

Monitoring and Evaluation of the Rule of Law in the Republic of Macedonia

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Monitoring and Evaluation of the Rule of Law in the Western Balkans

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LIST OF ABBREVIATIONS

CVE- Countering Violent Extremism

DPA – Democratic Party of the Albanians

DUI – Democratic Union for Integration

EC – European Commission

EPI – European Policy Institute

EU – European Union

IA – Intelligence Agency

MOI – Ministry of Interior

ODIHR – Office for Democratic Institutions and Human Rights

OSCE – Organization for Security and Cooperation in Europe

PAR – Public Administration Reform

PPRM – Public Prosecution of the Republic of Macedonia

SCPC – State Commission for Prevention of Corruption

SDSM (SDUM) – Social Democratic Union of Macedonia

SEC – State Election Commission

SPP – Special Public Prosecutor

UBK (SCID) – Security and Counterintelligence Directorate

UNHCR – United Nations High Commissioner on Refugees

URP – Urgent Reform Priorities

US – United States

USA – United States of America

VMRO-DPMNE (IMRO-DPMNU) – Internal Macedonian Revolutionary Organization – Democratic Party for Macedonian National Unity

TABLE OF CONTENTS

INTRODUCTION	5
CONTEXTUAL BACKGROUND	6
EXECUTIVE SUMMARY	7
1.ELECTIONS:(RE) SET THE DATE FIRST, DO THE REFORMS LATER	8
2.PARLIAMENT: TO DELIBERATE OR NOT TO DELIBERATE, THAT IS NOT THE QUESTION	10
3.GOVERNANCE: NO SEPARATION OF STATE AND PARTY	11
4.CIVIL SOCIETY: (NON-) COOPERATION WITH THE INSTITUTIONS	12
5.CIVILIAN OVERSIGHT OF THE SECURITY FORCES: THE 'VEIL OF IGNORANCE	14
6.PUBLIC ADMINISTRATION REFORM: THE EVERLASTING REFORMS TAKE A BREAK	15
7.REFORM OF THE JUDICIARY: RULING OUT THE RULE OF LAW	16
8.FIGHT AGAINST CORRUPTION: IS THERE A PILOT ON THE PLANE?	18
9.FIGHT AGAINST ORGANIZED CRIME: WE HAVE THE LAWS, NOW WHAT?	19
10.FIGHT AGAINST TERRORISM: POSITIVE DEVELOPMENTS	19
11.FUNDAMENTAL RIGHTS AND PROTECTION OF MINORITIES: MORE PRESSURE, LESS EQUALITY	20
12.FREEDOM OF EXPRESSION: EXPRESSION UNDER OPPRESSION	21
13.MIGRATION AND ASYLUM: MACEDONIA AT THE FOREFRONT	23
14.POLICE REFORM: WHO CONTROLS THOSE WHO CONTROL?	23
15.REGIONAL ISSUES AND INTERNATIONAL OBLIGATIONS: STATUS QUO	24
POLICY RECOMMENDATIONS	24
LIST OF REFERENCES	26

INTRODUCTION

This national study on monitoring and evaluation of the rule of law in Macedonia reflects on the development in the areas concerning the political criteria, Chapter 23 and 24 from the Acquis covering the period after the 2015 Country Report by the European Commission (EC). The purpose of this policy study is to assess the trends in the areas under analysis in the Republic of Macedonia. The study is conducted within the framework of the Monitoring and Evaluation of the Rule of Law in the Western Balkans (MERLIN WB) project conducted by the European Policy Institute – Skopje (EPI), in partnership with Institut Alternativa from Montenegro and the Belgrade Centre for Security Policy from Serbia, and funded by the European Fund for the Balkans. Based on the country studies, a policy paper covering the three countries (Macedonia, Montenegro and Serbia) will be produced.

It is not our purpose to replicate or interpret findings of the EC report. Rather, our intention is to provide a deeper, more focused, comprehensive and objective insiders' view on the development relating to essential issues of the rule of law. Consequently, we aim to offer a qualitative assessment for each of the issues under analysis, going beyond addressing technicalities in the process.

We have based our study on jointly developed methodology. We identified the key areas under analysis: elections; parliament; governance; civil society; civilian oversight over security forces; public administration reform; the judiciary; anti-corruption; organized crime; the fight against terrorism; fundamental rights and the protection of minorities; asylum and migration; police reform; and regional issues and international obligations. Most of the sub-areas correspond to the EC structure of monitoring and reporting in order to ensure comparability. We applied process tracing¹ to determine the trends and examine whether there has been any backsliding or progress with regard to each of the sub-criteria. That being said, rather than seek rigor causality with the process tracing, we instead identify the clues, which can help to affirm or weaken our hypotheses.

¹David Collier, "Understanding Process Tracing," *PS: Political Science & Politics* 44, no. 4 (October 2011): 82330, doi:10.1017/S1049096511001429.

CONTEXTUAL BACKGROUND

The past year has been marked by the continuing political crisis arising from the wiretapping scandal in the Republic of Macedonia. In order to resolve the crisis, the leaders of the four main political parties (SDSM, VMRO, DUI and DPA²), with mediation and pressure from the international community, signed the Przhino Agreement, also known as the June/July Political Agreement (2015).³ The agreement included several key issues that were foreseen as the “cure” for the crisis: early parliamentary elections and organization of a government responsible for their conduct, return of the Opposition in the Parliament and termination of publishing the wiretaps, resolving the wiretapping scandal, implementation of the EC's recommendations for reform (Urgent Reform Priorities (URPs))⁴ and establishment of a Special Public Prosecution (hereinafter SPP) to resolve the wiretapping scandal.

As of March 2016, inter-party negotiations continued without the international mediator Peter Vanhoutte, who had been engaged by the EC in mediation in Macedonia since 2012. Although the EU institutions never gave an official statement as to why Vanhoutte's contract was not extended, one can argue it was due to the fact that towards the end of his mandate he started to advocate openly for essential reforms in Macedonia.

In March 2016, the Constitutional Court made a decision to abolish several articles of the Law on Pardoning from 2009. This controversial decision resulted in President Ivanov giving a collective pardon to 57 suspects against whom criminal charges had been filed and criminal procedures initiated. Even though, following strong pressure from the international community, the pardons were further revoked, this does not change the fact that, for a short period, the President was effectively positioned above the Court and the Assembly.

The whole series of political actions leading to the abolition, once again demonstrated that the governing parties not only lacked political will in resolving the crisis, but were also willing to compromise the constitutional system and the rule of law at any price in order to avoid responsibility for the wrongdoings linked to the interception of communications scandal. “The reparation of damage” in the form of the abolition and its subsequent withdrawal was possible only with strong pressure from the international community.

The recommendation for the start of European Union accession negotiations was “frozen”,⁵ conditional upon the full implementation of the June/July Political Agreement and the URPs. As there was no progress in the implementation of the URPs, the focus of the negotiations throughout the year gradually narrowed down to selected issues related to elections, initially with regard to the voter registration, separation of state and party and media reform.

After two postponements of the scheduled early parliamentary elections, due to non-implementation of the set conditions, Przhino 2 was signed on 20 July 2016, further narrowing down the conditions for elections to the clean-up of the voter lists and media reporting in the pre-election period, following which a pre-election transitional government was appointed.

The citizens' protest continued throughout the year, taking the form of the “Colourful Revolution”, which mainly demanded political responsibility for the wiretapping scandal and supporting the SPP. Following Przhino 2, the intensity of citizens' protests decreased.

²SDSM – Social Democratic Union of Macedonia; VMRO-DPMNE – Internal Macedonian Revolutionary Organization – Democratic Party for Macedonian National Unity; DUI – Democratic Union for Integration; DPA – Democratic Party of the Albanians

³For more information, see: European Policy Institute, “A word is a word” (January 2016), [http://www.epi.org.mk/docs/Network%2023_Implementation%20of%20the%20Political%20Agreement\(1\).pdf](http://www.epi.org.mk/docs/Network%2023_Implementation%20of%20the%20Political%20Agreement(1).pdf).

⁴European Commission, “Urgent Reform Priorities for the Former Yugoslav Republic of Macedonia (June 2015)” (European Commission., June 2015), http://ec.europa.eu/enlargement/news_corner/news/news-files/20150619_urgent_reform_priorities.pdf.

⁵European Commission, “Progress Report for Republic of Macedonia 2015” (European Commission, November 2015).

EXECUTIVE SUMMARY

The past year has remained blighted by the political crisis caused by the illegal interception of communications by high-ranking officials. Major breakthroughs in re-establishing the rule of law did not occur, despite the pressure from the civil sector, both informal and formal. The protests by citizens, in the form of the Colourful Revolution, which were most intense during the spring of 2016, are now less frequent following Przhino 2 and the expectations of the early parliamentary elections. The focus on party bargaining during the Przhino negotiation process, albeit ensuring unobstructed work of Parliament further damaged the decision-making process. At the same time, the decision-making process focused on the fast adoption of Przhino-related provisions and mostly controversial laws and amendments put forward by the Government without broader deliberation.

The international community engaged heavily in the facilitation of negotiations involving the main four political parties, narrowing down the focus to ensuring minimum conditions for free and fair elections. Leverage was limited and difficult, more spared on repairing the damage than on pressure for real reforms. The migration crisis impacted on international leverage, shifting the focus and priorities from democracy to security.

