institutions outside the Republic of Macedonia.<sup>1174</sup>

### 11.1.4 INDEPENDENCE (PRACTICE)

Score: **25**

#### To what extent are political parties free from unwarranted external interference in their activities in practice?

There is no evidence of the state dissolving or prohibiting political parties in Macedonia; however, there is evidence of harassment and attacks on opposition parties. There has

<sup>1166</sup> Law on Political Parties, Official Gazette of RM, No. 76/04, 5/07, 8/07, 5/08, 23/13, Decision of the Constitutional court No. 57/07, 60/07, Article 38.

<sup>1167</sup> Ibid

<sup>1168</sup> Law on Political Parties, Official Gazette of RM, No. 76/04, 5/07, 8/07, 5/08, 23/13, Decision of the Constitutional court No. 57/07, 60/07, Article 3 and Article 6 paragraph (3).

<sup>1169</sup> Law on Political Parties, Official Gazette of RM, No. 76/04, 5/07, 8/07, 5/08, 23/13, Decision of the Constitutional court No. 57/07, 60/07, Article 33.

<sup>1170</sup> Law on Political Parties, Official Gazette of RM, No. 76/04, 5/07, 8/07, 5/08, 23/13, Decision of the Constitutional court No. 57/07, 60/07, Article 31.

<sup>1171</sup> Law on Political Parties, Official Gazette of RM, No. 76/04, 5/07, 8/07, 5/08, 23/13, Decision of the Constitutional court No. 57/07, 60/07, Article 32.

<sup>1172</sup> Law on Political Parties, Official Gazette of RM, No. 76/04, 5/07, 8/07, 5/08, 23/13, Decision of the Constitutional court No. 57/07, 60/07, Article 36.

<sup>1173</sup> Law on Political Parties, Official Gazette of RM, No. 76/04, 5/07, 8/07, 5/08, 23/13, Decision of the Constitutional court No. 57/07, 60/07, Article 6.

<sup>1174</sup> Law on Political Parties, Official Gazette of RM, No. 76/04, 5/07, 8/07, 5/08, 23/13, Decision of the Constitutional court No. 57/07, 60/07, Article 20.

been a high level of concern about the indirect influence of the ruling party VMRO-DPMNE, which demonstrates power by pressurizing members from smaller parties to join the ruling party or to join the ruling coalition.<sup>1175</sup> Several politicians<sup>1176</sup> from small political parties have joined VMRO-DPMNE. According to the leaders of these parties, such a step was both pragmatic and necessary for winning upcoming elections.<sup>1177</sup>

The wiretapped conversations published by the SDSM leader revealed the extent of harassment and attacks on political opponents. Recordings were published of conversations between leading members of the Government about influencing the media to press for the arrest of Ljube Boshkoski (an opposition party leader), about firing people employed in public institutions who were not members of VMRO-DPMNE, and about preventing opposition activists from arriving at party gatherings.<sup>1178</sup> In one recording, Interior Minister Jankuloska said: “We should make a list and destroy them. We cannot pay someone who tortured us during the campaign. The one who was his security will no longer work in the Ministry of Interior.”

Physical attacks, damage to party headquarters and threats against party members have all occurred during election periods, while the ruling party abuses the power of institutions and the pro-government media to manipulate the people.<sup>1179</sup> The leaked wiretapped phone conversations revealed discussions between the Director of PRO and the Director of Kanal 5 TV about finding a way to avoid paying taxes for the donation that the TV channel made to the ruling party.<sup>1180</sup>

The EU Progress Report for 2013 noted that: “the media covered the campaign extensively, but several broadcasters, including the public broadcaster, did not provide balanced coverage of the campaign.”<sup>1181</sup> There are serious concerns about media freedom due to factors including the state’s advertising power, the political links of major media owners, the closure of independent newspapers, and an expansion of government control over broadcasting.<sup>1182</sup> Freedom House ranks Macedonia as only “partly free”, and last year said that the country had “suffered a significant deterioration since 2006” in terms of the organisation’s “democracy score”. The Index on Censorship refers to Macedonia as being “the only country in south-east Europe with imprisoned journalists”.<sup>1183</sup>

International media also reported the allegations of widespread government interference in almost every sphere of national activity, including the law, the media, business and private institutions. It is suggested that the private sector has been routinely subjected to government influence.<sup>1184</sup>

<sup>1175</sup> Interview with Sonja Mirakovska, Organizational Secretary of the NSDP, a former member of Parliament in period 2008-2011, 2011-2014, face to face, 11.05.2015.

<sup>1176</sup> Ljube Boskovski (who went on to form the United for Macedonia party), Marjan Gjorchev (Agricultural Party of Macedonia), Filip Petrovski (Democratic Right Party), Dosta Dimovska (Democratic Republican Union of Macedonia) Boris Zmejkovski (VMRO-Real), Marjan Dodovski and Ljupco Georgievski (VMRO People’s Party)

<sup>1177</sup> Aleksandar Cekov and Dr. Zidas Daskalovski, *Analysis of internal party democracy in Macedonia*, (Skopje: Konrad-Adenauer-Stiftung, 2013), pp. 16 [http://www.kas.de/wf/doc/kas\\_33615-1522-2-30.pdf?130225094644](http://www.kas.de/wf/doc/kas_33615-1522-2-30.pdf?130225094644) [accessed on May 13, 2014].

<sup>1178</sup> <http://meta.mk/en/tretata-bomba-mestele-se-zhivo-i-divo/> [accessed on May 13, 2014].

<sup>1179</sup> “There have been situations in which the ruling party leased every single billboard in the city and left all the other parties without any opportunity to lease a billboard”, said Sonja Mirakovska.

<sup>1180</sup> Interview with Sonja Mirakovska, Organizational Secretary of the NSDP, a former member of Parliament in period 2008-2011, 2011-2014, face to face, 11.05.2015.

<sup>1181</sup> European Commission, 2014: p.6.

<sup>1182</sup> <http://www.bne.eu/content/story/macedonia%E2%80%99s-government-wins-double-election-victory> [accessed on May 31, 2014].

<sup>1183</sup> <https://freedomhouse.org/report/freedom-press/2015/macedonia> [accessed on May 28, 2014]

<sup>1184</sup> <http://www.balkaninsight.com/en/article/eradicating-corruption-must-be-macedonia-s-priority> [accessed on May 13, 2014].

## GOVERNANCE

### 11.2.1 TRANSPARENCY (LAW)

Score: **75**

#### To what extent are there regulations in place that require parties to make their financial information publicly available?

The law does not ensure the transparent operation of political parties. The existing transparency rules apply mainly to financial matters and not to party activities. According to the law, the incomes and expenses of a political party must be made public<sup>1185</sup> and the law sets out procedures for internal control over political party finances.<sup>1186</sup>

The parties are obliged to submit reports on their financial operations to the State Audit Office (SAO), the Central Registry, and the Public Revenue Office (PRO) by 31 March at the latest.<sup>1187</sup> Annual reports contain information about total revenues and total expenditures.<sup>1188</sup> If the SAO establishes irregularities in the annual financial statement of the political party, it must file a motion for the initiation of a misdemeanour procedure or file a report to the competent public prosecutor within 30 days of establishing the irregularities.<sup>1189</sup> Political parties are obliged to publicly announce the annual financial statement on their websites.<sup>1190</sup>

The parties are obliged to keep a registry of donations. Registries of donations received by political parties and election candidates must include the name of each donor individually, the type and value of the donation, and the date of receiving the donation, as well as information about donations from subjects who are related directly or indirectly to political parties or otherwise under their control.<sup>1191</sup> The 2011 amendments to the Law on Political Parties partly clarify the obligation to keep a registry of donations and to make it public every six months, either on their website or in some other way.<sup>1192</sup> The form for the report is prescribed by the Minister of Finance (MoF) and, since the 2012 amendment to the law, there are guidelines on how to complete the form.<sup>1193</sup>

The organizers of election campaigns are obliged to submit three financial reports on their election campaigns in order to ensure that the principles of transparency and accountability are upheld. However, the law does not oblige donors to submit reports on their financial contributions to political parties.<sup>1194</sup>

If a political party fails to file a yearly report to the SAO on time, or fails to publish data about the donations received during the last year, or fails to publish the financial report before the deadline, the money provided by the state budget for that political party will be suspended for a period of three months.<sup>1195</sup> The Minister of Justice will make the decision in such cases on the advice of the SAO. A complaint can be filed against the decision.<sup>1196</sup>

<sup>1185</sup> Law on Financing Political Parties, Official Gazette of RM, No. 76/04, 86/08, 161/08, 96/09, 148/11, 142/12, 23/13, Article 23.

<sup>1186</sup> Law on Financing Political Parties, Official Gazette of RM, No. 76/04, 86/08, 161/08, 96/09, 148/11, 142/12, 23/13, Article 24.

<sup>1187</sup> Law on Financing Political Parties, Official Gazette of RM, No. 76/04, 86/08, 161/08, 96/09, 148/11, 142/12, 23/13, Article 26.

<sup>1188</sup> Law on Financing Political Parties, Official Gazette of RM, No. 76/04, 86/08, 161/08, 96/09, 148/11, 142/12, 23/13, Article 27.

<sup>1189</sup> Ibid.

<sup>1190</sup> Law on Financing Political Parties, Official Gazette of RM, No. 76/04, 86/08, 161/08, 96/09, 148/11, 142/12, 23/13, Article 27-a.

<sup>1191</sup> Law on Financing Political Parties, Official Gazette of RM, No. 76/04, 86/08, 161/08, 96/09, 148/11, 142/12, 23/13, Article 17.

<sup>1192</sup> Ibid.

<sup>1193</sup> Law on Financing Political Parties, Official Gazette of RM, No. 76/04, 86/08, 161/08, 96/09, 148/11, 142/12, 23/13, Article 27.

<sup>1194</sup> Sladjana Taseva, *Buying influence: Money and politics in the Republic of Macedonia*, (Skopje: Transparency International – Macedonia, 2012), p.12.

<sup>1195</sup> Law on Financing Political Parties, Official Gazette of RM, No. 76/04, 86/08, 161/08, 96/09, 148/11, 142/12, 23/13, Article 27-b.

<sup>1196</sup> Law on Financing Political Parties, Official Gazette No. 76/04, 86/08, 161/08, 96/09, 148/11, 142/12, 23/13, Article 27-b and 27-v.



## 11.2.2 TRANSPARENCY (PRACTICE)

Score: **25**

### To what extent can the public obtain relevant financial information from political parties?

Political parties formally meet most of the legal obligations regarding transparency in their finances. However, they do not publish lists of donors and there is no effective control on overspending. There are weaknesses with regard to the transparency of political parties in Macedonia, both in their regular financing and in the financing of their electoral campaigns.<sup>1197</sup>

The SAO and PRO publish the political parties' annual financial reports and information on political party donations on their websites.<sup>1198</sup> Some progress has been made in educating political parties about their financial obligations.<sup>1199</sup> Co-operation between the entities involved in the supervision of political financing has improved, and a track record of sanctions related to the submission of required financial reports has begun to develop.<sup>1200</sup>

The 2011 law amendments loosened the obligation on political parties to publish reports on their websites by adding a clause enabling the possibility "to make it accessible to the public in another way", which is ambiguous in wording. In fact the majority of financial reports are published on official party websites,<sup>1201</sup> but the change in the law was prompted by the fact that a number of political parties do not have websites, and nor is there an obligation to have one. There is no guidance on how political parties may fulfil their obligation to publish reports, though failure to do so may result in a fine.<sup>1202</sup> The threat of suspending the right of a political party to receive payment from the budget has contributed towards ensuring the publication of financial reports in a timely manner.

There is no strong public reaction to the lack of transparency of political parties.<sup>1203</sup>

## 11.2.3 ACCOUNTABILITY (LAW)

Score: **75**

### To what extent are there provisions governing the financial oversight of political parties by a designated state body?

The laws contain numerous provisions designated to uphold the accountability of political party finances. The 2012 amendments to the Law on the Financing of Political Parties partly follow the recommendations of GRECO and OSCE/ODIHR and define the competences of the SEC, SAO and the SCPC, the institutions that together make up the controlling mechanism.<sup>1204</sup> The parties are obliged to submit reports on their financial operations to the

<sup>1197</sup> Taseva, 2012: p.13.

<sup>1198</sup> <http://www.dzr.mk/DesktopDefault.aspx?tabindex=0&tabid=1073> [accessed on May 14, 2014] <http://www.ujp.gov.mk/s/vodic/category/865> [accessed on May 14, 2014]

<sup>1199</sup> GRECO, 2014: p.9.

<sup>1200</sup> GRECO, 2014: p.9.

<sup>1201</sup> Interview with Kire Buzliev, Vice President of the Liberal Party of Macedonia, 11.05.2015.

<sup>1202</sup> Iskra Andreeva and Aleksandra Markovska, *Money and politics: Annual report: transparency of political party financing*, (Skopje: Transparency Macedonia 2013), p. 14 <http://www.transparentnost-mk.org.mk/Upload/dokumenti/transparentnost%20vnatreshen%20del%20ANG%20za%20na%20web%2002.pdf> [accessed on May 27, 2014].

<sup>1203</sup> Interview with Kire Buzliev, Vice President of the Liberal Party of Macedonia, 11.05.2015

<sup>1204</sup> GRECO, 2014: pp. 6

competent institutions which, in turn, are required to publish the reports on their websites.<sup>1205</sup>

The Electoral Code clarifies the obligations of the organisers of election campaigns concerning reporting and reporting periods.<sup>1206</sup> Organizers of election campaigns are obliged to submit three financial reports on their election campaigns in order to ensure that the principles of transparency and accountability are upheld.<sup>1207</sup> Specifically, the organizer of a party's election campaign is required on the eleventh day of the campaign to submit a financial report on the incomes and expenditures from the election campaign bank account, dating from the day the account was opened until the end of the tenth day of the campaign.<sup>1208</sup> The second report should be submitted one day before the second round of elections, and the third report, covering the second half of the campaign, should be submitted after the end of the election campaign.<sup>1209</sup> Finally, the election campaign organizers should complete financial reports covering the entire election campaign no later than 30 days after the end of the election campaign.<sup>1210</sup>

The Ministry of Finance has developed a template for a more detailed report that includes information on the name or designation of the donor, the type and amount of donations, the dates when donations were received, and expenditures for each donation, as well as incomes and expenditures throughout the election campaign.<sup>1211</sup>

Electoral contestants are obliged to register unique tax numbers and to open separate bank accounts through which all campaign-related financial transactions must be conducted. Individuals may donate up to EUR 5,000 in the national currency, while legal entities may donate up to EUR 50,000. Goods and services sold to parties at a discount price are considered as in-kind donations and accounted for according to their market prices. Anonymous donations are prohibited, as well as donations from public or foreign sources, citizens' associations, and religious groups.<sup>1212</sup>

The law foresees an obligation for the SAO to conduct an audit of the financial reports of political parties within 60 days of their submission.<sup>1213</sup> The audit covers the period from the day of opening of the campaign account to the end of the transactions on this account. If the SAO finds irregularities in the financial report of the election campaign, contrary to the provisions of the Electoral Code, it has the right to request the initiation of misdemeanour proceedings or charges by a competent public prosecutor within 30 days from the date of the determination of irregularities.<sup>1214</sup>

The SCPC is authorized to monitor both the election campaign funding of political parties and their annual funding activities in order to ensure that political parties are not using illegal sources for financing. If the SCPC notes irregularities based on the submitted financial reports, such as the use of public funds and assets of public enterprises and other legal entities that manage state capital, it should submit a report to Parliament within three months, detailing the abuse.<sup>1215</sup>

<sup>1205</sup> Electoral Code, Official Gazette of RM, No. 40/06, 148/08, 155/08, 44/11, 51/11, 142/12, 31/13, 34/13 and 32/14, Article 84-b (7).

<sup>1206</sup> GRECO, 2014: Paragraph 13, pp.3.

<sup>1207</sup> Electoral Code, Official Gazette of RM, No. 40/06, 148/08, 155/08, 44/11, 51/11, 142/12, 31/13, 34/13 and 32/14, Article 84-b,

<sup>1208</sup> Electoral Code, Official Gazette of RM, No. 40/06, 148/08, 155/08, 44/11, 51/11, 142/12, 31/13, 34/13 and 32/14, Article 84-b (1).

<sup>1209</sup> Electoral Code, Official Gazette of RM, No. 40/06, 148/08, 155/08, 44/11, 51/11, 142/12, 31/13, 34/13 and 32/14, Article 84-b (2).

<sup>1210</sup> Electoral Code, Official Gazette of RM, No. 40/06, 148/08, 155/08, 44/11, 51/11, 142/12, 31/13, 34/13 and 32/14, Article 85 (1).

<sup>1211</sup> Electoral Code, Official Gazette of RM of RM, No. 40/06, 148/08, 155/08, 44/11, 51/11, 142/12, 31/13, 34/13 and 32/14, Article 84-b, (3).

<sup>1212</sup> Electoral Code, Official Gazette of RM, No. 40/06, 148/08, 155/08, 44/11, 51/11, 142/12, 31/13, 34/13 and 32/14 Article 83.

<sup>1213</sup> Electoral Code, Official Gazette of RM, No. 40/06, 148/08, 155/08, 44/11, 51/11, 142/12, 31/13, 34/13 and 32/14 Article 85.

<sup>1214</sup> Electoral Code, Official Gazette of RM, No. 40/06, 148/08, 155/08, 44/11, 51/11, 142/12, 31/13, 34/13 and 32/14 Article 86 (6).

<sup>1215</sup> Law on Prevention of Corruption, Official Gazette of RM, No. 28/2002, 46/2004, 126/2006, 10/2008, 161/2008, 145/2010, Article 12.

The State Election Commission receives financial reports from political parties that run in elections and has an obligation to publish them on its website.<sup>1216</sup>

If the amount of the donation exceeds the amount determined by the law, the political party cannot use it and shall be obliged to immediately, and at latest within 15 days from the day of receiving, to return the difference between the allowed and donated value to the donor. While, if the origin of the donation cannot be confirmed, the political party must immediately, and within 15 days from the receiving of the donation, transfer the donated amount to the state budget.<sup>1217</sup>

The law establishes financial penalties in different forms, including loss of reimbursement for expenses related to the election campaign,<sup>1218</sup> fines for abuse of budget funds, or misdemeanour fines for a political party or coalition if they fail to return funds in the prescribed period to the donors in case of non-submission of the lists of candidates. A misdemeanour fine of 4,000 to 5,000 EUR (in MKD equivalent) will be imposed on any political party, coalition, representative of an independent list of candidates or potential nominees should they fail to return to the donors the full amount of funds that were not spent in the prescribed deadline.<sup>1219</sup> One legal loophole is that the law does not oblige donors to submit reports on their financial contributions to political parties. This is considered to be a deficiency of the law.<sup>1220</sup>

#### 11.2.4 ACCOUNTABILITY (PRACTICE)

Score: **50**

##### To what extent is there effective financial oversight of political parties in practice?

The current system whereby exercise of financial control over political parties is dispersed among different institutions is undermined by the weakness of the audit and verification mechanisms.

In spite of the requirements to submit interim financial reports published by the central controlling body, there are weaknesses with regard to the accountability of political parties both in their regular financing and in the financing of their electoral campaigns.<sup>1221</sup> Apart from not publishing lists of donors, another serious problem relates to the overspending of parties during election campaigns, as they often spend amounts that exceed deposits on specially opened bank accounts. There have been cases where political parties have declared overspending by several million MKD and yet the bills had still not been paid before the closure of the special bank account.<sup>1222</sup> However, this has not been effectively audited and verified by the responsible entities.

Co-operation between the SAO and the other entities involved in the supervision of political financing has improved and a track record of sanctions has begun to develop.

<sup>1216</sup> Electoral Code, Official Gazette of RM, No. 40/06, 148/08, 155/08, 44/11, 51/11, 142/12, 31/13, 34/13 and 32/14, Article 85 (8).

<sup>1217</sup> Law on Financing Political Parties, Official Gazette of RM, No. 76/04, 86/08, 161/08, 96/09, 148/11, 142/12, 23/13.

<sup>1218</sup> Electoral Code, Official Gazette of RM, No. 40/06, 148/08, 155/08, 44/11, 51/11, 142/12, 31/13, 34/13 and 32/14, Article 177-a.

<sup>1219</sup> Electoral Code, Official Gazette of RM, No. 40/06, 148/08, 155/08, 44/11, 51/11, 142/12, 31/13, 34/13 and 32/14, Article 188-a.

<sup>1220</sup> Taseva, 2012: p.12.

<sup>1221</sup> Taseva, 2012: p.13.

<sup>1222</sup> Ibid.

The powers and resources of the SAO seem insufficient to enable effective control of the origins of donations.<sup>1223</sup> Oversight by the SAO is limited to auditing the information submitted by the electoral contestants, and the SAO does not have the means to investigate whether that information is accurate.<sup>1224</sup> One of the recommendations from the OSCE/ODIHR Election Observation Mission in 2014 is that: “consideration could be given to granting the SAO investigative powers to undertake full campaign finance audits, including the power to request further documentation and testimonies from parties to ensure a full review of any possible infringement.”<sup>1225</sup> Donations from natural persons have to be subjected to control and it is crucial to introduce a mechanism for establishing the origin of these donations, such as the payment of funds from the donor’s account.<sup>1226</sup>

The EC PR 2014 also stresses the need to strengthen the rules on expenditure verification. The closure of campaign bank accounts and the treatment of campaign debts are yet to be regulated to prevent abuse. Penalties for breaches of the relevant legislation have begun to be imposed in practice, but a credible track record has yet to be developed in this field, and the lack of transparency and accountability of political parties in relation to party funding remains a concern.<sup>1227</sup>

There are no effective sanctions for failure to submit financial reports, although the SAO may ask the SEC to suspend reimbursement of expenditures to contestants from state funds, partially or totally, should it detect any irregularities. It may also initiate a misdemeanour procedure or report to the prosecutor within 30 days. However, there are no deadlines for the courts to decide on these violations. Electoral stakeholders do not have the right to file complaints on campaign finance violations, contrary to international good practice.<sup>1228</sup>

The templates and instructions developed for completing forms by the Ministry of Finance is a positive step that should improve the information available to voters concerning the financing of campaigns and help to promote consistency in filling out financial disclosure forms.<sup>1229</sup>

### 11.2.5 INTEGRITY (LAW)

Score: **50**

#### **To what extent are there organisational regulations concerning the internal democratic governance of the main political parties?**

There are only limited regulations related to the democratic governance of political parties. Political parties are obliged to have regulations on the election of the party leadership.<sup>1230</sup> They are also obliged to have regulations on issues such as acquiring and terminating membership, the rights, obligations and responsibilities of members, the bodies of the political party, the manner of their election and revocation, as well as the manner of decision-making.<sup>1231</sup>

<sup>1223</sup> European Commission, 2014: p.43

<sup>1224</sup> OSCE/ODIHR, 2014: p.15 and 16.

<sup>1225</sup> Ibid.

<sup>1226</sup> Andreeva and Markovska, 2013: p.36.

<sup>1227</sup> European Commission, 2014: p.43

<sup>1228</sup> OSCE/ODIHR Election Observation Mission Final Report, 2014: p.16.

<sup>1229</sup> Venice Commission, *Joint opinion on the Electoral code of the Republic of Macedonia*, Adopted by the Council for Democratic Elections at its 45th meeting (Venice, 13 June 2013) and by the Venice Commission at its 95th Plenary Session (Venice, 14-15 June 2013), Paragraph 28, p.7.

<sup>1230</sup> Law on Political Parties, Official Gazette No. 76/04, 5/07, 8/07, 5/08, 23/13, Decision of the Constitutional court No. 57/07, 60/07, Article 16.

<sup>1231</sup> Law on Political Parties, Official Gazette No. 76/04, 5/07, 8/07, 5/08, 23/13, Decision of the Constitutional court No. 57/07, 60/07, Article 16.

Neither the Law on Political Parties nor the Electoral Code includes any regulation for the selection of candidates by political parties. This issue is addressed in party statutes and the selection of candidates is mainly controlled by the parties' central committees.

In VMRO-DPMNE the Congress is the highest organ of power in the party. It elects the President of the party and members of councils, commissions and other party bodies.<sup>1232</sup> A minimum of 30 delegates of the Congress can propose a candidate for president of the party. A candidate is elected president of the party if he/she wins a majority of the votes of the total number of delegates of the Congress.<sup>1233</sup> The president of the party has a mandate of four years.<sup>1234</sup> The president of the party is also President of the Central Committee and the Executive Committee,<sup>1235</sup> represents the party, presides with the party organ sessions, and has an active role in the creation of the party's policy.

