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ANALYSIS ON THE QUALITY OF THE REFORMS REGARDING APPOINTMENT, APPOINTMENT IN HIGHER COURTS AND DISMISSAL OF JUDGES

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ANALYSIS ON THE QUALITY OF THE
REFORMS REGARDING APPOINTMENT,
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INTRODUCTORY NOTES

Scope and goal of the Analysis

The judges, as bearers of the judiciary, are guardians of the human rights and freedoms, and they serve as the highest warrants for the protection of the rule of law. They are implementators of the judiciary, enforcers of the law and creators of the judicial practices, and as such, are obliged to guard the determination of the State and the judiciary to protect the democracy based on rule of law and promotion of the system for protection of the human rights.

When it comes to performance of the judicial office, appropriate conditions must be provided to guarantee actual independence of the courts as judiciary institutions, but also individual independence, impartiality, quality, professionalism and efficiency of the judges when deciding in the specific cases.

The Strategy for Reform of the Judicial Sector 2017-2022 has determined directions which aimed towards improvement of the judiciary system through overcoming the existing deficiencies from normative and institutional nature of the judiciary and has anticipated conduction of several measures which aimed towards strengthening the independence, impartiality, quality and liability of the executioners of the judiciary. These measures included interventions in the legal framework, rules of procedure as well as strengthening of the human and technical resources as well as the Judicial council.

In the period from 2017-2019 amendments of the Law on Courts¹ and the Law on the Academy for Judges and Public Prosecutors² were reached together with a completely new Law on the Judicial Council³. In these phase overcomings of the located weaknesses in the judiciary, as per the given notes and recommendations by the Venice Commission and GRECO, inter alia, the conditions and procedure for election of judges in basic and higher courts, the qualitative and quantitative criteria for evaluation of the work of the judges and presidents of courts in case of their advancement, as well as the grounds and procedure for determining disciplinary liability of the judges and their dismissal, have been significantly amended.

Bearing in mind that the new and amendment solutions brought numerous novelties, the application of which has started with the day when they entered into force, but also bearing in mind the dynamic legal and political situation in the country, an Analysis of the quality of this part of the reforms and their practical application and effect, was deemed as necessary.

Continuing its effort in monitoring and participating in the conduction of inclusive and transparent, good quality reforms, the civil society organizations acting in the field of judiciary, which are part of the Blueprint Group for Judicial Reform, conducted this Analysis which elaborates the reformed career flow of the judges, starting from the terms, conditions and procedure for enrollment in the initial training at the Academy for Judges and Public Prosecutors good quality; the terms, conditions and procedure for election as a judge in the basic and administrative courts; terms, conditions and procedure for election of a judge in

¹ Law amending the Law on Courts, Official Gazette of RNM no. 83/2018, 198/2018, 96/2019.

² Law amending the Law on Academy for Judges and Public Prosecutors, Official Gazette of RNM, no. 163/2018.

³ Law on Judicial Council, Official Gazette of RNM, no. 102/2019.

the higher courts, grounds and procedure for determining disciplinary liability until termination and dismissal from the judicial office.

This group is composed of the Institute for Human Rights, the Helsinki Committee for Human Rights of Republic of Macedonia, the Coalition “All for Fair Trials”, the Macedonian Young Lawyers Association, the European Policies Institute, the Center for Legal Research and Analysis and the Foundation Open Society – Macedonia.

Since the Blueprint Group is a part of the Council for monitoring of the implementation of the Strategy for Reforms in the Judiciary System 2017-2022, which is an advisory body to the Ministry of Justice and has its representatives in the working groups for laws in the field of judiciary, this Analysis is a document for stating the professional and analytical opinions of the Blueprint Group for Judicial Reform, a contribution to the monitoring and evaluation of the reforms and an attempt to have an impact towards improvement of the quality of the reforms.

Primary goal of this Analysis is to identify and analyze whether, and to which amount, the new legal solutions contribute towards strengthening the independence, impartiality, quality and liability of the judiciary executives, and towards additionally identifying and analyzing the problems and challenges which arose, and which could be a boundary for the rule of law. The standings taken with this Analysis are grounds for intervention in areas in which visible results are expected, and it contains critical view to the amendments and their practical application in the judicial office, and to the essence of the reforms on which depend the provision and protection of fundamental human rights and freedoms, and the judicial system as a whole.

This Analysis has been prepared as a part of the continued joint action for monitoring of the judicial reforms of the Blueprint group, titled “For justice – Monitoring of the implementation of the Strategy for Reform of the Judicial Sector 2019-2020”, which realization is supported by the Foundation Open society – Macedonia.

This joint action arose from the need for continuing effort for transparent, timely and accountable implementation of the judiciary reforms. General goal of the action is to increase participation and impact of the civil society organizations in the process of implementation of the Strategy for Reform of the Judicial Sector (2017-2022) and strengthening the independence and impartiality of the judiciary, especially when it comes to respecting the timeframe as determined with the Action plan, the transparency of the process, the transparency and inclusiveness, evaluation of the quality of the proposed laws and policies and grade of realization of the aims for which they were reached, as well as influencing the judiciary reform process through preparing and delivering evidence-based recommendations for the proposed laws and policies and improvement of the public debate.

Methodology

The amendments to the laws and new legal solutions regarding the terms, conditions and procedure for enrollment in the initial training at the Academy for Judges and Public Prosecutors, the terms, conditions and procedure for election of a judge in the basic and administrative courts, terms, conditions and procedure for election of a judge in the higher courts, grounds and procedure for determining disciplinary liability until termination and dismissal from the judicial office as prescribed with the Strategy for Reform of the Judicial Sector 2017-2022 and the Action plan, were taken as grounds for conducting this Analysis.

The timeframe of the analyzed data is from the beginning of the reforms, i.e. 2017, concluding with October 2019.

The Methodology for gathering data for this Analysis, mostly includes overview of the documentation and statistical data. The strategic documents on which this Analysis is based are the Strategy for Reform of the Judicial Sector 2017-2022 with its action plan and Plan 18. It also includes an insight of the amendments to the laws and the new legal solutions of the Law on Courts, the Law on Judicial council of the RNM, Law on the Academy for Judges and Public Prosecutors. The information available on the web-sites of the institutions included in the Analysis, the Unique electronic register of provisions, and the information gathered through direct observations of the sessions of the Judicial council, were used as sources of information. Quantitative, qualitative and normative analysis was conducted in relation to the previous and new legal solutions.

Structure of the Analysis

The Analysis starts with introductory notes which sum the aim and the scope of the Analysis and the methodology used for gathering information and analysing the said information. After the introductory notes, the Analysis continues with the essence and the findings of the Analysis. **The first part** is dedicated to the initial training for judges, i.e. elaboration of the Law amending the Law on the Academy for Judges and Public Prosecutors, which regulates these issues. **In the second part**, the amendments regulating the election criteria for judges in basic and administrative court are analyzed, and in that direction, an elaboration of the Law on Court Council and the Law on Courts is conducted as well. In the **third part**, the manner of monitoring and evaluation of the work of the judges is elaborated, which manner shall lead to increased quality of the decisions and shall provide development of the skills and capabilities of the judges, which should further lead to increased trust in the judiciary by the citizens. **The fourth part** elaborates the election of a judge in a higher court, i.e. in the Courts of appeal, in the Supreme Court as well as the selection of presidents of courts. **The fifth part** is dedicated to the redefined grounds for disciplinary liability. **The sixth and final part** of the findings of this Analysis elaborates the termination and dismissal from the judicial office. Each part contains separate analysis of the current legal framework, i.e. the amendments and the practical application of the novelties and their effects, and specific conclusions are offered.

The document ends with summarized conclusions and recommendations arising from the conducted Analysis.

FINDINGS FROM THE ANALYSIS

Part 1: Introductory training

1.1. What did the reforms bring? – Legal framework Analysis

Law Amending the Law on Academy for Training of Judges and Public Prosecutors (Official Gazette of RM no. 163/2018)

On 29.8.2018, the Assembly of the Republic of North Macedonia reached the Law amending the Law on Academy for Training of Judges and Public Prosecutors.⁴ The intention with the amendments to the Law was to address certain inconsistencies in relation to the managerial and administrative bodies, and additionally the criteria for enrollment of new students of the Academy were amended.

When it comes to managerial and administrative bodies, the obligation for taking the psychological and the integrity test, which until now were taken by the Director, members of the Management board of the ATJPP and members of the Program Council, are now abolished. In addition to this, with the amendment, the obligation for knowing the English language for the members of the Managerial board, Program Council and the lecturers is also abolished; as was the exam for Director, which was previously obligatory for the Director of the Academy, the members of the Management board and the members of the Program Council.

When it comes to the candidates for enrollment, the main novelty introduced with the Law amending the Law on AJPP⁵ is the abolition of the required GPA of at least 8.0 for the candidates, which was mostly a limitation for the candidates. In addition to this, the criteria for obligatory postgraduate studies was abolished for the candidates with 4-year higher education, VII/I educational degree of legal studies.⁶ In regards to knowledge of one of the three most commonly used languages, instead of presenting a certificate for knowing the language, the candidates now will take an exam to show their knowledge in English, French or German.

New Draft-Proposal of a Law on the Academy for Judges and Public Prosecutors

On the 12th of May 2019, the Draft-Proposal of a Law on Academy for Judges and Public Prosecutors was published on the UNER. The goal for reaching the new Draft-Proposal of the Law lies within the removal of the formal criteria which were an obstacle preventing the Academy for Judges and Public Prosecutors from efficient functioning, and the opinion of TAEX, on grounds of which it is necessary to introduce legal grounds for education of the jurors. In July 2019, the Draft-Proposal of the Law on Academy for Judges and Public Prosecutors was submitted to the Assembly of Republic of North Macedonia, as prepared with the consultations with the public through UNER and through the work of the inclusive

⁴ Assembly of the Republic of Macedonia, "Session no. 58 of the Assembly of the R. Macedonia, scheduled on 29.08.2018' (29 August 2018) <<https://www.sobranie.mk/sessiondetails.nsp?sessionDetailsId=5f30c475-2ee9-4cac-9859-e9ec6841570f&date=29.8.2018>> accessed 16 October 2019.

⁵ Official Gazette of RM no..163/2018, Law amending the Law on the Academy of Judges and Public Prosecutors.

⁶ Blueprint group for judiciary reforms, "Analysis on the conduction of the Strategy for Reform of the Judiciary sector (2017-2022) for the period from 2018/2019 <https://epi.org.mk/wp-content/uploads/2019/06/Blueprint-analiza.pdf> accessed 16 October 2019.

working group of the Ministry of Justice, which, inter alia, was composed of representatives from the civil society sector.

The novelties introduced by this Draft-Proposal of a Law are increase of the mandate of the members of the Management board of the Academy, from the existing two, to four years. Regarding remunerations, the members of the Program Council would be entitled to a *monthly* remuneration, which in the existing Law is defined as *remuneration for completed work*. The amount of the monthly remuneration shall be regulated with the acts of the Academy.⁷ In addition to this, as per the Draft-Proposal of the Law, the members of the Management board, Program Council and the commissions for the entry exam, for review of the conducted exams and for the final exam at the Academy, appointed in two mandates before this Law entered into force, are not entitled to an additional mandate.⁸ This decision is based on the TALEX report, which recommends that the Director and Vice-Director of the Academy be entitled to only one re-election.

Biggest part of the amendments in the Draft-Law address the taking of the entry and final exam in the Academy, as well as the examination for each of the modules in the first phase of the initial training. In order to follow the TALEX recommendations,⁹ the deadlines for submitting and deciding upon the Objections and Appeals regarding the results during the entry exam are shortened. The criteria for entering the Academy are kept as stated in the current legal solution, i.e. the same provisions regarding abolition of the required GPA, determination of knowing one of the foreign languages through testing in the Academy, and abolition of the obligatory postgraduate studies for the candidates with 4 years of higher education, VII/I educational degree of legal studies, remain.

When it comes to the testing of the participants at the Academy, the novelties reflect the fact that the subjects which are taken during the theoretical education are divided into three modules, which are conducted and examined successively.¹⁰ The final exam is consisted of three parts: 1. Written part; 2. Hearing simulation and 3. Oral part. The Hearing simulation as a part of the final exam is a significant novelty¹¹, which is introduced with the Draft-Proposal of the Law, because it enables the candidates to confirm their knowledge into practice.

The Draft-Proposal to the Law also anticipates novelties in the fair representation of the participants. Although the general fair representation is kept as in the current legal solution, in the part regulating the notifications by the Judicial Council and the Council of Public Prosecutors for vacant positions for judges and public prosecutors in the basic courts and basic public prosecutions, now these institutions are obliged to also notify on the affiliation with the communities.

An additional novelty in the Draft-Proposal of the Law on the Academy for Judges and Public Prosecutors is regarding persons which aquired the status of a participant of an entry training. If they were employed for an indefinite period of time in the capacity of a judicial or public prosecution officials, their employment will rest until their completion of the

⁷ Article 22 from the Draft-Proposal of the Law on Academy for Judges and Public Prosecutors, delivered in July 2019 to the Assembly of RNM.

⁸ Blueprint group for judicial reforms (p 3).

⁹ *ibid.*

¹⁰ Article 52 from the Draft- Proposal to the Law on the Academy for Judges and Public Prosecutors, delivered in July 2019 to the Assembly of RNM.

¹¹ Article 56 from the Draft- Proposal to the Law on the Academy for Judges and Public Prosecutors, delivered in July 2019 to the Assembly of RNM

Academy, and after passing the final exam, they will return to work, i.e. they will return where their employment was resting, until their appointment as a Judge or Public Prosecutor.¹²

1.2. Application of the novelties

On 22nd of October 2018, a constitutive session of the Management board of the Academy for Judges and Public Prosecutors was held. During the sessions, the appointments of the members of the Management board of the AJPP were confirmed. Consequently, a Decision was reached for appointing Sasho Rajchev, Public Prosecutor of the Basic Public Prosecution Skopje as a president of the Management board of the Academy, and the appointment of Olja Ristova, judge in Basic Court Skopje 1 as a vice-president of the Management board of the Academy. The Management board further reached a decision for termination of the mandate of the current director of the Academy, and a Decision for announcing a public call for Director and vice-Director as per the terms and conditions set in the Law amending the Law on Academy for Judges and Public Prosecutors.¹³ In addition to this, during the same day, the Management board reached a Decision for announcing a public call for election of a Director and vice-Director of the Academy for Judges and Public Prosecutors.¹⁴

At the 138th Session of the Management board of the AJPP, held on 28th of November 2018, Natasha Gaber-Damjanovska was appointed as a Director to the AJPP. At the public call for a Director, four candidates applied. Although previously the public call anticipated a position for a vice-Director, the Management board decided that the sole candidate that applied, did not fulfill one of the criteria set in the announcement, i.e. the candidate failed to provide the Certificate of No Criminal Record. Until the moment of writing of this document, a public call for this position has not been announced, consequently, the Academy for Judges and Public Prosecutors does not have a vice-President.