Despite the “constructive participation” in the negotiations, the ruling parties took further action in countervailing the very essence of the agreement, as well as the basic principles of the rule of law, demonstrating a clear lack of political will along with a consistent strategy to postpone political and criminal responsibility by all means possible. The most flagrant example was the abolition by the President of a large number of persons involved in the wiretapping scandal, only one of the means for obstructing the work of the SPP. Furthermore, numerous partisan appointments and recruitments strengthened the linkage between state and party. Finally, following a minimized version of the Przhino Agreement, known as Przhino 2, which narrowed down the conditions for elections to the voter lists and an interim body controlling media reporting in the campaign period, early elections are scheduled for 11 December 2016.

Civil society engaged in more joint actions of advocacy; however, these efforts did not result in an adequate response from the governing parties. Still, the pressure has been increased and actions are more articulated.

It is indubitable that there has been no progress in respect of the rule of law within the past year. Nevertheless, this study indicates that progress in the different areas is varied: only one area has seen some progress and in other areas it has stagnated, while in majority of the covered areas we have noted backsliding. The overall assessment, however, is that, in order to deal with the political crisis and move forward on the Euro-Atlantic path, the incoming government must abandon the trend towards legislative changes and focus on substantial reforms and their proper implementation, while clearly separating the party from the state.

1. ELECTIONS:

(RE) SET THE DATE FIRST, DO THE REFORMS LATER

Despite the changes in the composition of the State Election Commission (SEC) and the complex processes of revision of the voter registry, we can only **assess this area as stagnating**, as the results of the actions performed do not match the expectations. The 2015 trend in terms of legislative changes, rather than substantial reforms⁶ continued, turning the overall reform process into political bargaining. The change in personnel and the creation of ad hoc bodies (see the Freedom of the Media section), instead of reforming the existing ones, are further indicators that the reforms were only intended to have a short-term impact, with no indications as to how the strong politicization of institutions in charge of conducting elections will be resolved.

One of the key issues was **setting the date for early parliamentary elections**. Early elections were firstly scheduled for 24 April 2016 and then for 5 June, but were both postponed. Both agreed dates failed because there was no agreement among the four main political parties that conditions for free and fair elections were met. In February, the governing coalition voted to dissolve the Parliament, regardless of the position taken by the opposition party SDSM.⁷ Following negotiations and facilitation by the international community, the Parliament reconvened, on the basis of the Constitutional Court's decision regarding the cessation of all electoral processes, at the behest of the DUI.⁸ Some believed that these series of actions pushed the Parliament to act in a legal grey area.⁹

The international community, which was, in the beginning indecisive in terms of the level of interference in setting the date of the elections, gradually took the stance that the agreement on the date of the elections should be taken by the four main parties as signatories to the Przhino Agreement, on the basis of minimum objective criteria. This stance followed the tactless statement by Commissioner Johannes Hahn that agreement by three of the parties was enough to schedule early elections.¹⁰ Przhino 2 set the date for elections to be 11 December 2016.¹¹ Despite this election date being agreed and so far respected, the results of the implemented electoral reforms are modest to date.

The focus of electoral reform was on strengthening the composition and capacity of the State Electoral Commission (SEC), 'cleansing' voter lists and media reporting. Thus, the number of members of the **SEC** increased from seven to nine and the number of independent experts on the SEC increased to three, while six are now nominated by the four major political parties. The President and the Deputy President were elected from among the independent experts. This was achieved with a **five-month delay**. Additional staffing was difficult and many positions remained temporary, instead of permanent.

The SEC did not work in a transparent manner, as only two sessions of the SEC were public and its decisions are not published on the website in a systematic and timely fashion, despite its legal obligations to do so. However, **the SEC has made significant efforts in revising the voter lists, including cross-checking 11 state institution databases and field inspections and verifications**.

In an attempt to increase confidence in the verification of the voter lists, the SEC has also provided a **public inspection of these lists**, allowing each citizen to inspect and check their own data electronically. The lists were removed due to a decision by the Directorate for Personal Data Protection to prohibit the publication of voters' personal

⁶Ibid.

⁷telma.mk, "ВМРО-ДПМНЕ и ДУИ заеднички предложија распуштање на Парламентот да се усвои денеска, а да важи од 24-ти февруари (In English: VMRO-DPMNE and DUI together proposed dissolution of Parliament to be voted today, and do be valid from April 24) | telma.mk," Telma TV website, (n.d.), <http://telma.com.mk/vesti/vmro-dpmne-i-dui-zaednichki-predlozhija-raspushtanje-na-parlamentot-da-se-usvoi-deneska-da>.

⁸The jurisprudence of the Constitutional Court was inconsistent, as it had declared itself as not competent in the case of two previous similar requests.

⁹Artan Sadiku and Katerina Kolozova., "Towards a Solution for the Political Crisis in Macedonia" (Institute of social sciences and humanities - Skopje, June 2016), <http://www.isshs.edu.mk/index.php?newsinfo=348>.

¹⁰meta.mk, "Hahn: It Does Not Matter If Everyone Participates, the Election Has to Be Democratic," Meta.mk, November 3, 2015, <http://meta.mk/en/hahn-it-does-not-matter-if-everyone-participates-the-election-has-to-be-democratic/>.

¹¹Delegation of the European Union to Macedonia, "European Union - EEAS (European External Action Service) | Agreement between the Four Political Parties 20 July 2016," July 2016, http://eeas.europa.eu/delegations/the_former_yugoslav_republic_of_macedonia/press_corner/all_news/news/2016/2016-07-20_agreement_en.htm.

data, but publicized again once all changes have been made in order to provide citizens with another chance to check their data.¹²

Initially, the number of identified problematic voters reached 300 000, while, by the end of the process, which also included field checks of 89 000 voters,¹³ most of these were validated. Due to being identified as deceased, 1 100 persons were removed.¹⁴ From the list of so-called contentious voters, which consisted of 39 502 persons, after a public call, the SEC was not in a position to validate 30 477 citizens, whose details were erased from the register. However, these citizens have until 11 November 2016¹⁵ to ask to be re-entered in the register.

The complex and cumbersome process has ended with 1 783 715 registered voters, with a possibility (of a low number of) additional entries until 11 November. For comparison, the number of voters during the early elections of 2011 was 1 821 122.

One of the most problematic issues, on which representatives of parties in the SEC had different positions was the validation of voters who do not have any proof of residence, whereby the SEC accepted the letter of the Deputy Minister, while the then Minister of Interior from the Opposition declined to sign it, although this was required by the Law. Another issue involves the “Pustec voters”,¹⁶ which was easily “addressed”, such that the Ministry of Interior has cancelled the ID cards of 349 persons due to not having the right to register their residency at a particular address.¹⁷ How these persons got on the lists in the first place was not a cause for concern for the SEC. Furthermore, the SEC is passive towards the continuing and credible allegations of the intimidation of voters reported by domestic NGOs and international organizations. This narrow understanding and practising of the responsibility of the SEC do not justify the investments made in it and the high public expectations. Consequently, despite its new composition under the Przhino Agreement, **the SEC has not managed to win over the confidence of the public.**

The results of the complex operation of 'cleansing' voter lists are questionable, as many of the initial questions leading to this operation were not essentially addressed, or, at least, explained to the public in a non-partisan manner.

The debate around **facilitating an environment conducive to fair competition among political subjects was mostly focused on media reforms** (See the Freedom of Expression section), so as to provide each party with fair representation by media outlets. The substantial amendments to the Electoral Code and the Law on Audio and Audiovisual Media Services made in November 2015 resulted in the proper and robust regulation of the airing of party campaign videos and commercials on the public broadcaster during campaign time. Although the reason behind this was to avoid over-representation of one party at the expense of another, these changes do no good in terms of stimulating self-regulation of the media, but rather result in an **intrusion into editorial independence**.¹⁸ In addition, their impact is limited, as they refer to the election campaign period.

¹²OSCE/ODIHR, “The Former Yugoslav Republic of Macedonia. Early Parliamentary Elections Scheduled for 5 June 2016. OSCE/ODIHR Election Observation Mission Final Report” (OSCE Office for Democratic and Human Rights, July 2016).

¹³OSCE/ODIHR, “The Former Yugoslav Republic of Macedonia. Early Parliamentary Elections Scheduled for June 5 2016. OSCE/ODIHR Election Observation Mission Final Report” (Warsaw: Organization for Security and Cooperation in Europe Office for Democratic Institutions and Human Rights, June 8, 2016), <http://www.osce.org/odihr/elections/fyrom/251456?download=true>.

¹⁴OSCE/ODIHR, “The Former Yugoslav Republic of Macedonia. Early Parliamentary Elections Scheduled for 5 June 2016. OSCE/ODIHR Election Observation Mission Final Report.”

¹⁵State Electoral Commission of the Republic of Macedonia, “Записник од 49-Та Седница на Државната изборна комисија (In English: Minutes from the 49th Meeting of the State Electoral Commission)” (State Electoral Commission of the Republic of Macedonia, August 2016), https://drive.google.com/file/d/OB8ZpCwro9h-zM2RDODRVRjFwQzg/view?usp=embed_facebook.

¹⁶These were citizens living in the Republic of Albania who were allegedly added to the voter lists in the Municipality of Centar during the last local elections, so as to influence the outcome of the elections.

¹⁷OSCE/ODIHR, “The Former Yugoslav Republic of Macedonia. Early Parliamentary Elections Scheduled for 5 June 2016. OSCE/ODIHR Election Observation Mission Final Report.”

¹⁸ibid.

▶ 2. PARLIAMENT:

TO DELIBERATE OR NOT TO DELIBERATE, THAT IS NOT THE QUESTION

The trend towards low parliamentary deliberation and frequent legislative changes without prior broader consultations continued. The Parliament continued to be a “voting machine” of the Government, while neglecting its role in supervising the work of the latter. In addition, the parliamentary events that happened in the past year strengthen our hypothesis that there has been no progress during this period in respect of the work of the Parliament. Rather, there has been **stagnation since last year's backsliding** caused by the Opposition's decision to boycott the Parliament due to the wiretapping scandal.

