

Thematic Report on the Project

„Justice Governance for
Growth Monitor

(JUDGMeNT)“

**IMPROVING EFFICIENCY
AND COMPETENCE:
OVERVIEW OF QUALITY, EFFICIENCY
AND COMPETENCE
OF JUDGES AND COURTS**

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ANNEX 1



1* Introductory remarks on SEE Strategy 2020: Jobs and Prosperity in a European perspective

“Southeast Europe Strategy 2020: Jobs and Prosperity in a European Perspective” aims at improving the living conditions in the region and bringing back the focus to the issues of competitiveness and development. The strategy was adopted in 2013, while the process of its development, adoption and implementation is coordinated by the Regional Cooperation Council (RCC). Strengthening of regional cooperation is one of the conditions for progress in the accession process of regional countries to the European Union.

The strategy is concentrated around four mutually related pillars of development, of which pillar “Governance for Growth” has three dimensions: Efficient Public Services, Anti-Corruption and Justice. Area Justice identifies three priorities, including “Improving Efficiency and Competence: Overview of Quality, Efficiency and Competence of Judges and Courts”.

The strategy highlights the need for increase of efforts by all institutions involved (ministries, judicial training centres or academies, universities), directly or indirectly, for the purpose of improving these parameters. In Macedonia's case, the call refers to: the Ministry of Justice, the Judicial Council, the Judicial Budget Council, but also bodies such as the Academy of Judges and Public Prosecutors, which are significant stakeholders in securing the quality of judiciary in general, but also the individual qualities and competence of judges.

The ambitious nature of SEE Strategy 2020 enables the involvement of several entities in the process of its implementation. It served as the foundation for the civil sector's months-long monitoring of the work of a portion of the institutions involved and the continual research over the improvement of the judicial quality, efficiency and competence. The monthly reports and this thematic report contain facts that provide a clear picture of the current state of affairs and recommendations that should be observed and implemented in the future.

The methodology for development of the thematic report was mainly founded on a legal and comparative analysis of the legal framework of the judiciary and the relevant monthly and annual reports. In addition to office research, data was collected from the Judicial Council of the Republic of Macedonia and the Academy of Judges and Public Prosecutors. Indicators have been established within the project, which would serve the purpose of development in this field (Annex 1).

The European Union's accession process includes issues related to judiciary, in the framework of the political components of the Copenhagen criteria and Chapter 23 - Judiciary and Fundamental Rights. Except for Article 47 of the Charter of Fundamental Rights of the EU, the Union law does not have provisions regulating issues related to the status of national judiciaries. This is a result of the principle of EU's respect for the national autonomy in regulating the national institutional structure.

The judiciary's independence in Macedonia is regulated at the highest level - the Constitution. According to Article 8, the division of power is noted as one of the fundamental values of the constitutional order, while Article 98 stipulates that the judicial power is carried out by the courts, which are independent. Article 99 establishes that a judge cannot be transferred against his/her will, and alongside amendment XXVI it regulates the conditions for termination of the judicial post and dismissal.

The key laws in the national legal framework in this field are the Law on Courts, the Law on the Judicial Council of the Republic of Macedonia, the Law on the Academy of Judges and Public Prosecutors, the Law on the Judicial Council, the Law on the Council for Determination of the Facts and Initiation of Disciplinary Procedure for Establishing Disciplinary Responsibility of a Judge, and the Law on Court Service.¹

The election and dismissal of judges, lay judges and court presidents is in the exclusive competence of the Judicial Council, based on objective criteria stipulated in the Law on Courts. It is questionable that the criteria for election of a court president are the same as the ones for election of a judge, with the exception of the provision that he/she needs to have the highest grade over the past two years and highest number of points compared to the other applicants. Such criteria do not leave the room for assessment of the managerial capabilities of the candidates for court presidents - a crucial aspect for the successful execution of this function.

The national legal framework has been harmonized regarding European standards related to disciplinary procedure, suspension and dismissal of judges. The Constitution, the Law on Courts and the Law on the Judicial Council establish the grounds for suspension and dismissal of judges, saying it can be done as consequence of heavier disciplinary breach that makes him/her unworthy to perform the judicial function, and unprofessional and negligent performance of the judicial function.

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¹The Law on Courts represents the foundation for the judicial power, regulating the competences of courts, their structure, local and actual jurisdiction, types of courts in the Republic of Macedonia, modus operandi, execution of judicial function, election of judges and lay judges, rights and obligations of courts and court presidents, as well as termination of office, disciplinary responsibility and responsibility due to unprofessional execution of the judicial office. The law regulates, on a basic level, the court administration, the court service and the court police, i.e. their basic competences in the performance of the judicial power. The Law on the Judicial Council of the Republic of Macedonia regulates the procedure of electing the Judicial Council, the manner of performance of its functions, modus operandi and decision-making process. In addition, the law regulates the Judicial Council's competences, including the election and dismissal of judges and assessment of their work. The Constitution and the law define the Judicial Council of the Republic of Macedonia as an independent body of the judiciary with the basic function and goal to guarantee the independence of judiciary. The Council sessions discussing complaints by citizens and legal entities over the work of judges and courts are public. The Law on the Academy of Judges and Public Prosecutors regulates the establishment, activities, status and financing of the Academy. In addition, the law contains provisions over lecturers and mentors who implement programmes, the basic and continual training as the main activity of the Academy, as well as other issues related to the Academy's position and operations. The Academy carries out admission and professional advancement of future judges and public prosecutors, continual professional advancement of knowledge of elected judges and public prosecutors in the execution of their function, as well as advancement and training for the purpose of professional and ethical execution of job tasks by judges and public prosecutors, in compliance with the law and international standards and principles.

done as consequence of heavier disciplinary breach that makes him/her unworthy to perform the judicial function, and unprofessional and negligent performance of the judicial function.