DUI is a centralized and personalized party with hierarchical relations between central and local bodies. The President of DUI establishes branch offices through the verification of their foundation.<sup>1236</sup> The party bodies at central level are as follows: the congress, the general council, the management board, the president, the presidency, the statutory committee, the supervisory committee and the court of honour.<sup>1237</sup>

## 11.2.6 INTEGRITY (PRACTICE)

Score: **25**

### To what extent is there effective internal democratic governance of political parties in practice?

Macedonian political parties lack effective mechanisms for internal democratic governance. Instead, the party leader is the dominant figure and decision-maker.<sup>1238</sup>

Almost all political parties are organized in a similar way: municipal branches at local level, and one broader representative body and one executive body at central level.<sup>1239</sup> Formally, according to statutory provisions, programmes and platforms, there is intra-party democracy, guaranteeing freedom of expression of opinions even when those are contrary to official party positions.<sup>1240</sup> In some parties, criticism is allowed by party statutes. In practice, however, critics are marginalized or excluded from parties.<sup>1241</sup>

In every party the role of the President of the Party is the key position that nominates the party management both at central and local levels.<sup>1242</sup> Formally, SDSM has a decentralized model of organisation and VMRO-DPMNE and DUI have a centralized model of organisation<sup>1243</sup>.

<sup>1232</sup> Statute of the VMRO-DPMNE, Article 18.

<sup>1233</sup> Statute of the VMRO-DPMNE, Article 20

<sup>1234</sup> Statute of the VMRO-DPMNE, Article 20.

<sup>1235</sup> Statute of VMRO-DPMNE, Article 21.

<sup>1236</sup> Statute of DUI of 2009, Article 18.

<sup>1237</sup> Statute of DUI of 2009, Article 20.

<sup>1238</sup> Ademi, Gashi, Siljanovska, Popsimonova and others <http://www.dw.de/15816584>,

<sup>1239</sup> Hofmeister and Grabow, Political Parties' Functions and Organisation in Democratic Societies, (Skopje: Konrad Adenauer Stiftung, 2013), Hofmeister and Grabow, 2013: p.109.

<sup>1240</sup> Hofmeister and Grabow, 2013: p.107.

<sup>1241</sup> Cekov and Daskalovski, 2013: p.49.

<sup>1242</sup> Hofmeister and Grabow, 2013: p.109.

<sup>1243</sup> Gordana, Siljanovska-Davkova, *Internal life of political parties in western balkans: between oligarchic tendencies and democratic challenges*, (Skopje: University of "Ss. Cyril and Methodius" Law School "Iustinianus Primus, 2014), pp.9 <http://www.jus.uio.no/english/research/news-and-events/events/conferences/2014/wccl-cmdc/wccl/papers/ws13/w13-siljanovska-davkova.pdf>

However, party factions are not explicitly mentioned in the statutes of the parties in most cases.<sup>1244</sup>

In VMRO-DPMNE, the election programme is written by teams of specialists, by citizens through a public announcement, as well as teams from the Executive Committee, the Central Committee and the Regional Committees.<sup>1245</sup> The election programme is then approved by the Central Committee.

In SDSM, the municipal organisation and its bodies are guaranteed participation in the creation and implementation of party policy, putting forward candidacies for its bodies and nominations for candidates for MPs and for councillors at local level. Decisions and rules regarding its foundation and termination are enacted by the Central Board of the SDSM.<sup>1246</sup> However, the Statute of SDSM does not prescribe which body formulates the party programme.<sup>1247</sup> The electoral programme of LDP is written by party experts and is then adopted by the Central Committee.

An exception amongst political parties in Macedonia is the NSDP, which in practice has developed broader internal party democracy.<sup>1248</sup> Nevertheless, in Macedonian political parties the decisions within are made according to the top-to-bottom approach, omitting wide deliberation amongst party members in the process. The autocratic tendencies of party leaders are a well-established practice in the day-to-day functioning of the political parties.<sup>1249</sup> Choosing a party programme typically comes down to choosing a leading individual.<sup>1250</sup>

## ROLE

### 11.3.1 INTEREST AGGREGATION AND REPRESENTATION

Score: **50**

#### **To what extent do political parties aggregate and represent relevant social interests in the political sphere?**

Formally, most of the political parties in Macedonia have a platform with which they represent relevant social interests in the political sphere. In reality, parties act in an elitist manner, dominated by interest groups. Their role in representing relevant social interests in the political sphere is thus manifested as populism rather than a genuine political platform .

VMRO–DPMNE continued its liberal economic policies in 2015 and once again highlighted economic development and the need to attract foreign investors.<sup>1251</sup> SDSM is the leading opposition party, standing for liberal economic policies, a generally pragmatic approach, and co-operation with the international community. SDSM advocates flexibility in the dispute with Greece over the country's name in order to enable the country to join NATO.<sup>1252</sup> DUI is the largest ethnic Albanian party and its main agenda is full implementation of the 2001 Ohrid

<sup>1244</sup> Cekov and Daskalovski, 2013: p.48.

<sup>1245</sup> <http://www.vesti.mk/read/news/975877/343840/vmro-dpmne-gi-kani-gragjanite-da-davaat-idei-za-programata> 27.05.2015.

<sup>1246</sup> Siljanovska-Davkova, 2014: p.9.

<sup>1247</sup> <http://www.sdsm.org.mk/Default.aspx?mld=54> 27.05.2015.

<sup>1248</sup> Interview with Sonja Mirakovska, Organizational Secretary of the NSDP, a former member of Parliament in period 2008-2011, 2011-2014, face to face, 11.05.2015

<sup>1249</sup> Cekov and Daskalovski, 2013: p.48.

<sup>1250</sup> Hofmeister and Grabow, 2013: p.110.

<sup>1251</sup> [http://vmro-dpmne.org.mk/wp-content/uploads/documents/Manifest\\_za\\_reformi\\_i\\_razvoj.pdf](http://vmro-dpmne.org.mk/wp-content/uploads/documents/Manifest_za_reformi_i_razvoj.pdf) 31.05.2015

<sup>1252</sup> <http://www.sdsm.org.mk/Default.aspx?mld=47&lld=1> 31.05.2015.

Peace Accord. It has been constructive in tackling the country's main diplomatic problem, i.e. the dispute with Greece over the country's name. However, one faction in DUI seeks a quicker solution to the dispute, enabling Macedonia to enter NATO and start negotiations with the EU on membership.<sup>1253</sup> The smaller political parties find it difficult to access the media and to present their programmes to the citizens.<sup>1254</sup>

Policy-making is dominated by special interest groups and businesses, together with the ruling party.<sup>1255</sup> The public is disengaged from politics, and there has been a steady decline in trust in political parties and a corresponding fall in voter turnout.<sup>1256</sup> In a survey conducted in 2014 by the International Republican Institute, 41% of respondents said they had no trust in political parties, 37% said they neither trusted nor distrusted political parties, and only 20% trusted political parties.<sup>1257</sup> Moreover, 60% of respondents think that civil society organizations are influenced by parties, and/or that their programmes and agendas are influenced and funded by political parties in Macedonia.<sup>1258</sup>

Some academics define the role of the political parties in Macedonia as elitist, since the personal self-interests of the main political actors play the most important role in policy-making. The party elites make all the key decisions, and often it is members of the business elites who are the most influential political actors.<sup>1259</sup> Corruption is a vast and systemic problem in Macedonia. Political parties provide tenders, and the businesses that invest in political parties expect favours in return for their investments.<sup>1260</sup>

### 11.3.2 ANTI-CORRUPTION COMMITMENT

Score: **25**

#### To what extent do political parties give due attention to public accountability and the fight against corruption?

The fight against corruption features prominently in all electoral campaigns. Changes in political leadership have come about because of votes against corrupt governments rather than in favour of good political programmes. Over the years, however, practice has shown that it is only in their political speeches that political parties give due attention to public accountability and the fight against corruption. In the manifesto of VMRO-DPMNE for 2011–2015, the party repeated its commitment to the fight against crime and corruption and to increasing the efficiency of law enforcement through deep reforms in the judiciary and public administration.<sup>1261</sup>

In practice, there is now a political and institutional crisis as a result of corruption, the lack of independence of the judiciary, violations of human rights, a politically controlled media and the selective enforcement of law.

<sup>1253</sup> <http://www.balkaninsight.com/en/article/who-is-who-political-parties-in-macedonia> 31.05.2015.

<sup>1254</sup> Interview with Sonja Mirakovska, Organizational Secretary of the NSDP, a former member of Parliament in period 2008-2011, 2011-2014, face to face, 11.05.2015.

<sup>1255</sup> Interview with Sonja Mirakovska, Organizational Secretary of the NSDP, a former member of Parliament in period 2008-2011, 2011-2014, face to face, 11.05.2015.

<sup>1256</sup> International Republican Institute, *Perception on the Assembly, Experience with MPs and View on Election Day*, 2014: slide 21.

<sup>1257</sup> International Republican Institute, *2014: Perception on the Assembly, Experience with MPs and View on Election Day*.

<sup>1258</sup> Ibid

<sup>1259</sup> Siljanovska-Davkova, 2014: p.18.

<sup>1260</sup> Interview with Sonja Mirakovska, Organizational Secretary of the NSDP, a former member of Parliament in period 2008-2011, 2011-2014, face to face, 11.05.2015.

<sup>1261</sup> Manifesto of VMRO-DPMNE 2011-2014 [http://vmro-dpmne.org.mk/wp-content/uploads/documents/Manifest\\_za\\_reformi\\_i\\_razvoj.pdf](http://vmro-dpmne.org.mk/wp-content/uploads/documents/Manifest_za_reformi_i_razvoj.pdf) 13.05.2015

In 2014, the opposition political party SDSM filed charges against the Prime Minister on three counts of taking bribes and tax evasion. The SDSM accused Gruevski of taking a bribe of €1.5 million to expedite the sale of Makedonska Banka in 2004. The opposition produced documents of financial transactions as well as legal papers from Macedonia's Central Bank that approved the sale of the bank's shares, stating that the documents contained clear evidence of wrongdoing.<sup>1262</sup> For this accusation, the opposition leader was convicted of defamation.

Recently, Macedonia has experienced repeated political crises concerning large-scale government corruption. Since February 2015, opposition leader Zoran Zaev has released a series of audio excerpts from what the opposition claims are 670,000 secretly recorded conversations from more than 20,000 Macedonian telephone numbers. In the released recordings, top government officials are heard plotting how to rig votes, how to buy off judges and how to punish political opponents. Mr. Zaev claims the recordings were made by the Government and leaked to the opposition.<sup>1263</sup> In May 2015, three top government officials resigned.

Prime Minister Gruevski has denied the allegations of wrongdoing, maintaining that the tapes were doctored and that the opposition illegally obtained its material from unnamed foreign secret services. He has refused to comment on the content of the tapes.<sup>1264</sup> At the European Parliament debate on 10 March 2015, the shadow rapporteur for Macedonia, British MEP Richard Howitt, said he had "no doubt" that large-scale surveillance has occurred in Macedonia and that at least part of the released tapes appeared authentic. "We cannot ignore this evidence, and neither can the Commissioner," Howitt said.<sup>1265</sup> The EU Enlargement Commissioner, Johannes Hahn, said in Strasbourg that Macedonia must properly investigate any allegations of wrongdoings related to the wiretapped conversations released by the opposition, regardless of their source. The Commissioner added that "at a time when public trust in institutions is low, all public figures must act responsibly and take accountability for their actions in their own interest". Noting that the political crisis in Macedonia has only highlighted "continuing concerns about the independence of justice" in the country, Hahn urged "all parties to respect the rule of law and independence of the judiciary and the freedom of press".<sup>1266</sup> To resolve the political crisis, the Przino Agreement was signed.<sup>1267</sup> Based on this agreement, changes have been made to electoral legislation and to the SEC, and a Special Public Prosecutor has been established to investigate the cases arising from the wiretapped phone calls. A Law on the Protection of Privacy<sup>1268</sup> has been adopted, as well as a Law on the Protection of Whistleblowers.<sup>1269</sup>

## RECOMMENDATIONS

- R1.** Political parties should agree to introduce regulations for the selection of candidates.
- R2.** Assembly should adopt amendments to the Law on Political Parties and the Electoral Code to include provisions for selection of candidates by political parties.
- R3.** Political parties should ensure the existence of integrity mechanisms and ensure their implementation by adopting codes of conduct and / or amending their party statutes.

<sup>1262</sup> <http://www.balkaninsight.com/en/article/criminal-charges-filed-against-macedonian-pm> 31.05.2015

<sup>1263</sup> [http://www.nytimes.com/2015/05/19/world/europe/macedonias-leaders-unable-to-resolve-festering-crisis.html?\\_r=0](http://www.nytimes.com/2015/05/19/world/europe/macedonias-leaders-unable-to-resolve-festering-crisis.html?_r=0)

<sup>1264</sup> <http://www.balkaninsight.com/en/article/macedonia-s-embattled-pm-stands-resilient-before-party-faithful>

<sup>1265</sup> <http://www.balkaninsight.com/en/article/hahn-tells-macedonia-to-investigate-wrongdoing-allegations> 31.05.2015

<sup>1266</sup> <http://www.balkaninsight.com/en/article/hahn-tells-macedonia-to-investigate-wrongdoing-allegations> 31.05.2015

<sup>1267</sup> <http://makfax.com.mk/makedonija/politika/dui-go-objavi-dogovorot-od-2-juni>,

<http://fokus.mk/tseliot-dogovor-shto-liderite-go-potpishaa-na-2-juni/>

<sup>1268</sup> Official Gazette of the RM, No.196/2015.

<sup>1269</sup> Official Gazette of the RM, No.196/2015.



# 12. MEDIA

## SUMMARY

The state exerts strong control over the media through unlimited government advertising. There are government-favoured media outlets and the EU Progress Report has described the situation of the media in Macedonia as being subject to 'indirect government control'.<sup>1270</sup> There are concerns about reporting standards during elections and a lack of editorial independence on the part of the Public Service Broadcaster, MTV.<sup>1271</sup> The Agency for Audio and Audio-Visual Media Services (AAVMS) and the Public Broadcasting Service (MTV) lack independence; government advertising is not regulated; and there are concerns regarding the over-regulation of the print media, including the state-provision of a definition of journalist and high penalties for transgressions. At the same time, there are no individual Codes of Conduct regulating media conduct in Macedonia.

On 1 July 2015, as a result of the international intervention due to the political crisis, the Government proclaimed a moratorium on government advertising campaigns in national media outlets.<sup>1272</sup> At the time of finalizing this report, however, the political parties have not achieved agreement on legal amendments to ensure the independence of the MTV and the media in general in accordance with the commitments of the Przino Agreement.<sup>1273</sup>

The ownership of the media is not transparent. Media owners and private advertisers may risk retaliation from political forces if they do not show support for their agenda.<sup>1274</sup> The financing of the media is also not transparent, given the fact that the media companies do not disclose the sources of their financing. Journalists cannot carry out their work free from fear.<sup>1275</sup> As a result, genuine investigative journalism hardly exists in Macedonia and some of the mainstream media outlets do not report stories objectively

**OVERALL PILLAR SCORE: 36.1 /100**

<sup>1270</sup> European Commission, 2014, (Political Criteria): p.12. [http://ec.europa.eu/enlargement/pdf/key\\_documents/2014/20141008-the-former-yugoslav-republic-of-macedonia-progress-report\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2014/20141008-the-former-yugoslav-republic-of-macedonia-progress-report_en.pdf) [accessed on 12.12.2014].

<sup>1271</sup> Ibid.

<sup>1272</sup> Minister Ivo Ivanovski, 01 July 2015, <http://mrt.com.mk/node/24396>

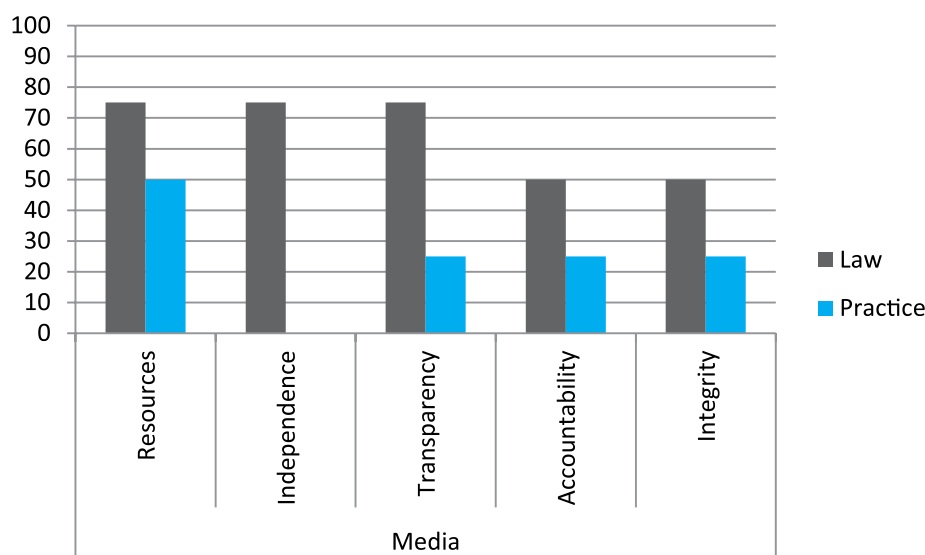
<sup>1273</sup> See footnote No.1265.

<sup>1274</sup> European Commission, The Republic of Macedonia: Recommendations of the Senior Experts' Group on systemic Rule of Law issues relating to the communications interception revealed in Spring 2015, (Brussels: European Commission, 2015).

<sup>1275</sup> Ibid.

| DIMENSION                       | INDICATOR                                  | LAW | PRACTICE |
|---------------------------------|--|-----|----------|
| <b>Capacity</b><br>50 / 100     | Resources                                  | 75  | 50       |
|                                 | Independence                               | 75  | 0        |
| <b>Governance</b><br>41.6 / 100 | Transparency                               | 75  | 25       |
|                                 | Accountability                             | 50  | 25       |
|                                 | Integrity                                  | 50  | 25       |
| <b>Role</b><br>16.6 / 100       | Investigate and expose corruption          |     | 25       |
|                                 | Inform public on corruption and its impact |     | 0        |
|                                 | Inform public on governance issues         |     | 25       |

### Pillar score per Law and Practice



## STRUCTURE AND ORGANISATION

There are various media organizations: printed daily newspapers (8), weekly magazines (3),<sup>1276</sup> broadcast television channels (65) and radio stations (76), both national and local, as well as internet portals and internet televisions. Overall there are 200 media outlets, all of which, except for the state/public national broadcaster (MTV), are in private hands.

All the media entities compete in a small and distorted market covering around two million citizens, and this in itself could be presented and understood as an alibi and excuse to cooperate—as a means of survival—with the ruling parties, the Government and connected businesses. Despite the variety of media sources, many important and vital socio-political issues are left without proper coverage, since the majority of the media is pro-government.

<sup>1276</sup> [http://www.avmu.mk/index.php?option=com\\_content&view=article&id=1154&Itemid=463&lang=mk](http://www.avmu.mk/index.php?option=com_content&view=article&id=1154&Itemid=463&lang=mk) [accessed on 1.11.2014].

The Agency for Audio and Audio-Visual Media Services (AAVMS) is an independent, non-profit regulatory body which acts as a legal entity with public competences.<sup>1277</sup>

There are three associations of journalists: the Association of Journalists of Macedonia (AJM), which is an independent, non-governmental and non-political organisation whose purpose is to be the protector and promoter of professional standards and freedom of expression;<sup>1278</sup> the Macedonian Association of Journalists (MAJ), which has a significant number of members; and the Macedonian Media Association, which was established in 2014. The Council of Honour is responsible for observing the principles of the Code of Ethics.<sup>1279</sup> The Independent Trade Union of Journalists and Media Workers is an autonomous, democratic, non-profit and independent organization of journalists and media workers.

## ASSESSMENT

### 12.1.1 RESOURCES (LAW)

Score: **75**

**To what extent does the legal framework provide an environment conducive to a diverse and independent media?**

#### 1. BROADCAST MEDIA

The media law contains limitations on ownership and co-ownership of the media,<sup>1280</sup> both at national and regional level. Any natural or legal person that is a majority co-owner, shareholder, or related person, in a broadcaster cannot also be a co-owner/share-holder in a publisher of print media involved in the publication of a daily newspaper, a news agency, an advertising company, a marketing and public opinion research company, an audio-visual distribution company, a film production company or an electronic communications network operator that provides re-transmission or broadcasting of radio/television programmes.<sup>1281</sup>

Political parties, state bodies and administrative bodies, public enterprises, local self-government units, public office holders and members of their families are not allowed to pursue broadcasting activity, or to be founders or co-founders of broadcasters.<sup>1282</sup>

A broadcaster is allowed to carry out a television or radio broadcast if it has a license for television/radio broadcasting and is registered in the Central Registry of the Republic of Macedonia and has a Head Office and an Editorial Board in the Republic of Macedonia.<sup>1283</sup>

The AAVMS awards licences for specific ratings in terms of viewers or listeners (national, regional or local), and the license-holder gains the right to broadcast radio or television services in the territory for which the license was awarded.<sup>1284</sup>

The AAVMS can revoke the license prior to its expiry date and delete the broadcaster from the Registry of Broadcasters if the broadcaster ceases to meet the conditions under which the

<sup>1277</sup> Law on Audio and Audiovisual Media Services, Official Gazette of the RM, No.184/2013, Article 4.

<sup>1278</sup> <http://www.znm.org.mk/drupal-7.7/en/node/121>, Statute of AJM [accessed on 31.10.2015].

<sup>1279</sup> Ibid.

<sup>1280</sup> Law on Audio and Audiovisual Media Services, Official Gazette of the RM, No.184/2013, Article 37.

<sup>1281</sup> Ibid.

<sup>1282</sup> Ibid.

<sup>1283</sup> Ibid.

<sup>1284</sup> Law on Audio and Audiovisual Media Services, Official Gazette of the RM, No.184/2013, Article 68

licence was awarded.<sup>1285</sup> There is a right to judicial appeal against the decision on revoking the license. The licence-holder has a possibility to submit a complaint before the competent court within 30 days of the receipt of the decision.<sup>1286</sup>

## 2. PRINT AND ON-LINE MEDIA

The law does not contain provisions on print media licences and there are no legal restrictions on entry into the journalistic profession. The law contains a quite restrictive definition on the term journalist, as “a person who collects, analyses, processes, edits and/or classifies information published in the media and is employed by the media publisher or has an employment contract with the latter, or is a person who provides journalist activities as an independent professional (a freelance journalist)”.<sup>1287</sup>

Internet portals and internet television do not fall within the scope of the legislation, in accordance with objections from the AJM that this would entail control over the internet space.<sup>1288</sup>

### 12.1.2 RESOURCES (PRACTICE)

Score: **50**

To what extent is there a diverse and independent media providing a variety of perspectives?

The media outlets in the Republic of Macedonia compete in a small and distorted market covering around two million citizens and with only a small number of companies that can afford advertising. This makes financial sustainability for media outlets almost impossible. There are various media sources, but many important and vital socio-political issues are left without proper coverage, since the majority of media are pro-government.<sup>1289</sup> The negative situation in the media field has long been registered by the OSCE / ODIHR, which monitor media and their work during the pre-election and election periods. Their reports regularly point out frequent imbalances in reporting, uneven time given to the presentation of election candidates, messages sent by the parties, critical tones used in reporting on opposition parties and favouritism towards parties in power, hidden advertising, and other defects.<sup>1290</sup> The TI Macedonia Report on the media coverage of the elections concluded as follows: The overall dominance of the ruling party in the media coverage of the campaign – both in their official capacities and as candidates – meant that contestants were not afforded equal access.<sup>1291</sup>

The EC has expressed “serious concerns about government control over public institutions and the media”,<sup>1292</sup> stating that: “the public broadcaster (MTV) does not fully play its role as the provider of balanced and informative media content, and its political bias was noted by OSCE/ODIHR during both this year’s and last year’s elections.”<sup>1293</sup> The same conclusions,

<sup>1285</sup> Law on Audio and Audiovisual Media Services, Official Gazette of the RM, No.184/2013, Article 82

<sup>1286</sup> Law on Audio and Audiovisual Media Services, Official Gazette of the RM, No.184/2013, Article 84

<sup>1287</sup> Ibid.

<sup>1288</sup> <http://www.mkd.mk/makedonija/politika/ako-vladata-saka-da-se-definira-profesijata-novinar-prvo-neka-ja-definira> “The Government and the Association of Journalists agreed upon leaving the internet portals out of the Law on media” [accessed on November 01, 2014].