Despite the need for improvements in the political dialogue and representation, as well as in legislative and oversight functions¹⁹ in light of the political crisis, the work of the Parliament has not improved in the past year. The needed reforms outlined in the Przhino Agreement assumed many changes in the legislative framework.²⁰ However, most of these changes did **not undergo any meaningful parliamentary deliberation nor wider consultation** with key stakeholders, partly due to the deadlines stipulated in the Przhino Agreement and partly due to the fact that the negotiations for the legislative changes were made behind closed doors, during the political negotiations for the implementation of the Przhino Agreement, between the four biggest political parties.

Although the Opposition returned to the Parliament on 1 September 2015, in compliance with the Przhino Agreement, **the level of deliberation did not significantly improve**. Out of 574 laws voted on in 2015, 339 were voted on in a shortened procedure and one in an urgent procedure, compared with 234 in a regular procedure.²¹ These numbers only confirm that the majority of laws passed in the Parliament undergo very little or no deliberation.

During September 2016, both the **SPP and the Public Prosecutor of the Republic of Macedonia (PPRM) presented their report** to the Parliamentary Committee on the Political System and Intercommunity Relations. The parliamentary and public discourses regarding the reports on the work of these two institutions were different. The parliamentary discussion on the SPP's report lasted four days and predominantly included questions that were in no way related to the report itself, but rather to the private life of the Special Prosecutor. There were offences directly related to Mrs. Katica Janeva, as well as attempts by MPs from the VMRO-DPMNE to discredit the work of the Prosecutor and the SPP.²² Media reports on the events involving the Parliamentary Committee differed, depending on whether the media supported or criticized the Government. At the same time, there was very little to no information regarding the report of the PPRM to the Committee on the Political System and Intercommunity Relations. The **difference in treatment** by the Parliamentary Committee members compared to that of the governing party towards the SPP and the PPRM is yet another indicator of the biased approach and the continuous attempts of the ruling party to discredit the work of the SPP.

¹⁹ European Commission, "Progress Report for Republic of Macedonia 2015."

²⁰ The reforms required amendments to the following laws: the Electoral Code, the Law on Audio and Audiovisual Media Services, the Law on Government, and Drafting a Lex Specialis for the Special Public Prosecutor.

²¹ Parliament of the Republic of Macedonia, "Извештај за работата на Собранието на Република Македонија за периодот 01.01.2015 - 31.01.2015 (In English: Report for the Work of the Parliament of the Republic of Macedonia for the Period 01.01.2015 - 31.01.2015)" (Skopje: Parliament of the Republic of Macedonia, n.d.), <http://www.sobranie.mk/content/izvestai/2011-2014/IZVESTAJ%20ZA%202015%20godina.pdf>.

²² Neda Chalovska, Voislav Stojanovski, and Aleksandar Jovanovski, "Shadow Report on Chapter 23" (Helsinki Committee for Human Rights of the Republic of Macedonia and European Policy Institute - Skopje, May 2016), <http://www.epi.org.mk/docs/Shadow%20report%20-%20web.pdf>.

▶ 3. GOVERNANCE:

NO SEPARATION OF STATE AND PARTY

The analysis of events and the state of affairs regarding governance in the past year highly strengthens our hypotheses that **governance has seen further backsliding**. The trend towards state capture has continued, as party domination is even more visible than in the previous year, consequently preventing the separation of state and party.

In its 2015 report, the EC noted that the governance of the country is strained by the ongoing political crisis, for which only limited responsibility was taken.²³ The long-lasting negotiations have further deepened the crisis, thus causing governance to remain strained by it. The trend towards state capture is highly visible and more salient than ever.

The governing coalition continued to be stable, even though the political crisis has **increased the distrust between the DUI and the VMRO-DPMNE**. While they have invested efforts to preserve the image of guardians of interethnic tolerance and stability among the public, ruptures along this crucial line are evident. For example, the review of the Ohrid Framework Agreement has reached a deadlock ever since the VMRO-DPMNE distanced itself from the review.²⁴

Interestingly, despite his mandate having ended, former Prime Minister Gruevski often appears to be undermining the new Prime Minister, Emil Dimitriev. In an attempt to continue his omnipresence in the media and to reaffirm himself as a people's person, Gruevski (this time only in the role of Party President) has made numerous public appearances on construction sites where Ministers and civil servants are seen reporting to him about the state of affairs regarding projects. In contrast, Prime Minister Dimitriev is rarely seen in public. This only further strengthens our hypothesis that there has **been no attempt to separate the party from the state**.

As the dates for elections were set and subsequently cancelled, the composition of the Government also changed, due to the Przhino provision to a transitional one 100 days before the elections.²⁵ Following the cancellation of the elections on 5 June 2015, the Government was reinstalled, without members of the Opposition. However, all members of the Government from the coalition partner, the DUI, were replaced following one more leak concerning intercepted communications. The Opposition once again entered the Government following the Przhino 2 Agreement. Consequently, **the composition of the Government has rather changed in the last year; however, this has had no major impact on its style of work**. This is one more indicator of the predominance of the parties in political life and decision-making, rather than any functioning of the institutions. The entry of Opposition members in the Government was marked with frequent accusations among the highest representatives of the Ministries. However, it should be admitted that the appointment of Ministers from the Opposition led to irregularities and more control from within the Government. Yet, the solution is not sustainable, as, in practice, this solution has not led to further strengthening of the institutions, but rather to the opposite, namely, **even more predominance of parties in political and public life in general**. In addition, **the changes of Ministers triggered changes of personnel, which caused further insecurity and uncertainty among the administrative servants**.

The ongoing political crisis resulted in **neglecting and marginalizing the commitment to the EU in the past year**, despite the declarative commitments. The Government announced the elaboration of an Action Plan for the implementation of the URPs, which was not officially deliberated on, or presented, but could be found on the website of the Secretariat for European Affairs in February 2016. The plan did not substantially address the Main Recommendations of the Senior Experts' Group on Systemic Rule of Law Issues (Priebe Report)²⁶ and the subsequently issued by the EC URPs.

²³European Commission, "Progress Report for Republic of Macedonia 2015".

²⁴Alsat-M, "VMRO-DPMNE целосно се дистанцира од анализата на Рамковниот Договор (In English: VMRO-DPMNE Is Fully Distancing Itself from the Analysis of the Framework Agreement)," Алсат-М, December 9, 2015, <http://alsat.mk/News/225526/vmro-dpmne-celosno-se-distancira-od-analizata-na-ramkovniot-dogovor>.

²⁵According to the Przhino Agreement, transitional governments appointed 100 days before elections, with a mandate to organize elections should include Ministers of Interior, Labour and Social Affairs nominated by the parties of the Opposition. Additional Deputy Ministers are appointed to the same Ministries nominated by the VMRO-DPMNE, and in the Ministries of Finance, Agriculture, Forestry and Water Supply, and Information Society and Administration nominated by the SDSM].

²⁶Reinhard Priebe, "The Former Yugoslav Republic of Macedonia: Recommendations of the Senior Experts' Group on Systemic Rule of Law Issues Relating to the Communications Interception Revealed in Spring 2015" (European Commission, June 8, 2015), http://ec.europa.eu/enlargement/news_corner/news/news-files/20150619_recommendations_of_the_senior_experts_group.pdf.

Nevertheless, while the implementation of the URPs was also on the agenda of the Przhino negotiations, the **issues that directly concerned the upcoming elections prevailed**, thus pushing the **full implementation of the URP recommendations to the margins of the political dialogue**. Given the decision to postpone the start of EU accession proceedings taken last year, is of utmost importance for the URP recommendations to be fully implemented, should Macedonia wish to “unfreeze” the recommendation.²⁷

▶ 4. CIVIL SOCIETY: (NON-) COOPERATION WITH THE INSTITUTIONS

The cooperation between the Government and civil society has been backsliding. Civil society organizations (CSOs) continued to provide input on policy issues and be critical of the Government when necessary. The protest movements, too, played their role in the course of the political crisis, coming up with their proposals and demands. The Government's long-lasting attempts to isolate and discredit the work of the civil society sector continued throughout 2016.

The **acknowledged progress** in the 2015 Country Report in terms of cooperation of the Government with CSOs **has not continued**. While consultations between CSOs and the Government were held up until the beginning of 2015, CSOs reported that the draft **Decision for Establishment of the Council for Cooperation Between the Government and the Civil Society** (hereinafter the Decision) “underwent drastic changes in the articles regulating the procedure for election of representatives from the associations and foundations and the election of the Council’s president”²⁸ What is more, the Decision itself was adopted only two working days after it was presented, leaving **no time for substantive deliberation and consultation with CSOs**. The Decision foresees that the majority of the Council members to be representatives from the state administration (14 members from a total of 27), as well as that the Government will select the President from these representatives. Contrary to this, the proposed version of the second draft envisaged a more transparent and open process for the selection of Council members.²⁹

The Balkan Civil Society Development Network and the Macedonian Center for International Cooperation have called on all interested organizations to support a **statement**³⁰ to be sent to the General Secretariat of the Macedonian Government, demanding for the above-mentioned changes to be removed from the draft Decision. As no measures by the Government were undertaken to resolve the issue and revise the Decision, the **signatories of the statement declared a boycott of the work of the Council**. This presents only a continuation of the practice of the Government and governmental institutions to invite CSO representatives to take part in policy discussions without taking their recommendations into account in further steps of the decision-making process. This being said, while **the policy-making process is formally “inclusive”, in practice CSOs' input is not fully appreciated and considered**.