The procedure regulated by the Law on the Judicial Council provides for the judge subject to the disciplinary procedure to give a statement regarding the allegations and submit an appeal against the decision.

Proper regulating of the section regarding disciplinary responsibility of judges and responsibility for unprofessional and negligent performance of the function has imposed the need for a number of law amendments. One of the disputable aspects was the competence and the capacity of the Judicial Council in the entire procedure, where the institution appeared both as a body initiating the procedure for establishment of the judge's responsibility and as a body deciding in the procedure, and the fact that the Supreme Court President is a member of the Council and an instance deciding on the appeal. In order to overcome this problem, the Law on the Council for Determination of the Facts and Initiation of Disciplinary Procedure for Establishing Disciplinary Responsibility of a Judge was adopted.² The law stipulates the introduction of a new body that will initiate procedures for determination of the facts and initiate proceedings for establishing disciplinary responsibility of a judge. Adoption of the Law on the Council for Determination of the Facts and Initiation of Disciplinary Procedure for Establishing Disciplinary Responsibility of a Judge is not an obligation or necessity stipulated in the Constitution of the Republic of Macedonia as the highest legal act, or other laws regulating this matter (Law on Courts, Law on the Judicial Council).

The law's fast-track adoption, without prior research and analysis, was an issue. Therefore, the criticism that the body established by this process is unconstitutional is justified, especially if one takes into account Article 99, Amendment XXVIII and Amendment XXIX of the Constitution, according to which the Judicial Council is unique, independent body that provides and guaranties the independence of the judicial power, as well as the only competent body to decide over the responsibility of judges. Unlike the Judicial Council, the Council for determination of the facts is not stipulated in the Constitution of the Republic of Macedonia.³ Another problem is the possibility for the Council for determination of the facts to reject the initiative for initiating procedures, thus in fact excluding the Judicial Council from the procedure, whereas the Council for determination of the facts imposes itself as a parallel body that shares the same or has similar competences as the Judicial Council.⁴

Article 6 of the Law on the Council for Determination of the Facts and Initiation of Disciplinary Procedure for Establishing Disciplinary Responsibility of a Judge is also disputable, reading that retired judges, public prosecutors, university professors and jurists are elected as council members. This provision does not set quality selection criteria and therefore is not only deemed unnecessary, but also represents discrimination on the grounds of age. Members of the Council for determination of the facts are elected by judges from all courts in Macedonia at direct and secret elections.⁵ The final provisions of this law, namely Article 52, stipulate that the first selection of members in the Council for determination of the facts shall be carried out by a commission established by the Judicial Council of the Republic of Macedonia. This provision goes against the Law on the Judicial Council and the Constitution of the Republic of Macedonia since the Law on the Council for Determination of the Facts and Initiation of Disciplinary Procedure for Establishing Disciplinary Responsibility of a Judge imposes competence to the Judicial Council beyond the competences stipulated in the Constitution and the Law on the Judicial

²Ibid.

³<http://www.sobranie.mk/ustav-na-rm.nspk>

⁴Article 40 of the Law on the Council for Determination of the Facts and Initiation of Disciplinary Procedure for Establishing Disciplinary Responsibility of a Judge

⁵Official Gazette of RM" no.20/15

⁵Article 16 ibid.

Council, as well as the fact that the selection is carried out by a commission established by the Judicial Council.

The procedure for determination of responsibility of a judge, the anticipation of disciplinary responsibility and responsibility for unprofessional and negligent performance of function are rather confusing and dispersed in three different laws (Law on the Judicial Council, Law on the Council for Determination of the Facts and Initiation of Disciplinary Procedure for Establishing Disciplinary Responsibility of a Judge, and the Law on Courts). These remarks have been highlighted, amongst other in the report of the Venice Commission, which notes that the grounds for responsibility of judges are confusing and loosely defined, while the procedure is needlessly complicated, leaving room for overlapping of procedures.⁶

There is also an imprecision in the Law on the Judicial Council regarding the definition of unprofessional and negligent performance of the judicial function. Namely, if the negligence can be related to shortcomings in the proceedings or conscious violation of legal provisions and obtaining of illegal benefit, the non-definition of unprofessional performance of the function can represent grounds for broad interpretation of this term and pressure on judges. Moreover, it would be more logical if the law determines a unique procedure for establishment of disciplinary responsibility, encompassing cases of unprofessional and negligent performance of the judicial function, including proper grading of projected sanctions.

