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 **HELSINKI** 
COMMITTEE FOR HUMAN
RIGHTS OF THE REPUBLIC OF
MACEDONIA

NETWORK
23

BETWEEN ACTION AND INACTION-

REFORMS IN **CHAPTER 23**

This policy brief summarises the main findings and recommendations from the Shadow Report on Chapter 23 for the period from May 2016 to January 2018 prepared by the European Policy Institute-Skopje and the Helsinki Committee for the Human Rights. The reporting includes three distinct periods:

>>> period prior to the early parliamentary elections on 11 December 2016,

>>> transition period after the elections and before the formation of the new Government on 31 May 2017 and

>>> period from the election of the new Government by the end of January 2018.

The report presents the key developments in the analysed period and provides policy recommendations in each of the areas of Chapter 23. For a detailed analysis of all areas please see the [Shadow Report](#).

Review:

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1. Judiciary

Judiciary at a crossroad

The need for reforms in the judicial sector was clearly established in the first and second reports of the senior experts' group led by Priebe and the Urgent Reform Priorities drafted by the European Commission. A poll carried out within the project Network 23+¹ confirmed the need for reforms. The poll shows that 47 percent of Macedonian citizens believe that the state of judiciary is poor.² In addition, the judiciary, the Public Prosecutor's Office, the Judicial Council and the Council of Public Prosecutors were considered institutions that are dependent, biased and unprofessional.

Following a long standstill and backtracking in this sphere, the new Government launched activities towards implementing reforms in the area of judiciary, which became part of the Plan 3-6-9.³ A Strategy for Judiciary Reforms 2018-2022 was adopted through a broad and consultative process. The Law on the Council for establishing facts and disciplinary responsibility of judges was annulled and the Law on the Judicial Council was amended for the purpose of transferring the competences to the Judicial Council. Moreover, draft amendments to the Law on courts, Law for the Academy of judges and Public Prosecutors and Law on Judicial Council were prepared within the Ministry of justice and published on the Electronic National Register of Legislation (ENER) in January 2018.

Independence

The extremely low level of independence of the judiciary from political and other influence, noted in numerous reports and analyses by civil society organizations within project Network 23+, has continued to characterize the general state of affairs in the judiciary field over the course of the entire reporting period.⁴

The Judicial Council and the Council of Public Prosecutors continued to elect judges and public prosecutors without any substantial changes to the election process. The election of judges was subject to debate, briefly presenting the CV of candidates and without explanation over the (non)election of candidates having the highest or the same number of points.⁵ The election of judges in higher courts was criticized both in the period prior to the formation of the new government in September 2016 and during the last election of judges by the Judicial Council following the local elections in November 2017. Several judges applying for these positions reacted to the latest election,⁶ especially due to the fact that an article from the Law on Courts was circumvented for the first time, resulting in the failure to elect the judge candidate in the Skopje-based Appellate Court with the highest number of points.

The criteria for election and appraisal of judges, which at present are based exclusively upon quantitative criteria of efficiency remain an issue of concern. The criteria vary along the different laws: while one law determines exclusively quantitative criteria, another sets ethical criteria, thus creating space for manipulation. An additional problem is the lack of accountability of the Judicial Council and its clientelistic approach. The present system of promotion of judges does not put in the forefront their expertise and integrity. The interventions in the system of appraisal, promotion and appointment of judges within the span past years, resulted in an "open door" for political influences over the judiciary.⁷ On the other hand, members of the Judicial Council have repeatedly highlighted the advantages of the system, which allows the judges with best results to "automatically" come to the forefront, even though improvements are still more than welcomed.

Specific steps towards strengthening the judicial independence were taken by the process of drafting the amendments to the Law on Courts and amendments to the Law on the Judicial Council.⁸ The former mostly refer to the section of grounds on disciplinary responsibility, disciplinary measures and changes in the criteria of entrance in the judiciary. The latter refer to the procedure of disciplinary responsibility and evaluation of judges, through the introduction of qualitative criteria for

1 Network 23+, Survey for Chapter 23, February 2017, available at: <https://goo.gl/qyK85v>

2 More about the poll at http://www.merc.org.mk/Files/Write/00001/Files/Network23/public_opinion_24_04_17/Istrazuvanje-na-javno-misljenje-poglavje-23-kratka-verzija.pdf

3 Plan 3-6-9 available on the website of the Government of RM, at the following link <http://vlada.mk/sites/default/files/programa/2017-2020/Plan%203-6-9%20MKD.pdf>

4 All analysis are available on <http://www.merc.org.mk/>

5 First monitoring report "Judiciary Reforms – from Priebe 1 to Priebe 2 and Beyond", page 5, available at <https://goo.gl/Bqq7P6>

6 Statement was given in TV show 360 degrees <http://360stepeni.mk/article/454/unapreduvanje-po-zasluzi-ili-po-nekoe-novo-tefterche>

7 European Policy Institute, Sitting on the bench and marking - how effective?, 2018, available at: <https://goo.gl/ZaQxrE>

