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SHADOW REPORT ON CHAPTER 23

FOR THE PERIOD BETWEEN JUNE 2018 AND MARCH 2019

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LIST OF ABBREVIATIONS

AVMU	Agency for Audio and Audiovisual Media Services
ACCMIS	Automated Court Case Management Information System
AJPP	Academy for Judges and Public Prosecutors
VMRO-DPMNE	Internal Macedonian Revolutionary Organization- Democratic Party for Macedonian National Unity
GRECO	Group of States against Corruption
SLI	State Labour Inspectorate
SCPC	State Commission for the Prevention of Corruption
ECTS	European Credit Transfer System
ECHR	European Convention on Human Rights
ENER	National Electronic Registry of Regulations
ECHR	European Court of Human Rights
ICT	Information Communication Technology
CPT	European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
LGBTI	Lesbian, gay, bisexual, transgender and intersex community
MISA	Ministry of Information Society and Administration
OSCE	Organization for Security and Co-operation in Europe
BPPOPOCC	Basic Public Prosecutor's Office for Prosecution of Organized Crime and Corruption
RM	Republic of Macedonia
RNM	Republic of North Macedonia
USA	United States of America
SDSM	Social Democratic Union of Macedonia
SPPO	Special Public Prosecutor's Office (Public Prosecutor's Office for Prosecuting Criminal Offences Related to and Arising from the Content of the Illegally Intercepted Communications)
JCRNM	Judicial Council of the Republic of North Macedonia
TAIEX	Technical Assistance and Exchange of Information instrument of the European Commission
UBK	Bureau for Security and Counterintelligence
SWC	Social Work Centre

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INTRODUCTION

This Report has been developed under the Project Network 23 - Networking for Impact (NETWIT 23), implemented by the European Policy Institute (EPI), Skopje and the Helsinki Committee for Human Rights, funded by the Balkan Trust for Democracy and the Royal Norwegian Embassy in Belgrade.

This Report streamlines in a coherent unity all findings, conclusions and recommendations deriving from monitoring the areas covered by Chapter 23 - Judiciary and Fundamental Rights. In fact, this is the fourth Shadow Report published by the 23 Network. The previous three shadow reports cover the period from October 2014 to July 2015[1], then the period from July 2015 to April 2016 and the period from May 2016 to January 2018.[2]

The Report covers the period from the beginning of June 2018, until March 2019, inclusive. It presents data relevant also for the period prior to June 2018. The reporting period has been extended in order that it corresponds with the new Report of the European Commission on the Republic of North Macedonia, which will be published by the end of May 2019. This Report follows the structure of Chapter 23, in line with the European Commission Report.

In the reporting period, the focus was placed on the implementation of the 2017-2022 Judicial Reform Strategy,[3] and its accompanying Action Plan and on the implementation of Plan 18,[4] these being the key importance documents for Chapter 23 related reforms. Plan 18 was adopted in October 2018, following the conclusions of the Council of the EU of 26 June 2018, and endorsed at the European Council on 28 June 2018, which emphasized the importance that the country continue making concrete progress on the Urgent Reform Priorities and deliver further tangible results in areas of judiciary, security and intelligence services, public administration reform and fight against organized crime and corruption with a view to maintaining and deepening the current reform momentum, to which effect the Commission will monitor closely the reform efforts. The progress made in the above areas will be assessed in the EC Annual Report and will affect the decision setting the date for opening accession negotiations with the Union. The Plan is divided in four parts, in following with the four key reform areas, as set forth in the conclusions of the Council of the EU. Plan 18 was developed in consultations with in-line Ministries, having competences in these areas, as well as through consultations with the civil sector and the international community.[5]

1 Чаловска et al., "Правосудството и темелните права во Република Македонија." (Chalovska et al, *The Judiciary and Fundamental Rights in the Republic of Macedonia.)*
2 Деловски et al., "Извештај во сенка за Поглавјето 23 за периодот од мај 2016 до јануари 2018 година." (Delovski et al. *Shadow Report on Chapter 23 for the period from May 2016 to January 2018).*
3 Ministry of Justice, 2017-2022 *Judicial Reform Strategy and Action Plan.*
4 Government of the Republic of Macedonia, Plan 18.
5 Government of the Republic of Macedonia, Plan 18.

According to Plan 18, major part of the activities were to be implemented by February 2019, inclusive, setting forth a longer implementing period for some of the activities, i.e. until September 2019, at the latest.[6] The implementation of the Prespa Agreement and the adoption of the Constitutional amendments slowed down the reform process under Chapter 23, by which the deadlines set forth under Plan 18 were not met.

In addition to the Constitutional amendments, this reporting period was also featured with the adoption of the Law on amnesty of persons suspected, indicted and convicted for offences related to the 27 April events at the Parliament of the Republic of Macedonia. On 18 December 2018, as part of the reconciliation agreement between the ruling parties and part of the opposition, MP's adopted the sixth law on Amnesty exempting from criminal prosecution, staying instituted criminal proceedings or releasing from serving prison sentences persons who had been reasonably suspected of having committed a crime related to the events at the Parliament on 27 April 2017. The provisions of the said Law do not apply to persons suspected, convicted, convicted with a final enforceable verdict and persons already serving a prison sentence for offences related to the events at the Parliament of the Republic of Macedonia of 27 April 2017, who had been reasonably suspected of having participated in the preparing or in the organization of the events at the Parliament of the Republic of Macedonia, or who have been convicted with a final verdict, who until the date of entry into force of the said Law had committed the crimes of *association for enemy activity,* under Article 324, paragraph 1 of the Criminal Code, persons with hidden identity who had used physical force, persons who had committed violence, persons who had been carrying fire arms or explosive materials without authorization and persons who had acted in contravention of official authorizations, while committing the crime of *terrorist endangering of the constitutional system and security* under Article 313 of the Criminal Code, the crime of *murder* under Article 123 of the Criminal Code, or the crime of *act of violence* under Article 386 of the Criminal Code.[7] Experts and the expert public at large extensively criticized this Law.

6 Ibid, 18.

7 Parliament of the Republic of North Macedonia SESSION NO. 76 OF THE PARLIAMENT OF THE REPUBLIC OF MACEDONIA SCHEDULED FOR 18 DECEMBER 2018, AT 16:00 HRS.

METHODOLOGY

The methodology used in preparing this Report is the methodology of monitoring of developments in areas, which are part of the work of Network 23 - Judiciary, fight against corruption and fundamental rights,[8] prepared in 2015 and already applied in previous reports. The methodology includes research of official sources of information of state and justice system institutions, analysis of media reports about events in the said areas in the reporting period, monitoring the fulfilment of the urgent reform priorities, numerous analyses and reports prepared by civil society organizations.

In preparing this Report, a dialogue was held on 17 April 2019 on the topic of *Reforms under Chapter 23*, which resulted in a substantive contribution made by representatives of in-line state authorities, justice system institutions and civil society organizations to finalizing this document, i.e. their remarks, considerations and comments were integrated in this Shadow Report.

8 Шикова, "Методологија за мониторинг и евалуација на јавните политики од Поглавјето 23 - правосудство и фундаментални права од законодавството на Европската унија." (Shikova, *Methodology for monitoring and evaluation of public policies under Chapter 23 – Judiciary and Fundamental Rights of the European Union Acquis).*

1. JUDICIARY

Judicial reforms were high on the agenda of the Government of the Republic of North Macedonia. As of its establishment in March 2018, the Council monitoring the implementation of the Judicial Reform Strategy had 10 meetings discussing and reviewing the most important reform laws and measures undertaken for the implementation of the Judicial Reform Strategy.[9] The Prime Minister of the Republic of North Macedonia chairs the Council, which has on board the Minister of Justice, the Deputy Minister of Justice and representatives of all key stakeholders in the justice system area, including representatives of civil society organizations from the Blueprint Group for the Judiciary.

In 2018, the focus was mainly on reforms in the judicial system. In this context, practitioners, experts and civil society organizations were involved in the drafting of a number of draft laws in the judicial reform area.[10] According to the last report of the Blueprint Group for the Judiciary, key reform laws and laws in the judicial reform area were adopted in March 2019, i.e. part of them were endorsed by the Government, while part of them were submitted as draft laws and are already in the legislative procedure at the Parliament of the Republic of North Macedonia.[11]

However, the number of applications against violations in the judicial area filed with the Ombudsman in 2018 was almost doubled (947, compared to 576 applications in 2017). The increase of the number of filed applications is a result of the fact that in the reporting period, more than 300 former employees of the Ohis Company and Companies part of the Ohis Group filed applications for protection of their constitutional and legal rights. The remaining number of applications consists of applications against the work of enforcement agents/Notaries Public, administrative courts, the Public Prosecutor's Office, regular courts and other justice system bodies or against persons with public authorizations. The excessive duration of proceedings remains the major problem against which citizens seek protection.[12] As usually, there were a high number of applications in which citizens alleged that court decisions had been adopted without impartiality, selectively, under pressure or with political motives by incompetent judges or as a result of corruption. In respect of administrative courts (the Administrative and High Administrative Court), the Ombudsman yet again concluded that they were utterly inefficient, sending cases for retrial instead of deciding on the cases' merits, which in practice brings ordeal for citizens, who are victims of a pin-pong situation of decisions being annulled and cases being ordered to be retried (instead of the court deciding about their rights and legal interests based on the merits of the case). This calls into question the application of legal norms in fulfilling the principles of rule or law, justice and fairness, and respect for human rights.[13]

9 Government of the Republic of North Macedonia, X Session of the Council Monitoring the Implementation of the 2017-2022 Judicial Reform Strategy. Adopted Annual Report on the degree of implementation of measures and activities set forth under the Action Plan.

10 Blueprint Group for the Judiciary, *II Quarterly Monitoring Brief of the Implementation of the Judicial Reform Strategy*.

11 Ibid.

12 The Ombudsman, *Annual Report on the Degree of Ensuring, Respect for, Advancement and Protection of Human Rights and Freedoms, 2018*.

13 Ibid.

The amendments to the Law on Courts and Law on the Judicial Council of May 2018 did not fully take on board the 2015 recommendations of the Venice Commission.[14] The said amendments did not fully address also the recommendations of the Priebe Experts Group, or the GRECO recommendations.[15] In its opinion of October 2018, the Venice Commission positively assessed the amendments, but also issued further recommendations that were to be additionally implemented.[16] The recommendations concerning the Law on the Judicial Council are related to the procedure for the establishment of disciplinary liability of judges and to the quantitative and qualitative criteria for performance evaluations of judges. There were also recommendations regarding the grounds for disciplinary liability set forth under the Law on Courts.[17] In this regard, an inclusive working group, attached to the Ministry of Justice, prepared the third set of amendments to the Law on Courts and the new Law on the Judicial Council, which were latter considered at a public debate, held on 8 and 9 November 2018, organized by the Ministry of Justice, the Association of Judges and the OSCE. Representatives of the Ministry of Justice, the Judicial Council, experts and representatives of civil society organizations took part in the debate. The conclusions adopted at the public debate were integrated in the text of the draft Law amending the Law on Courts and the draft of the new Law on the Judicial Council. The said amendments to the Law on Courts and the draft of the new Law on the Judicial Council were again submitted to the Venice Commission for its opinion. Thus, in December 2018, the Venice Commission issued a positive opinion of the draft amendments to the Law on Courts,[18] and in March 2019 further issued a positive opinion of the draft Law on the Judicial Council, accompanied with additional recommendations,[19] while this Law was already in the legislative adoption procedure. The amendments to the Law on Courts adopted in March 2019 implement the recommendations issued by the Venice Commission. The recommendations the Commission gave regarding the draft Law on the Judicial Council reflect to a great extent previous recommendations given by the Venice Commission.[20] The Commission concluded that the provisions of the draft Law are mostly in line with international standards and, if interpreted and implemented in good faith, can ensure the independence and efficiency of the judiciary.[21]

The reforms of the judiciary continued with the adoption of the new Law on Administrative Disputes. The key challenge for the European agenda of the Republic of North Macedonia remains to be the adoption of the set of laws relating to the system of Public Prosecutors' Offices. The draft Law on the Public Prosecutor's Office is of exceptional importance for the

14 BARRETT et al., *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).
15 Adopted by GRECO at its 80th Plenary Session, Fourth Evaluation Round - Corruption prevention in respect of members of parliament, judges and prosecutors, Second Compliance Report on the former Yugoslav Republic of Macedonia.
16 Barrett et al., *Opinion on the Law Amending the Law on the Judicial Council and on the Law Amending the Law on Courts Adopted by the Venice Commission at Its 116th Plenary Session* (Venice, 19-20 October 2018)."
17 Ibid.
18 Barrett et al., *Opinion on the Draft Amendments to the Law on Courts, Adopted by the Venice Commission at Its 117th Plenary Session.*
19 Barrett, Dimitrov, and Ribičič, *Opinion on the Draft Law on the Judicial Council, Adopted by the Venice Commission at Its 118th Plenary Session.*
20 Ibid.
21 Council of Europe, *Positive Opinion on the draft Law on the Judicial Council of North Macedonia.*

European future of the country and for getting a date for start of accession negotiations with the EU. This Law regulates the status and competences of the Special Public Prosecutor's Office. The major goal pursued with the adoption of this Law is to enhance the level of professionalism and accountability of Public Prosecutors. A significant portion of this draft Law consists of provisions envisaging the incorporation of the Special Public Prosecutor's Office within the system of public prosecutors' offices, in line with the Judicial Reform Strategy.[22] In March, the draft Law was endorsed at a Government's session. However, the draft Law is still subject of consultations and bargaining exclusively between the political parties, while the civil society sector has been completely left out of the process of drafting this law. A Working Group of the largest opposition party, VMRO-DPMNE, submitted amendments to the Law. However, the Ministry of Justice announced that some of the amendments were not acceptable since they undermine the autonomy of the Special Public Prosecutor's Office, as a separate prosecutorial body and ran contrary to the recommendations of the international community, while some of the amendments envisage amnesty for the offence of destruction of evidence that has already been gathered. The Minister of Justice appealed to all politicians to help the talks with a view to ensuring two third majority of votes for the adoption of the Law, which is of great importance for the country's process of European integration.[23] In this context, it is necessary to adopt a Law on the Public Prosecutor's Office that will take into account and implement international standards and recommendations of the international community, however in a transparent and inclusive manner, by involving the civil sector and experts in the entire process.

It is expected that in the coming period the focus will be placed on the implementation of laws and amending laws in the justice system area, which will enhance the efficiency and independence of the justice system, enhancing thus the trust of citizens in the justice system. In addition, the monitoring of the new legal solutions will be of key importance to achieve and demonstrate results of the preparatory activities for accession talks under Chapter 23.

22 Government of the Republic of North Macedonia, *124th session of the Government of the Republic of North Macedonia: Defined package of reform draft Laws on the Public Prosecutor's Office, on the Council of Public Prosecutors and on Free Legal Assistance; endorsed amendments to the draft Anti-Discrimination Law.*

23 Minister of Justice, Deskoska: *"I appeal to all politicians to help the talks process with a view to ensuring two-third majority for the adoption of a Law, which is of importance for the European integration process of the country."*

STRATEGIC DOCUMENTS

In November 2017, the Government adopted the 2017-2022 Judicial Reform Strategy, accompanied with an Action Plan, with a view to advancing the judiciary in the country in following with the principles of independence, accountability, efficiency and quality. The Ministry of Justice introduced a mechanism for implementation and for monitoring of measures and activities set forth under the Strategy. The members of this mechanism are representatives of the Ministry of Justice, as well as representatives of all justice system institutions, covered by the Strategy. The mechanism is tasked with submitting to the Ministry of Justice information about the progress made in implementing reforms activities within the purview of each institution represented in the mechanism.[24]

The Council for monitoring the implementing of the Judicial Reform Strategy had 10 meetings, discussing and reviewing the most important reform laws and measure undertaken for the implementation of the Judicial Reform Strategy.[25] The draft Law on the Public Prosecutor's Office has not been discussed at a meeting of the Council Monitoring the Implementation of the Judicial Reform Strategy.[26]

The annual Report on the Implementation of the Judicial Reform Strategy presets a general overview of all measures and activities set forth under the Action Plan, accompanying the Strategy, until the end of 2018, inclusive. According to this review, out of a total number of 227 activities set forth under the Action Plan, 23 were fully implemented, 61 activities are on-going, 3 were delayed, 22 activities are continually implemented, 89 activities have e a later deadline, while 29 activities are conditioned by previously adopting legislative amendments.[27]

Judicial reforms are covered by the Plan 18,[28] which establishes indicators and deadlines for implementation of judicial reforms.

The Ministry of Justice established a number of inclusive working groups preparing legislative solutions in the justice system area. All working groups include experts, legal practitioners and representatives of the non-governmental sector.[29]

24 Ministry of Justice, *ANNUAL REPORT ON THE IMPLEMENTATION OF THE 2017-2022 STRATEGY FOR JUSTICE SYSTEM REFORM.*
25 Government of the Republic of Macedonia, X Session of the Council Monitoring the Implementation of the 2017-2022 Judicial Reform Strategy. Adopted annual Report on the degree of implementation of measures and activities set forth under the Action Plan.
26 Blueprint Group for the Judiciary, *II Quarterly Monitoring Brief of the Implementation of the Judicial Reform Strategy.*
27 Ministry of Justice, *ANNUAL REPORT ON THE IMPLEMENTATION OF THE 2017-2022 STRATEGY FOR JUSTICE SYSTEM REFORM. 3.*
28 Government of the Republic of Macedonia, Plan 18.
29 Blueprint Group for the Judiciary, *II Quarterly Monitoring Brief of the Implementation of the Judicial Reform Strategy.*

The Law amending the Law on the Academy for Judges and Public Prosecutors,[30] which entered into force in September 2018, eliminated the formal obstacles that the Academy faced that far. In December 2018, 3 laws were adopted as follows: the Law amending the Law on Enforcement and the Law amending the Law on the Notaries Public, which were adopted on 18 December 2018, and entered into force 8 days following their publication in the Official Gazette, while the amendments to the Criminal Code were adopted by the end of December 2018 and entered into force in January 2019.[31] However, the key reform laws in the justice sector set forth under the Judicial Reform Strategy and under the Plan 18 were adopted in March 2019. On 4 March 2019, amendments to the following laws were adopted: amendments to the Law on Courts, the new Law on Administrative Disputes and the Law on Misdemeanours.[32] However, the President of the state refused to sign the promulgation order for these laws. The draft Law on the Judicial Council, the draft Law on the Public Prosecutor's Office and the draft Law on the Council of Public Prosecutors, being key reform laws, have been in legislative procedure at the Parliament since March 2019, yet they have still not been adopted. [33]

At its 127th session, the Government of the Republic of North Macedonia considered and endorsed the Information about the preparation of a 2019-2024 Strategy for Information Communication Technology in the Judicial System, accompanied with an Action Plan. The Judicial System ICT Strategy is in line with European and international standards, aiming at enhancing accessibility, timely decisions and facilitating the use of judicial system services for all users, improving data quality, protection and security, and prompting cooperation with other countries' judicial systems, relevant EU institutions, its Member-States and international organizations.[34] Furthermore, on 26 March 2019, the Government of the Republic of North Macedonia adopted the Strategy for Information and Communication Technology in the Judicial System, accompanied with an Action Plan. The Government adopted the revised draft of the Strategy, considering that the initially endorsed Strategy was not accompanied with an Action Plan. The attaining of the goals set forth under the Strategy demands implementation of specific measures and activities, following a precise timeline, with clear definition of what needs to be undertaken, by whom and in what manner. The preparation of the Action Plan meant revision of the text of the Strategy. Hence, the Government adopted as a package both the Action Plan and the revised Strategy. It is expected that an ICT Council will be established, which will take on the responsibility for the implementation of the Strategy for Information and Communication Technology in the Judicial System and its Action Plan, by coordinating the relevant policies and issuing guidelines and recommendations.[35]

30 Official Gazette of the Republic of Macedonia Nos. 20/2015, 192/2015, 231/2015 and 163/2018, Law on the Academy for Judges and Public Prosecutors.
31 Blueprint Group for the Judiciary, *II Quarterly Monitoring Brief of the Implementation of the Judicial Reform Strategy*
32 Parliament of the Republic of North Macedonia, *SESSION NO. 88 OF THE PARLIAMENT OF THE REPUBLIC OF MACEDONIA SCHEDULED FOR 4 MARCH 2019, AT 11:20 HRS.*
33 Blueprint Group for the Judiciary, *II Quarterly Monitoring Brief of the Implementation of the Judicial Reform Strategy.*
34 Government of the Republic of North Macedonia, *127th session of the Government of the Republic of North Macedonia.*
35 Policy Dialogue, *Reforms under Chapter 23, 17 April 2019.*

In 2018, the focus was mainly on reforms in the judicial system. In this context, practitioners, experts and civil society organization were involved in the drafting of a number of laws for reforms in the judicial system area.

The key reform laws in the judicial reforms covered by the Judicial Reform Strategy and Plan 18 were adopted in March 2019. The amendments to the Law on Courts, then the new Law on Administrative Disputes and the Law on Misdemeanours were adopted on 4 March 2019. However, the President of the state refused to sign the promulgation order for these laws. The draft Law on the Judicial Council, the draft Law on the Public Prosecutor's Office and the draft Law on the Council of Public Prosecutors, being key reform laws, were still not adopted by March 2019, inclusive.

It is expected that in the coming period the focus will be placed on the implementation of laws and amending laws in the judicial system area, which will enhance the efficiency and independence of the judicial system, enhancing thus the trust of citizens in the justice system. In addition, the monitoring of new legal solutions will be of key importance to establish and demonstrate results of the preparatory activities for accession talks under Chapter 23.

MANAGEMENT BODIES

Activities and measures set forth under the Judicial Reform Strategy[36] relating to the independence and impartiality of the justice system are focused exactly on the adoption of a new Law on the Judicial Council and the Law amending the Law on the Council of Public Prosecutors. The set forth measures and activities are aimed at fulfilling the urgent reform priorities, and the recommendations of the Venice Commission regarding the Law on the Judicial Council. The new draft Law on the Judicial Council[37] and the draft Law amending the Law on the Council of Public Prosecutors support the fulfilment of part of the measures envisaged in the Strategy itself, which on its part will help advance the independence of the Macedonian judicial system.

In November 2017, the Ministry of Justice established a number of inclusive working groups preparing amendments to the Law on the Judicial Council, with the same group later drafting the new Law on the Judicial Council. The Working Group mainly consists of representatives from the ranks of legal professionals, i.e. from the Association of Judges, the Supreme Court, the Judicial Council, representatives of the academia and representatives of civil society organizations.[38]

The amendments to the Law on the Judicial Council[39] are mainly aimed at clearly defining the provisions governing the proceedings for establishment of liability of judges, as well as the criteria for appointment of a judge to a higher instance court and criteria for performance evaluation of judges, introducing grounds and defining a procedure for disciplinary liability of members of the Judicial Council. However, the draft amendments do not envisage any legislative changes regarding the planned and long-debated measures of "deprofessionalization of the work of the Judicial Council." According to the debate on the draft Law on the Judicial Council, held on 8 and 9 November 2018, the deprofessionalization was questionable in terms of the mandate of the Judicial Council, and the limitations in this respect prescribed by the Constitution. According to the opinion of the Consultative Council of European Judges, although it is for the states to decide whether the members of the Council for the Judiciary should sit as full-time or part time members, the CCJE points out that full-time attendance means a more effective work and a better safeguard of independence. However, there is a need to ensure that judges sitting on the Council for the Judiciary are not absent for too long from their judicial work, so that, whenever possible, contact with court practice should be preserved. Terms of office, which entail exclusive sitting on the Council for the Judiciary, should be limited in number and time.[40] However, before embarking upon amending the law, i.e. envisaging complete deprofessionalization of the work of the

36 Ministry of Justice, 2017-2022 *Judicial Reform Strategy and its accompanying Action Plan.*
37 BARRETT et al., *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)."
38 Blueprint Group for the Judiciary, II Quarterly Monitoring Brief of the Implementation of the Judicial Reform Strategy.
39 Government of the Republic of Macedonia, draft Law on the Judicial Council.
40 Institute for Human Rights, *Appointment of members of the Judicial Council of the Republic of Macedonia and is their deprofessionalization necessary?*

members of the Judicial Council of the Republic of North Macedonia, it is necessary to make an in-depth analysis of the possible benefits and risks that could arise from such changes. Furthermore, introducing complete deprofessionalization of the work of the members of the Judicial Council is to be facilitated by the domestic regulations at all levels.[41]

The draft Law on the Judicial Council, which is in the Parliament legislative procedure envisages stricter conditions for appointment of members of the Council from the ranks of judges. Hence, according to one of the conditions, a candidate for Council member must have at least six years of service, i.e. experience as a judge.[42] The draft Law on the Judicial Council of the Republic of North Macedonia, defines the terms "renowned lawyer" by expanding the list of persons that may be appointed as members of the Judicial Council by the Parliament of the Republic of North Macedonia, by including in the list of possible candidates former judges of the Constitutional Court and international judges. According to the draft Law on the Judicial Council, members of the Council appointed by the Parliament of the Republic of North Macedonia and the members of the Council appointed by the Parliament of the Republic of Macedonia upon the proposal of the President of the Republic of North Macedonia are to be candidates from the ranks of university law professors, lawyers, former judges of the Constitutional Court of the Republic of North Macedonia, international judges or other renowned layer having at least 15 years of service in the legal profession and having passed the bar examination, and who have become renowned lawyers with their scientific or professional work or public serving activities.[43] It is yet to be seen what effects such provisions will produce after the Law enters into force.

The Venice Commission[44] approved the draft Law in March 2019, giving as well further recommendations for improvement of the text. The Venice Commission recommendations relate to the majority/special majority of votes required at sessions of the Judicial Council in order to adopt decisions on the appointment and promotion of judges or on the disciplinary liability of judges and members of the Judicial Council; with respect to disciplinary proceedings, the Law needs to ensure a mechanism to filter out complaints against judges submitted directly to the Judicial Council; the procedure for recruitment of judges needs to be better explained in the Law.[45] In relation to the evaluation of judges, it is recommended that the parameter for evaluating the performance of judges should be kept under constant revision. According to the Venice Commission, it would be more appropriate to attribute the exact numerical value to those parameters in regulations adopted by the Judicial Council in order to be able to change them if needed.[46] It is expected that the legislative procedure for the adoption of a new Law on the Judicial Council, which will have incorporated the recommendations of the Venice Commission, will continue.

41 Ibid.
42 Government of the Republic of Macedonia, draft Law on the Judicial Council.
43 Ibid.
44 Barrett, Dimitrov, and Ribičič, *Opinion on the Draft Law on the Judicial Council, Adopted by the Venice Commission at Its 118th Plenary Session.*
45 Ibid.
46 Ibid.