A continual problem with legislation in Macedonia is the adoption of laws through fast-track procedures,⁷ including the law on the Academy and its amendments, which were passed without proper expert debate, public debate or any involvement of experts or stakeholders in its adoption. This practice has resulted in other criticism related to the law, such as the criteria for enrollment in the Academy, with the legislator giving much significance to the university grade average of candidates, thus setting a criterion where the candidate's knowledge when graduating from the university is valued more or the same as his/her knowledge acquired after the graduation from university and during his career. The needlessness of this provision is supported by the amendments of 31 December 2015 regarding the criteria for admission, stipulating a grade average of at least 7, working experience of at least 5 years in legal affairs following a passed Bar exam, in a court or public prosecutor's office, as employee in court or a public prosecutor's office or lawyer. It is also stipulated that the training is carried out in a one stage, i.e. through a nine-month theoretical training.⁸ Under these changes, the candidate's experience must be obtained as employee in court, public prosecutor's office or lawyer, which is also a restrictive criterion. Representatives of the Judicial Council point to the fact that this provision aims to secure that candidates have first-hand experience of work in courts. However, the most questionable aspect is the repeated adoption of the amendments through a fast-track procedure and their time restriction to the previous changes of one year, which reconfirms the lack of transparency of the motives for such changes, leaving a doubt of arbitrary and corruptive activities.⁹

⁶[http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2015\)042-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2015)042-e)

⁷<http://vistinomer.mk/sobraniski-trend-nad-60-otsto-od-zakonite-po-skratena-postapka-1/>

⁸ibid.

⁹ Article 4 of the amendments to the Law on the Academy of Judges and Public Prosecutors "Official Gazette of RM" no.231/15.

In 2011, the Ministry of Justice of the Republic of Macedonia promoted the judicial statistical methodology as a methodological instrument for collection, processing and analysis of statistical data. The methodology was developed on the basis of the roadmaps of court statistics (GOJUST) of the European Commission for Efficiency of Justice (CEPEJ), in the framework of the Council of Europe. Its application should have provided consistent and comparable statistical data and indicators for monitoring and evaluation of court results. The methodology defines 11 indicators for analysis and monitoring of judicial achievements, which courts are obliged to collect, process and publish – however, this is not the case. In addition, the methodology envisages for direct access of academic and research institutions to the processed statistical data and analysis, which is also still not implemented. These two factors make the independent monitoring of court indicators in Macedonia extremely difficult. Still, an attempt has been made below to give an overview of the situation regarding the quality, efficiency and competence based on data that the research team managed to obtain.

3.1* Quality

According to the so-called Reinhard Priebe Report,¹⁰ members of the Judicial Council have to be selected only from amongst the most skilled judges and the most distinguished and experienced lawyers of the country. A clear and foreseeable test should be developed in practice as to the meaning of the statutory term “a distinguished lawyer”. These recommendations are linked to the revelations about the processes of political bargaining over the Council's makeup. Some imply Article 6 of the Law on the Judicial Council as a disputable provision, since it reads that the Supreme Court President and the Minister of Justice are Council members by function.¹¹ The legal imposing of members by function in a body that must guarantee judicial independence opens room for doubt over the body's independence. Moreover, although the Minister of Justice does not have a right to vote in the Council, his/her presence and informal influence can be an obstacle in the free functioning and decision-making of the Judicial Council.

Regarding the criteria for election of Judicial Council members and their use in practice, there is a perceived trend that is also used in other laws that regulate criteria for election of members in a judicial body – the use of term “distinguished lawyer”.¹² Up to the amendments of February 2015 there was no regulation that defined term “distinguished lawyer” or regulation for these criteria, meaning that the understanding of this term was left to the free interpretation of the selecting body. Thus, a number of opinions appeared in practice over the meaning of the term. Article 2 of the amendments to the Law on Judicial Council¹³ partially defined this criterion, saying the conditions stipulate that a member of the Council can be a graduated jurist with experience of at least 15 years in the legal profession following a passed Bar exam and whose scientific or professional achievements or public activities in the legal profession are well-documented.¹⁴

Moreover, the Macedonian public imposed the issue over the Judicial Council's independence from the political influence by the judicial and legislative powers when electing staff and enforcing its competencies, as well as the people's confidence in this body. The Priebe report notes that the Judicial

¹⁰ Recommendations of the Senior Experts' Group on systemic Rule of Law issues relating to the communications interception revealed in Spring 2015.

¹¹ Ibid.

¹² Article 26, *ibid*

¹³ „Службен весник на Република Македонија“ бр. 20/2015.

¹⁴ На 13.10.2016 г. врз основа на ваквата формулација, Собранието донесе одлука со која е избран Владе Богоевски за член на Советот. Според неговата биографија тој има правничка кариера која ја почнува како правник во стопанството, па адвокат, заменик јавен правобранител за подрачјето на Скопје, и државен правобранител за истото подрачје.

Council should exercise its duties without any political interference, either direct or indirect, and be more proactive in defending judges against interference and attack affecting their independence.

After the Special Prosecutor's Office summoned five judges from the Administrative Court in October 2016 as suspects over rulings in the execution of the judicial function, the Judicial Council reacted that the move represents direct pressure and violates the judiciary's independence, goes against the Constitution, the laws and international rights. As an independent body, the Judicial Council said the Special Prosecutor's Office is interfering in the work of judges and diminishes and image and dignity of judges, voicing readiness over uncompromising fight against those who interfere in the work of courts. This opened the issue of interrogating judges, with the Judicial Council president saying a judge cannot be prosecuted for his/her work and added that no one should dare to interrogate a judge about a ruling, taking into consideration Article 65 of the Law on Courts.¹⁵

Statements from the Special Prosecutor's Office interpreted these reactions as delaying certain pre-investigative procedures that lead to obstructions in the investigations and preventing the initiation of court proceedings against individuals suspected of committing serious crimes. On the other hand, there are almost no cases of judges addressing the Judicial Council for protection from pressure or influence. This may point to the fact that cases of pressure and influence are rare or that judges do not see the Council as a body that can provide effective protection.