8 The amendments to the Law on the Judicial Council were initiated at the beginning of August 2017 through the establishment of a working group tasked with these amendments and the drafting of a law terminating the validity of the Law on the Council for determination of facts and disciplinary responsibility of judges. See more at <https://goo.gl/KPQrWX>

the assessment of judges. However, several civil society organizations and experts refer to the necessity of further specification of the grounds for the accountability of judges, as well as the qualitative criteria for evaluation of judges primarily related to the complexity of cases, also taking into consideration the criteria for election of a judge in a higher-instance court, stipulated in Article 41 of the Law on the Judicial Council when evaluating judges. In addition, there is a need to further specify the criteria for the members of the Judicial Council elected by the Parliament of RM, as well as definition of the term “prominent lawyer”. Legislative changes are also required with regards to introducing responsibility of members of the Judicial Council and the Council of Public Prosecutors. The Venice Commission expressed their opinion on the new draft Law on Judicial Council from 2017 in which it stated “the increased transparency of the proceedings before the JC in the matters of appointment is, generally, a welcome development”.⁹ However, it also noted that it is “important to clarify rules on the ranking of candidates and how this ranking is taken into account in the final decision on the appointment of the candidate”.¹⁰

Regarding the election of public prosecutors, there is discrepancy over the conditions that the Public Prosecutor of RM and a public prosecutor in a higher public prosecutor’s office need to fulfil. They are not required to have experience as public prosecutors with confirmed results in their work.¹¹ After the dismissal of the Public Prosecutor of RM in August 2017, new Public Prosecutor of RM was elected in Parliament on 25 December 2017. However, it remains unclear which criteria were taken into account for his election, having in mind the large number of candidates for the post, accompanied by the absence of sufficient transparency of the procedure.

The Judicial Council had direct influence on the structure of judges who decided on high-profile cases initiated by the Special Prosecutor’s Office through the temporary referral of judges from the basic courts across the country to the Basic Court Skopje 1, as well as the referral of seven judges from the appellate courts across the country to the Skopje-based Appellate Court. The reporting period was also marked by mass reallocation of judges in the Basic Court Skopje 1.

Judicial discretion as a guarantee of independence was violated as a consequence of adopting the Law on deciding and determining the amount of the penalty. This law was often criticized by experts, presented over the course of July 2017, aimed at establishing the influence of this law on the general penal policy in the country.¹² The Constitutional Court decided to terminate the law while elaborating that it seriously breached the judiciary’s independence and violated the principle of separation of powers, including interference of the legislative in the judiciary. In addition, the decision highlights that the law goes against the legally stipulated free assessment of evidence and judicial discretion, which was formalized by it while not taking care of the individualization of penalties.¹³

Special Prosecutor’s Office

Unlike the report regarding its work in the first six months,¹⁴ where the Special Prosecutor’s Office (SPO) stated that jurisdiction has been established in 30 cases against 80 persons, the third six-month report submitted to the Council of Public Prosecutors and the Parliament of RM, through 15 March 2017, reads that the SPO conducted pre-investigative proceedings against 112 persons, while 50 persons were subject to investigative proceedings. A total of 272,950 audio files, i.e. 45 percent of the total number of audio files at SPO’s disposal, were analyzed by that time.¹⁵

During the first quarter of 2017 the SPO was prevented from full enforcement of its legal jurisdiction and the necessary cooperation and obstructions with majority of the relevant state institutions such as the Ministry of Interior, but also hindrance in proceedings within the Basic Court Skopje 1. There is a positive tendency after the change of Government, towards overcoming the previous state of affairs and achieving improved cooperation with the SPO, especially with regards to the collection of documents and evidence in line with the Criminal Procedure Code. The fourth report on the work of the SPO between 15 March-15 September 2017 notes that the difference from previous periods is the filing of indictments regarding most of the opened investigative proceedings, i.e. 18 indictments were filed in 19 cases against 120 persons for 168 crimes, which resulted in seven investigative proceedings against 25 individuals and investigative activities against four legal entities.¹⁶

9 European Commission for Democracy through Law (Venice Commission). “The Republic of Macedonia”, Opinion No. 905 / 2017 on the Draft Law on the Judicial Council. Available at: [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2017\)033-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2017)033-e)

10 European Commission for Democracy through Law (Venice Commission). “The Republic of Macedonia”, Opinion No. 905 / 2017 on the Draft Law on the Judicial Council. Available at: [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2017\)033-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2017)033-e)

11 There are opinions by experts that emphasize the need for a change to this solution.

12 The need to annul this law was also noted in the analyses carried out within the project Network 23+. The analysis of SPPMD is available on: <https://goo.gl/iLYDe9> and the analysis of the association Paktis is available on: <https://goo.gl/bS3tNb>

13 Court decision available at <http://www.ustavensud.mk/domino/WEBSUD.nsf>

14 Full report is available at <https://goo.gl/d1kk5y>

15 Third report on the work of the SPO is available at <http://www.jonsk.mk/wp-content/uploads/2017/03/III-izvestaj.pdf/>