On 7 September 2018, one member of the Judicial Council from the ranks of judges was appointed.[47] On 10 December 2018, five members of the Judicial Council from the ranks of judges were appointed. [48] 1 (One) member from the ranks of judges of the Supreme Court, 1 (one) member from the ranks of judges in the Appellate circuit of Skopje and the circuits of administrative courts, 1 (one) member from the ranks of judges in the Gostivar appellate circuit, 1 (one) member from the ranks of judges in the Shtip appellate circuit, 1 (one) member from the ranks of judges belonging to non-majority communities for the entire territory of the Republic of Macedonia were elected. The procedure was transparent, there was a ranking table published established after the voting on the website of the Judicial Council.[49] There is improvement in the work of the Judicial Council in terms of its transparency (albeit not completely). However, there are still evident problems with respect to the Judicial Council's accountability and effectiveness.[50]

In November 2017, there was a working group established, composed of a number of experts tasked with drafting the amendments to the Law on the Council of Public Prosecutors.[51] The draft amendments to the Law on the Council of Public Prosecutors were published on the ENER on 29 November 2018. On 5 March 2019, the Government finalized the text of the draft Law amending the Law on the Council of Public Prosecutors of the Republic of North Macedonia and submitted the draft to the Parliament for adoption in a summary legislative procedure.[52]

The draft Law on the Council of Public Prosecutors envisages stricter criteria for appointment of members of the Council of Public Prosecutors from the ranks of public prosecutors. Thus, a candidate who has at least 10 years of service, i.e. experience as a public prosecutor may be elected as a member of the Council of Public Prosecutors. The amendments also enhance the responsibility of the members of the Council of Public Prosecutors. The draft Law more precisely defines the condition of "renowned lawyer", a condition for appointment of members of the Council of Public Prosecutors upon the proposal of the Parliament of the Republic of North Macedonia and upon the proposal of the President of the Republic of North Macedonia, who are not from the ranks of public prosecutors. Thus, renowned lawyers not coming from the ranks of public prosecutors appointed by the Parliament as members of the Council are to be from the ranks of university law professors, lawyers, former judges of the Constitutional Court of the Republic of North Macedonia, international judges or other renowned lawyers, who have at least 15 years of service, i.e. experience in the legal profession, having passed the bar exam and who have acquired their renown through their scientific or professional work or public serving activities. [53] As different from the draft Law

47 Judicial Council, *THE JUDICIAL COUNCIL OF THE REPUBLIC OF MACEDONIA APPOINTED A NEW MEMBER.*
48 Judicial Council of the Republic of Macedonia, *Press release about the appointment of new members of the Judicial Council of the Republic of Macedonia.*
49 Ibid.
50 Blueprint Group for the Judiciary, *II Quarterly Monitoring Brief of the Implementation of the Judicial Reform Strategy.*
51 Ibid.
52 Government of the Republic of North Macedonia, *124th session of the Government of the Republic of North Macedonia: Defined package of reform draft Laws on the Public Prosecutor's Office, on the Council of Public Prosecutors and on Free Legal Assistance; endorsed amendments to the draft Anti-Discrimination Law.*
53 Ministry of Justice, *ANNUAL REPORT ON THE IMPLEMENTATION OF THE 2017-2022 JUDICIAL REFORM STRATEGY.*

on the Judicial Council, which defines the criteria for performance evaluation and the points, the draft law on the Council of Public Prosecutors does not contain provisions regulating the evaluation of public prosecutors, which is the most common problem in the practice in the context of the procedures for their appointment and promotion.[54] The draft Law furthermore does not stipulate complete deprofessionalization of the membership of the Council of Public Prosecutors.

There is a slight improvement of the transparency in the work of the Council of Public Prosecutors, considering that the Council has a functioning website.[55]

The new draft Law on the Judicial Council and the draft Law amending the Law on the Council of Public Prosecutors are aimed at implementing the measures set forth in the Strategy. It is expected that the legislative procedure for the adoption of a new Law on the Judicial Council, which incorporates the recommendations of the Venice Commission, will continue. It is necessary to consistently implement laws after they enter into force.

The draft Law on the Judicial Council and the draft Law amending the Law on the Council of Public Prosecutors do not envisage deprofessionalization of these two bodies. However, before amending laws with a view to deprofessionalization of the members of the Judicial Council and of the members of the Council of Public Prosecutors, it is necessary to make an in-depth analysis of the benefits and risks that could derive from such a change. In addition, introducing deprofessionalization of membership of the Judicial Council and of the Council of Public Prosecutors should be enabled by the domestic regulations at all levels.

The draft Law on the Judicial Council and the draft Law amending the Law on the Council of Public Prosecutors precisely define the term "renowned lawyer", as a criterion for appointment of members of the Judicial Council and of the Council of Public Prosecutors upon the proposal of the Parliament of the Republic of North Macedonia and upon the proposal of the President of the Republic of North Macedonia, who are not from the ranks of judges, i.e. public prosecutors. However, it remains to be seen how the pertinent provisions will be implemented in the practice.

There is improvement in the transparency of the work of the Judicial Council and of the Council of Public Prosecutors. However, additional commitments and efforts are needed in this regard.

54 Institute for Human Rights, *Action for greater transparency, accountability and effectiveness of the Judicial Council of the Republic of Macedonia, What was said that the Debate and the Faculty of Law in Shtip?* (14 March 2019).
55 Blueprint Group for the Judiciary, *II Quarterly Monitoring Brief of the Implementation of the Judicial Reform Strategy.*

INDEPENDENCE AND IMPARTIALITY

Some of the activities and measures set forth under the Judicial Reform Strategy[56], which are focused on the independence and impartiality have been implemented with the adoption of the third set of amendments to the Law on Courts and with the preparations of the new draft Law on the Judicial Council, which is in Parliamentary procedure. The draft Law on the Public Prosecutor's Office and the draft Law on the Council of Public Prosecutors are also aimed at enhancing the independence of the justice system.

Reports of the Senior Experts' Group, headed by Priebe,[57] require that the recruitment of judges and public prosecutors be done exclusively through the Academy for Judges and Public Prosecutors. The remarks in the Report following the TAIEX Peer Review Mission regarding training of judges and public prosecutors are mainly focused on the judges of the Administrative Court, stating that all judges are to undergo the same basic training at the Academy for Judges and Public Prosecutors.[58] There is a similar remark regarding the election of public prosecutors to higher offices at the public prosecutors service. This runs contrary to the principles governing the merit based appointment and promotion. The same career rules are to be applied both in courts and in public prosecutors' offices.[59]

The amendments to the Law on Courts adopted on 4 March 2019 address exactly this issue. [60] The amendments to the Law on Courts changed the criteria for appointment of judges. Under the new criteria, entry recruitment of judges shall be done exclusively through the Academy for Judges and Prosecutors. The only exception has been envisaged for judges who have served in international tribunals, who, having fulfilled the general conditions for election as a judge may be appointed as judges in courts of all instances. The amendments also increase the number of years of service required for appointment as a judge in the Appellate Court. A candidate who has at least four continual years of service as a judge in a first instance court may be elected as a judge of the Appellate court, while only candidates who have at least six continual years of service as a judge in an appellate court or in the Administrative Court may be elected as judges of the Higher Administrative Court. Hence, the Academy for Judges and Public Prosecutors is not sidelined in the appointment of judges for administrative courts. In the context of promotion of judges, it is required that the candidate has positive performance evaluation, by which the promotion of judges becomes a discretionary right of choice of the Judicial Council.[61]

56 Ministry of Justice, 2017-2022 Judicial Reform Strategy and its accompanying Action Plan.
57 Senior Experts' Group, *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; Senior Experts' Group, The Former Yugoslav Republic of Macedonia: Assessment and Recommendations of the Senior Experts' Group on Systemic Rule of Law Issues 2017*.
58 TAIEX Peer Review Mission for Training of Judges and Prosecutors.
59 Ibid.
60 Parliament of the Republic of North Macedonia, *SESSION NO. 88 OF THE PARLIAMENT OF THE REPUBLIC OF MACEDONIA SCHEDULED FOR 4 MARCH 2019, AT 11:20 HRS.*
61 Parliament of the Republic of North Macedonia, Supplemented DRAFT Law AMENDING the law on Courts.

The amendments to the Law also envisage the possibility to apply for a position of a judge in another court of the same instance. Thus, the amendments envisage that a judge who has been appointed as a judge in the circuit of a first instance court, after four years of continual service as a judge in the said court may be elected as a judge in another first instance court, while a judge who has been appointed as a judge in an appellate court, after four years of continual uninterrupted service in the said appellate court, may be elected as a judge in another appellate court, covering a different circuit, in line with criteria governing the appointment of judges for appellate courts.[62]

As regards transfer of judges to another court and transfer of judges from one into another section of the court, according to the amendments of the Law on Courts, a judge may be transferred to another court or transferred to another section of the court for a period of one year, but not more than once within a 5 year period.[63] In this regard, upon the proposal of the Venice Commissions guarantees are introduced in case of a transfer of a judge to another court or transfer into a lower instance court due to certain circumstances. The applicable Law stipulates that a judge may be transferred for a period of one year at the most. Upon the proposal of the Venice Commission, there are limitations set on the calculation of the one-year period. According to the proposed solution, the transfer may be done only once in a 5 year period. This solution prevents that transfers of judges are used as a form of pressure on judges.[64]

In the context of legal protection of judges against certain measures instituted against them, a guarantee has been introduced, i.e. the right to lodge an appeal with the Appeal Council at the Supreme Court. The Law on the Judicial Council did stipulate such a guarantee of lodging an appeal, but only for cases of dismissal or disciplinary liability, yet such guarantee was lacking regarding other measures that may be instituted against judges. The Law on Courts now envisages such a guarantee, i.e. protection.[65]

The draft Law on the Public Prosecutor's Office,[66] which envisages that the Special Public Prosecutor's Office will be incorporated within the system of public prosecution, also introduces changes in the appointment of Public Prosecutors. The draft Law stipulates that a candidate who has completed legally required training at the Academy for Judges and Public Prosecutors may be appointed as a public prosecutor in a given public prosecutor's office. The changes also cover the specific conditions for election of public prosecutors to higher positions within the public prosecution office, including for the appointment of the Public Prosecutor leading the Special Public Prosecutor's Office and appointment of public prosecutors to serve at the Special Public Prosecutor's Office. In such instances, the Council of Public Prosecutors will appoint public prosecutors to higher positions at the public prosecution service, who have served only as public prosecutors and have received positive

62 Ibid.
63 Ibid.
64 Цоневска и Камбери, "Процена на влијание на регулативата на законот за судови." *(Conevska and Kamberi, Regulatory Impact Assessment of the Law on Courts).*
65 Ibid.
66 Ministry of Justice, *Draft Law on the Public Prosecutor's Office*.

performance evaluations. The only exception is made for appointment of a candidate for the position of Chief Public Prosecutor of the Republic of North Macedonia, who according to the Law must have 12 years of continual uninterrupted service as a public prosecutor or at least 15 years continual uninterrupted service as a judge or lawyer in the criminal law area.[67]

The draft Law[68] envisages incorporation of the Special Public Prosecutor's Office within the system of public prosecution, in line with the Judicial Reform Strategy. The draft Law limits the possibility for use of the so called "bombs" (illegally intercepted communication), i.e. audio materials to be used as evidence in the procedure, which undermines the raison d'être, i.e. the purpose for which this public prosecution office was established, which is fight against high-profile corruption and organized systemic abuse of the state and state resources for satisfying private interests and gaining material benefit. Thus, the draft Law envisages that the Special Public Prosecutor's Office may process the contents of the illegally intercepted communications until 15 September 2020 at the latest, while such materials may be used as evidence only in cases in which indictments were instituted until 30 June 2017.[69]

Furthermore, the provisions of the draft Law lead to overlapping of competences between the Special Public Prosecutor's Office and the Basic Public Prosecutor's Office for Prosecution of Organized Crime and Corruption. Thus, the same type of crimes is subject of prosecution of the two public prosecutor's offices. The draft Law also envisages renewal of human resources for the public prosecution team every six months, until all of the public prosecutors are changed, which additionally brings into question the already working public prosecutors at the Special Public Prosecutor's Office, in the development of which much has been invested thus far. [70] The draft Law, which is now in Parliamentary procedure, is subject of consultations among all political parties. VMRO-DPMNE submitted amendments to this Law, but the Ministry of Justice stated that some of the amendments were not acceptable since they undermine the autonomy of the Special Public Prosecutor's Office as a separate body and ran contrary to the recommendations of the international community, since the said amendments envisage amnesty of destruction of evidence that has already been gathered. The Minister of Justice appealed to all politicians to help the talks process with a view to ensuring two third majority for the adoption of the Law, which bears great importance for the process of European integration of the country.[71]

The draft Law sets forth a solution similar to the one contained in the amendments to the Law on Courts regarding the issue of transfer of public prosecutors to another public prosecutor's office. On the grounds of increased caseload or with a view to reducing the backlog of cases, the Public Prosecutor of the Republic of North Macedonia may provisionally transfer

67 Ibid.
68 Ibid.
69 Ibid.
70 Blueprint Group for the Judiciary, *II Quarterly Monitoring Brief of the Implementation of the Judicial Reform Strategy.*
71 Minister of Justice, Deskoska: *"I appeal to all politicians to help the talks process with a view to ensuring two-third majority for the adoption of a Law, which is of importance for the European integration process of the country."*

a public prosecutor to another pubic prosecutor's office for a period of one year at the most. A public prosecutor may not be transferred to another public prosecutor's office without his/her consent more than once within a five-year period. The draft Law introduces guarantees for the salary in case of a transfer to another public prosecutor's office.[72]

In the context of appointment of judges, in the reporting period, the Judicial Council appointed a total number of four judges and four presidents of courts.[73] For the first time, all members of the Judicial Council individually presented a reasoned explanation for their vote in the course of the procedure for appointment of judges or presidents of courts. This obligation derives from the legal amendments of May 2018, and the obligation applies only to appointment of judges for presidents of courts or judges in higher instance courts, but does not apply to judges who have not been appointed, and have higher score than appointed judges. There is an improvement in the transparency of the manner of appointment of judges. Hence, during the sessions, judges present a reasoning as to why they vote in favour of a candidate, while the decisions for appointment of presidents of courts and judges are posted on the website of the Judicial Council, with information about all candidates that have applied such as degree of education, years of service, scores form regular performance evaluations and ethnic affiliation. The results of the anonymous survey asking for the opinion about the candidates for judges are available only in the published decision for appointment of a judge for the Skopje Appellate Court, Criminal Law Section, candidates who belong to the non-majority communities. On the other hand, the results of the anonymous survey have no bearing on the finalization of the ranking list. Despite the fact that decisions on the appointment contain data about all candidates, yet they do not contain a reasoning why a certain candidate has been appointed, despite the fact that that candidate has not been ranked first on the ranking list.[74]

The appointment as a judge at the Supreme Court in the criminal law area was postponed. Despite the fact that the ranking was established on 30 October 2018, it was decided that the voting would be done at a session in the coming period. However, such voting session has not been scheduled as of yet.[75] In January 2019, a public announcement was published for appointment of new judges at the Administrative Court. The appointment of judges under this public announcement will fill all vacancies at the Administrative Court. [76] Presently, [77] candidates who have at least five years of service on legal maters in a state administration body with recognized performance results may also compete for a position of a judge in the administrative court. However, under the latest legal amendments to the Law on Courts, which the Parliament of the Republic of North Macedonia adopted on 4

72 Ministry of Justice, *Draft Law on the Public Prosecutor's Office, para. 26*
73 Monitoring Report on the Work of the Judicial Council – Report No. 1 (Reporting period from June 2018 to September 2018); Monitoring Report on the Work of the Judicial Council – Report No. 2 (reporting period from October 2018 to January 2019).
74 Monitoring Report on the Work of the Judicial Council – Report No. 2 (reporting period from October 2018 to January 2019).
75 Ibid.
76 Ibid.
77 Official Gazette of the Republic of Macedonia Nos. 58/2006, 62/2006, 35/2008, 150/2010, 83/2018 and 198/2018, Law on Courts.

March 2019,[78] only a candidate who has at least four years of continual uninterrupted service as a judge in a first instance court until the moment of applying and who has received positive performance evaluations in accordance with the law may be elected as a judge at the Administrative Court.

At its 44th [79]and its 58th [80] sessions, the Council of Public Prosecutors appointed 13 public prosecutors.

The remarks of the experts and civil society organizations[81] are mainly related to the fact that there is no reasoning for the decisions for appointment or non-appointment, promotion or non-promotion of judges and public prosecutors provided by the Judicial Council or the Council of Public Prosecutor, respectively. According to the thus far practice, the Judicial Council *de facto* prevents not appointed candidates from having any grounds upon which to base their appeal against the decision, since non-appointed candidates do not know the reasons why they have not been appointed as a judge in a higher instance court (why they have not been promoted).[82]

After the published six-month Report of the Special Public Prosecutor's Office, in which names of judges were given for whom it was stated that they had performed their offices without a shred of moral integrity, the Judicial Council did not undertake a single action to protect the independence of the judiciary.[83]

The Association of Judges established the Judicial - Media Council. The Council has 21 members, of whom 11 are journalists, and 10 are judges. At the constitutive session, held on 20 September 2018, Mrs. Gordana Duvnjak, journalist and Deputy Editor at the 1 TV station, was elected as a Chair of the Council, while Judge Ilir Sulejmani, President of the Skopje II First Instance Court, Skopje was elected as the Deputy Chair. The Council was established in order to promote judicial transparency, promote the cooperation between judges and journalists on issues of common interest and to enhance the public access to justice.[84]

78 Parliament of the Republic of North Macedonia, Supplemented DRAFT Law AMENDING the law on Courts.
79 Council of Public Prosecutors, Press Release, 20 June 2018.
80 Council of Public Prosecutors, Press Release, 25 January 2019.
81 Institute for Human Rights, *Action for greater transparency, accountability and effectiveness of the Judicial Council of the Republic of Macedonia, What was said that the Debate and the Faculty of Law in Shtip?* (14 March 2019).
82 Ibid.
83 Monitoring Report on the Work of the Judicial Council – Report No. 1 (Reporting period from June 2018 to September 2018).
84 Association of Judges, *PROMOTION OF THE JUDICIAL-MEDIA COUNCIL OF THE ASSOCIATION OF JUDGES OF THE REPUBLIC OF MACEDONIA*

The ACCMIS System

The Report on the ACCMIS System application was submitted to the Judicial Council as early as December 2017. An independent group, which had previously conducted all required research, prepared the Report. However, even until the end of this reporting period, there have been no evident activities undertaken by the Judicial Council with a view to eliminating and removing the irregularities. This is another indicator of lack of effectiveness, which has a negative impact on the independence of the judiciary, which is to be the Council's primary concern.[85] There is still no information about the state of play in the investigation, pursued by the Public Prosecutor's Office into possible abuses of the ACCMIS System.

In the context of the ACCMIS operation, it is necessary to revise and advance the judicial information system. The Judicial Council, the Supreme Court and the Ministry of Justice have different numbers regarding data on the ACCMIS system. If one needs exact numbers for a certain period back about the number of investigations, assessment of the indictments, petty value disputes or about provisional measures, the data must be manually extracted. Some of the court administrative officers do extract manually such numbers and submit them as reports to the Supreme Court of the Republic of North Macedonia. It is necessary to evaluate the work of judges in the Criminal Law Chamber, in addition to that of the President of the Chamber. The ACCMIS system allows to state only judges who have been part of the criminal chamber, in addition to the President of the chamber. It is necessary to establish a mechanism for harmonization of the type of data entered in the ACCMIS system. It is also necessary to have sufficient data and each judge needs to have access to how cases are distributed. In advancing the system, it is necessary to provide all required input data, especially in the context of the accession negotiations with the European Union. In this respect, it is necessary to input data about instituted procedures for mediation, so that the number of such proceedings is also taken into consideration. The ACCMIS system needs to have an open section that would be accessible to external users. The section on statistics needs to be linked with the State Statistical Office. There should be a function enabling parties to a case to be linked in the case file. Every user of the system should have their own access account in order to get data they are authorized to acquire.[86]

The Law amending the Law on Courts[87] stipulates an obligation according to which the Ministry of Justice conducts the oversight of the application of the provisions of the Courts' Rules of Procedure, without infringing upon the autonomy and independence of the judicial office, in line with the Plan for supervision, which is adopted by the Minister of Justice until December at the latest of the running year for the next calendar year. The supervision is conducted by a commission, established by the Minister of Justice, composed of two representatives of the Ministry of Justice, a graduated lawyer with at least 10 years of service in legal matters, after their having passed the bar exam and two IT experts trained about the

85 Monitoring Report on the Work of the Judicial Council – Report No. 1 (Reporting period from June 2018 to September 2018).

86 Цоневска и Камбери, "Процена на влијание на регулативата на законот за судови." *(Conevska and Kamberi, Regulatory Impact Assessment of the Law on Courts).*

87 Official Gazette of the Republic of Macedonia No. 83/18, Law amending the Law on Courts.

functions and manner of operation of the Automated Court Case Management Information System. In addition, the amendments to the Law on Courts[88] envisage the possibility for the Minister of Justice, when he/she deems it necessary, to involve in the commission external experts to examine the functioning of the Automated Court Case Management Information System, which helps address the issue of recruiting independent experts in the preparation of regular audits of the functioning of the ACCMIS.[89]

The amendments to the Law on Courts, adopted in March 2019, envisage the establishment of a Council coordinating and managing the information communication technology in justice system bodies. The ICT Council presents proposals setting the policy priorities and coordination of justice system bodies in the operation of the information communication technology system.[90] Such activities were assessed as necessary to harmonize data submitted by all justice system bodies, considering that the Ministry of Justice is the in-line institution charged with preparing and managing the Information Technology Strategy.[91]

In addition, in the course of 2019 there will be amendments drafted to the Law on the Management of Court Cases with a view to ensuring legal basis for the establishment of a body to evaluate the application of the ACCMIS system.[92] In this respect, it is necessary to first draft the amendments to the Law and then the ICT Council is to take over the work both in terms of organizing the work and acquiring the equipment necessary for the functioning of the ACCMIS.[93]

The supervision of the ACCMIS system started in 2019. The plan for 2019 envisages supervision of 16 courts, in five of which the supervision has been completed. There is a progress in the application of the ACCMIS system in courts.[94]

On 18 December 2018, the tender procedure for procurement of a new ACCMIS was stayed. None of the three companies selected to be evaluated with a view to granting the tender for procurement of new software fulfilled the technical conditions of the tender.[95]

88 Ibid.
89 Ministry of Justice, *ANNUAL REPORT ON THE IMPLEMENTATION OF THE 2017-2022 JUDICIAL REFORM STRATEGY.*
90 Parliament of the Republic of North Macedonia, Supplemented DRAFT Law AMENDING the law on Courts.
91 Цоневска и Камбери, "Процена на влијание на регулативата на законот за судови." (Conevska and Kamberi, *Regulatory Impact Assessment of the Law on Courts).*
92 Ministry of Justice, *ANNUAL REPORT ON THE IMPLEMENTATION OF THE 2017-2022 JUDICIAL REFORM STRATEGY.*
93 Policy Dialogue, *Reforms under Chapter 23, 17 April 2019.*
94 Ibid.
95 КОД, "Судовите Нема Да Добијат Нов АКМИС." (KOD- Courts will not get a new ACCMIS).

The amendments to the Law on Courts and the draft Law on the Public Prosecutor's Office help implement the recommendations contained in the Priebe reports and the recommendations following the TAIEX peer review mission on training of judges and public prosecutors, relating to the appointment and promotion of judges and public prosecutors. The amendments to the Law on Courts incorporate the recommendations given by the Venice Commission related to the provisional transfer of judges to another court or to another court section. Additional guarantees for judges are also introduced. It remains to be seen how these amendments will be applied in the practice, after their entry into force.

The lack of reasoning for the election (non-election), promotion (non-promotion) of judges and public prosecutors by the Judicial Council, i.e. by the Council of Public Prosecutors remains the main issue against which experts and civil society organizations present their remarks. According to the present practice, the Judicial Council de facto prevents not-appointed candidates from having any grounds upon which to lodge their appeal claims, since they have no information about the real reasons for them not being appointed as a judge in a higher instance court (for their not being promoted).

It is necessary to adopt the draft Law on the Public Prosecutor's Office, which regulates the status and mandate of the Special Public Prosecutor's Office, defining it as an autonomous prosecutor's office within the system of public prosecution. This Law is of exceptional importance for the European future of the country. The submitted amendments should not jeopardize the autonomous status of the Special Public Prosecutor's Office.

There is progress in the application of the ACCMIS system in courts. In this regard, it is necessary to advance the judicial information system. In addition, the type of data entered in the ACCMIS needs to be harmonized.

ACCOUNTABILITY

The Law amending the Law on Courts and the Law amending the Law on the Judicial Council of May 2018 introduced changes in the grounds for calling upon judges to responsibility and for establishing their liability. However, these changes did not meet the expectations of judges and did not incorporate fully the recommendations of the Venice Commission.[96]

The GRECO Report[97] emphasizes that the recommendation "(i) that disciplinary infringements applicable to judges be clearly defined and that the range of sanctions be extended to ensure better proportionality and (ii) that dismissal of a judge only be possible for the most serious cases of misconduct, ensuring, in particular, that the possibility to dismiss a judge solely in case one of his/her decisions is found to be in violation of the right to a trial within a reasonable time" was partially implemented. GRECO notes that excessively vague offences such as the "unprofessional, untimely or inattentive exercise of the judicial office" (an offence used frequently in practice) can still be found in Article 75, which now comprises 11 elements (10 at the time of the on-site visit). Moreover, as regards the second part of the recommendation, Article 75 still provides for the type of situations that the recommendation calls to abolish (decision found in violation of Articles 5 and 6 of the European Convention on Human Rights). Overall, whilst some improvements may have taken place as regards the range of offences and sanctions and the automatic sanctions have been abolished, some important underlying concerns of the two parts of the present recommendation have actually not been addressed.[98]

On 22 October 2018, the Venice Commission published its opinion on the Law amending the Law on Judicial Council and the Law amending the Law on Courts.[99]

The Venice Commission positively assessed the amendments, but also issued specific recommendations for the next amendments and for the improvement of the legislative texts. According to the Venice Commission,[100] the Law on the Judicial Council should specify who has the filtering function in the new system of disciplinary proceedings. The role of the plenary Judicial Council vis-à-vis the Inquiry Commission and the Appeal Council should be better explained (namely whether the Judicial Council is bound by the proposal of the Inquiry Commission, and who takes the final decision in a disciplinary case if the Appeal Council returns the case with "guidelines"); the authorities should reconsider which types of decisions need a 2/3 majority in the Judicial Council, and specify what happens if this majority is not reached. The effectiveness of the performance evaluation system should be

96 Цоневска и Камбери, "Процена на влијание на регулативата на законот за судови." (Conevska and Kamberi, *Regulatory Impact Assessment of the Law on Courts).*

97 Adopted by GRECO at its 80th Plenary Session, Fourth Evaluation Round - Corruption prevention in respect of members of parliament, judges and prosecutors, Second Compliance Report on the former Yugoslav Republic of Macedonia.