At the session held on the 18th of June 2019, the Management board of the AJPP reached a Decision for setting the final exam for the participants of the VIth generation. The final exam was held on the 5th of July 2019, starting at 10:00 AM, in the premises of the Academy for Judges and Public Prosecutors. In total, 37 candidates from the VIth generation managed to pass the examinations, and they received their diplomas on the 9th October of 2019.¹⁵

The Management board of the Academy for Judges and Public Prosecutors “Pavel Shatev”, at the session held on 3.6.2019, has defined the Program for entry exam for the Academy for Judges and Public Prosecutors “Pavel Shatev” for 2019, and reached the following acts: The Statutory Decision for amending the Statute of the Academy for Judges and Public Prosecutors “Pavel Shatev” and the Rulebook on amending the Rulebook on taking the entry exam for the Academy for Judges and Public Prosecutors “Pavel Shatev”.

The Management board of the Academy for Judges and Public Prosecutors, at the session held on 9.5.2019, reached a Decision for a public call for accepting participants of the new, VIIth generation for the initial training in the Academy for Judges and Public

¹² Article 50 from the Draft- Proposal to the Law on the Academy for Judges and Public Prosecutors, delivered in July 2019 to the Assembly of RNM.

¹³ Law amending the Law on the Academy for Judges and Public Prosecutors, 2018 (Official Gazette of RNM no.163/2018).

¹⁴ Iva Conevska and others, ‘Shadow report on Chapter 23 for the period from June 2018-March 2019’ (2019).

¹⁵ makpress.mk, ‘Diplomas awarded to 37 graduated candidates for judges and public prosecutors’ (10 September 2019) <<https://makpress.mk/Home/PostDetails?PostId=308972>> accessed 18 October 2019.

Prosecutors “Pavel Shatev”.¹⁶ As per the notifications from the Judicial council and the Council of Public Prosecutors for vacant positions in the courts and prosecutions, the number of candidates for which the public call should be announced in the AJPP was 120, 65 of which were projected for the prosecution, and the remaining 55 for the courts.¹⁷ Nonetheless, the Academy, due to its space capacities, published the public call for 60 candidates, from which 30 candidates that will successfully complete the training will be sent to the courts, and 30 candidates will be sent to the public prosecutions. The public call was published on the 15th of May 2019, in the Official Gazette, and the daily newspapers “Nova Makedonija” and “Lajme”, as well as on the bulletin board and the web-site of the Academy for Judges and Public Prosecutors. Around 670 candidates answered the Public call, which is a significantly bigger number than the number of candidates for the VIth generation – candidates that answered the Public call published in 2016.¹⁸ This, mostly due to the alleviation of the entry criteria for the candidates, i.e. the abolition of the GPA for the candidates and of the criteria for obligatory postgraduate studies for the candidates with completed four years of higher education, i.e. VII/I educational degree of legal studies.

On 26-27th of August, the AJPP conducted the knowledge test for one of the three most commonly used languages in the EU (English, French or German) for the candidates that applied for the VIth generation for participants of the entry training in the Computer Center of the Faculty of Law in Skopje. The qualification tests of the AKPP were scheduled in the period between 10-14th of September 2019 in the exam center of the Faculty of Law. The candidates that passed the knowledge test for one of the three most commonly used languages in the EU were entitled to take the exam. The psychological test for the candidates that passed the qualification exam was scheduled for the 12th and 13th of October, at the Faculty of Philosophy – University Ss. Cyril and Methodius in Skopje. The evaluation methodology for the psychological tests, as well as the dynamic of their evaluation were not under authorization of the AJPP, since they shall be evaluated by professionals coming from an independent and fully accredited professional institution.

Meanwhile, AJPP continually works on the improvement of the training quality through introducing the necessary training subjects, prepared on grounds of the conducted evaluations of the trainings and the submitted proposal-subjects from the Judicial council, the Council of Public Prosecutors, experts and non-governmental organizations.¹⁹ In the past period, several consultings and trainings on various subjects were conducted. Trainings regarding victim examination techniques, mediation and arbitration, improvement of the system regarding domestic violence, court practice in cases of safety of journalists and media workers, were among the latest, together with other subjects which are important for

¹⁶ akademik.mk, ‘Public call for entering the initial training of the Academy for Judges and Public Prosecutors “Pavel Shatev” (17 May 2019) <<https://akademik.mk/javen-oglas-za-priem-vo-pochetna-obuka-vo-akademijata-za-sudii-i-javni-obviniteli-pavel-shatev/>> accessed 18 October 2019.

¹⁷ nezavisen.mk, ‘Interview with Natasha Gaber-Damjanovska: The State is paying for the training of the future judges and prosecutors’ (2 June 2019) <<https://nezavisen.mk/intervju-so-natasha-gaber-damjanovska-drzhavata-plakja-za-obukata-nadnite-sudii-i-obviniteli/>> accessed 18 October 2019.

¹⁸ 24info.mk, ‘Gaber: The Academy is working professionally and does not favor certain candidates’ (9 October 2019) <<https://24info.mk/%d0%b3%d0%b0%d0%b1%d0%b5%d1%80-%d0%b0%d0%ba%d0%b0%d0%b4%d0%b5%d0%bc%d0%b8%d1%98%d0%b0%d1%82%d0%b0-%d1%80%d0%b0%d0%b1%d0%be%d1%82%d0%b8-%d0%bf%d1%80%d0%be%d1%84%d0%b5%d1%81%d0%b8%d0%be%d0%bd%d0%b0/>> accessed 18 October 2019.

¹⁹ Blueprint group for judiciary reforms, “Analysis on the conduction of the Strategy for Reform of the Judiciary sector (2017-2022) for the period from 2018/2019” <<https://epi.org.mk/wp-content/uploads/2019/06/Blueprint-analiza.pdf>> accessed 16 October 2019

the improvement of the work of the courts and public prosecutions in order to strengthen the capacities of their representatives.

1.3. Conclusion

Although in total 120 new judges and public prosecutors were demanded by the Judicial council and the Council of Public Prosecutors, the Academy for Judges and Public Prosecutors provided capacities for only 60 participants, due to lack of space.²⁰ Hence, there is a need for increased capacity of the Academy for Judges and Public Prosecutors regarding its premises, with special focus on the training premises, but there is also additional need for increase of the budget and personnel in order to provide trainings with better quality for the participants, judges, public prosecutors and auxiliary personnel, and for fulfillment of the TAEX recommendations in this manner. When it comes to the personnel, 36 job positions have been fulfilled, while there are 64 job positions in the systematization.²¹ The biggest deficiency in fulfilled job positions come from the sectors for training and financial affairs. In the sector for training, 13 job positions are projected, while only 4 are fulfilled, and in the sector Financial affairs, only one job position has been fulfilled, out of 7 projected.

In addition to this, AJPP should be provided with budget resources for creating conditions for premises such as reading rooms, libraries and courtrooms, where the participants will be able to train for judicial offices and public prosecutors. It is also necessary for the number of personnel required for implementation of the legally binding obligations of the AJPP as determined with the Law on the Academy of Judges and Public Prosecutors to be increased. The AJPP has a total of 18 employees, and there are vacant job positions. The Government should make effort to this. In order to fulfill the needs of the Academy for Judges and Public Prosecutors, the Government shall in the next period, when creating the state budget, to secure more budget assets for improvement of the work of the AJPP.

At the the moment of writing this Analysis, the web-site of the Academy for Judges and Public Prosecutors (<http://ipacademy.gov.mk/>) is completely redesigned with a modern look. Although relatively new, the archive of the previous web-site has not been integrated. In light of this, the posts from the old web-site shall be integrated, for better transparency and visibility of the work of the Academy.

Part 2: Election of a Judge in the basic courts and in the Administrative court

2.1 What did the reforms bring? – Legal framework Analysis

The election of judges in the basic courts and in the administrative court is regulated with the Law on Courts²² and with the new Law on the Judicial council of the RNM,²³ where it is stated that the Judicial council of RNM as an autonomous and independent judiciary body is authorized for the processes of election, evaluation, advancement and dismissal of judges.

²⁰ nezavisen.mk, "Interview with Natasha Gaber-Damjanovska: The State is paying for the training of the future judges and prosecutors" (2 June 2019) <<https://nezavisen.mk/intervju-so-natasha-gaber-damjanovska-drzhavata-plakja-za-obukata-nadnite-sudii-i-obviniteli/>> accessed 18 October 2019.

²¹ Functional Analysis of the Academy for Judges and Public Prosecutors, Skopje, November 2019

²² Law on Courts („Official Gazette of Republic of Macedonia“ no. 58/2006, 62/2006, 35/2008, 150/2010, 83/2018 and 198/2018 and „Official Gazette of Republic of North Macedonia“ no. 96/2019)

²³ Law on Judicial Council of Republic of North Macedonia („Official Gazette of Republic of North Macedonia“ no. 96/2019)

As per the Strategy for Reform of the Judicial Sector, the judiciary reform is divided into three phases, i.e. three sets of amendments to the Law on Judicial Council of RNM and the Law on Courts.

In 2017 and 2018, two amendments to the Law on Judicial Council were conducted, and they were adopted by the Assembly.²⁴ As per the directions given in the Strategy for Reform of the Judicial Sector, the recommendations by the Venice Commission, GRECO and the recommendation by the assessment mission TAIEX from April 2018, third amendment was to be adopted, i.e. a new Law on Judicial Council, which was reached and published in the Official Gazette of RNM no. 102 from 22.05.2019. The new Law on Judicial Council is amongst the laws which were not signed by the previous president due to the change of the name of the state, so consequently, at the first session after the presidential elections, the PMs re-voted the amendments.

The Law on Courts has also been amended three times – twice in 2018 and the third and last time in 2019.²⁵

Despite the anticipated reaching of a new Law on Courts with the Strategy for Reform of the Judicial Sector, three amendments were conducted to this Law after the Strategy was reached.²⁶ These amendments provided stable legal framework; they provided protection of the independence of the judiciary, and as such, they were greeted in the latest report of the European Commission on our country.²⁷

Both the Law on Courts and the Law on the Judicial Council of RNM provide a procedure for election of judges in basic courts in Republic of North Macedonia, starting with a Decision for determining vacant positions for judges in the basic courts by the Judicial Council of RNM. This Decision shall be reached by the Judicial Council upon gained opinion from the general session of the Supreme Court of Republic of North Macedonia and gained opinion from the sessions of the judges of the court in question, on grounds of an Analysis and projection on vacant positions for judges, and through application of an appropriate and fair representation of the members of the communities which are not a majority in Republic of Macedonia, as per the Annual Working Program of the Judicial Council of Republic of North Macedonia.²⁸

The Judicial council shall deliver the reached Decision for determining vacant positions in the basic courts to the Academy for Judges and Public Prosecutors until 31st of March in the year it was reached, at latest.²⁹ The relevance of this Decision is questionable, since despite the fact that the Judicial council reached a Decision on 14.3.2019, defining the number of vacant positions for judges in basic courts at 55 for the VII-th generation of candidates for studying at the AJPP, due to the insufficient space capacities, the AJPP published a call for 30 candidates for judges.

²⁴ Law on Judicial Council of Republic of Macedonia („Official Gazette of Republic of Macedonia“ no. 60/2006, 69/2006, 150/2010, 100/2011, 20/2015, 61/2015, 197/2017 and 83/2018)

²⁵ Law on Courts („Official Gazette of Republic of Macedonia“ no. 58/2006, 62/2006, 35/2008, 150/2010, 83/2018 и 198/2018 and „Official Gazette of Republic of North Macedonia“ no. 96/2019)

²⁶ Blueprint group for judiciary reforms, “Analysis on the conduction of the Strategy for Reform of the Judiciary sector (2017-2022) for the period from 2018/2019, available at: <http://ihr.org.mk/uploads>

²⁷ Ibid

²⁸ Член 44 став 2 од Законот за судовите („Службен весник на Република Македонија“ бр. 58/2006, 62/2006, 35/2008, 150/2010, 83/2018 и 198/2018 и „Службен весник на Република Северна Македонија“ бр. 96/2019)

²⁹ Article 45 from the Law on Judicial Council of RNM („Official Gazette of RNM“ no. 102/2019)

Also, after a vacant position of a judge, or upon determined need for such a position, upon delivered request by the Court, the Judicial council reaches a decision for publishing a call for election of a judge. The Call shall be published in the Official Gazette of RNM and in at least two newspapers, one of which issued in a language different than the Macedonian, which is spoken by at least 20% of the citizens fo RNM and shall last 15 days upon its announcement in the Official Gazette.³⁰

The general criteria which shall be fulfilled in order for a person to be elected as a judge are as follows:

- To possess citizenship of Republic of North Macedonia
- To actively use the Macedonian language,
- To be able to work and to have general health capabilty, which is proven by medical statement;
- To be a legal studies gradate with gained 300 ECTS or VII/1 education degree in the field of legal studies or nostrified diploma from legal studies abroad for acquired 300 credits;
- To have the bar exam passed in Republic of Macedonia
- To know at least one of the three most commonly used languages in the European Union (English, French or German),
- At the day of its election, the person shall not be under a punishment or infringement sanction on conducting a profession, activity or duty for an act in relation to conducting the legal profession, or for other crime which prescribes prison time of at least 6 months, as confirmed with a final verdict;
- To have practical knowledge for working on computers;
- To be respectable and to have integrity for conducting the position of a judge, and
- To possess social capabilities for conducting the profession of a judge, for which integrity and psychologial tests shall be conducted.³¹

With the novelties, the confirmation of the general health condition shall not be conducted with health examinations, as was previously regulated, but the candidate shall prove such condition with a medical confirmation. Further, the candidates for judges are not required to have active knowledge of a certain foreign language, i.e. the examination is within the entry exam in the Academy for Judges and Public Prosecutors, where the test shall determine the knowledge degree of the future judge, and if this person is accepted to the Academy for Judges and Public Prosecutors, it shall be provided with possibilities for further professional advancement of the knowledge of the foreign language.

