

Judicial system

The main reforms in this area have already been largely completed, but improvements are needed to ensure the correct implementation of European standards relating to independence and quality of justice.

Defects in the current career system for judges have still not been addressed, despite the potential threat they pose to judges' **independence**. Security of tenure needs to be more robustly safeguarded by amending the legislation relating to discipline and dismissal, which is overly complex and insufficiently precise and predictable. The practice of the Judicial Council in relation to discipline and dismissal proceedings needs to be more proportionate and transparent. Poor performance by judges should be addressed through remedial measures such as organisational improvements and training, rather than resulting in dismissal. Dismissal should be limited to serious and persistent misconduct and should only be imposed following recourse to less severe disciplinary penalties, such as warnings and salary reductions, which are rarely used at present.

In the area of **impartiality**, the provisions relating to conflicts of interest contained in the civil and criminal procedure legislation continue to function smoothly. Judges in the basic courts and appeal courts made 2 419 requests to recuse themselves in cases of potential conflicts of interest, of which 1 818 were accepted. The Judicial Council received 77 complaints from parties alleging biased court proceedings, but none were sufficiently well founded to trigger a disciplinary procedure. Claims of indirect political influence on the conduct and outcome of high-profile court proceedings persist, especially in respect of organised crime and corruption prosecutions, as well as cases involving political personalities and the media.

As regards **professionalism and competence**, amendments to the Law on Courts, which entered into force in 2013, have not in practice led to any significant strengthening in the merit-based recruitment and promotion of judges. In 2013, the Judicial Council failed to comply with the legal requirement that all new first instance judges must have completed the training of the Academy for Judges and Prosecutors, by appointing numerous candidates who had not. The legal requirement for higher court judges to have prior judicial experience was also circumvented by a number of appointments being made immediately before the amendment entered into force and even ignored in some appointments made after its entry into force. This continues to cast doubt on the commitment to merit-based recruitment. The appointment process of the Judicial Council, in particular the evaluation of candidates' respective merits, needs to be made more transparent.

The Academy for Judges and Prosecutors continues to play a central role in promoting the competence and lifelong learning of judges, prosecutors and court staff. It further expanded its *in-service training* activities in 2013 to include 4 151 judges, 1 256 prosecutors and 1 929 expert associates and other participants. The number of training programmes increased to 272, including 63 provided outside the capital through the decentralised training system. A new generation of 13 candidate judges and prosecutors started their 2-year *pre-service training* in December 2013. This is the fifth generation of candidates to participate in the Academy's initial training programme since 2009, but also one of the smallest. Of the 80 candidates who have graduated in the last five years, 76 have been appointed as judges or prosecutors. Despite numerous publicity campaigns and preparatory measures undertaken during the past year, the 29 available places for the current academic year could not be filled. Improvements have been made, including introducing preparatory training for the entrance exam, a new exam-question structure and method of assessment. Sustained efforts should continue, including close cooperation with universities, to bring more candidates up to a sufficient level that they are able to fulfil the entrance requirements. It also remains difficult to motivate young professionals to view the judiciary and prosecution service as an attractive career option and the relevant authorities need to examine the

underlying reasons for the current low level of interest and to address the fear of nepotism, excessive productivity pressures and political interference, which may be dis-incentivising potential candidates.

The annual evaluation procedure for judges requires urgent review, as it is having a detrimental effect on both the independence and the **quality of justice**. It is used primarily as a tool for monitoring the productivity of judges rather than their competence and integrity, the quality of their work, and their service to the citizen and to the profession. It acts as a precursor to either dismissal or career advancement, based on purely quantitative criteria. The system places unnecessary pressure on judges and deprives them of the autonomy to manage their caseloads in the optimal way, indirectly fostering negative working methods. Evaluation should be separated from the disciplinary and dismissal system, and should focus more on appraising judges' core competencies, such as legal drafting and reasoning, organisational skills, participation in training activities and level of specialisation. The quantitative criteria currently used (number of cases processed, number of judgments overturned on appeal and number of procedural deadlines met) are more suitable for evaluating the justice system as a whole, rather than individual judges. A coherent system of quality evaluation and customer satisfaction for the courts still needs to be developed.