98 Ibid.

99 *Barrett et al., Opinion on the Law Amending the Law on the Judicial Council and on the Law Amending the Law on Courts Adopted by the Venice Commission at Its 116th Plenary Session (Venice, 19-20 October 2018).*

100 Ibid.

reviewed, after a test period; the function of devising the system of performance evaluation may be given to the Judicial Council itself; the role of the extraordinary evaluations in the promotion process should be clarified. Articles 75 and 76 of the Law on Courts should be reformulated in order to avoid parallelism and reflect the distinction made by the Constitution between "unprofessional and neglectful exercise of the judicial office" and a "serious disciplinary offence"; the Law must make clear that the dismissal of a judge for a professional error is possible only if two pre-conditions are established: the fault of the judge concerned (in the form of intent or gross and evident negligence), and the gravity of the error and its consequences. In any event, individual judges should not bear responsibility for the malfunctioning of the judicial system as a whole. While judges have to apply the case law of the European Court of Human Rights, they should not be punished for honest errors in performing this task. Where the European Court finds a violation of the Convention in a case handled by a judge, this should never lead automatically to the dismissal of this judge, or to the reduction of the overall score in the performance evaluation process.[101]

The amendments to the Law on Courts of March 2019,[102] regarding the grounds for liability of judges are aimed at strengthening the independence of judges and of the judiciary overall. The amendments facilitate the implementation of the recommendations contained in the GRECO Report[103] and the measures defined under the Justice System Reform Strategy. In addition, the Venice Commission has endorsed these amendments.[104] The amendments go along the lines of the recommendations given by the judges.[105]

These amendments[106] grade the grounds for dismissal, i.e. for a less serious form of violation of the grounds for serious disciplinary violations, a judge may be sanctioned with a disciplinary measure. With respect to the grounds for dismissal of judges the gravity of the violation and the fault of the judge are taken into consideration.

The draft Law on the Judicial Council was also positively assessed by the Venice Commission,[107] but the Commission issued additional recommendations. It is necessary to assess whether the majorities/special majority required in the plenary of the Judicial Council to take decisions on the appointment and promotion of judges or on the disciplinary liability of judges and members of the Judicial Council are realistic. In the context of disciplinary proceedings, the Law should provide for a filtering mechanism for the complaints submitted against judges directly to the Judicial Council.[108] These recommendations of the Venice Commission need to be incorporated in the draft Law by submitting amendments.

101 Ibid.
102 Parliament of the Republic of North Macedonia, Supplemented DRAFT Law AMENDING the law on Courts
103 Adopted by GRECO at its 80th Plenary Session, Fourth Evaluation Round - Corruption prevention in respect of members of parliament, judges and prosecutors, Second Compliance Report on the former Yugoslav Republic of Macedonia.
104 Barrett et al., *Opinion on the Draft Amendments to the Law on Courts, Adopted by the Venice Commission at Its 117th Plenary Session.*
105 Цоневска и Камбери, "Процена на влијание на регулативата на законот за судови." (Conevska and Kamberi, *Regulatory Impact Assessment of the Law on Courts).*
106 Parliament of the Republic of North Macedonia, Supplemented DRAFT Law AMENDING the law on Courts
107 Barrett, Dimitrov, and Ribičič *Opinion on the Draft Law on the Judicial Council, Adopted by the Venice Commission at Its 118th Plenary Session.*
108 Ibid.

The amendments to the Law on Courts,[109] envisage that the Supreme Court will adopt a Code of Judicial Ethics for judges and lay judges, upon the proposal of the Association of Judges. This solution is in line with one of the GRECO recommendations.[110]

In the reporting period, the Association of Judges and the Academy for Judges and Public Prosecutor organized trainings on judicial ethics.

The draft Law on the Public Prosecutor's Office,[111] lays down the grounds for suspension, dismissal and disciplinary liability of public prosecutors. Similarly, to the amendments to the Law on Courts, it is positive that in this draft Law, there is grading of the grounds for dismissal, or more precisely less serious forms of violation of the grounds for grievous disciplinary violation are sanctioned with a disciplinary measure for the concerned public prosecutor. In the context of grounds for dismissal of public prosecutors, the gravity of the violation and the fault of the public prosecutor are taken into consideration.[112] The draft Law defines the majority required to be reached by the Council of Public Prosecutors for the dismissal of a public prosecutor. In the context of the proceedings themselves, the Rulebook on the manner of implementation of proceedings for establishment of liability of a public prosecutor is adopted by the Council of Public Prosecutors of the Republic of North Macedonia, upon the proposal of the chief Public Prosecutor of the Republic of North Macedonia.[113]

The amendments to the Law on Courts, adopted by the Parliament in March 2019 related to the grounds for liability of judges are aimed at strengthening the independence of judges and of the judiciary. The said amendments also serve the purpose of fulfilling the recommendations contained in the GRECO report and the measures set forth in the Judicial Reform Strategy. In addition, the said amendments have been endorsed by the Venice Commission and are in line with the recommendations presented by judges themselves.

The draft Law on the Judicial Council has also been positively assessed by the Venice Commission, which however has issued additional recommendations. It is necessary to assess whether the majorities/special majority required in the Plenary of the Judicial Council to take decisions on the appointment and promotion of judges or on the disciplinary liability of judges and members of the Judicial Council are realistic. The Law should provide for a filtering mechanism for the complaints submitted against judges directly to the Judicial Council. These recommendations of the Venice Commission need to be incorporated in the draft Law by submitting amendments.

109 Parliament of the Republic of North Macedonia, Supplemented DRAFT Law AMENDING the law on Courts.
110 Adopted by GRECO at its 80th Plenary Session, Fourth Evaluation Round - Corruption prevention in respect of members of parliament, judges and prosecutors, Second Compliance Report on the former Yugoslav Republic of Macedonia.
111 Ministry of Justice, *Draft Law on the Public Prosecutor's Office*.
112 Ibid.
113 Ibid.

The amendments to the Law on Courts, adopted in March 2019, envisage that the Supreme Court will adopted the Code of Judicial Ethics for judges and lay judges, upon the proposal of the Association of Judges. Such a solution is in full compliance with one of the recommendations issued by GRECO.

PROFESSIONALISM AND COMPETENCE

The amendments to the Law on Judicial Council of May 2018 satisfactorily implement Recommendation ix of the GRECO Report[114] relating to the increasing emphasis on the qualitative rather than the quantitative criteria for performance evaluation of judges.

In March 2019, the draft Law on the Judicial Council was approved by the Venice Commission,[115] which issued additional recommendations for improvement of the text of the Law. The draft Law introduces amendments relating to the definition of criteria for performance evaluation of judges. There is a consolidated list defining which are quality and which are quantity criteria for the performance evaluation of judges. In terms of designating the points, qualitative criteria make 60% of the final evaluation at the expense of qualitative criteria, which make 40% of the total evaluation score. The Law stipulates the numerical values of the points given to judges. As regards the issue of evaluation score of judges, the Venice Commission states that parameters for performance evaluation should be kept under revision. It is more appropriate to attribute the exact numerical values to those parameters in the regulations adopted by the Judicial Council, rather than in the Law itself, in order to be able to change them if needed.[116] According to the recommendations of the Venice Commission, judges should be regularly evaluated every 4 years and should be subject to extraordinary performance evaluations in case of a promotion.[117]

As different from the draft Law on the Judicial Council, which sets forth the evaluation criteria and points, the draft Law amending the Law on the Council of Public Prosecutors does not contain provisions regulating the performance evaluation of public prosecutors, which is the most frequent problem encountered in practice in the context of procedures for their appointment and promotion.[118] The system of performance evaluation score in the public prosecution system is set up in the following manner: the hierarchically higher-ranking prosecutor evaluates the work of subordinated prosecutors. The criteria for performance evaluation are elaborated in the secondary legislation adopted by the Council of Public Prosecutors of the Republic of North Macedonia, which places the emphasis on qualitative, and not on qualitative parameters.[119]

114 Adopted by GRECO at its 80th Plenary Session, Fourth Evaluation Round - Corruption prevention in respect of members of parliament, judges and prosecutors, Second Compliance Report on the former Yugoslav Republic of Macedonia.
115 Barrett, Dimitrov, and Ribičič, *Opinion on the Draft Law on the Judicial Council, Adopted by the Venice Commission at Its 118th Plenary Session.*
116 Ibid.
117 Government of the Republic of Macedonia, *Draft Law on the Judicial Council.*
118 Institute for Human Rights, *Action for greater transparency, accountability and effectiveness of the Judicial Council of the Republic of Macedonia, What was said that the Debate and the Faculty of Law in Shtip?* (14 March 2019).
119 Ministry of Justice, *Draft Law on the Public Prosecutor's Office.*

One of the recommendations following the TAIEX peer review mission is that newly appointed judges and prosecutors are not allotted difficult, complex or sensitive cases of transitional period of one year.[120] The amendments to the Law on Courts[121] stipulate that a judge in a first instance court with expanded competences, having up to two years of service as a judge, shall deliberate cases, which are decided in courts of basic competence.

In March 2019, the Venice Commission approved the draft Law on the Judicial Council, but it also issued additional recommendation for the improvement of the text of the Law. As different from the solution for public prosecutors, the evaluation score points for judges are defined in the draft Law on the Judicial Council. After a certain period, such parameters, i.e. points might be changed. Hence, the Venice Commission recommends that it is more appropriate to attribute the exact numerical values to those parameters in the regulations adopted by the Judicial Council, rather than in the Law itself, in order to be able to change them if needed.

120 TAIEX Peer Review Mission for Training of Judges and Prosecutors.
121 Parliament of the Republic of North Macedonia, Supplemented DRAFT Law AMENDING the law on Courts.

QUALITY OF JUSTICE

Access to courts is a basic principle and a fundamental element of the access to justice. The Judicial Reform Strategy[122] envisages making an analysis of the network of courts in the country with a view to optimizing the number of courts, by amending the Law on Courts. In December 2018, the Ministry of Justice prepared an "Analysis of the court network of the Republic of Macedonia."[123] The purpose of this Analysis is to establish the state of play with respect to the workload of courts and whether they have backlog of cases, to make a chronological review of the changing circumstances in courts and issue recommendations for future activities with a view to optimizing the court network and increasing the efficiency of courts.[124] This Analysis was presented at the 10th session of the Council monitoring the implementing of the Judicial Reform Strategy, held on 6 February 2019. With the aim of optimizing the court network, it was announced that a detailed in-depth analysis would be made of each court individually.[125] Under the amendments to the Law on Courts, adopted on 4 March 2019,[126] the Gevgelija First Instance Court, the Kavadarci First Instance Court and the Kicevo First Instance Court will become courts of expanded competences as of 2020.

However, further projections, consultations and public debates are needed regarding the issue whether certain courts with basic competence will be merged or first instance courts with basic competence will become sections of first instance courts with expanded competence.[127] In this regard, some courts face the problem of lack of sufficient number of judges, which is reflected on the work of courts, and then some of the first instance courts with basic competence will not be able to function if they are not delegated judges from another court. By delegating judges from courts with expanded competence to courts with basic competence, the quality of work of delegating courts is reduced. There is uneven influx of cases in courts, especially courts with basic competence. Thus, judges are not in an equal position when their performance is evaluated or when they are considered for promotion. In certain courts, there is a small number of judges who have small number of cases. Furthermore, such organizational set-up is an obstacle for the specialization of judges for certain legal areas, especially judges in smaller courts. Additional problems are caused by the protection of rights of children who have violated the law, who are under the competence of courts with expended jurisdiction. The real and territorial competence regarding children needs to be considered based on the principle of the best interest of the child. Hence, some of the cases in which children are one of the parties, it is best and it is in their interest if their

122 Ministry of Justice, 2017-2022 Judicial Reform Strategy and its accompanying Action Plan.
123 Караманди Попчевски и Наумов, "Анализа На Судската Мрежа Во Република Македонија." (Karamandi Popchevska and Naumov, *Analysis of the Court Network in the Republic of Macedonia).*
124 Ibid.
125 Blueprint Group for the Judiciary, II Quarterly Monitoring Brief of the Implementation of the Judicial Reform Strategy.
126 Parliament of the Republic of North Macedonia SESSION NO. 88 OF THE PARLIAMENT OF THE REPUBLIC OF MACEDONIA SCHEDULED FOR 4 MARCH 2019, AT 11:20 HRS.
127 Караманди Попчевски и Наумов, "Анализа На Судската Мрежа Во Република Македонија." *(Karamandi Popchevska and Naumov, Analysis of the Court Network in the Republic of Macedonia).*

case is tried in a court which the closest to their home.[128] Upon the establishment of the Higher Administrative Court, the Supreme Court *de facto* is not bale to perform its constitutionally envisaged competence of ensuring the harmonized application of laws by courts. There are also positions that it is necessary to establish more court sections specialized to try organized crime and corruption cases.[129]

The draft Law on the Bar Exam, the text of which has been published on the ENER, also aims to improve the quality of justice.[130]

The bodies of the Academy for Judges and Public Prosecutors could not have been established and function in line with the applicable Law of 2015, despite the fact that the Academy did nominate candidates for members of its Management Board. Other obstacles for the functioning of the Academy are also the complicated procedure for passing the electronically-based exam for a Director, members of the Management Board and of the Programme Council for judges and public prosecutors, then the expenses for taking an exam to acquire foreign language proficiency certificate, which has a limited validity period, and the large budget expenses for organizing the electronically-based exam. In such a situation, decisions were adopted by the bodies of the Academy established in line with the previous Law on the Academy, with the Law on the Academy that is in force not being applied.[131]

One of the measures envisaged in the Judicial Reform Strategy envisages drafting amendments to the Law on the Academy of Judges and Public Prosecutors with a view to eliminating formal criteria, which are an obstacle to the efficient functioning of the Academy.[132] In November 2017, a working group was established to draft the amendments. The Parliament adopted the amendments on 29 August 2018, which entered into force[133] in September 2018.

The amendments[134] introduced new criteria for the managerial bodies of the Academy. Under the amendments to the Law, the psychological test is abolished, as well as the integrity test that are to be passed by candidates for a Director, member of the Management Board of the Academy for Judges and Public Prosecutors, the members of the Programme Council of the Academy. Proficiency in the English language is abolished as a condition for becoming a member of the Management Board, the Programme Council or lecturer at the Academy. In addition, the exam, which was to be passed by candidates for the position of a Director, member of the Management Board and members of the Program Council of the Academy for Judges and Public Prosecutor, was also abolished. A candidate having at least

128 Цоневска и Камбери, "Процена на влијание на регулативата на законот за судови." (Conevska and Kamberi, *Regulatory Impact Assessment of the Law on Courts).*
129 Ibid.
130 Policy Dialogue, *Reforms under Chapter 23, 17 April 2019.*
131 Blueprint Group for the Judiciary, *I Quarterly Monitoring Brief of the Implementation of the Judicial Reform Strategy.*
132 Ministry of Justice, 2017-2022 Judicial Reform Strategy and its accompanying Action Plan.
133 Official Gazette of the Republic of Macedonia Nos. 20/2015, 192/2015, 231/2015 and 163/2018, Law on the Academy for Judges and Public Prosecutors.
134 Ibid.

eight years of service as a judge in the courts of the Republic of Macedonia, in the Constitutional Court of the Republic of Macedonia, in an international tribunal or a person who has at least eight years experience as a public prosecutor may be appointed to the office of Director of the Academy. The Director, i.e. Deputy Director must be proficient in one of the three most frequently used languages of the European Union (English, French, German), which is proven by presenting an internationally recognized certificate issued by an official European testing body. Furthermore, the amendments[135] changed the conditions for admission of candidates for initial training at the Academy for Judges and Public Prosecutors. According to the changed conditions, a candidate may be admitted for initial training if the candidate is a graduated lawyer, who has completed a four-year higher education of the VII/1 degree legal studies or graduated lawyer with 300 credits according to the European Credit Transfer System (ECTS). This change in fact abolished the average mark, which was previously required as a condition for candidates; furthermore, the criterion, which required candidates having completed four-year higher education of the VII/1 degree of legal studies to obligatory acquire a master's degree, is abolished. This leaves room for more candidates to apply for initial training at the Academy, which previously was an obstacle for lawyers with longer years of experience, and especially professional court staff, who in order to be admitted to the Academy were required to take exams in a retrograde manner, so that they acquire certain average total mark of their studies or be admitted to post-graduate studies. The amendments[136] require that candidates are to be proficient in one of the three most frequently used languages of the European Union (English, French, German), which is established as part of the entrance exam at the Academy. According to the transitional and final provisions of the Law amending the Law on the Academy of Judges and Public Prosecutors, members of the management Board were appointed - candidates from the Supreme Court, the Judicial Council, the Association of Judges, from the Public Prosecutor's Office, from the Council of Public Prosecutors, the Association of Public Prosecutors and from the Ministry of Justice. [137]

The Management Board of the Academy of Judges and Public Prosecutors had its constitutive session on 22 October 2018. At the session, the appointments of members of the Management Board of the Academy were confirmed. The following decisions were adopted at the said session: decision for appointment of Sasho Rajchev, Public Prosecutor from the Skopje Public Prosecutor's Office as President of the Management Board of the Academy, decision on the appointment of Olja Ristova, judge at the Skopje I First Instance Court, Skopje as the Deputy President of the Management Board of the Academy, decision on the termination of the office of the that far director of the Academy, decision for publishing an announcement for a Director and Deputy Direct in accordance with the conditions set forth under the Law Amending the Law on the Academy for Judges and Public Prosecutors (Official Gazette of the Republic of Macedonia No. 163/2018). At its session held on 26 October 2018, the Management Board adopted a decision appointing a Director of the Academy *ad interim*- Vjollca Elmazi, Public Prosecutor at the Higher Public Prosecutor's

135 Ibid.
136 Ibid.
137 Ibid.

Office in Gostivar, from the ranks of members of the Management Board of the Pavel Shatev Academy for Judges and Public Prosecutors, to serve until the appointment of the new Director of the Academy.[138]

On 28 November 2018, the Management Board of the Academy for Judges and Public Prosecutors had its 138th session, which was public and had a five-item agenda. One of the agenda items was the appointment of a Director and Deputy Director of the Pavel Shatev Academy for Judges and Public Prosecutors, Skopje. At the same session, a decision was adopted appointing Natasha Gaber Damjanovska as the Director of the Pavel Shatev Academy for Judges and Public Prosecutors, Skopje. Four candidates had applied following the public announcement. At the same session, the Deputy Director of the Academy was not elected. There was only one application for the office of a Deputy Director, but the members of the Management Board concluded that the candidate did not fulfil one of the envisaged conditions, i.e. the candidate did not submit a certificate proving that he has no criminal record. The Academy Management Board has still not published a new announcement for appointment of a Deputy Director of the Academy.[139]

On 8 February 2019, the Ministry of Justice established a working group tasked with the drafting of a new Law on the Academy for Judges and Public Prosecutors. The Working Group has 9 members, among whom the Director of the Academy, representatives of the Ministry of Justice, judges, public prosecutors and representatives of civil society organizations. The drafting of the new Law has the aim of removing the obstacles that the Academy faces in its work and of implementing the recommendations of the TAIEX peer review mission on training of judges and public prosecutors.[140]

The Academy continually works to advance the quality of trainings and introduce required training topics, in line with evaluations of trainings and topics proposed to be elaborated submitted to the Judicial Council, the Council of Public Prosecutors, experts and non-governmental organizations.[141] In the reporting period, the Academy and the Association of Judges organized training on ethics. In the context of quality and uniformity of judgments, the Academy organizes training on analysis of court judgments.

In July 2019, the Academy will organize the final exam for the sixth generation of trainees. With a view to meeting the needs of the judiciary and the public prosecution service, an entrance exam will be organized for admission of candidates of the new seventh generation of trainees. Considering the determined needs, this generation is expected to be the most numerous thus far.[142]

138 Blueprint Group for the Judiciary, *I Quarterly Monitoring Brief of the Implementation of the Judicial Reform Strategy.*
139 Blueprint Group for the Judiciary, *II Quarterly Monitoring Brief of the Implementation of the Judicial Reform Strategy.*
140 TAIEX Peer Review Mission for Training of Judges and Prosecutors.
141 Петровски et al., "Анализа на спроведувањето на итните реформски приоритети во македонското правосудство." (Petrovski et al., *Analysis of the implementation of urgent reform priorities in the Macedonian judiciary).*
142 Policy Dialogue, *Reforms under Chapter 23, 17 April 2019.*

It is necessary to increase the capacity of the Academy in terms of premises, mainly premises for training, then to increase its budget and staff if the Academy is expected or tasked with ensuring greater volume and better training for judges, public prosecutors and court administrative staff (including court professional staff).[143]

The Supreme Court of the Republic of North Macedonia is included in the Superior Courts Network, through its Jurisprudent Section. Under this Network, the Supreme Court communicates with the European Court of Human rights in Strasbourg regarding certain legal issues.[144]

The Annual Report on the implementation of the Judicial Reform Strategy states that the judicial portal www.sud.mk is fully functional and that more than 500,000 court judgments have been posted on this portal.[145] However, it is necessary to improve the functions of the judicial portal www.sud.mk, and the posting of judgments on the judicial portal within the legally prescribed period, being also necessary to observe the guidelines for anonymizing judgments and designating whether the judgments are final or not.[146]

There is improvement in promoting mediation. In the reporting period, the Chamber of Mediators, in cooperation with the Ministry of Justice and non-governmental organizations, organized promotional events. On 14 March 2019, a Memorandum of Cooperation was signed between the Government and the Chamber of Mediators, determining the principles for undertaking joint activities in the area of alternative dispute settlement, and for pursuing cooperation and joint activities in support of, promotion, applying, advancing, strengthening and developing mediation.[147]

> *The Judicial Reform Strategy envisages preparing an analysis of the court network and the number of courts in the country with a view to optimizing the number of courts, by amending the Law on Courts. In December 2018, the Ministry of justice prepared the "Analysis of the Court Network". However, additional analysis, projections, consultations and public debates are needed with respect to the issue whether certain courts with basic jurisdiction will be merged or first instance courts with basic jurisdiction will become sections of first instance courts with expanded jurisdiction. It is necessary to rationalize and optimize the court network.*

143 TAIEX Peer Review Mission for Training of Judges and Prosecutors.

144 Стојкова Зафировска, Алексов и Гоџо, "Прв Национален Извештај Од Матрицата За Мерење На Перформансите и Реформите Во Правосудството." Stojkova Zafirovska, Aleksov and Godzo, *First National Report of the Matrix for Measurement of the Performances and the Judicial Reforms).*

145 Ministry of Justice, *ANNUAL REPORT ON THE IMPLEMENTATION OF THE 2017-2022 STRATEGY FOR JUSTICE SYSTEM REFORM.*

146 Петровски et al., "Анализа на спроведувањето на итните реформски приоритети во македонското правосудство." (Petrovski et al., *Analysis of the implementation of urgent reform priorities in the Macedonian judiciary).*

147 Government of the Republic of North Macedonia, *Signing of the Memorandum of Cooperation between the Government and the Chamber of Mediators of the Republic of North Macedonia.*

The amendments to the Law on the Academy for Judges and Public Prosecutors, adopted in December 2018, address the obstacles that the Academy had been facing in terms of its managerial bodies. It is expected that the new Law on the Academy for Judges and Public Prosecutors, which is now drafted, will additionally help address, i.e. implement the recommendations issued following the TAIEX Peer Review mission of the training of judges and public prosecutors, resolving finally the obstacles in the overall operation of the Academy.

The Academy continually works to advance the quality of trainings and introduce required training topics. It is necessary to increase the budget of the Academy in order to improve the quality of the trainings. The Academy needs to be equipped with staff, technical facilities and infrastructure facilities, which on its part requires consistent implementation of the measures envisaged to this end under the 2017-2022 Judicial Reform Strategy and its accompanying Action Plan.

The functionalities of the judicial portal sud.mk need to be improved.

EFFICIENCY

One of the strategic commitments set forth under the Justice System Reform Strategy is efficiency.[148] The annual report on the implementation of the Judicial Reform Strategy[149] presents a review of activities with a view to improving the efficiency, i.e. attaining this strategic commitment. In this regard, the Judicial Council makes quarterly reviews of pending court cases remaining unresolved for 3, 7 and 10 years.[150] The Ministry of Justice prepared a detailed analysis of the situation with the number of judges and number of cases in courts, which will serve as the basis for future plans for the judiciary.[151]

According to assessments and conclusions about the situation in courts in 2017 prepared by the Supreme Court of the Republic of Macedonia, published on 29 October 2018,[152] courts in the Republic of North Macedonia invest great efforts. Hence, almost all courts, using the available staff, material and financial conditions for work, succeeded in managing the influx of new cases, while working on the resolution of the backlog of cases, meaning they worked efficiently in 2017. In 2017, courts had a total number of 568,388 cases, of which 473,985 were closed. A backlog of 94,403 cases remained. According to the Supreme Court this is a success in its own since courts succeeded in dealing with the influx of cases , while reducing the backlog of cases by 34,406 cases.

With regard to conditions for work, which are closely linked to the efficiency concept, the Supreme Court considers that the High Administrative Court is appropriately technically equipped (computers), having appropriate office premises as well necessary for the normal functioning of this Court. However, office furniture for storing cases is lacking. On the other hand, the Supreme Court considers that the Administrative Court does not have appropriate premises for efficient and normal functioning. As regards first instance and appeal courts, the Supreme Court is of the opinion that courts in Skopje do not have appropriate premises (offices and building) that are required for successful functioning of court, while the opinions on this issue regarding other courts throughout the country are divided.[153] In the context of equipment of courts, the last perception survey shows that high percentage of judges, court administrative staff and lawyers consider that courts do not have sufficient number of computers and other necessary equipment.[154]

148 Ministry of Justice, 2017-2022 Judicial Reform Strategy and its accompanying Action Plan.
149 Ministry of Justice, *ANNUAL REPORT ON THE IMPLEMENTATION OF THE 2017-2022 STRATEGY FOR JUSTICE SYSTEM REFORM*.
150 Ibid.
151 Ibid.
152 General session of the Supreme Court, *Assessments and Conclusions about courts in the Republic of Macedonia in 2017*.
153 Стојкова Зафировска, Алексов и Гоцо, "Прв Национален Извештај Од Матрицата За Мерење На Перформансите и Реформите Во Правосудството." (Stojkova Zafirovska, Aleksov and Godzo, *First National Report of the Matrix for Measurement of the Performances and the Judicial Reforms)*.
154 Ibid.