Election of a Judge in a Basic Court

The special criteria for election of a judge in basic courts state that a person can be elected for a basic court judge, only if:

- The person has completed the training at the Academy for Judges and Public Prosecutors as per Law, and
- The person has at least four year uninterrupted judiciary employment as a judge in another basic court until the moment of applying for selection, which has been positively graded by the Judicial Council, as per the Law on Judicial council.³²

³⁰ Article 46 ibid

³¹ Article 45 from the Law on Courts („Official Gazette of Republic of Macedonia“ no. 58/2006, 62/2006, 35/2008, 150/2010, 83/2018 and 198/2018 and „Official Gazette of Republic of North Macedonia“ no. 96/2019)

Election of a Judge in the Administrative Court

In regards to the election of a judge in the Administrative court, it is noticed that the criteria for election have been tightened, because the previous legal solution anticipated that persons with at least five year experience in legal affairs, conducted in a state body, with confirmed working results can be elected for judges, while the new amendments anticipate that only a judge with working experience of at least four uninterrupted years as a judge in a basic court at the moment of applying for selection, which has also been graded positively by the Judicial council, can be elected as a judge of the Administrative court.³³

The significant novelties state that the completion of the training at the Academy for Judges and Public Prosecutors is the only way for initiating a career as a judge.

The Judicial council elects the basic court judge from the ranking list of candidates delivered from the Academy for Judges and Public Prosecutors which answered the public call, starting with the best results in the final ranking list, as well as the results from the interview conducted by the Judicial council.³⁴

The conduction of the interview for the candidates for basic court, which is evaluated by the Judicial council and can be up to 10% from the total number of points,³⁵ is a novelty prescribed with the new law and it anticipates valorization of the personal and social competences of the candidates for judges in the basic courts. This gives the possibility to avoid the mandatory acceptance of the delivered ranking list by the AJPP, and this novelty answers the criticism that the previously stated manner for election of a judge does not give a possibility for the Judicial council to apply other selection criteria, and that the work of the Council is set to conducting formal election, which is similar to appointment of the candidate as a judge, and it is a positive thing, having a more precise legal regulation regarding the election of judges. Upon conduction and evaluation of the interview, the Judicial council of RNM is entitled to change the rating of the candidates at the final ranking list, and although the subjectiveness when grading the interview cannot be ignored, this novelty has been seen as positive.

The Law on Judicial Council of RNM prescribes that the Council shall discuss and decide upon election of a judge, at a session on which at least eight votes from the members of the Judicial council with a right to vote are present.³⁶ The Judicial council is composed of 15 members; members upon their position are the President of the Supreme Court of Republic of North Macedonia and the Minister of justice, and they are included in the work of the Council without a right to vote.³⁷ In the previous legal solutions from 2018, the President of the Supreme court, as a member of the Judicial council was entitled to vote, but could not be a member of the Council which decided upon Appeal against decisions reached by the Judicial council of the RNM.

³² Article 46 from the Law on Courts („Official Gazette of Republic of Macedonia“ no. 58/2006, 62/2006, 35/2008, 150/2010, 83/2018 and 198/2018 and „Official Gazette of Republic of North Macedonia“ no. 96/2019)

³³ Article 45 par. 2 it. 1 od from the Law on Judicial Council of RNM („Official Gazette of RNM“ no. 102/2019)

³⁴ Article 47 from the Law on Judicial Council of RNM („Official Gazette of RNM“ no. 102/2019)

³⁵ Ibid

³⁶ Article 49 par 1 from the Law on Judicial Council of RNM („Official Gazette of RNM“no. 102/2019). There is a linguistic error in this paragraph, but despite that, it is not difficult to interpret that the Council shall discuss and decide during a session on which at least eight members of the Judicial Council with a right to vote are present.

³⁷ Article 6 from the Law on Judicial Council of RNM („Official Gazette of RNM“ no. 102/2019)

This novelty, regarding the participation of the Minister of Justice and the President of the Supreme Court at the sessions without a right to vote, should contribute towards essential division between the judicial and executive authority when reaching important decisions for the judiciary, and should additionally prevent the President of the Supreme Court from deciding in two instances, bearing in mind the right to appeal of the non-selected candidates to the Council of Appeal of the Supreme Court, which shall be elaborated later.

The discussion and deciding is conducted in order, as per the final ranking list of the candidates, and each member of the Council with a right to vote is obliged to orally elaborate its decision for election of a judge during the session of the Council.³⁸ The elaboration of the decision regarding the candidate by the members of the Judicial council is a novelty which shall contribute towards better quality when selecting judges and better transparency of the work of the Judicial council of RNM.

Only the candidate who received at least eight votes from the total number of members of the Council with a right to vote shall be deemed as elected, for which the candidate will be notified in written, and the decision for election shall be published on the web-site of the Council and in the Official Gazette of RNM.³⁹ During the monitoring of the judicial council, conducted by the Institute for Human Rights, from its practice it has been noticed that the voting for election of a judge is closed when the first of the candidates ranked at the ranking list is elected with the sufficient number of votes (in the previous legal solution, that was two-thirds from the votes in the Judicial council), without the possibility of vote to the next candidates on the ranking list, which deprives them from the possibility to be elected with even more votes than the previous candidate. The question that rose is what the voting procedure would be like, in case the candidates have equal number of points from their success at the AJPP and their interview.

The new Law on Judicial council of RNM further prescribes that the Council can elect a judge for one basic court, although the candidate applied for another basic court, if no candidate from the Academy for Judges and Public Prosecutors has applied to the public call.⁴⁰ The question that was raised here is, whether this provision is not limiting for the judges from the basic courts which applied for the call for judge for a different basic court, and whether their election should be possible only if no candidate from the Academy for Judges and Public Prosecutor applied.

The candidate which has not been elected for a judge is entitled to an appeal within eight days from the receipt of the notification, to the Council of Appeal in the Supreme court of Republic of North Macedonia.⁴¹ This legal remedy for the non-selected candidate, i.e. the possibility for appeal to the Council of Appeal in the Supreme court is a novelty which provides transparency of the Judicial council and greater engagement of the Supreme court in the process of election of judges in the country.

Also guaranteed is fair and appropriate representation in the election of judges, in a manner that when a judge is elected in a basic court in the area of a local selfgovernment where 20% of the citizens speak official language different from the Macedonian, the majority of votes from the present members belonging to the communities which are not a

³⁸ Article 49 *ibid*

³⁹ Article 49 para. 1 *ibid*

⁴⁰ Article 47 para. 6 *ibid*

⁴¹ Article 49 para. 5 *ibid*

majority in Republic of North Macedonia is required.⁴² When the Judicial council elects a judge for the administrative court, the majority of votes from the present members belonging to the communities which are not a majority in Republic of North Macedonia is required.⁴³

In any case, a person who is relative in first line or in indirect line up to third degree with, or is a spouse of a judge, cannot be elected as a judge in the same court. In addition to this, a person who is a relative in first line or in indirect line up to third degree with, or a spouse of a member of the Judicial council of RNM, cannot be elected as a judge.⁴⁴

If after the conducted procedure for election of a judge or president of a court, the Judicial council determines that no candidate applied or that all of the applicants have been negatively evaluated, it shall reach a Decision for re-announcing the call for election of a judge.⁴⁵

Upon the recommendations of the assessment mission TAIEX, a novelty that got incorporated in the Law on Courts, is that a person which has been a judge in an international court for at least one mandate, and which fulfills the criteria, may be elected as a judge in all instances.⁴⁶

Also a significant novelty in the amendments to the Law on Courts is the possibility for continuance of the mandate of the judges which until now were set to retire with 64 years, but now they are entitled to continue working until 67, as per the Law on Labor Relations.⁴⁷

These amendments introduce the possibility for a judge elected for the area of one basic or court of appeal, after a certain amount of uninterrupted years of work as a judge in the said court, to be elected for the area of another basic, i.e. court of appeal.

The Law amending the Law on Courts contains a new article, which introduces new category for so-called young judges, thus anticipating a period of two years in which the newly-selected judge may judge only cases which can be decided in a court with basic authorization. It has been estimated that the two-year period is sufficient for achieving sufficient judicial competence of the young judges, in order for the to be included in the regular schedule of ongoing cases, as per the recommendation of the assessment mission TAIEX.⁴⁸

A judge of a basic court may be temporarily transferred, but no longer than one year, to judge in another court in the same instance, or in lower-instance court, or to another specialized department, when due to inability or exemption of a judge, or due to significantly increased volumes of work, decreased diligence or complexity of the cases the regular operations of the court are brought into question, but not more than once in five years. This solution disables the transfer and arrangement being used as a form of pressure.⁴⁹ As per the latest amendments to the Law, a judge may be transferred to another court only once in 5

⁴² Article 50 para. 1 *ibid*

⁴³ Article 50 para. 2 *ibid*

⁴⁴ Article 43 from the Law on Courts („Official Gazette of Republic of Macedonia“ no. 58/2006, 62/2006, 35/2008, 150/2010, 83/2018 and 198/2018 and „Official Gazette of Republic of North Macedonia“ no. 96/2019)

⁴⁵ Article 52 *ibid*

⁴⁶ Article 46 para. 3 *ibid*

⁴⁷ Institute for Human Rights, Monitoring report for the work of the Judicial Council of RNM May – August 2019, available at [http://ihr.org.mk/uploads/publications_pdf/IHR%20-%20Monitoring%204-2019%20\(web\).pdf](http://ihr.org.mk/uploads/publications_pdf/IHR%20-%20Monitoring%204-2019%20(web).pdf)

⁴⁸ Article 48 par 1 from the Law on Courts („Official Gazette of Republic of Macedonia“ no. 58/2006, 62/2006, 35/2008, 150/2010, 83/2018 and 198/2018 and „Official Gazette of Republic of North Macedonia“ no. 96/2019)

⁴⁹ Blueprint group for judiciary reforms, “Analysis on the conduction of the Strategy for Reform of the Judiciary sector (2017-2022) for the period from 2018/2019, available at: <http://ihr.org.mk/uploads>

years. In this manner, upon proposal of the Venice Commission, guarantees are introduced in case of transferring the judges in another court, or when arranging them to work in lower-instance courts due to certain situations.⁵⁰

2.2. Application of the novelties

After the many critiques from the public regarding the work of the Judicial council, after the first and second amendments to the Law on Judicial council, the attempt of the Judicial council to show greater degree of effectivity in their work was visible while attempting to apply the given legal possibilities when electing judges. In this manner, the Decisions for election in 2017 and 2018 are different than those reached in 2016, since they contain a full list of applicants, number of points for work, biographical data for the candidates, total working years and results from the anonymous survey. In these two phases, i.e. amendments, the novelty in the possibility for oral elaboration of the decision for election of a judge by the members of the Judicial council with a right to vote, contributed towards better transparency and accountability of the Judicial council and better quality in election of judges, but it was not always respected in the first two phases of the reforms.

From the realization of the third phase of the reforms, i.e. entering into force of the new Law on Judicial council of RNM and the Law amending the Law on Courts until the moment of writing this Analysis, the Judicial council has not conducted election for judges for basic courts under the new criteria and procedures.

In this period, in September 2019, one judge in Supreme court – criminal matter was elected, while in October 2019, eight presidents of basic courts were elected: Basic court Bitola with a department in Demir Hisar, Basic court Veles, Basic court Delchevo, Basic court Kichevo with a department in Makedonski Brod, Basic court Kriva Palanka, Basic court Prilep, Basic civil court Skopje and Basic court Shtip. Since the public calls for these elections were published before the new amendments to the Law, these elections were conducted in accordance with the previous criteria and procedure for election.

In the reporting period, in October 2019, two judges in the administrative court were elected, for which the Judicial council published a call⁵¹ in January 2019, under the criteria valid before reaching the newest amendments to the Law on Judicial council, when persons which had completed the Academy for Judges and Public Prosecutors, and who had at least five years employment in legal affairs in a state body, with confirmed results from their work, were eligible to apply. For the two positions in the Administrative court, 31 candidate applied.⁵²

The implementation of the new legal provisions regarding the election of judges in basic courts and in the Administrative court, with the new election criteria, shall be seen in future.

In the period from the reaching of the new Law on Judicial council of RNM several temporary transfers were conducted, as a result of lack of judges in some courts in the country. In the past, the Judicial council has transferred judges to another courts and usually

⁵⁰ Analysis on the conduction of the Strategy for Reform of the Judiciary sector (2017-2022) for the period from 2018/2019, Blueprint group for judicial reforms

⁵¹ Public call no.08-45/2 from 15.01.2019, Judicial Council of RNM

⁵² Judicial Council of RNM, Announcement from the 320th session held on 2.10.2019, available at <http://sud.mk/wps/portal/ssrm/sud/vesti>

the same judges received renewal of their transfer. With the newest amendments to the law, a judge may be transferred to another court only once in 5 years. With the transfer, the Judicial council re-transferred same judges which were already transferred in another court, although the new Law was in force. One judge filed a Complaint against this Decision, and this Complaint was rejected by the Judicial council. In the summary of the Decision, reached by the Judicial council, the members stated the need of the citizens for realization of their rights, while also taking care that the operations of the court are not slowed down, which would lead to an increased number of arrears. It shall be mentioned here that this decision was not reached unanimously. There was no further explanation, bearing in mind that the court from which the judge is transferred is a bigger court and there were other judges which could be transferred.

2.3 Conclusion

The reaching of the Law amending the Law on the Courts and the new Law on Judicial council arises from the need of a judiciary reform which is inscribed in the Strategy for Reform of the Judiciary Sector, in order to improve the judiciary and its functioning. With the latest amendments to the Law on courts, this Law was harmonized with the amendments prescribed with the Law on Judicial council of RNM.

Some of the more significant amendments to the Law on Judicial council of RNM and the Law on Courts, regarding the selection process for basic and administrative court judges, and which impact the quality of the judiciary are:

- The basic court judges shall be selected solely from the list constituted of candidates which applied upon the public call, delivered by the Academy for Judges and Public Prosecutors to the Judicial council of RNM, i.e. the completion of the training of the Academy for Judges and Public Prosecutors is the only way for initiating a career of a judge;

- When selecting a judge, the Judicial council shall take into consideration the year of completing the training and the success achieved, as well as the results from the conducted interview.

- When electing basic court judges, the Judicial council for the first time will conduct interviews with the candidates, which shall weight 10% from the points given to the candidate, which basically changes the function of the Judicial council in the process of electing a judge, which until now was set up to be like a formal selection similar to appointment of the candidate for a judge.

- A judge from another basic court may be elected as a judge in another basic court, if no candidates from the Academy for Judges and Public Prosecutors applied.

- The candidate which was not elected for a judge is entitled to an Appeal within eight days from the receipt of the notification, to the Council of Appeal in the Supreme court of Republic of North Macedonia, which enables the transparency of the Judicial council and bigger engagement of the Supreme court in the process of electing judges.