Although the Law on Courts stipulates objective criteria for election and dismissal of judges, lay judges and court presidents, resulting in proper competence, quality and independent work, the 2016 European Commission Report on Macedonia notes that the system of election and promotion is not sufficiently transparent, while steps were not undertaken to secure de-politicization in line with the Urgent Reform Priorities. In 2015, the Judicial Council elected 20 court presidents with significant delay, and in September 2016 it elected 7 judges in basic courts (all from the Academy), 11 judges in appellate courts, 2 judges in the Higher Administrative Court and 4 judges in the Supreme Court (all having court experience).¹⁶

It should be noted that current regulations leave room for the judge to be sanctioned on the grounds of the number of altered rulings by a higher court, which represents an infringement of the court immunity guaranteeing that a judge cannot be deemed responsible for an opinion when issuing a ruling. Such regulations depict a problematic viewpoint of the legislator and the law proposer, according to which higher-instance courts only have to confirm the rulings of the lower-instance courts.

In the 2016 Report on Macedonia, the European Commission notes that a new professional system for evaluation, with a focus on assessing the basic competencies of judges, has still not been introduced, making the system more focused on quantitative criteria. Therefore, no actions have been taken regarding the European Commission and Venice Commission recommendations in this area. Even those criteria, which are seen as qualitative, are based on statistics without taking into account the differences on a case-by-case basis.¹⁷ According to Judicial Council representatives, they take into consideration such differences when evaluating judges, including the reasons for annulment or altering of rulings by higher-

¹⁵ Article 65 of the Law on Courts reads:

(1) Judges have immunity in the execution of the judicial function.

(2) A judge cannot be subject to criminal responsibility over expressed opinion or decision when passing a ruling.

(3) A judge cannot be detained without an approval from the Judicial Council of the Republic of Macedonia, unless he/she is caught while committing a crime, which stipulates a prison sentence of at least 5 years.

(4) The Judicial Council of the Republic of Macedonia decides over depriving a judge from immunity.

(5) The procedure over depriving a judge from immunity is urgent.

¹⁶ European Commission Report on Macedonia, 2016.

¹⁷ Article 98 – Article 115 of the Law on Judicial Council of the Republic of Macedonia "Official Gazette of RM" no. 60/2006, 150/10, 100/11, 20/15 и 61/15.

instance courts. This is assisted to a certain extent by a provision in the Law on Courts,¹⁸ which says that a commission comprised of a court president where the judge subject to evaluation is employed, along with two other judges, give an opinion when evaluating a judge. There is also a practice of the judge subject to the evaluation to submit comments to such opinions.

¹⁸Article 126.

3.2* Efficiency

KNoting that the Judicial Council adopted a decision in November 2015 on reducing the number of judges from 740 to 636 without assessing the needs and the effect, the European Commission says in its latest progress report there is no comprehensive strategy for human resource management in the judiciary. At the start of 2016 there were almost 2,500 administrative and court staff in the judiciary, which represents a 5-percent increase compared to the end of 2014.¹⁹ Despite this rise, the Judicial Council assessed there was a lack of managerial, professional and administrative-technical staff.²⁰ Among the countries of former Yugoslavia, including Macedonia, the number of judges and court staff per 100,000 citizens is significantly higher than the European average.²¹ Regarding gender structure, women judges are more represented in the first and second instance courts, while men in the Supreme Court and among court presidents.²² Two-thirds of employees in the court administration are women.²³

The Commission expresses concern that the budget of courts in 2016 is significantly lower than the European average per capita.²⁴ Namely, the 2016 budget for all courts, excluding the Constitutional Court, is insignificantly increased compared to the budget plan for 2015, amounting to about EUR 30 million.²⁵ This comes to almost EUR 15 per capita, while the European average stands at approximately EUR 36.²⁶ Macedonia has court expenditures per capita that are lower than any other EU member-state, with only Albania having lower expenditures per capita in the Western Balkans.²⁷ . On the other hand, taking into consideration the share of public expenditures for courts in the GDP, Macedonia is among the top six countries in Europe - former Yugoslav states.²⁸ The 2016 budget of the Academy of judges and public prosecutors amounts to about EUR 670,000²⁹ – which represents an increase by 15% compared to the Academy's budget in 2015. Still, the impression remains this is still a small amount compared to the training needs. This is confirmed by the fact that a large number of seminars and trainings are carried out with the support by foreign donors.

Despite the fact that the Judicial Budget Council is formally operational, it is forced in practice to accept the restraints imposed by the Ministry of Finance, which do not observe the legal amounts intended for public consumption in the judicial system. The Judicial Budget Council made an attempt in the past to calculate the cost for an individual case, based on which it would deliver the annual projection of the budgetary needs and projected workload in the judiciary, but the practical implementation of this concept was hampered because of the diverse staff numbers in courts and the caseload.

In 2015, Macedonian courts ruled on 2% more cases compared to the influx of new cases in the year, thus lowering the number of open cases.³⁰ Exceptions to this trend are the Higher Administrative Court, appellate courts and the Supreme Court, where the number of open cases increased over the course of the year. The number of days required for solving open cases increased only among the basic courts, but due to the large number of cases in basic courts, this led to reduction in the time for solving cases of judiciary in general.