<sup>1289</sup> Ibid.

<sup>1290</sup> Media in Macedonia: No Fourth Estate or fourth power, but a paper tiger <http://novatv.mk/index.php?navig=8&cat=18&vest=25634>.

<sup>1291</sup> Baseline Assessment of Macedonian Media, p.9. [http://www.transparency.mk/en/index.php?option=com\\_content&task=blogsection&id=6&Itemid=36](http://www.transparency.mk/en/index.php?option=com_content&task=blogsection&id=6&Itemid=36)

<sup>1292</sup> European Commission, 2014 (Political Criteria): p.5. [http://ec.europa.eu/enlargement/pdf/key\\_documents/2014/20141008-the-former-yugoslav-republic-of-macedonia-progress-report\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2014/20141008-the-former-yugoslav-republic-of-macedonia-progress-report_en.pdf) [accessed on 15.10.2014].

<sup>1293</sup> Ibid.

especially those about the public broadcaster, were drawn by Transparency International Macedonia in its systematic monitoring of the media coverage of the presidential and early parliamentary elections in April 2014.<sup>1294</sup>

A number of media outlets do not have adequate and sustainable resources to be efficient. Several media outlets have been closed due to financial difficulties, for example the weekly magazines “Gragjanski” and “Globus” closed because of the impossibility of securing advertising revenue.<sup>1295</sup>

Until now, no research has been undertaken on the competences, education and skills of journalists, but the general assessment is that the level of professional competences has decreased in the last decade.<sup>1296</sup> This can be linked with the tendency to replace professional journalists with compliant people.<sup>1297</sup>

Additional education is needed for journalists with degrees in disciplines other than journalism in order to gain a broader set of skills and to be able to “capture the social moment” and “be able to see the big picture”.<sup>1298</sup> The need for the permanent continuous education of journalists and editors is one of the commitments of the Declaration on the Promotion of a Principled Attitude for Achieving Constitutional and Legally Guaranteed Freedom of Media in the Republic of Macedonia, agreed in 2014 under the project Support to Independent Media in Macedonia, which is implemented by Transparency International-Macedonia and ERIS from the United Kingdom, and is supported by the European Union through the European Instrument for Democracy and Human Rights (EIDHR).<sup>1299</sup>

Journalists recommend that the definition of the term journalist be deleted from the Law on Media since the definition enables restrictions on the rights and freedom of journalists.<sup>1300</sup>

### 12.1.3 INDEPENDENCE (LAW)

Score: **75**

#### To what extent are there legal safeguards to prevent unwarranted external interference in the activities of the media?

Macedonian legislation guarantees freedom of expression and freedom of the media, including, among other things, the independence of editors, journalists, authors and creators of content or programme associates and other persons, in accordance with rules of the profession.<sup>1301</sup> To guarantee transparency in the operations of the holders of information, all

<sup>1294</sup> [http://www.transparency.mk/en/index.php?option=com\\_content&task=view&id=516&Itemid=35](http://www.transparency.mk/en/index.php?option=com_content&task=view&id=516&Itemid=35) “Media coverage not unbiased, international and local media monitors say” [accessed on 20.11.2014].

<sup>1295</sup> <http://daily.mk/makedonija/zgasnuva-nedelnikot-gragjanski-5> The weekly magazine Gragjanski ceases to exist [accessed on December 01, 2014].

<sup>1296</sup> Snezana Trpevska and Igor Micevski, *Why is the media integrity important – Returning of the public interest in the work of the media and journalism*, (Skopje: Macedonian Media Institute, 2014), pp.109

<sup>1297</sup> Interview with Tamara Chausidis, President of the Independent Trade Union of Journalists and Media Workers, face to face, 10.11.2014;

<sup>1298</sup> Zaneta Trajkoska, Director of the School for Journalism and Public Relations, face to face, 10.11.2014.

<sup>1299</sup> “Declaration for Promotion of Principle Attitude for Achieving Constitutional and Legally Guaranteed Freedom of Media in the Republic of Macedonia” signed on 4.11.2014. The document was signed by six media as weekly newspaper Focus, the web portals Nova TV and Plus info, the daily newspaper *Sloboden Pecat* and TV 24 Vesti, radio network Kanal 77, as well as representatives from civil society organization as: the Macedonian Institute for Media, the Media Development Center, Transparency international Macedonia, Association of Journalists and Independent Union of Journalists and Media Workers. <http://www.transparency.mk/images/stories/press/deklaracija.pdf>

<sup>1300</sup> “Declaration for Promotion of Principle Attitude for Achieving Constitutional and Legally Guaranteed Freedom of Media in the Republic of Macedonia”. [http://www.transparency.mk/index.php?option=com\\_content&task=view&id=1015&Itemid=57](http://www.transparency.mk/index.php?option=com_content&task=view&id=1015&Itemid=57) [accessed on 20.11.2014]

<sup>1301</sup> Law on Media, Official Gazette of the RM, No.184/2013, Article 3.

natural and legal persons have the right to free access to information of a public character.<sup>1302</sup> Furthermore, media publishers are required to be independent in their editorial policy/implementation and are responsible for their work.<sup>1303</sup>

The national broadcaster MTV, which is a public enterprise established by the Parliament through a separate law, is legally obliged not to represent or protect the positions or interests of a specific political party, political, religious or other group, and the programmes it develops and broadcasts are protected from any kind of influence from the Government, political organisations or other centres of economic and political power.<sup>1304</sup>

The law guarantees the right of protection of sources of information.<sup>1305</sup> Journalists have a right not to disclose sources of information or information which might disclose the source, in accordance with international law and the Constitution.<sup>1306</sup> Journalists are obliged to inform their editor-in-chief of the identity of the source before publishing particular information.<sup>1307</sup> Civil liability for damage done to the reputation of persons is regulated.<sup>1308</sup> A journalist should not be requested to reveal the identity of his/her secret source of information.<sup>1309</sup>

Broadcast licences should be awarded via public competition in a transparent manner providing equal, fair and non-discriminatory treatment of all participants in the procedure.<sup>1310</sup>

## 12.1.4 INDEPENDENCE (PRACTICE)

Score:  0

### To what extent is the media free from unwarranted external interference in its work in practice?

According to media specialists, although there are provisions for ensuring transparency and objectivity in the media, these commitments are not fulfilled.<sup>1311</sup> The political parties interfere in the media<sup>1312</sup> and there are serious concerns about government control over the media.<sup>1313</sup>

There are continuous reports regarding the lack of objectiveness and fairness of the media regulator, the AAVMS.<sup>1314</sup> The AAVMS is neither politically nor financially independent.<sup>1315</sup> The Government recently widened its competences over the media by establishing a separate inter-ministerial committee with seven members, of which only one member is from the AAVMS. This undermines the AAVMS as an autonomous regulatory body.<sup>1316</sup>

<sup>1302</sup> Law on Free Access to Information of Public Character, Official Gazette of the RM, No.13/06, 86/08, 6/2010.

<sup>1303</sup> Ibid.

<sup>1304</sup> Law on Audio and Audiovisual Media Services, Official Gazette of the RM, No.184/2013, Article 110.

<sup>1305</sup> Constitution of the Republic of Macedonia, Article 16, <http://www.sobranie.mk/ustav-na-rm.nsp> [accessed on 15.10.2014]

<sup>1306</sup> Constitution of the Republic of Macedonia, Official Gazette of Republic of Macedonia No. 52/1992, Article 16.

<sup>1307</sup> Law on Media, Official Gazette of the RM, No.184/2013, Article 12.

<sup>1308</sup> Law on Civil Liability for Insult and Defamation, Official Gazette of the RM, 143/2012.

<sup>1309</sup> Law on Civil Liability for Insult and Defamation, Official Gazette of the RM, 143/2012.

<sup>1310</sup> Law on Audio and Audiovisual Media Services, Official Gazette of the RM, No.184/2013, Article 69.

<sup>1311</sup> Snezana Trpevska and Igor Micevski, *Why is the media integrity important – Returning of the public interest in the work of the media and journalism*, (Skopje: 2014, Macedonian Media Institute), p.65.

<sup>1312</sup> Ibid.

<sup>1313</sup> [http://ec.europa.eu/enlargement/pdf/key\\_documents/2014/20141008-the-former-yugoslav-republic-of-macedonia-progress-report\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2014/20141008-the-former-yugoslav-republic-of-macedonia-progress-report_en.pdf) [accessed on 25.10.2014], p.5.

<sup>1314</sup> [http://ec.europa.eu/enlargement/pdf/key\\_documents/2014/20141008-the-former-yugoslav-republic-of-macedonia-progress-report\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2014/20141008-the-former-yugoslav-republic-of-macedonia-progress-report_en.pdf) [accessed on 25.10.2014], p.29.

<sup>1315</sup> Ibid

<sup>1316</sup> [http://mdc.org.mk/wp-content/uploads/2014/11/CRM\\_Izvestaj\\_Monitoring-na-AVMU-MIOA-MRT-sobranie-i-mediumi\\_-Okt-2014.pdf](http://mdc.org.mk/wp-content/uploads/2014/11/CRM_Izvestaj_Monitoring-na-AVMU-MIOA-MRT-sobranie-i-mediumi_-Okt-2014.pdf) [accessed on 5.11.2014]

The majority of journalists from the pro-Government media re-established the Macedonian Journalists Association (MAN), which had previously been established in 2002 but was not fully functional. MAN is designed not only to diminish criticism but to impose artificial support for the newly adopted media laws.<sup>1317</sup> MAN is perceived as an organisation to “minimize the role of AJM in ...drafting the media laws”.<sup>1318</sup> More precisely, the AJM and the Independent Trade Union reported multiple concerns with regard to diminishing pluralism, selective enforcement of legislation against journalists critical of the authorities, and undue pressure exercised by owners of media against members of the AJM.<sup>1319</sup>

In addition, the widespread use of defamation actions continues to impinge on freedom of expression.<sup>1320</sup> Furthermore, labour rights are still inadequately enforced, which also contributes towards the continuing problem of self-censorship.<sup>1321</sup> Many journalists cannot rely on any of the basic rights stipulated in labour law, since they work without contracts, insurance, paid vacation, overtime or sick leave, and their minimum wage is not regulated.<sup>1322</sup>

In October 2013, the Republic of Macedonia became the only country in the region with a journalist in prison, i.e. Mr. Kezharovski, who was sentenced to four and a half years for allegedly revealing the identity of a protected witness in a murder trial published in a journalistic text in 2008.<sup>1323</sup> Kezharovski was held in detention for more than 600 days<sup>1324</sup> after being arrested for alleged revealing the identity of a protected witness.<sup>1325</sup> He was well known for his political blog, which was critical of the Government.<sup>1326</sup>

There are concerns regarding cases of alleged intimidation by the authorities through multiple legal procedures instigated against media and journalists that criticize its work.<sup>1327</sup> This has a negative impact in the form of silencing those sections of the media that are critical of the authorities.<sup>1328</sup>

A major broadcaster and three daily newspapers were closed as a consequence of a lawsuit against tax fraud and money laundering in July 2011.<sup>1329</sup> In December 2010, the owner of A1 TV, his daughter and 17 other persons employed by or collaborating with Plus Produkcija were arrested for failure to pay tax in a massive police operation criticized by civil society as disproportional and abusive.<sup>1330</sup> In June 2012, another enterprise belonging to the same media group was targeted once again by a disproportionate penalty when the Broadcasting Council (now the AAVMS) revoked the licence of A2 TV for allegedly failing to meet the licence criteria for its programming format by dedicating more than 65 per cent of its airtime to entertainment programming, thereby providing insufficient educational and news programming.<sup>1331</sup>

<sup>1317</sup> Ibid

<sup>1318</sup> Interview with Tamara Chausidis, President of the Independent Trade Union of Journalists and Media Workers, face to face, 10.11.2014.

<sup>1319</sup> Ibid.

<sup>1320</sup> Ibid.

<sup>1321</sup> Ibid.

<sup>1322</sup> Association of Journalists of Macedonia, *Summary of the media situation in Macedonia*, (Skopje: Association of Journalists of Macedonia, 2014), p. 4.

<sup>1323</sup> Association of Journalists of Macedonia, 2014: p. 3.

<sup>1324</sup> Article: Kezarovski stays in detention for more than 558 days, <http://plusinfo.mk/vest/5923/kezarovski-cmae-558-dena-vo-pritvor>, November 2014

<sup>1325</sup> Ibid

<sup>1326</sup> Ibid

<sup>1327</sup> United Nations, General Assembly, *Report of the Special Rapporteur on the promotion and protection and protection of the right to freedom of opinion and expression, Frank La Rue*, 16 May 2011, pp.6. [http://www2.ohchr.org/english/bodies/hrcouncil/docs/17session/A.HRC.17.27\\_en.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/17session/A.HRC.17.27_en.pdf) [accessed on 7.11.2014]

<sup>1328</sup> Ibid.

<sup>1329</sup> Ibid.

<sup>1330</sup> Ibid.

<sup>1331</sup> Ibid.

One of the most striking examples of the threats to the operation of the media took place on 24 December 2012, when journalists reporting on the parliamentary session were expelled from the Parliament by security forces.<sup>1332</sup> So far no public official has been held liable for the breach of Article 16 of the Constitution, which guarantees citizens the right to objective information.<sup>1333</sup>

The 2014 EC Progress Report noted that there is indirect state control of media output through government advertising and government-favoured media outlets.<sup>1334</sup> State advertising has intensified since 2008, which has been an incentive for media owners to fight over public resources and has created stronger political-clientelist linkages between the Government and the media.<sup>1335</sup> The Government is an important purchaser of publicity, and representatives of civil society have highlighted the lack of transparency in the allocation of state resources among media groups and the potential bias in resource allocation in favour of enterprises sympathetic to the Government.<sup>1336</sup> Government spending on advertising is directed only towards pro-government media, giving them a significant financial advantage.<sup>1337</sup> The Government came out top among the 50 largest advertisers in the country in 2012, and in 2013 it was in first place with twice as many campaigns in the private media as the largest local mobile operator, T-Mobile.<sup>1338</sup>

A further example of the lack of independence of the media is the fact that 34 media outlets donated to the governing party (VMRO-DPMNE) during the local elections in 2013.<sup>1339</sup> There was one similar case in 2011, when the former TV channel, A1, donated to the opposition political party.<sup>1340</sup>

Regarding the right to free access to public information 77% of journalists consider it difficult to access information.<sup>1341</sup>

The right of protection for sources of information is not respected. In one case, (the Kezarovski case), the judge insisted that the identity of the protected witness should be revealed.<sup>1342</sup>

There are no rules allowing the government to control information disseminated by the media, and the Constitution of the Republic of Macedonia forbids censorship and guarantees freedom of speech, public address, public information, and the establishment of institutions for public information.<sup>1343</sup>

The Law on Liability for Insult and Defamation and the Law on Media contain weak provisions for non-judicial remedies, such as the right of reply or correction, and there is a need for the

<sup>1332</sup> <http://globalvoicesonline.org/2012/12/25/journalists-opposition-thrown-out-of-macedonian-parliament-amid-street-protests/> [accessed on 10.11.2014]

<sup>1333</sup> Association of Journalists of Macedonia, *Summary of the media situation in Macedonia*, (Skopje: Association of Journalists of Macedonia, 2014), p. 4.

<sup>1334</sup> European Commission, (Political Criteria), 2014: p.12. [http://ec.europa.eu/enlargement/pdf/key\\_documents/2014/20141008-the-former-yugoslav-republic-of-macedonia-progress-report\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2014/20141008-the-former-yugoslav-republic-of-macedonia-progress-report_en.pdf) [accessed on 15.10.2014].

<sup>1335</sup> Trpevska and Micevski, 2014: pp.89

<sup>1336</sup> <http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session26/Pages/ListReports.aspx>, "Report of the Special Rapporteur on the promotion and protection and protection of the right to freedom of opinion and expression, Frank La Rue", p.10.

<sup>1337</sup> European Commission, 2013: p.23, [http://ec.europa.eu/enlargement/pdf/key\\_documents/2013/package/mk\\_rapport\\_2013.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2013/package/mk_rapport_2013.pdf) [accessed 25.10.2014]

<sup>1338</sup> *ibid*

<sup>1339</sup> Trpevska and Micevski, 2014: p.97.

<sup>1340</sup> State Audit Office Report [http://www.dzr.mk/Uploads/3\\_TRET\\_VKUPEN\\_SDSM.pdf](http://www.dzr.mk/Uploads/3_TRET_VKUPEN_SDSM.pdf)

<sup>1341</sup> <http://freeinfo.mk/wp-content/uploads/2012/11/istrazuvanje-za-primena-na-pravoto.pdf> "Research on the use of the right to free access to information of public character", Center for Civic Communications, pp.12 [accessed on 20.11.2014]

<sup>1342</sup> Foundation Open Society Macedonia, *Media Mirror, the Freedom of Media under Strong Pressure of the Government*, (Skopje: Foundation Open Society Macedonia 2013) <http://nvoinfocentar.mk/wp-content/uploads/2014/05/No5Mediumsko-ogledalo.pdf> [accessed 20.11.2014]

<sup>1343</sup> Constitution of the Republic of Macedonia, <http://www.sobranie.mk/ustav-na-rm.nspix> Article 16 [accessed on 15.10.2014]



development of an alternative and less draconian mechanism for dealing with defamation issues.<sup>1344</sup>

## GOVERNANCE

### 12.2.1 TRANSPARENCY (LAW)

Score: **75**

**To what extent are there provisions to ensure transparency in the activities of the media?**

The law lacks provisions regarding the true (beneficial) ownership of the media.<sup>1345</sup> There are legal rules regarding transparency of media ownership. The law obliges print media and broadcast companies to publish data on their ownership and sources of financing, as well as to inform the AAVMS before changing the ownership structure.<sup>1346</sup>

Media publishers are obliged to publish information related to internal staff.<sup>1347</sup>

Media publishers are obliged to publish information related to reports in visible place, including the author's identity, copyright information, and the date of production (month and year). There are no obligations on the disclosure of information related to reporting and editorial policies.

### 12.2.2 TRANSPARENCY (PRACTICE)

Score: **25**

**To what extent is there transparency in the media in practice?**

Transparency in the media is not sufficient in practice and the existing legal provisions regarding transparency issues need to be respected and enforced.<sup>1348</sup>

The AAVMS website contains registries of television channels, radio stations and print media outlets, and registration is made upon request. Nevertheless, the ownership of the media is generally not transparent.<sup>1349</sup> In an interview conducted for this survey, the head of the journalists' trade union gave the opinion that, given the Government is the biggest advertiser it can be assumed that it is financing (and is the hidden owner of) the majority of the media.<sup>1350</sup> In addition, the financing of media entities is not transparent, given the fact that media companies do not disclose their sources of financing.<sup>1351</sup>

<sup>1344</sup> European Commission, 2014, (Political Criteria); p.45. [http://ec.europa.eu/enlargement/pdf/key\\_documents/2014/20141008-the-former-yugoslav-republic-of-macedonia-progress-report\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2014/20141008-the-former-yugoslav-republic-of-macedonia-progress-report_en.pdf) [accessed on 12.12.2014]

<sup>1345</sup> European Commission, 2014 (Political Criteria); p.45. [http://ec.europa.eu/enlargement/pdf/key\\_documents/2014/20141008-the-former-yugoslav-republic-of-macedonia-progress-report\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2014/20141008-the-former-yugoslav-republic-of-macedonia-progress-report_en.pdf) [accessed on 15.10.2014]

<sup>1346</sup> Law on Audio and Audiovisual Media Services, Official Gazette of the RM, No.184/2013, Article 41

<sup>1347</sup> Law on Media, Official Gazette of the RM, No.184/2013, Article 14

<sup>1348</sup> European Commission, 2014 (Political Criteria); p.45 [http://ec.europa.eu/enlargement/pdf/key\\_documents/2014/20141008-the-former-yugoslav-republic-of-macedonia-progress-report\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2014/20141008-the-former-yugoslav-republic-of-macedonia-progress-report_en.pdf) [accessed on 15.10.2014]

<sup>1349</sup> Ibid.

<sup>1350</sup> Interview with Tamara Chaushidis, president of the Independent Trade Union of Journalists and Media Workers, face to face, 10.11.2014;

<sup>1351</sup> Ibid.

There are three private news agencies, but their websites do not contain explicit information on the ownership structure. The internet sector is the least transparent regarding ownership structure.<sup>1352</sup>

Print media and broadcast companies publish the data of the company and the head office address, the editorial board, the name of the media publisher's legal representative, the name and surname of the editor-in-chief, the name and address of the printing house, and the date of print or reprint, as well as, in the case of print media, the number of printed copies.<sup>1353</sup>

### 12.2.3 ACCOUNTABILITY (LAW)

Score: **50**

To what extent are there legal provisions to ensure that media outlets are answerable for their activities?

In Macedonia there is a relatively strong legal framework governing the accountability of media entities; however, the laws in this sector are subject to frequent amendments.

The regulatory agency in the media sector, the AAVMS, is the oldest regulator in the country and acts as an independent, non-profit regulatory body with public competences.<sup>1354</sup> Broadcasters are obliged to submit to the AAVMS a written report on the implementation of the obligations defined in the radio or television broadcasting licence.<sup>1355</sup> According to Article 6 of the Law on Audio and Audio-visual Media Services, the Agency's major responsibilities are as follows: ensuring transparency in the work of broadcasters; ensuring protection and enhancing pluralism in the sphere of audio and audio-visual media services; undertaking measures against broadcasters when provisions of the Law and other rules are violated; adopting acts derived from the Law; issuing and revoking broadcast permits; monitoring broadcasters' work; and prescribing the manner of measuring the number of viewers or listeners of broadcasted programmes and conducting the process of measurement.<sup>1356</sup>

Parliament appoints the members of the AAVMS Council for a seven-year term of office upon proposals from authorised nominators (i.e., AJM; the Inter-University Conference; the Bar Association of the Republic of Macedonia; the Committee for Elections and Appointments of the Parliament; and the Association of Local Self-Government Units in the Republic of Macedonia).<sup>1357</sup> The Council elects the Agency director through public competition.<sup>1358</sup> The AAVMS is accountable for its operation to the Assembly and submits a report on its work to the Assembly.<sup>1359</sup>

Broadcasters are obliged to submit a written report to the AAVMS on the implementation of the obligations defined in the radio or television broadcasting licence, and particularly on the implementation of the programme concept, not later than 31 March of the current year.<sup>1360</sup>

<sup>1352</sup> Ibid.

<sup>1353</sup> Law on Media, Official Gazette of the RM, No.184/2013, Article 14.

<sup>1354</sup> Law on Audio and Audiovisual Media Services, Official Gazette of the RM, No.184/2013, Article 4.

<sup>1355</sup> Ibid.

<sup>1356</sup> Law on Audio and Audio-visual Media Services, Official Gazette of the RM, No.184/2013, from: [http://www.avmu.mk/index.php?option=com\\_content&view=article&id=1160&Itemid=32&lang=mk](http://www.avmu.mk/index.php?option=com_content&view=article&id=1160&Itemid=32&lang=mk) [accessed on 15.10.2014].

<sup>1357</sup> Ibid.

<sup>1358</sup> Ibid.

<sup>1359</sup> Ibid.

<sup>1360</sup> Law on Media, Official Gazette of the RM, No.184/2013, Article 15

The law also establishes the rules in case of insult and libel. Victims of libel may submit a request for disclosure of response, retraction or correction within seven days of his/her notifying of the published information, but not later than one month after its publication.<sup>1361</sup> In such cases the media is obliged to publish a denial, reply or correction within two days of the submission of the application, or in the next edition number for periodic editions, or in other media for non-periodic editions.<sup>1362</sup> The publication of the denial, reply or correction can be rejected if it is not submitted in a timely manner, if it contains an insult or libel, or if it violates the legally protected third party interests.<sup>1363</sup>

#### 12.2.4 ACCOUNTABILITY (PRACTICE)

Score: **25**

##### To what extent can media outlets be held accountable in practice?

Despite the relatively strong legal framework governing the accountability of media entities, the laws are subject to frequent amendments and are often insufficiently implemented.<sup>1364</sup>

The AAVMS as a regulatory authority monitors the content of programmes, media ownership and market concentration, and it has extended monitoring activity to regional television channels. The control of broadcasters is transparent, as the agency publishes regular monitoring reports. Decisions containing measures against broadcasters that have been found to have acted in breach of law, together with information on AAVMS's control mechanisms, are available on the AAVMS website.<sup>1365</sup>

The media has blogs, chat forums, readers' letters sections and various forms allowing for public interaction, all of which are well used, especially those on social media and internet portals. Answers and responses from reporters and editors are lacking, however, except in readers' letters sections in print media, where there is usually an answer from the person responsible.

