

# SHADOW REPORT ON CHAPTER 23

FOR THE PERIOD BETWEEN APRIL 2019 AND MARCH 2020

SKOPJE, APRIL 2020



European  
Policy  
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Skopje





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## LIST OF ABBREVIATIONS

<b>AVMU</b>	Agency for Audio and Audiovisual Media Services
<b>ACCMIS</b>	Automated Court Case Management Information System
<b>AJPP</b>	Academy for Judges and Public Prosecutors
<b>GRECO</b>	Group of States against Corruption
<b>DPDP</b>	Directorate for Personal Data Protection
<b>SSO</b>	State Statistical Office
<b>SLI</b>	State Labour Inspectorate
<b>SCPC</b>	State Commission for the Prevention of Corruption
<b>EIGE</b>	European Institute for Gender Equality
<b>ECHR</b>	European Convention on Human Rights
<b>ENER</b>	National Electronic Registry of Regulations
<b>ECtHR</b>	European Court of Human Rights
<b>AJM</b>	Association of Journalists of Macedonia
<b>LPPD</b>	Law on the Prevention of and Protection against Discrimination
<b>ICT</b>	Information Communication Technology
<b>CPT</b>	European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
<b>LGBTI</b>	Lesbian, gay, bisexual, transgender and intersex community
<b>MOI</b>	Ministry of the Interior
<b>MISA</b>	Ministry of Information Society and Administration
<b>MRT</b>	Macedonian Radio and Television
<b>MLSP</b>	Ministry of Labour and Social Policy
<b>OSCE</b>	Organization for Security and Co-operation in Europe
<b>BPPOCC</b>	Basic Public Prosecutor's Office for Prosecution of Organized Crime and Corruption
<b>RM</b>	Republic of Macedonia
<b>RNM</b>	Republic of North Macedonia
<b>USA</b>	United States of America
<b>SDSM</b>	Social Democratic Union of Macedonia
<b>CMEM</b>	Council of Media Ethics of Macedonia
<b>SPPO</b>	Public Prosecutor's Office for Prosecuting Criminal Offences Related to and Arising from the Content of the Illegally Intercepted Communications (Special Public Prosecutor's Office)
<b>JCRNM</b>	Judicial Council of the Republic of North Macedonia
<b>UBK</b>	Bureau for Security and Counterintelligence
<b>EPI</b>	European Policy Institute
<b>EC</b>	European Commission
<b>EU</b>	European Union
<b>BPPO</b>	Basic Public Prosecutor's Office
<b>CEPEJ</b>	European Commission for the Efficiency of Justice
<b>SWC</b>	Social Work Centre



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# INTRODUCTION

This Shadow Report streamlines in a coherent unity all findings, conclusions and recommendations deriving from monitoring the areas covered by Chapter 23 -Judiciary and Fundamental Rights. This is the fifth Shadow Report published by the European Policy Institute-Skopje (EPI), while taking into consideration the comments and opinions of the 23 Network members. The previous four Shadow Reports cover the period from October 2014 to July 2015<sup>1</sup>, then the period from July 2015 to April 2016<sup>2</sup>, the period from May 2016 to January 2018<sup>3</sup> and the period from June 2018 to March 2019<sup>4</sup>.

The Report covers the period from the beginning of April 2019 to end of March 2020, inclusive. It presents data relevant for the period prior to April 2019, if necessary to set the context or clarify the novelties in the running reporting period. The reporting period corresponds with the reporting period of the European Commission (EC) on the Republic of North Macedonia (RNM, North Macedonia). This Report follows the structure of Chapter 23, in line with the European Commission Report. The considerations for each area end with recommendations and main conclusions set in a separate framework field.

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 Чаловска, Стојановски, and Јовановски, “Извештај во сенка за Поглавје 23.”(Chalovska, Stojanovski and Jovanovski, *Shadow Report on Chapter 23*).

3 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*).

4 Цоневска et al., “Извештај Во Сенка За Поглавје 23 За Периодот Јуни 2018 – Март 2019 Година.” (Conevska et al. *Shadow Report on Chapter 23 for the period from June 2018 to March 2019*).



In the reporting period, despite the invested reform efforts and difficult steps it undertook, which include reaching the so-called Prespa Agreement<sup>5</sup> and the Treaty of Good-Neighbourliness with the Republic of Bulgaria<sup>6</sup>, at the October 2019 European Summit, the Republic of North Macedonia was not granted a date for start of EU accession talks. Albeit not following the same pace, the country continued to work on the reforms in following with the Council conclusions. In March 2020, the EC published an Update on the country,<sup>7</sup> in which it welcomed the judiciary reforms, while, *inter alia*, underlining that the country needs to focus on judicial reforms and proactive investigations, prosecutions and final convictions in corruption and organised crime cases, including at high level.<sup>8</sup> Concerning judicial reforms, significant legislative steps have been taken to strengthen the independence of the judiciary. In this regard, North Macedonia stepped up the implementation of the reforms envisaged in the Judicial Sector Reform Strategy and action plan<sup>9</sup>, addressing the earlier 'Urgent Reform Priorities'<sup>10</sup>, the recommendations of the Venice Commission<sup>11</sup> and of the Senior Experts' Group on Systemic Rule of Law Issues.<sup>12</sup> However, the Report notes that monitoring of the reforms is a priority at the highest level and there has been open dialogue with the European Commission and other partners to ensure the quality of adopted strategies and legislation.<sup>13</sup> The Parliament of the Republic of North Macedonia dissolved in February 2020 in order for early general elections to be organized.<sup>14</sup> However, due to the COVID-19 pandemic, on 18 March 2020, the President of the country adopted a Decision proclaiming a state of emergency on the entire territory of the country.<sup>15</sup> According to Article 126 of the Constitution,<sup>16</sup> in the course of the state of emergency, the Government may adopt Decrees with the force of law.