16 Report on activities of Public Prosecutor’s Office for prosecuting criminal offences related to and arising from the content of the illegally intercepted communication for a six-month period (15 March 2017-15 September 2017) available at www.jonsk.mk/wp-content/uploads/2017/09/I3BEWTAJ-15.09.2017.pdf

In order to further regulate the status of SPO office, Strategy for judicial reforms stipulates the incorporation of the SPO as a separate Prosecutor's office within the Public Prosecutor's Office of the Republic of Macedonia by amendments of the Law on the Public Prosecution Office.¹⁷

Recommendations

- Further strengthening of the judiciary's independence is required, including that of the Judicial Council and the Council of Public Prosecutors, through a proper and transparent process and elaborated decisions for appointment and promotion of judges, as well as the application of clear procedures for the election of court presidents and reallocation of judges. A large portion of the elements in the Strategy for judiciary reforms assumes this direction, including amongst other, de-professionalization of the Judicial Council members and their enhanced accountability. The de-professionalization is not stipulated in the draft-amendments to the Law on the Judicial Council.
- The judiciary's independence should also increase through the proposed amendments to the Law on Courts and the Law on the Judicial Council. In addition, there is a necessity to detail the professionalization of the Judicial Council members, i.e. certain criteria for the members elected by the Parliament of RM, along with the definition of term "prominent lawyer". Legislative changes are also needed regarding the introduction of responsibility of members of the Judicial Council and the Council of Public Prosecutors.
- Although the Council of Public Prosecutors has adopted a Rulebook on the evaluation of public prosecutors, which states that the evaluation is carried out once in two years, such evaluation of public prosecutors has not been regular and fails to yield proper results. It is necessary to improve the quality of the evaluation process of public prosecutors. In addition, it is necessary to detail the proposed quality criteria for the evaluation of judges, primarily and depending on the complexity of cases, as well as taking into consideration the criteria for election of judges in a higher court, cited in Article 41 of the Law on the Judicial Council.
- The financial independence needs to strengthen in the form of increased percentage of the Gross Domestic Product earmarked for the judiciary. It needs to reach the legally prescribed 0.8 percent of the GDP or change this provision towards the allocation of 0.5 percent of the GDP for the judiciary, in line with analyses in the field. Furthermore, the practice of cutting the judiciary budget through budget reviews should be abandoned.
- The strategic guideline contained in the Strategy for judicial reforms over the incorporation of the SPO as a separate prosecutor's office within the Public Prosecutor's Office of the Republic of Macedonia should be embraced. This office would have jurisdiction over the entire territory of the country and its competence would be expanded to other crimes involving high-profile corruption (white-collar crime), besides cases arising from the illegal surveillance of communications. Still, one should be very careful in avoiding any unwanted overlapping of its competences with those of the Basic Public Prosecutor's Office for organized crime and corruption. Moreover, there remains the challenge to guarantee the complete independence and impartiality of judges who would be selected to proceed in the special department, taking into consideration the prior negative experiences.

Impartiality

The ethical and impartial actions by certain judges and court presidents were under serious doubt in the context of the possible abuse of the Automated Court Case Management Information System (ACCMIS), especially regarding the management of cases arising from the wiretapped conversations in the jurisdiction of the SPO, which were distributed to only a few judges in the Basic Court Skopje 1. These doubts were strongly highlighted in the second expert Priebe report.¹⁸ Taking into consideration that a thorough ACCMIS oversight has never been done, the experts' group proposed such oversight without any political interference, and if needed, including international institutions and representatives. A special Commission investigating possible ACCMIS abuse was set up within the Ministry of Justice. After the completion of the insight of the functionality of the information system and the oversight over the use of provisions from the courts' rules of procedures regarding the ACCMIS a final report¹⁹ was presented, which was submitted to the Public Prosecutor's Office of RM for further processing in January 2018.²⁰

17 The Strategy is available at: <https://goo.gl/Wj9y7J>

18 Assessment and recommendations of the Senior Experts' Group on systemic rule of law issues 2017, page 5

19 Assumed on 30 January 2018, <https://goo.gl/Jz398e>

20 In the absence of an official investigation, doubts over irregularities and illegal activities in the functioning of the Basic Court Skopje 1 at the time of the presidency of judge Vladimir Panchevski additionally heightened after the search of his offices and his home in the course of October 2017 by a SPO team, in the framework of a pre-investigative procedure, in which Panchevski and two IT staff are suspected of abusing the system when distributing cases, especially those of the SPO. See http://www.merc.org.mk/Files/Write/Documents/04801/mk/Mreza-23-mesecen-pregled-otkomvri-2017_MKD.pdf

Accountability

Taking into account that its establishment of by the Council for determination of facts and disciplinary responsibility of judges (hereinafter: Council for Facts) was assessed as unnecessary by experts from the very beginning and later confirmed through its work, the Council's termination was included in Plan 3-6-9 and the Strategy for Judiciary Reforms.²¹ In this regard, the Parliament adopted on 11 January 2018 the Law terminating the validity of the Law Council for Facts.²²

In response, with the amendments to the Law on Judicial Council of adopted in December 2017 the jurisdiction in managing the disciplinary procedure was returned to the Judicial Council, taking into account the remarks and recommendations by international institutions in the judiciary reforms. Changes related to the initiation of a procedure against certain judges by the Judicial Council include the insistence of Council members initiating the procedure would be excluded from the voting in the procedure.