¹⁹ 2015 Judicial Council Report.

²⁰ Ibid.

²¹ Ibid.

²² 2014 data, European judicial systems: Efficiency and quality of justice, CEPEJ, 2016.

²³ 2015 Judicial Council Report.

²⁴ European Commission Report on Macedonia, 2016

²⁵ Amendments to 2016 Budget of the Republic of Macedonia

²⁶ 2014 data, European judicial systems: Efficiency and quality of justice, CEPEJ, 2016.

²⁷ Increasing the efficiency of Macedonia's and Montenegro's justice system: Introducing an innovative EU monitoring and evaluation mechanism in the sphere of administrative law, Association Zenith, 2014.

²⁸ 2014 data, European judicial systems: Efficiency and quality of justice, CEPEJ, 2016.

²⁹ Amendments to 2016 Budget of the Republic of Macedonia.

Efficiency indicators for 2016 are expected to deteriorate due to the strike of the court administration, which brought into question the courts' operations. The strike could have been prevented if the parties concerned reached an agreement.³¹ As a result of the dissatisfaction from the Law on Court Service, the court administration went on strike for a period of 58 days from May to September 2016 by blocking the courts' operations. The revolt of the court administration intensified after the decision for increase of salaries for judges, prosecutors and staff in public prosecutor's offices. During the strike, some courts operated with minimum capacity, only undertaking proceedings that included temporary measures and proceedings involving foreign elements, while complaints were not even admitted due to the lack of proper conditions and the strike's intensity. According to the law, the trade union took the stance of putting the strike on hold on 15 July 2016, saying it would continue with an increased intensity if an agreement was not reached. Eventually there was no agreement, efforts were made to resume the strike, but it was interrupted after a brief period without meeting any of the requirements for payments similar to those for judges, prosecutors and staff in public prosecutor's offices. Events in this period point, amongst other, to the fact that instead of negotiations, pressure was exercised on court staff by the Judicial Budget Council and the Judicial Council president,³² which is inappropriate for the Judicial Council as an independent body in the judiciary, pointing to its lack of transparency.

Coalition "All for Fair Trials" monitored 14 cases in September 2016. Although this is an insignificant number of monitored hearings, statistics showed there is not much difference between 2015 and 2016 regarding the postponement of hearings - there are only differences regarding rulings. A large number of rulings and decisions to adopt motions in 2016 were passed without a hearing, which indicates that despite the small number of held hearings, the rest are not held and most often a decision to adopt the motion is immediately passed because the court lacks the capacities to manage them.

In the course of September 2015 a total of 40 hearings were monitored in Basic Court Skopje 1 Skopje, 28 of which were postponed, the most common reason being the absence of one party in the case. September 2016 saw the monitoring of two hearings less compared to the same month in 2015, meaning 38, of which 19 were postponed. The most common reason for the postponement was the absence of one party in the case or their unavailability to the law enforcement bodies, as well as lack of conditions for escort of detainees in the court. This points to the fact that a large portion of the work resulting in a fair ruling is on the burden of the people grouped in the general category "court service", encompassed in the law which they find disputable and unacceptable.

Judges and other legal experts agree that the practice of passing different rulings for same legal circumstances is continuing, whereas court rulings are often improperly elaborated. It is important to mention the concern regarding the work of the Administrative Court, which is not ruling on merits against

³⁰ Calculations based on the 2014 and 2015 annual reports of the Judicial Council of the Republic of Macedonia.

Court	Rate of closed cases in 2015 ³⁰	Open cases by the end of 2015	Time to settle open cases (days) ³⁰	
			2014	2015
Supreme Court	98%	1 802	106	118
Higher Administrative Court	81%	1 095	8	88
Administrative Court	106%	9 872	193	219
Appellate courts	95%	9 404	66	88
Basic courts	103%	109 700	97	84
TOTAL	102%	131 873	98	89

³¹ Data analysis from observed court proceedings in 2015, Coalition "All for Fair Trials".

³² The Judicial Budget Council decided to fully pay the May 2016 salary to the court staff, while the salary cuts in line with Article 77 of the Law on Court Service to be realized with the payment of the June salary. According to the secretary-general of the trade union of employees in administration, judiciary and civic associations of the Republic of Macedonia, this was just another attempt to break the strike of the court administration and turn the attention away from the problems of the court staff. The Judicial Budget Council informed the court staff that their salaries would be collectively cut by 40% for the months during the strike of the court administration. This decision of the Judicial Budget Council came a few days after the first decision, which requested court presidents to cut the salaries by 60% of employees who went on strike for a period of two months, asking for higher salaries.

decisions of state bodies and refuses to pass final rulings towards protecting the people's rights. In this way, cases go back to the state bodies, which pass the same decisions without observing the stance of the administrative courts, thus violating the right of trial within a reasonable time. The right to a trial within a reasonable time is also violated by basic and appellate courts, especially by delaying the publishing of rulings. The electronic system for searching court rulings has been enhanced. The deadline for preparation of the ruling within 15 days from the final hearing is not observed, with a noted case of exceeding the 60-day deadline for more complex cases. It is necessary for administrative bodies to implement court rulings within a reasonable time. In order to achieve the full effect of the rulings, they need to undertake all measures required by the law, along with a review of all regulatory and policy options at disposal, towards choosing the appropriate solution for key issues, such as availability and integrity, as well as to take into consideration the national context, such as the level of public trust and measures required for the purpose of harmonization with EU standards.