The dissatisfaction with the unfolding of the political crisis and the Parliament's decision to hold elections on 24 April, predominantly supported by the VMRO_DPMNE, without the conditions for free and fair elections still not being met, has also resulted in a **series of joint letters to EC, EU and USA representatives**.³¹ **Signed by over 70 CSOs and publically presented in front of the EU Delegation in Skopje**, the European institutions, representatives and diplomats were asked to act in accordance with European values, further support the process of reforms and insist on the fulfilment of the conditions for free and fair elections before an election date is scheduled. A joint announcement³²

²⁷“Priebes Report Contains Reform Instructions Upon Which Macedonias Recommendation for EU Negotiations Depends - Independent.mk,” Independent - The Macedonian English News Agency, n.d., <http://www.independent.mk/articles/32715/Priebe%27s+Report+Contains+Reform+Instructions+Upon+Which+Macedonia%27s+Recommendation+for+EU+Negotiations+Depends>.

²⁸Balkan Civil Society Development Network, “Series of Concerns over Sudden Adoption of the Decision for Establishing Government Civil Society Council in Macedonia,” <http://www.balkancsd.net, n.d., http://www.balkancsd.net/series-of-concerns-over-sudden-adoption-of-the-decision-for-establishing-government-civil-society-council-in-macedonia/>.

²⁹Macedonian Center for International Cooperation and and Balkan Civil Society Development Network, “Reaction to the Adoption of the Decision on the Establishment of the Council for Cooperation between the Macedonian Government and Civil Society,” www.balkancsd.net, n.d., http://www.balkancsd.net/novo/wp-content/uploads/2016/05/94-3-40-31-Reaction-to-the-Decision-Est-Council_final.pdf.

³⁰Ibid.

³¹ www.okno.mk, “Писмо до ЕУ и САД од 78 организации: Бараме вистински реформи за фер и демократски избори! (In English: A Letter to EU and the USS from 78 Organisations: We Ask for Real Reforms for Fair and Democratic Elections),” Okno, January 2016, <http://okno.mk/node/53125>.

³² “Public Announcement on EU-USA Assessment on Elections in Macedonia,” February 18, 2016, <http://www.epi.org.mk/docs/public-announcement-on-EU-USA-assesment-on-elections-in-Macedonia-18022016-EN.pdf>.

on the **EU-USA assessment of elections**³³ was also sent to EU and US representatives, the heads of diplomatic missions and EC and EP representatives, where a group of CSOs and think tanks reiterated their position that it is not possible to hold elections on 24 April, given that neither the Przhino Agreement nor the URPs had been implemented. Lastly, a major attempt to contribute to resolving the crisis was the initiative of several CSOs, academics and experts in producing the **Blueprint for Urgent Democratic Reforms**.³⁴ With this blueprint, civil society provided guidelines and detailed actions for achieving progress in the following policy areas: public finance and the economy; the judiciary; the fight against corruption; elections and the electoral system; the media; public administration; control over police work, security agencies and counterintelligence agencies; parliament; civil society; social protection, welfare and sustainability; education and youth policies; and the environment. All of recommendations were meant to contribute to restoring the democratic standards and values, as well as to regaining citizens' trust in the key public institutions. The blueprint included a recommendation to form an expert government in order to set a level playing field for elections.

Last but not least, **CSOs have demanded, on several occasions, to be included in the Przhino negotiation process**, either through discussions and consultation, or through monitoring. While this should have happened under the Annex to the Przhino Agreement signed in July 2016, it was **not implemented in reality**.

The political crisis has resulted in multiple protest movements since 5 May 2015, yet the biggest and the longest-lasting one was the Protestiram (I Protest) movement, which later became the **Colourful Revolution**. While previously held predominantly as protest marches, the **President's decision to pardon 57 suspects** against whom criminal charges had been filled and criminal procedures initiated stirred up the movement. The protesters came up with their own **demands**,³⁵ including revoking the pardon and the resignation of President Ivanov, revoking the decision on holding elections (this time on 5 May) before key criteria were met and forming a special court unit within the Criminal Court for handling the cases of the SPP. While being held every day until the beginning of summer 2016, the protests are now less frequent and predominantly held in support of the SPP.

In an environment deeply divided along partisan lines, it was easy for the ruling party to spin all of civil society's actions and present them as collaborators of the Opposition. What is more, a few pro-Government media even published documents on the income of several members of prominent CSOs, academics and experts,³⁶ so as to further distort the reality and frame the public discourse in a way that benefits the ruling party. Later, this publication of personal records was ruled down by the Directorate for Data Protection.

³³Delegation of the European Union to Macedonia, "Joint EU-US Letter to Prime Minister Dimitriev," January 29, 2016, http://eeas.europa.eu/delegations/the_former_yugoslav_republic_of_macedonia/press_corner/all_news/news/2016/29-01-29_jointletter_en.htm.

³⁴"Blueprint for Urgent Democratic Reforms," June 2016, http://www.epi.org.mk/docs/Blueprint_ANG_WEB.pdf.

³⁵www.protestiram.info, "Proclamation for Joint Action. Protests Macedonia 2015/2016," April 2016, http://protestiram.info/?page_id=40.

³⁶kurir.mk, "Има пари, нема мир – 6.000.000 евра за платеничката војска на Сорос (In English: There Are Money, There Is No Peace - 6.000.000 Euros for Soros Mercenary Army)," Kurir.mk, May 27, 2016, <http://kurir.mk/makedonija/vesti/ima-pari-nema-mir-6-000-000-evra-za-platenichkata-vojska-na-soros/>.

▶ 5. CIVILIAN OVERSIGHT OF THE SECURITY FORCES: THE 'VEIL OF IGNORANCE'

The functioning of the oversight bodies continued to be very weak and obstructed by the ruling coalition. The Committee for supervising the work of the Security and Counter-intelligence Directorate (UBK) and the Intelligence Agency (IA) as well as the Committee for oversight of the implementation of the special investigation into the interception of communications by the Ministry of Interior (MOI), the Financial Police Management, the Customs Management and the Ministry of Defence did not achieve any substantive results and/or conclusions, which supports our hypothesis of **backsliding in this area**.

Much like in 2015, sufficient **responsibility** for the failure of the intelligence service to prevent the interception of communications **has not been taken**. There are two committees: one has oversight of the security forces within the Parliamentary Committee for supervising the work of the UBK and the IA, while the other has oversight of the implementation of the special investigation into the interception of communications by the Ministry of Interior, the Financial Police Management, the Customs Management and the Ministry of Defence. Nonetheless, following the work on the sessions of the former committee is solely based on media reports, given that, other than the agenda, there are **no conclusions or minutes from the meetings** published on the website of the Parliament, which indicates a **lack of transparency**.

During 2016, the **committee for supervising the work of the UBK and the IA** held four meetings from January to August, deliberating on the reports on the security agencies, made visits to the agencies, reported on the work of the committee, and collected information regarding the events related to the equipment for expenses in the UBK and the current security situation in Macedonia pertaining to the migration crisis and possible terrorist threats.

Upon the initiation of the SPP's third case for **destroying the equipment for the interception of communications**,³⁷ the public legitimately questioned the ability of the committee to monitor the work of the UBK, given that they had no record of the equipment in the first place. However, the President of the committee stated that, even after requests were made, the UBK did not provide a detailed report of all of their equipment and the technical specificities.³⁸ There are **no public records as to the conclusions made by the committee** upon the review of the working plans of both the UBK and the IA for 2015.

The **committee for oversight of the implementation of the special investigation into the interception of communications by the MOI, the Financial Police Management, the Customs Management and the Ministry of Defence** has held a total of four meetings since its establishment in 2015, with its members having adopted the rulebook at the first meeting, without representatives from the Opposition being present. That said, the committee **failed to adopt the report on their work in 2015**, while members from the different political parties continuously transferred the blame from one to the other.

Both committees failed to present reports on the interception of communications scandal, as required by the Przhino Agreement.

³⁷ Deutsche Welle (www.dw.com), "Уништувањето на опремата за прислушување е третиот случај на СЈО (In English: Destroying of the Equipment for Interception of Communications Is the Thrid Case of the SPP)," DW.COM, March 30, 2016, <https://goo.gl/CBlSz5>.

³⁸ Deutsche Welle (www.dw.com), "Локвенец: Од УБК Баравме Податоци За Опремата, Ама Не Ни Ги Дадоа! (In English:Lokvenec: We Requested Data on the Equipment from UBK, They Did Not Prove Them to Us)," DW.COM, March 31, 2016, <https://goo.gl/7GZC3a>.

▶ 6. PUBLIC ADMINISTRATION REFORM

THE EVERLASTING REFORMS TAKE A BREAK

Even though public administration reform (PAR) has been perceived to be among the most important and urgently needed reforms in respect of EU integration, it has been sidelined. Moreover, even though separation of state and party was one of the benchmarks for having free and fair elections, the continued pressure over the administration on behalf of the governing party continued. The work on a new strategy was launched. Equitable representation has improved, but the concepts of integration in the workplace and diversity management have not been applied. Therefore, there has been no progress in the field of PAR, but rather **stagnation** for the past year.

Similar to some other processes, in light of the political crisis PAR was also **neglected**, thus there have been no major changes since the last assessment of the EC in respect of PAR. The process of **drafting a new strategy for PAR is ongoing** and includes representatives of relevant institutions and CSOs. However, as there is **no official evaluation** of the previous PAR strategy, the process of drafting a new one is significantly burdened.