Recommendations

- The decisions of the Judicial Council and the Council of Public Prosecutors that establish disciplinary responsibility and dismissal of judges and public prosecutors should be clear and properly elaborated.
- The draft-amendments to the Law on Courts and the Law on the Judicial Council aim at increasing the judges' accountability. However, some civil society organizations and experts in the field claim the grounds for the accountability of judges should be detailed further.
- Codes of ethics for judges, public prosecutors and staff in the courts and public prosecutor's offices should be consistently applied. In addition, judges and public prosecutors should refrain from public statements that bring into question the impartiality of judges and public prosecutors.
- Stripping judges of their immunity should be a measure of last resort, used only in exceptionally rare situations.
- The impartial allocation of cases needs to be ensured (especially when it comes to sensitive high-profile criminal cases) by guaranteeing the continuous functioning of the ACCMIS. There is a need for regular control and revision of its functioning in order to prevent any abuse of the system.

Professionalism, competencies and efficiency

Academy of Judges and Public prosecutors

The Academy for Judges and Public Prosecutors (AJPP) has been continuously advancing and modernizing the curriculum and quality of initial and continuous training, even though there is need for further improvement. The designed framework program based on training evaluations is shared with the courts, the Judicial Council and the Council of Public Prosecutors for assessing the real training needs. However, there is a need for improving the training.²³

On two occasions, the Management Board introduced changes to the Rulebook on the Initial Training from 2017 concerning the theoretical teaching, before the final exam was administered for the sixth generation of candidates.²⁴ The respective changes simplified the scoring system and the final exam. The publication of case studies with offered set of questions was done contrary to the Rulebook. The administration of electronic exams still poses a dilemma in terms of whether it serves the purpose of assessing the practical skills of candidates.²⁵

AJPP budget for 2017 amounted to 41.125.000,00 MKD; however, following the budget rebalance, instead of being increased, the budget was cut to 38.415.000,00 MKD, irrespective of the requirements arising from the financial implications in the legislative changes in 2015 and the necessity to enhance the quality of training and improvement of technical and infrastructural facilities.

21 The termination of the Council for determination of facts and the transfer of its competences to the Judicial Council was highlighted by the Minister of Justice, available at <https://www.plusinfo.mk/vest/121365/na-sudskiot-sovet-kje-mu-se-vratat-site-nadleznosti>

22 Session of Parliament of RM, 11 January 2018, <https://goo.gl/zm7nkp>

23 First monitoring report on URP about judiciary is available at <https://goo.gl/jpneR2>

24 <http://www.jpacademy.gov.mk/za-akademijata-mk/zakon-i-podzakoni-akti>

25 Second monitoring report on URP about judiciary is available at <https://goo.gl/osa2gD>

The Strategy for reform of the Judicial Sector entails that analysis should be prepared for possible design of a separate initial training curriculum for long-standing and experienced legal practitioners, including experienced expert associates, as well as continuous trainings through redesigned curricula and teaching methods. In addition, the Strategy foresees the introduction of new legal criteria for the composition of the governing and managing bodies of the AJPP, as well as staffing and technical upgrading and adequate spatial conditions. In accordance with the Strategy, legislative changes are proposed in view of the new legal criteria for the composition of the governing and managing bodies of AJPP. Such changes play crucial role given that the mandates of the members of the Governing Board of AJPP and of the AJPP director are already expired. However, further amendments of the law are needed in order to predict certain criteria that the candidates need to fill for entrance.

Judicial practice

After a one-year delay, the Supreme Court put the judicial e-portal <http://www.sud.mk/> in operation, where all court decisions are to be published. In fact, the portal is practically non-functional, includes just a small portion of court decisions, and it is unknown whether the available court decisions are enforceable, modified, reversed or annulled. The last survey concerning the publication of court decisions and functionality of the web portal sud.mk, which included 224 respondents -lawyers, revealed that the biggest portion of court decisions are not enforced in timely manner.²⁶

Efficiency

After many delays, the 2016 Annual Report on the Work of the Judicial Council of Republic of Macedonia was reviewed and adopted at the session held on 3 July 2017. The report entails data on the work of the Judicial Council, i.e. number of dismissed judges and lay judges, undertaken procedures to establish unprofessional performance, judges' performance evaluation, information about undertaken action upon citizens' complaints and other data about the operation of courts in RM. In respect of the backlog, the biggest number of cases older than 7-10 years were found at the Basic Court Skopje 2 Skopje, Basic Court Skopje 1 Skopje and the Basic Court Kumanovo.²⁷

Regarding the execution of judgments of the European Court of Human Rights, the Interagency committee for execution of ECtHR judgments is not functional has not convened since March 2016. No significant interventions have been made in practice with regard to legal provisions that were found as source of violation of the European Convention of Human Rights, or any significant changes in the judicial and administrative practice. The execution of ECtHR judgements is mainly reduced to payment of the awarded compensation in the judgments.