The survey done by the Coalition All for Fair Trials about the physical accessibility of courts has established that five out of ten courts that were monitored do not have lifts that people with disabilities could use, while in three of the monitored courts the lifts are out of order. The initial research results show that all categories of persons with disabilities face difficulties in terms of access to courts and access to justice, which limits their right to a fair trial under equal conditions as all citizens, in accordance with the law and international regulations.[155]

As regards the number of judges per 100,000 inhabitants, according to the "European judicial systems - Efficiency and quality of justice", the Republic of North Macedonia is above the European average. Compared to other countries in the region, all other regional countries have higher number of judges, except for Albania. In the period from 2014 to 2017, the number of judges was reduced.[156] All courts lack sufficient number of professional administrative staff. According to statistics of the European Commission for Efficiency of Justice (CEPEJ), the country is above the European average in terms of employees in courts, as non-judicial staff. It is furthermore concerning that only 14.5% of the administrative court staff are professional associates. There are no proper criteria for the appointment and liability of court administrators. In addition, the principle of equitable representation of persons belonging to the non-majority communities, especially the small communities is not consistently applied.[157]

In the context of efficiency and dealing with civil law cases, there was a negative trend established in the period from 2010 to 2016, i.e. from 131% in 2012 to 95% in 2016, featured with continual increase in the number of pending cases. On the other hand, according to information from the Judicial Council of the Republic of North Macedonia, the 2018 average of 101.41% of resolved cases in the first instance courts corresponds to a certain extent to the information of the CEPEJ.[158]

In respect of administrative cases, after the progress made and the increase of the efficiency in resolving cases in the period from 2010 to 2014, in the last cycle there was a setback established in this area of the judiciary. According to information of the Judicial Council of 2018, the rate of resolved cases at the Administrative Court was 113.27%, while at the High Administrative Court it was 97.5%. However, the average period for resolving cases by the Administrative Court (186.54 days) is almost three times more than the average period for resolving case by the High Administrative Court (65.07 days).[159]

155 Coalition All for Fair Trails, *Legal, financial and physical access to justice at first instance courts in the Republic of Macedonia.*

156 Цоневска и Камбери, "Процена на влијание на регулативата на законот за судови." (Conevska and Kamberi, *Regulatory Impact Assessment of the Law on Courts).*

157 Ibid.

158 Стојкова Зафировска, Алексов и Гоџо, "Прв Национален Извештај Од Матрицата За Мерење На Перформансите и Реформите Во Правосудството." (Stojkova Zafirovska, Aleksov and Godzo, *First National Report of the Matrix for Measurement of the Performances and the Judicial Reforms).*

159 Ibid.

Public prosecutors' offices have problems with human resources, i.e. they lack sufficient staff, both in terms of sufficient number of public prosecutors and professional staff at the public prosecution service.[160]

The Public Prosecutor Office of the Republic of Macedonia made an analysis of the capacities of the public prosecution service, in light of the entry into force of the Law on Criminal Procedure, which changes the role of public prosecutors in criminal procedures, by expanding their mandate concerning the legal procedures. The analysis establishes that it is necessary to strengthen the capacities of public prosecutor's offices with public prosecutors, professional staff at the public prosecution service and technical staff. The analysis of the Public Prosecutor's Office of the Republic of North Macedonia shows that it is necessary to increase the number of public prosecutors in 274 public prosecutors' offices.[161] The Report of the TAIEX peer review mission for training of judges and prosecutors states that the ratio of vacancies for admission to the Academy for Judges and Public Prosecutors needs to be clearly established at the advantage of public prosecutors in the coming 2 to 3 years with a view to filling the vacancies.[162] The TAIEX peer review mission Report also states that candidates at the Academy need to be trained and have an aptitude both for the office of a judge, but also for the office of a public prosecutor in order to ensure better flexibility in managing the human resources and facilitate reappointment between the two groups.[163]

The 2018 budget for the judiciary was increased compared to 2017.[164] The largest part of the budget is allocated for salaries.[165] However, the measures envisaged under the Judicial Reform Strategy[166] for improvement of the situation with the enforcement of the Law on Judicial Budget have not been implemented, while the Action Plan sets the 2019 judiciary budget at 0.6% of the GDP and at 0.8% for 2021.

The application of the Law on the Judiciary Professional Service shows deficiencies with respect to salaries, supplements to salaries of the professional staff of the judiciary. The deficiencies established in determining the rights of the professional administrative staff at the judiciary under the Law on the Judiciary Professional Service, in terms of salaries and supplements to salaries for administrative staff, especially affect the supplements to the salaries, which has an impact on the application of the Law in its entirety. Namely, the established supplements to the salaries of judiciary administrative staff are not harmonized with the other employees in the justice system. Thus, the judiciary administration is not able to exercise the same rights to salary supplements as other administrative staff performing same tasks within the justice system bodies. The Law does not envisage the category of special supplement to the salary on grounds of special conditions for work, and it does not

160 Council of Public Prosecutors, *2017 Annual Report about the Work of Public Prosecutors' Offices in the Republic of Macedonia*.
161 Ibid.
162 TAIEX Peer Review Mission for Training of Judges and Prosecutors.
163 Ibid.
164 Ministry of Finance, 2018 BUDGET OF THE REPUBLIC OF NORTH MACEDONIA.
165 Ibid.
166 Ministry of Justice, 2017-2022 Judicial Reform Strategy and its accompanying Action Plan.

envisage a supplement for high risks and special supplement for confidentiality.[167] Furthermore, owing to the lack of precise wording, the provision, which regulates rights deriving from overtime work, is not appropriately implemented. The Judicial Budget Council also expressed the commitment to increasing the salaries of the judiciary administrative staff. [168] In addition, the President of the Judiciary Budget Council, who is at the same time also a President of the Judicial Council, issued a press release on 3 December 2018 explaining the payment of salary supplements for judges for the November 2018. [169] In December 2018, the Parliament adopted the Law amending the Law on Judiciary Professional Service in a summary legislative procedure.

On 28 December 2018, the Parliament adopted the Law amending the Law on Salaries for Judges.[170] The Law on Salaries of Judges was adopted in 2007, establishing the system of salaries, supplements and other types of remuneration of judges. In light of the situation in which decisions for payment of supplements adopted by presidents of courts, allocating supplements to almost all judges in the courts, while individuals were excluded from payment of supplements without any explanation, it became necessary to more precisely define the provisions of this Law in order to prevent discrimination of judges and the arbitrariness of certain presidents of courts. The amendments to this Law were adopted at the same time with the amendments to the Law on Judiciary Professional Service, with a view to introducing the same provisions on supplements in both laws.[171]

In addition, the Judiciary Budget Council adopted the Decision for payment of supplements also to the members of the Judicial Council, which caused a wave of fierce public reaction. The Judicial Council and the Judicial Budget Council did not issue any official press release offering justification for the decision. On 30 January 2019, the Rulebooks on supplements to salaries, their amount and the manner of their determination for members of the Judicial Council, judges and the administrative service were adopted. This was an obligation deriving from the Law amending the Law on Salaries of Judges and the Law amending the Law on Judiciary Administrative Service. These Rulebooks are to be endorsed by the Minister of Finance in order to enter into force.[172]

The Association of Judges also expressed the commitment to increasing the salaries of judges. [173] In February 2019, representatives of the Association of Judges, led by the President of the Association, had a meeting with the Prime Minister. At the meeting, they discussed the issue of salaries and supplements to salaries of judges. Representatives of the Associ-

167 Parliament of the Republic of North Macedonia Law amending the Law on Judiciary Professional Service, summary legislative procedure.
168 Judicial Budget Council, *Press Release.*
169 Ibid.
170 Promulgation of the Law Amending the Law on Salaries for Judges.
171 Parliament of the Republic of North Macedonia, *DRAFT LAW AMENDING THE LAW ON SALARIES FOR JUDGES, SUMMARY LEGISLATIVE PROCEDURE.*
172 Institute for Human Rights, *Action for greater transparency, accountability and effectiveness of the Judicial Council of the Republic of Macedonia, What was said that the Debate and the Faculty of Law in Shtip?* (14 March 2019).
173 Association of Judges, *WORKING MEETING OF REPRESENTATIVES OF THE ASSOCIATION AT THE GOVERNMENT of the Republic of Macedonia.*

ation informed the Government about the decision of judges to institute lawsuits claiming payment of overdue unpaid supplements as of 2016, emphasizing the need of finding a systemic solution for salaries of judges, i.e. more precisely correcting the coefficient and the baseline salary for calculation of the final salary, while presenting measures for overcoming the problematic situation. Representatives of judges underline the readiness of judges, recorded in minutes of meetings of regional offices, that there would be prepared for out-of-court settlement of the dispute regarding the supplements to the salaries, stressing the necessity of undertaking urgent measures considering the periods for institution of the lawsuits. The Prime Minister expressed understanding for the demands of the judges and readiness for finding a comprehensive solution for the salaries of judges, taking into considering the budget possibilities and implications, the procedures set under the law for the execution of the budget and proposed a package of measures to overcome the entire situation.[174]

As regards the budget of the public prosecutors' offices, despite the fact that the allocated 2017 budget funds, the restructuring of the Budget of the Republic of Macedonia and the endorsed requests for reallocation under the approved budget for the Public Prosecutor's Office for the reporting year, it is necessary to underline that the budget allocated for public prosecutors' offices does not satisfy the needs, which brings into question the functioning of public prosecutors' offices, as established by the Constitution and laws. In this context, it is furthermore important to underline the increased need for specific funds considering that the investigations of cases are now within the purview of public prosecutors. Hence, there is a need for funds for investigative activities, i.e. funds to cover expenses incurred in the course of criminal investigations, the funds for which are allocated under expenditure budget item 42 - goods and services, expenditure item 425 – contracted services.[175]

The VII Report of the Special Public Prosecutor's Office states that approved budget for 2018, 31 December 2018, inclusive was executed in the amount of MKD 195,321.542.00 or 85.43% of the total budget of this Public Prosecutor's Office. The approved 2019 budget for this Public Prosecutor's Office is MKD 228, 633,000.00, and in the period from 1 January 2019 until 15 03.2018 March 2019, a total amount of MKD 37,161,139.00 or 16.25% of the approved 2019 budget was spent.[176]

Relying on the existing staff and material and financial conditions for work almost all courts managed to deal with the influx of new cases, while dealing at the same time with the backlog of cases.

It is necessary to ensure better premises and better IT equipment in courts and public prosecutors' offices.

174 Ibid.

175 Council of Public Prosecutors, *2017 Annual Report about the Work of Public Prosecutors' Offices in the Republic of Macedonia.*

176 Report about the activities of the Public Prosecutor's Office for Prosecuting Criminal Offences Related to and Arising from the Content of the Illegally Intercepted Communication for a six-month period (period from 15 September to 15 March 2019).

It is necessary to design a human resource strategy and policy for the judiciary and for the public prosecutors' offices.

In the period from 2014 to 2017, the number of judges was reduced. However, the Republic of North Macedonia is still above the European average of number of judges. Professional administrative staff is lacking in all courts. According to statistics of the European Commission for Efficiency of Justice, the Republic of North Macedonia is above the European average in terms of number of staff that do not serve as judges. It is also concerning that only 14.5% of the court administrative staff are professional associates.

In its analysis of the capacities of public prosecutors' offices, made in light of the entry into force of the Law on Criminal Procedure, and the role of the prosecutor in the criminal procedure, i.e. the mandate of the prosecutor in this procedure is expanded, the Public Prosecutor's Office of the Republic of North Macedonia established that it was necessary to strengthen the capacities of public prosecutors' offices with public prosecutors, public prosecution professionals service and technical staff. The Analysis of the Public Prosecutor's Office also established that it is necessary to raise the number of public prosecutors to 274. Thus, the Report of the TAIEX peer review mission on training of judges and public prosecutor's states that the ratio of vacancies for admission to the Academy for Judges and Public Prosecutors needs to be clearly set in favour of public prosecutors in the coming 2 to 3 years with a view to filling the vacancies in public prosecutors' offices. It is furthermore recommended that candidates at the Academy be trained and have aptitude both for the office of judge and for the office of a public prosecutor in order to ensure better flexibility in managing human resources and facilitate reappointment and transfer between the two offices.

It is necessary to increase the budget for the judiciary in order to implement the measure set forth under the Judicial Reform Strategy, which envisages improvement of the situation with the application of the Law on the Judicial Budget, with the Action Plan setting the 2019 judicial budget at 0.6% of the GDP and at 0.8% of the GDP for 2021.

It is necessary to increase the budget for the Public Prosecutor's Office. The budget allocated to the public prosecutors' offices does not satisfy their needs and thus brings into question the functioning of the public prosecutors' offices as stipulated in the Constitution and laws. In this context, it should be especially emphasized that there is an increased need for specific funds, which derives from the transfer of the investigation within the purview of the public prosecutor, i.e. primarily funds for investigative activities to finance expenses incurred in the criminal procedure.

2. FIGHT AGAINST CORRUPTION

In the reporting period there were efforts made to enhance the legislative and institutional framework for fight against corruption.

In the last Transparency International Report on the Corruption Perceptions Index 2018, the Republic of North Macedonia and Kosovo[177] share the 93rd place in terms of corruption perception. They are the lowest ranked in the Balkans, with only Albania ranked lower. The following regional countries are better ranked: Croatia at 60th, Romania at 61st, Montenegro at 67th, Bulgaria at 77th, Serbia at 87th and Bosnia and Herzegovina at 89th place. In relation to North Macedonia, the Report states that after the fall of the Government in 2017, the anti-corruption fight expectations were high for a country aspiring to open accession talks with the EU. The country has recently revised the pertinent national legislation with a view to expanding the mandate of the Special Public Prosecutor's Office to investigate cases of corruption, including by government officials and the President.[178] However, the Republic of North Macedonia marks certain progress in the fight against corruption compared to 2017, when the country was the lowest ranked regional country, at 107th place.[179] The freedom in the world index features the Republic of North Macedonia as partly free country.[180] The Freedom House Report welcomes the efforts of the new ethnically inclusive Government to uproot corruption, welcoming as well the efforts to settle the long-standing name difference with the southern neighbour.[181]

Despite the low corruption perception ranking[182] of the Republic of North Macedonia, corruption is not among the three top 11 offered options for choice of the most burning issue with which the country is faced. Corruption is ranked fifth on this 11-item list of problems, as it was in 2016 and in 2014. According to Macedonian citizens, as in previous years, unemployment remains the biggest problem, followed by political instability, low income and poverty. [183] 76% of citizens consider that the inefficiency of the judiciary in fighting corruption, then the lack of strict administrative control of corruption (74.2%) and the individual desire of people in power for personal gain (73.9%) are the leading factors for the widespread corruption. In addition, about 70% of citizens consider that overlapping of official duties and personal interests and the crisis of moral values prevailing in society are the next most important factors prompting widespread corruption.[184]

The Second Compliance Report of the Fourth Evaluation Round of the Council of Europe Group of States against Corruption – GRECO, which was adopted at the 80th GRECO Plenary meeting, held on 21-22 June 2018, states that the country implemented satisfactorily or dealt with in a satisfactory manner only 6 of the 19 recommendations contained in the

177 Transparency International, *2018 Corruption Perceptions Index*.
178 Ibid.
179 Transparency International, *CORRUPTION PERCEPTIONS INDEX 2017*.
180 Michael, *Freedom in the World 2018*.
181 Ibid.
182 Transparency International, 2018 Corruption Perceptions Index.
183 Нурединоска et al., "Извештај За Проценка На Корупцијата Во Македонија 2018 Година." (Nuredinoska et al., *Report about the Assessment of Corruption in Macedonia in 2018)*.
184 Ibid, 16.

Report of the Fourth Round of Evaluation. Out of the remaining recommendations, 8 have been partially implemented and five have not been implemented at all.[185]

Regarding recommendations relating to the Members of Parliament, the GRECO Report emphasizes that the situation has not changed significantly and none of the recommended improvements have been implemented, not even partially, with the exception of the drafting of a Code of Conduct for MPs, the activities for which are back on the right track, after the project was put on hold at the end of 2016.[186]

As far as recommendations for judges and prosecutors are concerned, the Report states that there have been limited, decisive improvements. GRECO is pleased to see that the Law on the Judicial Council was amended in December 2017 and in May 2018, and that it now provides for appeal possibilities against decisions on appointments and promotions, as well as for a periodic appraisal system for judges, which places greater emphasis on qualitative criteria. Further changes have been made, for instance to define more clearly the disciplinary infringements, but some important concerns in this respect have not been addressed to date. GRECO also noted with interest that new advisory and supervisory bodies are being created for judges and prosecutors to support the implementation of their respective rules of conduct in daily practice and GRECO will need to reassess these improvements when more specific information becomes available. In other cases, measures have been taken but they clearly do not take sufficiently into account the concerns expressed in the Evaluation Report. This is for instance the case as regards practical guidance documents for judges and prosecutors on ways to implement the rules of conduct.[187]

As for the system of declarations of assets and interests, GRECO regrets that no meaningful development has taken place to strengthen the control function and to support a more balanced approach (free from political interference) of the State Commission for the Prevention of Corruption. The Commission was itself recently embroiled in serious controversies and a majority of its members resigned, amid allegations of mismanagement of assets. There have also been allegations of political pressure on the institution, which was perceived by the media as "silent" over the last few years, but tried to be more effective in recent months after a change of government.[188]

The Report sets a deadline for provision of a report on the progress in implementing recommendations i to v, vii, xi, xii, xiv to xvi, xviii and xix as soon as possible, however – at the latest – by 30 June 2019.[189] After the GRECO Report, the authorities have undertaken measures to implement part of the recommendations. Hence, a new Law was adopted on the Prevention of Corruption and Conflict of Interest, then the Parliament adopted the third set

185 Adopted by GRECO at its 80th Plenary Session, Fourth Evaluation Round - Corruption prevention in respect of members of parliament, judges and prosecutors, Second Compliance Report on the former Yugoslav Republic of Macedonia. 20.
186 Ibid.
187 Ibid.
188 Ibid, 21.
189 Adopted by GRECO at its 80th Plenary Session, Fourth Evaluation Round - Corruption prevention in respect of members of parliament, judges and prosecutors, Second Compliance Report on the former Yugoslav Republic of Macedonia.

of amendments to the Law on Courts; in addition, a new draft Law on the Judicial Council was prepared and amendments to laws governing the public prosecution system were prepared. However, additional efforts are needed to implement some of the recommendations and to monitor the application of the new legislative solutions.

The Ministry of Justice of the Republic of North Macedonia established a working group tasked with the implementation of the remaining GRECO recommendations following the fourth round of evaluation.[190]

In the past period in addition to amendments to the legislative framework and drafting of new laws and amendments to laws, the composition of the State Commission for the Prevention of Corruption was changed, while in-line institutions were more pro-active in the fight against corruption. The Ministry of the Interior, the Government and the Special Public Prosecutor's Office enjoy the highest level of trust, as institutions countering corruption. Citizens say that when it comes to dealing with corruption they trust the most the Ministry of the Interior, then the Government and then the Special Public Prosecutor's Office. Among all in-line institutions, courts and public prosecutors' offices have the lowest degree of trust.[191]

190 Association of Judges, *FIRST MEETING OF THE WORKING GROUP FOR IMPLEMENTATION OF THE GRECO RECOMMENDATIONS*.

191 Нурединоска et al., "Извештај За Проценка На Корупцијата Во Македонија 2018 Година," (Nuredinoska et al., *Report about the Assessment of Corruption in Macedonia in 2018) 48*.

INSTITUTIONAL FRAMEWORK

State Commission for the Prevention of Corruption

The State Commission for the Prevention of Corruption is one of the key institutions in the Macedonian system of fight against corruption. It is designed to be the leading institution for prevention, being of key importance in creating the preconditions for other institutions within the political system to be able to counter the corruption pressures. Furthermore, the Commission has the task of supervising all other institutions, but it also works on strengthening their capacities. In addition, the Commission shares the responsibilities with law enforcement bodies, with the public prosecutor's office and the police in identifying and processing potential cases of corruption.[192]

However, despite the fact that at the beginning this institution attained relatively good results in its work, in the last several years there has been evident and intensifying political influence and undermining of the efficiency of the Commission in exercising its duties. Hence the question how to return the Commission back on the right track, ensure its integrity and improve its work. The Platform of civil society organizations for fight against corruption prepared a brief analysis of the last several years of the work of the Commission, including the factors required for a successful anti-corruption body, issuing recommendations how such an anti-corruption body should be designed in order to be more successful in countering corruption.[193] In the last ten years, instead of dealing with high-profile corruption among holders of political offices, the Commission focused its work on specific cases of "low" profile corruption among the administration.[194] The Platform of civil society organization working against corruption underscored that it would be necessary that the new anti -corruption law better define the rules of appointment of members of the Commission. It is furthermore necessary to place the emphasis not only on education, but also and especially on experience, particularly experience of working in limited or unfavourable conditions. In the selection of candidates, civil society organizations working against corruption must be given an opportunity to examine the candidates so they can present their opinion to the public and thus pressure members of Parliament to make a good choice of candidates and not just verify the appointment of political party based candidates.[195] It is unacceptable to have a situation in which members of the Commission are subject of political party bargaining, and thus remain loyal to the ruling political structures instead of actively controlling them and insisting on the rule of law.[196]

192 Platform of civil society organization fighting corruption, *How can the State Commission for the Prevention of Corruption build its Integrity?*
193 Ibid.
194 Ibid.
195 Ibid.
196 Platform of civil society organization fighting corruption, *Reaction by the Platform of civil society organization fighting corruption.*

At the beginning of March 2018, five members of the Commission (which has a total number of seven members) resigned, after the publication of the audit report of the work of the Commission. The Report presents suspicions about payment of fictitious travel orders, i.e. expenses to some members of the Commission. Upon learning about the suspicions, the Skopje Primary Public Prosecutor's Office instituted preliminary proceedings to examine the spending of public funds by the members of the State Commission for the Prevention of Corruption.[197] On 19 March 2018, the Parliament of the Republic of Macedonia adopted a Decision dismissing the five members of the Commission who had resigned.[198] On 29 March 2018, there was information published on the website of the Commission for the Prevention of Corruption according to which owing to the "dismissal from office of five members of the State Commission for the Prevention of Corruption, in the forthcoming period the Commission would not be able to deliberate upon and issue decisions on requests and applications filed by applicants."[199] Despite the fact that the Commission was not able to consider and decide on filed applications, in March 2018, there were new requests, reports and forms addressed to the State Commission for the Prevention of Corruption to be processed by the future new members of the Commission. The country was without a functioning Commission for the Prevention of Corruption for almost 11 months.

Activities for drafting the new Law on the Prevention of Corruption and Conflict of Interest started in July 2018.[200] The Ministry of Justice established an inclusive working group, composed of former members of the anticorruption commission, experts and representatives of non-governmental organizations.

At its 115th regular session[201], the Government adopted a decision to submit to the Parliament a draft Law on the Prevention of Corruption and Conflict of Interest in a summary procedure as a law of importance for the EU integration process, after which the ruling majority and the opposition came to an agreement and the SDSM accepted 20 of the 40 amendments submitted by VMRO-DPMNE. At its 80th session, held on 17 January 2019, the Parliament adopted the Law on the Prevention of Corruption and Conflict of Interests in a summary procedure.[202]

The newly adopted Law on the Prevention of Corruption and Conflict of Interest introduced a new manner of appointing the President and members of the Commission. In addition to the Committee for Election and Appointments at the Parliament of the Republic of Macedonia, the procedure also envisages the establishment of a Selection Committee the task of which will be to conduct interviews with all candidates who fulfil the conditions of the public announcement and who have been accordingly scored and ranked.[203]

197 Skopje Basic Public Prosecutor's Office, *Allegations are examined about the expenditures by the State Commission for the Prevention of Corruption.*
198 Parliament of the Republic of North Macedonia, *Draft Decision for the dismissal of members of the State Commission for the Prevention of Corruption.*
199 State Commission for the prevention of Corruption, *Press Release, 2018.*
200 ENER, *Notification about the start of the process of preparations of the draft Law on the Prevention of Corruption.*
201 115th Session of the Government of the Republic of North Macedonia
202 Parliament of the Republic of North Macedonia, *Session No. 80 of the Parliament of the Republic of North Macedonia, scheduled for 16 January 2019, at 12:00 hrs.*
203 Official Gazette No. 12, 19 January 2019 година, Law on the prevention of Corruption and Conflict of Interest.

In pursuance with the new Law on the Prevention of Corruption and Conflict of Interest, on 22 January 2019, the Parliament published the announcement for appointment of members and President of the State Commission for the Prevention of Corruption.[204] The procedure took less than two weeks, i.e. from the publication of the announcement to the appointment, which prevented the undertaking of a thorough vetting of candidates. Thus, the possibilities to fully examine the candidates were limited.[205] Civil society organizations and media associations were fully involved in the interview process, i.e. every candidate without any exception was asked questions the answers to which were to show the integrity of the person necessary for the office in question, as well as their knowledge and readiness to perform the required duties. The Selection Committee was transparent throughout the process, which was broadcast on the Parliament TV channel, which enabled the public to familiarize themselves with the candidates and to hear their views.[206] The Platform of civil society organizations fighting corruption issued a press release that the model for appointment of members of the Commission was good and applicable for other similar bodies as well. It is very important for the Parliament to show initiative and to be actively involved in the application of a sound approach of thorough examination of candidates for members of various bodies the Parliament oversees, by which the Parliament will reinstate its key role in ensure the rule of law.[207] On 8 February 2019, the Parliament appointed all new members of the Commission, giving 65 votes in favour, none vote against and 10 abstentions. Biljana Ivanovska was appointed as President of the Commission, while Vladimir Georgiev, Sofka Pejovska Dojchinovska, Katica Nikolovska, Nuri Bayrami, Goran Trpenoski, Shemshi Salai, i.e. the seven best-ranked candidates by the Selection Committee were appointed as members of the Commission. The Decision on the appointment of a President and members of the State Commission for the Prevention of Corruption of the Parliament of the Republic of Macedonia entered into force on the date of its adoption and will be published in the Official Gazette of the Republic of Macedonia.[208]

As of the establishment of the new Commission for the Prevention of Corruption, until March 2019, the Commission worked transparently and processed a number of cases following filed applications, while ex *officio* opening a number of cases of possible conflict of interest. In this period, the Commission adopted 28 decisions in total,[209] all posted on the website of the Commission.

As of its establishment, the Commission received 185 applications with allegations of corruption, and 200 applications with allegations of conflict of interest, most of which are in fact allegations of nepotism. Compared to previous years, in a matter of two months the Commission received the same number of applications alleging corruption, as the previous

204 Official Gazette No. 14/2019, of 22 January 2019, *Public announcement for appointment of a President and members of the State Commission for the Prevention of Corruption.*
205 Platform of civil society organizations fighting corruption, *Expectations for a new feisty Commission for Fight against Corruption.*
206 Ibid.
207 Ibid.
208 Parliament of the Republic of North Macedonia, SESSION No. 85 of the Parliament of the republic of north Macedonia, scheduled for 8 February 2019, at 12:30 hrs.
209 State Commission for the Prevention of Corruption, Decisions adopted at sessions.

Commission received in a period of three years. This is an indicator of the enhanced public trust in the work of the Commission. In any case, the Commission needs to largely focus its efforts on cases of high-profile corruption.[210]

Until 27 April 2019 inclusive, the Commission received 17 complaints against violations of the provisions of the Election Code. In respect of elections, the Commission posted two electronic tools on its website. Using one of these tools, any citizen may report election violations. The second tool in fact gives a list of registration plates of vehicles used for the needs of the state administration and public enterprises in the country, which enables to establish whether Article 8b of the Election Code, which prohibits use of state owned resources, including state owned vehicles, in election campaigns.[211]

Upon its own initiative, the Commission decided to examine whether rectors, deans, directors and deputy directors of institutes at all state universities and mayors in the Republic of North Macedonia have submitted asset declarations.[212] In March 2019, the Commission opened a number of cases examining employment with political party influence and with nepotism by a number of incumbent and former holders of office. In addition, after learning any pertinent information, the Commission will examine assets of former holders of office. The Commission will examine the assets of the five judges mentioned in the State Department Human Rights Report.[213] In light of suspicions of malfeasance and corruptive activities the assets of the President of the Supreme Court, Jovo Vangelovski, will also be examined According to the Report,[214] Jovo Vangelovski shared key information regarding active cases with politicians and pressured peers during adjudication. In addition, the Report states that former Judicial Council president Aleksandra Zafirovska consulted senior government officials to select politically loyal or "favourable" judges, that criminal trial judge Sofija Lalichich followed senior UBK orders and severely violated the judges' ethical code, and that administrative judge Svetlana Kostova simultaneously worked as a judge and as a UBK staffer.[215] The assets of the former President of the Criminal Court, Vladimir Panchevski will also be examined.[216] The Report[217] states that while there were strict rules regulating the assignment of cases to judges that were implemented through an electronic case management system, in September the Skopje Public Prosecution Office summoned several persons for interviews after a 2017 audit of the ACCMIS revealed that the system to assign judges to handle specific cases had been manipulated. Media outlets reported that prosecutors summoned former President of the Skopje I First Instance Court, Skopje and the President of the Supreme Court. The State Department Report refers to the 14 September 2018 Special Prosecutor's Office Special Report on Judges Implicated in the 2008-2015 Unlawful Wiretaps.[218]

210 Policy Dialogue, *Reforms under Chapter 23, 17 April 2019.*
211 Ibid.
212 State Commission for the Prevention of Corruption, *Press Release.*
213 State Department, "NORTH MACEDONIA 2018 HUMAN RIGHTS REPORT."
214 Ibid.
215 Ibid.
216 Фотиновска, "Антикорупциска Отвара Постапка За 5 Судии." *(Fotinovska, The Anti-corruption Commission opens cases against 5 Judges).*
217 State Department, *NORTH MACEDONIA 2018 HUMAN RIGHTS REPORT.*
218 Ibid.