Interlocutors from within the media say that the media usually grant a right to reply and correct erroneous information in a timely manner. However, the experience of TI Macedonia suggests otherwise. In the months of June and August 2015, TI Macedonia was accused of publishing incorrect facts as regards its project work and financing. Pro-government media outlets (Dnevnik and Vecer) failed to grant TI Macedonia a right of reply and failed to correct erroneous information in a timely manner. TI Macedonia subsequently filed a case before the Council of Ethics for the Media, which found in favour of TI Macedonia.<sup>1366</sup>

#### 12.2.5 INTEGRITY MECHANISMS (LAW)

Score: **50**

##### To what extent are there provisions in place to ensure the integrity of media employees?

<sup>1361</sup> Law on Civil Liability for Insult and Defamation, Official Gazette of the RM, No. 143/2012, Article 14

<sup>1362</sup> Ibid.

<sup>1363</sup> Ibid.

<sup>1364</sup> Trpevska and Micevski, 2014: p.51.

<sup>1365</sup> Slobodan Tomic, Dr. Slagjana Taseva, Ivana Popovic, Aleksandar Jovancic, Zorica Vojinovic, *Agency Transparency and Accountability: Comparative Analysis of Five Regulated Sectors in Serbia and Macedonia*, (Belgrade: Regional Research Promotion Programme in the Western Balkans (RRPP), 2015).

<sup>1366</sup> [http://www.transparency.mk/en/index.php?option=com\\_content&task=view&id=532&Itemid=30](http://www.transparency.mk/en/index.php?option=com_content&task=view&id=532&Itemid=30) [accessed on 15.10.2014]  
Denial [http://www.transparency.mk/index.php?option=com\\_content&task=view&id=1076&Itemid=57](http://www.transparency.mk/index.php?option=com_content&task=view&id=1076&Itemid=57)

The legal framework does not provide sufficient safeguards to ensure the integrity of media employees.

The Association of Journalist of Macedonia (AJM) is an independent, non-governmental and non-political organisation whose purpose is to be the protector and promoter of professional media standards and freedom of expression.<sup>1367</sup> Since 2001 the AJM has had a Code of Ethics for Journalists of Macedonia.<sup>1368</sup> According to the Code, the main duty of journalists is to respect the truth and the right of the public to be informed, in accordance with Article 16 of the Constitution of the Republic of Macedonia.<sup>1369</sup>

The Council of Honour is responsible for observing the principles of the Code.<sup>1370</sup> The Council is the sole self-regulatory body of journalists in Macedonia.<sup>1371</sup>

The Council of Ethics of the Media (founded by most of the print and electronic media) was established at the end of 2013 as a self-regulatory body.<sup>1372</sup> It has a Committee on Appeals composed of seven members, which decides on irregularities in journalists' texts.<sup>1373</sup> Each citizen, public entity and journalist can submit an appeal against a media outlet (not individual journalists) for any breaches of professional and ethical standards.<sup>1374</sup>

Gifts, benefits and hospitality are viewed by journalists as a form of pressure. However, there are no individual Codes of Conduct for media outlets except the Code of Ethics of the AJM, although each media outlet should have a Code of Conduct<sup>1375</sup> and there should be ethical provisions in the law related to media.<sup>1376</sup>

## 12.2.6 INTEGRITY MECHANISMS (PRACTICE)

Score: **25**

### To what extent is the integrity of media employees ensured in practice?

Media outlets do not have codes of conduct, despite the requirement for each outlet to have such a code.<sup>1377</sup> The level of respect for ethical principles is low, and journalists are often politically biased in their reporting since they are prone to influence and control by political and business interests (see independence (practice)).<sup>1378</sup> Journalists lack the capacity and strength to challenge the government and do not fulfil their role as a democratic check on power.<sup>1379</sup>

<sup>1367</sup> <http://www.znm.org.mk/drupal-7.7/en/node/121>, Statute of AJM [accessed on 31.10.2015]

<sup>1368</sup> <http://www.znm.org.mk/drupal-7.7/en/node/441>, Code of Journalists of Macedonia [accessed on 1.11.2014]

<sup>1369</sup> Ibid.

<sup>1370</sup> Ibid.

<sup>1371</sup> Ibid.

<sup>1372</sup> <http://www.novamakedonija.com.mk/NewsDetal.asp?vest=122013729567&id=9&setlzdanie=23057> [accessed on 31.10.2014]

<sup>1373</sup> Ibid.

<sup>1374</sup> Ibid.

<sup>1375</sup> Interview with Tamara Chausidis, president of the Independent Trade Union of Journalists and Media Workers, face to face, 10.11.2014; Zaneta Trajkoska, director of the School for Journalism and Public Relations face to face, 10.11.2014; Biljana Petkovska, director of the Macedonian Institute for Media face to face, 10.11.2014

<sup>1376</sup> Ibid.

<sup>1377</sup> Interview with Tamara Chausidis, president of the Independent Trade Union of Journalists and Media Workers, face to face, 10.11.2014; Zaneta Trajkoska, director of the School for Journalism and Public Relations face to face, 10.11.2014; Biljana Petkovska, director of the Macedonian Institute for Media face to face, 10.11.2014

<sup>1378</sup> Ibid.

<sup>1379</sup> Trpevska and Micevski, 2014: p.58.

While some journalists report objectively, others only rarely rely on multiple sources and certain journalists act as a mouthpiece for the government.<sup>1380</sup> When a story is related to politics or inter-ethnic relations, journalists tend to use only one source of information and tend to base their stories only on official government or institutional announcements (for instance, they only interview the police, not the victim).<sup>1381</sup>

Gifts and benefits, as discussed under independence (practice), are one form of pressure on and means of influencing journalists. According to a survey, conducted by the AJM 51% of journalists receive invitations for luxurious trips or other benefits, while 49% of journalists are subjected to threats of dismissal in order to make them report in a particular way. 24% of journalists said they experience direct censorship, and 16% said they experience bullying.<sup>1382</sup>

## ROLE

### 12.3.1 INVESTIGATION AND EXPOSURE OF CASES OF CORRUPTION PRACTICE

Score: **25**

#### To what extent is the media active and successful in investigating and exposing cases of corruption?

Investigative journalism focusing on corruption and malpractice in politics and business hardly exists in Macedonia due to pressure on the media.<sup>1383</sup> Several informative programmes have been withdrawn without explanation, although the reason is mainly due to their criticism of the Government.<sup>1384</sup> The Government's influence on the editorial policy of media outlets is apparent on a daily basis.<sup>1385</sup>

International donors attempt to support investigative journalism. Three organizations have supported investigative journalism in past years: the Balkan Investigative Reporting Network (BIRN), Supporting Investigative Journalism (SCOOP), and the United States Agency for International Development (USAID).<sup>1386</sup> BIRN and USAID have promoted a website for enhancing investigative journalism.<sup>1387</sup> The TI Macedonia project has used results and cases from its advocacy and legal advice center (ALAC) to advocate for the implementation of whistle-blower protection policies.<sup>1388</sup> A new website has been launched for investigating Macedonian media ownership,<sup>1389</sup> which has disclosed that offshore companies whose owners not transparent are owners of internet portals.<sup>1390</sup>

<sup>1380</sup> Interview with Zaneta Trajkoska, director of the School for Journalism and Public Relations, face to face, 10.11.2014

<sup>1381</sup> Interview with Snezana Lupevska, journalist of the "Code" (face to face), 11.11.2014.

<sup>1382</sup> Survey on the Condition of Journalism, AJM, Sept.2014 <http://www.znm.org.mk/drupal-7.7/sites/default/files/Anketa%20novinari%20ZNM%20September%202014.pdf> [accessed on 12.12.2014].

<sup>1383</sup> Trpevska and Micevski, 2014: p.110.

<sup>1384</sup> Ibid.

<sup>1385</sup> Ida Protugjer Veljkovikj, Journalist <http://mediapedia.mk/istrazuvanja/their-thoughts-media-ownership>

<sup>1386</sup> Trpevska and Micevski, 2014: p.110.

<sup>1387</sup> <http://prizma.birn.eu.com/%D0%BC%D0%BA/%D1%81%D1%82%D1%80%D0%B0%D0%BD%D0%B0%D0%BD%D0%B0%D1%81%D0%BB%D0%BE%D0%B2%D0%BD%D0%B0> [accessed on 15.10.2014]

<sup>1388</sup> [http://www.transparency.mk/index.php?option=com\\_content&task=blogcategory&id=16&Itemid=69](http://www.transparency.mk/index.php?option=com_content&task=blogcategory&id=16&Itemid=69) [accessed on 05.10.2015].

<sup>1389</sup> <http://mediapedia.mk/> [accessed on 15.10.2014].

<sup>1390</sup> Interview with Tamara Chaushidis, president of the Independent Trade Union of Journalists and Media Workers, face to face, 10.11.2014;

*Focus*, a weekly magazine, and *Nova Makedonija*, a daily newspaper, frequently publish investigative stories. *Focus* investigates various forms of organized crime and corruption, but its editors have faced lawsuits for defamation.<sup>1391</sup> In a case for libel against *Focus* in 2006, the owner was fined 30,000 EUR for disclosing information about secret bank accounts of the former president of the country.<sup>1392</sup> In 2011, the editor-in chief of *Focus* was fined 15,000 EUR in a case in which the editor-in-chief was sued by the former Minister for Foreign Affairs.<sup>1393</sup> In 2014, *Focus* was fined 9,300 EUR and the AJM successfully organized solidarity fund-raising to help its media colleagues.<sup>1394</sup> The owner of *Focus* died in a car accident in March 2013, causing public controversy.<sup>1395</sup> As mentioned above, under Independence (practice), an investigative journalist from the newspaper *Nova Makedonija* was imprisoned.

There is one investigative TV programme, named *Code*, though it has recently confined its investigations mostly to social affairs.

There are few high-profile cases investigated by journalists. CSOs often create debates and lobby for legislative changes.<sup>1396</sup>

There are no associations of investigative journalists or departments for investigative journalism at the state university.<sup>1397</sup>

### 12.3.2 INFORMING THE PUBLIC ABOUT CORRUPTION AND ITS IMPACT

Score: **0**

#### To what extent is the media active and successful in informing the public on corruption and its impact on the country?

There are no specific programmes run by the media for education of the public on corruption issues and the fight against corruption.<sup>1398</sup>

There are two main national broadcasting electronic media, 24 Vesti and Telma TV, as well as some web portals, including Nova, Plusinfo and SCOOP, and one printed media (*Focus* magazine) that are critical of government activities and publish information and investigative stories on corruption, as well as criticism of government malpractice. This creates a situation of media 'darkness' in which the majority of citizens have not even heard of the revelations from the wiretapping scandal.<sup>1399</sup>

<sup>1391</sup> Trpevska and Micevski, 2014: p.111.

<sup>1392</sup> Ibid.

<sup>1393</sup> Ibid.

<sup>1394</sup> <http://novatv.mk/index.php?navig=8&cat=2&vest=17519> "Successful Action of Solidarity with Colleagues".

<sup>1395</sup> Trpevska and Micevski, 2014: p.111.

<sup>1396</sup> Interview with Zaneta Trajkoska, director of the School for Journalism and Public Relations face to face, 10.11.2014

<sup>1397</sup> Ibid.

<sup>1398</sup> Interview with Tamara Chausidis, President of the Independent Trade Union of Journalists and Media Workers, face to face, 10.11.2014; Zaneta Trajkoska, director of the School for Journalism and Public Relations face to face, 10.11.2014; Biljana Petkovska, director of the Macedonian Institute for Media, face to face, 10.11.2014.

<sup>1399</sup> [http://www.iri.org/sites/default/files/wysiwyg/2015-07-13\\_survey\\_of\\_macedonian\\_public\\_opinion\\_june\\_6-15\\_2015.pdf](http://www.iri.org/sites/default/files/wysiwyg/2015-07-13_survey_of_macedonian_public_opinion_june_6-15_2015.pdf) [accessed on 15.10.2014].

### 12.3.3 INFORMING THE PUBLIC ON GOVERNANCE ISSUES

Score: **25**

#### To what extent is the media active and successful in informing the public on the activities of the government and other governance actors?

Media outlets daily inform the public about government activities, although they do so in a biased manner. It is extremely difficult for the public to easily obtain objective and unbiased information about government activities through the media. Critical journalism is more prevalent in Internet media entities (internet portals and internet television) established by professional journalists who previously worked in institutions that were subject to severe political pressure.<sup>1400</sup>

#### RECOMMENDATIONS

- R1.** Journalist associations should adopt unified codes of conduct for the media.
- R2.** Journalist associations should propose legal amendments to strengthen ethical behaviour and integrity in the media and among journalists
- R3.** The Government should amend the Law on Media and ensure that political advertisements are not allowed in the public media service and are regulated in the media with national licences.
- R4.** The tax authority should develop effective mechanisms for oversight over media-related donations to political parties.

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<sup>1400</sup> Ibid.





# 13. CIVIL SOCIETY

## SUMMARY

The Constitution guarantees citizens the right to free association. Legislation has existed since 1998 to regulate CSOs, with the latest Law on Associations and Foundations being passed in 2010.<sup>1401</sup> The procedure for registering a CSO is relatively simple, quick and inexpensive.<sup>1402</sup> In December 2014, some 13,654 CSOs were registered, of which 4,156 were re-registered or newly registered. CSOs can freely express and promote their positions and opinions, raise initiatives and participate in building public opinion and policy-making. However, CSOs are subject to political pressure, including frequent defamation and libel lawsuits lodged against them.<sup>1403</sup> CSOs have also been subjected to violence and intolerance in recent years: for instance, there was an attack on an LGBT center and there have been homophobic articles in the media,<sup>1404</sup> while those who have been critical of the Government have been denounced as traitors. TI Macedonia<sup>1405</sup> faced AN attack from pro-government media on account of its advocacy campaign on the protection of whistle-blowers.<sup>1406</sup>

CSOs lack financial resources, a problem consistently raised in the EC Progress Reports: “Granting of state funds to civil society organisations has not yet been fully regulated, leaving the sector largely dependent on donor funding” (EC PR 2014 p.10). Research by the Macedonian Center for International Cooperation and Civicus shows that, almost 60% of organisations rely on foreign foundations and 25% rely on assistance from the EU.

**OVERALL PILLAR SCORE: 43.75/100**

<sup>1401</sup> Law on Associations and Foundations, Official Gazette of the RM, No.52/2010.

<sup>1402</sup> Interview with Zoran Stojkovski, Executive Director of CSO CIRa, face to face 27.01.2015; Interview with Emina Nuredinovska, Macedonian Center for International Cooperation, face to face 28.01.2015.

<sup>1403</sup> Kire Vasilev, *EU and the activist organization in the Republic of Macedonia*, (Skopje: European Policy Institute, 2014), p.7 <http://www.epi.org.mk/docs/EU%20i%20aktivistickite%20organizacii%20vo%20Republika%20Makedonija.pdf> (accessed on 21.01.2015)

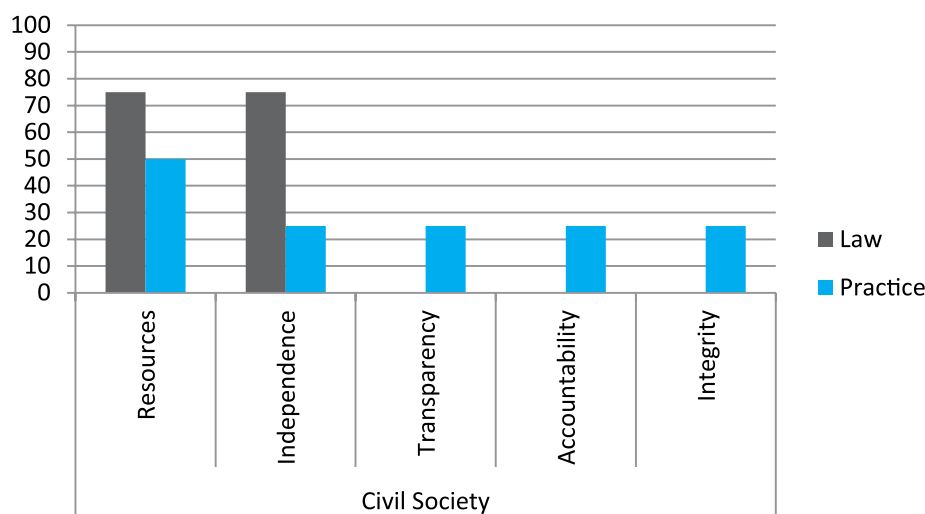
<sup>1404</sup> Ibid.

<sup>1405</sup> <http://dnevnik.mk/?ItemID=64117EA064C3D64E90A1DAF69D0CB3FD> 01.06.2015

<sup>1406</sup> “Whistleblower protection will provide for a legal state”, <http://www.novamakedonija.com.mk/NewsDetail.asp?vest=1014141053149&id=12&setlzdanie=23297>

| DIMENSION                     | INDICATOR                   | LAW | PRACTICE |
|-------------------------------|-----------------------------|-----|----------|
| <b>Capacity</b><br>56.2 /100  | Resources                   | 75  | 50       |
|                               | Independence                | 75  | 25       |
| <b>Governance</b><br>25 / 100 | Transparency                | /   | 25       |
|                               | Accountability              | /   | 25       |
|                               | Integrity                   | /   | 25       |
| <b>Role</b><br>50 / 100       | Hold government accountable |     | 50       |
|                               | Policy reform               |     | 50       |

Pillar score per Law and Practice



## STRUCTURE AND ORGANISATION

Up until the adoption of the new Law on Associations and Foundations in 2010, the number of CSOs was 11,350.<sup>1407</sup> By March 2012, only 3,732 CSOs had re-registered according to obligations set out in the 2010 law.

Analysis published in 2011 by CIVICUS describes civil society as “moderately developed” in terms of institutions and values.<sup>1408</sup> According to data published by the Financial Intelligence Unit concerning 11.350 CSOs, their budgets are very small and only 5 CSOs have an annual budget of more than 100,000,000 MKD (1.6 million EUR).<sup>1409</sup>

In Macedonia there is no tradition of making donations to CSOs. There is also no tradition of volunteerism. CSOs dealing with human rights and equality are perceived as having the most influence and as operating with low levels of corruption. Generally there is a lack of human capacity and financial resources.<sup>1410</sup>

<sup>1407</sup> Strategy for Cooperation with the NGOs (2012-2017). [http://www.nvosorabotka.gov.mk/index.php?option=com\\_docman&task=cat\\_view&gid=22&Itemid=37](http://www.nvosorabotka.gov.mk/index.php?option=com_docman&task=cat_view&gid=22&Itemid=37).

<sup>1408</sup> Ibid., p.12

<sup>1409</sup> Ibid., p.13 based on the Presentation of the FIU 03 March 2011 “Monitoring of the subjects and methods for its performance.

<sup>1410</sup> Technical Assistance to Civil Society Organisations in the IPA Countries, *Macedonia Needs Assessment Report*, (Skopje: TACSO, 2010), p.9.

Dialogue and cooperation between government and civil society is formally established.<sup>1411</sup>

Due to the economic situation and the high rate of unemployment (28%), CSOs are perceived as opportunities for employment. The practice of CSOs charging membership fees is not well developed in Macedonia. Financial resources for CSO activities are mainly based on donations. As regards organizational structure, the majority of CSOs do not have well-established internal structures that ensure separation between the executive and governing structures.

The biggest challenge facing CSOs is the withdrawal of various donors from Macedonia given the low level of financing from the state, individual donations and private sector donations.<sup>1412</sup> Regarding the state budget, over the last three years 4.2 million EUR has been allocated to CSOs, trade unions, religious organizations and political parties.<sup>1413</sup> Resources from the lottery are a significant source of revenue for CSOs; however, although the law states that 50% of lottery revenues should be allocated to CSOs, in fact only between 7 and 12% of such revenues are allocated.<sup>1414</sup>

## ASSESSMENT

### CAPACITY

#### 13.1.1. RESOURCES (LAW)

Score: **75**

#### To what extent does the legal framework provide an environment conducive to civil society?

CSOs are registered according to the new Law on Associations and Foundations adopted in 2010, although some CSOs that were registered under the previous law from 1998 are still operating.<sup>1415</sup> The procedure of registering CSOs is relatively simple, quick and inexpensive.<sup>1416</sup> According to a survey of CSOs conducted by the MCIC, the registration process is simple and quick in 84% of cases.<sup>1417</sup> The Central Registry of the Republic of Macedonia is responsible for registrations, and once registered the organization has the status of legal entity.<sup>1418</sup>

When CSOs are banned, they can appeal to the competent appellate court.<sup>1419</sup>

Non-registered organizations are not forbidden by law and are functional in practice.<sup>1420</sup> For instance, non-registered CSOs organised the March of Tolerance as well as the Movement against Price Increases in Electricity Provision (AMAN).<sup>1421</sup>

<sup>1411</sup> Website of the unit for cooperation with the NGOs in the General Secretariat of the Government <http://www.nvosorabotka.gov.mk/>.

<sup>1412</sup> Ibid.

<sup>1413</sup> Emina Nuredinovska and Simona Oggenovska, *Report on the Enabling Environment for Development of the CSOs*, (Skopje: MCIC, 2014), p. 19

<sup>1414</sup> Ibid.

<sup>1415</sup> Interview with Zoran Stojkovski, Executive Director of CSO CIRa, face to face 27.01.2015

<sup>1416</sup> Interview with Zoran Stojkovski, Executive Director of CSO CIRa, face to face 27.01.2015; Interview with Emina Nuredinovska, Macedonian Center for International Cooperation, face to face 28.01.2015

<sup>1417</sup> Nuredinovska and Oggenovska, 2014: p. 19

<sup>1418</sup> Ibid.

<sup>1419</sup> Law on Associations of Citizens and Foundations (Official Gazette of the RM, no. 52/2010)

<sup>1420</sup> Nuredinovska and Oggenovska, 2014: p. 19

<sup>1421</sup> Interview with Zoran Stojkovski, Executive Director of CSO CIRa, face to face 27.01.2015

Article 20 (freedom of association) and Article 21 (freedom of assembly) of the Constitution guarantee freedom of conviction, conscience, thought and public expression of thought, speech, public address and public information. The country has ratified the relevant European and international legal instruments guaranteeing and regulating the protection of freedom of expression, such as the European Convention on Human Rights and the UN Covenant on Civil and Political Rights. In this sense, CSOs are free to engage in advocacy and to criticize the government. They can freely express and promote their positions and opinions, raise initiatives and participate in building public opinion and policy-making.<sup>1422</sup>

The tax system is not favourable to CSOs. Tax exemptions/stimulations can be granted to CSOs that receive donations for the promotion of public interest, such as activities in the fields of human rights, culture, ethics, education, environment, science, etc.<sup>1423</sup> The government has established a Committee for Organisations of Public Interest which grants CSOs the status of organizations of public interest. However, the administrative procedure for granting such status is complicated and creates an additional burden for CSOs and donors.<sup>1424</sup> There are no tax incentives for CSOs: CSOs are treated by the tax system in the same way as other legal persons and there is no indirect state support for CSOs.<sup>1425</sup> Income tax on the material and travel expenses of CSOs is the same as for other legal entities.<sup>1426</sup> One positive aspect is that there are no restrictions on the amount of income that CSOs may earn from economic activities.<sup>1427</sup>

### 13.1.2 RESOURCES (PRACTICE)

Score: **50**

#### To what extent do CSOs have adequate financial and human resources to function and operate effectively?

The functioning of CSOs is quite different in practice, given the widespread use of defamation and libel lawsuits to suppress opposition, as well as the role of pro-government media active in labelling the critical CSO groups.<sup>1428</sup>

One of the biggest problems for CSOs is the lack of sustainable financial resources. Almost 60% of CSOs rely on foreign organisations for resources: for example, the EU is one of the largest donors to CSOs.<sup>1429</sup> Nevertheless, insufficient use has been made of the EU Instrument for Pre-Accession (IPA). Of the 622.5 million EUR available, only 1% of IPA assistance for CSOs has been used (only 6.72 million EUR).<sup>1430</sup> The next largest sources of funding are the SDC Civica Mobilitas (6 million EUR); UN, USAID 2.5 million EUR. The EU has allocated more than 5 million euros per year under the IPA for CSOs activities.<sup>1431</sup>

Most CSOs do not have paid personnel and/or suffer from a lack of personnel. In 2012 there

<sup>1422</sup> Vasilev, 2014: p.7.

<sup>1423</sup> Law on Donations and Sponsorship, Official Gazette of the RM, No. 47/06, 86/08, 51/2011 and 28/14.