The **concerns regarding the implementation of the merit system and principles still remain**, especially as the country has been in a pre-electoral period since the beginning of the year. Even though the Electoral Code was amended to include a moratorium on new recruitments during the election campaign period, the existing administrative body remains under pressure since elections have been postponed twice already. Consequently, the political crisis and perspicuous focus on elections have resulted in **further politicization** of the public administration. The changes in the personnel, which followed changes of Ministers, have caused further instability among administrative servants, especially in the Ministry of Interior.

EPI's recent analysis³⁹ suggests that one of the greatest achievements from the implementation of equitable representation in the public administration is the numerical increase in non-majority employees in the administration. However, the main barrier for further implementation, along with diversity management and achieving equality in the workforce, is the politicization of the administration. Employment and promotion based on party membership hinder the proper implementation of equitable representation and undermine opportunities for creating an administration that is representative of all groups in society, appreciative of diversity and free of discrimination.

Equitable representation is increasingly considered as a monopolized process, which applies only to the Albanian community, while smaller non-majority communities have been sidelined in the process. Furthermore, there seems to be a lack of commitment within leadership structures for the implementation of equitable representation and diversity management. The members of non-majority communities are mostly present in the institutions run by members of these communities.⁴⁰

³⁹ Malinka Ristevska Jordanova et al., Life and Numbers. Equitable Ethinc Representation and Integration at the Workspace (European Policy Institute - Skopje, 2016), http://www.epi.org.mk/docs/Life%20and%20numbers_ENG_Final%20version.pdf.

⁴⁰ibid.

7. REFORM OF THE JUDICIARY

RULING OUT THE RULE OF LAW

The pressure imposed by the Executive Branch on the Judicial Branch in times of serious political crisis is highly visible. Instead of reform, **'soft, reform-like wrapping'** is being offered, which provides the form, but not the substance of reform. The creation and functioning of the SPP - which promotes a different approach to carrying out this duty - has also "woken up" and provoked reactions from the "regular" Public Prosecutor while the court decisions so far on the SPP's proposals indicate a strong influence from the corrupted Government over the Judiciary. This reinforces our hypothesis that the situation regarding the **Judiciary has been backsliding**.

The past year was marked by a **serious change in the judicial framework** system with the establishment of the SPP, the institution in charge of investigating and prosecuting cases surrounding and arising from the unauthorized interception of communications. Looking at the Judiciary as a whole, although the SPP had the spotlight in the past year, there have been numerous developments, which have caused **further backsliding** in this area.

The **reforms in the area of the Judiciary have not been substantially implemented**. Instead, only **'soft, reform-like wrapping'** is being offered, which takes the form, but not the substance, of the reforms.⁴¹ Towards the end of 2015, a consultative meeting with relevant stakeholders was organized by the Ministry of Justice, where a **draft strategy for the reform of the Judiciary** was presented. Nevertheless, adopting a strategy in a highly sensitive period of political crisis without broader discussion is not likely to reflect the systemic shortcomings pointed out by the Priebe Report and the URPs. Furthermore, the 2016 budget of the country has envisaged financial resources for improving judicial efficiency and efficacy, with EUR1.25m allocated for reforms to the Judiciary under categories such as purchasing furniture, equipment, gadgets and appliances, as well as the construction.⁴²

A recent analysis revealed that there is a **very low level of trust in the work of the Judicial Council and the Council of Public Prosecutors**, which is noteworthy if we take into account that these are the two institutions that should guarantee the independence of the Judiciary from political influence. Thus, instead of strengthening the independence and accountability of the Judiciary, these two institutions seem to have performed a different role.⁴³ For example, although the appointment of the SPP was an urgent procedure, the Council of Public Prosecutors obstructed the commencement of the work of the SPP by not approving the team requested by the Special Prosecutor, which credibly suggests **political influence** over the decisions of the Council of Public Prosecutors.⁴⁴

Further events that have once again put in question the independence of the judiciary were related to the work of the SPP. Indeed, so far, **almost all of the SPP's requests for detention were rejected by the Basic Court in Skopje 1**. Taking in account that, to date, the Basic Court has not rejected any request for detention from the Public Prosecution Service,⁴⁵ except for one house detention, this brings into question the former's independence and indicates possible political pressure, taking into account that, in practice until now, it accepted nearly all the requests of the Public Prosecutor for detention.

The Constitutional Court has not yet deliberated on the request for constitutionality of the SPP, thus continuing the uncertainty of this institution. However, under Przhino 2, the parties took on an obligation to ensure constitutionality following the eventual Constitutional Court decision.

⁴¹ Neda Chalovska, Voislav Stojanovski, and Aleksandar Jovanovski, "Shadow Report on Chapter 23."

⁴² Ibid.

⁴³ Dane Taleski, Marko Kmezic, and Lura Pollozhani, "Improving Checks and Balances in the Republic of Macedonia: Judicial Control of the Executive," Checks and Balances in the Republic of Macedonia: How to Make Them Work?, Dialogues for Vision - European Policy Institute - Skopje, 2016, http://www.epi.org.mk/docs/D4V_Democracy%20and%20Rule%20of%20Law_en.pdf.

⁴⁴ Neda Chalovska, Voislav Stojanovski, and Aleksandar Jovanovski, "Shadow Report on Chapter 23."

⁴⁵ Ibid.

In September 2016, the Council of Public Prosecutors once again elected Mr. Petar Anevski as its President, even though, according to the Law on the Council of Public Prosecutors,⁴⁶ the mandate of the President is two years, without a right to re-election. Mr. Anevski later publicly stated that this was not against the law, as his re-election is in the context of a new mandate, such that it does not present a continuation of his previous mandate. Nevertheless, this decision of the Council calls the competence, independence and impartiality of the members of the Council into question.

The concerns regarding the independence of the Judiciary remain. The appointment of judges and court presidents by the Judicial Council has been made without any previous changes to the election system. Moreover, a record of a number of judges was appointed the day before the planned and prolonged dissolution of the Parliament, in anticipation of early elections.⁴⁷

In December 2015, a **law regarding new salary supplements for judges and public prosecutors** was adopted in shortened procedure. As the Shadow Report on Chapter 23 argues, “the obvious aim of these salary supplements is to win over the judges and public prosecutors in the pre-election period and to invest in their subservience to political behests”.⁴⁸ Additionally, along with the law on the employees from the SPP, salaries were also raised for the Public Prosecution Service, with the attempt to “neutralize” the latter’s discontent, which arose on account of the introduction and position of the SPP.⁴⁹

The Supreme Court of the Republic of Macedonia has announced a new central database where all the judgements from all the courts in Macedonia should be published. Nevertheless, it remains unclear whether the database will also contain judgements that have already been published on specific court websites, thus making the substance of this intervention questionable. “If the database does not incorporate previous decisions as well, this activity is not only inadequate in terms of the priorities for timely publication of all court judgements, but it goes against the spirit of this priority, which primarily relates to the publication of a judgement by a judge within a statutory deadline.”⁵⁰

In its opinion of December 2015,⁵¹ the Venice Commission assessed the 2015 initiative on amending the Constitution as problematic, more so since it was passed by the ruling coalition during the Opposition’s absence from the Parliament. For the Commission, such important reforms as these should receive the widest possible political support, otherwise it **could be seen as an attempt by the governing coalition to use the newly established bodies to control the Judiciary.**⁵²

The Commission also stated that it is not in favour of establishing a separate body for disciplinary responsibility (Council for Determining Facts and Initiating a Procedure to Determine the Responsibility of a Judge), and that these functions should be returned to the Judicial Council, a position that Network 23 reiterated since its first Shadow Report published in 2015. Finally, the Commission stated that the constitutional reforms started in 2014 and the legislation amendments from 2015 should be approached systematically, at both the constitutional and legislative levels.⁵³

The main concern regarding professionalism and competence remains the appointment of judges, as it continued to lack **any improved criteria for selection.** Namely, no steps whatsoever have been undertaken to change the criteria for appraising and promoting judges. At present, these criteria are based exclusively upon quantitative

⁴⁶“Law on the Council of Public Prosecutors in the Republic of Macedonia” (Official Gazette of the Republic of Macedonia, 150/2007 and 100/2011, n.d.).

⁴⁷European Policy Institute - Skopje, “Monitoring Brief for September 2016 with Regard to the Monitoring of Chapter 23 Judiciary, Fight against Corruption and Fundamental Rights” (European Policy Institute - Skopje, September 2016).

⁴⁸Neda Chalovska, Voislav Stojanovski, and Aleksandar Jovanovski, “Shadow Report on Chapter 23,” page 15.

⁴⁹Neda Chalovska, Voislav Stojanovski, and Aleksandar Jovanovski, “Shadow Report on Chapter 23.”

⁵⁰Ibid., page 21.

⁵¹The Venice Commission announced its opinion on legislation referring to disciplinary responsibility and the evaluation of judges, more specifically regarding the 2015 proposed amendments referring to the Law on the Courts, the Law on the Judicial Council of the Republic of Macedonia and the already-adopted Law on a Council for Determining Facts and Initiating a Procedure to Determine the Responsibility of a Judge.

⁵²European Policy Institute - Skopje, “Monitor: Implementation of Urgent Reform Priorities” (European Policy Institute - Skopje, 2015), http://epi.org.mk/docs/Network%2023_monitoring-report-15-30%2012%202015.pdf.