On 1 March 2019, the State Commission for the Prevention of Corruption, represented by Biljana Ivanovska, President of the Commission and the Academy for Judges and Public Prosecutors, represented by Professor Natasha Gaber-Damjanovska, Ph.D., Director of the Academy signed a Memorandum of Cooperation with a view to pursing cooperation in preventing corruption and conflict of interest.[219]

On 25 February 2019, upon the initiative of the State Commission for the Prevention of Corruption, at the premises of the Civil Society Resource Centre, the new members of the Commission had the first working meeting with relevant representatives of the non-governmental sector and representatives of organizations that are members of the Platform of civil society organizations fighting corruption. The purpose of the meeting was to explain the mandate of the Commission, the goals and future activities, especially in the forthcoming period considering the need for close cooperation between the State Commission for the Prevention of Corruption and the non-governmental sector.[220] On 29 March 2019, the Commission members had another meeting with representatives of the Platform of civil society organizations fighting corruption. This meeting too was convened upon the initiative of the State Commission for the Prevention of Corruption and its goal was to define and coordinate the next steps to be undertaken with a view to successfully monitoring the campaign for the presidential elections in the coming months.[221] The Deputy Prime Minister of the Republic of North Macedonia and the President of the Commission met on 5 March 2019[222], discussing the Plan 18 and the implementation of the recommendations under the fourth round of GRECO evaluation. The Commission members also met with representatives of the OSCE/ODIHR Monitoring mission for the 2019 presidential elections. At this meeting, the mandate of the Commission was presented, as well as activities undertaken with respect to the election process.[223]

On 15 March 2019, the State Commission for the Prevention of Corruption adopted the Strategy for Promotion of the Whistleblower Protection System in the Republic of North Macedonia.[224]

It is necessary to increase the budget and resources available to the Commission. It is also necessary to link the equipment the Commission has received with databases and registers, which will enable proper performance of the duties of the Commission, especially in terms of examining the assets of elected and appointed officials. The budget of the Commission has remained the same in the last years. It necessary to increases its budget. The Capacities of the Commission are not sufficient for processing 400 cases, which the Commission received as of its establishment until February 2019.[225]

219 State Commission for the Prevention of Corruption, *Pres Release. 2019.*
220 Ibid.
221 Ibid.
222 Ibid.
223 Ibid.
224 State Commission for the Prevention of Corruption, *STRATEGY FOR THE PROMOTION OF THE WHISTLEBLOWER PROTECTION SYSTEM IN THE REPUBLIC OF MACEDONIA.*
225 Policy Dialogue, *Reforms under Chapter 23, 17 April 2019.*

Special Public Prosecutor's Office

The fight against high-profile corruption continued with the work of the Special Public Prosecutor's Office. In the period from 15 March 2018[226] to 15 March 2019,[227] the Special Public Prosecutor's Office instituted 11 investigative proceedings in total involving 90 persons. In the period from 15 September 2018 to 15 March 2019, the Special Public Prosecutor's Office opened another 8 new financial investigations in cases in which there were reasonable suspicions that with the crimes committed suspected persons had financially damaged the Budget of the Republic of Macedonia in the amount of almost MKD 92 million. In this period, the Skopje Basic Public Prosecutor's Office and the Bitola Basic Public Prosecutor's Office adopted decisions within the legally envisaged period establishing jurisdiction *ratione materiae* of the Special Public Prosecutor's Office in the cases IMPERIA (EMPIRE) and TALIR. [228] In the reporting period, the SPPO instituted two indictments in the cases of TALIR and TALIR 2.[229] In the period, from 15 March 2018 to 15 March 2019, Public Prosecutors participated in 399 proceedings before courts of the Republic of North Macedonia, of which 389 main hearings before the Skopje I First Instance Court and 10 public hearings of the Skopje Appellate Court. In the reporting period, 389 hearings were scheduled for cases formed after the submission of the indictments, whereof 114 hearings were adjourned, accounting for almost one third of the total number of scheduled hearings.[230]

The Sixth SPPO Report,[231] expresses concerns about the efficiency of the judiciary in processing the proposal for indictment in the case known as VIOLENCE IN THE MUNICIPALITY OF CENTAR, in which court proceedings have been undergoing for 2 (two) years, which is unusual for a trial based on a proposal for indictment. Promptness in the processing of the cases was noticed only in the trials for the cases TENK and TRISTA, in the course of which no adjournments were granted and verdicts were delivered.[232] In the period from 15 March to 15 September 2018, first instance judgments were delivered against three persons in two different cases, sentencing them to imprisonment. At the same time, in the sixth reporting period, the Skopje Court of Appeal upheld first-instance verdicts against five people.[233] In the period from 15 September to 15 March 2019, judgments were delivered against three persons in two cases. The judgment in the TALIR case was adopted in December 2018, based on a plea bargaining for 1 indicted person who was issued an alternative

226 Report about the activities of the Public Prosecutor's Office for Prosecuting Criminal Offences Related to and Arising from the Content of the Illegally Intercepted Communication for a six-month period (period from 15 March 2018 to 15 September 2018).
227 Report about the activities of the Public Prosecutor's Office for Prosecuting Criminal Offences Related to and Arising from the Content of the Illegally Intercepted Communication for a six-month period (period from 15 September to 15 March 2019).
228 Ibid.
229 Ibid.
230 Ibid.; Report about the activities of the Public Prosecutor's Office for Prosecuting Criminal Offences Related to and Arising from the Content of the Illegally Intercepted Communication for a six month period (period from 15 March 2018 to 15 September 2018).
231 Report about the activities of the Public Prosecutor's Office for Prosecuting Criminal Offences Related to and Arising from the Content of the Illegally Intercepted Communication for a six-month period (period from 15 March 2018 to 15 September 2018).
232 Ibid.
233 Ibid.

measure of suspended sentence, i.e. two year prison sentence, not be served if the indicted person does not commit a new crime within a 5 year period from the adoption of the final judgment.[234] A judgment was delivered also in the TRUST case.[235] The delivery of the judgment in the TITANIK 2 case was scheduled for 8 March 2019.[236]

Upon the request of the Special Public Prosecutor's Office, the judge in preliminary proceedings at the Skopje I First Instance Court delivered a decision ordering the provisional measure of securing the property of the VMRO-DPMNE political party. This measure freezes 69 facilities, i.e. immovable property among which the building which hosts the seat of the Party. The measure bans the sale or lease of the immovable property. These activities were undertaken in respect of the TALIR case, considering the probability that the property could be sold until the completion of the proceedings.[237] Furthermore, the same month, upon the request of the Special Public Prosecutor's Office, a judge in preliminary proceedings at the Skopje I First Instance Court, Skopje delivered provisional order to secure the assets in the investigation in the case known to the public as the case of Poshtenska Banka (Postal Bank).[238]

A particular feature of the reporting period is the increased number of proposal for pre-trial detention, as a measure to secure the attendance of the accused. In the reporting period, the SPPO motioned 12 proposals for pre-trial detention, 8 requests for replacement of pre-trial detention with house arrest and 6 requests for pre-trial detention of an absconded suspect.[239]

A significant event marking this reporting period is the escape to Hungary by the former Prime Minister, Nikola Gruevski, in November 2018. From Hungary, the former Prime Minister posted on social media networks confirming that he had escaped and that he had applied for political asylum with the Hungarian authorities.[240] After the escape of the former Prime Minister, 14 non-governmental organizations issued an open letter requesting accountability and responsibility for the omissions and inefficiency of institutions, which ultimately resulted with the escape of the former Prime Minister Nikola Gruevski.[241]

234 Report about the activities of the Public Prosecutor's Office for Prosecuting Criminal Offences Related to and Arising from the Content of the Illegally Intercepted Communication for a six-month period (period from 15 September to 15 March 2019). With a view to being more effective, the Special Public Prosecutor's Office separated the proceedings in the TALIR case, and therefore two indictments were filed. One of the indictments is against unlawful funding of a legal person – the VMRO-DPMNE political party, and the second indictment is against illegal construction of the building of the seat of the VMRO-DPMNE political party.

235 Ibid.

236 Ibid.The judgement in this case is not covered by the Seventh Report of the Special Public Prosecutor's Office.

237 Special Public Prosecutor's Office, Measures to Secure the Assets.

238 Special Public Prosecutor's Office, Measures to Secure the ASSETS in the case of Poshtenska banka (Postal Bank).

239 Report about the activities of the Public Prosecutor's Office for Prosecuting Criminal Offences Related to and Arising from the Content of the Illegally Intercepted Communication for a six-month period (period from 15 September to 15 March 2019).

240 Gruevski posted on Facebook from Hungary. He applied for political asylum.

241 Радио МОФ, "14 Граѓански Организации Бараат Одговорност За Бегството На Груевски Во Следните 10 Дена. (Radio MOF, *14 Civil Society organizations demand responsibility for the escape of Gruevski in the coming 10 days.)*

The Public Prosecutor, Lile Stefanova, made a public statement saying that the SPPO could not be blamed for the escape of the convicted person Nikola Gruevski and it was the court that received the request for pre-trial detention of Gruevski that did not take seriously into consideration the assessment of the prosecutor that there were real reason to suspect his escape. Prosecutor Stefkova said that the SPPO emphasized and filed motions for pre-trial detention, but the court adopted a different decision and ordered milder measures to secure the presence.[242] After the escape of the former Prime Minister, as part of submitted indictments already processed in court proceedings, upon submitted requests for pre-trial detention of the person Nikola Gruevski, in six cases- cases called TNT, TALIR, TALIR 2, TITANIK, TRAEKTORIJA and VIOLENCE IN THE MUNICIPALITY CENTAR, the Criminal Law Section at the Skopje I First Instance Court- Skopje ordered pre-trial detention of the indicted person Nikola Gruevski, starting from the date of his finding and deprivation of freedom.[243] Nikola Gruevski was granted political asylum in Hungary, almost simultaneously with the submission of the request for extradition by the Ministry of Justice.[244]

Another important development in the reporting period were the efforts to integrate the Special Public Prosecutor's Office within the public prosecution system in the Republic of North Macedonia, as well as the activities relating to the status and competences of this Public Prosecutor's Office. The draft Law on the Public Prosecutor's Office, which regulates the status of the SPPO, is in parliamentary procedure.[245] On 30th of January 2019, at its general session, the Supreme Court delivered the principled legal opinion about the competences of the SPPO, following the initiative of lawyers Boro Tasevski and Elenko Milanov, submitted in pursuance with Article 6 of the Law amending the Law on Courts. According to the said opinion the Public Prosecutor's Office for Prosecuting Criminal Offences Related to and Arising from the Content of the Illegally Intercepted Communication may institute indictments or order the staying of an investigative procedure in a period not longer than 18 months from the date of taking over the cases and materials within the purview of this Prosecutor's Office. This is a cumulative condition, and the period must be respected and may not be moved, i.e. the period starts with the date of receipt of the materials from the illegally intercepted communication, under Article 2 of the Law on the Public Prosecutor's Office for Prosecuting Criminal Offences Related to and Arising from the Content of the Illegally Intercepted Communication and after 18 months afterwards, the SPPO is not authorized to undertake prosecution activities in preliminary investigations or investigations, envisaged under the Law on Criminal Procedure.[246] This opinion of the Supreme Court has been criticized by some of the experts, who said that by delivering such an Opinion the Supreme Court has infringed upon the mandate of the Legislative Committee at the Parliament of the Republic of North Macedonia. [247]

242 Stefanova: the SPPO is not to be blamed for the escape of Gruevski, The SPPO emphasized the problem before the court, but the court did not order pre-trial detention.

243 Report about the activities of the Public Prosecutor's Office for Prosecuting Criminal Offences Related to and Arising from the Content of the Illegally Intercepted Communication for a six-month period (period from 15 September to 15 March 2019).

244 Civil media, "Груевски Доби Политички Азил Во Унгарија." (Civil Media, *Gruevski was granted political asylum in Hungary).*

245 Blueprint Group for the Judiciary, *II Quarterly Monitoring Brief of the Implementation of the Judicial Reform Strategy.*

246 Supreme Court of the Republic of North Macedonia, *Press Release.*

247 360 степени, "Мислењетно На Врховниот Суд Ќе Го Користиме Како Анти-Прктикум." (360 Stepeni, *We will use the Opinion of the Supreme Court as a negative example).*

Inter-institutional Cooperation in the Fight against Corruption and Money Laundering

On 6th of March 2019, at the premises of the Government of the Republic of North Macedonia, a Memorandum of Cooperation was signed for use of the System for collection and processing of statistics for the prevention and suppression of corruption and money laundering.[248] About fifty state institutions support enhanced inter-institutional cooperation and the design of the web tool called *System for collection and processing of statistics for the prevention and suppression of corruption and money laundering*.[249] The purpose of the system is to strengthen the cooperation among all institutions involved in the prevention of and fight against corruption, without having to submit a special request data, which they should have anyway in accordance with the law. This system is expected to significantly facilitate the inter-institutional communication and thus increase the efficiency in the fight against corruption and money laundering.[250]

The institutions signatories of this Memorandums are: the Ministry of Justice, the Ministry of Foreign Affairs, the Ministry of Information Science and Administration, the State Commission for the Prevention of Corruption, the Public Prosecutor's Office, the SPPO, the Supreme Court, the Council of Public Prosecutors, all appellate and first instance courts in the Republic of North Macedonia, the State Audit Office, the Agency for Administration, the Financial Police, the Financial Intelligence Unit, the Customs Administration, the Public Revenue Office, the Directorate for the Execution of Sanctions, the Agency for Management of Seized Property, and the State Commission deciding in the second instance in administrative procedures and labour law procedures.[251]

248 Government of the Republic of North Macedonia, *Official signing of the Memorandum of Cooperation for use of System for collection and processing of statistics for the prevention and suppression of corruption and money laundering.*
249 Posted on the website of the Ministry of Information Society and Administration, *Inter-institutional Cooperation in the fight against corruption and money laundering.*
250 Ibid.
251 Ibid.

LEGAL FRAMEWORK

At its regular 115th session,[252] the Government adopted a decision to submit to the Parliament a draft Law on the Prevention of Corruption and Conflict of Interest in a summary procedure, as a draft law of importance for the European integration of the country, following which the ruling majority and the opposition parties reached and agreement and the SDSM accepted 20 of the 40 amendments submitted by VMRO-DPMNE. At its 80th session, held on 17th of January 2019, the Parliament adopted the Law on the Prevention of Corruption and Conflict of Interest, giving 81 votes in favour for the adoption of the Law.[253]

The new Law on the Prevention of Corruption and Conflict of Interest[254] regulates both corruption and conflict of interest. The Law, *inter alia,* introduces changes in the procedure for appointment of president and members of the Commission, their status and salaries, and the termination of office and dismissal of members, introducing changes as well in the submitting of asset declarations and declarations of interest and related obligations for administrative, judicial and public employees. The mandate of the Commission is expanded. Hence, the Commission now may institute and pursue a procedure for control of the financing of political parties and oversees the legality of financing of election campaigns.[255] The new Law introduces the exclusive competence of the Commission for examining the assets of elected and appointed officials, which helps fulfil one of the GRECO recommendations following the fourth round of evaluation.[256] This would require other additional resources. With the adoption of the Law, the Republic of North Macedonia has a stable framework for the status and mandate of the State Commission for the Prevention of Corruption, which is the key institution in the fight against corruption.

On 15 March 2019, the Commission adopted the Strategy for Promotion of the Whistle Blower Protection System in the Republic of North Macedonia.[257]

The text of the draft Law on the Public Prosecutor's Office was posted on the ENER on 4 December 2018, while on 5 December 2018 the draft Law on the Special Public Prosecutor's' Office was posted.[258] On 5th of March 2019, at its 124th session, the Government endorsed the draft Law on the Public Prosecutor's Office.[259] The main goal of this Law is to strengthen the professionalism and accountability of public prosecutors. An important

252 115th Session of the Government of the Republic of North Macedonia
253 Parliament of the Republic of North Macedonia, Session No. 80 of the Parliament of the Republic of North Macedonia scheduled for 16 January 2019, at 12:00 hrs.
254 Official Gazette No. 12, 19 January 2019, Law on the Prevention of Corruption and Conflict of Interest.
255 Ibid.
256 Policy Dialogue, *Reforms under Chapter 23, 17 April 2019*.
257 State Commission for the Prevention of Corruption, *STRATEGY FOR THE PROMOTION OF THE WHISTLEBLOWER PROTECTION SYSTEM IN THE REPUBLIC OF MACEDONIA*.
258 Blueprint Group for the Judiciary, *II Quarterly Monitoring Brief of the Implementation of the Judicial Reform Strategy*.
259 Government of the Republic of North Macedonia, *124th session of the Government of the Republic of North Macedonia: Defined package of reform draft Laws on the Public Prosecutor's Office, on the Council of Public Prosecutors and on Free Legal Assistance; endorsed amendments to the draft Anti-Discrimination Law*.

provision of the draft Law is related to incorporating the Special Public Prosecutor's Office within the public prosecution system, in line with the Judicial Reform Strategy.[260] Civil society organizations had remarks about the endorsed draft of the Law and about the procedure for its adoption. The draft Law limits the possibility of using the contents of illegally intercepted communications as evidence in the proceedings, which brings into question the *raison d'être* of this Public Prosecutor's Office, which fights against high-profile corruption and against organized systemic abuse of the state and state resources for the benefit of private interests and accruing material gains. In addition, the content of the draft Law suggests overlapping of the mandates of the SPPO and the Basic Public Prosecutor's Office for Prosecution of Organized Crime and Corruption. Thus, the same types of crimes are prosecuted by both prosecutors' offices. Another problem is the renewal of human resources at the public prosecutor's offices every six months until all prosecutors are replaced, which again raises the problem of prosecutors who are already working at the SPPO, in the training of whom many efforts have been invested.[261] The draft Law that is in parliamentary procedure is subject of consultations among all political parties. The political party VMRO -DPMNE submitted amendments to this Law. However, the Ministry of Justice stated that some of the amendments were not acceptable since they undermine the autonomy of the SPPO, as a separate body and ran contrary to the recommendations of the international community, while the other provisions of such amendments envisage amnesty for the crime of destruction of evidence that has already been collected. The Minister of Justice appealed to all politicians to facilitate the talks processes with a view to ensuring two-third majority for the adoption of this Law, which is of great relevance for the process of European integration of the country.[262]

Instead of making an overhaul of the Criminal Code, at its 77th session, held on 28th of December 2018, in a summary procedure, the Parliament of the Republic of Macedonia adopted amendments to the Criminal Code. The amendments envisage criminal prosecution of hate crimes, and introduce new provisions on witness protection and new provisions punishing interference with justice. However, aside from these positive legal solutions, the amendments introduced reduction of prison sentences under Article 275-c for the crime of *Abuse of procedure for public call, award of public procurement contract or public-private partnership,* and under Article 279-a introduced new incrimination of *Tax fraud.* The amendments to Article 275-c and the introduction of Article 279-a are not mentioned at all in the Report and explanation of the draft law. Considering the social setting and the increasing incidence of such crimes, the lack of a clear explanation about the reasons for a less strict penal policy of the legislator for this type of crimes, then the adoption of the amendments in a summary procedure, without any transparency and public debate that would be required for such major impact amendments to the Criminal Code, raise the issue about the true intentions of the legislator for the introduction of such amendments. The same applies to the lack of explanation of the need to introduce a new incrimination

260 Ibid.
261 Blueprint Group for the Judiciary, *II Quarterly Monitoring Brief of the Implementation of the Judicial Reform Strategy.*
262 Minister of Justice, Deskoska: "I appeal to all politicians to help the talks process with a view to ensuring two-third majority for the adoption of a Law, which is of importance for the European integration process of the country."

(Article 279-a Tax fraud). Namely the Report does not presents statistics about the number of committed crimes of this modified form of the already sanctioned crime of *tax evasion*, that on their part would justify the need for this new incrimination, and there are no relevant data that would indicate that advisory opinions have been sought from experts (domestic or foreign) in this regard.[263]

The Strategy of the Republic of North Macedonia for strengthening the capacities for financial investigations and asset confiscation, accompanied with an Action Plan for its implemented needs to be posted on the website of the Ministry of the Interior and its implementation is to be monitored.

The efforts made to strengthen the legislative and institutional framework for fight against corruption should be welcomed. Currently, the Republic of North Macedonia has a stable legal framework for the prevention of corruption and conflict of interest, as well as clearly defined mandate of the Commission for the Prevention of Corruption.

The process of appointment of members of the Commission for the Prevention of Corruption should also be welcomed. The process was completed in less than two weeks, from the moment of publication of announcement until the appointments, which prevented the application of a process of thorough vetting of cacandidates. Therefore, there were limited possibilities to examine in detail all candidates. Civil society organizations and media associations were fully involved in the process of conducting interviews, i.e. every candidate without any exception was asked questions the answers to which should demonstrate the integrity of the person required for the performance of the office, as well as the candidates' knowledge and readiness to perform the duties. The Selection Committee was transparent throughout the entire process, which was broadcast on the Parliament TV channel, which provided the public with the opportunity to familiarize themselves with all candidates and hear their views. This model of appointment of members of the State Commission for the Prevention of Corruption is recommended to be applied for appointment of members of other independent bodies and commissions.

As of the establishment of the new Commission for the Prevention of Corruption and Conflict of Interest, the Commission actively processes applications, in pursuance with its mandate set forth under law and opens cases upon its own initiative. Furthermore, the Commission actively works on the prevention of corruption and cooperates with other institutions, and meets representatives of embassies and of non-governmental organizations.

263 Blueprint Group for the Judiciary, *II Quarterly Monitoring Brief of the Implementation of the Judicial Reform Strategy.*

The budget and resources of the Commission need to be increased.

In the last period, the Special Public Prosecutor's Office has been continually instituting new investigative procedures and executes its mandate. It is necessary to more speedily regulate the status and mandate of the Special Public Prosecutor's Office, as a key impotence prosecutor's office for prosecution of crimes in high-profile cases of white-collar crime. In this context, it would be necessary to adopt the draft Law on the Public Prosecutor's Office, to regulate the status and mandate of the SPPO, as an autonomous prosecutor's office within the public prosecution system.

3. FUNDAMENTAL RIGHTS

CASE-LAW OF THE EUROPEAN COURT OF HUMAN RIGHTS

Out of 12 judgments delivered by the ECHR in 2018, a Chamber of seven judges delivered seven judgments and a Committee of three judges delivered the other five judgments.[264] In one case, the Court found violations of Article 1 of Protocol 1 to the Convention, of Article 10 and a violation of Article 3, referring to Article 5, paragraph 5. In two cases, there was violation established of Article 5, paragraph 3, while in 3 cases, there was a violation of Article 11, referring to Article 9, and in another three cases, there was a violation of Article 6.[265]

In the reporting period, the ECHR delivered a judgment[266] establishing a violation of Article 3 of the Human Rights Convention. Seljami brought damages claims against the state for unlawful deprivation of freedom and sustaining serious injuries as a result of inflicted physical violence, after which we was admitted to hospital with a number of fractures. Later he had a brain surgery and was in a coma for two weeks. Mr. Seljami was arrested by the police on suspicions of involvement in the killing of two police officers. Mr. Seljami brought damages claims, and the first instance court awarded the denar equivalent of EUR 18,000 for unlawful deprivation of freedom. The State Attorney appealed against this decision and the Appellate Court reduced the damages to EUR 9,800. Upon an application lodged with the ECHR, the Court established that the ill-treatment by the police amounted to torture and the authorities had not conducted a proper investigation to establish all the facts and circumstances. In the same judgment, the ECHR found that the state is to award Mr. Seljami the denar equivalent EUR 20,000 for non-pecuniary damage.

In respect of the enforcement of judgments of the European Court of Human Rights delivered in the reporting period, i.e. June 2018 to March 2019, the state authorities submitted four action plans,[267] four action plan reports[268] and one report about individual

264 "Судска Практика На Европскиот Суд За Човекови Права Со Фокус Врз 2018 Година: Албанија, Босна и Херцеговина, Хрватска, Црна Гора, Северна Македонија и Србија.", (Case law of the European Court of Human Rights with a focus on 2018: Albania, Bosnia and Herzegovina, Croatia, Montenegro, North Macedonia and Serbia) p. 49.

265 Ibid.

266 ECHR, Seljami and others v. the former Yugoslav Republic of Macedonia, Application No. 78241/13.

267 Bureau for representation of the Republic of Macedonia before the European Court of Human Rights, "Communication from North Macedonia Concerning the Orthodox Ohrid Archdiocese Group of Cases (Application No. 3532/07 - Action Plan." Bureau for representation of the Republic of Macedonia before the European Court of Human Rights, "Communication from North Macedonia Concerning the Orthodox Ohrid Archdiocese Group of Cases (Application No. 3532/07) - Revised Action Plan." Bureau for representation of the Republic of Macedonia before the European Court of Human Rights, "Communication from the Former Yugoslav Republic of Macedonia" Concerning the Case of Seljami and Others v. "the Former Yugoslav Republic of Macedonia" (Application No. 78241/13) - Action Plan." Bureau for representation of the Republic of Macedonia before the European Court of Human Rights, "Communication from 'the Former Yugoslav Republic of Macedonia' Concerning the Case of Taseva Petrovska v. 'the Former Yugoslav Republic of Macedonia' (Application No. 73759/14) - Action Plan."

268 Bureau for representation of the Republic of Macedonia before the European Court of Human Rights, "Communication from 'the Former Yugoslav Republic of Macedonia' Concerning the Case of Krstanoski and Others v. 'the Former Yugoslav Republic of Macedonia' (Application No. 38024/08) - Action Plan." Bureau for representation of the Republic of Macedonia before the European Court of Human Rights, "Communication from 'the Former Yugoslav Republic of Macedonia' Concerning the Case of VASILKOSKI AND OTHERS v. 'the Former Yugoslav Republic of Macedonia' (Application No. 28169/08) - Action Report." Bureau for representation of the Republic of Macedonia before the European Court of Human Rights, "Communication from 'the Former Yugoslav Republic of Macedonia' Concerning the Case of Karajanov v. 'the Former Yugoslav Republic of Macedonia' (Application No. 2229/15) - Action Report."

measures.[269] The four Action plans submitted by the authorities of the Republic of North Macedonia envisage the following individual measures: repeating the proceedings before domestic courts,[270] compensation for the applicant,[271] reopening of administrative proceedings.[272] The general measures have been designed on the following grounds: the fact that violations resulted from inadequate jurisprudence,[273] violation of the right to adversarial proceedings in the context of administrative disputes[274] and the joint conclusion of the appellate courts.[275] The submitted Action plan reports envisage general measures, while emphasizing that in the future, decisions for continuing pre-trial detention would contain sufficient reasoning explaining the grounds and reasons for the decision in question.[276]

269 "Communication from the Authorities (03/12/2018) Concerning the Case of Ljatifi v. 'the Former Yugoslav Republic of Macedonia' (Application No. 19017/16)."