<sup>1424</sup> Interview with Emina Nuredinovska, Head of Unit, Macedonian Center for International Cooperation, face to face 28.01.2015

<sup>1425</sup> Nuredinovska and Ognenovska, 2014: p.27.

<sup>1426</sup> Ibid.

<sup>1427</sup> Ibid.

<sup>1428</sup> Ibid <http://www.epi.org.mk/docs/EU%20i%20aktivistickite%20organizacii%20vo%20Republika%20Makedonija.pdf> [accessed on 21.01.2015].

<sup>1429</sup> Kire Vasilev, 2014: p.7.

<sup>1430</sup> Kire Vasilev, 2014; p.16. <http://www.epi.org.mk/docs/EU%20i%20aktivistickite%20organizacii%20vo%20Republika%20Makedonija.pdf>

<sup>1431</sup> <http://www.tacso.org/documents/otherdoc/?id=7257> [accessed on 21.1.2015].

were 1,839 employees in CSOs, a decrease compared to 2006, and 88% of CSOs rely on volunteer support.<sup>1432</sup> CSOs with strong donor support are able to attract skilled professional staff.<sup>1433</sup> Almost half of the total staff numbers of CSOs and two thirds of overall resources are allocated to the most affluent CSOs (around 100 organisations).<sup>1434</sup>

Private philanthropic donors donate 1% of the total resources of CSOs. Some 75–80% of donations to CSOs come from international donors.<sup>1435</sup>

CSOs operate mainly on a project-by-project basis and as not-for-profit organizations. There are no prohibitions on CSOs earning additional income from services, products or rent. For instance, the Association of Journalists of Macedonia rents part of its premises to a private company that organises events.<sup>1436</sup>

### 13.1.3 INDEPENDENCE (LAW)

Score: **75**

#### To what extent are there legal safeguards to prevent unwarranted external interference in the activities of CSOs?

There are sufficient legal safeguards to prevent unwarranted external influence on CSO activities.<sup>1437</sup> The establishment of a CSO is forbidden only if its programme is directed towards the violent destruction of the constitutional order of the country, incitement to military aggression, or to stirring ethnic, racial or religious hatred or intolerance. A CSO will be forbidden if it undertakes terrorism-related activities, activities against the Constitution or the law, or activities that violate the freedoms and rights of other people.<sup>1438</sup>

There are no regulations stipulating state membership on CSO boards and no regulations allowing for mandatory state attendance at CSO meetings. The right to privacy is also extended to CSOs.

### 13.1.4 INDEPENDENCE (PRACTICE)

Score: **25**

#### To what extent can civil society exist and function without undue external interference?

There are over 5,000 CSOs operating in the country in a moderately safe environment, including examples mentioned below that indicate undue external influence in the work of CSOs. Some civil society activists use the name “ikebana” when talking about the role of CSOs in Macedonia,<sup>1439</sup> a term which refers to the practice of the Government of allowing CSOs to exist but ignoring them in practice while using their existence to claim it is a free country.

<sup>1432</sup> Kire Vasilev, 2014: p.7.

<sup>1433</sup> Interview with Zoran Stojkovski, Executive Director of CSO CIRa, face to face 27.01.2015.

<sup>1434</sup> Nuredinovska, Sazdevski, Gjuzelov, 2014: p.102.

<sup>1435</sup> Interview with Zoran Stojkovski, Executive Director of CSO CIRa, face to face 27.01.2015.

<sup>1436</sup> Ibid.

<sup>1437</sup> Law on Associations and Foundations, Official Gazette of the RM, No.52/2010.

<sup>1438</sup> Ibid.

<sup>1439</sup> Suad Misini, Civil Society Research Center, official meeting with international representatives, October 2015

There are cases of the Government manipulating CSOs to advance their interests. Furthermore, there are CSOs which are an “extended hand of the Government”.<sup>1440</sup> For example, the recently registered Association for the Spiritual Unification of Setinci, Popadinci and Krushodari from Lerin in Macedonia, has no staff, funds or website, but nevertheless donates monuments worth millions of euros.<sup>1441</sup> The pro-government media criticises CSOs. CSOs that are financed by the George Soros Foundation are critical of the Government and they are harassed by the leading political party and are often attacked in the media as ‘traitors’ and ‘enemies of the state’.<sup>1442</sup> There have been attacks on civil society actors, and in such cases it is common for state institutions to delay proceedings or fail to carry out proper and impartial investigations. Activists from the CSO Parkobrani (*Protectors of Parks*) have been detained after opposing government plans to build an administrative building in a green area of the city centre.<sup>1443</sup> Activists from the CSO Ploshtad Sloboda (*Freedom Square*) were attacked while protesting against the building of a church and other constructions in the main square of the city center.<sup>1444</sup> The LGBT centre has been attacked, and homophobic articles have been published in the media.<sup>1445</sup>

## GOVERNANCE

### 13.2.1 TRANSPARENCY (PRACTICE)

Score: **25**

#### To what extent is there transparency in CSOs?

CSOs are not very transparent. Only the largest organizations make information on their activities available to the general public on a regular basis. These CSOs also publish their annual reports, as well as the composition of their boards and their financial statements. Levels of transparency are related to the capacity and resources of CSOs. Most registered CSOs do not have functional websites.<sup>1446</sup>

### 13.2.2 ACCOUNTABILITY (PRACTICE)

Score: **25**

#### To what extent are CSOs answerable to their constituencies?

CSO board members usually act *pro forma* in providing oversight of organizational activities. Some board members are external, eminent persons, but board members are typically motivated by the rewards they will receive and not by serving the community per se.<sup>1447</sup>

<sup>1440</sup> <http://daily.mk/auto/riker-vladata-da-go-namali-vlijanieto-vrz-nvo-sektorot> The Government to stop interfering the NGO sector, Interview with the US Ambassador, 2010 [accessed on January 21, 2015]

<sup>1441</sup> <http://inbox7.mk/archives/2207> [accessed on 28.10.2015].

<sup>1442</sup> <http://sitetel.com.mk/dnevnik/makedonija/vmro-dpmne-%E2%80%9Cja-shpiuniraat-rabotata-na-sovetot-za-evrointegracii> Sorosoids are spying on the work of the European Integration Council.

<sup>1443</sup> <http://www.alfa.mk/News.aspx?ID=63053> 10 activists from Parkobrani detained in a political action in the Bristol Park

<sup>1444</sup> <http://www.dw.de/%D0%BF%D1%80%D0%BE%D1%82%D0%B5%D1%81%D1%82-%D0%BD%D0%B0-%D0%BF%D0%BB%D0%BE%D1%88%D1%82%D0%B0%D0%B4%D0%BE%D1%82-%D0%BC%D0%B0%D0%BA%D0%B5%D0%B4%D0%BE%D0%BD%D0%B8%D1%98%D0%B0-%D0%B2%D0%BE-%D1%81%D0%BA%D0%BE%D0%BF%D1%98%D0%B5/a-4170604> [accessed on January 21, 2015]

<sup>1445</sup> Kire Vasilev, 2014: p.7.

<sup>1446</sup> Interview with Simonida Kacarska (PhD.), President of the European Policy Institute Assembly, face to face, 28.01.2015.

<sup>1447</sup> Interview with Zoran Stojkovski, Executive Director of CSO CIRA, face to face, 27.01.2015.

### 13.2.3 INTEGRITY (PRACTICE)

Score: **25**

#### To what extent is the integrity of CSOs ensured in practice?

There have been efforts among CSOs to self-regulate and there was an initiative to create a Code of Ethics for CSOs to promote the sustainability of organizations, protect the professionalism of their personnel and enhance CSO credibility amongst donors and the public.<sup>1448</sup> There is also a Code of Good Practice for the Participation of CSOs in Policy-Making Processes; but this has been applied inconsistently and state administrative bodies have paid only scant attention to the Code.<sup>1449</sup>

## ROLE

### 13.3.1 HOLDING THE GOVERNMENT ACCOUNTABLE

Score: **50**

#### To what extent is civil society active and successful in holding the Government accountable for its actions?

CSOs act as a watchdog over government policies and activities. CSOs joined forces to demonstrate against the prosecution and imprisonment of the journalist Kezarovski (mentioned above under the Media pillar).<sup>1450</sup> CSOs have also acted successfully to mobilise the public in a 'Green Action' in Veles.<sup>1451</sup> They have made possible the adoption of the Strategy for Cooperation with CSOs,<sup>1452</sup> the validation of foreign diplomas, the Law on Mediation, the Law on Volunteering, as well as the Law on Donations and Sponsorship.<sup>1453</sup>

However, the Government rarely cooperates with CSOs. CSOs have opposed, without success, the Government's attempts to reform higher education and the Government's 'Project Skopje 2014', which uses public funds to erect monuments and sculptures in the main square and in the centre of the capital, alters the facades significant buildings in the capital in a baroque style, and urbanises green areas.

The MCIC, Transparency International Macedonia and several other organizations carry out advocacy campaigns, public education and activities in the field of anti-corruption.

### 13.3.2 POLICY REFORM

Score: **50**

#### To what extent is civil society actively engaged in policy reform initiatives on anti-corruption?

<sup>1448</sup> <http://www.gragjanskisvet.org.mk/index6f4c.html?ItemID=7DC8425E1AA9794B86CF1481966FB6FD>

<sup>1449</sup> Nuredinovska and Ognenovska, 2014: p.31.

<sup>1450</sup> <http://www.telma.com.mk/vesti/kezharovski-privremeno-osloboden-kolegite-na-protest> Kezarovski is temporarily released [accessed on 21.01.2015]

<sup>1451</sup> Interview with Zoran Stojkovski, Executive Director of CSO CIRA, face to face 27.01.2015.

<sup>1452</sup> Interview with Emina Nuredinovska, Macedonian Center for International Cooperation, face to face, 28.01.2015

<sup>1453</sup> Interview with PhD. Simonida Kacarska, President European Policy Institute Assembly, face to face, 28.01.2015

Only a small percentage of CSOs deal with anti-corruption. Besides Transparency International Macedonia and Transparency Macedonia, which deal with anti-corruption and conflicts of interest, other CSOs deal with sectoral issues such as public procurement, the electoral process and the financing of political parties (for example, the Center for Civil Communications, MOST, the Institute for Democracy Societas Civilis, and Coalition for Free Trials for All).<sup>1454</sup>

Anti-corruption CSOs, as well as the CSO Platform for Anti-Corruption established in December 2014, focus on monitoring corruption by publishing reports on transparency, the fight against corruption, budget spending and the implementation of public policies, as well as by proposing measures for improvements in legislation.<sup>1455</sup>

There is an established practice of including CSOs in the preparation of the State Programme for the Prevention of Corruption.

The SCPS has signed a Memorandum of Understanding for Mutual Support in the prevention of corruption and conflicts of interest with 21 CSOs, but it has not established significant cooperation in practice.<sup>1456</sup>

## RECOMMENDATIONS

- R1.** The Government should enhance and make transparent all procedures for policy consultation with CSOs.
- R2.** The Government should finance CSO activities subject to transparent and participatory processes and free from undue influence.
- R3.** CSOs should self-regulate and create a Code of Ethics for CSOs to promote the sustainability of organizations, to protect the professionalism of CSO personnel, and to enhance the credibility of CSOs amongst donors and the public.
- R4.** The Government should introduce tax incentives for CSOs.

<sup>1454</sup> Nuredinovska, Sazdevski, Gjuzelov, 2014.

<sup>1455</sup> Ibid.

<sup>1456</sup> Ibid.



# 14. BUSINESS

## SUMMARY

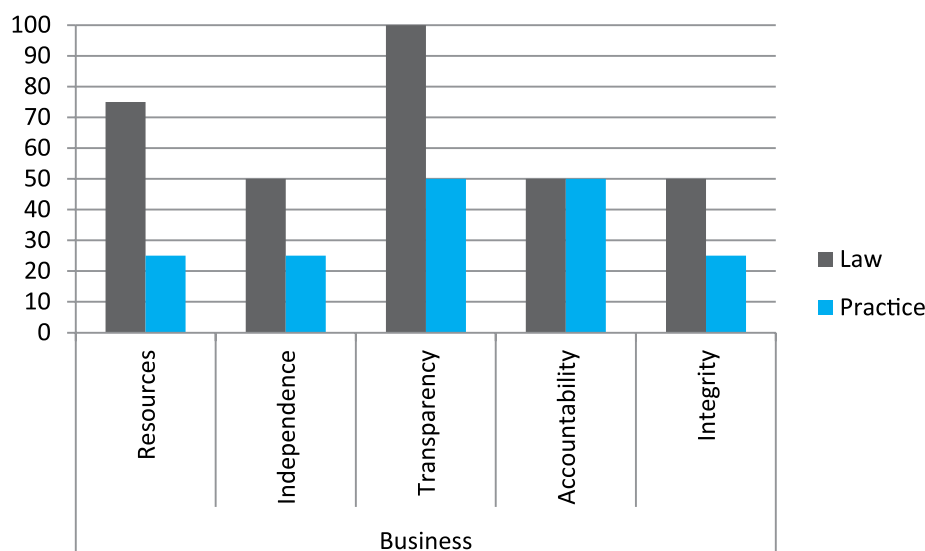
The legal framework is generally favourable to businesses. Registration is simple and quick and the overall burden of government regulation is light. The independence of private companies is ensured in law. In practice, however, the absence of a fully implemented entrepreneurship-based business model and a deep-rooted managerial culture disallow the independence of companies based on the principle of a free competitive market. Together with the lack of an independent judiciary, there is insufficient protection of businesses from unwarranted government interference and infringements on property rights. The integrity of the business sector is not ensured either in law or in practice. The business sector is currently not involved in the Government's anti-corruption policies and there are no links with civil society.

The table below presents the indicator scores which summarize the assessment of business in terms of its capacity, its internal governance, and its role within the Macedonian integrity system. The following part of this section provides qualitative analysis for each indicator.

**OVERALL PILLAR SCORE: 32.6/100**

| DIMENSION                       | INDICATOR                                  | LAW | PRACTICE |
|---------------------------------|--|-----|----------|
| <b>Capacity</b><br>43.7 / 100   | Resources                                  | 75  | 25       |
|                                 | Independence                               | 50  | 25       |
| <b>Governance</b><br>54.1 / 100 | Transparency                               | 100 | 50       |
|                                 | Accountability                             | 50  | 50       |
|                                 | Integrity                                  | 50  | 25       |
| <b>Role</b><br>0 / 100          | Anti-corruption engagement                 |     | 0        |
|                                 | Support for/ engagement with civil society |     | 0        |

## Pillar score per Law and Practice



## STRUCTURE AND ORGANIZATION

The government has formally implemented a policy of deregulation and reduction of administrative barriers to businesses. However, the government's policy on entrepreneurship does not foster competition.

Small firms are the most common business model in Macedonia. Over three-quarters of all firms are privately held Limited Liability Companies (LLC).<sup>1457</sup> There are 1,283 large and medium-sized companies out of a total of 70,659 firms. According to the Business Network online directory,<sup>1458</sup> as reported in the economic media, 40 of the largest 100 domestic companies which are privately owned are managed by domestic manager. In 46 of the 100 largest companies, the dominant capital is foreign and 27 have a foreigner as their CEO. 13 of them have domestic managers, and the remaining 6 companies in the top positions have mixed top management - domestic and foreign.<sup>1459</sup> At the end of 2014, 116 companies with a combined market capitalization of \$ **1,763,260,000** were listed on the Macedonian Stock Exchange.<sup>1460</sup>

## ASSESSMENT

### CAPACITY

#### 14.1.1 RESOURCES (LAW)

Score: **75**

To what extent does the legal framework offer an enabling environment for the formation and operations of individual businesses?

<sup>1457</sup> <http://www.stat.gov.mk/Publikacii/PDFSG2015/12-DelovniSubj-BusinessEnt.pdf> [accessed on 25.03.2015].

<sup>1458</sup> <http://www.fleetbusinessnetwork.co.uk/business-networking-in-fleet/>

<sup>1459</sup> Who manages the Macedonian economy? Kapital, Posted on October 28, 2015, 16:09 by Igor Petrovsky Economics <http://kapital.mk/koj-upravuva-so-makedonskata-ekonomija/>

<sup>1460</sup> <http://www.mse.mk/Repository/UserFiles/File/Godisni%20izvestai/GODISEN%20IZVESTAJ%20ZA%20RABOTA%202014.pdf> [accessed on 25.03.2015]

The legislative framework is generally business-friendly. The country is ranked 30 out of 189 economies in the 2015 edition of the World Bank's *Doing Business Survey*.<sup>1461</sup>

According to the World Bank, Macedonia ranks 3rd in the world in terms of the ease of starting a business, since the process involves only two steps in practice (compared to the OECD average of 4.8): (1) notarizing the company deeds and articles of association and (2) registration with the Central Registry and obtaining a company seal. According to the law, 12 steps<sup>1462</sup> are required.<sup>1463</sup> Businesses are registered by the National Agency for the Central Registry. Refusal by the Agency to register a business can be challenged in court.<sup>1464</sup> There are several different avenues to terminate a business<sup>1465</sup> and the decision must be registered with the same agency. Closure of a business can take up to three years.<sup>1466</sup> The Heritage Foundation<sup>1467</sup> has described the Macedonian economy as moderately free, with an economic freedom score of 67.1, making its economy the 53<sup>rd</sup> most free in the 2015 Index.<sup>1468</sup>

A number of other aspects of the legal framework are very favourable for businesses. According to the World Bank, Macedonia's total tax rate amounts to 7.39 percent of profit (compared to the OECD average of 41.3). Property registration involves seven procedures (compared to the OECD average of 4.7), while 11 procedures are required to obtain a construction permit (the OECD average is 11.9).<sup>1469</sup> The Law for Innovative Activities<sup>1470</sup> enables state support for innovative investments with financial grants of up to EUR 30,000. The **Agency for Foreign Investments and Export Promotion** is in charge of attracting new foreign investments to the country and supporting the expansion of foreign companies.<sup>1471</sup> The Law for the Protection of Competition<sup>1472</sup> has established the Competition Commission to regulate and promote competition.

Property rights are guaranteed by the Macedonian Constitution, which states that no person may be deprived of his/her property or of the rights deriving from it, except in cases concerning the public interest as determined by law.<sup>1473</sup> The state can expropriate a property so long as compensation, not lower than the market value of the property, is guaranteed.<sup>1474</sup> No court order is needed for an expropriation, though the decision can be challenged in court.<sup>1475</sup> The legislative provisions on expropriation are potentially problematic given the excessive influence of the Macedonian executive branch over the judiciary.

A number of strict laws govern the business environment. The Civil Procedure Law contains detailed provisions governing the exercise of property rights.<sup>1476</sup> Intellectual property rights

<sup>1461</sup> The World Bank And The International Finance Corporation, *Doing Business 2015, Ease Of Doing Business In Macedonia*, [Http://www.Doingbusiness.Org/Data/ExploreEconomies/Macedonia-Fyr](http://www.doingbusiness.org/Data/ExploreEconomies/Macedonia-Fyr) [accessed on 23.03.2015]

<sup>1462</sup> <http://mkd-news.com/kako-da-otvorite-firma-vo-makedonija-shto-vi-treba-12-detavno-objasneti-chekori/> [accessed on 27.03.2015]

<sup>1463</sup> Law on Entrepreneurs, Official Gazette of RM, Nos. 28/04 (84/05;25/07,) 25/07 87/08,42/10,48/10,24/11, 166/12, 70/13, 119/13, 120/13, 182/13, 38/14, 41/14, 138/14, Article 265.

<sup>1464</sup> Law on the General Administrative Procedure Official Gazette of RM, Nos. 38/05, 110/08, 51/11

<sup>1465</sup> Law on Entrepreneurs, Official gazette no 28/04 (84/05;25/07,) 25/07 87/08,42/10,48/10,24/11, 166/12, 70/13, 119/13, 120/13, 182/13, 38/14, 41/14, 138/14, Article 265.

<sup>1466</sup> <http://biznis101.com/razvivaj-biznis/promeni-vo-biznisot/98-zatvoranje-na-biznis.html> [accessed on 01.04.2015]

<sup>1467</sup> The Heritage Foundation, *2015 Index of economic freedom*, <http://www.heritage.org/index/country/macedonia> [accessed on 01.04.2015]

<sup>1468</sup> Ibid.

<sup>1469</sup> The World Bank and the International Finance Corporation, *Doing Business 2015, Ease of Doing Business in Macedonia*, <http://www.doingbusiness.org/data/exploreconomies/macedonia-fyr> [accessed on 27.03.2015]

<sup>1470</sup> The Law on Innovative Activities, Official Gazette of RM, No. 79/13, 137/13 and 41/14.

<sup>1471</sup> <http://www.investinmacedonia.com/about-us> [accessed on 01.04.2015]

<sup>1472</sup> Law for the Protection of Competition, Official Gazette of RM, No.04/05, 70/06 and 22/07.

<sup>1473</sup> Constitution of the Republic of Macedonia, adopted by the Parliament on 17 November 1991, effective as of 20 November 1991, Article 30.

<sup>1474</sup> Ibid, p. 3.

<sup>1475</sup> The Law on Expropriation, Official Gazette of RM, Nos. 95/2012, 131/2012 and 24/2013, Article 32.

<sup>1476</sup> Civil Procedure Law, Clear text, Official Gazette of RM, No.7/2011.

are protected by a number of laws, including the Law on Authors' Rights and Related Rights,<sup>1477</sup> the Law on Industrial Rights<sup>1478</sup> and the by-law Rulebook on Trademarks.<sup>1479</sup>

The Civil Procedure Law also devotes considerable attention to procedures for contract enforcement.<sup>1480</sup> Macedonia's ranking in the World Bank's *Doing Business* Survey in terms of legislation governing contract enforcement is lower (87) than the country's overall ranking, and the number of procedures (38) is also higher than the OECD average (31.5).<sup>1481</sup> The Global Competitiveness Report ranks Macedonia 63<sup>rd</sup> out of 143 economies in terms of the efficiency of the legal framework for settling disputes.<sup>1482</sup>

The Law on the Sale of Agricultural Land in State Ownership,<sup>1483</sup> adopted in June 2013, ensures that existing tenants have a very advantageous position. The methods of sale set out in this law mainly exclude open competition to purchase the land.

### 14.1.2 RESOURCES (PRACTICE)

Score: **25**

#### To what extent are individual businesses able in practice to form and operate effectively?

The registration of businesses is simple and cheap in practice, and the overall burden of government regulation is light. The Government presents business registration as an easy two-step process, whereas in fact the preparation of all necessary documents takes several days and a total of 12 steps.<sup>1484</sup> Property rights are regulated fairly and respected, unlike intellectual property rights, which need further improvement in implementation in practice.<sup>1485</sup>

The registering authorities are technically well-equipped. According to one of TI Macedonia's expert interviews, the registration process is more complex in practice than it is in law.<sup>1486</sup> One TI expert interviewee said that the necessary documents can be prepared in three days, including notary verification and the provision of bank certificates for the basic contribution, or an estimation of the property if the company is opened with a value-based procedure.<sup>1487</sup> The World Bank has also noted that the registration of a business in Macedonia is relatively simple in practice, taking only three days<sup>1488</sup> (compared to the OECD average 4.8 days), while the cost of registration is 0.6% of the per capita income (equivalent to EUR 50), which is below the OECD average of 8.8 and below the eastern Europe and Central Asia average of 5.8.<sup>1489</sup>

<sup>1477</sup> Law on Authors' Rights and Related Rights, Official Gazette of RM, Nos. 47/96, 98/2002 and 4/2005, integral text No. 23/2005)

<sup>1478</sup> Law on Industrial Rights, Official Gazette of RM, No.47/02, 42/03, 09/04, 39/06 and 79/07.

<sup>1479</sup> By-Law, Rulebook on Trademarks, Official Gazette of the RM, No. 18/04.

<sup>1480</sup> Civil Procedure Law Clear text, Official Gazette of RM, No.7/2011.

<sup>1481</sup> The World Bank and the International Finance Corporation, *Doing Business* 2015, Ease of Doing Business in Macedonia, <http://www.doingbusiness.org/data/exploreeconomies/macedonia-fyr> [accessed on 01.04.2015]

<sup>1482</sup> The Global Competitiveness Report 2014–2015, World Economic Forum. [http://www3.weforum.org/docs/WEF\\_GlobalCompetitivenessReport\\_2014-15.pdf](http://www3.weforum.org/docs/WEF_GlobalCompetitivenessReport_2014-15.pdf) [accessed on 01.04.2015]

<sup>1483</sup> Law on the Sale of Agricultural Land in State Ownership, Official Gazette of the RM, No.87/13.

