



European
Policy
Institute.
Skopje

URGENT REFORM PRIORITIES

State of Play

Legend

4 - Measures pursued do not serve the attainment of the priority

3 - Not being implemented or implemented measures run contrary to the set priority

2 - Underway

1 - Implemented

1. Rule of Law and Judiciary

A. Judiciary

3

De-politicize the appointment and promotion of judges and prosecutors, in practice, not only in theory, on the basis of transparent, objective and strictly merit-based criteria, applied by transparent and open procedure.

○ The Judicial Council and the Council of Public Prosecutors has continued electing judges and prosecutors without any real changes in the selection process. With the temporary appointment of judges from the basic courts from all over the country to the Basic Court Skopje 1 and the temporary appointment of seven judges from the Courts of Appeal from other parts of the country to the Skopje Court of Appeal the Judicial Council has influenced directly the structure of the judges that would decide in the high profile cases initiated by the Public Prosecution Office. Moreover, the selection of acting Presidents of Basic Courts Skopje 1 and President of the Supreme Court by the Judicial Council, was followed by criticism from the media, experts and the judicial community. These practices make us question the basic working principles of the Council as an independent institution.

3

Put in place a harmonised performance management system based on qualitative, as well as quantitative standards, as a basis for all career decisions.

○ No steps have been taken for the purpose of establishing a harmonised performance management system that will also take into consideration the qualitative criteria. The Judicial Council continues with its practice of adopting decisions establishing an orientation number of cases that a judge should settle on monthly bases in all courts and it is one of the key performance criteria.

3

Remove elements of the discipline and dismissal system for judges, which currently interfere with judicial independence, both in legislation and practice.

○ Regardless of the reactions by the civil society, and the opinion of the Venice Commission regarding the inadequacy of the Council for establishing facts and initiating procedures for establishing the responsibilities of a judge, a law was adopted in a summary procedure and the Council for establishing facts and initiating procedures for establishing the responsibilities of a judge was formed.

3

Ensure the professionalism of the Judicial Council, in practice not only in theory (i.e. clear and foreseeable test for the application of the statutory requirement of "distinguished lawyer").

○ Neither practical nor legal changes have been done in this direction.

2

Ensure more pro-active role played by Judicial Council and highest courts, to protect judges from interference on their independence (both through improved communication strategies and through decisive action on complaints of interference or pressure).

○ The Judicial Council has not developed practice of protecting the independence and the integrity of judges. The Supreme Court, as the highest court in the country, additionally endangers the judicial independence. The decisions adopted on the complaints by judges (especially in the case of the Basic Court Skopje 1 and the former President of the Supreme Court) show a practice of contrary nature. The efforts, like the adoption of the Handbook of the Judicial Council on the communication of the courts with the public, has not resulted in improved communication with the public and the civil sector.

2

Improve training quality, budget and autonomy of the Academy for Judges and Prosecutors (and encourage secondments of national judges to the ECtHR).

○ The Academy for Judges and Prosecutors introduced changes in the curriculum, increased its budget and there is progress in the implementation of the trainings. However, the role of the Academy in the secondment of new candidates for judges and public prosecutors is problematic. This is evident from the late start of the introductory training for the 6th generation of students at the Academy for Judges and Prosecutors, after appeal procedures had to be carried out and the Administrative Court adopted its decisions as well as the case of the appointment of public prosecutors suspected of submitting forged certificates confirming their knowledge of a foreign language .

2

Ensure publication of all court rulings within the clear deadlines imposed by law (and ensure full "searchability" and ease of access).

○ There are no data about late publication of court rulings by the judges. With the creation of the new web site www.sud.mk efforts have been made to increase the transparency in judiciary, however so far it hasn't shown that there has been any progress in comparison to the previous system for publication of the court ruling of all courts individually.

2

Develop a track record on overall length of proceedings, with special focus on "old cases".

○ There are no data about the implementation of the Judicial Council's Action Plan adopted on 12 January 2016 for urgent dealing with the unresolved cases older than 7 and 10 years in RM.

2

Ensure speedy execution of all ECtHR judgments against the country (in particular by developing practical and effective measures for each category of cases).