⁵³Venice Commission, “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).”, Opinion No. 825 / 2015 (Strasbourg: Venice Commission, December 21, 2015).

criteria of efficiency, which do not foreground the expertise and integrity of judges. As the Network 23 Shadow Report notes, “[t]he interventions in the system of appraisal, promotion and appointment of judges within the span of more than a few past years, resulted in an **'open door' for political influences over the judiciary**”.⁵⁴

Regarding the **Academy of Judges**, **slight progress** has been observed due to the Law Amending the Law on Judges and Prosecutors in December 2015.⁵⁵ The amendments refer to the introduction of electronic protection when conducting examinations, tighter control over examinations, and sanctions for any violation of these provisions. With these amendments, the transparency should be increased by requiring the announcement of a public call for candidates, among professors and prominent lawyers, to become members of the Programme Council. The 2016 budget for the Academy was also increased in comparison to the previous two years.⁵⁶

Last but not least, due to dissatisfaction with the amendments to the Law on Judicial Service, which was adopted in a shortened procedure and with no public discussion, **judicial officers staged a three-day strike** in March 2016. The strike, however, did not result in an adequate response from the Ministry of Justice, which further confirms that the judicial administration remains neglected, consequently resulting in regress instead of progress with regard to the rights of judicial officers.⁵⁷

▶ 8. FIGHT AGAINST CORRUPTION: IS THERE A PILOT ON THE PLANE?

Although the Law on the Protection of Whistle-blowers is a step forward in the fight against corruption, the passiveness and failure of the competent institutions, including the State Commission for Prevention of Corruption (SCPC), to react to the emerged wiretapping scandal, which revealed abuse of office by high-ranking state officials, is a major step backwards. At the same time, this is a **strong indicator of backsliding in the area of anti-corruption**, given that all hopes in resolving the cases, which have arisen from and are related to the content of the unlawful interception of communications, are now directed towards the SPP.

The **failure of the SCPC to react to the content of the published wiretaps** can only confirm that its work in the past year has been passive and ineffectively selective. More so, the new anti-corruption programme⁵⁸ (2016-2019) of the SCPC does not include any planned actions, which address the problems from the wiretapping scandal. Additionally, the process of preparing and drafting the programme was not inclusive as it did not include all members of the Platform Against Corruption, nor consultations with experts and/or citizens' associations. One of the main reasons for this passivity by the SCPC is the selection of members who are not particularly active in the fight against corruption.⁵⁹

Having said the above, it is fair to conclude that **the major role in fighting corruption in the country has been left to the SPP**, which, despite the obstructions from the Judiciary and other state institutions, continues to work at full capacity on resolving cases, which have arisen from and are related to the content of the unlawful interception of communications.

The political crisis has made the promulgation of the **Law on the Protection of Whistle-blowers** an urgent matter. As the content of the law was agreed upon by the four political parties involved in the negotiations for implementation of the Przhino Agreement, the preparation did not include broader consultations with CSOs and experts, nor did it include any meaningful deliberation in the Parliament. The parties, however, did agree to **request an opinion from the Venice Commission**, which recommended **further clarifications** on what is considered as public interest regarding whistle-blower protection and also reinforcing Article 6, which covers protecting whistle-blowers. The **recommendations are still not implemented**. Nevertheless, the mere fact that this law has been voted on should be considered a step forward in dealing with corruption.

⁵⁴Neda Chalovska, Voislav Stojanovski, and Aleksandar Jovanovski, “Shadow Report on Chapter 23,” page 23.

⁵⁵“Law on Judges and Prosecutors” (Official Gazette of the Republic of Macedonia, 231/2015, 2015).

⁵⁶Neda Chalovska, Voislav Stojanovski, and Aleksandar Jovanovski, “Shadow Report on Chapter 23,” page 23.

⁵⁷Neda Chalovska, Voislav Stojanovski, and Aleksandar Jovanovski, “Shadow Report on Chapter 23.”

⁵⁸Државна комисија за спречување на корупција, “Државна програма за превенција и репресија на корупцијата и превенција и намалување на појавата на судир на интереси со акционен план 2016-2019 (In English: State Program for Prevention and Repression of Corruption and Prevention and Decreasing of the Conflict of Interests with an Action Plan 2016-2019)” (Државна комисија за спречување на корупција, 2015). <https://goo.gl/sjyn71>.

⁵⁹Neda Chalovska, Voislav Stojanovski, and Aleksandar Jovanovski, “Shadow Report on Chapter 23.”

▶ 9. FIGHT AGAINST ORGANIZED CRIME

WE HAVE THE LAWS, NOW WHAT?

The failure of the Judiciary to respond to major abuses relating to the functions of high-ranking officials, which indicate the existence of organized crime, as well as the poor and selective implementation of the legal framework, supports our hypothesis that the fight against organized crime is yet another area that has seen **backsliding** in the past year.

While the **legal framework** is relatively well aligned with international standards, it remained being **poorly and selectively applied**. The lack of any response from the institutions to the wiretapping scandal has demonstrated the lack of political will to fight organized crime, as well as the high-level impact of the ruling parties on the law enforcement agencies. As indicated previously, the main role in the fight against organized crime now belongs to the SPP.

The Head of the Department for Organized Crime of the Public Prosecutor's Office was nominated and elected a **judge in the European Court of Human Rights**, which was assessed by the broader public as highly controversial.

▶ 10. FIGHT AGAINST TERRORISM: POSITIVE DEVELOPMENTS

The **fight against terrorism marked some progress**, even though the emphasis remains on dealing with consequences, rather than with their prevention. The trend towards legislative regulation, as opposed to grass roots intervention and community engagement, needs to change, especially in the midst of major terrorist attacks across Europe.

The fight against terrorism is another area that **has not received the needed attention**, due to the focus on the political crisis, even though the country plays a major role in regulating the flow of the migrants entering Europe. The **National Strategy for Combating Terrorism** was approved by the Government on 15 March 2016, yet there is **no separate strategy for countering violent extremism (CVE)**. Nonetheless, there are 'alleged plans' to include other relevant state institutions (such as the Ministry of Education and the Ministry of Labour and Social Policy), as well as civil society and religious institutions, in the Counterterrorism Coordinator's action plan. As such, this has been seen as a step forward in fighting terrorism, as the importance of these actors has been recognized.⁶⁰

To date, Macedonia has taken **several measures in the fight against terrorism**. For example, besides being a member of the Anti-ISIS Coalition, the national authorities also utilize Interpol's database on foreign terrorist fighters, although they report that the country is still facing a lack of access to EU databases on foreign fighters.⁶¹

Radicalization and violent extremism have been high on the agenda of Macedonian institutions, yet the **approach to resolving these issues has remained inadequate**. If we take into account the theory that one in nine volunteers fighting for foreign militaries joins a military group once they return home,⁶² as well as the fact that there are 110 fighters from Macedonia in Syria, out of which 86 have returned home,⁶³ one can assume that there are threats and dangers, as these individuals might become involved in violent activities. As pointed out in the 2015 Country Report by the EC, "the phenomenon of foreign terrorist fighters needs a dedicated approach by the intelligence and law enforcement community and a coherent judicial policy towards offenders".⁶⁴

⁶⁰Kaltrina Selimi and Filip Stojkovski, "Assessment of Macedonia's Efforts in Countering Violent Extremism, View from Civil Society" (Analytica, October 2016), http://www.analyticamk.org/images/Files/extremism-en-updated-FINAL-web_ceb98.pdf.

⁶¹Ibid.

⁶²Filip Stojkovski, "Поради загубите на територија во Ирак и Сирија, ИСИС би можеле да се фокусираат на напади во Европа (In English: Due to Loss of Territory in Iraq and Syria, ISIS Might Focus on Attacks in Europe)," n.d., http://www.analyticamk.org/images/Files/Commentary/2016/commentary_extra1_mk_0598f.pdf.

⁶³President of the Republic of Macedonia, "Обраќање на Претседателот на Република Македонија, Д-Р Ѓорге Иванов (in English: Speech of the President of the Republic of Macedonia, George Ivanov)," Official Website of the President of the Republic of Macedonia, June 22, 2016, <http://pretsedatel.mk/mk/2011-06-17-09-55-07/2011-07-19-10-40-39/3849.html>.

⁶⁴European Commission, "Progress Report for Republic of Macedonia 2015."

A recent analysis⁶⁵ by the Analytica think tank points to the danger of foreign fighter returnees recruiting at the grass roots level, mostly through social media and other types of online radicalization. While the Macedonian strategy predominantly **focuses on executive and judicial powers, little to no community engagement is accounted for**. The latter, however, is of immense importance, given that the majority of the interviewees (mostly university and high school students) knew someone that had gone to Syria or Iraq. They also have a low level of trust in state institutions and their abilities to make a difference in CVE, which confirms the need to equip communities “with the right tools and skills so that they can address this threat that is hurting each individual community”.⁶⁶ That said, the number of Macedonian citizens joining ISIS or similar groups in Syria or Iraq has significantly dropped since the first police operation, known as “Cell”.⁶⁷

▶ 11. FUNDAMENTAL RIGHTS AND PROTECTION OF MINORITIES: MORE PRESSURE, LESS EQUALITY

It is safe to note that there have been no major improvements. The issues concerning the Ombudsman, torture, and inhumane or degrading treatment or punishment, as well as in respect of prison and detention centres, remain as problematic as they were during 2015. The implementation of legislation on human rights remains weak, due to the pressure from the governing coalition, with selective justice still applied. Major breaches in human rights in the past year were noted during the Colourful Revolution protests. Therefore, we can conclude that there has been **severe backsliding in the area of human rights**.

The Ombudsman's budget for 2016 has been increased, yet given the increase was a mere 1% compared to the 2015 budget, one can only conclude that **increasing the capacities of this institution was not foreseen**. What is more concerning, however, is the fact that the budget of this institution remains **financially dependent on the Ministry of Finance**, hence on the Government, which does not ensure independence of the institution.