<sup>1484</sup> <http://mkd-news.com/kako-da-otvorite-firma-vo-makedonija-shto-vi-treba-12-detaino-objasneti-chekoril/> [accessed on 25.03.2015]

<sup>1485</sup> Interview, Biljana Krstevska, EURISK Consulting

<sup>1486</sup> Interview conducted on 06 July 2015 Biljana Krstevska, Lawyer, EURISK Consulting

<sup>1487</sup> Interview conducted on 06 July 2015 Biljana Krstevska, Lawyer, EURISK Consulting

<sup>1488</sup> The World Bank and the International Finance Corporation, *Doing Business* 2015, Ease of Doing Business in Macedonia <http://www.doingbusiness.org/data/exploreeconomies/macedonia-fyr> [accessed on 25.03.2015]

<sup>1489</sup> Ibid.

Although Macedonia has the 7<sup>th</sup> smallest tax rate in the world according to the *Doing Business* Index of the World Bank and the International Finance Corporation, other elements necessary for a favourable business environment are weak. Macedonia ranks 74<sup>th</sup> among countries surveyed in terms of ease of property registration,<sup>1490</sup> 89<sup>th</sup> in dealing with construction permits; 88<sup>th</sup> for obtaining electricity supply, and 85<sup>th</sup> in trading across borders. Senior managers need to spend 119 hours per year dealing with government regulations, which is lower than the OECD average (175) and the Europe and Central Asia average of 234.<sup>1491</sup> In order to enforce a contract, a company needs to spend 604 days in Macedonian courts, which is higher than the OECD average (539.5 days) and Europe and Central Asia average of 448.1 days.<sup>1492</sup>

Closing down a business or declaring bankruptcy is a more complex process. One expert emphasizes that, even though according to the law<sup>1493</sup> the bankruptcy procedure should not last more than six months, in practice it takes much longer.<sup>1494</sup> The cost of the procedure is EUR 500 and the taxes that grantees need to pay for participation in the preparatory phase is low, at approximately EUR 20.

In general, property rights are respected, although there are still numerous pending cases concerning denationalization<sup>1495</sup> and occasional cases of expropriation. According to the Heritage Foundation 2015 Index of Economic Freedom,<sup>1496</sup> registering real property and obtaining land titles continues to be difficult. As noted by one commentator, new legislation regarding property rights has made things complicated as landowners are registered as users who have to prove their ownership of land, in some cases of land purchased 30 years before.<sup>1497</sup> Macedonia scored 81 out of 178 for repressed property rights in the Heritage Foundation's 2015 Index of Economic Freedom<sup>1498</sup> (well above the country's overall score of 67.1 on the scale of 0 to 100, where 0 is a good score).<sup>1499</sup>

Intellectual property rights are not effectively enforced. In the EC 2014 Progress Report it is noted that: "Some legislative progress was made in the area of intellectual property law, enforcement efforts by all institutions continue, but the complexity of the enforcement system that allows civil and criminal procedures to last several years impedes effective protection of intellectual property rights."<sup>1500</sup>

The Law on the Sale of Agricultural Land in State Ownership,<sup>1501</sup> adopted in June 2013, is still not implemented. Land is the last remaining resource for privatization in Macedonia and the methods of sale set out in the law may create a risk of corruption and do not ensure competition, as existing tenants have a very advantageous position. The methods of sale set out in the Law will not test the market, as it will mainly exclude open competition.<sup>1502</sup>

<sup>1490</sup> Ibid.

<sup>1491</sup> Ibid.

<sup>1492</sup> Ibid.

<sup>1493</sup> The Bankruptcy Law, Official gazette of the RM, No. 34/2006, 126/2006, 84/2007, 47/11, 79/13 and 29/14.

<sup>1494</sup> Mr. Dejan Kostovski, Expert for the Bankruptcy, Academic, <http://www.akademik.mk/stechaj> [accessed on 27.03.2015].

<sup>1495</sup> There are no cases of denationalization in the first instance, though 3,000 are pending in the courts. The MoF has solved 30,744 cases of denationalization. <http://www.time.mk/cluster/7fba7c6ac9/zavrsena-denacionalizacijata.html>

<sup>1496</sup> <http://www.heritage.org/index/country/macedonia> [accessed on 25.03.2015].

<sup>1497</sup> Mr Trajko Ristovski, Radisani, a statement for the daily newspaper *Sloboden Pecat*. <http://slobodenpecat.mk/Home/Item/5353> [accessed on 23.03.2015].

<sup>1498</sup> <http://www.heritage.org/index/country/macedonia> [accessed on 23.03.2015].

<sup>1499</sup> Heritage Foundation, *2015 Index of Economic Freedom*, <http://www.heritage.org/index/country/macedonia#rule-of-law>.

<sup>1500</sup> In its communication on 'Enlargement Strategy and Main Challenges 2014 -15': the Commission's Conclusions and Recommendations on the former Yugoslav Republic of Macedonia. [http://ec.europa.eu/enlargement/pdf/key\\_documents/2014/20141008-the-former-yugoslav-republic-of-macedonia-progress-report\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2014/20141008-the-former-yugoslav-republic-of-macedonia-progress-report_en.pdf)

<sup>1501</sup> Law on the Sale of Agricultural Land in State Ownership, Official Gazette of the RM, No. 87/13.

<sup>1502</sup> Interview Zoran Temelkovski, July 2015

The Government has a reputation of not making payments on time to companies concerning procurement contracts and to citizens concerning various payments and subsidies. The IMF described the situation as “delayed payment in the public sector”, which according to foreign economic expert Mr. Sam Vaknin is a nice way of saying that the Government does not pay its debts.<sup>1503</sup> Companies also did not receive refunded VAT in the last four quartiles of 2014. In support of this finding, the Global Competitiveness Report 2014–2015 indicates that access to finance is the most problematic factor for doing business in Macedonia (16.9).<sup>1504</sup>

### 14.1.3 INDEPENDENCE (LAW)

Score: **50**

#### To what extent are there legal safeguards to prevent unwarranted external interference in the activities of private businesses?

There are no significant loopholes in the legislation that compromise the ability of private businesses to function free of external influence. However, the legislation is frequently amended, which creates uncertainty for businesses. Amendments occur regularly concerning taxation, fees, and different type of duties such as ownership registration, pre-registration and licensing procedures.

The role of civil servants in the start-up and support of business activities, such as registration, licensing, trade marks, and protection of business practices, has been minimized through the introduction of an e-registry and registry agents.<sup>1505</sup> There is no fee for the registration of a new company via a registry agent.<sup>1506</sup>

According to Article 552-b of the Law on Trade Companies,<sup>1507</sup> however, the Central Registry (CR) can initiate a procedure for deleting companies that have not submitted annual financial reports to the CR by the end of a given year. The list is published on the CR website. According to article 21 of the Law, a procedure can be initiated for failure to submit an e-mail address for receiving official information.<sup>1508</sup>

The Obligations Law<sup>1509</sup> contains complaint mechanisms for businesses to seek redress in case of undue external influence. Companies can also seek compensation through court proceedings.

### 14.1.4 INDEPENDENCE (PRACTICE)

Score: **25**

#### To what extent is the business sector free from unwarranted external interference in its work in practice?

<sup>1503</sup> Sam Vaknin: ‘Where did Stavrevski find EUR 10 million to extend the budget?’ <http://novatv.mk/index.php?navig=8&cat=18&vest=23746> [accessed on 25.03.2015].

<sup>1504</sup> The Global Competitiveness Report 2014–2015, World Economic Forum, [http://www3.weforum.org/docs/WEF\\_GlobalCompetitivenessReport\\_2014-15.pdf](http://www3.weforum.org/docs/WEF_GlobalCompetitivenessReport_2014-15.pdf) [accessed on 25.03.2015].

<sup>1505</sup> Law for the amendments to the Law of the one stop system and maintenance of the trade registry and the registry of legal persons, Official Gazette of the RM, No. 70/13.

<sup>1506</sup> Law of the one stop system and maintenance of the trade registry and the registry of legal persons

<sup>1507</sup> Law on Trade Companies, Official Gazette of RM, No. 28/04, 84/05, 25/07.

<sup>1508</sup> Ibid, Article 21.

<sup>1509</sup> Law on Obligation Relations, Official Gazette of the RM, Article 167.

Provisions designated to protect businesses from unwarranted interference are not always applied effectively in practice, primarily due to the absence of a fully independent judiciary.<sup>1510</sup>

According to one expert interviewee,<sup>1511</sup> Macedonia's big businesses enjoy unusually close cooperation with the Government. Companies involved in Project Skopje 2014 have signed contracts agreeing to delayed payment from the Government for seven years.<sup>1512</sup> In addition, the interlocutor adds that the Government is the biggest investor and employer and that opposition-led municipalities often suffer a lack of financial support for their projects. In addition, it is a general rule that the companies which are awarded contracts typically have close ties to the political establishment.<sup>1513</sup>

According to a relevant survey, business representatives in Macedonia rank corruption as the fifth most significant obstacle to doing business, after high taxes, frequent changes in laws and regulations, complicated tax laws and limited access to financing.<sup>1514</sup> The 2013 EU Progress Report found that Macedonia's business environment is negatively affected by corruption.<sup>1515</sup> The Heritage Foundation's Index of Economic Freedom Report notes that corruption in the country is a serious problem, especially in public procurement.<sup>1516</sup> Corruption is estimated to have delayed business development by 30 years.<sup>1517</sup>

There are cases of state officials allegedly soliciting unofficial payments in their dealings with private businesses, such as the case of the construction company Beton, which was requested to pay for the transport of voters by airplane from Switzerland during the 2014 elections.<sup>1518</sup> There are also examples of alleged abuse of state power to gain access to private sector assets or resources. One such case concerns land on Mount Vodno near Skopje<sup>1519</sup> which was sold to a controversial offshore company connected to the highest levels of the Government after a sudden change in the urban plan for Skopje. Another example is the "Cosmos"<sup>1520</sup> case, in which a construction worth some EUR 60 million was destroyed. These alleged cases of undue influence are to be investigated by the Special Prosecutor as part of the political agreement negotiated after the recent political crisis.<sup>1521</sup>

It is very difficult in practice for a business to complain or to file a lawsuit against the behaviour of the public administration or a civil servant. This and the abovementioned problems are aggravated by Macedonia's lack of an independent judiciary,<sup>1522</sup> which effectively leaves businesses with no means of protection against unlawful interference. The Global Competitiveness Forum ranks Macedonia 98 out of 148 countries in terms of judicial independence,<sup>1523</sup> while the Heritage Foundation has noted that: "Corruption and cronyism

<sup>1510</sup> Interview with Zoran Temelkovski, July 2015.

<sup>1511</sup> Interview with Professor Nikola Popovski, former Minister of Finance, 30 July 2015.

<sup>1512</sup> Professor Marjan Petreski, American College, Macedonian Economy in Real Danger, Prizma BIRN analysis <http://prizma.birn.eu.com> [accessed on 25.05.2015].

<sup>1513</sup> Interview with Zoran Temelkovski, July 2015.

<sup>1514</sup> UNDOC Report. 2013. Business, corruption and crime in the Former Yugoslav Republic of Macedonia.

<sup>1515</sup> European Commission, 2014.

<sup>1516</sup> 2014 Index on Economic Freedom. Heritage Foundation. Retrieved from: <http://www.heritage.org/index/country/macedonia> [accessed on 25.05.2015].

<sup>1517</sup> Zoran Temelkovski, July 2015.

<sup>1518</sup> <http://a1on.mk/wordpress/archives/462237> [accessed on 16.05.2015]

<sup>1519</sup> <http://www.dw.com/mk/>; <http://24vesti.mk/canoski-urivanjeto-na-%E2%80%9Ekosmos%E2%80%9C-e-politicka-odluka> [accessed on 25.03.2015].

<sup>1520</sup> <http://ohridsky.com/?p=667> [accessed on 16.05.2015]

<sup>1521</sup> European Commission, The Republic of Macedonia: Recommendations of the Senior Experts' Group on systemic Rule of Law issues relating to the communications interception revealed in Spring 2015, (Brussels: European Commission, 2015), [http://ec.europa.eu/enlargement/news\\_corner/news-files/20150619\\_recommendations\\_of\\_the\\_senior\\_experts\\_group.pdf](http://ec.europa.eu/enlargement/news_corner/news-files/20150619_recommendations_of_the_senior_experts_group.pdf) [accessed on 9.04.2015].

<sup>1522</sup> Also cited as a main issue of concern in the Priebe Report.

<sup>1523</sup> World Economic Forum, Global Competitiveness Report 2013–2014. [http://www3.weforum.org/docs/WEF\\_GlobalCompetitivenessReport\\_2014-15.pdf](http://www3.weforum.org/docs/WEF_GlobalCompetitivenessReport_2014-15.pdf) [accessed on 8.06.2015].

are prevalent in public administration and procurement procedures, increasing costs for businesses and chilling foreign investment.”<sup>1524</sup>

According to TI Macedonia’s interview with an expert <sup>1525</sup> the treatment of business by the tax authorities tends to be excessively harsh and often politically motivated. In addition, the authorities tend to process tax-related disputes through the criminal justice system, and businesspersons have virtually no hope of winning their cases.<sup>1526</sup>

The owners and managers of several independent media outlets have repeatedly claimed that there is indirect control of the governing party over the media because of the state’s dominance in the advertising market.<sup>1527</sup> The A1 TV case is one example of government interference with business in which the government went so far as to close the company.<sup>1528</sup>

## GOVERNANCE

### 14.2.1 TRANSPARENCY (LAW)

Score:  100

#### To what extent are there provisions to ensure transparency in the activities of the business sector?

Under the Law on the Central Registry,<sup>1529</sup> the Central Registry (CR) establishes the registers of trade companies. All data from the registries can be used by legal and physical persons.<sup>1530</sup> All information from the registry can be obtained in person or electronically.

Annual financial accounts are required by all legal persons according to the Law on Trade Companies<sup>1531</sup> and need to be submitted at the end of the calendar year. According to the Law on Audits (Article 32),<sup>1532</sup> companies are obliged to prepare their accounts in accordance with the International Standard for Financial Information (IFAC).<sup>1533</sup> Violation of this requirement is a disciplinary offence.<sup>1534</sup>

The National Bank of the Republic of Macedonia (NBRM) has authority to oversee the financial sector, including savings houses, e-money issuers and other financial institutions.<sup>1535</sup> The NBRM can inspect and audit their operations, suspend licenses and impose sanctions. A separate Securities and Exchange Commission<sup>1536</sup> is an autonomous and independent regulatory body established by the Securities Law, the Law on Investment Funds, the Law

<sup>1524</sup> The Heritage Foundation 2015 <http://www.heritage.org/index/country/macedonia> [accessed on 25.05.2015].

<sup>1525</sup> Interview with Mr. Zoran Temelkovski, July 2015.

<sup>1526</sup> The case of A1 TV and Velija Ramkovski, <http://a1on.mk/wordpress/archives/88602>.

<sup>1527</sup> European Commission, The Republic of Macedonia: Recommendations of the Senior Experts’ Group on systemic Rule of Law issues relating to the communications interception revealed in Spring 2015, (Brussels: European Commission, 2015), p.17. [http://ec.europa.eu/enlargement/news\\_corner/news/news-files/20150619\\_recommendations\\_of\\_the\\_senior\\_experts\\_group.pdf](http://ec.europa.eu/enlargement/news_corner/news/news-files/20150619_recommendations_of_the_senior_experts_group.pdf) [accessed on 08.06.2015]

<sup>1528</sup> <http://en.rsrf.org/macedonia-disastrous-summer-for-macedonian-17-08-2011,40797.html> [accessed on 08.06.2015]

<sup>1529</sup> Law on the Central Registry, Official Gazette of RM, No.50/01, 49/03, 81/08.

<sup>1530</sup> Law on the Central Registry, Official Gazette of RM, No.50/01, 49/03, 81/08, Article 14.

<sup>1531</sup> Law on Trade Companies Official Gazette of RM, No. 28/04, 84/05, 25/07, Article 469.

<sup>1532</sup> Law on Audits, Official Gazette of the RM, No. 158/10,135/11, 188/13, 43/14 and 138/14.

<sup>1533</sup> International Standard for the Financial Information [http://www.finance.gov.mk/files/u11/ifrs\\_for\\_sms.pdf](http://www.finance.gov.mk/files/u11/ifrs_for_sms.pdf) [accessed on 25.05.2015]

<sup>1534</sup> Law on Audits Official Gazette of the RM, No. 158/10,135/11, 188/13, 43/14 and 138/14, Article 4, p. 14

<sup>1535</sup> National Bank of the RM <http://www.nbrm.mk/default-en.asp?ItemID=7B388C2967979A4CA95D7EFBEB3F05D1> [accessed on 04.06.2015]

<sup>1536</sup> Website of the Securities Exchange Commission <http://www.sec.gov.mk/Default.aspx>



on the Takeover of Joint-Stock Companies and various by-laws.<sup>1537</sup> The Securities and Exchange Commission requires businesses to be annually audited by an external auditor, and these audits are required to be published. The Depository<sup>1538</sup> must publish a summary of its annual audit reports in the Official Gazette of the Republic of Macedonia and must publish the complete annual report on its website.<sup>1539</sup>

## 14.2.2 TRANSPARENCY (PRACTICE)

Score: **50**

### To what extent is there transparency in the business sector in practice?

Information about companies registered in Macedonia is either readily available online or is made available on request. Banks and stock market actors report to the relevant authorities as required by law.

The Central Registry has an online database offering information to registered users and on request. Information about the ownership structure is not available online, although according to one expert interviewed by TI Macedonia it is usually made available by the CR on request.<sup>1540</sup> An investigative journalist has noted, however, that obtaining information about offshore companies operating in Macedonia is difficult.<sup>1541</sup> Data on foreign direct investment shows that offshore locations, including Cyprus, the British Virgin Islands, Belize, Lichtenstein and Panama, have been significant sources of financial flows to Macedonia.<sup>1542</sup>

General data on registered companies, such as the names of directors, contact details and annual reports, are available to the public on request. Information about company registries and tax numbers, as well as bank account details, are available at the Public Revenue Office.<sup>1543</sup>

Financial auditing and reporting standards are applied effectively. However, 25,000 companies have not submitted annual financial statements.<sup>1544</sup> Companies that refuse to submit annual financial statements are deleted from the register of companies.

The Public Revenue Office is responsible for the verification of financial statements. However, administrative capacity in the area of financial management, control and auditing needs to be further improved.<sup>1545</sup>

The scope of external auditing of banks was expanded to comply with the Basel principles for the external auditing of banks.<sup>1546</sup> Banks are required to set up audit committees; however, there is no legal requirement for them to include independent directors, and the banks do not

<sup>1537</sup> Law on Securities, Official Gazette of RM, No. 95/2005, 25/2007, 07/2008 and 57/2010.

<sup>1538</sup> <http://www.merriam-webster.com/dictionary/depository> [accessed on 04.06.2015]

<sup>1539</sup> Law on Securities Official Gazette No. 95/2005, 25/2007, 07/2008 and 57/2010, Article 70

<sup>1540</sup> Interview Biljana Krstevska, EURISK Consulting

<sup>1541</sup> Interview with Sashka Cvetkovska, journalist

<sup>1542</sup> Belize: the hidden side of Macedonian investors, by Sashka Cvetkovska <http://novatv.mk/index.php?navig=8&cat=20&vest=21287> [accessed on 08.06.2015]

FDI 'Lots of noise, few results', by Srgjan Stojancov <http://novatv.mk/index.php?navig=8&cat=2&vest=22017>

<sup>1543</sup> Public Revenue Office website: [http://www.ujp.gov.mk/e/javni\\_informacii](http://www.ujp.gov.mk/e/javni_informacii)

<sup>1544</sup> Statement Vanco Kostadinovski, Director of the Central Registry <http://kurir.mk/makedonija/vesti/158082-Kostadinovski-Do-krajniot-rok-onlajn--podenseni-okolu-14300-godisni-smetki-vo-Centralniot-registar?r1=http%3A%2F%2Fvesti.mk%2Fread%2Fnews%2F1890036%2F613369%2Fkostadinovski-do-krajniot-rok-onlajn-podenseni-okolu-14-300-godishni-smetki-vo-centralniot-registar> [accessed on 12.05.2015]

<sup>1545</sup> European Commission, 2014: p. 44.

<sup>1546</sup> European Commission, 2014: p. 33.

seem to have training and induction programmes in place for supervisory board members.<sup>1547</sup> As for banks' internal control, while banking regulations assign the responsibility for efficient organisation of internal control systems to the supervisory and management board, the supervisory authority does not require regular reporting and disclosure of the banks' internal control function.<sup>1548</sup>

There is insufficient knowledge about issues of corruption and conflicts of interest within the private sector. There are weak measures for the prevention of corruption and for strengthening integrity within the private sector. According to private sector representatives, bribery in the private sector in Macedonia involves public officials. Almost 68% of the private sectors in Macedonia see corruption as proliferating among public officials.<sup>1549</sup>

### 14.2.3 ACCOUNTABILITY (LAW)

Score: **50**

#### **To what extent are there rules and laws governing oversight of the business sector and governing the corporate governance of individual companies?**

Macedonian legislation concerning corporate governance has improved in recent years. The Law on Trading Companies contains provisions regarding transparency, strengthening the protection of stakeholders and reform of company registries.<sup>1550</sup> A Code for Corporate Governance for Companies was adopted in 2007 and a guide for corporate governance for trading companies was published in the same year.<sup>1551</sup> The Stock Exchange has also adopted a Corporate Governance Code for listed companies. The legal framework is composed of several laws (the Law on Trading Companies; the Law on Securities, the Law on undertaking trade companies),<sup>1552</sup> and regulations which constitute a solid base for corporate governance.

The law defines the structure of companies and reporting mechanisms. Managers are required to report once a year to the assembly of shareholders and to present a financial report, to publish quarterly balances, and once a year to publish an annual report and a compliance report. There are specific rules for companies listed on the Stock Exchange. The Stock Exchange Code of Conduct envisages the establishment of an "auditing commission" that will have authority for overseeing companies and management. Only the Law on Banks encompasses provisions regarding internal audits.<sup>1553</sup>

According to the Law on Trading Companies,<sup>1554</sup> there is a list of companies (large and medium-sized companies) that need to conduct external audits and the Law on Audit

<sup>1547</sup> EBRD Commercial laws of the R. Macedonia, June 2013 Commercial Laws of the R. Macedonia June 2013 an assessment by the EBRD.

<sup>1548</sup> Ibid.

<sup>1549</sup> Augmenting demand for anti-corruption and organized crime - Ad ACTA, Macedonian Center for International Cooperation, 2015, Emilija Tudzarovska-Georgievska <http://www.mcms.org.mk/images/docs/2015/sledenje-na-vrskata-megju-korupcija-i-organiziran-kriminal-2del.pdf> [accessed on 23.07.2015]

<sup>1550</sup> Law on Trading Companies, Official Gazette of the RM, No. 28/04, 84/05, 25/07. [http://www.sfid.mk/comp\\_includes/webdata/documents/ZAKON%20ZA%20TRGOVSKI%20DRUSTVA%20+.pdf](http://www.sfid.mk/comp_includes/webdata/documents/ZAKON%20ZA%20TRGOVSKI%20DRUSTVA%20+.pdf)

<sup>1551</sup> Guide for the corporate governance for the Macedonian trade companies, International Finance Corporation [http://www.mse.mk/upload/datoteki/Priracnikot\\_MK-2.pdf](http://www.mse.mk/upload/datoteki/Priracnikot_MK-2.pdf) [accessed on 08.06.2015]

<sup>1552</sup> Law on Trading Companies, Official Gazette of the RM, Nos. 28/04, 84/05, 25/07; Law for the Securities, Official Gazette of the RM, No. 95/05, 25/07, 7/08, 57/10, 135/11, 13/13, 188/13, 43/14; Law on the undertaking of the shareholders companies, Official Gazette of the RM, No. 4/02, 37/02, 36/07.

<sup>1553</sup> Law on Banks, Official Gazette of the RM, No. 67/2007, Article 95.

<sup>1554</sup> Law on Trading Companies, Official Gazette 28/04, 84/05, 25/07, Article 470. [http://www.sfid.mk/comp\\_includes/webdata/documents/ZAKON%20ZA%20TRGOVSKI%20DRUSTVA%20+.pdf](http://www.sfid.mk/comp_includes/webdata/documents/ZAKON%20ZA%20TRGOVSKI%20DRUSTVA%20+.pdf)

regulates the authority and obligations of external auditors.<sup>1555</sup> There is no specific financial regulator for overseeing companies.