270 Bureau for representation of the Republic of Macedonia before the European Court of Human Rights, "Communication from North Macedonia Concerning the Orthodox Ohrid Archdiocese Group of Cases (Application No. 3532/07) - Revised Action Plan."

271 Ibid.; Bureau for representation of the Republic of Macedonia before the European Court of Human Rights, "Communication from 'the Former Yugoslav Republic of Macedonia' Concerning the Case of Taseva Petrovska v. 'the Former Yugoslav Republic of Macedonia' (Application No. 73759/14) - Action Plan."; Bureau for representation of the Republic of Macedonia before the European Court of Human Rights, "Communication from "the Former Yugoslav Republic of Macedonia" Concerning the Case of Selami and Others v. "the Former Yugoslav Republic of Macedonia" (Application No. 78241/13) - Action Plan."

272 Bureau for representation of the Republic of Macedonia before the European Court of Human Rights, "Communication from 'the Former Yugoslav Republic of Macedonia' Concerning the Case of Taseva Petrovska v. 'the Former Yugoslav Republic of Macedonia' (Application No. 73759/14) - Action Plan."

273 Bureau for representation of the Republic of Macedonia before the European Court of Human Rights, "Communication from North Macedonia Concerning the Orthodox Ohrid Archdiocese Group of Cases (Application No. 3532/07 - Action Plan."

274 Bureau for representation of the Republic of Macedonia before the European Court of Human Rights, "Communication from 'the Former Yugoslav Republic of Macedonia' Concerning the Case of Taseva Petrovska v. 'the Former Yugoslav Republic of Macedonia' (Application No. 73759/14) - Action Plan."

275 Bureau for representation of the Republic of Macedonia before the European Court of Human Rights, "Communication from the Former Yugoslav Republic of Macedonia" Concerning the Case of Selami and Others v. "the Former Yugoslav Republic of Macedonia" (Application No. 78241/13) - Action Plan."

276 Bureau for representation of the Republic of Macedonia before the European Court of Human Rights, "Communication from 'the Former Yugoslav Republic of Macedonia' Concerning the Case of VASILKOSKI AND OTHERS v. 'the Former Yugoslav Republic of Macedonia' (Application No. 28169/08) - Action Report."

THE CONSTITUTIONAL COURT AS A PROTECTOR OF HUMAN RIGHTS AND FREEDOMS

There have been several failed attempts to reform the Constitutional Court. In 2014, constitutional amendments were proposed, which envisaged expansion of the group of rights and freedoms that the Constitutional Court would be mandated to protect. Furthermore, the said constitutional amendments envisaged the possibility for the Constitutional Court to deliberate upon complaints against decisions of the Judicial Council on the appointment, dismissal and establishment of disciplinary liability of judges and presidents of courts. The Venice Commission presented some suggestions and recommendations, but the said constitutional amendments have never been adopted. There were indications of some progress in this context with the initial draft of the Strategy that also envisaged that the institute of constitutional complaint would cover larger number of rights and freedoms guaranteed under the Constitution. The final draft of the Strategy did not contain any provision relating to reform of the Constitutional Court, without any reasons for this being clearly explained.[277]

The legal order of the Republic of North Macedonia defines the mandate, i.e. the two types of procedures that may be instituted with the Constitutional Court, through which the Constitutional Court may control and influence the work of regular courts with a view to protecting the constitutionality and constitutionally guaranteed rights and freedoms. However, the control and institute of constitutional complaint are utterly inefficient and ineffective. Thus, as of 1991 the Constitutional Court has not received a single initiative for preliminary consideration of the constitutionality of a legal document submitted by regular courts regarding proceedings pursued before them. The number of applications for protection of freedoms and rights of citizens filed with the Constitutional Court is continually decreasing. In its thus far jurisprudence, the Constitutional Court has established violations of constitutionally guaranteed rights or freedoms only in one case.[278]

In the context of the institute of constitutional complaint, i.e. request for protection of freedoms and rights, as it is called in the Court's Rules of Procedure, the fundamental reason for the disappointing situation with the effectiveness of this institute is that the list of rights and freedoms that may be protected by the Constitutional Court is defined very narrowly, without any rational explanation of the selectiveness in defining the list.[279]

Despite the proposed 2014 constitutional amendments, the institute of constitutional complaint has still not been introduced, which is necessary as the last instance for protection of human rights and freedoms, before applying with the ECHR.[280]

277 Прешова и Дамјановски, "Уставниот Суд Изгубен Во Судските Реформи." (Preshova and Damjanovski, *The Constitutional Court lost in the judicial reforms).*
278 Ibid.
279 Ibid.
280 Debate: Reforms of the Constitutional Court related to Chapter 23.

The Constitutional Court still works according to the 1992 Rules of Procedure.[281] Considering the changes in society and the need to keep up with contemporary trends, the Rules of Procedure of the Constitutional Court need to be amended, or perhaps a new Constitutional Law could be adopted to regulate this matter. The law regulating the work of the Constitutional Court is adopted by Parliament with two-third majority of votes.[282]

With a view to enhancing the public trust in the Constitutional Court, it is necessary to clearly define the term "renowned lawyer". In addition, the name and the CVs of candidates for constitutional judges need to be considered by the wider expert community, prior to their appointment, especially when candidates are proposed by the Parliament of the Republic of Macedonia.

The list of rights and freedoms covered by the institute of constitutional complaint needs to be expanded with more rights and freedoms guaranteed under the Constitution in order to enhance the protection of rights and freedoms of citizens.

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281 Constitutional Court, Rules of Procedure of the Constitutional Court.
282 Debate: Reforms of the Constitutional Court related to Chapter 23.

THE OMBUDSMAN

The Government endorsed[283] the draft Law amending the Law on the Ombudsman. The most important novelty introduced with this draft Law is that it envisages the setting up of a separate external body that would serve as an additional instrument for control of the investigations of crimes committed by prison police officers and authorized police officers of the Ministry of the Interior. The purpose of the draft Law is to advance the human rights protection by aligning the national framework in this regard with standards of the Council of Europe, with the Paris Principles and other international standards. The Ombudsman's Office will also have the mandate to conduct additional control of the work of the Department for Internal Control and Professional Standards, when citizens file applications with this Department.

The Assembly of the Republic of North Macedonia adopted the legislation related to the Ombudsman.[284] The amendments facilitate the establishment of a new organizational unit at the Ombudsman's Office, as part of the Professional Services i.e. *The Ombudsman as a civil control mechanism,* which will ensure protection and support for victims, their rights and will represent their interests in all procedures for examination of the conduct by persons with police authorities and of prison police officers.

On 14th of June 2018, the Parliament of the Republic of Macedonia adopted[285] the measures for implementation of the recommendations of the Ombudsman, presented in the Ombudsman's 2017 Annual Report on the degree of ensuring, respect for, promotion and protection of human rights and freedoms. The measures for implementation of the recommendations are grouped as follows: police authorities, civil registration status and other internal affairs related issues, justice system, election rights, rights of refugees and migrants, prisons and educational -correctional facilities, social security and protection, pension and disability insurance, health insurance and health care, the rights of the child, rights of persons with disabilities and other areas of relevance for advancing the situation with freedoms and rights of citizens.

Sending the communication No. 08-1359/35, dated 9th of July 2018, the Government recommended to the Ombudsman to incorporate in its organizational set-up the mechanism for effectuation of Article 33[286] of the Convention on the Rights of Persons with Disabilities and its Optional Protocol. This Article envisages that States Parties, in accordance with their system of organization, shall designate one or more focal points within government for matters relating to the implementation of the Convention. Furthermore, considering

283 47th Session of the Government of the Republic of Macedonia.
284 Parliament of the Republic of Macedonia, Session No. 6 of the Parliament of the Republic of Macedonia, scheduled for 5 July 2017.
285 Parliament of the Republic of Macedonia, Session No. 46 of the Parliament of the Republic of Macedonia, held on 14 June 2018.
286 Convention on the Rights of persons with Disabilities, Article 33: National implementation and monitoring.

that the Ombudsman is an independent mechanism, the Government tasked the Ombudsman's Office to work on the promotion, protection and monitoring of the implementation of the Convention with a view to protecting human rights and freedoms of persons with disabilities. The Ombudsman should exercise this part of its mandate in cooperation with the non-governmental sector. A new unit for civil control has been established at the professional services of the Ombudsman's Office, while the Department for protection of the rights of the child and rights of persons with disabilities is tasked with monitoring the implementation of the UN Convention on the Rights of Persons with Disabilities.[287]

Last year, the authorities did not allocate funds for promotion of the institution and for informing the public about the new competencies of the Ombudsman. The non-fulfilment of this obligation prevents the Ombudsman from serving as "the national institution in the real sense of the word" that would be able to fully execute its mandate in the future.[288]

Consequently, it is still necessary to work on exempting the employees of the Ombudsman's Office from the scope of the Law on Administrative Servants, the Law on Public Sector Employees and the Law on the Execution of the Budget. In pursuance with the Paris Principles, the Ombudsman is to be ensured complete financial independence and independence of human resources.

In 2018, the Ombudsman's Office processed 4,482 applications in total, of which 3,654 applicants lodged 3,458 applications last year. According to areas, most applications were lodged against violations of rights by public servants and institutions, i.e. 1, 374 (39.76%), then applications against violations of rights by the central authorities 1,140 (32.76%) and 345 (9.98%) applications were lodged against violations committed by local authorities.[289]

Funding

The 2018 budget for the Ombudsman's Office was MKD 78,465,000, which by 4.29% higher than the total budget allocated for 2017. After the restructuring of the budget, this amount was reduced by MKD 6, 000,000 – budget item for salaries, which according to the Ombudsman's Office did not reflect negatively on the regular work. 63% of the budget of this institution has been spent for salaries and social insurance contributions, 34% for goods and services and 3% for capital expenditures. The work of the Ombudsman's Office was also financially supported by the UNHCR in the amount of MKD 3, 557,952. The Ombudsman's Office was also financially supported by the Embassy of the Republic of Bulgaria, i.e. with a financial assistance of MKD 1,602,429, the Ombudsman's Office usefully implemented the Project *Roma Inclusion after the Roma Decade: State of play and challenges.*[290]

287 The Ombudsman, *Annual Report on the Degree of Ensuring, Respect for, Advancement and Protection of Human Rights and Freedoms, 2018.*
288 Ibid.
289 Ibid.
290 Ibid.

Citizens need to be educated, i.e. informed about the mandate and possibilities available to the Ombudsman's Office for protection and enabling the unimpeded exercise of their rights. This would require additional funds to be allocated by the state in order that the information-education activities are consistently implemented and cover as many citizens as possible.

The Ombudsman appeals that the authorities facilitate that this institution become a national institution in the true sense of the word in order that the Ombudsman's Office could fully exercise its duties. In this regard, it is necessary that the authorities exempt the employees of the Ombudsman's Office from the scope of the Law on Administrative Servants, the Law on Public Sector Employees and the Law on the Execution of the Budget. Such changes would contribute to attaining the standards set by the Paris Principles, according to which the capacities of the national human rights institutions could not be functional without independence of funding and of human resources.

TORTURE OR OTHER FORMS OF CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

On 30 October 2018, the Parliament adopted the supplemented draft Law amending the Law on the Public Prosecutor's Office.[291] The amendments introduced the following novelty: establishment of a specialized Unit for investigation and prosecution of crimes perpetrated by persons having police authorities and prison police officers at the Basic Public Prosecutor's Office for Prosecution of Organized Crime and Corruption. This Unit has its own professional service and public prosecution investigators, coming from the Investigative Centre, in compliance with this law. Public Prosecutors and the Head of the Unit are designated by the Public Prosecutor heading the Basic Public Prosecutor's Office for prosecution of organized crime and corruption, for a term of office of 4 years with the right to one reappointment.

This is an important novelty in the system for control of persons having police authorities and of prison police officers, especially in light of previous experience, which shows that criminal charges filed by the Department for Internal Control and Professional Standards have not been timely and consistently processed by the Public Prosecutor's Office due to its huge workload. The only functional measures were the disciplinary ones, which the Department for Internal Control was authorized to deliver. This mechanism was additionally strengthened with the expansion of the mandate of the Ombudsman to control the work of this Department, i.e. to conduct oversight of activities undertaken following a complaint filed by a citizen.

In October and November 2018, the Helsinki Committee registered 2 cases that could amount to use of excessive force and unprofessional conduct by police officers. In October 2018,[292] a case was registered in which it was alleged that police officers of the Police Station in the Municipality of Centar overstepped their police authorities. The Helsinki Committee lodged a complaint with the Department for Internal Control and Professional Standards, which established violation of the standard operating procedure for treatment of persons whose freedom of movement has been limited. It was also established that the person in police custody was subject to physical force without any grounds, since he did not resist, and no report was prepared and filed of the application of means of coercion, which runs contrary to Article 65-a of the Rulebook on the manner of performing police duties. Based on these facts, the Department instituted disciplinary proceedings and sent pertinent information to the Public Prosecutor's Office for further processing of the case.

291 Parliament of the Republic of Macedonia, Session No. 35 of the Parliament of the Republic of Macedonia, held on 30 October 2018.

292 Helsinki Committee, Monthly report on the situation with the human rights in the Republic of Macedonia for October 2018.

In November 2018,[293] the applicant was a victim of use of excessive force by police officers of the Ohrid Department for Internal Affairs. The applicant contacted the Helsinki Committee. Namely, in an altercation between the applicant and her son, the police interfered, throwing her son onto the police vehicle and hitting him on the entire body and genitals. After her son was released the next day, a doctor established a serious injury to the left testicle, which was visibly swollen and he also had lacerations and bruises all over his body. After the medical analysis, an urgent urological surgery was made, i.e. his left testicle was removed. Despite the fact that the victim complained of pain while being kept at the police station, the ambulance was not called and he was not provided with health care services. The case was reported with the Department for Internal Control and Professional Standards, which processed the case, while the representatives of the victim filed criminal charges. The MoI Department informed the Helsinki Committee that it had been established that there were grounds for the complaint and that criminal charges were filed against 2 police officers on the grounds of reasonable suspicion that they had perpetrated the crimes of *Mistreatment in performing a duty, under* Article 143 of the Criminal Code and the crime of inflicting *Grave bodily injury,* under Article 131 of the Criminal Code. The case is pending and is still processed by the Special Unit for investigation and prosecution of crimes perpetrated by persons with police authorities and prison police officers at the Basic Public Prosecutor's Office for prosecution of organized crime and corruption.

293 Helsinki Committee, Monthly report on the situation with the human rights in the Republic of Macedonia for November 2018.

PRISONS AND DETENTION FACILITIES

In 2018, the cooperation between the Helsinki Committee and the Directorate for the Execution of Sanctions was strengthened with their signing a Memorandum of Cooperation. Compared to previous years, when prisons were inaccessible for activities of the civil society sector, in 2018 there was unimpeded access to prisons and educational-correctional facilities. In 2018, there were certain improvements of the situation in prisons, especially in terms of reducing overcrowdedness in prisons, following the adoption of the Law on Amnesty in January 2018. The same year, new facilities were opened at the Idrizovo Prison, housing of 546 persons. According to the information from the Directorate for the Execution of Sanctions, the new facilities are part of the open and semi-opened wards of the Prison. The facilities have four -bed cells and are in line with international standards. Thus far, about 280 inmates have been placed in the new open and in the semi-open facilities at this Prison.

However, despite the reduction of overcrowdedness in prisons, the problems with hygiene and inappropriate conditions in prisons, which have not been reconstructed still persist. During visits made by representatives of the Helsinki Committee and in interviews with inmates, the problem of non-separated (open) toilets in the cells was noticed, as well as problems with the ventilation, and problems with mould and humidity. The Report of the Ombudsman establishes the fact that the unchanged conditions for housing in prisons violate the human dignity.[294] Namely, the cells have old beds and bed linen, humid rooms and old decrepit installations. The problem with lack of adequate staff in prisons, especially educators and social workers, together with the non-existence of treatment ressocialization programs are systemic problems, which if not addressed appropriately will continue to produce negative consequences for inmates even after their release.

The construction of the new educational-correctional facility in Volkovija near Tetovo was supposed to be completed in 2016. The facility has been constructed with a delay, but it is still not operational. Therefore, children in conflict with the law are still housed in the correctional facility in Ohrid, which does not offer any conditions for their education and ressocialization, which can have a negative impact on their psychophysical development.[295] After completing their sentence, persons are released from prison without personal identification documents, since for a longer period they could not have exercised their rights in accordance with the Constitution and laws. Consequently, they are not able to exercise their right to health care, they cannot have health insurance and social security. A systemic solution is needed in this context that would include an obligation for the prison to follow the situation in this regard of each individual inmate, i.e. whether they possess valid personal identification documents, prior to their release from the prison.[296]

294 The Ombudsman, *Annual Report on the Degree of Ensuring, Respect for, Advancement and Protection of Human Rights and Freedoms, 2018.*
295 Ibid.
296 Ibid.

After the transfer of the competence for primary health care at prisons from the Ministry of Justice to the Ministry of Health, the problem of inadequate health care for inmates was exacerbated. Due to the lack of communication among the institutions and the lack of medical staff in prisons, inmates have difficulties with their access to a doctor and being administered adequate medicines. One of the problems that inmates frequently emphasize in their applications is the belated reaction by prisons when they need medical treatment that can be provided only outside the prison.

Considering that there are no letter boxes to send the request for a doctor's appointment, which is contrary to Article 3 of the Instructions on access to doctor for sentenced persons, inmates have difficulties in the access to medicines and health care services to be provided outside the institution. Thus, inmates send their request to see a doctor through the prison police officers.[297]

According to information of the Helsinki Committee, female inmates still do not have adequate access to health care services, while according to information gathered by the Helsinki Committee by conducting interviews with female inmates, there have been even cases in which the prison doctor has not come for a visit for months on end. The lack of a gynaecologist at the women's ward at the Idrizovo Prison remains to be a problem, considering that women serving a prison sentence have gender specific health problems, which are not related only to pregnancy and pre and post-natal care. Their gender specific health care needs are related to their reproductive and sexual health, as well as preventive check-ups for breast and cervical cancer.

In 2018, the Helsinki Committee registered 9 death cases in prison. Out of the total number of death cases, three were registered as suicides by hanging in the cell. Three inmates died in the clinic where they had been taken due to their worsening health situation, while two inmates died during their using benefits - annual leave and one died during the attempted escape from the prison. Suicide prone inmates need urgent health care support and need to be under a special monitoring regime. Neglecting to recognize and identify these inmates and/or not undertaking adequate measures has been criticized in the reports of the Committee for the Prevention of Torture – CPT.

In August 2018, the Helsinki Committee received an application alleging inhuman treatment at the Shtip Prison. Hence, the applicant was placed in a cell intended for solitary confinement, owing to the fact that there were no available beds in the other cells of the Prison. In addition, the cell did not have running potable water; the inmate has been suffering from bad health for a longer period and despite this, he was not taken for a check-up in a relevant health care institution. According to the Law on the Execution of Sanctions, referring an inmate to solitary confinement may serve only as a disciplinary punishment for violation of the order and discipline. Placing an inmate in solitary confinement without any grounds amounts to violation of Article 3 of the ECHR, since the inmate is additionally

297 Ibid.

limited his/her rights, in addition to the limitation of rights inherent to incarceration. Namely, it is unacceptable that owing to inadequate conditions in prisons inmates receive treatment, which cannot be explained and which cannot be attributed to any fault of their own.[298]

During interviews with female inmates at the Idrizovo Prison, representatives of the Helsinki committee learned that female inmates in this Prison do not have access to a telephone to maintain contacts with their facilities.[299] In the 2016 Report[300] of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment on the Republic of Macedonia it is stated that inmates are to be ensured regular and frequent access to telephone to contact their close ones. After the Helsinki Committee filed a complaint with the Directorate for the Execution of Sanctions, the Helsinki Committee was informed that a telephone had been ensured for the women's ward so that female inmates could contact their families.

Activities for reconstruction and improvement of the conditions in prisons need to be continued, as well as activities to increase the housing capacities in order to avoid cases in which due to the lack of beds inmates are housed in solitary confinement cells.

Furthermore, it is necessary to develop an education program and modules for ressocialization of inmates. In this respect, the psychophysical condition of inmates needs to be monitored with the aim of preventing various diseases and suicides. The Ministry of Health needs to ensure better communication and coordination with prisons and fill the vacancies for health care workers, in order to satisfy the needs for health care services of all inmates, both male and female.

The state needs to provide a systemic solution for automatic issuance, i.e. renewal of personal identification documents to inmates upon their release from prison. Thus, they would also acquire access to all benefits and measures provided for by the state, which on its part would facilitate their ressocialization.

298 Helsinki Committee, Monthly report on the situation with the human rights in the Republic of Macedonia for August 2018.

299 Ibid.

300 European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, *Report to the Government of 'the Former Yugoslav Republic of Macedonia' on the Visit to 'the Former Yugoslav Republic of Macedonia' Carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.*

PERSONAL DATA PROTECTION

On 29 June 2018, the Directorate for Personal Data Protection submitted the draft Law on Personal Data Protection[301] to the Ministry of Justice with a view to harmonizing the relevant legislative framework with Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation). The draft Law also serves the purpose of fulfilling an obligation noted in the 2018 European Commission Progress Report on the Republic of Macedonia,[302] which states that further efforts need to be undertaken to align the personal data protection legislation with the General Data Protection Regulation 2016/679 and Directive 2016/680.

In its 2018 Report, the European Commission requests strengthening of the independence of the Directorate for Personal Data Protection, i.e. its financial and staff independence. It is also necessary to ensure the normative prerequisite for functional independence, i.e. separation of the Directorate and granting it special status, as a parliamentary or autonomous body. The draft Law has still not been adopted. Consequently, North Macedonia has still not aligned itself with the EU Directive. Furthermore, additional efforts need to be made to improve the legislative framework of the country in line with this Directive. Very little has been done thus far in this respect, although the Directive was adopted at the same time with the Regulation upon which the new draft Law on Personal Data Protection is based.

The adoption of this Law would require also alignment of other pertinent laws and regulations, which regulate the collection, processing, storage, use and transfer of personal data with the provision of the new Law, requiring as well adoption of secondary legislation, the content of which is determined under the provisions of the proposed new Law.[303]

301 Directorate for Personal Data protection, *Draft Law on Personal Data Protection, June 2018.*
302 EC, *The Former Yugoslav Republic of Macedonia 2018 Report.*
303 Policy Dialogue, *Reforms under Chapter 23, 17 April 2019.*

FREEDOM OF THOUGHT, CONSCIENCE AND RELIGION

In the context of freedom of religion, in the reporting period, no tensions were recorded between communities on religious grounds. On 29 November 2018, the ECHR delivered a judgment versus the Republic of Macedonia.[304] Namely, the Court established a violation of Article 11 (freedom of assembly and association) of the Convention, referring to Article 9 (freedom of thought, conscience and religion). The judgment states that the court in the Republic of Macedonia did not allow a group of citizens to establish an association that would serve as a religious community, limiting thus their right under the ECHR. In light of the above stated, the state was ordered to pay compensation of the MKD equivalent of EUR 4,000. On the same date, another judgment was delivered[305] on the same ground and in a case with similar facts in which the ECHR established a violation of Article 11 referring to Article 9 of the ECHR and ordered the Republic of Macedonia to pay compensation of MKD equivalent of EUR 3,000.

FREEDOM OF EXPRESSION

There has been a slight improvement in the situation with control of the media by the Government, but it would be too early to establish with certainty the genuine commitment of the Government to continue improving the situation in this area. In 2018, the Republic of North Macedonia progressed by two-places (from the 111th to the 109th place) and had a global score of – 3.31 according to the Reporters without borders index.[306]

The Macedonian courts do not have harmonized practice of application of the Law on Civil Liability for Libel and Offence when it comes to contents posed on online media outlets. The reason for such a situation is that courts dismiss lawsuits against libel expressed on this type of media outlets since the Law on the Media does not treat, i.e. define them as media outlets, despite the fact that the Law on Civil Liability for Libel and Office has a separate article, which regulates court proceedings when defamatory statements are published on online media outlets.[307]

304 ECHR, case of Stavropegic Monastery of Saint John Chrysostom v. 'the former Yugoslav Republic of Macedonia' (Application No. 52849/09)."

305 ECHR, case of Church of Real Orthodox Christians and Ivanovski v. 'the former Yugoslav Republic of Macedonia.

306 Reporters without Borders, *Reporters without Borders - Republic of Macedonia 2018*.

307 Небиу et al., "Показатели За Степенот На Слободата На Медиумите и За Безбедноста На Новинарите Во Македонија.". (Nebiu et al, *Indicators of the level of freedom of the media and of the security of journalists in Macedonia).*

In the context of freedom of expression, on 19 July 2018, the ECHR delivered a judgment versus the Republic of Macedonia[308] for violation of the freedom of expression. The applicant Jani Makraduli was found by the court in the Republic of Macedonia guilty of defamation stated during a press conference. On the basis of the findings related to the application lodged with the ECHR, the Court decided that the right of the applicant Jani Makraduli to freedom of expression under Article 10 of the ECHR had been violated and found that he was to be paid damages in the equivalent MKD value of EUR 2,520.

In 2018, 24 applications were lodged in total[309] with the Agency for Video and Audiovisual Media, while in 2019, 18 applications were lodged.[310] Legal persons filed only two of the applications, while natural persons filed all the other applications. The applications are mainly related to the content, i.e. the language of TV programmes, which are broadcast without translation into the Macedonian language, while some application are against spreading hate speech, and there are applications against misinformation spread among citizens.

Pressure on Journalists

In North Macedonia, there are no specific mechanisms to monitor and report attacks against journalists. Consequently, there is no register of attacks and threats against journalists, while aside from the police, public prosecutors' offices, and courts are in general terms rather unwilling to share information about cases concerning attacks against journalists. "In Macedonia the investigations by the public prosecutors' offices and the judiciary of cases of violence against journalists are inefficient and ineffective. It is difficult to monitor their activities in this regard since they are too closed. The results in the Report of the Public Prosecutor's Office about instituted investigations are not encouraging at all. Out of ten open cases, in four cases the Public Prosecutor's Office dismissed the criminal charges, because, according to the prosecution assessment, it was a matter of the crime of *endangering security,* which is not prosecuted *ex officio.*[311]

The number of physical attacks and threats against journalists has been significantly reduced. Thus, in 2018, the security of journalists was improved, compared with the previous year. The Association of Journalists registered six attacks in the period from September 2017 to September 2018, which is significantly lower number of attacks compared to the 18 attacks registered in the previous year.[312]

308 ECHR, case of Makraduli v. the former Yugoslav Republic of Macedonia (Applications Nos. 64659/11 and 24133/13).
309 Agency for Audio and Audiovisual media Services, *Applications filed with the AVMU and their reply in 2018.*
310 Agency for Audio and Audiovisual media Services, *Applications filed with the AVMU and their reply in 2019.*
311 Небиу et al., "Показатели За Степенот На Слободата На Медиумите и За Безбедноста На Новинарите Во Македонија." *(Nebiu et al, Indicators of the level of freedom of the media and of the security of journalists in Macedonia).*
312 Ibid.