Regarding the new Criminal Procedure Code,³³ analyses have shown that it is not fully implemented. According to the provisions in the Criminal Procedure Code, the public prosecutor has the right and duty to prosecute perpetrators of crimes *ex officio*, but the public prosecutor often puts him/herself in the role of a party in the case and a judge, with many judges saying they eventually carry the burden and the obligations.

There are serious obstacles for effective and proper enforcement of court rulings in the civil, administrative and criminal fields. Civil and administrative procedures are complex and expensive to enforce, while criminal cases include improper conditions in prisons and loose enforcement of sentences due to lack of conditions in the judiciary for complete management of criminal procedures.

Macedonia's Bureau for the country's representation before the European Court of Human Rights has made significant efforts for swift enforcement of rulings, reducing the number of rulings that are still not enforced by more than half to 56.³⁴

The state of trust in the judiciary can be presented by Macedonia's ranking according to relevant global parameters. Such an indicator is the perception of the judiciary's independence. The 2016-2017 World Economic Forum Global Competitiveness Report ranks Macedonia in the lower part of its list (106th out of 136 countries).³⁵ Macedonia has an index of 3.1, whereas the global average is 4.19. The indicator stood at 3.3 in the previous year, meaning there is a worsening trend in Macedonia regarding the trust in judiciary.

A second indicator in the field is the "perceived independence in civil justice" of the World Justice Project, in the context of the report over the index of the rule of law.³⁶ Macedonia is ranked in the upper half of this global table (51st out of 113 countries), while in regional terms it is third out of 13 countries in the area. The index is 0.56 regarding the independence of civil justice. The index in last year's report for Macedonia stood at 0.57, while in global terms the country was ranked 38th out of 102 countries. This indicator has also registered a drop for the Republic of Macedonia.

³³Official Gazette of RM" no.150. The new CPC offers different solutions regarding the work of the public prosecutor's office, with the entire pre-investigative and investigative procedure in the jurisdiction of the public prosecutor, meaning that the work of the investigative judges in the investigation is now transferred to the public prosecutor. The prosecutor is now the lead investigator, thus strengthening the role of the public prosecutor in the fight against perpetrators of crime prosecuted *ex officio*.

³⁴European Commission Report on Macedonia, 2016.

³⁵The World Economic Forum determines the value of this indicator based on the annual survey of business leaders at a global level, where respondents can respond regarding the judiciary's independence of a certain country, using grades between 1 and 7. Grade 1 would indicate that the judiciary is under large influence from the government, citizens or companies, while grade 7 would indicate its full independence.

³⁶This indicator is based on responses by the general population and qualified respondents, ranking between 0 and 1, with 1 indicating strict observance of the rule of law.

For the purpose of improved functioning and enhancement of the judicial system regarding prevention and fight against corruption in judiciary, the State Commission for Prevention of Corruption and the Judicial Council of the Republic of Macedonia signed a Protocol for cooperation in the prevention and repression of corruption and conflict of interest. The protocol is under continual analysis over enhancement of cooperation, coordination and joint activities. In this regard, institutions meet at least once a year for the purpose of its evaluation, cooperation and experience exchange. In this regard, inter-agency cooperation is crucial because this is a complex problem that encompasses numerous jurisdictions.

3.3* Competence

In 2015, the Academy of judges and public prosecutors "Pavel Shatev" held 267 continual trainings for 5,888 participants. Twelve of the 13 candidates for judges and public prosecutors of the fifth generation who completed the basic training in February 2016 are already employed in the basic courts and the basic public prosecutor's offices. Thirty-seven new candidates have enrolled for basic training in the Academy.³⁷

On 30 August 2016, the Academy of judges and public prosecutors released a call for participants in the basic training, for the purpose of meeting the required number of public prosecutors in compliance with the December 2015 amendments. In the meantime, there is no information available over the procedure for selection of the sixth generation of participants in the basic training,³⁸ with the final ranking is still not compiled due to the appeals procedure before the Administrative and the Higher Administrative courts.³⁹

The thing we can highlight as a positive aspect, but is also of enormous importance for the Academy of judges and public prosecutors, as well as other institutions, is the attendance at numerous conferences and workshops on best practices and the possibilities for their implementation, towards improved functioning and enhancement of the judicial system. Continual training is the most comprehensive segment in the Academy's operations, encompassing target groups in the three main training programmes: general programme for mandatory continual training, specialized programme for mandatory continual training, and specialized programme for voluntary continual training. The plan of activities within the voluntary continual training for staff in courts and public prosecutor's offices was compiled in August 2016, as well as the plan of activities within the mandatory continual training for judges, court presidents and public prosecutors in public prosecutor's offices, both for period September-December 2016.

More attention needs to be given to the development of the so-called "soft skills", including ethics, integrity and communicative skills, especially for court presidents. In addition, practice has shown that courts do not have sufficient knowledge of the EU law, possibilities for its direct application, as well as the case law of European courts.

Turning to cooperation with civil society organizations, it seems that the number of civil society organizations collaborating with the academy has started to drop. The academy often tends to be fully involved in the organizational aspects of projects of civil society organizations, which are most often predetermined by donors.