The stock market is overseen by the Securities and Exchange Commission, which regulates the manner of trading with securities on the licensed stock exchange, monitors and supervises the work of participants on the securities market, monitors and supervises the functioning of the securities market, and prescribes standards of competition among licensed market intermediaries in their dealings with securities, as well as authorized investment management companies (i.e. investment funds, by inspections or in another manner).

#### 14.2.4 ACCOUNTABILITY (PRACTICE)

Score: **50**

##### To what extent is there effective corporate governance in companies in practice?

Progress has been made in recent years by Macedonian enterprises in the application of corporate governance rules, most notably by banks. However some significant weaknesses remain to be addressed and there is no agency overseeing the implementation of the relevant regulations.

An expert interviewed by TI Macedonia suggested that Macedonian banks follow the existing corporate governance provisions more thoroughly than other types of commercial entities.<sup>1556</sup>

Existing provisions are partially effective in ensuring good corporate governance, but there is still a need for more coordinated activities from all relevant stakeholders. In the years 2007, 2008 and 2009, the TI Macedonia issued Corporate Governance Certificates to companies that could prove compliance with criteria developed by the companies and experts.<sup>1557</sup> This was the beginning of corporate governance activities in the private sector that led to the adoption of the Code for the corporate governance for small and medium-sized companies. However, there is still much work to be done, since the World Global Competitiveness Report ranks the efficacy of Macedonian corporate boards at 77 out of 144 countries and 53 in terms of the protection of minority shareholders' interests.

There is almost no activity on the part of companies in reporting corruption. The business sector became part of the State Programme for the Prevention of Corruption 2011–2015 as a separate sector with measures and activities for the prevention of corruption and conflicts of interest.<sup>1558</sup>

With regard to accounting standards, according to an expert interviewed by TI Macedonia, large and medium companies generally follow international standards. The latest World Competitiveness Report ranks the quality of financial auditing and reporting standards for the private sector in Macedonia at 61 out of 144 countries.<sup>1559</sup> The latest World Competitiveness Report ranks the quality of corporate activity among Macedonian companies at 70 out of 144 countries,<sup>1560</sup> suggesting that there are still improvements that need to be made in this area.

<sup>1555</sup> Law on Audit, Articles 24, 28,31

<sup>1556</sup> Zoran Temelkovski,

<sup>1557</sup> ProCredit Bank, Makpetrol, Ohridska Banka, NLB Tutunska Banka, Komercijalna Banka, Stopanska Banka, ASP - PAK, Farmahem, Makstil, Rade Koncar - repair service of electrical products, Knauf Radika Agipro, Geoprom, Renova, Inet, Rade Koncar TEP, Eurolink, Vitalia and Teteks

<sup>1558</sup> State Commission for the Prevention of Corruption, *Annual Report 2014*, (Skopje: SCPC, 2014)

<sup>1559</sup> World Global Competitiveness Report [http://www3.weforum.org/docs/WEF\\_GlobalCompetitivenessReport\\_2014-15.pdf](http://www3.weforum.org/docs/WEF_GlobalCompetitivenessReport_2014-15.pdf) [accessed on 08.06.2015].

<sup>1560</sup> World Global Competitiveness Report [http://www3.weforum.org/docs/WEF\\_GlobalCompetitivenessReport\\_2014-15.pdf](http://www3.weforum.org/docs/WEF_GlobalCompetitivenessReport_2014-15.pdf) 467.

## 14.2.5 INTEGRITY (LAW)

Score: **50**

### To what extent are there mechanisms in place to ensure the integrity of all those acting in the business sector?

The legal framework contains adequate provisions defining and proscribing corrupt practices within and between enterprises, and adequate provisions concerning corporate liability. There are also limited rules concerning conflicts of interest in the private sector. There is a general lack, however, of both sector-wide and individual codes of conduct.

Private sector bribery, both active and passive, is a punishable offence under the Criminal Code and can result in a prison sentence of between five and ten years.<sup>1561</sup> The Code also establishes punishment for money laundering and abuse of official duty during public procurement.<sup>1562</sup> The Code contains provisions on corporate liability. Legal persons (including commercial entities) can be held responsible for crimes committed by authorized representatives on their behalf, whether with their involvement or with the purpose of benefiting them. The types of punishment that can be imposed on legal persons include fines, temporary and permanent bans on performing specific activities, termination of the legal person and confiscation of property.<sup>1563</sup> Foreign legal entities are also liable, no matter whether there is a branch established in Macedonia or not. The law expressly prohibits bribery when doing business abroad.

As explained above, there are no sector-wide codes of conduct. The Stock Exchange Code of Conduct envisages integrity rules for companies trading on the Stock Exchange. The members of governing bodies of such companies are required to act according to the principle of integrity and in a way that best serves the company and the holders of its stock. A member of the governing body of a company must notify the company's board about any upcoming transactions involving a conflict of interest. Such information needs to be published appropriately.<sup>1564</sup>

The banking sector is the only sector covered by a sectoral Code of Conduct,<sup>1565</sup> which code is adopted by the Association of Bankers in the Chamber of Commerce. Commercial banks are the only businesses that have mandatory codes of conduct. The Code of Komercijalna Banka AD Skopje<sup>1566</sup> is a comprehensive document containing provisions for transparency and internal control and accountability, though it does not mention corruption and does not cover individual behaviour. The Code for Corporate Governance of the HALK Bank AD Skopje contains anti-corruption mechanisms, including a whistle-blower protection mechanism and procedure.<sup>1567</sup>

<sup>1561</sup> Criminal Code Official Gazette of the RM 37/96, 80/99, 4/02, 43/03, 19/04 и 73/06. Amendments to the Criminal Code were adopted on 10 September 2009 (and published in the Official Gazette on 14 September 2009) to, *inter alia*, bring corruption-related provisions closer in line. The aforementioned amendments enter into force on 22 March 2010

<sup>1562</sup> Ibid, Article 353 p. 5.

<sup>1563</sup> Ibid, Article 28, Chapter 6-a.

<sup>1564</sup> Law on Securities, Official Gazette of RM, Nos. 5/2005, 25/2007, 7/2008, Article 14.

<sup>1565</sup> Code for Good Governance of the Banks and savings houses in Macedonia, Association of Bankers in the Chamber of Commerce, 2013. <http://www.stb.com.mk/content/Pdf/KODEKS%20BANKI%202013%20potpisan%2015%20mart%202013%20final.pdf>

<sup>1566</sup> Komercijalna Banka AD Skopje, Corporate Governance Code published in 2010, <http://www.kb.com.mk/Handlers/GetResource.ashx?id=ec3271a3-5b5f-44d0-82cc-c2ac3c01fca7> [accessed on 23.05.2015]

<sup>1567</sup> Code for Corporate Governance of the HALK Bank AD Skopje, 2014, [http://www.halkbank.com.mk/content/KODEKSOT\\_NA\\_KORPORATIVNO\\_UPRAVUVANJE.pdf](http://www.halkbank.com.mk/content/KODEKSOT_NA_KORPORATIVNO_UPRAVUVANJE.pdf) [accessed on 26.05.2015]

Other commercial banks also have codes of conduct<sup>1568</sup> and their provisions extend to the boards and cover conflicts of interest and good commercial practices.

The Law on Public Procurement provides that a bidder will be excluded if in the last five years the bidding entity has been sentenced for corruption or a money laundering offence.<sup>1569</sup> However, there is no legal requirement for bidders for public contracts to have ethics programmes and corresponding compliance mechanisms in place. There is also no legal requirement for large corporations to have professional chief compliance officers.

#### 14.2.6 INTEGRITY (PRACTICE)

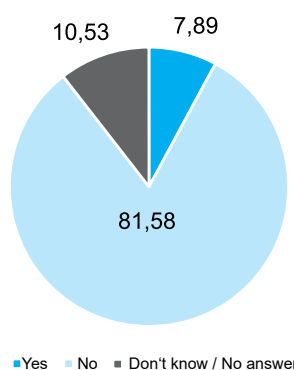
Score: **25**

#### To what extent is the integrity of those working in the business sector ensured in practice?

Integrity-related legal provisions are not implemented and there is a lack of sector-wide codes of ethics.

One expert interviewed by TI Macedonia confirmed that a few companies have ethic codes or programmes but that there is almost no information available on the implementation of such rules in practice. According to the interviewee, companies are not interested in codes of ethics because there is no legal obligation regarding such codes.<sup>1570</sup>

A recent MCIC survey revealed that the lack of good private sector governance provides a breeding ground for the growth of organized crime.<sup>1571</sup> In this regard, the MCIC survey showed that 9.5% of private sector companies have confirmed that a crime has been committed in the premises of their companies, of which 7.89% believe that the crimes committed on the premises of the companies were carried out as part of or in connection with organized crime.



Source: MCIC Business Survey, 2014

<sup>1568</sup> <http://www.eurostandard.com.mk/dokumenti/pdf/EtickikodeksnaESB.pdf>  
[http://procreditbank.com.mk/WBStorage/Files/Code\\_of\\_Conduct\\_MKD.pdf](http://procreditbank.com.mk/WBStorage/Files/Code_of_Conduct_MKD.pdf)  
<http://www.alphabank.com.mk/Default.aspx?tabid=1457&lang=mk> [accessed on 23.05.2015]

<sup>1569</sup> Law on Public Procurement, Official Gazette of RM, Nos. 136/2007, 130/2008, 97/2010, 53/2011, 185/2011, 15/2013, 148/2013, 160/2013, 28/2014, 43/2014, 130/2014, 180/2014.

<sup>1570</sup> Interview Zoran Temelkovski, July 2015.

<sup>1571</sup> Emilija Tudzarovska-Georgievska, Misa Popovic and Slagjana Dimiskova, Augmenting demand for anti-corruption and organized crime, (Skopje: Macedonian Center for International Cooperation and Centre for the study of democracy, 2015) <http://www.mcms.org.mk/images/docs/2015/sledenje-na-vrskata-megju-korupcija-i-organiziran-kriminal-2del.pdf>, p.99.

There is no effective whistleblowing policy. There is no blacklist of companies that engage or have engaged in corrupt practices and money laundering; nor have any companies signed integrity pacts. Concern about the integrity of the private sector has led to the inclusion of this sector as a separate pillar of the State Programme for the Prevention of Corruption and Conflicts of Interest 2011–2015.<sup>1572</sup> However, the latest report on the implementation of activities included in the State Programme<sup>1573</sup> shows that out of 13 measures only four have been realized, while four are ongoing and five have not been implemented. Integrity training occurs only in companies working in the financial sector.

There are no statistics about bribery in the private sector.

## ROLE

### 14.3.1 ENGAGEMENT WITH ANTI-CORRUPTION POLICY

Score: **0**

#### **To what extent is the business sector active in engaging with the domestic government in anti-corruption efforts?**

Anti-corruption is not on an issue on the agenda when large business associations and the Chamber of Commerce meet with the Government, and there are no examples of business associations publicly calling on the Government to fight corruption. The Business Confederation of Macedonia, as well as a small number of companies, subscribe to the UN Global Compact (Publicis and Makpetrol).<sup>1574</sup>

### 14.3.2 BUSINESS SECTOR SUPPORT FOR AND ENGAGEMENT WITH CIVIL SOCIETY IN COMBATTING CORRUPTION

Score: **0**

#### **To what extent does the business sector engage with/provide support to civil society in its task of combating corruption?**

Macedonian businesses have limited engagement in civil society anti-corruption activities, and there is no example of any sponsorship of civil society's anti-corruption activities.

The link between civil society and business is weak in Macedonia. CSOs rely almost exclusively on foreign donor support. The Law on Donations and Sponsorship<sup>1575</sup> prescribes a very complicated procedure for the admission and reporting of donations. CSOs have initiated amendments to the Law and to the tax laws that affect CSOs.<sup>1576</sup> A small number of CSOs have businesspersons on their boards, but these are rare exceptions to the rule.

<sup>1572</sup> [http://www.dksk.org.mk/images/Drzavni\\_Programi/](http://www.dksk.org.mk/images/Drzavni_Programi/) [accessed on 08.06.2015].

<sup>1573</sup> State Commission for the Prevention of Corruption, 2014: p.25.

<sup>1574</sup> UN Global Compact website: [https://www.unglobalcompact.org/search?button=&page=1&search\[document\\_type\]=Participant&search\[keywords\]=Macedonia&utf8=%E2%9C%93](https://www.unglobalcompact.org/search?button=&page=1&search[document_type]=Participant&search[keywords]=Macedonia&utf8=%E2%9C%93) [accessed on 08.06.2015].

<sup>1575</sup> Law on Donations and Sponsorship in Public Activities, Official Gazette of the RM, No. 47/06, 86/08, 51/2011.

<sup>1576</sup> Macedonian Center for International Cooperation, *Report on the implementation of the Strategy for the cooperation of the Government with civil society*, (Skopje: Macedonian Center for International Cooperation, 2015), <http://mcms.org.mk/images/docs/2015/izveshtaj-za-sproveduvanje-na-strategijata-za-sorabotka-na-vladata-so-gragjanskiot-sektor.pdf> [accessed on 12.05.2015]

TI Macedonia's activity on corporate governance, implemented between 2007 and 2009, ceased due to insufficient interest and support from both the business sector and from the international donor community. Nevertheless, TI Macedonia has published the TI Business Principles in the Macedonian language, a project supported by the Norwegian Embassy and in cooperation with TI Norway and the Chamber of Commerce.<sup>1577</sup> The Principles have been presented to the members of the Businesswomen's Association.<sup>1578</sup>

## RECOMMENDATIONS

- R1.** The Chambers of Commerce should adopt Sectoral Codes of Corporate Governance containing procedures for the implementation of codes of conduct and for developing anti-corruption programmes and policies for businesses.
- R2.** The State Securities Commission and the Stock Exchange of Macedonia should establish an auditing commission that will have authority for overseeing companies and their management.

<sup>1577</sup> <http://www.mchamber.org.mk/%28S%28esjigz45vp24qv45kwzj1045%29%29/default.aspx?mId=56&evId=393&IId=1> [accessed on 12.05.2015].

<sup>1578</sup> [http://www.transparency.mk/index.php?option=com\\_content&task=view&id=665&Itemid=77](http://www.transparency.mk/index.php?option=com_content&task=view&id=665&Itemid=77) [accessed on 12.05.2015].





# 15. STATE-OWNED ENTERPRISES

## SUMMARY

State-owned enterprises (SOEs) are legal entities, often created by the state, that operate commercial activities. An SOE may be wholly or partially owned by the state, including central or local government.

SOEs in Macedonia are not sufficiently autonomous institutions and the legal and regulatory framework does not protect their independence. The government is authorised to appoint most of the board members of SOEs, but there is no clear chain of reporting since there is no legal requirement to provide annual reports. Nevertheless, annual reports are available on several SOE websites.

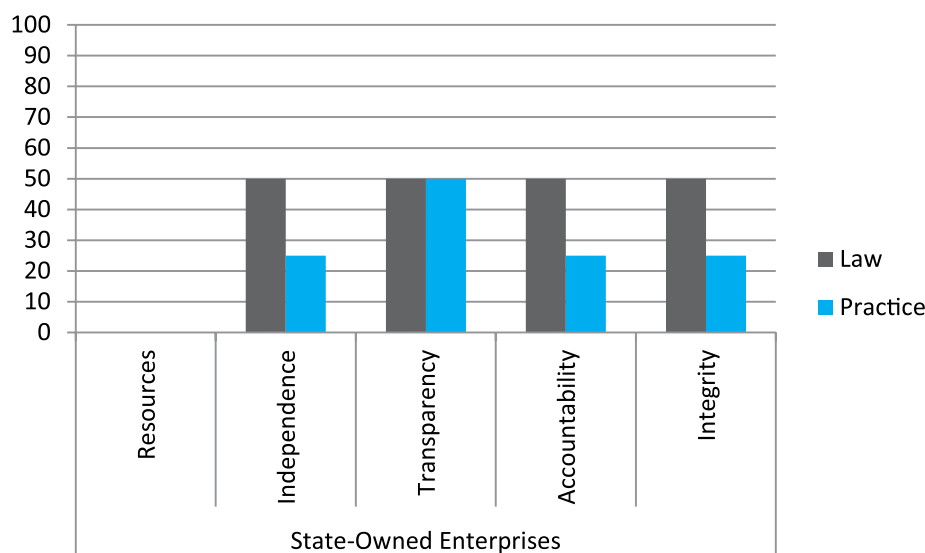
There are no specific integrity regulations for SOEs. According to the State Audit Office's annual programme, SOEs are to be audited by the SAO, though not regularly every year. The audit reports are published, but in recent years there has been no example of the Assembly discussing an SOE's report, which raises concern about checks and balances and about the accountability of SOEs.

The table below presents the indicator scores which summarise the assessment of the SOEs in terms of their capacity and governance within the Macedonian national integrity system. The remainder of this Section presents the qualitative assessment for each indicator.

**OVERALL PILLAR SCORE: 34.7/100**

| DIMENSION                       | INDICATOR         | LAW | PRACTICE |
|---------------------------------|-------------------|-----|----------|
| <b>Capacity</b><br>37.5 / 100   | Resources         | /   | /        |
|                                 | Independence      | 50  | 25       |
| <b>Governance</b><br>41.6 / 100 | Transparency      | 50  | 50       |
|                                 | Accountability    | 50  | 25       |
|                                 | Integrity         | 50  | 25       |
| <b>Role</b><br>25 / 100         | Oversight of SOEs |     | 25       |

## Pillar score per Law and Practice



## STRUCTURE

According to the Constitution, socially-owned enterprises which exist in a number of sectors, including public utilities, the media, oil and gas and transportation services, must be restructured and privatised.<sup>1579</sup> The state's ownership of economic assets remains relatively moderate at about 15 % of GDP.<sup>1580</sup>

Public enterprises were established by the state, by a municipality, or as joint public enterprises. Public enterprises established by the State are the property of the State, while public enterprises established by the municipality or the City of Skopje are the property of the founder. If there is external investment in the SOE, it can be restructured as a commercial company with the participation of the state.

There are SOEs operating in several sectors of the economy, including energy, banking, water supply, communal utilities, and public transportation sectors.<sup>1581</sup> There are also sectors such as arms production and narcotics in which private enterprises may not operate without government approval.

For this pillar, the enterprises established by the state (SOEs) are analysed.

## CAPACITY

### 15.1.1 INDEPENDENCE (LAW)

Score: **50**

**To what extent does the legal and regulatory framework for SOEs protect the independent operation of SOEs and ensure a level-playing field between SOEs and private sector companies?**

<sup>1579</sup> Kekenovski, *The public sector in the Republic of Macedonia's legislation, Abstract* (Skopje: Kekenovski), p. 1

<sup>1580</sup> European Commission, 2014: p. 27.

<sup>1581</sup> Law on Public Enterprises, Official Gazette of the Republic of Macedonia, Nos. 38/96; 9/97 6/02, 40/03, 49/06, 22/07, 83/09, 6/12, 119/13, 41/14, 138/14, 25/15, 61/15, Article 2.

State-owned enterprises (SOEs) are considered to be public enterprises in which the government is the dominant shareholder. The Constitution of the Republic of Macedonia establishes the same terms of competition for both private and public enterprises with respect to access to markets, credit, and other business operations to include licenses and supplies.

SOEs are not given favourable positions or material advantages under the law. SOEs are treated equally except those that are given special rights in the public interest. The law also provides that public interest includes all activities considered indispensable for the life and work of citizens and the work of legal entities and public institutions.<sup>1582</sup>

SOEs' obligations and responsibilities are not mentioned in any law but are clearly mandated in the Decisions with which they have been founded, as well as in their Statutes.

According to article 2-a of the LPE,<sup>1583</sup> SOEs are not exempt from any law or regulation related to market competition. The Law on the Protection of Competition and the Law on Control of State Aid are also applicable to SOEs. In the LPE it is established that bankruptcy proceedings may not be brought against public enterprises.

General managers of SOEs are usually appointed by the government. Members of SOE boards of directors are usually comprised of both internal and external members appointed by the government. General managers of SOEs routinely report to a line minister, however. As a result, unusually as compared to other states, the law enables significant government involvement in the day-to-day management of SOEs. Some SOEs have general assemblies in which the state government is the only member.<sup>1584</sup>

### 15.1.2 INDEPENDENCE (PRACTICE)

Score: **25**

#### To what extent in practice are the day-to-day operations of SOEs performed independently of state interference?

Interviews with Directors of SOEs<sup>1585</sup> indicate that they have to implement the Government's programme and at the same time perform in the best interest of the company. The Director of the SOE Macedonian Forests, Karadzovski, explained that there have been many cases of long discussions (over several months) with the Government over company decisions.

Experience in Macedonia shows that SOE board members usually act as an extended hand of the Government and do not prioritise the interests of the companies. This is mainly because board members and CEOs are political appointments. Board members are elected by the Government and, as of 2014, are elected on the basis of public advertisements for candidates to apply to be board members. However, there is no clear information about the appeal process regarding appointments. There is no established transparent procedure that would allow appointments based on fair competition in accordance with objective criteria

<sup>1582</sup> Law on Public Enterprises, Official Gazette of the Republic of Macedonia, Nos. 38/96; 9/97 6/02, 40/03, 49/06, 22/07, 83/09, 6/12, 119/13, 41/14, 138/14, 25/15, 61/15, Article 1.

<sup>1583</sup> Law on Public Enterprises, Official Gazette of the Republic of Macedonia, Nos. 38/96; 9/97, 6/02, 40/03, 49/06, 22/07, 83/09, 6/12, 119/13, 41/14, 138/14, 25/15, 61/15.

<sup>1584</sup> Statute of the Joint Stock Company for Construction and Management of Residential Properties and Commercial Properties with significance for the Republic of Macedonia, Articles 13 and 14 of the Statute: [http://www.adsdp.mk/adsdpmk/dokumenti/podzakonski\\_akti/StatutNaADISSPDPZR.pdf](http://www.adsdp.mk/adsdpmk/dokumenti/podzakonski_akti/StatutNaADISSPDPZR.pdf) [accessed on 23.07.2015].

<sup>1585</sup> Mr. Zarko Karadzovski, Director of the SOE Macedonian Forests, Interview 24.08.2015.

with regards to expertise and integrity. It has often been the case that the appointments of board members of SOEs has raised public concern over conflicts of interest. This was the case in the appointment of a trade union leader as board member of a pension fund after he had supported the adoption of the new law on public administration.<sup>1586</sup>

The EC has noted the issue of increasing employment in the public sector, in particular in public enterprises.<sup>1587</sup> The routine practice of creating new posts on social or political grounds has artificially inflated the civil service, undermining the principle of merit and the overall goal of developing an efficient public administration.<sup>1588</sup> The EC also addressed the issue of increased government borrowing abroad, as well as a surge in foreign loans to public enterprises, as the main forces behind the gradual increase of gross external debt.<sup>1589</sup> Debt accumulated by public enterprises, and related contingent government liabilities due to debt guarantees — estimated at some 8 % of GDP — are of particular concern.

## GOVERNANCE

### 15.2.1 TRANSPARENCY (LAW)

Score:  50

#### To what extent are there provisions to ensure transparency in the activities of SOEs?

Legal provisions regarding the transparency of SOEs are of a limited nature. SOEs are covered by the Audit Law as well as the Law on Free Access to Public Information.<sup>1590</sup> The Law on Public Enterprises is the only law with provisions regarding the transparency of public enterprises.

The LPE regulates the principles of transparency in the financial activities of SOEs<sup>1591</sup> and contains a general principle for transparency in the work of SOEs (Article 8). Public enterprises are registered in the Trade Registry and information regarding the registration of a public enterprise must be published in the Official Gazette of the Republic of Macedonia. The SOEs are subject to the same accounting and auditing standards as listed companies, such as the International Financial Reporting Standards (Article 7).

There is no legal requirement for an SOE to have an anti-corruption programme and therefore they are not obliged to report on their anti-corruption programmes.

In Macedonia there is no institution that acts as a centralized coordinating unit for SOEs and there is no institution that is required to develop consistent and aggregate reporting on SOEs (covering financial indicators, the value of SOEs, the implementation of the State's ownership policy, voting structures, membership of SOE boards, or individual reporting on the most significant SOEs).

<sup>1586</sup> <http://www.telegraf.mk/aktuelno/makedonija/104172-sdsm-liderot-na-ssm-naznacena-za-clen-na-upravniot-odbor-na-piom> [accessed on 23.07.2015].

<sup>1587</sup> European Commission, 2014.

<sup>1588</sup> *Ibid.*, p.13.

<sup>1589</sup> *Ibid.*, p.22.