The **accountability** of state judicial bodies is monitored by means of multiple complaints mechanisms available to citizens. The Judicial Council, the Ministry of Justice and the Ombudsman's Office received 1 061, 339 and 732 complaints respectively in 2013, relating to the work of the judiciary. The most common grounds for complaint are the length of court proceedings, but increasingly also lack of impartiality or equal access to justice. The Supreme Court continued to receive claims for compensation for unreasonably lengthy court proceedings. It received 434 such claims (down from 676 in 2012) and awarded over € 116 000 in compensation and costs. The country also agreed to pay out over € 445 000 in friendly settlements, to applicants who had made claims before the European Court of Human Rights, most of which also related to the excessive length of court proceedings. As regards individual accountability, five judges were dismissed so far in 2014, on the catch-all grounds of 'unprofessional or unconscientious exercise of judicial office' and one judge resigned during an ongoing dismissal procedure. The Council of Public Prosecutors dismissed two prosecutors on the grounds of incompetence. Two high-level corruption investigations were concluded in autumn 2013 with the prosecution, conviction and imprisonment of a judge, two prosecutors, a former judge, a former investigative judge, an employee of the prosecution service and a lawyer. The State Commission for the Prevention of Corruption also initiated misdemeanour proceedings against 32 judges for failure to submit legally-required statements of interest.

As regards the **efficiency** of the court system, 23 out of the country's 27 basic courts maintained a positive clearance rate (meaning that they managed to process more cases during 2013 than they received) as did the four appeal courts, the Administrative Court and the Supreme Court. In terms of case-flow management, there are no backlogs to speak of. However, the equally serious issue of lengthy court proceedings still needs to be addressed. Whereas individual stages of the court procedure are generally concluded within the legal deadlines, the overall length of proceedings from initiation to final judgment remains one of the main causes of complaints and requests for compensation by citizens. The robust steps taken in recent years to address court backlogs, including the imposition of monthly targets and heavy emphasis on productivity in the annual evaluation process, risks a deterioration in the quality of justice, as a result of judges' limited ability to devote appropriate time and attention to preparing sound, fully reasoned judgments based on all available evidence. Rather than speeding up the overall proceedings, this may on the contrary be contributing to the long-standing problem of repeated re-examinations and re-trials, and to longer overall proceedings. The Law on Mediation provides a legal framework for alternative dispute resolution, but in practice the system is still underdeveloped and more awareness-raising measures are needed to bring it into the mainstream. In early 2014, the Judicial Council and the Ministry of Justice took steps to identify 'old cases' using the courts' automated

case management system. Across all court instances, 3 155 cases were identified as having been in the court system for more than three years, of which 822 cases were more than five years old and 56 cases more than 10 years old. However, this review has thus far been limited to around 88 000 contentious cases and needs to be extended to cover the entire caseload of the courts, including procedural and non-contentious cases, which currently stands at around 180 000.

The 2014 court budget is € 30.83 million and the Public Prosecutor's Office's budget is € 7.25 million; both slightly increased from last year. The Academy for Judges and Prosecutors receives only €0.68 million from the court budget, which given the scope of its training activities and its central role in the professionalism of the judiciary, should be increased. By far the largest part of the court budget is still spent on salaries and the ratio of the total number of judges to the size of the population remains over 50 % higher than the European average. At the same time, the total number of court cases currently in active proceedings before the national courts has reduced drastically in the last four years, from almost 1 million at the end of 2009 to around 180 000 at the end of 2013, due to the reorganisation of competences in areas such as enforcement and succession. These factors underline the growing need for a rationalisation of the court system and a more efficient redistribution of financial and human resources.

As regards **access to justice**, the annual legal aid budget allocation has remained at € 50 000 and the number of lawyers registered to provide legal aid rose to 251. Of the 227 requests for legal aid submitted in 2013, 95 were granted so far while 128 were inadmissible. The highest numbers of requests were made in cases involving property issues, victims of family violence and child protection. Further improvements are needed to make the work of courts more accessible to the public. No steps have been taken to locate information desks at the entrances of courthouses. Physical access to Skopje II Basic Court, the busiest in the country, is inadequate, as there are no lifts and no provision made for people with special needs. No steps have been taken to introduce a user-friendly search function for judgments published on the court websites. Despite the legal obligation to ensure transparency by publishing all court judgments online within two days of drafting and signing, the most significant or controversial judgments, liable to be of public interest, do not appear to be published at all, which can lead to a lack of publicly verifiable information and distorted media reporting.