26 For more information, see: First monitoring report "Judicial Reforms – from Priebe 1 to Priebe 2 and beyond", page 8-9, available at <https://goo.gl/Bqq7P6>

27 First monitoring report "Judicial Reforms – from Priebe 1 to Priebe 2 and beyond", page 8-9, available at <https://goo.gl/Bqq7P6>

2. Fight against corruption

Despite the ongoing procedures initiated by the SPO, fight against corruption remains at a very low level, which is manifested through the continuous absence of accountability and impunity of officials, inefficient use of the confiscation measure and poor implementation of the Law on Whistleblowers, as well as the fact that the State Commission for Prevention of Corruption is not properly performing its legal competences. By obstructing the work of the SPO, the competent state authorities practically made impossible the efficient administration of justice and postponed any expected concrete results from the fight against corruption.

The Republic of Macedonia recorded the largest drop in the rankings of the corruption perception index.²⁸ For 2016,²⁹ Macedonia ranks 90th with 37 points, down from 24 in 2015, when it was ranked 66th in the Corruption Perception Index. In addition, a survey conducted within the project "Network 23+" showed that as many as 60% of the respondents think that the current situation with the fight against corruption is bad,³⁰ while 46% of state officials gave the same rating.³¹ They consider that this is due to the inconsistent, non-objective and selective implementation of the law.

The National Integrity System (NIS) conducted by Transparency International-Macedonia (TIM), showed that while the Republic of Macedonia has a good legal framework for combating corruption, there is still a poor implementation of anti-corruption laws, and the institutions responsible for preventing and combating corruption are not effectively managed, nor sufficiently independent to cope with corruption and they lack integrity.³²

Moreover, the Republic of Macedonia has not yet undertaken activities aimed at implementing part of the recommendations referred to in the Report of the Fourth Evaluation Round of the Council of Europe GRECO Committee, which had been adopted on 6 December 2013. GRECO's report on the implementation assessment from 1 July 2016, which deals with the fight against corruption in the Parliament, the judiciary and the public prosecutor's office,³³ has established that the country had implemented satisfactorily only three out of a total of nineteen recommendations, ten were partially implemented and six were not implemented at all.

Four of the non-implemented GRECO recommendations refer to the prevention of corruption among MPs, while the other two non-implemented recommendations refer to the judiciary and the public prosecutor's office.³⁴ As a result, corruption in the judiciary is of particular concern. Although judges, as well as other holders of state and public functions, are subject to the same obligations stipulated in the Law on Prevention of Corruption and the Law on Prevention of Conflicts of Interest, and they are obliged to disclose their property and judges, as well as most other officials, generally respect the obligation to disclose their property, but they largely fail to update their asset declarations, and the SCPC has not yet established a mechanism to accurately monitor changes in judges' assets.³⁵

Even after the change of power, the State Commission for Prevention of Corruption (SCPC) has faced significant challenges with respect to the non-enforcement of its legal competences, particularly with regard to accountability, integrity and transparency, which results in its insignificant role in the fight against corruption. Its overall performance can be assessed as passive, selective and insufficiently transparent. For instance, over the reporting period the Commission has not initiated any procedure on its own initiative for any suspicions of corruption, nor has it initiated any criminal liability procedure against elected or appointed persons, officials and responsible persons in public enterprises, public institutions and other legal entities with state ownership. In addition, the updating of the register of asset declarations of elected and appointed officials remains one of the main weaknesses of the SCPC. At the same time, the Commission is passive in respect of initiating proceedings for oversight of the financial operation of political parties. This is accompanied by obvious shortcomings and lack of capacity of the Public Prosecutor's Office, while the State Audit Office remains the strongest pillar in the fight against corruption.

28 Statement by the President of Transparency International Macedonia, available at <https://goo.gl/afxvng> (Accessed on 15.02.2017)

29 Corruption perception index 2016, available at https://www.transparency.org/news/feature/corruption_perceptions_index_2016

30 The results of the survey are available at http://www.merc.org.mk/Files/Write/00001/Files/Network23/public_opinion_24_04_17/Istrazuvanje-na-javno-misljenje-poglavje-23-kratka-verzija.pdf

31 The results of the survey are available at: <http://www.merc.org.mk/Files/Write/00001/Files/Network23/Poglavje-23-Anketa-na-administracija.pdf>

32 Transparency International Macedonia, National Integrity System - Assessment for Macedonia, May 2006, p. 28, available at http://www.transparency.mk/images/stories/NIS_mk.pdf

33 Fourth Evaluation Round- Corruption Prevention in respect of members of Parliament, judges and prosecutors, Compliance report „the former Yugoslav Republic of Macedonia“ (https://www.ecoi.net/file_upload/1226_1478595492_grecorc4-2016-8-the-former-yugoslav-republic-of-macedonia-en.pdf).