Some consider that the recruitment of trainers in the academy is not transparent, because the same judges are recruited as trainers on several occasions. It seems that the current institutional setup does not leave room for a professional civil society organization to offer continual education of judges. Even the Macedonian Bar has stopped with its training for judges. Only courses held at the academy are considered mandatory for judges.⁴⁰

Despite the fact that the academy is still lacking supporting staff, it has begun measuring the efficiency of trainings in collaboration with outsourced entities, analysing if they result in changes in the conduct and proceedings of judges and public prosecutors.

³⁷European Commission Report on Macedonia, 2016.

³⁸<http://www.ipacademy.gov.mk/upload/PDF%20Files/Priracnik%20modul4.pdf>

³⁹<http://www.osce.org/skopje/123941?download=true>

⁴⁰<http://all4fairtrials.org.mk/wp-content/uploads/2016/06/Macedonia-country-report-MKD.pdf>

4.* Conclusions

The Republic of Macedonia was one of the first countries in the region to launch judiciary reforms in the context of the Euro-integration process, by adopting the Strategy for Judicial Reforms 2004-2007 and adopting the constitutional amendments in this field. More than a decade after the start of these significant reforms, one can conclude that the legal framework in the Republic of Macedonia incorporates almost all significant international standards for an independent and impartial judiciary. There are segments in the domestic legal framework that have room for improvement, of which only a few are essential. However, harmonization primarily refers to the legal framework and the national standards, not their application and the court practice. More efforts are required for protection of the judiciary's independence and providing conditions for impartiality of judges, in order to improve the quality of justice and facilitate the access to justice.

European Commission reports note the need for more efforts in de-politicization of the judiciary in line with the Urgent Reform Priorities, as well as securing improved transparency and objectivity in the system of election and promotion. Despite the fact that the Judicial Council is established "by the judges for the judges", including majority of votes to members coming from the order of judges, the influence of the other powers is still considered to be quite strong in practice. There are repeated reports of selective justice and political interference in certain high-profile or politically sensitive cases. This puts a stain on the already functional judicial system.

The conditions for election of a court president do not provide for proper assessment of the managerial capabilities of the court president candidates. There is no option in the national legal order to file a complaint to a Judicial Council decision over an election of a judge. The system of judge evaluation puts the focus on the quantitative criteria and less on the basic competencies of the judges, while regulations leave the room for a judge to be sanctioned based on the number of altered decisions by a higher-instance court. Unprofessional execution of the function as grounds for dismissal can be broadly interpreted, because regulations do not provide a more precise definition.

Regulations in the judicial field are often amended by using a fast-track procedure, not including proper analyses, consultation and public debate. Internet access to legislation and case law is available, but inconsistent in practice.

The European Commission notes that the 2016 budget of Macedonian courts is significantly lower compared to the European average per capita, while the number of judges and court staff per 100,000 citizens is significantly higher than the European average, which raises questions over the efficiency and the proper distribution of resources.⁴¹ Despite the fact that the Judicial Budget Council is formally operational, in practice it is forced to accept the restraints imposed by the Ministry of Finance, which do not consider the legally projected amount of 0.8% of the GDP intended for public expenditures in the judicial system.⁴²

The monitoring of court proceedings continues to point to the fact that the most common reason for postponement of proceedings is the failure to escort detainees and inmates, most often due to lack of conditions for their escort to the court in order to get a fair trial within a reasonable time.⁴³ The latest

⁴¹According to the public consumption in the judicial system, Macedonia spends less per capita than any other EU member-state, but when taking into account the share of this consumption in the GDP, Macedonia is measured in certain years with the top five EU countries regarding public consumption in the judicial system.

⁴²Law on Judicial Budget "Official Gazette of the Republic of Macedonia, no. 60/2003, 37/2006, 138/2008, 145/2010.

⁴³Final conference for presentation of the objectives and achievements within project "Capacity Building of the Law Enforcement Agencies for Appropriate Treatment of Detained and Sentenced Persons", funded by the European Union and implemented by the Council of Europe.

European Commission Report on Macedonia highlights the consistency in rulings as a continual challenge, although the Supreme Court has continued to invest efforts in this regard.

Internationally accepted indicators of perception by the public, or certain segments of the public, point to a drop in the trust in judiciary, meaning the public opinion over judiciary's independence in Macedonia has deteriorated.

The academy of judges and public prosecutors requires larger financial and human resources in responding to the enormous needs, including those related to the development of the so-called "soft skills" and the needs for training in EU law and its implementation.

5.* RECOMMENDATIONS

Based on the aforementioned claim over the need for full implementation of essential reforms, the following priorities are seen as having priority:

1. Creating conditions for escorting detainees and sentenced persons in order to observe the court proceedings and timeframes.
2. The Law on Courts should include a body competent to provide judges with easy access to legislation, international agreements, case law etc.
3. Urgent rearranging of the foundations of the judicial budget towards proper allocation and distribution of funds while observing the principle of judicial independence.⁴⁴
4. Assessment of the effectiveness of the existing judicial network, as well as the effectiveness of the number and type of court staff as foundation for implementation of future reforms while securing citizens' access to justice.
5. It is necessary to introduce a proper system for training and professional advancement of administrative and court staff.
6. Enhancement of judicial statistics by including indicators stipulated in the EU Justice Scoreboard and access to it. It is necessary to ensure improvement of the ACCMIS system in the courts in the processing of data, along with regular publishing of updated statistical data, in line with the Methodology for judicial statistics.
7. Changes in regulations in the judiciary field should be based on prior analysis and broad consultations with all stakeholders, accompanied by dialogue with experts.
8. A constructive and sustainable cooperation of judicial institutions with the civil society sector is a necessity, with the aim of joint implementation, monitoring and evaluation of essential reforms related to the rule of law.
9. Civil society organizations should contribute through their capacities in the process of implementing trainings over EU law in the Academy of judges and public prosecutors.
10. More attention should be paid to the development of the so-called "soft skills" of judges, including ethics, integrity and communication skills.
11. The Academy of judges and public prosecutors should introduce a continual system of monitoring and evaluation of past trainings towards systematic tracking and enhancement of achievements and results.
12. Judiciary should be de-politicized in practice, meaning separation of the judiciary from the influence of the executive branch and political parties, including the election, promotion and dismissal of judges.
13. Reassessment of the criteria for election of a court president, in order to evaluate if they stimulate candidates for court president who have proper managerial skills.
14. Considering possibilities for introduction of the right to a complaint in cases of election of judges and election of Judicial Council members from the order of the judiciary.

⁴⁴Projections over the requested judicial budget along with the projections over the workload should be published prior to their submission to the Finance Ministry.

15. Improving the system for assessment of the work of judges, in order to secure proper balance between the qualitative and quantitative aspects of the work. In this sense, the quality of judges should be evaluated through analysis of the rulings.

16. Undertaking activities towards enhancing the independence and impartiality of the judicial function, integrity of judges and prosecutors, as well as the awareness on their role in Macedonian society.

ANNEX 1:

: Defined indicators for monitoring of the progress in priority “Improving Efficiency and Competence: Overview of Quality, Efficiency and Competence of Judges and Courts”.

Measure-instrument from SEE Strategy 2020	Indicator	Data	Method for collection of information	Risks
Quality	Assessment of EC Report	EC Report	Overview of documentation	Delayed release
	Observance of principles of fair and just trial	Monitoring by independent observers	Monitoring	No relevant information available, insufficient information for assessment
	Gender and just representation of judges	Report of Judicial Council of RM; Report of Ombudsman	Delayed release, no relevant information available	Delayed release, no relevant information available
	Distribution of judges by courts and court departments	Report of Judicial Council of RM	Overview of documentation	Delayed release, no relevant information available
	Number of elected judges in basic and higher-instance courts	Report of Judicial Council of RM	Overview of documentation	No availability of documents, lack of will to take part in interviews, no relevant information available
	Number of dismissed judges	Report of Judicial Council of RM	Overview of documentation	No availability of documents, lack of will to take part in interviews, no relevant information available
	Objective and transparent criteria for election and career of judges, based on the merit principle, applied through transparent and open procedure	Legal provisions and procedures for election of judges	Overview of documentation; questionnaires and surveys with stakeholders	No relevant information available over course of procedure for election of judges

Measure-instrument from SEE Strategy 2020	Indicator	Data	Method for collection of information	Risks
Quality	Assessment of EC Report	EC Report	Overview of documentation	Delayed release
	Objective and transparent criteria for dismissal of judges based on the principle of objectiveness and impartiality	Legal provisions and procedures for dismissal of judges	Overview of documentation: questionnaires and surveys with stakeholders	No relevant information available over course of procedure for dismissal of judges
	Complaints over decisions for election and appointment	Report of Judicial Council of RM	Overview of documentation	No relevant information available
	Complaints over decisions for dismissals			No relevant information available
Efficiency	Assessment of EC Report	EC Report	Overview of documentation	Delayed release
	Meeting annual budgetary requirements of judiciary	EC Report, report of Judicial Council of RM	Overview of documentation	Delayed release, no relevant information available
	Meeting annual budgetary requirements of AJPP	EC Report, report of AJPP	Overview of documentation	Delayed release, no relevant information available
	Plan on requirements and employment in the judiciary	Report of Judicial Council of RM	Overview of documentation	Delayed release, no relevant information available
	Number of cases in courts	Report of Judicial Council of RM	Overview of documentation	Delayed release
	Average timeframe of procedure	Report of Judicial Council of RM	Overview of documentation	Delayed release
	Increased percentage of citizens having trust in judicial system	Surveys	Survey measuring the satisfaction of court beneficiaries	Partiality of responses

Measure-instrument from SEE Strategy 2020	Indicator	Data	Method for collection of information	Risks
	Publishing all court rulings in clear timeframe regulated by law, including complete search options and facilitated access	Court websites	Overview of websites	Delayed release
	Publishing all court rulings in clear timeframe regulated by law, including complete search options and facilitated access	Report of Bureau for country's representation before ECHR	Overview of documentation	
Competence	Assessment of EC Report	EC Report	Overview of documentation	Delayed release
	Number of trainings delivered by the	Report of AJPP	Overview of documentation	
	Number of judges and prosecutors undergoing additional training	Report of AJPP	Overview of documentation	
	Number of participants at basic training in AJPP	Report of AJPP	Overview of documentation	
	Number and quality of lecturers in AJPP	Report of AJPP	Overview of documentation	
	Developed curricula – training programme and its updating in line with strategic national documents	Report of AJPP	Overview of documentation	No relevant information available