On 7 September 2018, the Skopje I First Instance Court ordered a six-month prison sentence for the person that attacked the journalist team of the A1on TV station, which reported about the protest rallies under the motto *Macedonia for all* on 28 February 2017. Namely, two protesters, one of whom inflicted a serious head injury on one of the journalist, attacked the journalist team and they destroyed the cameras. The identity of one of the protesters remains unknown.[313]

Implementation of legislation/institutions

The Parliament adopted the new Law on Audiovisual Services, supported both by the ruling and opposition parties on 28 December 2018.[314] This Law is expected to help establish independent, transparent, efficient and accountable regulatory body in the area of audio and audiovisual services The Law takes on board the remarks by journalists and media organizations, and it incorporates recommendations of experts of the Council of Europe and the OSCE, which are focused on reducing the political influence on the media, on the public broadcaster and the media regulator. In addition, this Law offers a solution for media piracy, i.e. for broadcasting foreign channels for which the domestic media outlets do not have the TV copyrights to broadcast them in North Macedonia.[315]

On 25 July 2018, the Parliament adopted the Law amending the Election Code,[316] which was met with negative reactions by the Agency for Audio and Audiovisual Media Services and by the journalists. Namely, they primarily have remarks regarding the novelty introduced by the Law envisaging that political advertising, which that far was paid by political parties and their candidates, would be now paid under the public budget, through the Ministry of Finance. In such conditions, this legal solution places larger parties in much more favourable position, while independent candidates are totally left out.[317] Furthermore, there are the questionable solutions according to which instead of media developing media plans for paid political advertising, under the new Law, this will be done by those participating in the election campaigns, which has a direct impact on the editorial policy and freedom of the media. Another novelty introduced the obligation for the State Election Commission to monitor portals. i.e. their contents. Consequently, the State Election Commission now will have the mandate to issue fines in the amount of EUR 4,000 to traditional and internet media outlets for imbalanced and biased reporting, as set forth under Article 181a of the Election Code.

313 1TB, "Шест Месеци Казна Затвор За Напаѓачот На Новинарите На А1он." (1TV Six-month prison sentence for the attacker of the A1on journalists).
314 Parliament of the Republic of Macedonia, Session No. 78 of the Parliament of the Republic of Macedonia, scheduled for 28 December 2018.
315 1TB, "Донесен Новиот Закон За АВМУ, Заминува Ли Пиратеријата Во Историјата?" (1TV, *The New Law on the AVMU adopted. Will piracy become history?)*
316 Parliament of the Republic of Macedonia, Session No. 56 of the Parliament of the Republic of Macedonia, scheduled for 25 July 2018.
317 Agency for Audio and Audiovisual Media Services, *Scandalous solutions in the amendments to the Election Code.*

Five days prior to the start of the election campaign, the Government endorsed the draft Law amending the Election Code[318] with a view to harmonizing the legal provisions of this Law. The Agency for Audio and Audiovisual Media Services (AVMU) reacted that legal provisions had been made more confusing and contradictory, and that this specially applies to paid political advertising. Furthermore, the AVMU informed that "the provision relating to the percentage of allocated broadcast time in news programs of the public broadcaster and the free of charge broadcasting time for introducing the candidates at the Parliament TV channel remain not harmonized and not adjusted to the specific features of these elections."[319] At the end of the press release, the AVMU appealed that after the election a wide encompassing debate be held with all stakeholders and relevant parties with a view to harmonizing the legal provisions prior to the next elections, which on its part would help implement the recommendations of the Venice Commission, according to which the substantive elements of the election code should not be amended in a period less than a year prior to the elections.

In January 2019, the Government endorsed a new draft Law on Free Access to Information of Public Character.[320] The aim pursued by the Government with this Law is to propose solutions for overcoming problems with lack of precision of certain parts of the previous law, as well as the problems of limited transparency, partial exercise of the rights by natural and legal persons to access to information of public character. The new Law will facilitate the right to access information and will help overcome the problem of partial exercise of the right to acquire requested information.

Public Broadcaster

It has been established that the newly allocated budget is not sufficient since it does not satisfy the basic needs for functioning of the public broadcaster. Therefore, on 16 July 2018, the Commission for Transport and Communication and Environment accepted the proposal for restructuring the budget of the Macedonian Radio and Television, allocating additional 3 million euros for the operation of the public broadcaster.[321] The initially planned 2018 budget was MKD 700 million, while with the budget restructuring this amount was raised by MKD 186,550,000, making thus the total 2018 budget of MKD 886,550,000. The broadcasting fee was abolished with the restructuring of the budget.

The Association of Journalist protested against performance evaluations of journalists and creative staff at the public broadcaster on the basis of the Law on Employees in the Public Sector. According to the Association, the process of performance evaluations of journalists the same as for employees covered by the Law on Employees in the Public Sector represents political pressure and has an impact on the editorial policy of the public broadcaster.[322]

318 Parliament of the Republic of North Macedonia, Draft law amending the Election Code, summary legislative procedure.
319 Agency for Audio and Audiovisual Media Services, *Press Release of 28 March 2019 regarding the new amendments to the Election Code*.
320 Government of the Republic of North Macedonia, *Draft law on Free Access to Information of Public Character.*
321 Parliament of the Republic of Macedonia, Session No. 23 of the Committee for Transport, Communications and Environmental Protection, scheduled for 16 July 2018.
322 Association of Journalists, *Bulletin of the Association of Journalists for October, November and December 2018*.

Economic Factors

Economic autonomy strengthens the independence of journalists and editors, in terms of the contents of their reporting. Sound economic conditions set the foundations for further professionalization of journalists and all related institutions and bodies. The average salary of journalists is MKD 18,800, which is by 30% lower than the average salary in the country. Journalists working outside the country's capital have salaries as low as MKD 12,000. More than 55% of journalists are paid their salaries with delays, while half of the journalists do not have long-term employment contracts.[323] The average salary of journalists in internet media outlets is MKD 18,348, which is also far bellow the average salary at the national level. Great number of these journalists are paid their salaries in cash, meaning that they do not have health care, social and pension coverage i.e. insurance.[324] In light of such a situation, journalists may be subject to various forms of threats and pressures, which directly affect their personal reputation and integrity, undermining at the same time the reputation of this profession, which would have long-term consequences in terms of who informs the public and in what manner.

Internet

The association of journalists of Macedonia, the Independent Trade Union of Journalists and Media Workers and the Council of Ethics in the Media in Macedonia harmonized the minimum criteria for the protection and promotion of professional journalism in online media outlets. These criteria build upon principles of the journalist profession such as transparent ownership structure, publishing the impresum, contact and the address of the media outlet, accepting and abiding by the Code of Journalists and by regulations on registering a legal entity in Macedonia.[325] Furthermore, these organizations have asked the Government and in-line institutions to respect these criteria in issuing accreditations to journalists who work in internet media outlets.

Professional Organizations/Professional Conditions

The start of negotiations for the collective agreement at the Macedonian Information Agency was scheduled for 5 February 2019, which would start with signing a Protocol on the course of negotiations for a collective agreement. These negotiations are the first of this type in the media area, except for the public broadcaster. Mila Carovska, Minister of Labour and Social Policy supported the process.[326] Despite the fact that the initially planned period for completing the negotiations was 60 to 90 days, the collective agreement has still not been signed until the preparation of the present Report.

323 Небиу et al., "Показатели За Степенот На Слободата На Медиумите и За Безбедноста На Новинарите Во Македонија." *(Nebiu et al, Indicators of the level of freedom of the media and of the security of journalists in Macedonia).*

324 Independent Trade Union of Journalists and Media Workers, *Salaries of journalists in digital media bellow the average.*

325 Association of Journalists, Bulletin of the Association of Journalists for October, November and December 2018.

326 Independent Trade Union of Journalists and Media Workers, *The start of negotiations for the collective agreement started at the MIA.*

Journalists of the TV Nova Station are among the first journalists working in digital media outlets who have become collectively a member of the Independent Trade Union of Journalists of Macedonia. Namely, on its website, the Independent Trade Union of Journalists emphasized the need to adapt the trade unions to cope with the contemporary challenges, which on its part reflect the fact that traditional media are disappearing and that now the journalist profession is transitioning to digital platforms.

Public Broadcaster: *to provide visible evidence of the reforms of the public broadcaster in terms of its operation policy, organizational set-up, education and editorial policy and lack of political independence, lack of balanced reporting and providing high quality news content.*

Government advertising: *to establish strict rules for government advertising founded on transparent, objective and non-discriminatory criteria to ensure complete transparency of government advertising and develop a mechanism for free of charge announcements broadcast by the public broadcaster that are genuinely of public interest.*

Access to information: *address the main obstacles that journalists face in getting information of public character.*

Libel: *The reduction of the number of libel cases through revisions of the legislation, procedurals rules, support and promotion of greater reliance on self-regulation, as an alternative to judicial proceedings, and offering guarantees for and the implementation at the political level of adequate self-restrain by politicians and holders of public office so that libel proceedings could be avoided in line with principles set forth under the ECHR.*

PROPERTY RIGHTS

In 2018, the Ombudsman recorded increase of the number of applications relating to property rights, which brought to light problems and challenges that citizens face with denationalization, i.e. return of their property, in which respect there is continual unequal and non-objective application of pertinent laws and regulations.[327] Such a situation results in annulling the same decisions several times by the administrative court, and citizens pursue their legal procedures for decades, which on its part violates their right to a trial in a reasonable time, a principle guaranteed also under the European Convention for Human Rights, being as well one of the fundamental principles of the procedural laws in the country.

327 The Ombudsman, *Annual Report on the Degree of Ensuring, Respect for, Advancement and Protection of Human Rights and Freedoms, 2018. The Ombudsman, Annual Report on the Degree of Ensuring, Respect for, Advancement and Protection of Human Rights and Freedoms, 2018.*

VULNERABLE GROUPS AND THE NON-DISCRIMINATION PRINCIPLE

The new Law on the Prevention of and Protection against Discrimination was adopted on 11 March 2019.[328] This Law introduced three new grounds for discrimination such as sexual orientation, gender identity, segregation and instruction to discriminate. Furthermore, the following terms were introduced "disabled persons" (the term previously used was "persons with invalidity"), "reasonable accommodation", "access to infrastructure, goods and services." In addition, under this Law serving as a member of the Commission for the Protection against Discrimination becomes fully professional, and its name and mandate are changed, i.e. the name is changed to Commission for the Prevention of and Protection against Discrimination, and in addition to protection it will also be mandated to work on the prevention of discrimination. The mandate of the Commission is defined in detail, as well as the manner of appointment and conditions for appointment of the Commission members. The Law introduces a provision for use of new evidence in court proceedings and the *action popularis* institute. Finally, exemption from payment of court fees in court proceedings is also envisaged."[329] On 18 March 2019, the President of the Republic of North Macedonia sent a communication[330] to the Parliament stating that he had decided not to sign the document for promulgation of this Law, based on Article 75 of the Constitution. Namely, the President has not signed any promulgation documents for laws adopted following the entry into force of the Constitutional amendments changing the name of the country as of 12 February 2019.

For the first time ever, the Commission for Protection against Discrimination established discrimination[331] following a situation testing organized by the Helsinki Committee. Based on the said situation testing, discrimination was established on the grounds of skin cooler and ethnic affiliation of citizens – Roma from Prilep, whose access to goods and services was limited, i.e. denied by a café called *Art Café Aporea* in Prilep. In the situation testing, persons belonging to the Macedonian community were allowed access to the café, while persons belonging to the Roma community were told that all tables were reserved. It is evident that the legal entity, i.e. the café acted in a discriminatory fashion putting citizens of the Roma community in a less favourable position, compared to their co-citizens belonging to another ethnic community.

328 Parliament of the Republic of Macedonia, Session No. 90 of the Parliament of the Republic of Macedonia, held on 11 March 2019.
329 Government of the Republic of North Macedonia, *Draft law on the Prevention of and Protection against Discrimination, in a summary legislative procedure*
330 President of the Republic of North Macedonia, *Communication from the President of the Republic of North Macedonia to the Parliament No.* 08-361/1, dated 18 March 2019.
331 Commission for the Protection against Discrimination, *Opinion of the Commission for the Protection against Discrimination No. 0801-1/3*, dated 15 March 2019.

In the period from June 2018 to January 2019, the Helsinki Committee registered 46 cases of discrimination. Most of the cases are related to public goods – 13 cases and there are 12 health care related cases. In addition, there are cases of labour relations discrimination - 7 cases, 4 cases of discrimination in the education area, 2 cases of discrimination in the housing area, 2 cases of discrimination in the social security area and 6 cases of discrimination in other various areas. Hence, the Helsinki Committee was contacted and received applications by persons reporting discrimination on the grounds of their personal and family status,[332] discrimination on the grounds of religious and religious conviction, specifically when accessing a public facility,[333] in which respect in November 2018, the Commission for Protection against Discrimination established direct discrimination on this ground,[334] establishing as well discrimination on the grounds of physical disability.[335]

Selective Work of the Commission for the Protection against Discrimination

At its session held on 5 November 2018, the Commission for Protection against Discrimination adopted an opinion[336] upon the application submitted on 13 September 2018 by the former Prime Minister, Nikola Gruevski, against the Skopje I First Instance Court- Skopje and judge Dobrila Kacarska. In its opinion, the Commission established that there was direct discrimination against the applicant on grounds of "personal and social status" in the area of "justice and administration".'

Disagreeing with this opinion of the Commission, Commission members Irfan Dehari, Ph.D. and Bekim Kadriu, Ph.D. submitted their dissenting opinions[337] in this case. In their dissenting opinions, the two Commission members state that there are insufficient arguments to prove less favourable treatment of the applicant in the exercise of his rights on grounds of his "personal and social status." The two judges emphasize that he had all the rights the same as any other indicted person in court proceedings.

Another questionable issue in this context is that the Commission gave advantage to the processing and deciding upon this application, neglecting other applications for which the legally prescribed period of three months for submission of an answer had long elapses. Thus, the Commission, at the period in question, did not process or reply to applications to which it was legally obliged to reply within the envisaged period, while the application submitted by Nikola Gruevski was processed in a short period, before all other applications of earlier date of submission.

332 Helsinki Committee, Monthly report on the situation with the human rights in the Republic of Macedonia for June and July 2018.
333 Helsinki Committee, Monthly report on the situation with the human rights in the Republic of Macedonia for September 2018.
334 Commission for the Protection against Discrimination, *Opinion of the Commission for the Protection against Discrimination No. 0801-307/5*, dated 28 December 2018.
335 Helsinki Committee, Monthly report on the situation with the human rights in the Republic of Macedonia for December 2018.
336 Commission for the Protection against Discrimination, *Opinion of the Commission for the Protection against Discrimination No. 0801-295/1*, dated 5 November 2018.
337 Irfan Dehari, Ph. D. and Bekim Kadriu, Ph.D., *Dissenting opinion regarding the Opinion No. 0801-295/1 adopted on 5 November, by the Commission for the Protection against Discrimination.*

LGBTI

In 2018, there was certain progress made in respect of human rights of the LGBTI people in the country. Certain processes were delayed due to the political situation in the country. However, these delays can also be attributed to the contradictory positions presented by some opposition parties on certain issues of importance. The new Law on the Prevention of and Protection against Discrimination, drafted in 2017, was expected to be adopted by June 2018. However, the adoption of the Law faced a two -month delay in Parliament, followed by press conferences, public reactions and protests by civil society organizations, which ultimately resulted with the adoption of the Law. At the time, the authorities were focused on the Prespa Agreement with Greece and on the preparations for the Referendum, which overshadowed the importance of resolving other issues. The legal recognition of gender remains unregulated, which causes prolonged legal uncertainty and a situation of uncertainty for the transgender people. A positive step forward in the area is the establishment of the working group tasked with drafting amendments to regulations on the civil registry records, which will introduce a new chapter legally recognizing gender and will define the administrative procedures to be followed in this regard. The working group is still working on the text of the sad Chapter of the Law. In the meantime, the European Court of Human Rights adopted the first ever judgment[338] in the favour of a transgender person, in which the ECHR established that the applicable legal framework in Macedonia has gaps and serious deficiencies that brought the transgender person in a situation of stress and uncertainty with respect to the recognition of the person's gender identity. Following this judgment, Macedonia is obliged to adopt a law that would enable transgender people fast, transparent and accessible procedure for the legal recognition of their gender.

Hate crimes and other violence-motivated crimes are still not publicly condemned and resolved, while the police, courts and public prosecutors' offices remain unprepared and ineffective in prosecuting and resolving such cases. The number of hate speech cases grew as the visibility of the LGBTI community grew, with the help of campaigns and other events promoting non-discrimination, non-violence and accepting differences by the heterosexual people. Owing to persistent commitments of civil society organizations and the support and commitment of the Inter-party parliamentary group for the promotion of human rights of LGBTI people in the country at the Parliament, a number of legal solutions were adopted contributing to greater protection of human rights of LGBTI people in the country. At the end of 2018, the amendments to the Law on Audio and Audiovisual Media Services were adopted, which include sexual orientation and gender identity in the anti-discrimination clause. In addition, amendments to the Criminal Code were adopted which introduce sexual orientation and gender identity as grounds for hate crimes. In 2018, in Skopje, the first regional LGBTI conference was held - the Regional ERA Conference at which there were discussions about various contexts of the LGBTI rights in the region by LGBTI people, activists and government representatives from the country and from other countries in the Region. As different from previous larger scale meetings of LGBTI people and activists, this conference was held without any incidents.

338 ECHR, Case of X. v. the former Yugoslav Republic of Macedonia (Application No. 29683/16).

EQUALITY BETWEEN WOMEN AND MEN

In 2018, the Ministry of Labour and Social Policy prepared and adopted the National Action Plan for the Implementation of the Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention).[339] The first goal set forth under the Action Plan is alignment of national laws with the provisions of the Istanbul Convention. With this goal in mind, a working group was established which participates in the preparation of the draft Law for the Prevention of and Protection against Gender Based Violence. The Helsinki Committee has its representatives in this working group.

The Law will define the terms gender, sex, gender based valance, woman, victim, gender identity; it will also ban discrimination on all grounds set froth under the new Law for the Prevention of and Protection against Discrimination; the right of women to live free from violence will be guaranteed both in the public and in the private sphere; the Law will set forth the obligation for compulsory training of professionals to provide services to victims of gender based violence in areas of health care, education, police, judiciary, social protection and other areas; domestic violence will be regulated in line with the provisions of the Convention; there will be measures defined geared towards eliminating gender based violence among vulnerable categories of women (pregnant women, women with young children, women with disabilities, women in rural areas, women using drugs, sexual workers, women-migrants, lesbians, bisexual women and transgender people, women living with HIV, homeless women, etc.); the Law will incorporate the principle of taking due account of the interests and needs of victims of violence in designing and implementing all measures the Law stipulates; there are provisions regulating the establishment of a standing national body against gender based violence, composed of representatives of in-line institutions and organizations; the design of comprehensive programmes for empowering victims of gender based violence will be also regulated; the obligation will be stipulated for conduct of researches of all forms of gender based violence, including domestic violence and the institution to be in charge of collecting data about gender based violence will be designated, as well as the manner of collection of data on this issue.[340]

On 14 March 2019, after a long process, the Parliament of the Republic of North Macedonia adopted the Law on Interruption of Pregnancy.[341] However, as it is the case with all other laws adopted in this period, the President of the State did not sign the document for the promulgation of this Law, by which *de facto* this law is returned to Parliament for repetition of the voting procedure. With the entry into force of the new Law, the restrictive Law on Interruption of Pregnancy will be null and void.[342] The old Law has been in force and

339 Ministry of Labour and Social Policy, 2018-2023 *Action Plan for the implementation of the Convention on Preventing and Combating Violence against Women and Domestic Violence*.

340 Helsinki Committee, Monthly report on the situation with the human rights in the Republic of Macedonia for February 2018.

341 Parliament of the Republic of Macedonia, Session No. 91 of the Parliament of the Republic of Macedonia, scheduled for 14 March 2019.

342 Official Gazette of the Republic of Macedonia, Law on the Interruption of Pregnancy.

applied for almost six years and it limits the free will of women. The procedure of drafting the new Law was inclusive and representatives of the civil society sector were involved in the preparation of this Law.

The purpose of the new Law on Interruption of Pregnancy is to enable exercise of the right of women to safe interruption of pregnancy, abolishing the existing administrative procedures or rather barriers for the procedure for safe interruption of pregnancy, as well as presenting complete, objective and correct information about the intervention for interruption of pregnancy, realistic presentation about possible complications in the case of which the patient is to immediately contact a doctor, explaining the necessity that the patient should make the decision for interruption of pregnancy in full awareness , without being forced by anyone, based on objective information about the intervention itself.

The new Law facilitates the access to abortion, in compliance with the will of women and with recognizing women's rights to reproductive health. The new Law introduces the following changes: elimination of administrative barriers to access to abortion, by removing the procedure for obligatory (biased) counselling of women and the later three-day period of contemplation after the counselling. The first instance Commission now may deliberate instead during the 12th in the 22nd gestation week of pregnancy, and requirements are removed under which women were to submit certificates that they had been raped or that they were in a difficult social, i.e. material situation.

Timely implementation of the Action Plan, which envisages alignment with the Istanbul Convention and enhanced inter-institutional cooperation with a view to preventing gender based violence. Adoption of protocols or secondary legislation to define the responsibilities and mandates of institutions involved in the prevention of and protection against gender based violence.

The initiative for the adoption of the Law on the Prevention of and Protection against Gender-Based Violence, which is to be aligned with the standards set forth under the Istanbul Convention, and the comprehensive process of involvement and consultations with the civil society sector in the drafting of the Law should be welcomed, yet activities for finalization of the drafting of the Law need to be accelerated.

Adoption of secondary legislation and of the new Law on Interruption of Pregnancy, which will clearly define the roles of individual institutions (both for primary and for secondary health care).

THE RIGHTS OF THE CHILD

In 2018, the Ombudsman noted an increase in the number of applications lodged with this institution for protection of rights of the child. Most application in this area are related to the rights of the child within the family in terms of regulating personal contacts of the child with the parents, child support after divorce and issuance of passports to children. Furthermore, a significant number of applications are related to violations of the rights of the child in primary and in secondary education, and there is a large number of applications for protection of children against violence, which marks an increase compared to the previous year.[343]

In a research conducted in cooperation with the NGO "Otvorete gi prozorcite" (Open your windows), the Ombudsman established that in kindergartens there are no conditions for inclusion of children with disabilities. There is a lack of mechanisms for systemic identification, recording and monitoring the progress of children with disabilities as of their earliest age, which makes the care for children in kindergartens difficult. They stay in kindergartens is often reduced to provision of care, but no education or activities for stimulation of early development are offered. [344] In terms of statistics, out of a total number of 34,700 children going to kindergartens only 415 or 1.19% are children with disabilities. Consequently, the research showed that parents are looking for different forms of care and education of their children considering the bad conditions in kindergartens. Namely, kindergartens urgently need to be staffed with special education professionals, then they need training of kindergarten teachers for work with children with disabilities. In addition, the physical accessibility to kindergartens needs to be ensured, and teaching aids and other education equipment and technology needs to be provided. More special purpose funds need to be allocated to kindergartens to finance the activities to satisfy the individual needs of children with disabilities. In addition, the legal framework needs to be amended in order to facilitate the stay of children with disabilities in kindergartens.[345]

Furthermore, the draft Law on the Protection of Children has been in Parliamentary procedure for several months now and is still not on the agenda of the Parliament, despite the fact that in the structure of the EU acquis, protection of children is horizontally linked to a number of chapters, since it covers a number of areas.

Roma children and children with special needs still suffer from stigmatization, discrimination and segregation, especially in education and in the service sectors. Despite the fact that some progress has been made in the last years, the coordination is still limited in preventing and reacting i.e. intervening in cases of violence against children. There is no unified system

343 The Ombudsman, *Annual Report on the Degree of Ensuring, Respect for, Advancement and Protection of Human Rights and Freedoms, 2018.*

344 Нова Македонија, "Градинките Не Ги Нудат Потребните Услови За Прием и Оптимален Развој На Секое Дете." (Nova Makedonija, newspaper, *Kindergartens do not offer the required conditions for admission and optimal development of every child).*

345 The Ombudsman, *Annual Report on the Degree of Ensuring, Respect for, Advancement and Protection of Human Rights and Freedoms, 2018.*

of collection of data and monitoring (about several aspects of the situation of children). Furthermore, the authorities have very small capacities to provide assistance, protection and care for children. Child protection services are fragmented and an integrated system of child protection is urgently needed, by which the child will be placed in the centre of the system.