○ The execution of ECtHR judgments is efficient only in paying the monetary compensation. For the other cases efforts are made to draft action plans for the execution of each individual case and later for reports to be submitted. The Bureau for Representation of the Republic of Macedonia before the European Court of Human Rights has a new web site <http://biroescp.gov.mk> with all the relevant information regarding the competences of the Bureau, as well information about the European Court of Human Rights.

B. Functioning Judicial and Parliamentary Oversight of Interception of Communications

3

Ensure clearer separation of the mandates and regulations concerning interception of communications for criminal investigation, on the one hand, and for security purposes on the other.

○ No activities have been undertaken to attain this priority.

3

Remove the UBK's intermediary function as "gatekeeper" for interception activities of the law enforcement agencies (police, customs, financial police).

No activities have been undertaken to attain this priority.

3

Remove the UBK's direct access to technical equipment allowing the mirroring of the telecoms providers' communication signal (i.e. complete removal of the UBK's practical and technical capability to capture communications directly).

No activities have been undertaken to attain this priority.

3

Clarify in law and in practice that telecoms providers activate and divert signals to the competent law enforcement agencies (Police, Customs Administration and Financial Police) or the security agencies (the Security and Counterintelligence Service (UBK), the Intelligence Agency, and the Ministry of Defence's military security and intelligence service) only upon prior receipt of the relevant court order, and only for the purposes of lawful interceptions.

No elementary conditions have been created to attain this priority. .

3

Introduce risk management tools to guide and lead all intelligence operations, as well as reinforced data security and storage.

No elementary conditions have been created to attain this priority.

3

Ensure appropriate training of staff on data protection, fundamental rights, professional ethics and integrity.

No elementary conditions have been created to attain this priority.

4

Ensure immediate and regular convening of the relevant Parliamentary Committees on interception of communications and on security and counterintelligence, and their smooth operation.

The parliamentary committees from the new composition of the Assembly are still not formed.

3

Ensure these Committees compliance with their statutory reporting duties, as well as their ability to obtain without hindrance the necessary data, testimonies, technical assistance and access, necessary to produce those reports.

○ The parliamentary committees from the new composition of the Assembly are still not formed.

C. Functioning Judicial and Parliamentary Oversight of Interception of Communications

3

Ensure sufficient autonomy of independent regulatory, supervisory and oversight bodies, not only in theory but in practice, in order to act effectively and free from political pressure. This requires not only proactive efforts from the bodies themselves, but also the political will of all other actors to allow them to carry out their functions as intended by law, including through allocation of sufficient financial means.

○ No progress has been made in this direction. The independent bodies are mainly under direct influence from the former government.

3

Ensure that membership of independent regulatory bodies is based on professional competence, professional experience relevant to the field and comparative merit.

○ No progress has been made in this direction. The independent bodies are mainly under direct influence from the former government.

3

Ensure that recommendations of the Ombudsman's Office and other advisory bodies are followed up by all state bodies in full respect for the law and for the principle of accountability.

○ The 2016 Ombudsman's Report concludes that there is stagnation and in some areas even regression, which is confirmed by the 4 percent increase of established violations of human rights and freedoms.

In addition it points out the issue of the utterly politicised and non-functional institutions, which have been carrying out party agendas. It continues to state the unprofessional and brutal conduct on the part of the police as well as excessive use of force by prison guards on prisoners and the absence of systematic health care at the penitentiary and correctional facilities. In addition the shortcomings in the pension system are detrimental for its beneficiaries; lack of funds for social welfare; violation of the rights to employment of the persons with disabilities; illegal deporting of refugees, illegal determination and collection of the broadcasting fee and water supply fee; illegal taxation of citizens; as well as absence of professionalism in the work of the election bodies.

3

Ensure effective legal sanctions for non-compliance with the requests and recommendations of independent bodies.

○ The 2016 Ombudsman's Report states that there are institutions that do not understand the role of the Ombudsman, and even though they are legally required they do not cooperate with the Ombudsman's Office, and some even disrespectfully obstruct its work. Because of the obstacles imposed by the Ministries of labour and social policy, health, internal affairs, justice as well as by the Public Prosecutor's Office, Public Revenues Office and the Skopje Water Supply and Sewerage Utility Company (PE "Vodovod I kanalizacija" – Skopje), the Ombudsman has failed to carry out in full the procedures for protection of the rights of the citizens. .