- In regards to the election of a judge in the Administrative court, the criteria for election of a judge had been tightened, in a manner that for this court also only a judge who had completed the training of the Academy for Judges and Public Prosecutors, with at least 4 years of uninterrupted working experience as a judge in basic court until the moment of application for selection, and who had been positively

evaluated by the Judicial council, may be elected. This replaces the previous legal solution, which anticipated that persons with at least five year experience in legal affairs in a state body, with confirmed results in their work, may be elected as judges of the Administrative court.

– A person which had been a judge in an international court for at least one mandate, and which fulfills the criteria, may be elected as a judge in all instances.

In the reporting period, one judge in Supreme court – criminal matter was elected, while in October 2019, eight presidents of basic courts were elected: Basic court Bitola with a department in Demir Hisar, Basic court Veles, Basic court Delchevo, Basic court Kichevo with a department in Makedonski Brod, Basic court Kriva Palanka, Basic court Prilep, Basic civil court Skopje and Basic court Shtip. Since the public calls for these elections were published before the new amendments to the Law, these elections were conducted in accordance with the previous criteria and procedure for election

In the period between the latest amendments to the laws in 2019 until the moment of writing this Analysis, the Judicial council did not elect basic court judges.

It is obvious that the new Laws did tighten the criteria regarding selection of basic and Administrative court judges. The theoretical basis is well set, but since no election for the basic or Administrative court has been conducted as per the new legal solutions, it remains to be seen from its practical application, whether there will be improvement and increased quality in selection of the judges.

Part 3. Monitoring and evaluation of the work of the judges

3.1 What did the reforms bring? – Legal framework Analysis

The aim of the professional evaluation of the position of a judge is to improve the quality of the judicial justice. This can be achieved through strengthening the personal motivation of the judges and providing professional development based on the personal capabilities, which will consequently provide conditions for improvement of the judges without any influence, and for strengthening the independence of the judges when they perform their judicial office. The previous regulations for evaluation of the judges did not anticipate objective evaluation of the quality of the work of the judges and was based on criteria which showed the productivity of the judges through an Automatic judicial-informatics system for case management (AKMIS). This system did not take into consideration the necessary aspects for providing real and comprehensive evaluation of the performance of the judges, such as the capability for argumentation and elaboration of the decisions, the complexity of the cases, preparedness for holding a hearing, e.t.c., and it did not offer evaluation of the fulfillment of the criteria for advancement of the judges. Due to the lack of precise procedure for evaluation of the work of the judges, in accordance with the international principles and standards, the Strategy for Reform of the Judiciary Sector 2017-2020 anticipated revision of the system for monitoring and evaluation of the work of the judges by combining **qualitative and quantitative criteria**.

Criteria and procedure for monitoring and evaluation of the work of the judges

The Amendments to the Law on Judicial council from May 2018⁵³ introduced new qualitative criteria which the Venice Commission deemed as unclear and insufficiently objective, so they were additionally precised in the completely new Law on Judicial council in 2019. The new model for evaluation of the quality for the first time introduces a role for the judges from the higher courts which shall evaluate the quality of work in individual cases, instead of a Commission composed by members of the Judicial council. The evaluation of the other aspects (qualitative and quantitative) is still under authorization of a three-member commission from the Judicial council, which shall reach the final Decision. The Law does not clearly define the authorizations of the Council in the decision-making process and prescribes a combined method through voting and point rating, which means that they shall continue to subjectively evaluate the professional work of the judges.⁵⁴The Council shall regulate the details regarding the evaluation porcedure with an Evaluation methodology as a bylaw,⁵⁵ on grounds of the opinion from the Supreme court of RNM as the highest court, authorized for the functioning of the courts in this country. The Council may evaluate the judge with a positive grade if more than 100 points were achieved, or with a negative grade if less than 100 points were achieved.⁵⁶ The new amedments to the Law regarding the disciplinary procedure, the terms statign that two consecutive “negative”evaluations may cost the judge a dismissal by the Judicial council, were amended. Since the negative evaluation effects the quality and diligence in the work, as per the new legal amendments to the Law on Courts, this situation shall be deemed as incompetent and negligence of the judicial office, which is gross disciplinary violation.⁵⁷

The monitoring of the work of the judge and the president of the Court shall continue to be conducted through ordinary assessment on each four years, and extraordinary assessment in cases of advancement of the judges.⁵⁸

The previous regulation⁵⁹ anticipated ordinary assessment on each two years, which is deemed as too short period of time for evaluation and was seen as constant pressure on the work of the judges, and affected their efficacy and independence when deciding. The extraordinary assessment in the old law was condcuted upon estimation of the Court, and now it is an essential aspect of the advancement of the judges, and shall apply in the cases when applying for a judge in higher court, for president of a court or for member of the Judicial council.⁶⁰ Unlike the previous regulation, it is not anticipated that the Council may conduct extraordinary assessment on the newly elected judges. The key novelty is that the assessment will largely be based on the qualitative criteria as grounds of the evaluation of the judge with 60%, where the judge may receive 120 points, while for the quantitative criteria compose 40% of the grade, and the judge may receive up to 80 points fro that. Until now, the evaluation of the judges was based on the qanitative criteria, under which the

⁵³ Law on Judicial Council of Republic of Macedonia („Official Gazette of Republic of Macedonia“ no. 60/2006, 69/2006, 150/2010, 100/2011, 20/2015, 61/2015, 197/2017 and 83/2018)

⁵⁴ Article 80, it. 2 and 3 from the Law on Judicial Council („Official Gazette of RNM“ no.106/19)

⁵⁵ Article 82 from the Law on Judicial Council („Official Gazette of RNM“ no.106/19)

⁵⁶ Article 89 from the Law on Judicial Council („Official Gazette of RNM“ no.106/19)

⁵⁷ Article 76 from the Law on Courts („Official Gazette of Republic of Macedonia“ no. 58/2006, 62/2006, 35/2008, 150/2010, 83/2018 and 198/2018 and „Official Gazette of Republic of North Macedonia“ no. 96/2019)

⁵⁸ Article 77 Law on Judicial Council („Official Gazette of RNM“ no.106/19)

⁵⁹ Law on Judicial Council („Official Gazette of Republic of North Macedonia“ no. 60/2006, 69/2006, 150/2010, 100/2011, 20/2015, 61/2015, 197/2017 and 83/2018)

⁶⁰ Article 77, para. 2 the Law on Judicial Council („Official Gazette of RNM“ no.106/19)

judge could receive up to 140 points through calculation on the success in achieving the orientation number of cases which should be decided by the judge monthly, while for the qualitative criteria, which evaluated the productivity in their actions, the judge could receive additional 3 points for published professional essays or prepared educational materials for the need of the Academy for Judges and Public Prosecutors.⁶¹ An insight in the effective time spent at work was also a part of the grade.

Besides the regular and extraordinary assessment of the judges, the Law on Judicial council⁶² prescribes special cases for evaluation of the work of the judges, i.e. evaluation of a judge who is not subjected to monitoring from a higher court (the Supreme court of RNM) and an automatic positive evaluation if the candidate for judge has previously been a judge in international court. Unlike the previous Law, the new legal solution does not anticipate additional and special criteria regarding the performance of the judicial office as a part of the evaluation. As a part of the monitoring of the work of the judges it is anticipated that the Council will prepare a Form with information regarding the work of the judge in accordance with the evaluation criteria, which shall be fulfilled on a monthly basis, but it is not precisely stated how and if this form shall be a part of the grade of the judge.⁶³

On grounds of the reports from the Commissions, as well as from the conducted insight for the quality and productiveness in the acting, the Council shall reach a Decision accompanied by a summary to the grade. The graded judge/president of a court is entitled to file a Complaint against this Decision within 8 days, and the Council may reject it, accept it or conduct re-evaluation. These legal provisions were also anticipated with the previous law, and the Council of Appeal in the Supreme Court is authorized to act upon appeals against such Decisions.⁶⁴

Qualitative criteria

The previous legal provisions which determined the qualitative criteria did not reflect the true quality of exercising the judicial office, but they evaluated the attitude of the judge towards its job through the productivity level, i.e. respecting the legal deadlines for conducting process actions, publishing and preparing decisions and the ratio between the number of confirmed, nullified or amended decision and the completed cases. These criteria were revised with the legal amendments in 2018,⁶⁵ but the Venice Commission stated that the evaluation of their fulfillment has not been clearly determined.

⁶¹ Article 112, Additional criteria in relation to performance of the function of a judge („Official Gazette of Republic of North Macedonia“ no.60/2006, 150/2010, 100/2011)

⁶² Article 88 from the Law on Judicial Council („Official Gazette of RNM“ no.106/19). So, if the work of the judge is not subjected to surveillance from a higher court (the Supreme Court of RNM), i.e. no legal remedies have been filed against its decisions, the judge will receive a maximum of 105 points under the criteria as set out in the Law and in the Evaluation methodology.

⁶³ Article 78, para. 3 from the Law on Judicial Council („Official Gazette of RNM“ no.106/19)

⁶⁴ Article 97, The Council of Appeal is not changed, i.e. is consisted of 9 members, out of which: three judges from the Supreme court, 4 judges from the Courts of Appeal and two judge from the court to which the judge that filed the Objection belonged. If the Judicial Council reaches a decision for re-assessment, a new Commission will be composed, consisted of three members of the Council, which shall prepare a Report and conduct the re-assessment. In these situations the judge/president of a court, is not entitled to an appeal.

⁶⁵ Article 103-The qualitative criteria for assessment of the work of the judge are: - quality of the work of the judge regarding the number of annulled decisions due to gross violation of the procedure in comparison to the total number of completed cases, - quality of the work of the judge regarding the number of amended decisions in comparison to the total number of completed cases, - quality of leading a court procedure (respect of the deadlines prescribed by law for undertaking process activities in the procedure, respect of the deadlines prescribed by law for reaching, publishing and preparing the decisions, duration of the court procedure and respect of the principle of trial within a reasonable time) – quality of the reached decision, which shall be determined through an insight in five randomly selected cases by the authorized computer system for court case management and five cases determined by the judge, in the assessment period, and - awarded disciplinary measures. Law on

The Law on Judicial council in the Articles 80 to 85⁶⁶ anticipates the qualitative criteria for evaluation of the judge and manner of earning points in accordance with the recommendations of the Venice Commission from 2019:⁶⁷

- Quality of leading a judicial procedure in which the following is evaluated: capacity for argumentation, preparedness for leading the hearing, composing Minutes and hearing parties, preparedness for reaching process decision as well as conflict-solving capacities.

The evaluation of the quality in acting shall be done by the Commission composed of judges from the directly higher court, through an insight in five randomly selected cases through the AKMIS system, and five cases selected from the judge subjected to evaluation. The evaluation of the work of the judges by their colleagues from higher courts is anticipated so that a real evaluation of the quality in acting can be achieved, contrary to the current practice where the evaluation was done by the Commission composed of three members of the Judicial council. Each of the judges – members of the Commission gave individual grade for each of the cases, and delivered average grade to the Council, which grade was elaborated.

- Quality of acting diligently upon court cases, especially regarding: respecting the legal deadlines for undertaking process actions in the procedure, publishing and preparing the decisions and duration of the procedure;

The quality of acting diligently upon court cases shall be evaluated through an insight in the data for the cases, received through AKMIS. Although this is a qualitative criteria, the legal provisions anticipate estimation on grounds of percentage of respected deadlines, from respecting deadlines in less than 50% of the cases and respecting deadlines in more than 90% to 100% of the cases.

- Quality of the work of the judge regarding the number of annulled decisions due to gross violation of the procedure in relation to the total number of completed cases.

The aspect of evaluation of the quality of the work of a judge shall be elaborated in details with the Evaluation Methodology. This criteria shall be determined by the percentage of annulled decision due to gross violation of the procedure through the data received by AKMIS.

Bearing in mind that the quality shall be evaluated through an insight in the actions taken and decisions made by the judge, the Judicial council shall revise the **Methodology with indicators for complexity of the cases** divided per legal area, complexity of the material and type of courts, as well as on grounds of the degree of *ratione materiae* jurisdiction.⁶⁸ It is anticipated that through the Methodology the orientation number of cases, which shall be closed by the judge on a monthly level, shall be set, while taking into consideration the volume of work and the type of cases for each individual court. The role of the Supreme Court is strengthened with this Article, since this court will be authorized to give opinion and to adopt the Methodology at its general session.

Judicial Council („Official Gazette of Republic of North Macedonia“ no. 60/2006, 69/2006, 150/2010, 100/2011, 20/2015, 61/2015, 197/2017 and 83/2018)

⁶⁶ Law on Judicial Council („Official Gazette of RNM“ no.106/19),

⁶⁷ NORTH MACEDONIA OPINION ON THE DRAFT LAW ON THE JUDICIAL COUNCIL Adopted by the Venice Commission at its 118th Plenary Session (Venice, 15-16 March 2019)

⁶⁸ Article 85 („Official Gazette of RNM“ no. 102/2019),

The Law prescribes additional qualitative criteria for evaluation of the president of the court which undertook an obligation for judging cases⁶⁹:

- Realized working program with an Action plan;
- Application of the Courts Rules of Procedure, which is evaluated through an insight in the reports from the regular and extraordinary controls by the higher court, the Council or the Ministry of Justice;
- Functioning of AKMIS, which is evaluated through an insight in the reports from the regular and extraordinary controls by the higher court, the Council or the Ministry of Justice
- Quality of the reached decision in the court administration

The quality of the reached decision in the court administration shall be evaluated through forming a Commission composed of five judges from the directly higher court. The Commission shall evaluate the cases, taking into consideration the legal ground, the articulateness and clarity of the language, whether there is argumentation to all of the facts, circumstances and evidence.

- Public relations and transparent operations

This criteria shall be evaluated through an insight in the diligent publishing information at the web-site of the court, i.e. whether the Court publishes notifications, decisions, analyses and reports.

Quantitative criteria

The previous Law on Judicial council⁷⁰ as a grounds for evaluation, received the information on number, type and completed cases in relation to the orientation number of cases through AKMIS. Although the quantitative criteria are further based on the information and data received by the AKMIS, they need to be harmonized with the Methodology with indicators for complexity of the cases for determining the type of cases against which legal remedies are allowed. This Methodology shall introduce a new system for determining the orientation monthly rate. The Law prescribes that the judge has fully completed the quantitative criteria if the judge has fulfilled the monthly rate for closed cases for 100%.