RIGHTS OF PERSONS WITH DISABILITIES

In July 2018, the Government endorsed the amendments to the Law on the Protection of Children. The amendments envisage increase of the number of beneficiaries eligible for special supplement for children with specific needs due to impaired physical or mental development or combined development impairment until their reaching 26 years of age.[346] The new Law will set the amount of the special benefit to MKD 5.021, while for a single parent who has a child with specific needs this benefit is increased by 50%, amounting to MKD 7,531, and for socially underprivileged parents this benefit is increased by 25%, amounting to MKD 6,276.[347]

Furthermore, the 2018 draft Law amending the Law on Employment of Person with Disabilities aims to reduce possible abuses of the Special Fund, by more precisely defining the procedure for allocation of finances under the Special Find, with a view to ensuring that the awarded special purpose funds are properly used, defining as well the control procedure for the use of such funds. The Institute for Human Rights and the Association of citizens for support of persons with special needs *SOLEM* presented their comments to the draft Law, focusing on the amendments to Article 2, stating that the provisions on disability of persons older that 26 years need to be made more precise, both in terms of establishing a system for assessment of the disability and in terms of the wording used in the Law (persons with invalidity is the term used in the Law).[348]

346 Ministry of Labour and Social Policy, *special benefit for persons with special needs increased.*
347 Law on the Protection of Children, consolidated text.
348 Association of Citizens *Institute for Human Rights and Association of citizens for support of persons with special needs – SOLEM, Comments about the draft Law amending the Law on Employment of Persons with Invalidity.*

LABOUR RELATIONS

The Parliament adopted the amendments to the Law on Pension and Disability Insurance, which reduced the years of pensionable service for miners. Under the adopted amendments, miners may acquire old age pension after reaching 40 years of pensionable service for men and 35 years of pensionable service for women. This means that as different from the present situation in which miners may retire upon reaching 58 years of age, under the amended Law miners may retire upon reaching about 50 years of age.[349]

The draft Law on Social Security was submitted to the Parliament on 13 March 2019 for adoption in a summery procedure. The draft Law is now in the second reading in Parliament. This Law regulates social security for the elderly, then the conditions and procedure for exercise of the right and the funding of the right to social security of the elderly. Persons having reached 65 years of age are eligible to the right to social security under conditions set forth under this Law. The monthly amount of the benefit paid under this right is MKD 6,000. One of the conditions for becoming eligible for this benefit is that the person has registered pensionable years of service with the Fund for Pension and Disability Insurance of Macedonia, or to have pension insured years of service of less than 15 years and not to be in possession of any property or property rights that produce subsistence income.[350] The Ombudsman has recorded a steep increase of the number of applications in the area of labour relations, which perhaps points to the fact that the practice of "political party revanchism" continues after elections. Such a situation is especially present in education and child protection institutions, as well as in the selection of candidates for employment and in the transformation of temporary employment contracts into full employment contracts. Owing to the increased number of applications, it can be concluded that citizens feel discriminated against, especially discriminated on political affiliation grounds.[351]

In the context of workers' rights, 300 employees of the Ohis factory filed applications, which shows the fact that even after 10 years and many legal changes in this area, workers in companies which underwent bankruptcy procedures still face difficulties in exercising their rights in collecting their unpaid salaries and with respect to payment of social contributions, which of course creates difficulties in their exercising rights deriving from pension insurance, i.e. they cannot acquire the right to pension.[352]

The new Law on Social Protection has still not been adopted. The adoption of this new Law has been envisaged under the draft 2019-2021 National Programme for Adoption of the EU Acquis, under Chapter 19 - Social Policy and Employment. The deadline for

349 Ministry of Labour and Social Policy, Legislative amendments adopted- Miners may retire by fulfilling only the conditions of pensionable years of service.
350 Government of the Republic of Macedonia, draft Law on Social Security of the Elderly, summary legislative procedure.
351 The Ombudsman, *Annual Report on the Degree of Ensuring, Respect for, Advancement and Protection of Human Rights and Freedoms, 2018*.
352 Ibid.

submission of the draft of the new Law was 31 December 2018. The new solutions in this Law are aimed at making a sweeping reform of the system of social protection and the manner in which social protection services will be provided. Another goal pursued with these amendments is to address the remarks contained in Report about the country in this area of the last years, which relate to systemic deficiencies and insufficient capacities for social protection at the institutional level. Thus, in 2016, it was noted that the introduction of new services requires legal amendments. This also requires cooperation between sectors of social protection, education and health care. In addition, considering that pecuniary benefits do not produce the desired results, revision or replacement of the system of pecuniary benefits is needed. Consequently, the 2018 Report notes that the amount of the baseline support for pecuniary benefits of underprivileged families was not sufficient; furthermore, state institutions lack the capacity to apply the national social protection policy, while social workers are mainly focused on administrative requirements, not having sufficient time to pay proper attention to the field support to people in need of social protection services.[353]

353 Macedonian Platform against Poverty, *Press Release*.

THE ROMA

The Ombudsman noted that except in the area of education, there was no significant improvement of the situation of the Roma in areas of health care, housing and employment. According to the research of the Ombudsman, conducted as part of the Project *Inclusion of Roma after the 2005-2015 Roma Decade - State of Play and Challenges,* it cannot be denied that part of the Roma community still lives in extreme poverty, in difficult and inadequate conditions, in substandard made-shift dwellings, without potable water supply, in illegal Roma settlements and without any employment possibilities. They also face difficulties in their access to health care rights, low health literacy and they face the problem of not possessing personal identification documents.[354]

Possession of Personal Identification Documents

With the help of the Ministry of Labour and Social Policy and civil society organizations, the Government registered about 700 Roma who do not possess a birth certificate, because of which they cannot have access to any basic services or benefits offered by the state.[355] The Prime Minister announced that the problem of these persons would be resolved with legal solutions that will facilitate institution of a specific administrative procedure, following which citizens will be issued basic personal identification documents.

Employment

Between 73% and 86% of young Roma, aged 18 to 24 are not employed, do not have adequate trainings and do not attend school.[356] Only 22% of the Roma in the Republic of North Macedonia are employed.[357] Very small number of Roma are covered by the active employment measures In 2017, only 1% of the total number of beneficiaries of the measures for self-employment, trainings, support to creation of new jobs and work engagement were Roma. In terms of number of Roma employed in the public sector, in 2017, Roma represented only 1.3% of the total number of public sector employees, while in 2015 this percentage was 1.4%, which shows a reduction, instead of rise in the number of Roma employed in the public sector. If the structure of employees per institution is analysed, it can be seen that 750 Roma out of the total number of 1,715 Roma employed in the public sector, are employees in public utilities companies (43%).[358] The number of Roma at jobs from which they can retire being positioned higher in the hierarchy of managerial positions in institutions is still insignificant.

354 The Ombudsman, *Inclusion of Roma after the Roma Decade- State of Play and Challenges.*
355 Statement by Zoran Zaev, Prime Minister of the Republic of North Macedonia on Roma Day, 8 April 2019, given at the Parliament of the Republic of North Macedonia.
356 UNDP, *Regional Roma Survey 2017: Country Fact Sheets.*
357 World Bank, *Breaking the Cycle of Roma Exclusion in the Western Balkans.*
358 The Ombudsman, *Inclusion of Roma after the Roma Decade- State of Play and Challenges.*

Roma Information Centres

As of March 2007, Roma Information Centres have been functioning in 12 municipalities. Roma Information Centres were set up as part of a project of the Ministry of Labour and Social Policy. Now, the Roma Information Centres are placed at Social Work Centres, as different from the hitherto practice of placing them at premises of non-governmental organizations and similar. This ensures long-term systemic solution for the status of the employees at Roma Information Centres and it facilities the access of Roma to the services offered by Roma Information Centres.

Health Care

The research conducted by the *Initiative of Roma Women from Shuto Orizari* shows that 40% of Roma women, not having health insurance, paid for laboratory analysis in the course of the pregnancy or for baby delivery services, despite the fact that they are entitled to these services free of charge. Only 16% of Roma women used their right to be provided with free of charge folic acid, only 11% of the Roma pregnant women were seen by visiting nurses in the course of their pregnancy and a concerning percentage of 12% of pregnant Roma women are minor girls.[359]

In 2017, only 10 Roma Health Care Mediators were recruited, which is significantly lower that the planned number of 30 Mediators to be recruited until 2020, under the 2014-2020 Roma Strategy.[360]

A positive development is that the rate of infant mortality among Roma has been significantly reduced. In 2013, this rate was 11.4%, while in 2017 it was 6.5%.

Roma Children

A total number of 337 beggars were registered on the streets of which only 10 are not Roma children. According to age groups, children beggars are babies less than 1 year old, and children who have not reached legal age.[361] This is a serious problem first for the healthy development of the children, being also a wider social problem. Considering the multifaceted character of this problem, which is dealt with by institution working in various areas, especially the Ministry of the Interior, the Ministry of Labour and Social Policy, the Ministry of Education and Science, the Ministry of Health, it is ultimately necessary to establish a coordinated approach and a mechanism for communication among institutions with a view to resolving this issue. Such an approach would involve adequate inclusion of children in the education process, provision of adequate social protection for children and for their parents,

359 Initiative of Roma Women from Shuto Orizari, *How long will the right to health of Roma women remain only words on paper?*

360 Centre for Economic Analysis- CEA and Institute for Research and Policy Analysis – Romalitico, *Shadow Report- Implementation of the Roma Strategy in the Republic of Macedonia in 2017*.

361 Канал 5, "Евидентирани 337 Деца Питачи На Улици, Најмногу Во Скопје и Прилеп." (Kanal 5, *337 children beggars on the street registered, most of them in Skopje and in Prilep).*

and education of parents, equipping them with soft skills and the parents' adequate inclusion in the labour market in order to ensure a sustainable situation for the welfare of their families. Furthermore, there are indications that Roma children begging on the streets are forced to beg by organized groups, which transport the children to different cities and force them to beg on the streets.

Budget funds intended for the implementation of the 2014-2020 Roma Strategy need to be increased.

Active employment measures need to be adapted to the capacities, resources and needs of persons belonging to the Roma community. Furthermore, marginalized citizens need to be informed about the benefits deriving from such measures and about the manner of applying for such measures.

Units of local self-government need to be informed and be familiar in detail with their obligations set forth under the 2014-2020 Roma Strategy. A systemic solution is needed to resolve the problem of children on the street. Such a solution needs to be multi-structured and coordinated among institutions at the central and local level in areas of health care, housing, employment and education.

The Ministry of Health and the Health Insurance Fund need to finally resolve the long lasting problem of unlawful charging payments for health care services that are provided free of charge by gynaecologists and improve the measures for preventive programmes for women in the reproductive period.

MEASURES AGAINST RACISM AND XENOPHOBIA AND HATE SPEECH

In 2018, although in a smaller number of incidents compared to the previous year, in the public there were calls for violence, insults and xenophobic speech against refugees and migrants.

At the website www.govornaomraza.mk, the Helsinki Committee registered three cases of hate speech against refugees and migrants. The intensity of hate speech and insults against refugees was the greatest on social networks. In one of the registered cases, it was a matter of a Facebook post by a professor at the Iustinianus Primus Faculty of Law Faculty of Law.[362] In her post, the professor calls the migrants thieves, rapists and warns the citizens that now when they start living in the country, citizens will be forced to bare all of those things. Hate speech is additionally spread with comments regarding this post. In the other two cases, it was a matter of sharing photographs the text under which compared refugees to dogs in a manner that is derisive, offensive and spreads lies and prejudices.[363] The photograph was posted and shared on the Facebook page intended for promotion of refugee rights.

As regards the reactions of in-line institutions, an improvement is noted, compared to previous years, especially in terms of detecting and prosecution of organized smuggling groups, which operate in the country. However, in some instances, in-line institutions continued the established practices that are contrary to the human rights principles and standards, stipulated in international documents.

In 2014, the Helsinki Committee for Human Rights of the Republic of Macedonia started implementing activities for monitoring and registering cases of hate speech on the territory of the entire country. In 2018, the Helsinki Committee started activities for establishment of comprehensive mechanisms for mapping and documenting these negative social occurrences in response to the increasing trend of hate speech, especially on social networks. In term of methodology, the monitoring and reporting of hate speech and hate crimes was done using interactive internet based tools www.govornaomraza.mk and www.zlostorstvaodomraza.mk. With a view to ensuring the veracity of the reported cases, the Helsinki Committee checked and verified the reported material, after which the data become part of the aggregate statistics generated by these internet tools.

In 2018, the largest number of cases of hate speech were registered in July and in September, especially on ethnic and grounds of political affiliation. These months correspond to the period of negotiations with the Hellenic Republic and the signing of the Prespa Agreement and the announcement for organizing a Referendum. The increase in hate speech

362 Helsinki Committee, Hate Speech against Refugees.
363 Ibid.

cases also corresponds to two key importance political developments in the country – the adoption of the Constitutional amendments in accordance with the Prespa Agreement, on 11 January 2009, and the Law on the Use of Languages in the middle of January. In this period, there was an increase noted of hate speech on grounds of ethnic and political affiliation. Compared to 2018, there is an increased number of reported cases of hate speech on grounds of sexual orientation, gender and sex, which according to the structure of cases has reached one third of the total number of applications. Based on the Helsinki Committee monitoring of hate speech in January, it can be concluded that in-line institutions gave a weak response in sanctioning this occurrence. Based on the 2014 and 2018 analyses, the Helsinki Committee of the Republic of Macedonia expects increase of hate speech on the social media, especially on ethnic and/or political affiliation in the eve of the start of the campaign for the Presidential elections. In following with the trend of reporting hate speech, the largest number of applications were in the period from 12 to 17 February 2019. The steep increase of cases of hate speech on ethnic grounds on social networks corresponds with the period of the bus accident on the Skopje-Gostivar motorway and the decision for allocation of funds under the Annual Programme of the Ministry of Culture for 2019. Furthermore, in February 2019 there was an increase of hate speech on social networks on grounds of gender and sex. The period of this trend corresponds to the announcement of the candidate of the VMRO-DPMNE political party to run for president.

The comparison of the situation with the last quarter of 2018 leads to the conclusion that the public awareness for recognizing hate speech is favourably developing and citizens feel increasingly encouraged to report hate speech. Despite the fact that more intensified reaction by in-line institutions can be noticed in processing reports of hate speech, still the general conclusion is that a more pro-active approach and timely sanctioning of hate speech is needed, being also necessary to better inform the public.

Table - Timeline of entry of hate speech incidents - July 2018-March 2018

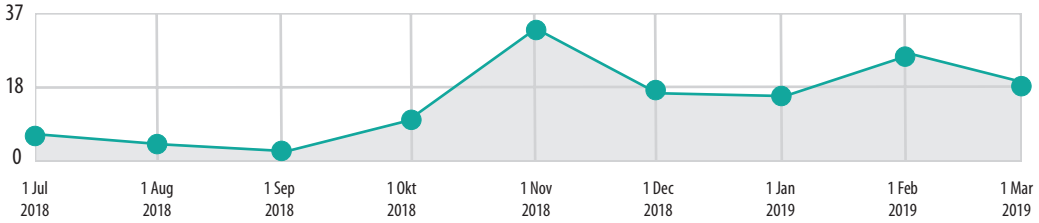
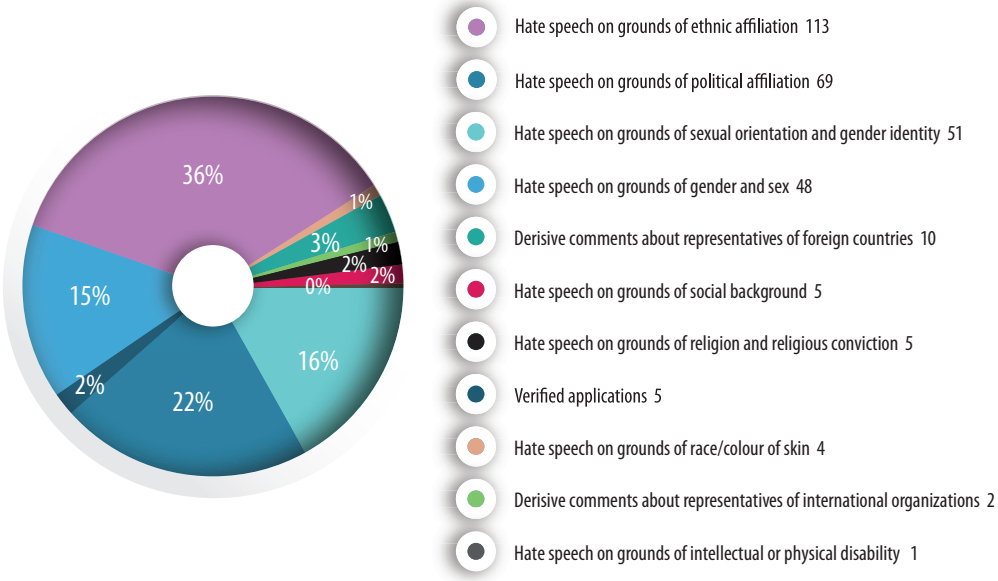


Table – Structure of registered reported hate speech cases – July 2018-March 2019



The analysis of the data leads to the evident conclusion that hate speech resulted in hate crimes, especially on grounds of ethnic and political affiliation. Furthermore, collected data on hate speech and data on hate crimes point to the fact that the largest number of registered cases of hate speech and hate crimes has been perpetrated on grounds of ethnic affiliation, most often by persons belonging to the Macedonian and to the Albanian ethnic communities.

Despite the fact that data about hate speech in the last years have shown that homophobic speech is present in the public, and especially on social networks, victims of hate crimes on grounds of sexual orientation and gender identity have not been encouraged in the last period to report such cases neither with in-line institutions nor with civil society organizations, which can be attributed to the hitherto not undertaking any action and/or undertaking inadequate action by institutions upon reported crimes on these grounds and the inappropriate protection of victims. Furthermore, in 2018 hate speech by politicians during public debates and political campaigning most often resulted in the commitment of hate crimes by their supporters and sympathizers. In the race for sensationalism and ratings, media outlets put aside their legal and ethical obligation to filter the contents to be offered to the public, serving instead as a conduit for spreading discriminatory and hate speech.

Despite the fact that compared to 2017, an increased awareness of hate speech can be noticed, the MoI and the Public Prosecutor's Office need to continually implement measures for prosecution of hate speech, considering that impunity for spreading and promoting hate speech in the public arena in fact represents tolerance and justification of hate speech. There has been some progress in the respect for and application of ethical standards in journalism in preventing the spreading of hate speech. Yet, public personalities and high-ranking political representatives need to refrain from the use of hate speech and need to condemn the use of hate speech.

Similarly, as in 2018, the recommendation is again repeated that it is necessary to apply relevant measures to further facilitate the procedures for reporting hate speech by victims and to strengthen the cooperation with the civil society organizations with a view to enhancing the trust in the police and in other state institutions.

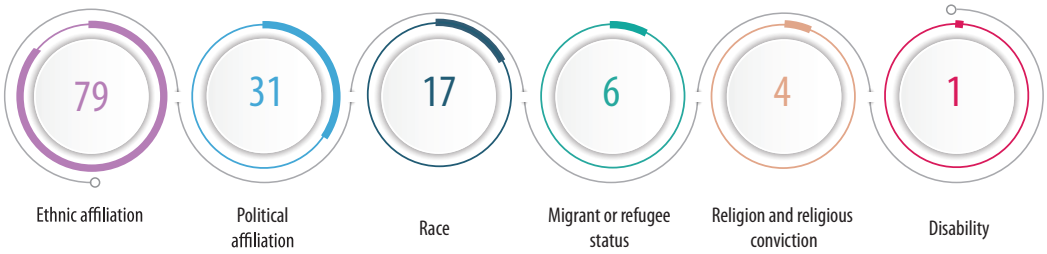
HATE CRIMES

In the period from 1 January to 31 December 2018, the Helsinki Committee registered 123 hate crimes in total, which is almost double the number of hate crimes committed in 2017. In addition, out of all 123 incidents reported on the portal www.zlostorstvaodomraza.mk to the end of the year, 60 incidents were verified, 63 remained unverified.

The cases were verified by sending communications to the MoI asking for information and replies, as well as by regularly checking the daily bulletins of the MoI and media reports about individual incidents. Unverified crimes were registered anyway because of bias deriving from the perception of the victim/witness, then differences between the persons committing the crime and the victim according to ethnic or political affiliation, lack of other possible motives for the crime, rate of occurrence of similar incidents, and the place and timing of the perpetration of the crimes. Large number of the unverified incidents involve incidents in ethnically mixed communities, settlements and schools, on busses or near bus stations, especially bus lines used by persons belonging to different ethnic communities and similar. Furthermore, unverified incidents are featured by the type of incident (attacks on a bus, or near bus stations, fights between two groups, or attack by a group of minors against one or more victims and similar).

As regards the motive for the hate crime, 64% of the crimes were committed on grounds of ethnic affiliation, and the number of such incidents is the highest, followed by incidents on grounds of political affiliation of the victim, which make one quarter of the total number of incidents (25%). The next largest group of incidents are those motivated by racial, national or religious intolerance (13.8%), incidents on the grounds of the status of a refugee/migrant (4.8%), and on grounds of religion and religious conviction (3.2%). This year there has been one case of hate crime registered on grounds of the victim's disability (0.8%). It is underlined that in 2018, no incidents were registered exclusively on the grounds of the sexual orientation of the victim.

Grounds for Hate Crimes - Number of cases



The number of hate crimes on grounds of political affiliation or political conviction of the perpetrators/victims is especially on the rise and evident prior to and during the adoption of certain major political decisions, such as the adoption of the Law on the Use of Languages in the Republic of Macedonia, the signing of the Prespa Agreement, the 2018 Referendum, and the voting for the Constitutional amendments at the Parliament of the Republic of Macedonia.

In 2018, the largest number of registered incidents (67) have all the elements of a violent crime (since they have been committed out in the open, in front of a number of people, for example in a school yard, at a bus station, at times when there is a great frequency of people, on the bus or at sports games). However, law enforcement bodies qualify most of such incidents, especially incidents between groups of young people and minors as misdemeanours, by which the incidents are not registered as hate crimes in the official statistics of the state. Such qualification of these crimes does not constitute an adequate response by the authorities, and perpetrators are sent the message that either they will not be held accountable for the crime or that their punishment will be mild, which does not fulfil the purposes of the penal policy i.e. to prevent and avert both the perpetrators and future potential perpetrators of such crimes.

Damage to property was registered in 26 incidents, most of which were on grounds of political affiliation or on grounds of religion and religious conviction (damaged cars, other objects, religious or state-owned premises and seats of offices of political parties).

Out of the 123 registered incidents, in 18 cases the victims sustained bodily injuries and one person died as a result of sustained bodily injuries at the end of June 2018. Such consequences are most frequent with crimes committed on the grounds of ethnic affiliation.

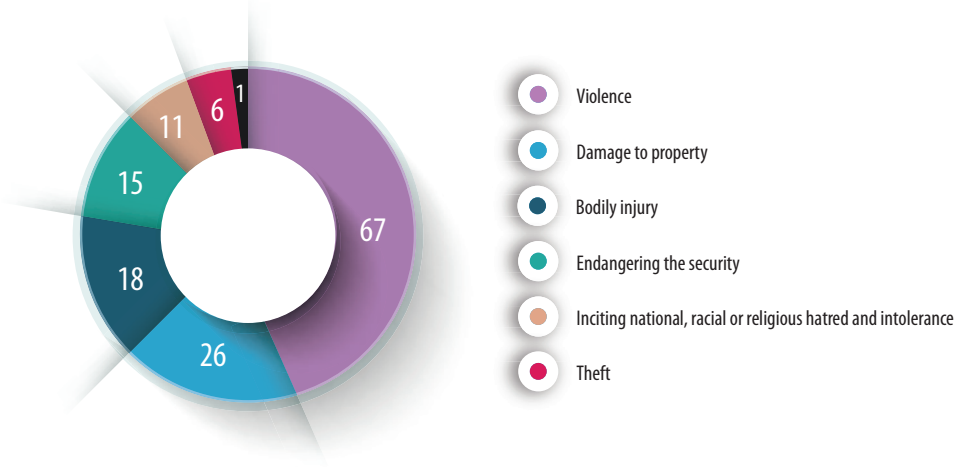
Specifically, in the case of the young sport fan attacked by three of his peers belonging to the Albanian ethnic community, the boy was beaten so badly that he lost his life as result of sustained injuries. In this case, the Helsinki Committee sent a number of communications to the competent Public Prosecutor's Office pointing out the need to carefully process this case with due attention, underscoring as well the need for a thorough and full investigation, after which based on gathered evidence an indictment is to be submitted against the perpetrators. The Helsinki Committee reacted publicly by issuing press releases appealing for a reasonable attitude among the two ethnic groups, while condemning hate speech, especially by public figures and politicians, emphasizing that such speech could only lead to escalation of violence and new victims of hate crimes. Initially, the case was qualified as a case of violence, but after the death of the boy, it was qualified as a murder in a cruel manner. The first instance court proceedings are still pending.[364]

Endearing the security is a crime committed in 15 cases of hate crimes, and again these are cases in which the crime was committed on grounds of political affiliation of the victim or of the perpetrator.

As much as 11 incidents have all elements of a crime of causing national racial and religious hatred and some of these incidents have been adequately processed by the law enforcement bodies (police and public prosecutor's office). Robbery is a crime committed in 6 registered cases, i.e. incidents against refugees/migrants. There was one registered case of causing general danger by putting on fire the vehicle of politician.

364 Макпрес, "Продолжува Судењето За Убиството На Саздовски." (Makpres, *The Trial for the Murder of Sazdovski continues).*

Types of Crime - Number of cases



The trend of perpetrators of hate crime being mainly young people and minors continued in 2018. A significant 36% of the victims are persons under 18 years of age and there are incidents in which the victims were aged 12 or 13. In the other cases, most of the victims are young people. There is also an important number of minors perpetrating hate crimes. Hence, out of the total number of 319 registered perpetrators, 72 were minors, which is almost one quarter of the total number of perpetrators (22%).

This is a serious indicator that tolerance among the young population has been significantly reduced, especially among young people belonging to different ethnic communities (most often incidents are between young people of the Macedonian and of the Albanian ethnic communities) and that in-line institution must monitor this phenomenon and trend with due attention, while working on the prevention of this undesired occurrence by introducing educational programmes of co-existence and tolerance. In-line institutions also need to register and adequately qualify hate crimes in which the victim and/or perpetrators are minors and young people and to thoroughly and carefully investigate the crimes, pursuing relevant procedures with due attention so that in a fair, impartial and objective procedure, based on the evidence, and without any reasonable doubts, the guilty are punished in accordance with the law, which on its part will send the right message to the public and to other young people, but also to the adults that hate crime will not be tolerated and that anyone who perpetrates such crime will be adequately punished.

Out of the 123 registered cases in total, the largest number of cases were registered in Skopje (85 or 69%), followed by Prilep (11), Kumanovo (4), Tetovo (4), Veles, Negotino, Bitola and Vinica (2 in each city) and Strumica, Kichevo, Tabanovce, Mavrovo, Gevgelija, Demir Hisar, Gostivar , Delchevo and Ohrid (1 incident in each city). Of all incidents registered in Skopje as much as 20 cases took place on the territory of the Municipality of Gazi Baba, 19 cases in the Municipality of Chair, 17 in the Municipality of Centar, 7 in the Municipality of Aerodrom, 5 cases of hate crimes each in the Municipalities of Karposh and Butel, 4 cases of hate crimes each in the Municipalities of Kisela Voda and Gjorce Petrov, and one case of hate crime each in the villages near Skopje- Arachinovo, Studenichani, Chucher Sandevo and Petrovec.

It is very concerning that, the MoI detected only 24 perpetrators, against whom the police filed criminal charges in only 8 of the registered hate crimes. This is a serious indicator that law enforcement bodies - the Ministry of the Interior and the Public Prosecutor's Office must more carefully follow and process such cases, instituting investigations after having heard or received any information about a potential case. They also must conduct timely, prompt, thorough and full investigations in order to identify as many perpetrators as possible and bring them to justice, all with the goal of more efficiently dealing with this type of crime, especially in light of its far-reaching damaging social consequences.

In the first two months of 2019, a total number of 25 hate crimes were registered. In 24 of the 25 registered cases, the motive was the ethnic affiliation of the victims/perpetrators, and in one case, the hate crime was committed on the grounds that the sexual orientation of the victim was different from that of the perpetrator. Most of the registered cases involve children up 18 years of age, or young people up to 25 years of age, a trend that continues from the last year of 2018.

Recommendations for dealing with hate crimes:

In-line institutions and bodies needs to promote the amendments to the criminal law among citizens and among professionals applying criminal law provision as lawyers, prosecutors, police officers and judges, but also among civil society organizations with a view to introducing them to all positive changes.

Ensuring timely and effective investigation and prosecution of perpetrators of hate crimes by applying the amendments to the Criminal Code related to prosecution and punishment of hate crimes.

Encouraging victims to report hate crimes and ensuring measures for building the trust in the police and other state institutions.

Adequate documenting and publishing comprehensive and comparable data about hate crimes and ensuring proper protection of and support to victims of hate crimes in all stages of the procedure, as well as relevant training for practitioners, who come into contact with victims of hate crimes.

Most importantly, implementing activities and measures that will contribute towards prevention of hate crimes, especially by introducing relevant trainings, education and lessons in the curricula.

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