4

Ensure that the Office of the Ombudsman Law is amended to comply fully with the Paris principles.

○ In March 2017 the amended Law on the Ombudsman that was passed in the autumn of 2016 went into effect. This Law was amended to comply with this priority. Thus, from the normative aspect preconditions have been created for its accreditation as a Status A National Human Right Institution. However, there is no available information whether the principles are implemented in practice.

D. Anti-corruption Policies and Legislation

3

Establish a credible track record on high-level corruption, in particular ensuring that all law enforcement and supervisory bodies have sufficient autonomy to act independently in line with the law (the credibility of the current track record suffers from the absence of a number of high-profile cases from recent years).

○ The activities of the Special Public Prosecutor's Office are making a step forward in this direction. However, the obstruction on the part of the various institutions so far and the practice of the courts in regard to the proposals by the SPPO, which is different from before, imply serious influence by the former governmental officials in an attempt to prevent the course of justice.

2

Overall fight against corruption needs to be reinforced.

○ The state bodies competent for preventing corruption are practically protecting the high level corruption, with the exception of the Special Public Prosecutor's Office. The State Commission for Preventing Corruption has failed to perform its function. According to the survey carried out by the European Policy Institute and the Helsinki Committee for Human Rights within the framework of the "Network 23 +" project, 60% of the respondents believe that the fight against corruption is at a low level, and 47% of them assess negatively the state of the justice system.

4

Improve scrutiny of conflict of interest and assets of elected and appointed officials by establishing a central register of such officials.

○ The assets declarations of the SCPC's members have not been made public, and a number of cases initiated by the public have not been processed (the case of the five directors of national cultural institutions who have not submitted their assets declarations, even though they have been on managerial positions for some time now). In the coming period people will be getting interested in the assets declarations of the newly elected and appointed officials.

2

Work with GRECO experts to establish a new, comprehensive whistle blowing protection mechanism in line with latest Council of Europe recommendations and best European practices.

○ The Law on Whistleblowers Protection adopted in November 2015 has not been really implemented in practice. Apart from that no steps have been made to take into consideration the opinion of the Venice Commission. ISIE in its survey carried out within the framework of the Network 23+ project made a recommendation for the Law on Whistleblowers Protection to be amended in accordance with the Venice Commission's recommendations regarding the mechanisms for improving the implementation of the Law. The Whistleblowers of criminal activities and corruption are not popular i.e. they get no support from anybody in the countries of the Western Balkans and even less in Macedonia as one can see from the survey carried out in seven countries on a sample of 7000 respondents and supported by the Regional Cooperation Council with a central office in Sarajevo.

E. Lustration

4

Address the serious shortcomings and revise / repeal of the Law on Lustration and its implementation (in particular with reference to the Venice Commission's amicus curiae brief) as regards e.g. temporal limits; safeguards against political, ideological or party reasons used as grounds for lustration; exclusion of persons in private or semi-private positions and stronger safeguards protecting the identity of subjects until final court decision.

○ The repealing of the Law and of the Commission has not resolved the exceptionally negative consequences from their implementation and activities. The European Court of Human Rights adopted a number of judgements against the Republic of Macedonia related to cases of lustration.

2. Depolitisation of the Public Administration

3

Implement rigorously the new legal framework, Law on Administrative Servants and Law on Public Employees, fully observing the principles of transparency, merit and equitable representation.

○ Contrary to the formal framework in practice the partisanship of the public administration has continued.

3

Employment policies need to follow the principles of transparency, merit and equitable representation in the public service through of open procedures. There should be no further employments not respecting the rules.

○ Contrary to the formal framework in practice the partisanship of the public administration has continued.

3

Impose a moratorium on implementation of the Law on Transformation of Temporary Positions into Permanent Contracts until the principle of merit is fully observed in the transformation process.

○ Actions contrary to the priority.

2

Provide figures for the total number of public service employees in all government ministries, agencies and other bodies, broken down by sectors.