34 This assessment was also expressed through the Press Release to the media - the Republic of Macedonia continues to fail to comply with the recommendations of the GRECO's fourth assessment covering the Assembly, the judiciary and the Public Prosecutor's Office, published on December 22, 2017. on the Transparency International website, http://www.transparency.mk/index.php?option=com_content&task=view&id=1244&Itemid=57

35 Transparency International Macedonia, National Integrity System - Assessment for Macedonia, May 2006, p. 96, available at http://www.transparency.mk/images/stories/NIS_mk.pdf;

Furthermore, no progress has been made in the area of confiscation of illegally acquired property, regardless of the numerous proceedings brought in cases related to organized crime and corruption, including the cases of the SPO. The Strategy for strengthening the capacities for conducting financial investigations and confiscation of property, adopted by the Government on 9 August 2017 is expected to improve the capacities and overcome the shortcomings identified in this area.

A positive step undertaken with a view to more effective protection of whistleblowers was the adoption of the new Law on Protection of Whistleblowers in the last quarter of the reporting period, which was preceded by a broad public debate. This law essentially covers the majority of the opinion and recommendations of the Venice Commission, but its implementation would require further amendments to several bylaws, including the Rulebook for protected internal reporting in the public sector,³⁶ as well as its harmonization with Article 50 of the Law on Public Internal Financial Control.³⁷

Recommendations

- The state must take serious steps towards full implementation of **GRECO's recommendations**, with particular emphasis on recommendations referring to the judiciary.
- The **State Commission for Prevention of Corruption** must finally and consistently apply the Law on Prevention of Corruption regarding the asset declarations and changes of property status for public officials, including its own members, in accordance with Article 50-a of the Law on Prevention of Corruption. SCPC needs to make public its practice and the reasoning of its decisions, in particular decisions related to political financing, conflicts of interests and asset declarations. It should act independently, proactively and impartially, in accordance with its legal competences. At the same time, it is necessary to increase the transparency of the SCPC by organizing open and public sessions and developing close cooperation with all civil society organizations working in the field of fight against corruption, despite the current trend of closed and isolated operations that violates the integrity of this body.
- It is necessary for the Strategy for strengthening the capacities for conducting financial investigations and **confiscation of property** to be complementary to the already existing National Strategy for Combating Money Laundering and Financing Terrorism adopted for the period 2017-2020 and other strategic documents. Non-governmental organizations should actively monitor the implementation of the Strategy.
- Amending or supplementing the Law on **Whistleblowers** represents a positive step towards its alignment with the recommendations of the Venice Commission in order to eliminate all identified shortcomings in the existing draft law. Still this law and the relevant by-laws will have to be consistently applied, whereby the state will have to make significant legal, institutional and practical preparations for law enforcement, as well as raising public awareness of the legal framework in order to ensure its efficient implementation.

36 Official Gazette of the Republic of Macedonia" No.46 / 2016.

37 Official Gazette of the Republic of Macedonia" No. 90/09, 12/11, 188/13, 192/15, 147/17.

3. Fundamental rights

The improper conduct of police officers remains to be the key human rights issue, taking into consideration the inefficiency of the Sector for Internal Control, Professional Standards and Criminal Investigations within the Ministry of Interior, as well as the absence of an effective investigation by the Public Prosecutor's Office in cases of torture, inhuman or degrading treatment and punishment. The efforts by the Council of Europe with a view to establishment of an external, independent oversight mechanism over the unlawful police conduct and the excessive use of force by the police are to be embraced.³⁸ In this regard, the Parliament will soon discuss a set of legal amendments towards ensuring the legal framework for the establishment of this mechanism.

The state of persons deprived of their liberty in the penitentiary and correctional facilities in the country is of special concern. The Ombudsman has continuously noted the overcrowding of institutions, which results in inhuman conditions for sentenced and remand prisoners at the prisons.³⁹

None of 11 judgments rendered by the European Court of Human Rights in respect of Macedonia which establish a violation of Article 3 of the European Convention on Human Rights has been fully implemented.

Discrimination on different grounds, including gender, sex, sexual orientation, disability, political and party affiliation and conviction, is the most visible violation of human rights noted by domestic organizations, including the Helsinki Committee for Human Rights. It is accompanied by the inactivity of the Anti-Discrimination Commission, also due to the lack of competence by some of its members. In addition, there is a widespread discrimination of members of the LGBTI community, as well as impunity of perpetrators of attacks on the LGBTI support centre, who have not faced justice years after the incidents. A positive step in this direction are the changes in the Law on prevention and protection from discrimination, which stipulates the inclusion of sexual orientation in the grounds for discrimination, which many civil society organizations have promoted for years.

Freedom of expression was further endangered through many attacks on journalists and news crews, preventing them in the execution of their professional tasks in the public interest. In addition, hate speech that was present in electronic media and press, but also enhanced at social media and Internet websites, as well as during the protests "For Free Macedonia" resulted in series of hate acts, which culminated in the Parliament events of 27 April 2017.