<sup>1590</sup> Law on Free Access to Public Information, Official Gazette of the Republic of Macedonia, Nos. 13/2006, 86/2008, 6/2010 and 42/2014.

<sup>1591</sup> Law on Public Enterprises, Official Gazette of the Republic of Macedonia, No. 38/96; 9/97, 6/02, 40/03, 49/06, 22/07, 83/09, 6/12, 119/13, 41/14, 138/14, 25/15, 61/15, Article 7.

## 15.2.2 TRANSPARENCY (PRACTICE)

Score: **50**

### To what extent is there transparency in SOEs in practice?

The SOEs follow the legal requirement for publishing their registration in the Trade Registry and the Official Gazette; however, the governance and ownership structures of SOEs and their relations to other state-owned entities are not disclosed on their websites.<sup>1592</sup> The most commonly available information concerns the organizational structure and the name of the managing director, but not the names or statements of interests of the governing boards.

SOEs are subject to an annual independent external audit by the State Audit Office,<sup>1593</sup> and some SOEs also appoint external auditors.<sup>1594</sup> Some SOEs have established internal audit units<sup>1595</sup> and in some SOE statutes the Assembly is obliged to appoint an external auditor<sup>1596</sup> for conducting effective external audits. However, there are only a few audit reports published on the websites of SOEs.<sup>1597</sup>

There is no officially published information regarding public service obligations or regarding any resulting financial compensation. As explained above, there is no co-ordinating unit responsible for the work of SOEs and therefore there are no aggregate reports on SOEs. There is also no existing website that centralises the information made available to the public on the country's SOEs.

## 15.2.3. ACCOUNTABILITY (LAW)

Score: **50**

### To what extent are there rules and laws governing oversight of SEOs?

The LPE contains rules of control and oversight of SOEs, including through the functions of the boards. The LPE clearly specifies how SOEs should be governed and organized, including provisions relating to the management board, the manager (director) and the supervisory board. The law also obliges SOEs to pass a Statute in which the same provisions are further developed.

The managing board of an SOE contains five to fifteen members appointed by the establisher (the Government) with a term no longer than four years. For the purpose of carrying out control of the material-financial operation of a public enterprise, a board of control of the material-financial operation is established (hereafter referred to as: the Board of Control), consisting of 5 members.<sup>1598</sup> The members of the Board of Control are appointed or dismissed

<sup>1592</sup> SOE Macedonian Woods <http://www.mkdsumi.com.mk/zanas.php?page=2&s=2> SOE Roads <http://www.roads.org.mk/> [accessed on 4.08.2015]

<sup>1593</sup> Law for the State Audit Official Gazette Article 22, Official Gazette 66/10 and 145/10 [http://www.finance.gov.mk/files/u11/zakon\\_zadravna\\_revizija.pdf](http://www.finance.gov.mk/files/u11/zakon_zadravna_revizija.pdf) [accessed on 26.07.2015]

<sup>1594</sup> <http://www.roads.org.mk/314/revizorski-izveshtai> [accessed on 23.07.2015]

<sup>1595</sup> <http://www.mkdsumi.com.mk/sektori.php?page=4&s=10>

<http://www.roads.org.mk/215/organizaciona-postavenost>

[http://www.posta.mk/za\\_nas/struktura/struktura\\_na\\_makedonska\\_posta.html](http://www.posta.mk/za_nas/struktura/struktura_na_makedonska_posta.html) [accessed on 26.07.2015]

<sup>1596</sup> [http://www.adsdp.mk/adsdpmk/dokumenti/podzakonski\\_akti/StatutNaADISSDPZR.pdf](http://www.adsdp.mk/adsdpmk/dokumenti/podzakonski_akti/StatutNaADISSDPZR.pdf) [accessed on 21.07.2015]

<sup>1597</sup> <http://www.roads.org.mk/314/revizorski-izveshtai> [accessed on 23.07.2015]

<sup>1598</sup> Law on Public Enterprises Official Gazette of the Republic of Macedonia, Nos. 38/96; 9/97, 6/02, 40/03, 49/06, 22/07, 83/09, 6/12, 119/13, 41/14, 138/14, 25/15, 61/15, Article 26.

by the founder. Members of the Board of Control should be persons who have completed higher education, who have appropriate knowledge and experience, especially in the field of finance and accounting.

The LPE obliges SOEs to submit tri-monthly reports to the founder (the State, municipalities, or the City of Skopje). The Director submits bi-annual reports to the founder and the management board.<sup>1599</sup> The Board of Control is obliged to examine the annual accounts and the Report on the Operation of the Public Enterprise, after which it submits its opinion to the management board.<sup>1600</sup>

There are no separate procedures regulating the accountability of SOEs to the Assembly, other than those established by the Law on State Audit. Article 16 of this Law provides an obligation for reporting, but it does not clarify whether or not the report is to be sent to the Assembly and does not establish an obligation for the Assembly to discuss and adopt the report. This applies even to Macedonian Radio and Television, which is a public enterprise established by the Assembly.<sup>1601</sup>

As mentioned above, there is no coordinating unit responsible for the work of SOEs. However, the work of SOEs is subject to inspections carried out according to the Law on Inspection Oversight.<sup>1602</sup> The Law on Inspection Oversight does not provide any special provisions regarding the oversight of public enterprises. SOEs can be subject to an inspection oversight,<sup>1603</sup> such as an oversight by the State Inspectorate of Labor, the State Administrative Inspectorate, the State Foreign Exchange Inspectorate, and by the State Sanitary and Health Inspectorate.

#### 15.2.4 ACCOUNTABILITY (PRACTICE)

Score: **25**

##### To what extent is there effective oversight of SEOs in practice?

Due to insufficient public information, it is very difficult to establish clear facts regarding the role of SOE boards and the way they apply their authority and competencies and the extent of their objectivity in carrying out their functions of strategic guidance and monitoring of management. It is very rare for SOEs to publish their annual reports on official websites.

However, directors of SOEs have stated in interviews that SOE boards do carry out their functions in accordance with the objectives set out by the government. In the case of Macedonian Forests, the director<sup>1604</sup> informed us that the SOE sends reports to the government on a quarterly basis. The reporting and oversight is organized vertically: every three months the director submits reports to the governing board, and these reports are sent to the government after review. Bi-annual reports are reviewed only by the governing board.

<sup>1599</sup> Law on Public Enterprises, Official Gazette of the Republic of Macedonia, Nos. 38/96; 9/97, 6/02, 40/03, 49/06, 22/07, 83/09, 6/12, 119/13, 41/14, 138/14, 25/15, 61/15, Article 19.

<sup>1600</sup> Law on Public Enterprises, Official Gazette of the Republic of Macedonia, Nos. 38/96; 9/97, 6/02, 40/03, 49/06, 22/07, 83/09, 6/12, 119/13, 41/14, 138/14, 25/15, 61/15, Article 27.

<sup>1601</sup> Law on Establishing a Public Enterprise Macedonian Radio and Television, Official Gazette of the Republic of Macedonia, Nos. 6/98, 48/09.

<sup>1602</sup> Law on Inspection Oversight, Official Gazette of the Republic of Macedonia, No. 50/10

<sup>1603</sup> Law on Inspection Oversight, Official Gazette of the Republic of Macedonia, No. 50/10, Article 2.

<sup>1604</sup> Mr.Zarko Karadzovski, Director of the SOE Macedonian Forests, Interview 24.08.2015.

However, there is no information about SOE boards carrying out any evaluation of their work to appraise their performance.

In one case, a Publicly-Owned Enterprise (POE) established by City of Skopje (which is different from a SOE but has the same function at local level) was transformed into a shareholder company (the sanitary landfill of Drisla) in which 80% of the ownership is held by a foreign investor, similar to the company EVN Macedonia AD.<sup>1605</sup> In these types of companies there is no governing board but only an assembly that comprises five members, one of whom is from the City of Skopje as the owner of 20% of the company. However, the sale of Drisla has proven controversial due to its non-transparent procedure and the selection of the successful candidate was in violation of basic tender criteria.<sup>1606</sup> The procurement committee decided to select an Italian company which had not been registered at the time when the tender was published and could not present necessary experience. A German competitor has taken the case to the international court.<sup>1607</sup>

## 15.2.5 INTEGRITY (LAW)

Score: **50**

### To what extent are there mechanisms in place to ensure the integrity of SOEs?

There is no Code of Corporate Governance for SOEs. Article 18 of the LPE contains rules on conflicts of interest providing that a member of a public enterprise management board cannot have personal interests in an enterprise or a company that is in business relations with the public enterprise. Each member of the management board and the general manager of the public enterprise is obliged to warn the founder about the existence of any conflicts of interest amongst members of the management board.

As described above in the section on the Business pillar, private sector bribery, both active and passive, is a punishable offence under the Criminal Code and can result in a prison sentence of between five and ten years. This also applies to SOEs.<sup>1608</sup> The Code also contains provisions on corporate liability. Legal persons (including SOEs) can be held responsible for crimes committed by authorized representatives acting on their behalf, with their involvement, or with the purpose of benefiting them.

General procurement rules and their transparency requirements apply equally to SOEs and private sector enterprises when working with government entities. According to Article 2-a of the LPE, there are no exemptions related to market competition for SOEs.

The Electoral Code prohibits donations from public sources, either in monetary form or in kind,<sup>1609</sup> and as mentioned in the section on the Political Parties pillar, if the State Commission

<sup>1605</sup> EVN Macedonia AD is FYR Macedonia's sole electricity distribution company, serving more than 812,000 customers and a population of 2 million people. After the unbundling of the state-owned utility into separate generation, transmission, and distribution companies, the Company was subsequently privatized in March 2006, with 90 percent of its shares sold to EVN AG for €225 million. Ten percent of the Company's shares remain with the Government. <https://www.worldbank.org/content/dam/Worldbank/document/eca/Macedonia-Snapshot.pdf>, pp. 21

<sup>1606</sup> Investigative journalist story, Sashka Cvetkovska, Vlado Apostolov, Nela Lazarevic, BIRN Skopje 23.09.2014 <http://novatv.mk/index.php?navig=8&cat=20&vest=16894>

<sup>1607</sup> Ibid.

<sup>1608</sup> Criminal Code, Official Gazette of the RM 37/96, 80/99, 4/02, 43/03, 19/04 и 73/06. Amendments to the Criminal Code were adopted on 10 September 2009 (and published in the Official Gazette on 14 September 2009) to, *inter alia*, bring corruption-related provisions closer in line. The aforementioned amendments enter into force on 22 March 2010

<sup>1609</sup> Electoral Code, Official Gazette of RM, No. 40/06, 148/08, 155/08, 44/11, 51/11, 142/12, 31/13, 34/13 and 32/14, Article 83.

for the Prevention of Corruption (SCPC) notes irregularities based on submitted financial reports, such as the use of public funds and assets of public enterprises and other legal entities managing state capital, a report must be submitted to Parliament within three months, detailing such possible abuses.<sup>1610</sup> The Law on the Prevention of Corruption takes the same stance.<sup>1611</sup> SOE officials are also obliged to provide asset declarations to the SCPC.<sup>1612</sup>

The Law on Lobbying contains a provision that prohibits lobbying activities on the part of responsible persons in public enterprises or public institutions established by the legislative, executive or local government, and these persons are also not allowed to lobby in the first six months after the completion of their term.<sup>1613</sup> However, SOEs have no provisions in their internal regulations related to lobbying.

Macedonia has not yet ratified the OECD Convention on Combating the Bribery of Foreign Public Officials in International Business Transactions.

### 15.2.6 INTEGRITY (PRACTICE)

Score: **25**

#### To what extent is the integrity of SOEs ensured in practice?

The integrity of SOEs is not ensured and there is no effective control mechanism. On the contrary, SOEs are very often in the public eye due to problems related to their integrity.

Recently published wiretapped phone conversations reveal various types of subservience on the part of SOEs to the ruling political party. On April 25, 2015, the opposition published a phone conversation between the director of the Macedonian power plant (ELEM) and a government official (the chief of the Prime Minister's Cabinet)<sup>1614</sup> in which, in spite of the fact that a vacancy announcement in ELEM was targeted at professionals in nuclear energy, the director accepted the official's request to employ drivers and other people from the party list.

In another case, the Minister of Finance organized a lottery to employ 1,600 persons in the Macedonian Forests enterprise.<sup>1615</sup> The Government presented this as a project for employing 1,600 persons from socially vulnerable groups.<sup>1616</sup> The candidates selected by computer were not all employed in Macedonian Forests, but a number were transferred to other institutions. This was seen as a populist tactic of using the offer of employment for political goals. There are also other documented cases of public funds from SOEs being used for political goals, such as providing transport or meals for political activities.<sup>1617</sup>

There are no clear statistics on bribery committed by SOEs in the country or abroad. The SCPC's 2014 annual report states that the SCPC submitted a criminal report to the State Prosecutor alleging organized crime and corruption by two managing directors and chairs of the governing board of the public enterprise Macedonian Railways.<sup>1618</sup>

<sup>1610</sup> Law on the Prevention of Corruption, Official Gazette of RM, Nos. 28/2002, 46/2004, 126/2006, 10/2008, 161/2008, 145/2010, Article 12.

<sup>1611</sup> Law on the Prevention of Corruption, Official Gazette of RM, Nos. 28/2002, 46/2004, 126/2006, 10/2008, 161/2008, 145/2010, Articles 10–15.

<sup>1612</sup> Law on the Prevention of Corruption, Official Gazette of RM, Nos. 28/2002, 46/2004, 126/2006, 10/2008, 161/2008, 145/2010.

<sup>1613</sup> Law on Lobbying, Official Gazette of RM, No. 106/08 and 135/11.

<sup>1614</sup> Vlatko Cingovski and Martin Protuger, <http://reporter.mk/2015/04/08/sdsm-protuger-so-nalog-za-partiski-vra/> [accessed on 28.07.2015].

<sup>1615</sup> <http://republika.mk/?p=136480> Press release from the Sector for Public Relations in the Government.

<sup>1616</sup> <http://infomax.mk/wp/?p=7090> [accessed on 23.07.2015].

<sup>1617</sup> MP Jani Makraduli for the media press release date 29 April 2011 <http://sdsm.org.mk/print.aspx?articleId=5191>

<sup>1618</sup> SCPC, 2014: [http://www.dksk.org.mk/images/Drzavni\\_Programi/%D0%93%D0%9E%D0%94%D0%98%D0%A8%D0%95%D0%9D%20%D0%98%D0%97%D0%92%D0%95%D0%A8%D0%A2%D0%90%D0%88-2014-%D0%94%D0%9A%D0%A1%D0%9A.pdf](http://www.dksk.org.mk/images/Drzavni_Programi/%D0%93%D0%9E%D0%94%D0%98%D0%A8%D0%95%D0%9D%20%D0%98%D0%97%D0%92%D0%95%D0%A8%D0%A2%D0%90%D0%88-2014-%D0%94%D0%9A%D0%A1%D0%9A.pdf) [accessed on 2.08.2015]



The UNODC's Business Crime Report<sup>1619</sup> gives an indication of the extent of bribery in SOEs by listing the variations in the prevalence of bribery across business sectors in Macedonia: Building and Construction (11.7 percent); Wholesale Trade and Retail Trade (7.5 per cent); Manufacturing, Electricity, Gas and Water Supply (5.1 per cent); and Accommodation and Food Service Activities and Transportation and Storage combined (3.8 per cent). From this list, electricity, gas and water supply are covered by SOEs, while others are related because SOEs use their services.

There is no effective monitoring either of existing codes of conduct or of the LPE provisions regarding conflicts of interest. However, based on the Law for the Prevention of Conflicts of Interest, the State Commission for the Prevention of Corruption (SCPC) publishes potential conflicts of interest concerning board members and discloses them to the public on its website. However, there are no known internal procedures and/or monitoring mechanisms that SOEs have put in place to prevent cases of bribery, and there is no practice of SOEs or other enterprises signing integrity pacts.

In practice, there have been cases of the Government giving SOEs preferential treatment. For example, in February 2010 the Parliament adopted legal amendments on reprogramming, allowing SOEs to pay their tax-related debts within 10 years with a grace period of 3 years. The private sector issued a statement criticising the unequal treatment of the public and private sectors, which creates unfair advantages for SOEs.<sup>1620</sup> The law was changed in 2015 to provide equal conditions for all sectors.<sup>1621</sup>

The Tax Revenue Office published a report on financial donations to political parties in 2013, revealing donations from the SOE Macedonian Post Offices to the Democratic Union of Albanians.<sup>1622</sup> The case has not been investigated or clarified by the institutions responsible for the control of political financing.

## RECOMMENDATIONS

- R1.** The Government should initiate and to present to the Assembly legal amendments to the LPE with a legal requirement for SOEs to have anti-corruption programmes.
- R2.** The Government should establish a centralized coordinating unit for SOEs that is required to develop reporting on SOEs (covering financial indicators, the value of SOEs, the implementation of the State's ownership policy, the voting structures and membership of SOE boards, and individual reporting on the most significant SOEs).
- R3.** The Government should establish a central website that centralises the information available to the public about the country's SOEs.
- R4.** The Government should initiate and present to the Assembly legal amendments to the LPE, with a legal requirement for SOEs to publish on their websites their governance and ownership structures and their relations to other state-owned entities.

<sup>1619</sup> UNODC Business, Corruption and Crime in the former Yugoslav Republic of Macedonia: The impact of bribery and other crime on private enterprise 2013 [https://www.unodc.org/documents/data-and-analysis/statistics/corruption/Macedonia\\_Business\\_corruption\\_report\\_ENG.pdf](https://www.unodc.org/documents/data-and-analysis/statistics/corruption/Macedonia_Business_corruption_report_ENG.pdf) [accessed on 23.07.2015]

<sup>1620</sup> Mile Boskov, <http://daily.mk/vesti/privatniot-sektor-bara-ist-tretman-so-javnite-pretpriyatija> [accessed on 23.07.2015]

<sup>1621</sup> Chamber of Commerce of Macedonia. <http://www.mchamber.org.mk/%28S%285u5nqjkn1nil0aq2jktsh45%29%29/default.aspx?lId=1&mId=55&evId=31023>

<sup>1622</sup> <http://faktor.mk/2014/04/05/ujp-gi-objavi-godishnite-donacii-za-partiite-od-gradonachalnici-i-direktori-do-obichni-lugje-i-javni-pretpriyatija/> [accessed on 2.08.2015].





7



# VII. RECOMMENDATIONS

## LEGISLATURE

- R1.** The Assembly should hold to account the officials it appoints to lead anti-corruption institutions.
- R2.** The Assembly should review the implementation of international anti-corruption instruments such as the UNCAC and the implementation of the national programme for the Prevention of Corruption and Conflicts of Interest.

## EXECUTIVE

- R1.** The Government should take effective measures to provide a clear and updated list of elected and appointed officials.
- R2.** The Government should ensure effective accountability, integrity and ethical behaviour on the part of ministers and executive officials.
- R3.** The Government should introduce citizen's budget tools to increase transparency in public spending.

## THE JUDICIARY

- R1.** The Judicial Council should ensure full implementation of the principle of merit-based appointment and promotion of judges in order to strengthen the independence, impartiality and integrity of the judiciary.
- R2.** A unified Code of Judicial Ethics and guidelines on its implementation should be developed and applied to all judges.
- R3.** Rules and procedures for judges concerning the acceptance of gifts, hospitality and other advantages should be established by the Judicial Council

## PUBLIC SECTOR

- R1.** Mechanisms should be established (e.g., in the form of a parliamentary committee or a new or existing agency) to provide regular (even monthly or quarterly) oversight of new employments in public administration.
- R2.** Authority and procedures for the supervision of contract implementation should be established.

## LAW ENFORCEMENT AGENCY

- R1.** The Ministry of Interior should introduce effective rules relating to conflicts of interest for police officers.
- R2.** The Ministry of Interior should ensure effective controlling mechanisms for the implementation of the Code of Police Ethics and the rules on gifts and hospitality.
- R3.** The Ministry of Interior needs to establish effective mechanisms, including a whistleblowing mechanism, to prevent political activities on police premises. This is necessary in order to strengthen police officers' ability to resist undue political interference, and their ability to resist being instrumentalised during elections as tools of political parties.

## PUBLIC PROSECUTOR

- R1.** The Public Prosecutor Council should establish an effective mechanism to implement the Code of Ethics.
- R2.** The public prosecution should ensure accurate and timely presentation of information concerning the prosecution of corruption cases, as well as cases related to the illegally wiretapped conversations.

## ELECTORAL MANAGEMENT BODY

- R1.** The SEC should be provided with the authority and capacity to create and effectively maintain the electoral roll.
- R2.** A Code of Conduct for electoral officials should be adopted, and implementation mechanisms should be established.

## SUPREME AUDIT INSTITUTION

- R1.** The Assembly should increase the supervisory and sanctioning mechanisms of the State Audit Office (SAO) in order to strengthen its role and effectiveness in the supervision of public expenditure.

## COMMENT

The SAO should be taken as an example for most or all of the other pillars. It can serve as a model for the comparison of all institutions' capacities (in terms of resources) and to develop general guidance as to what is required in order to perform duties adequately in an efficient manner.

## OMBUDSMAN

- R1.** The Law on the Ombudsman needs to be changed and amended in order to ensure full compliance with the Paris Principles relating to human rights bodies, notably to extend the Office's mandate to the promotion of human rights.
- R2.** The Ombudsman's office requires additional financial and human resources in order to fulfil its competences.
- R3.** The Government and the Parliament should introduce a legal provision making it mandatory for there to be a follow-up on the recommendations of the Ombudsman. This provision should state clear deadlines and introduce appropriate sanctions for cases in which recommendations are not followed up.

## ANTI-CORRUPTION AGENCIES

- R1.** The SCPC should adopt an internal Code of Conduct for members elected by Parliament and establish effective mechanisms for the implementation of this Code.
- R2.** SCPC members should ensure that their own asset declarations are made public, in accordance with the Law on the Prevention of Corruption.
- R3.** The SCPC should ensure the publication of case law and explanations of decisions, especially decisions related to political financing, conflicts of interest and asset declarations.
- R4.** The SCPC should publish other reports which, in accordance with the law, it should meet its legal obligation to submit reports on the financing of political campaigns to the Assembly.

## POLITICAL PARTIES

- R1.** Political parties should agree to include regulations for the selection of candidates by political parties.
- R2.** Assembly should adopt amendments to the Law on Political Parties and the Electoral Code to include provisions for selection of candidates by political parties.
- R3.** Political parties should ensure the existence and implementation of integrity mechanisms by adopting codes of conduct or by amending statutes.

## **MEDIA**

- R1.** Journalists' associations should adopt unified codes of conduct for the media.
- R2.** Journalists' associations should propose legal amendments to strengthen the ethical behaviour and integrity of the media and journalists.
- R3.** The Government should amend the Law on the Media and ensure that political advertisements are not allowed in the public media service and will be regulated for the media with national licenses.
- R4.** The tax authority should develop effective mechanisms for oversight over media-related donations to political parties.

## **CIVIL SOCIETY ORGANIZATIONS**

- R1.** The Government should enhance and make transparent the procedures for policy consultation with CSO groups.
- R2.** The Government should finance CSO activities subject to transparent and participatory processes free from undue influence.
- R3.** CSOs should self-regulate and create a Code of Ethics for CSOs in order to promote the sustainability of such organizations, to protect the professionalism of personnel and to enhance the credibility of CSOs amongst donors and the public.
- R4.** The Government should introduce tax incentives for CSOs.

## **BUSINESS**

- R1.** The Chambers of Commerce should adopt Sectoral Codes of Corporate Governance, containing procedures for the implementation of codes of conduct and the development of anti-corruption programmes and policies for businesses.
- R2.** The State Securities Commission and the Stock Exchange of Macedonia should establish an auditing commission that will have authority for overseeing companies and their management.



## STATE-OWNED ENTERPRISES

- R1.** The Government should initiate and present to the Assembly legal amendments to the LPE with legal requirement for State-Owned Enterprise (SOEs) to have anti-corruption programmes and clear legal obligations for SOEs to report on the implementation of their anti-corruption programmes.
- R2.** The Government should establish a centralized coordinating unit for SOEs that is required to develop reporting on SOEs (covering financial indicators, the value of SOEs, the implementation of the State's ownership policy, the voting structures and membership of SOE boards, and individual reporting on the most significant SOEs).
- R3.** The Government should establish a website that centralises the information available to the public on the country's SOEs.
- R4.** The Government should initiate and present to the Assembly legal amendments to the LPE with a legal requirement for SOEs to publish on their websites their governance and ownership structures and their relations with other state-owned entities





8



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