○ According to the second annual report published last March there are 1,291 public institutions with 129,653 employees.

3. Electoral Reform

2

Finalise the electoral reform in line with OSCE/ODIHR and Venice Commission recommendations, including increasing the scope and possibilities to file complaints and appeals, ensuring sufficient separation between State and political party activities and ensuring a bipartisan approach of electoral bodies on all levels.

○ According to the latest OSCE/ODIHR report on the early parliamentary elections held on 11 December 2016 there is a need to continue working on improving the legislation. In addition it recommends for the authorities and the political parties to undertake concrete steps for preventing any pressure exerted on the public administration, political activists and others that attend those events or the voting itself, and that the claims of pressure should be thoroughly investigated. It also states that the post-election period has been marked by tensions and harsh rhetoric. And that SPPO and PPO have initiated certain pre-investigative activities regarding certain allegations of misuse of funds during the election campaign.

2

Conduct an audit of the Voters' List, in line with OSCE/ODIHR recommendations assessing the accuracy and completeness of voter data in particular as regards possible duplicate voters; voters registered separately with ID card and passport details; and addresses with large numbers of registered voters, Identify areas of potential improvement in voter data accuracy. Revise and improve accuracy of voters' list accordingly.

○ The OSCE/ODIHR Mission recommends that it is necessary for the Electoral Code to be reviewed again in order to increase the transparency and the efficiency of SEC, and to perform regular controls of the Voters List in order to respond quickly in cases when some people cannot be found on the Voters List..

4. Implementation of the recommendations of the Committee of Inquiry into the events of 24 December

3

Implement the recommendations of the 2013 Committee of Inquiry as regards the better functioning of parliament and the scheduling of its work.

○ The storming of the Assembly from 27 April 2017 and the physical attack on the MPs from the newly formed majority, that could be qualified as attempted murder, have shown that not only the findings and the recommendations of the Committee of Inquiry are not respected, but also the security service of the Assembly is under full party control by the former ruling party.

5. Media: Freedom of Expression

A. Public Service Broadcaster

4

Provide tangible evidence of ongoing policy-, organisational-, training- and editorial reforms within the Public Broadcaster aiming at addressing criticisms made regularly in the past about its lack of political independence, and lack of balanced reporting, as well as to provide informative, high-quality content.

○ The former government has failed to reform the Macedonian Radio and Television public service and to ensure its independence. Instead it has been under most direct influence of the authorities and according to some independent reports they have reported with political bias.

B. Government Advertising

Establish stringent rules on government advertising based on transparent, objective and non-discriminatory criteria. **4**

The new government announced that they would stop this practice. However it remains necessary to investigate the funding of the private media from the budget in the past period.

Ensure full transparency on government advertising (not only on the spending of public finances but also on its recipients and contents). **3**

The new government announced that they would stop this practice. However it remains necessary to investigate the funding of the private media from the budget in the past period.

Develop a mechanism for unpaid public service announcements of a true public interest character. **4**

Not developed.

C. Access to Information

Address the main obstacles, which journalists face in obtaining public information (e.g. the failure of relevant bodies to respond at all to many requests for information, the unjustified over-use of the "classified" category for documents not of that nature). **3**

Not done.

D. Defamation

Revising the legislation to remove "honour", "dignity" and "offence"-type cases, most of which are raised under the statutory definition of insult and which fall outside scope of defamation in the sense of Article 10 of the ECHR. **3**

Not done.

3

Revising the procedural rules to exclude petty cases and instead increase the use of mediation to resolve these cases.

○ The Council of Ethics in March published its annual analysis of the changes in the legislation and self-regulation in Macedonia for 2016 that also incorporated mediation as a recommendation for improving the situation in the media.

2

Support and promote greater use of self-regulation as alternative to court action.

○ Independent media organisations and the Council of Ethics are active and they have made some recommendations for improving the media legislation and self-regulation. But they haven't been implemented, yet.

2

Guarantee and enforce, at political level, the exercising of appropriate self-restraint by politicians and public officials not to resort to defamation actions, in line with ECtHR principles.

○ In the past period other forms of attacks against the journalists have also been popular, and they were also targeted during the storming of the Assembly on 27 April 2017.