Freedom of association was thwarted by arrests, detentions and significant fines issued to civil society activists for trivial violations in the context of the so-called "Colourful Revolution", when they expressed their dissatisfaction from the authorities and requested the resignation of President Ivanov after his decision for collective pardoning in the spring of 2016. On the other hand, 36 persons were arrested on 28 November 2017, in respect of which the Ombudsman expressed serious concern regarding the legality of the arrests and pre-trial detention of several MPs from the aspect of proper legal procedures related to their immunity.⁴⁰

Freedom of association was essentially denied by attempts to silence freethinking civil society organizations, through intensive financial scrutiny by the Public Revenue Office followed, upon an order by the SCPC between December 2016 and May 2017, aimed at 22 civil society organizations. Although they did not result in establishing any abuse in financial operations, the procedures initiated before the public prosecutor are not officially closed, which brings into question their legal safety.⁴¹

Great controversy in the public was also caused with the parliamentary procedure initiated upon the Draft-Law on the Use of Languages which significantly broadens the scope of use of the Albanian language. Despite the reactions, the Government decided to adopt this law quite quickly although it is a law that regulates a complex and sensitive matter.

38 For more information on the Council of Europe's projects in this respect, see <http://www.coe.int/en/web/criminal-law-coop/home-fyrom-oversight> and <http://www.coe.int/en/web/skopje/enhancing-human-rights-policing>. These projects envisaged the adoption of model "Prosecution Plus" including the establishment of a separate department within the Public Prosecutor's Office for cases of improper police treatment, establishment of a separate body for external oversight as the second-instance body to this mechanism, comprised of representatives of civil society organizations and experts in the field.

39 See Annual Report on the degree of respecting, enhancing and protecting human rights and liberties, 2016, available at <http://ombudsman.mk/upload/Godisni%20izvestai/GI-2016/GI-2016.pdf>, pages 51-55.

40 Materials on detention motions are available at <http://www.sobranie.mk/materialdetails.nsp?materialId=2f6ebb9c-af48-459f-8489-265b77153355>

41 This fact was highlighted by representatives of numerous civil society organizations, which actively took part in the work of the focus group on 15 September 2017 for the purpose of drafting this document.

Recommendations

- The Assembly should give due consideration to the **Ombudsman's** Annual Report and identify measures to implement the general recommendations for improving the system based on the legislative changes. Additionally, adequate funding needs to be provided for the Ombudsman's Office to be able to start implementing the stipulated powers, thus avoid any pro forma implementation of recommendations given by the international organizations.
- The inactivity and political instrumentalization of the **Constitutional Court** amount to continuous lack of credibility and public trust. The process of election of judges should give due consideration to the professionalism, competencies and integrity of newly elected judges, which should ultimately raise the level of the Constitutional Court. In order to increase the public trust in the Constitutional Court, it would be necessary to clearly define the term "prominent lawyer". In addition, the candidates for constitutional judges should be discussed by the academic community before they are appointed, in particular when judges are nominated by the Assembly. The increase in the required parliamentary majority for election of constitutional judges should also be taken into consideration. Based on the existing legal framework, the election is made by absolute majority that may result in election of judges when the opposition is absent. Furthermore, the constitutional complaint needs to be introduced in order to ensure enhanced protection of citizens' freedoms and rights.
- The competent authorities need to cease impunity to authorized officers for **torture and other forms of inhuman and degrading treatment**. The inactivity of the Public Prosecution Office in cases of torture, especially when done by police officers, further strengthens citizens' distrust in the judicial system. At the same time, serious efforts need to be made regarding the execution of the judgments where the European Court of Human Rights has found a violation of Article 3, through reopening the investigation, whenever possible, and when there is no statute of limitations for the criminal prosecution. The establishment of an external mechanism for oversight over the work of police and monitoring cases of police misconduct must be put in practice as soon as possible, by means of adoption of the foreseen legal framework and building the necessary institutional capacities for consistent application. Victims of torture and police ill-treatment must be guaranteed adequate legal, medical, psychological and social support, in line with the requirements set forth in the EU Directive 2012/29 establishing minimum standards on the rights, support and protection of victims of crimes.
- **Prison conditions, overcrowding and prisoners' treatment** are alarming. There is a need for urgent measures in order to change the policies governing the execution of penalties and remand detention, as well as full implementation of CPT recommendations so as to annul the established shortcomings, by placing an emphasis on improving the general conditions, ensuring adequate medical care, prevention and accountability in cases of ill-treatment as well as preventing corruption. It is of absolute importance to shed light on the cases of prisons. The National Preventive Mechanism should be provided urgently death of prisoners in the with staff and material and financial resources in order to be able to perform its duties adequately. The NGOs should be given free access to prisons for regular inspections of the conditions in order to provide recommendations aimed at their improvement. The Law on Amnesty should be implemented carefully, and to be accompanied by adequate measures and policies for resocialisation of the amnestied persons after their release in order to prevent reoffending and other negative consequences.
- It is urgently necessary to thoroughly reform the Anti-Discrimination Commission with a view to securing its greater professionalism, in order to more successfully perform its competences for equal protection of all citizens. The Ombudsman should continue with his efforts and activities in **fighting against discrimination** within the framework of his mandate. The proposed amendments to the Law on Prevention and Protection against Discrimination should strengthen the access to justice for the victims of discrimination by exempting them from court expenses for initiating judicial proceedings for protection against discrimination; strengthen the independence of the Anti-Discrimination Commission; and incorporate sexual orientation and gender identity as grounds for discrimination. There is an urgent need of results from the investigation of the attackers against the LGBTI Centre for support of the LGBTI persons. A broader and clear definition of the legal issues in respect of which free legal aid could be granted should be introduced in the new Law on Free Legal Aid, as well as to cover all citizens that need legal aid, and to ease the conditions that the citizens should fulfil in order to have access to FLA.
- The state should ensure respect for the **freedom of assembly** in a way that will not be limited either by the police, or by another groups of citizens - opponents in cases when the protests are properly announced in accordance with the Law on Public Assembly. Initiating criminal procedure against these individuals could be considered also as a warning for other citizens who want to take part in the protests, contrary to Article 21 of the Constitution of the Republic of Macedonia, an article that provisions for the citizens to have a right to assembly and to express public protest without previous announcement or special permit and exercising this right could be curtailed only under circumstances when a state of war or emergency is declared, which was not the case. Adequate disciplinary measures to be imposed against all police officers that use excessive force against participants in peaceful protests, as well as against their superiors.