The quantitative criteria are anticipated in Article 86 from the Law on Judicial council:⁷¹

- Volume of work which is valued through the number and type of closed cases in relation to the orientation number of cases, received from the monthly reports from the AKMIS.
- Quantity of the work of the judge in relation to the number of amended and annuled decision in comparison to the total number of closed cases shall be evaluated through an insight in the AKMIS, and only the number of the decisions against which legal remedies are allowed shall be taken into consideration, and if they are amended due to misapplication of the material law.

The president of the court which undertook an obligation for judging cases is evaluated on grounds of the same quantitative criteria for the judges, but the orientation

⁶⁹ Article 92 from the Law on Judicial Council („Official Gazette of RNM“ no.106/19),

⁷⁰ Article 102 from the Law on Judicial Council („Official Gazette of Republic of North Macedonia“ no. 60/2006, 69/2006, 150/2010, 100/2011, 20/2015, 61/2015, 197/2017 and 83/2018)

⁷¹ Law on Judicial Council („Official Gazette of RNM“ no.106/19),

rate shall be valued at 70%. In addition to this, when this person is evaluated as a president of a court, the quantitative criteria shall evaluate the productivity at a court level by determining the percentage of closed cases in comparison to the cases received by the court.

3.2 Application of the novelties

The implementation of the new legal provisions for the new system of evaluation shall be further regulated by reaching bylaws by the Judicial council of RNM. The Law anticipates that the Court shall reach all of the bylaws within three months from the day the Law has entered into force, but already 6 months passed, and they've not been reached. When it comes to evaluation of the judges, the Court shall prepare:

- Manual and form with data and information about the work of the judge and the president of the court as per the evaluation criteria;
- Decision for calculating effective time at work of the judges;
- Rulebook for the work of the Commission for evaluation of the quality of leading a court procedure;
- Methodology of indicators for the complexity of the cases.

The Judicial council shall also amend the Rules of procedure of the Judicial council⁷² and shall further regulate the manner of reaching decisions for evaluation, method for election of members of the three-member commission, and to determine the manner of elaboration and publishing the decisions for evaluation, which are not regulated with the Law.

Despite the positive reactions regarding the new Law,⁷³ the evaluation method shall be tested and regularly revised since most of the criteria are determined by law and are not fully harmonized with the remaining procedures, such as with the procedure for election of judges and initiating a disciplinary procedure. For instance, one of the criteria for election of a judge in higher court⁷⁴ is acquiring positive evaluation from the work, but also evaluation of the professional knowledge and specialization in the judiciary, participation in continuous training, additional work in conducting the judicial office through participation in solving late cases, additional work through mentorship and education, e.t.c. These aspects are not taken into consideration when the qualitative criteria for evaluation of the judges were defined, and they are significant for the objective evaluation of the quality of the judges, and they shall be additionally determined by the bylaws which shall be reached by the Judicial council.

In the period after the Law on Judicial council and the amendments to the Law on Courts from 2019 entered into force, the Judicial council of RNM on 27.9.2019 published a public call no. 08-1548/2 and 08-1549/2 for election of presidents of three basic courts and three judges Supreme court which shall be elected as per the new legal criteria for election and extraordinary assessment. As per Article 47 from the Law on Courts, it is anticipated that when electing a president of a court, the Council shall give positive grade as per the new system of extraordinary assessment, which indicates that the quality of the actions of the judges shall be evaluated for the first time in the next period.

⁷² Rules of procedure for the Judicial Council („Official Gazette of RNM“ no. 60/06, 150/10, 100/11, 20/15, 61/15)

⁷³ Law on Judicial Council („Official Gazette of RNM“ no.106/19),

⁷⁴ Article 48 from the Law on Judicial Council („Official Gazette of RNM“ no.106/19)

On 3.10.2019, the Judicial council of RNM elected 10 presidents of the basic and the Higher Administrative court under the published calls from May 2019, on which the provisions for extraordinary assessment of judges for advancement in higher court and of judges elected as presidents of courts, where not applied. The last regular evaluation was conducted in the period May-June 2019, and it was conducted in accordance with the provisions from the old Law on Judicial council.⁷⁵

3.3 Conclusion

The new Law on Judicial council for the first time prescribes clear and objective criteria for evaluation of the quality of the judicial office. The more significant amendments to the Law on Judicial council of RNM and the Law on Courts, regarding the judge evaluation procedure are:

– The Law prescribes a solid framework for improvement of the system for evaluation of the work of the judges, by anticipating priority of the qualitative in comparison to the quantitative criteria. This approach to evaluation, for the first time essentially focuses on the quality of the judicial justice through evaluation of the argumentation and articulation of the decisions. This manner provides appropriate strengthening the professional development and advancement of the judges.

– The criteria for evaluation of the quality of the court procedure and the work of the judge through including judges which will perform the evaluation, provides objective estimation of the work of the courts. The evaluation shall include aspects of the evaluation of the quality, such as professional skills, integrity and experience, professionalism (knowing the law, capability for leading court procedures, capacity for writing well-elaborated verdicts), personal capability (capability for handling the delegated number of cases for acting, capability for deciding, openness for accepting new technologies), social skills, i.e. capability for mediation, e.t.c.

– The amendments to the Methodology with indicators for complexity of the cases shall be amended, bearing in mind that the setting of the orientation norm affects the efficacy and quality of the acting of the judges. The Methodology shall incorporate new system of determining the orientation rate which shall be based on the specific features and complexity of the cases for each individual court, the legal areas and *ratione materiae* of the court.

Part 4: Appointment of a judge in higher courts and of a President of a Court

4.1 What did the reforms bring? – Legal framework Analysis

Within its authorization for electing judges, the Judicial court shall elect judges for the higher courts, in the Court of Appeal, the Higher administrative court and in the Supreme court of RNM, as well as presidents of the courts. The election shall be performed from the candidates that applied to the public call and that fulfill the terms and conditions as prescribed by the Law on Courts and the Law on Judicial council of the RNM, in a manner

⁷⁵ Law on Judicial Council („Official Gazette of Republic of North Macedonia“ no. 60/2006, 69/2006, 150/2010, 100/2011, 20/2015, 61/2015, 197/2017 and 83/2018).

that it rates the applicants as per the required specialization for fulfillment of the vacant judge position.⁷⁶

Appointment of judges in higher courts

The Council shall elect for a judge a person which has the highest vocational and professional qualities, which enjoys reputation in conducting the judicial office, based on the following criteria:

- Vocational knowledge and specialization in the field and participation in continuous training;
- Positively evaluated work;
- Capability for oral and written expression, which can be seen from the prepared decisions and vocational actions as a judge;
- Undertaking additional work when fulfilling the judicial office, through participation in solving late cases;
- Undertaking additional work when fulfilling the judicial office through mentorship, education, e.t.c., and
- Period of experience as a judge.⁷⁷

If the candidate comes from the judges, the Judicial council shall acquire opinion from the court in a manner that the President of the court, on grounds of the held session for the judges, shall deliver the opinion to the Council.

Special requirements for election of a judge in the Court of Appeal are:

- a person who has a continuous length of service as a judge in a court of appeal or in the Administrative Court of at least six years at the moment of signing up for election, who is assessed with a positive grade by the Judicial Council of the Republic of Macedonia, in accordance with the Law on the Judicial Council of the Republic of Macedonia, may be elected judge in the Court of Appeal;
- a person who has a continuous length of service as a judge in a basic court of at least four years at the moment of signing up for election, who is assessed with a positive grade by the Judicial Council of the Republic of Macedonia, in accordance with the Law on the Judicial Council of the Republic of Macedonia, may be elected judge in the Administrative Court.⁷⁸

Special requirements for election of a judge in the Supreme court of Republic of Macedonia are:

- a person who has a continuous length of service as a judge in a court of appeal of at least six years at the moment of signing up for election, who is assessed with a positive grade by the Judicial Council of the Republic of Macedonia, in accordance with the Law on the Judicial Council of the Republic of Macedonia, may be elected judge in the Supreme court of Republic of Macedonia⁷⁹

Special requirements for election of a judge in the Higher Administrative court are:

⁷⁶ Article 48 from the Law on Judicial Council („Official Gazette of Republic of North Macedonia“ no. 60/2006, 69/2006, 150/2010, 100/2011, 20/2015, 61/2015, 197/2017 and 83/2018)

⁷⁷ *ibid*

⁷⁸ Article 46 para. 1 from the Law on Courts („Official Gazette of Republic of Macedonia“ no. 58/2006, 62/2006, 35/2008, 150/2010, 83/2018 and 198/2018 and „Official Gazette of Republic of North Macedonia“ no. 96/2019)

⁷⁹ Article 46 para. 1 from the Law on Courts („Official Gazette of Republic of Macedonia“ no. 58/2006, 62/2006, 35/2008, 150/2010, 83/2018 and 198/2018 and „Official Gazette of Republic of North Macedonia“ no. 96/2019)

- a person who has a continuous length of service as a judge in a court of appeal or in the Administrative Court of at least six years at the moment of signing up for election, who is assessed with a positive grade by the Judicial Council of the Republic of Macedonia, in accordance with the Law on the Judicial Council of the Republic of Macedonia, may be elected judge in the Higher Administrative Court.⁸⁰

Appointment of a President of a Court

The President of the Court has a status and function of a first judge amongst the equals in the said court. The Judicial council shall also conduct the procedure for election of a president of a court, which is initiated by publishing a public call two months before the expiry of the mandate of the current president.⁸¹

As per Article 47 from the amended Law on Courts, the president of a court shall be elected from among the judges who have a continuous length of judicial service in a court of the same or higher instance of at least six years, under the conditions and in the procedure determined by a law, for a period of four years, with the right to one additional reelection in a court of the same instance.⁸²

The Judicial Council of the Republic of Macedonia shall elect president of a court from among the candidates who meet the requirements within a period of two months at the most.

The candidate for president of the court shall attach to the application and the other documents a work program for the term of office together with an action plan for implementation of the program.⁸³

In case of termination of the mandate of the president of a court or its dismissal, the Judicial council shall appoint acting President from the judges in the court, which is assessed with the highest positive grade and has the greatest number of points.

In relation to the evaluation with a positive grade, the ordinary assessment of the judge and of the president of the court shall be conducted once on every four years, concluding with the end of June of the current year, for the work of the judges and of the president of the court in the previous four years.

In case the judge applies to be elected as a judge in another court, in a higher court or for election as a president of a court, an extraordinary assessment of the operations of the judge and of the president of a Court.

If the judge or the president of the court apply to be a judge in a higher court or for a president of a court, in the current year, for the previous year for which they have already been evaluated through ordinary assessment, they will not be subject to an extraordinary assesment.⁸⁴

In order for the procedure for election of judges in the higher courts to be correct, the Judicial council shall form a Commission composed of three members which are randomly drawn,⁸⁵ which shall verify the documents submitted by the candidates, shall prepare the list

⁸⁰ Article 46 para. 2 ibid

⁸¹ Article 47 ibid

⁸² ibid

⁸³ ibid

⁸⁴ Article 77 from the Law on Judicial Council of RNM

⁸⁵ Article 48 ibid

of candidates, shall notify the candidates upon the day and time of the psychological and integrity tests as well as upon the cost for those tests, which shall be paid by the candidates, shall conduct interviews with the candidates that had passed the tests and composes the final ranking list as per the requested specialization, as well as a ranking list of the candidates which do not have the required specialization.

The Judicial council shall elect a president of a court from the judges which applied to the open call for election of a president, by following the same procedure used for election of a judge in the basic court. The Judicial council shall decide with at least eight members of the Council with a right to vote, and each member of the Council with a right to vote is obliged to orally elaborate its decision for election of a president of a court.

Each candidate shall receive written notification for the decision for election of a president of a court, and the candidate which has not been elected for the position is entitled to file an appeal within eight days upon receipt of the notification to the Council on acting upon Appeals in the Supreme court of the Republic of North Macedonia.⁸⁶

In case the Judicial council at its session determines that no applicant has applied for the public call, or that none of the applicants fulfills the criteria for election as prescribed by law, the Council shall publish a new call for election of a president of court within ten days from the day of determining such condition.

The president of the court which shall not be re-elected at the same position shall continue its employment as a judge in the court where it has previously conducted the judicial office.⁸⁷

As previously stated, a person which had been a judge in an international court for at least one mandate, and which fulfills these criteria, may be elected as a judge in a court of any instance.

Just and appropriate representation in the election of judges is also guaranteed, so for election of a president of basic or Court of appeal located in area of the local selfgovernment where 20% of the citizens speak official language other than Macedonian, there must be majority of the votes of the attending members belonging to the communities which are not a majority in Republic of North Macedonia.

When the Judicial council elects a president and judge of the Administrative, Higher administrative and Supreme court of Republic of North Macedonia, there has to be a majority of votes from the attending members belonging to the communities which are not majority in Republic of North Macedonia.⁸⁸

4.2 Application of the novelties

On 7.2.2019, at the 297th session of the Judicial council a Decision for publishing a public call for election of presidents in the Basic court Bitola, Basic court Veles, Basic court Delchevo, Basic court Kavadarci, Basic court Kichevo, Basic court Kriva Palanka, Basic court Negotino, Basic court Prilep, Basic court Skopje 2- Skopje, Basic court Shtip.

⁸⁶ Article 51 from the Law on Judicial Council

⁸⁷ Ibid

⁸⁸ Article 50 ibid

The public calls have been published on 22th of May, several days before the new Law on Court entered into force, due to which, the election of these presidents was to be conducted under the old legal solutions, i.e. under the amendments from 2018.

The election of presidents was conducted in October. At the 320th session of the Judicial council, held on 2.10.2019, 8 presidents of the basic courts, a president for the Higher Administrative court and additionally, two judges from the Administrative court were elected.

In February 2019, the Judicial council also reached a decision to publish a public call for election of six judges in the Court of Appeal Skopje: three judges on criminal matters, two judges on civil matters and one judge on trade dispute matters. The election of six judges for the Court of Appeal Skopje, which was to be conducted, was postponed, and the six judges are still not elected.⁸⁹

4.3 Conclusion

One of the main goals of the new Law on Judicial council of RNM, and the amendments to the Law on Courts, was to answer the recommendations to redefine the criteria for election of a judge in higher courts, i.e. defining the manner of election of a judge in a higher court, and defining the system for the assessment of judges and presidents of courts, aspects which are directly connected.

Apart from the years of experience set in the law for a judge in higher courts and for presidents of courts, it is also necessary that the person is evaluated with positive grade by the Judicial council. The new legal solutions finally specify the criteria for evaluation of the judges upon their advancement, in a manner that the significance of the qualitative criteria is significantly increased in comparison with the significance of the quantitative criteria, which is elaborated in the Part 3 of this Analysis.

Although since the new legal solutions entered into force an election of judges in the higher courts and presidents of courts was conducted, this election was conducted on grounds of the previous legal solutions, because the public calls were published before the new Laws entered into force.