In September 2016, the **Law on the Ombudsman was amended, without accounting for the majority of the Priebe recommendations**. In addition, in order to reinforce its authorities, the Law on the Ombudsman needs to be consistently applied, especially in the area of investigation and promoting human rights,⁶⁸ which the latest amendments do not provide for. Furthermore, the **two Deputies to the Ombudsman appointed by the Parliament** in October were both political representatives of the Government's coalition parties, rather than “personalities whose activities in the area of the protection of human rights are evidenced, as well as have any reputation to carry out this office”,⁶⁹ as required by the Law on the Ombudsman.

The civil sector has continued to advocate for a **zero tolerance policy** regarding acts of torture by public officials. Still, the **PPRM remained passive regarding cases of torture**, especially when performed by police officers. The victims of torture have still not been provided with proper legal, medical, psychological and social support by the state.⁷⁰

The prisons remain **overcrowded**: “the total capacity for housing prisoners is 2,026, which means that the prisons are 156% overcrowded; put another way, there are 156 persons, on average, living in facilities meant for 100 persons”.⁷¹ At the same time, the **living conditions in prisons remain substandard** and there are records of inadequate healthcare, the non-application of socialization programmes, the absence of educational programmes, the lack of hygiene,⁷² not being allowed to go outside for longer than an hour, limited correspondence etc.

⁶⁵Kaltrina Selimi and Filip Stojkovski, “Assessment of Macedonia's Efforts in Countering Violent Extremism, View from Civil Society.”

⁶⁶Ibid., page 66.

⁶⁷Ibid

⁶⁸Neda Chalovska, Voislav Stojanovski, and Aleksandar Jovanovski, “Shadow Report on Chapter 23.”

⁶⁹Law on the Ombudsman” (Official Gazette of the Republic of Macedonia, 60/2003 and 143/2008, n.d.).

⁷⁰Neda Chalovska, Voislav Stojanovski, and Aleksandar Jovanovski, “Shadow Report on Chapter 23.”

⁷¹Ibid., page 30.

⁷²Helsinki Committee Of The Republic Of Macedonia, “Helsinki Committee Of The Republic Of Macedonia - Special Report: Visit to the Special Institution in Demir Kapija (in Macedonian: Посебен Извештај: Посета на специјалниот завод во Демир Капија),” June 27, 2016, http://www.mhc.org.mk/reports/424#.V_2Qcfl97IV.

Disproportionate and excessive force was used by the police during protests, which took place on 5 May 2015 and throughout the end of the year, as well as in the course of 2016.⁷³ The Public Prosecution Service, however, has taken no single ex officio procedure against police officers in this instance to date.⁷⁴ In addition, there were cases of **restricting the right to the freedom of movement** and simultaneously the right to public assembly by police officers, without authority. This was the case with a protest against the decision by the Constitutional Court to initiate procedures regarding the constitutionality of amendments to the Law on Pardons from 2009, which was previously registered with the Ministry of Interior. The protest, however, did not occur, as the venue was occupied by people organized by Stevcho Jakimovski, the leader of the GROM political party, which is a member of the ruling coalition as well.

Several protesters from the Colourful Revolution were apprehended and some of them were **charged in connection with misdemeanours**, as well as held at a police station longer than the allowed period for detention. Some protesters even received house arrest, while others received criminal charges.⁷⁵ The reaction of the public to these events was that they were regarded as **nothing more than a warning to other citizens considering further gatherings and protests**. Such actions present a breach of Article 21 of the Macedonian Constitution, which prescribes that citizens have the right to gather and publicly protest without any previous announcement or special permission.⁷⁶ It is important to note that there were no charges brought against participants in the violent protests in front of the Municipality of Centar in 2015,⁷⁷ which is yet another indicator of selective justice being applied.

There has also been a **notable increase in the pressure applied by governmental institutions on civil associations**, in the form of so-called smear campaigns by pro-Government media.⁷⁸

▶ 12. FREEDOM OF EXPRESSION

EXPRESSION UNDER OPPRESSION

Instead of focusing on long-term reforms and systemic solutions, the media reforms agreed in the past year have only focused on short-term fixes in light of the upcoming elections. That said, we cannot state there has been progress in this area. **Indeed, the situation has been backsliding.**

In common with other areas, there have been **no major changes** in respect of freedom of expression and media pluralism since the 2015 Country Report. The media has remained under **heavy pressure from the ruling party**, while **self-censorship has continued to be practised by some journalists**. In the context of resolving the political crisis, media reforms were one of the two key points of discussion. **Freedom House reported that Macedonia's status declined from 'partly free' to 'not free'**,⁷⁹ due to the revelations indicating large-scale and illegal government wiretapping of journalists, corrupt ties between officials and media owners, and an increase in threats and attacks on media workers.

The past year was marked by **further violation of the legal regulations in the Law on Media and the Law on Audio and Audiovisual Media Services**. Up until the end of March 2016, the Agency for Audio and Audiovisual Media Services (henceforward the Agency) initiated a total of 87 supervisions on its own initiative. The Agency noted **17 violations** of the Law on Media and the Law on Audio and Audiovisual Media Services committed by broadcasters, three violations by publishers of print media and seven violations by operators of public electronic communication networks.⁸⁰

⁷³European Policy Institute - Skopje, "Monitoring Brief for June 2016 with Regard to the Monitoring of Chapter 23 Judiciary, Fight against Corruption and Fundamental Rights," June 2016, http://www.epi.org.mk/docs/Monitoring%20Brief_Chapter%2023_Network%202016_June%202016.pdf.

⁷⁴Neda Chalovska, Voislav Stojanovski, and Aleksandar Jovanovski, "Shadow Report on Chapter 23."

⁷⁵European Policy Institute - Skopje, "Monitoring Brief for July 2016 with Regard to the Monitoring of Chapter 23 Judiciary, Fight against Corruption and Fundamental Rights," July 2016, http://www.epi.org.mk/docs/Monitoring%20Brief%20for%20July%202016_Chapter%2023_EN.pdf.

⁷⁶Neda Chalovska, Voislav Stojanovski, and Aleksandar Jovanovski, "Shadow Report on Chapter 23."

⁷⁷Helsinki Committee Of The Republic Of Macedonia, "Helsinki Committee Of The Republic Of Macedonia - Protests and Detentions," April 25, 2016, http://www.mhc.org.mk/announcements/400%23.VysJtIR97IU#.V_1ifPI97IU.

⁷⁸European Policy Institute - Skopje, "Monitoring Brief for May 2016 with Regard to the Monitoring of Chapter 23 Judiciary, Fight against Corruption and Fundamental Rights," May 2016, page 7, http://www.epi.org.mk/docs/Monitoring%20Brief%20on%20Chapter%2023_May%202016_EN.pdf.

⁷⁹"Freedom of the Press 2016. The Battle for the Dominant Message" (Freedom House), accessed October 24, 2016, https://freedomhouse.org/sites/default/files/FH_FT0P_2016Report_Final_04232016.pdf.

⁸⁰Neda Chalovska, Voislav Stojanovski, and Aleksandar Jovanovski, "Shadow Report on Chapter 23," page 39.

As media reforms were one of the two issues that the Przhino negotiations narrowed down to, pre-electoral, balanced media reporting has been of immense importance. In that respect, the biggest pro-Governmental Sitel TV conducted several interviews with members of the Opposition party, including one with Party President Zoran Zaev. In particular, the latter interview was seen as one that **violated professional journalistic principles and standards**, thus the Agency, journalists' associations, the international community and the wider public condemned it strongly. In response, the Council of Media Ethics of Macedonia drafted the **Charter of Ethical Reporting during the Elections**,⁸¹ which was signed by most of the media houses, including Sitel TV.

Despite amending the **Electoral Code** regarding media reporting during the election campaign period, so as to provide balanced media reporting, even though the country never entered into the campaigning period, **the trend towards media reporting with strong support for the ruling party has continued**. The main identified strategies were that the ruling party, the VMRO-DPMNE, has used the most influential TV news programmes as their marketing tool, while there exists selective censorship of the expression of political ideas, as well as orchestrated media showdowns.⁸² The last report on monitoring the media content by ResPublica generally found slight improvements in respect of media pluralism, in the sense that side-taking, propagandistic reporting, demonizing of political subjects and including political marketing to an informative programme (TV news) have “softened”.⁸³ This, however, is far from enough in order to ensure proper balanced and unbiased reporting, free from political pressure.

The long-lasting negotiations on media reforms yielded the **establishment of an ad hoc body for monitoring the compliance with media provisions from the Electoral Code within the Agency for Audio and Audiovisual Media Services**. In addition, the parties have agreed that the SDSM will nominate a Chief Editor of informative programmes at the public broadcaster, which will assume his/her position 100 days before elections.⁸⁴ Lastly, a new law for governmental advertising was proposed by the Ministry of Information Society and Administration, but was withdrawn from procedure upon strong international pressure.

⁸¹Council for Media Ethics of Macedonia, “Charter on Ethical Reporting During Elections,” n.d., <http://semm.mk/en/news/2015-08-11-15-03-18/204-2016-01-27-13-41-21>.