- The **reforms in the media sector** need to be implemented through urgent legislative changes in consultations with civil society organizations. It is necessary to change urgently the Law on Audio and Audio-visual Media Services in order to prohibit advertising paid by the state, as well as to ensure independence and avoid political influence on the regulatory body - the Agency for Audio and Audio-visual Media Services. The broadcasters should strictly follow the professional principles and should report objectively and without bias, providing all relevant standpoints which should be treated equally. The reporters and journalists should take due care that neither they, nor their interlocutors use discriminatory speech instigating hate, insults and defamations. The journalists' associations and organizations should intensify their efforts to secure conditions so that reporters and journalists and other media professionals can carry out their duties professionally and free of fear or pressure. It is necessary to change the Law on Civil Liability for Defamation, especially its definitions (in order to harmonize it with article 10 from the ECHR).
- The new system for intercepting communications through OTA needs to have sufficient safeguards against its arbitrary use to the detriment of the citizens' privacy. To achieve this, civil society organizations and the Parliament should have a greater role so as to efficiently control the operation of OTA. **Interception of communications**, as a special investigative measure, should be limited to a specified category of offences and the conditions under which such measure can be ordered orally should be specified in a more restrictive manner. The interception process should be limited in time, and the lengthy deadlines stipulated in the current regulations should be re-examined. An obligation should be introduced for the body implementing the interception to stop the measure once the objectives for which the measure was imposed are achieved. At the same time the law should stipulate that the persons concerned should be informed about the special investigative measures applied once they are terminated.
- It is indeed necessary to change the Public Prosecution Office and the court detention practice in order uniformly to apply the Law on Criminal Procedure and Article 5 from the ECHR. At the same time, in order equally and unselectively to protect the **right to liberty and security** of all citizens in the country, judges and prosecutors should be held individually responsible if they have been subjective and violated the law when deciding (not) to impose detention.
- The Ministry of Interior should invest efforts to discover the perpetrators of the registered offences, as well as to prevent similar such incidents in future. Legislative solutions from EU member countries should be considered in order to extend the scope of the **hate crime** offences so as to include other grounds for bias in these offenses. Additionally, timely and efficient investigation of hate crimes should be ensured, having in mind the motives for biased acting during the whole criminal procedure.
- A comprehensive and inclusive public debate involving the experts and academia, as well as the civil society is needed with respect to the **Law on Use of Languages**. Its adoption has to be a result of a completely democratic and transparent process, based on a thorough analysis of the financial implications of its implementation on the budget of the Republic of Macedonia. Finally, it would be prudent this law to be adopted after receiving the relevant opinions and recommendations from the Venice Commission, which would enable their full incorporation in the legal text and would prevent further controversies, which instead of promoting the rights of the communities lead to further unnecessary inter-ethnic tensions and lack of trust among the citizens.
- The Directorate for Personal Data Protection needs to have a stronger role in protecting the citizens and it should be more actively involved in **protecting the privacy and personal data** of citizens. It is quite necessary to re-examine Articles 255 and 263 of the Law on Criminal Procedure so that it can be ensured that the data collected with intercepted communications are only used for the purpose for which the order has been issued and they are not kept for an unreasonably lengthy period. The security of data collected through intercepting communications should be legally guaranteed, as well as their destruction in cases when they are no longer needed for the purpose for which they have been collected. The providers of electronic communication services need to take appropriate technical and organisational measures which will ensure that access to personal data is granted only to authorised personnel and the data can be protected from unauthorised or illegal form of processing.