The new laws strengthen the criteria for election of a judge in a higher court and presidents of courts which shall contribute towards objective elections with better quality, but it is necessary that the new criteria for election and the new assessment method are practically applied, in order to determine the level of harmonization and need for review.

⁸⁹ Taken from the application „the judiciary under a magnifying glass” – Minutes from the session of the Judiciary council of RNM

Part 5: Disciplinary liability

5.1 What did the reforms bring? – Legal framework Analysis

Introductory notes

One of the general strategic goals of the Strategy for Reform of the Judicial Sector 2017-2022 (hereinafter referred to as: the Strategy) is the **liability** of the judiciary bodies.⁹⁰ Led by the need for reform of the system for liability of the judges, the Strategy identifies one strategic direction.⁹¹ As a measure⁹² for realization, the Strategy has anticipated an intervention in the Law on Courts and in the Law on Judicial Council, leading towards: *1. Strengthening the disciplinary liability of the judge through clear statement of the grounds for dismissal of a judge with prescribing only the gross disciplinary violations as grounds for dismissal; and 2. The quantitative data such as the percentage of annulled or amended decision shall be deemed as grounds for liability of the judge, but not grounds for dismissal of the judge.* Apart from this, as a measure for reforming the system for disciplinary liability of the judges, the Strategy anticipated abolition⁹³ of the Law on the Council for determining facts and initiating procedures for determining liability of a judge and amendments to the Law on Judicial council in order to return the authorization for initiation and conducting procedures for determining liability.

The reasons that required the system reform on the liability of the judges were identified and analyzed in details both from the national and international bodies. The problems with the application of the rules for disciplinary liability were stated several times in the EU Progress report for RM, s.c. Priebe Reports, the opinions of the Venice Commission and the verdicts from the European Court of Human Rights. Starting point in the system reform were the recommendations given in the opinion by the Venice Commission on the laws regulating disciplinary liability and assessing judges from 2015⁹⁴ which, inter alia, included:

- The Laws shall provide that the judges will not be punished for situations out of their control and which can be explained by the non-functioning of the judicial system; the disciplinary measures shall not interfere with the independence of the judge while deciding, and they shall never be reached in relation to different interpretation of the law or judicial errors.
- Only the intentional misconduct of the judicial office or repeated gross negligence shall be deemed as a disciplinary violation, the punishment system shall be less drastic for smaller offences, dismissal of the judge may be ordered only in exceptionally serious cases;
- The function of the Council for determining facts shall be returned to the Judicial council, but the members or bodies of the Judicial council which are included in the initial phase from the disciplinary procedure as “prosecutors” or “interrogators” shall not participate in the decision-making process as “judges”...

⁹⁰ Strategic goal 2.3.

⁹¹ Strategic goal 2.3.1. “Functional and transparent mechanisms for liability of the judges and public prosecutors, introducing objective and measurable criteria for determining liability of the judges and public prosecutors, pluralisation of sanctions, dismissal only for gross and continuous disciplinary violations”

⁹² Measure no. 2.3.1-1.

⁹³ Measure no. 2.3.2-2.

⁹⁴ Opinion on the Laws on the Disciplinary Liability and Evaluation of Judges of “The Former Yugoslav Republic of Macedonia”, adopted by the Venice Commission at its 105th Plenary Session (Venice, 18-19 December 2015).

- The Council of Appeal (in relation to the disciplinary measure) shall be replaced by a court body, defined by Law. The assessment of the judges shall be separated from the disciplinary measures;
- The failure to complete the working quotas shall not be automatically treated equal to a disciplinary violation;

5.2 Description of the reforms

What is interesting about the reform of the system of liability of the judges, is that it was not conducted immediately, but it was conducted in three phases/waves. The reasons behind this are hidden in the complexity of the issue, the emergency for solving separate segments from the issue, the need for consultation and inclusion of several stakeholders, as well as the inclusion and consultation with the Venice Commission in the process of reaching the Laws.

a. First wave of reforms (December 2017 and January 2018)

The first wave of reforms was conducted in the period from December 2017 to January 2018 with amendments to the LCRM⁹⁵ and abolition of the Council for determining facts.⁹⁶ We will mention the following as especially significant reforms conducted in this phase:

- The Council for determining facts and initiating procedure for determining liability of a judge⁹⁷ ceased to exist and the authorization to initiate and conduct disciplinary procedures was returned to the Judicial council of RM.
- The deadlines for filing a request for initiating procedure for determining liability were prolonged – the subjective deadline was prolonged from three to six months, while the objective deadline was prolonged from one to three years.⁹⁸
- In order to increase the transparency, there is a possibility, per request by the judge or the president of the court, for the Council to decide to hold a public procedure. At their request, the session may also be attended by a representative from the Association of judges.⁹⁹
- Certain things that were previously regulated by the Rules of Procedure, now are regulated by the Law (content a request, delivery, gaining information, discussion upon the request, minutes, e.t.c.).¹⁰⁰
- In order to guarantee the impartiality, forming of a three-member Commission for determining liability, assembled by draw from the members of the Judicial council was anticipated, as well as grounds for exempting from the procedure (if the elected member is the one who submitted the request). In addition to this, if the procedure is for determining liability of a judge or president of a court belonging to the non-majority communities, one member of the Commission must be member of the communities which are not a majority. The members of the Commission are exempted from voting in the Council.¹⁰¹

⁹⁵ Law amending the Law on the Judicial Council of Republic of Macedonia („Official Gazette of RM“, no. 197 from 29.12.2017)

⁹⁶ Law on terminating the validation of the Law on the Council for determining facts and initiating procedures for determining liability of a judge („Official Gazette of R. Macedonia“, no.11 from 18.01.2018)

⁹⁷ Article 1 from the Law on the Council for determining facts and initiating procedures for determining liability of a judge („Official Gazette of R. Macedonia“, no.11 from 18.01.2018).

⁹⁸ Article 54 from the Law on Judicial Council.

⁹⁹ Article 54 para. 3 and 4 from the Law on Judicial Council.

¹⁰⁰ Article 55 as well as articles from 56-a to 56-h.

¹⁰¹ Article 60 from the LCRM.

6. Second wave of reforms (May 2018)

In the second wave of reforms, apart from the repeated amendment to the provisions regulating the procedure,¹⁰² the material provisions¹⁰³ prescribed by the Law on Courts, regulating the disciplinary violations and measures were also amended. The amendments to the Law on Judicial council in May 2018, the following novelties were introduced:

- Instead of the Council, a member of the Council – reporter assesses whether the request is on time and complete, and the obligation for evaluation of the permission of the request is removed.¹⁰⁴
- An additional provision has been established that the representation of the council members, who preside over the court proceedings, is to be considered while assembling the Commission, notably by the Parliament.
- When a member of the Council submits the request for disciplinary procedure, not only shall this person not be involved in voting, but it shall not attend the discussion in the Council.¹⁰⁵
- An obligation was introduced that the members of the Council for deciding upon appeal to be publically elected, by a draw, at a general session, within 10 days upon receipt of the Appeal.¹⁰⁶
- A procedure for repeating the procedure due to a Decision of the European court of Human Rights is introduced and regulated.¹⁰⁷

When it comes to regulation of the disciplinary violations and types of disciplinary measures, the amendments to the **Law on Courts** from May 2018, the following was anticipated:

- In order to articulately regulate the gross disciplinary violations which can be deemed as grounds for dismissal, the number of gross disciplinary violations was increased from 4 to 9, which specified the cases when a judge may be dismissed from the function, and 7 new gross disciplinary violations were introduced, while 9 violations remained from the previous version of the Law (gross violation of the public order and peace which harms the reputation of the court and of the judge, determined by a final court decision and insufficient grade in two consecutive evaluations).
- The provision stating that the percentage of the annuled and amended decisions shall be treated as unprofessional and neglectful exercise has been removed.
- The gross violation of the rights of the parties and other participants in the procedure, which ruins the reputation of the court and the judicial office, and the violation of the principle of non-discrimination are no longer grounds for dismissal.
- Regarding the disciplinary violations for which disciplinary measures may be announced, new violation was introduced: violation of the rules of the Codex of judicial etics.

b. Third wave of reforms (May 2019)

The third and, for now, final wave of reforms in the legislative regulating the work of the courts and the Judicial council of RNM, regarding the liability of the judges, closed the

¹⁰² Law on amending the Law on Judicial Council of Republic of Macedonia (Official Gazette of RM no. 83 from 8.5.2018)

¹⁰³ Law on amending the Law on Courts (Official Gazette of RM no. 83 from 8.5.2018)

¹⁰⁴ Article 56, para. 1 from the LCRM.

¹⁰⁵ Article 60 para. 4 from the LCRM.

¹⁰⁶ Article 96 from the LCRM.

¹⁰⁷ Article 97 from the LCRM.

reforms in this area. The Law on Courts was amended once again¹⁰⁸, and these are the most significant amongst them:

- Anticipation of additional criteria which shall be fulfilled in cases when a judge is dismissed, in addition to the grounds for dismissal.¹⁰⁹ As per these criteria which shall be cumulatively fulfilled, the judge shall be dismissed if the violation is conducted intentionally or due to an obvious negligence of the judge, without justified reasons, and the violation had caused severe consequences.¹¹⁰
- Decreased number of gross disciplinary violation, unlike the amendment from 2018, which increased the number of disciplinary violations for which a procedure for dismissal is initiated, in a manner that the number has been decreased from 9 to 4, and only one violation anticipated with the previous text remained to be deemed as gross (gross violation of the public order and peace and other more serious forms of inappropriate behavior which harms the reputation of the court and of the judge)¹¹¹;
- When it comes to disciplinary violations for which disciplinary measure may be issued, the number of disciplinary violations has been decreased, and when deciding whether a disciplinary measure is to be announced, the following criteria must be taken into consideration: the disciplinary violation is conducted intentionally or due to obvious negligence of the judge without justified reasons, and the disciplinary violation affected severe consequences.¹¹²

In May 2019, due to the significant volume of amendments to the text, a completely new Law on Judicial council of RNM was reached.¹¹³ The procedure for determining disciplinary liability has been upgraded to the previous solutions, but still introduces some additional novelties in certain affairs, regarding the following:

- A possibility is given that the request for initiating a procedure for determining liability of a judge or president of a court to be submitted by any person, unlike the previous solution, which prescribed that the request may be submitted only by a member of the Judicial council, the president of the court, the president of the higher court or the general session of the Supreme court.
- Instead a member of the Council-reporter, the request is initially examined by the Commission of reproters, assembled by a draw, consisted of three members, two of which are judges and one is a member of the Council elected by the Assembly. The Commission is authorized to concensually dismiss the request if it is not on time, incomplete or obviously ungrounded, i.e. it is based on facts which have already been examined by a higher court in a procedure upon a legal remedy, or could have been examined by a higher court, but were not initiated with the legal remedy.
- The person who has submitted the request, shall not be invited to attend the discussion upon the request.¹¹⁴

¹⁰⁸ Law on amending the Law on Courts (Official Gazette of RNM no. 96 from 17.5.2019)

¹⁰⁹ See Article 74 para. 1 from the Law on Courts, The judge shall be dismissed from the judicial office:

- due to serious disciplinary offense that makes him/her discreditable to exercise the judicial office prescribed by law and
- due to unprofessional and neglectful exercise of the judicial office under the conditions defined by law.

¹¹⁰ Article 74 para. 3 from the Law on Courts.

¹¹¹ We have to mention here that the part from the provision, requiring that the violation be determined by a final court decision, is removed.

¹¹² Article 77 from the Law on Courts.

¹¹³ Law on Judicial Council of Republic of North Macedonia („Official Gazette of RNM“ no. 102 from 22.5.2019)

¹¹⁴ Article 66 para. 2 from the Law on JCRNM

- The president and the members of the Commission shall participate in the discussion and voting for the decision. ¹¹⁵

5.3 Procedures for determining liability in the period from 2017 until 2019

In the same time with the reform process, the Judicial council of RNM acted in procedures for determining liability of judges.

In 2017, the Judicial council acted upon 7 (seven) requests for initiating procedure for determining unprofessional and neglectful exercise of the judicial office, submitted by the Council for determining facts. The Council has dismissed two (2) of the requests – one due to incompleteness, and one is deemed as not allowed. In one of the procedures the Council has determined unprofessional and neglectful exercise; one procedure has been stopped, while in the other cases, the procedure was still ongoing. ¹¹⁶

During 2018, 7 (seven) requests for determining liability for judge or president of a court have been submitted. The requests for determining liability of a judge or president of a court have been submitted against: 1(one) judge of the Supreme court of Republic of Macedonia, 1 (one) judge of the Basic court Ohrid, 1 (one) judge from the Basic court Prilep, 3 (three) judges from the Basic court Skopje I Skopje, 1 (one) judge from Basic court Kumanovo and 3 (three) judges from the Court of Appeal Skopje.

Commissions have been assembled for three (3) requests, submitted in the first half of 2018, and upon 1 (one) request a Report has been prepared by the Commission with a draft-Decision. The remaining 4 (four) requests are submitted in the last quarter of 2018, and they have been delivered to a member of the Council – reporter.

During 2018, the Council acted upon 5 (five) requests submitted in 2017 by the Council for determining facts, in one of the procedures the Decision for dismissal has been confirmed, in two procedures the Reports with draft-Decisions have been prepared, and for the remaining procedures there is an ongoing investigation. ¹¹⁷

The data regarding 2019 are still incomplete. There has been one decision for dismissal of a judge due to unprofessional and neglectful exercise of the judicial office. One judge has been temporarily removed from exercising judicial office, since there is an indictment against the judge by the public prosecution due to arranging which judge shall act upon cases in the AKMIS system. Commissions for determining the liability of a judge or president of a court have been formed for several requests in this period. Some of the requests have been revoked by the reporter during session. There is a Decision reached for stopping a procedure and Decisions by which certain requests are dismissed due to failure to meet the time criteria or due to incompleteness. A Decision has been reached for stopping the procedure for determining liability due lack of grounds for liability. A decision has been reached for dismissal of one request for determining liability of a judge due to failure to meet the time criteria or due to incompleteness. ¹¹⁸

¹¹⁵ Article 68 para. 2 from the Law on JCRNM

¹¹⁶ Annual Report for the work of the Judicial Council of Republic of Macedonia for 2017

¹¹⁷ Annual Report for the work of the Judicial Council of Republic of Macedonia for 2017

¹¹⁸ Institute for Human Rights, Monitoring report on the work of the Judicial Council of RNM, Report no. 4 (reporting period: May-August 2019).