⁸²ResPublica, “First Monthly Report from the Monitoring of the Media Content” (Institute of Communication Studies, December 2015), http://respublica.edu.mk/modem/23-18-dek-emvri-2015/First-Monthly-report-MODEM-28_12_15%20EN_PDF.pdf; ResPublica, “Second Monthly Report Based on the Monitoring of Media Content (19th December 2015 – 29th January 2016)” (Institute of Communication Studies, n.d.), <http://respublica.edu.mk/2016-03-08-11-03-03/96-second-monthly-report-based-on-the-monitoring-of-media-content-19th-december-2015-29th-january-2016>; ResPublica, “Third Monthly Report from the Monitoring of the Media Content” (Institute of Communication Studies, n.d.), http://respublica.edu.mk/modem/06-04-mart-2016/Third-Monthly-report-MODEM_EN_opt.pdf; ResPublica, “Fourth Monthly Report from the Monitoring of Media Content” (Institute of Communication Studies, n.d.), http://respublica.edu.mk/modem/03-do-04-2016/Fourth-Monthly-report-MODEM_ENG_opt.pdf; ResPublica, “Monitoring of Media Content through the Rapid Response Media Mechanism (April 16 - Maj 7, 2016),” ResPublica, n.d., <http://respublica.edu.mk/modem5-en>.

⁸³ResPublica, “Извештај од следењето на медиумските содржини 05 - 16 септември 2016 (In English: Report from the Monitoring of Media Content 05-16 September 2016),” ResPublica, n.d., <http://respublica.edu.mk/sheستي-mesechen-izveshtaj>.

⁸⁴meta.mk, “What the Parties Agreed to: New Editor at MTV, Ad Hoc Body for the Media and Support for the SPOMeta.mk,” Meta.mk, n.d., <http://meta.mk/en/what-the-parties-agreed-to-new-editor-at-mtv-ad-hoc-body-for-the-media-and-support-for-the-spo/>.

▶ 13. MIGRATION AND ASYLUM

MACEDONIA AT THE FOREFRONT

The migration issue was largely used by the Government during the internal political crisis to demonstrate its ability to address the crisis. The fact is that, despite the rotations of Ministers from the ruling party and the Opposition, the policy towards the migration crisis was not subject to change and thus **marked a trend towards stagnation**.

By the end of 2015, Macedonia had **built a fence on its border with Greece** and reinforced it by February 2016. According to Frontex, the Republic of Macedonia, **“given its geographical position, was a key player in all the coordinated measures agreed and implemented at regional level for the reduction of the unprecedented migratory flow”**.⁸⁵ Macedonia took on a major role for closure of the Balkans route, especially through the regional arrangement made by Austria, Slovenia, Croatia, Serbia and the Republic of Macedonia to jointly profile and register refugees and asylum seekers at the border between the Republic of Macedonia and Greece and take on a number of additional actions.⁸⁶ These arrangements were subject to criticism by the United Nations High Commissioner for Refugees (UNHCR),⁸⁷ as well as national and international organizations working along the Western Balkan migration route.⁸⁸ Following these measures and the EU-Turkey statement on 18 March 2016 on closing the Balkans route, the **flow of refugees and asylum seekers significantly dropped**.⁸⁹

▶ 14. POLICE REFORM

WHO CONTROLS THOSE WHO CONTROL?

In a nutshell, the **police reform has also experienced backsliding**, given the long lasting struggle for party control over the Ministry of Interior resulted in further politicization, instead of actual reforms, despite the fact that a Strategy for Police Development has been drafted.

A **Strategy for Police Development 2016-2020**⁹⁰ was drafted and presented with EU support. However, the status regarding the adoption of the strategy is not known. Unlike previous strategies, this one has **attracted no public interest**. While mentioning the findings of the EC Country Reports, the document **does not address the main issues of politicization of the police**. Being an extremely technical document, it **avoids addressing the key challenges**: politicization, internal and external control over the police, protecting the rights of citizens and their privacy and personal data, etc.

In reality, the **political struggle for control over the MOI** was ongoing throughout the year. As one of the key Ministries that were part of the Przhino Agreement, to which a Minister from the Opposition was appointed, disputes over appointments of staff were constant. Following the failure of the initial Przhino Agreement, the ruling party amended the Law on Internal Affairs, removing the competences of the Minister.⁹¹ Following negotiations for the Przhino 2 Agreement, the implementation of this law has been delayed until 1 January 2017. In addition, the Przhino 2 Agreement explicitly admits politicization; it establishes the right of the Minister of the Interior to make “up to 10% of the number of horizontal transfers based on the average of such transfers in the years 2013 and 2014”.

In the summer of 2016, 600 new police officers were employed, which was assessed by civil society as further politicization of the police.

⁸⁵Frontex, “Western Balkans Quarterly. Quarter 2, April-June 2016,” Western Balkans Quarterly, October 2016, http://frontex.europa.eu/assets/Publications/Risk_Analysis/WB_Q2_2016.pdf.

⁸⁶“Joint Statement of Heads of Police Services from the Meeting Held in Zagreb, Croatia, on 18 February 2016,” February 2016, https://www.mup.hr/UserDocImages/topvijesti/2016/veljaca/migranti_sastanak/joint_statement.pdf.

⁸⁷United Nations High Commissioner for Refugees (UNHCR), “UNHCR Concerned by Build up along Borders and Additional Hardships for Refugees and Asylum Seekers,” Refworld, February 23, 2016, [http://www.refworld.org/docid/56cd6fb14.html%20\[accessed%2028%20September%202016\]](http://www.refworld.org/docid/56cd6fb14.html%20[accessed%2028%20September%202016]).

⁸⁸“Joint Statement on Border Closures,” Public statement, (March 3, 2016), https://www.oxfam.org/sites/www.oxfam.org/files/file_attachments/joint-statement_border-closures_0.pdf.

⁸⁹United Nations High Commissioner for Refugees (UNHCR), “Refugees/Migrants Emergency Response - Mediterranean,” UNHCR Refugees/Migrants Emergency Response - Mediterranean, n.d., <http://data.unhcr.org/mediterranean/country.php?id=502>.

⁹⁰Ministry of Interior of the Republic of Macedonia, “Police Development Strategy 2016-2020” (Ministry of Interior, January 2016), [http://www.mvr.gov.mk/Upload/Editor_Upload/publikacii%20pdf/Police%20Development%20Strategy%202016-2020%20\(1\).pdf](http://www.mvr.gov.mk/Upload/Editor_Upload/publikacii%20pdf/Police%20Development%20Strategy%202016-2020%20(1).pdf).

⁹¹European Policy Institute - Skopje, “Monitoring Brief for July 2016 with Regard to the Monitoring of Chapter 23 Judiciary, Fight against Corruption and Fundamental Rights.”

▶ 15. REGIONAL ISSUES AND INTERNATIONAL OBLIGATIONS

STATUS QUO

Overall, there has been **stagnation** in respect of regional issues, due to their marginalization and their framing for the purposes of domestic politics.

Owing to the strong focus on the political crisis, regional issues and international obligations, except for the migration crisis, have been **pushed to the margins of political discourse**, with no major changes made since the 2015 EC Country Report. For example, **the name issue with Greece** did not receive as much attention as in previous years. In addition, regional issues and international obligations have **mostly been linked to the elections and primarily used to frame the discourse for domestic political purposes**.

POLICY RECOMMENDATIONS

None of the recommendations is addressed to the Government currently in power, as a precondition for re-establishing the rule of law in the country is that Government representatives take on political and other responsibilities with regard to the illegal interception of communications, as indicated by the wiretapping scandal in 2015.

▶ To the political parties

- ▶ To ensure that free and fair elections take place
- ▶ Not to list, as candidates for elections, persons against whom an investigation has been launched by the SPP
- ▶ To take on a public commitment before the elections to re-establishing the rule of law and ensuring the separation of state and party, especially through:
 - ▶ Ensuring independence of independent and supervisory bodies, with immediate focus on the Constitutional Court, Judicial Council and Council of Public Prosecutors
 - ▶ Providing support to the SPP
 - ▶ Ensuring the professionalism of the state security services
 - ▶ No political interference in the recruitment and career advancement of public administrators
 - ▶ Ensuring freedom of expression, with banning government advertisements in the private media and professionalism of the Audiovisual Agency
 - ▶ Constructive and sustainable cooperation with the civil sector

▶ To EU institutions

- ▶ To focus again on the findings and recommendations of the Priebe Report and, consequently, the implementation of the URPs in the country
- ▶ To take into account the fact that EC leverage is decreasing, while the EU should not further abandon the instruments of the EU accession process without developing relevant and effective new instruments for promoting the rule of law
- ▶ Not to further compromise basic democratic values and trade democracy for security
- ▶ To avoid technicization in their reporting and recommendations and focus on assessing the actual, substantive progress in the different areas

► To civil society

- To continue and further strengthen the watchdog role in order to put more pressure on the institutions
- CSOs should continue to work together, articulate the priority issues and jointly advocate before political agents for the essentials and priority actions leading to the re-established rule of law in the country, before and immediately after the elections
- CSOs should continue to develop their actions of monitoring, cooperation and advocacy targeted at the independent, supervisory and regulatory bodies in order to motivate the latter to be more transparent and professional

► To the independent supervisory and regulatory bodies

To the SEC:

- To be fully prepared for the forthcoming elections and play an active role; ensure objectivity in the work of the SEC and respond promptly to complaints; regularly and comprehensively inform the public on the preparations for the elections and publish the results of the election in a timely manner; ensure transparency through open sessions
- To present a detailed report to the public on the implementation of the amended Electoral Law, especially providing answers to the issue concerning the 'clean-up' of voter lists, presenting lessons learned and options, and open up a public debate

To the Judicial Council and Council of Public Prosecutors:

- To regain citizens' trust by bringing back their integrity and not relenting under governmental pressure
- To include the media and the CSOs in their work, so as to increase their transparency
- To be transparent with regard to the elections and the advancement of judges and public prosecutors

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