5.4 Conclusion

The provisions that regulate the liability of the judges in a relatively short timeframe (from December 2017 until May 2019) were subject to reforms, at first with two amendments, and then with a completely new Law on Judicial council of the RNM, as well as two amendments to the Law on Courts. The frequent interventions in the essential rules regulating the grounds and the procedure for determination of the liability of the judges shall normally not contribute towards strengthening the legal safety. Nonetheless, bearing in mind that there is a reform process ongoing, most of the intervention may be justified with the need of quicker conduction of the reforms due to which sometimes makes it impossible to conduct the necessary analyses for these types of reforms.

The reached amendments regarding the grounds for liability are significantly based on the recommendations stated in the Opinion by the Venice Commission. Still, when it comes to the procedure, the same fact that the president and the members of the Commission of reporters are given the possibility to participate in the discussion and to vote for the decision, so, the Judicial council has a justified dilemma as to whether this satisfies the recommendation given by the Venice Commission from December 2015, in accordance to which the members or bodies of the Judicial council which are included in the initial phase of the disciplinary procedure as “prosecutors” or “investigators” shall not participate when the final decision is reached.

In practice, besides the election of new members of the Judicial council, on grounds of which the Commissions for determining liability of a judge or president of a court have been changed, difficulties are noticed in keeping up with the principle of urgency with this procedures and with the deadlines for undertaking certain actions in the procedures.

Considering the relatively short period from the completion of the reforms in this area, in this phase it is difficult to give conclusions regarding the novelties in the system, especially for those regarding the possible inclusion of the public, transparency, argumentation of the decisions, as well as regarding the impartiality of the whole process. Due to this, in the following period there is a need of increased monitoring over the work of the Judicial council of RNM in order to provide fully functional and just system for determining liability of the judges and presidents of the courts.

Part 6: Termination of and dismissal from the judicial position

6.1 What did the reforms bring? – Legal framework Analysis

In the Law on Courts, the title V is dedicated to termination and dismissal of the judicial office and determines the provisions for termination of the judicial office, dismissal of the judge, unprofessional and neglectful exercise of the judicial office, while the Law on Judicial council of RNM regulates these issues in the Articles 53 to 74.

Termination of the judicial office

As per Article 73 from the Law on Courts, The judicial office of a judge shall terminate upon:

- personal request,
- permanent loss of the ability to exercise the judicial office, confirmed by the Judicial Council of the Republic of Macedonia,

- turning 64 years old,
- election or appointment to another public office, except when the judicial office is in abeyance under conditions defined by law, and
- conviction for a crime by a legally valid court verdict to an unconditional imprisonment sentence of minimum six months.¹¹⁹

The Law on Judicial council anticipates the same grounds for termination of the judicial office as the Law on Courts, but additionally elaborates that the Judicial council shall reach a Decision upon termination of the judicial office.

In case of termination of the judicial office upon request by the judge, the Judicial council shall reach a Decision without separate examination of the reasons behind the request.¹²⁰

The Judicial Council of RNM shall reach a Decision for determining the termination of the judicial office due to permanent loss of ability to perform the judicial office. The permanent loss of the ability to perform the judicial office shall be determined based on documentation accompanied by a finding, assessment, and opinion of the competent health commission. The procedure for determination of the permanent loss of ability to exercise the judicial office shall be initiated ex officio by the Judicial council when it receives such information or when such an initiative has been raised by the president of the court where the judge exercises his/her office or by the president of the higher court or by Supreme Court of the Republic of Macedonia at a general session.¹²¹

Also a significant novelty in the amendments to the Law on Courts is the possibility for continuance of the mandate of the judges which until now were set to retire with 64 years, but now they are entitled to continue working until 67, as per the Law on Labor Relations.¹²²

The judicial office shall also be terminated when the judge has been elected or appointed for another public office, except in case when prescribed by law that the judicial office shall rest, as from the day of the election, i.e. the day of appointment.

The Council shall reach a Decision to determine the termination of the judicial office of a judge if the judge is sentenced for a committed crime to imprisonment of at least six months, or has received penalty sanction - ban on conducting profession, activity or duty for an act that is connected to the misconduct of the judicial office, upon the effectiveness of the verdict that imposes this punishment, i.e. penalty.¹²³ The first instance court that adopted the Verdict without any delay shall submit a copy of the verdict by which the judge has been sentenced for a committed crime to imprisonment of at least six months to the Judicial council of RNM and to the president of the court where the judge holds the judicial office.¹²⁴

The Judicial council of RNM shall determine termination of the judicial office within ten days from the moment of understanding about the existence of any of the cases stated above, by which the right to a salary for the judge shall cease to exist.

¹¹⁹ Article 74 from the Law on Courts

¹²⁰ Article 55 from the Law on Judicial Council

¹²¹ Article 56 from the Law on Judicial Council

¹²² Monitoring report on the work of the Judicial Council of RNM May – August 2019, Institute for Human Rights

¹²³ Article 58 from the Law on Judicial Council

¹²⁴ *ibid*

Dismissal from the judicial office

When it comes to the dismissal of a judge from its judicial office, as per Article 74, para. 1 from the Law on Courts, there are two grounds for dismissal:

- due to serious disciplinary offense that makes him/her discreditable to exercise the judicial office prescribed by law and
- due to unprofessional and neglectful exercise of the judicial office under the conditions defined by law.

The following shall be deemed as serious disciplinary offense, upon which a procedure for determining liability of a judge shall be initiated:

- serious violation of the public order that demean the image of the court and his/her reputation determined by an effective court decision;
- Severe influence and involvement in conduction of the judicial office of another judge;
- If the judge refuses to submit written statement of its possessions and interests as per Law or if the information contained in the Statement are mostly untrue, or
- There is an obvious violation of the rules for exemptions in situations when the judge was aware or should have been aware of the existence of one of the grounds for exemption, as prescribed by Law.

The amendment to the Law on Courts decreases the number of serious disciplinary offences for which a procedure for dismissal shall be initiated to four, unlike the previous solutions which offered nine grounds. In addition to this, the new amendments to the Law on Courts remove the item stating that a Verdict from the European court of Human Rights finding violation of Article 5 or 6 from the European Convention on Human Rights, shall be treated as grounds for dismissal. This provision was contrary to the practice of the ECtHR and of the international practice regarding independence and impartiality of the judiciary.¹²⁵

Unprofessional and neglectful exercise of the judicial office shall include insufficient professionalism or negligence of the judge that affect the work quality and efficiency, that is:

- if in two consecutive assessments, he/she does not meet the criteria for successful performance of the work, due to his/her fault without any justifiable reasons, for which he/she is assessed with two negative grades, and in accordance with the procedure determined by the Law on Judicial Council of the Republic of Macedonia;
- he/she is imposed a lower sentence that the one foreseen in Article 73 paragraph (1) line 5 of this Law by an effective judgment, which is a direct result of the exercise of the judicial office, intentionally or with conscious negligence;
- unauthorized disclosure of classified information, that is, disclosure of information and data about court cases which violates the obligation for protection of procedure's secrecy determined by a law and where the public is excluded in accordance with the law;
- without justifiable reasons, he/she does not schedule the trials of cases which are assigned to him/her or in any other manner prolongs the procedure;
- he/she does not act on the case due to which the criminal prosecution for the crime is time barred or the execution of the criminal sanction for the crime is time barred;

¹²⁵ POLICY PAPER REGARDING THE SETTING AND OPERATION OF THE JUDICIAL COUNCIL OF RM, Institute for Human Rights, page 9, available at [http://ihr.org.mk/uploads/IHR%20-%20Sudski%20sovet%20na%20RM%202018%20\(MKD\)%20web.pdf](http://ihr.org.mk/uploads/IHR%20-%20Sudski%20sovet%20na%20RM%202018%20(MKD)%20web.pdf)

- he/she acts on a case which is not assigned to him/her through the automated computer system for court cases management in the courts;
- intentionally and without any justification, he/she makes a huge professional mistake so the different interpretation of the law and the facts cannot constitute a ground for determination of liability of a judge.¹²⁶

In case of easier form of violation of the obligations stated in para. (1) of this Article, the Judge may be sanctioned with a disciplinary measure.

- President of a court shall be dismissed from the office of a president if the Judicial Council of the Republic of Macedonia establishes in a procedure the following bases:
 - excess and violation of official powers,
 - unlawful and unintended use of court's funds,
 - influence on the independence of the judges related to adjudging in certain cases,
 - non-application of the provisions on court case management and distribution,
 - violation of the provisions on adoption and amendment of the Annual Schedule of Judges,
- the president does not notify the Judicial Council of the Republic of Macedonia about a committed serious disciplinary offense referred to in Articles 75, 76 and 77 of this Law by a judge in a court where he/she is a president, provided that he/she has known about the commission of the offense and it has not been reported for the purpose of concealing it,
- hinders the supervision in the court in accordance with the law.¹²⁷

The treatment of the presidents of courts is same with the treatment of the judges; in case of an easier form of violation of the grounds for dismissal of the president of the court, the president may be sanctioned with a disciplinary measure.

The Decision for dismissal of the judge is reached by the Judicial council of Republic of Macedonia, in the following cases:

- if the violation was conducted intentionally or with obvious negligence that was judge's fault without justified reasons, and
- the violation provoked severe consequences.

The Law on Judicial council anticipates the same reasons for dismissal of the judicial office as the Law on Courts, but additionally elaborates the procedure for determining liability of a judge.

Procedure for determining liability of a judge or president of a court

Although the novelties in the procedure for determining liability of a judge or president of a court are elaborated in Part 5 of this Analysis, this part shall go through the procedure for determining liability of a judge or of a president of a court, which results with dismissal, as per the new legal solutions.

As per Article 61 from the Law on Judicial council, the procedure for determining liability of a judge or a president of a court shall be initiated within a period of six months as of the day of discovering the committed violation, but not later than three years as of the day of commission of the violation. The procedure shall be urgent and confidential, shall be

¹²⁶ Article 76 *ibid*

¹²⁷ Article 79 *ibid*

conducted without the presence of the public and by respecting the reputation and dignity of the judge or the president of the court, at the same time taking care to protect the personal data of the judge or the president of the court in accordance with the regulations on personal data protection.

The new legal solutions allow that the request for determination of liability of a judge or president of a court may be filed by any person, unlike the previous solution which stated that only a member of the Judicial council, the president of the court, the president of the higher court or the general session of the Supreme court is entitled to file such request.

The reasoned request for initiation of a procedure for determination of liability of a judge or a president of a court (hereinafter: the request) shall be submitted to the Council and shall contain: name and surname of the judge or the president of the court, address and place of residence, in which court he exercises the office, description of the violation, legal term for the violation by stating the provisions of the Law on Courts, and proposed evidence that have to be exhibited at the discussion.¹²⁸

Upon receipt of the request for determining liability of a judge or president of a court, the Council from the members with a right to vote, shall assemble a Commission of reporters by a draw, composed of three members, two of which shall be from the members elected by the judges, and one from the members elected by the Assembly of Republic of North Macedonia. When the Council determines liability of a judge or president of a court which belongs to the communities which are not a majority in Republic of North Macedonia, the President of the Commission shall be drawn by the members of the Commission.

In case the Commission does not dismiss the request for determining liability of a judge, i.e. of a president of a court as a late submission, incomplete or unfounded request, the Commission shall deliver notification for the determined actual standing of the Judicial council, which is obliged to decide within seven days from the receipt of the notice for stopping or continuance of the procedure.

In the cases when the Judicial council decides to continue the procedure, the Commission is obliged to gather all the necessary data and to prepare report within three months from the day of the receipt of the request.

The Commission shall schedule a hearing within seven days from the day of receiving the response to the request by the judge or the president of the court. The Commission works in full composition and is managed by the President.¹²⁹ The Commission shall submit a report on the established situation upon the request to the Council within 15 days from the day of the completion of the hearing.¹³⁰

Next in the procedure is the hearing before the Judicial council of RNM, during which the president of the Commission shall elaborate the report.¹³¹ Acting upon the report, the Council may temporarily remove the judge or the president of the court from conducting the judicial office, as per the Law on Courts. Upon completion of the procedure, the Judicial council shall initially decide on stopping the procedure if it determines that there are no

¹²⁸ Article 62 from the Law on Judicial Council of RNM

¹²⁹ Article 66 para. 1 ibid

¹³⁰ Article 67 para. 1 ibid

¹³¹ Article 68 para. 1 ibid

grounds for liability, with at least seven votes from the total number of members with a right to vote.¹³²

If the Council fails to reach a decision on termination of the procedure, i.e. finds that the judge or the president of the court committed a more severe disciplinary offense or unprofessional and unethical exercise of the judicial office, under the conditions determined by law, decides on the dismissal of the judge or the president of the court at least eight votes out of the total number of members with a right to vote. With the reached decision for dismissal, the judge or president of the court shall be temporarily removed from the performance of the judicial office, i.e. president of a court, until the conclusion of the procedure.

There is a possibility for the Judicial council to decide, during the discussion regarding the report of the Commission, that further elaboration of the case is needed, the case file may be returned to the Commission for finalization, not more than once, and the Commission is obliged to additionally process the case and return it to the Judicial council within 15 days.¹³³

If the judge, i.e. the president of the court against whom a procedure for determination of liability is being initiated, during the procedure files a request for termination of the judicial office, the Judicial council shall determine the termination of the judicial office and shall continue the procedure until reaching a final decision which shall be a composing part of the judicial file of the judge, i.e. of the president of the court.¹³⁴ This provision increases the level of liability of the judge and a possibility for reimbursement of the parties that suffered damages.

The judge, i.e. the president of the court against whom the procedure for determining liability has been initiated, is entitled to an appeal to the Council for deciding upon appeals in the Supreme court of Republic of North Macedonia, within eight days from the day of the receipt of the decision. The Council of appeal can either confirm or abolish the decision of the Council in case of a gross violation of the provisions of the procedure for liability of a judge or of a president of a court. If the Council of Appeal abolishes the decision, the Council shall repeat the procedure, with an obligation to secure compliance with the guidelines from the Council of appeal, shall reach a decision and shall publish it publicly on its web-site. Neither appeal, nor a lawsuit is allowed against this decision.¹³⁵

The judge or the president of a court whose right had been violated in the procedures, is entitled to repeated procedure in regards to the final judgment reached by the European Court of Human Rights in Strassbourg, if the judge or the president of a court files a request for repeating the procedure to the Judicial council within 30 days, but not later than three years from the date the judgment of the European court of Human rights becomes final.¹³⁶

6.2 Application of the novelties

After the new Law on Judicial council and the Law amending the Law on Courts, and until the publishing of this Analysis, decisions fo termination of the judicial office were

¹³² Article 69 para. 1 ibid

¹³³ Article 70 ibid

¹³⁴ Article 68 para. 3 from the Law on Judicial Council

¹³⁵ Article 72 ibid

¹³⁶ Article 73 ibid

reached for 5 judges due to fulfillment of the criteria for retirement, and upon a request for termination of the judicial office.

In this period, no decision for dismissal of a judge has been reached.

When it comes to the novelty in the amendments to the Law on Courts with the possibility for continuance of the mandate of the judges which until now were set to retire with 64 years, but now they are entitled to continue working until 67, as per the Law on Labor Relations, the mandate was continued for twenty judges which have submitted timely statements for continuance of their mandate.¹³⁷

6.3 Conclusion

The new Law on Judicial council of RNM and the Laws amending the Law on Courts introduce several substantial novelties regarding the termination and dismissal from the judicial office.

Also a significant novelty in the amendments to the Law on Courts is the possibility for continuance of the mandate of the judges which until now were set to retire with 64 years, but now they are entitled to continue working until 67, as per the Law on Labor Relations.

In addition to this, the judge is offered with the possibility for his office to not be terminated if the judge is elected for a PM, i.e. member of the Municipal council, i.e. member of the Council of the city of Skopje or if the judge is elected to hold an office in the state bodies, municipality and the city, or political or party position, if the judicial office rests as determined by Law. This provision eases the possibility for the judge whose office rests, to continue as a judge after his/her political engagement, which constitutes a conflict in relation to the division of authorities.

The novelties also specify the grounds for initiating procedure for determining liability of a judge, and detailed distinction has been conducted, as to which of these grounds lead towards dismissal of the judge and president of a court, and which lead to easier or disciplinary measure, i.e. grading of the grounds for dismissal is conducted, i.e. If the judge or the president of the court conducts easier violation of the grounds, this person could be sentenced with a disciplinary measure and will not be dismissed. The procedure for acting upon these grounds by the Judicial council has been elaborated in details with the latest Law on Judicial council.

The new legal solutions also prescribe that apart from fulfillment of the grounds for dismissal, the gravity of the violation and the fault of the judge, i.e. a distinction is being made whether such violation is conducted intentionally or due to negligence, due to the judge's fault and whether such violation triggered severe consequences. The amendments decrease the number of disciplinary measures for which a procedure for dismissal can be initiated to four, unlike the previous solutions which had nine, grounds.

These amendments are a positive step towards increasing the effectivity, efficiency and liability of the judges, although further monitoring is necessary, both on its content and its application.

¹³⁷ Monitoring report on the work of the Judicial Council of RNM, Report no. 4 (reporting period: May-August 2019), Institute for Human Rights, 2019, available at [http://ihr.org.mk/uploads/publications_pdf/IHR%20-%20Monitoring%204-2019%20\(web\).pdf](http://ihr.org.mk/uploads/publications_pdf/IHR%20-%20Monitoring%204-2019%20(web).pdf)

CONCLUSION AND RECOMMENDATIONS

In the period from 2017 until 2019 amendments to the Law on Courts¹³⁸ and the Law on Academy for Judges and Public Prosecutors¹³⁹ have been reached, together with a completely new Law on the Judicial Council¹⁴⁰ in order to provide conditions which shall guarantee the essential independence of the courts as institutions of the judiciary, but also individual independence, impartiality, quality, professionalism and efficacy of the judges.

In 2018, the new Law amending the Law on the Academy for Judges and Public Prosecutors¹⁴¹ was reached, aiming to address certain inconsistencies regarding the management and administration structures, and in addition to this, amendments in the criteria for accepting participants at the Academy were included. The abolition of the required GPA of at least 8.0 for the candidates, which constituted a large obstacle for the potential candidates, was the main novelty of this Law.

In July 2019, the new Draft-Proposal to the Law on Academy for Judges and Public Prosecutors was submitted to the Assembly, with a purpose of harmonization of the Law with the directions contained in the Strategy for Reform of the Judicial Sector, and with the recommendations given by relevant international institutions. The main goal of this Law is to revise the manner of election and taking the entry and final exam before the professional commission, on grounds of measurable and objective criteria for assessment of the knowledge of the candidates. Most of the amendments are related to the taking of the entry and final exam in the Academy, as well as the examination upon each of the modules in the first phase from the initial training.

In the reporting period, from the activities of the Academy for Judges and Public Prosecutors it can be concluded that the Academy faces lack of space, financial and human resources, and reforms in this direction are more than welcome. Despite the request for 120 new judges and public prosecutors by the Judicial Council and the Council of Public Prosecutors, the Academy for Judges and Public Prosecutors had the capacity for only 60 candidates due to lack of space.¹⁴²

The appropriate capacities of the Academy for Judges and Public Prosecutors are essential, since the completion of the training of the Academy for Judges and Public Prosecutors is the only way to initiate a career as a judge, i.e. the judges of basic courts shall be elected solely from the list of candidates that applied to the public call, delivered by the Academy for Judges and Public Prosecutors to the Judicial Council of RNM.

Regarding the process for election of judges in basic courts, amongst the more significant amendments to the Law on Judicial Council of RNM and the Law on Courts that impact the quality of the judiciary are: the fact that for the first time the Judicial Council when electing judges for basic courts, shall conduct interview with the candidates, which shall take 10% from the points that the candidate may earn. This changes the function of the Judicial Council in the election of judges, from formal appointment to substantial election of

¹³⁸ Law amending the Law on Courts, Official Gazette of RNM no. 83/2018, 198/2018, 96/2019.

¹³⁹ Law amending the Law on Academy for Judges and Public Prosecutors, Official Gazette of RNM no. 163/2018.

¹⁴⁰ Law on Judicial Council of RNM, Official Gazette of RNM no. 102/2019.

¹⁴¹ Assembly of Republic of Macedonia, 'Session no. 58 of the Assembly of R. Macedonia scheduled for 29.08.2018' (29 August 2018) <<https://www.sobranie.mk/sessiondetails.aspx?sessionDetailsId=5f30c475-2ee9-4cac-9859-e9ec6841570f&date=29.8.2018>> accessed 16 October 2019.

¹⁴² nezavisen.mk (n 17).

judges. When electing a judge, the Judicial council shall consider the year of completing the training and the achieved results, as well as the results from the conducted interview.

Additionally, the possibility for appeal by the candidate not elected for judge is introduced, who is now eligible for an appeal within eight days from the receipt of the notification, upon which the Council of Appeal in the Supreme court of Republic of North Macedonia shall decide, which enables accountability of the Judicial Council and bigger engagement of the Supreme court in the process of electing judges.

Regarding the elections of a judge in the Administrative court, the criteria for election of a judge have been tightened because for this court also, the person may be elected for a judge only if it has completed the training of the Academy for Judges and Public Prosecutors and has working experience of at least four uninterrupted years as a court in a basic court until applying for election, and which was assessed with positive grade by the Judicial council. This replaces the previous legal solution, which anticipated that persons with at least five year experience in legal affairs in a state body, with confirmed results in their work, may be elected as judges of the Administrative court.

Another novelty is that a person which have been a judge in an international court for at least one mandate and which fulfills the criteria, may be elected as a judge in a court of any instance.

The new laws tightened the criteria when it comes to election of judges in the basic courts and administrative court. The quality, efficiency and efficacy of the new legal framework for election of judges in the basic courts and in the Administrative court shall be seen after their practical implementation and after completion of election of a judge as per the new legal solutions.

When it comes to assessment of the judges, the Law prescribes a solid framework for improvement of the system for assessment of the work of the judges, by anticipating priority of the qualitative in comparison to the quantitative criteria. This approach to assessment, for the first time essentially focuses on the quality of the judicial justice through evaluation of the argumentation and articulation of the decisions. The criteria for assessment of the quality of the court procedure and the work of the judge through including judges that will conduct the assessment provides objective evaluation of the court's operations. Nonetheless, the work of the Commission composed of judges from higher court and the Commission from members of the Judicial council shall be regulated in details with the Methodology, which shall encompass several aspects of the assessment of quality.

Before a full application of the new system of evaluation, the Judicial council shall revise the Methodology with indicators for complexity of the cases, on which the acting of the judges is fully dependant. It is necessary to incorporate a new system for determining the orientation rate which shall be based on the specifics and the complexity of the cases for each individual court, legal areas and the *ratione materiae* of the court, while paying attention, that this does not affect the volume and the quality of the actions of the judges.

One of the main goals of the newest legal reforms was acting upon the recommendations when it comes to redefining the criteria for election of a judge in higher courts, i.e. the regulation of the manner of election of a judge in higher courts and determining the system of evaluation of the judges and the presidents of courts, aspects which are directly connected. The new legal solutions, besides the prescribed experience for a judge in higher courts and president of a court, specify the assessment of the judges with a

positive grade by the Judicial council. Finally, the criteria for evaluation of the judges upon their advancement are specified in a manner that the significance of the qualitative criteria is significantly increased in comparison with the significance of the quantitative criteria.

Although since the new legal solutions entered into force an election of judges in the higher courts and presidents of courts was conducted, this election was conducted on grounds of the previous legal solutions, because the public calls were published before the new Laws entered into force.

Similar to the election of judges in basic courts, the new laws strengthen the criteria for election of a judge in a higher court and presidents of courts which shall contribute towards objective elections with better quality. It is, however, necessary that the new criteria for election and the new assessment method are practically applied, in order to determine the level of harmonization and need for review.

Regarding the liability of the judges, the frequent interventions in the essential rules regulating the grounds and the procedure for determination of the liability of the judges shall normally not contribute towards strengthening the legal safety.

The reached amendments regarding the grounds for liability are significantly based on the recommendations stated in the Opinion by the Venice Commission, but there is still the justified dilemma as to whether this satisfies the recommendation given by the Venice Commission in December 2015, in accordance to which the members or bodies of the Judicial council which are included in the initial phase of the disciplinary procedure as “prosecutors” or “investigators” shall not participate when the final decision is reached. In practice, difficulties are noticed in keeping up with the principle of urgency with this procedures and with the deadlines for undertaking certain actions in the procedures.

Considering the dynamics of the reforms in this area, one shall not be too quick in giving conclusions regarding the novelties in the system, especially for those regarding the possible inclusion of the public, transparency, argumentation of the decisions, as well as regarding the impartiality of the whole process. Due to this, in the following period there is a need of increased monitoring over the work of the Judicial council of RNM in order to provide fully functional and just system for determining liability of the judges and presidents of the courts.

The new Law on the Judicial council of RNM and the Laws amending the Law on Courts introduce several substantial novelties regarding the termination and dismissal from the judicial office.

Regarding the cessation of the judicial office, a significant novelty is introduced with the postponement of the cessation of the function of a judge and the possibility for continuance of the mandate of the judges which until now were set to retire with 64 years, but now they are entitled to continue working until 67, as per the Law on Labor Relations.

The new possibility, prescribed by Law, allowing a rest of the judicial office during political engagement, after the termination of which the judge may continue its function is questionable, because it is a conflict with the division of powers.

The novelties also clarify the grounds for initiating procedure for determining liability of a judge, and there is detailed division as to which from these grounds lead towards dismissal of the judge and the president of a court, and which lead to announcement of easier or more severe disciplinary measure, i.e. grading of the grounds for dismissal is conducted. So, if the judge or president of the court conducts

easier form of violation of the grounds, this person can be subjected to a disciplinary measure and shall not be dismissed. The latest Law on Judicial council elaborates the steps for acting on these grounds in details.

The new legal solutions also prescribe that apart from fulfillment of the grounds for dismissal, the gravity of the violation and the fault of the judge, i.e. it's intention or negligence shall also be taken into consideration. In addition to this, the amendments decrease the number of disciplinary measures for which a procedure for dismissal can be initiated for four, unlike the previous solutions which had nine, grounds.

These amendments are a positive step towards increasing the effectivity, efficiency and liability of the judges, although further monitoring is necessary, both on its content and its application.

ANNEX I

Total, June-October 2019	Election	Termination	Dismissal	Mandate continuance
June, 2019	/	/	/	Continued mandate of 5 judges
July, 2019	/	Termination of the function of one judge due to fulfillment of criteria for retirement due to age.	/	Continued mandate of three judges
August, 2019	/	/	/	Continued mandate of six judges
September, 2019	Election of one judge in Supreme court – criminal area	/	Two dismissals – there is a liability determined for one president of court and one judge (Upon discussion for a Report of the Commission for determining liability of a judge/president of a court, decisions are reached by which one president of a court is dismissed from the position – president of a court, and one judge is dismissed from the position – judge.)	Continued mandate of six judges
October, 2019	Election of eight presidents of basic courts; election of president of the Higher Administrative court; Decision for electing two judges in the Administrative court.	/	/	/

REFERENCES

1. Law amending the Law on Courts, Official Gazette of RNM no. 83/2018, 198/2018, 96/2019
2. Law amending the Law on Academy for Judges and Public Prosecutors, Official Gazette of RNM no. 163/2018
3. Law on Judicial council of RNM, Official Gazette of RNM no. 102/2019
4. Analysis on the conduction of the Strategy for Reform of the Judiciary sector (2017-2022) for the period from 2018/2019
5. Draft-proposal Law on the Academy for Judges and Public Prosecutors, delivered in July 2019 to the Assembly of Republic of North Macedonia
6. Shadow report on Chapter 23 for the period June 2018-March 2019
7. Functional Analysis of the Academy for Judges and Public Prosecutors, Skopje, November 2019
8. Law on Courts (Official Gazette of Republic of Macedonia no. 58/2006, 62/2006, 35/2008, 150/2010, 83/2018 and 198/2018 and Official Gazette of Republic of North Macedonia no. 96/2019)
9. Law on Judicial council of Republic of North Macedonia (Official Gazette of Republic of North Macedonia no. 96/2019)
10. Law on Judicial council of Republic of Macedonia (Official Gazette of Republic of Macedonia no. 60/2006, 69/2006, 150/2010, 100/2011, 20/2015, 61/2015, 197/2017 and 83/2018)
11. Monitoring report for the work of the Judicial council of RNM
12. North Macedonia opinion on the draft law on the judicial council. Adopted by the Venice Commission at its 118th Plenary Session (Venice, 15-16 March 2019)
13. Rules of procedure for the work of the Judicial council (Official Gazette of RNM, no. 60/06, 150/10, 100/11, 20/15, 61/15)
14. Annual report on the work of the Judicial council of Republic of Macedonia for 2017
15. Monitoring report for the work of the Judicial council of RNM, Report no. 4 (reporting period: May-August 2019)
16. Policy paper regarding the setting and operation of the Judicial council of RM