The new central independent body, the State Commission for the Prevention of Corruption (SCPC), which has a mandate to prevent and fight corruption, has been particularly active in preventing corruption.<sup>17</sup> In addition to the proactive work of the SCPC, the Republic of North Macedonia has comprehensively revised the legal framework for the prevention of corruption and conflict of interests, as well as for strengthening the powers of the SCPC. The Report underscores the need to ensure the increase of the budget and resources of the SCPC, in order to enable unimpeded and efficient fulfilment of tasks by the SCPC.

5 Government of the Republic of North Macedonia, *Final Agreement For The Settlement Of The Differences As Described In The United Nations Security Council Resolutions 817 (1993) And 845 (1993), The Termination Of The Interim Accord Of 1995, And The Establishment Of A Strategic Partnership Between The Parties*.

6 Government of the Republic of Macedonia, *Treaty on Friendship, Good-Neighbourliness and Cooperation between the Republic Macedonia and the Republic of Bulgaria*.

7 European Commission, "Update on the Republic of North Macedonia."

8 Ibid.

9 Ministry of Justice, 2017–2022 Justice System Reform Strategy and Action Plan.

10 European Commission, "Urgent Reform Priorities for the Former Yugoslav Republic of Macedonia."

11 Barrett et al., "Opinion on the Draft Amendments to the Law on Courts, Adopted by the Venice Commission at Its 117th Plenary Session"; Barrett, Dimitrov, and RIBIČIĆ, "Opinion on the Draft Law on the Judicial Council, Adopted by the Venice Commission at Its 118th Plenary Session."

12 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."

13 European Commission, "Update on the Republic of North Macedonia."

14 Parliament of the Republic of North Macedonia, *Session 137 of the Parliament of the Republic of North Macedonia 137*.

15 Official Gazette of the Republic of North Macedonia, Decision proclaiming state of emergency on the territory of the Republic of North Macedonia for a period of 30 days.

16 Article 126, Constitution of the Republic of North Macedonia. Source: Official Gazette No. 52/1991, Constitution of the Republic of Macedonia.

17 European Commission, "Update on the Republic of North Macedonia."

The legal framework addressing problems of certain vulnerable categories of citizens has been advanced. Yet, it remains to clarify and remedy certain inconsistencies featuring the legislative solutions contained in the Law on Social Protection and in the Law on Primary Education. Despite two attempts, in the reporting period, members of the Commission for the Prevention of and Protection against Discrimination were not appointed, which left citizens without this anti-discrimination protection mechanism. Hate crimes and especially hate speech were extensively present, which demands a proactive intervention and education of the population about dangers arising from these phenomena. In the reporting period, women were targets of attacks and insults by politicians, journalists and by other persons. Furthermore, the LGBTI+ community and the Roma remain the most vulnerable categories, being much more affected by intersectional discrimination. It is necessary to advance the efforts for enforcement of ECtHR judgements and for the prevention of the so-called recurring cases being brought by persons from the country before the Strasbourg Court. In the reporting period, the Ministry of Justice improved the conditions in prisons and advanced the legal framework for personal data protection. Freedom of expression remains a challenge to be further tackled with; journalists still report that they are subjected to threats and pressures, while those working in investigative journalism, focusing on crime and corruption, lack sufficient resources and support in order to reveal high-profile corruption cases. Further reforms of the Public Broadcaster are needed, while the challenge of fake news and suspicious financing of internet-based media still prevails.

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# METHODOLOGY

The methodology used in preparing this Report is the methodology of monitoring developments in areas, which are part of the work of Network 23 - Judiciary, fight against corruption and fundamental rights,<sup>18</sup> 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 Shadow Report there were two rounds of consultations, done in writing (electronically) with civil society organizations and institutions. The first round of consultations consisted of submission of relevant analyses, reports and researches relating to Chapter 23. Under the second round of consultations, civil society organizations and institutions submitted their comments and contributions to the Draft Shadow Report.

The Agency for Audio and Audiovisual Media Services (AVMU), then the Blueprint Judicial Reform Group, the State Commission for the Prevention of Corruption, the Association of Judicial Administrative Staff, the Coalition *All for Fair Trials*, the Office of the Minister without portfolio in charge of the implementation of the Strategy for the Improvement of the Status of Roma, the Ministry of Justice, the National Network to end Violence against Women and Domestic Violence, Reactor - Research in Action, the Romalitico, the Council for Media Ethics of Macedonia, the Metamorphosis Foundation, the Open Society Foundation Macedonia, the Helsinki Committee for Human Rights of the Republic of Macedonia and the Centre for Legal Research and Analysis have all made a substantive contribution to this Report.

<sup>18</sup> 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*).



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# 1. JUDICIARY

The judiciary reforms have given tangible results, especially compared with prior reporting periods analysed under previous Shadow Reports.<sup>19</sup> Key reforms started with the adoption of the 2017-2022 Justice System Reform Strategy, accompanied with an Action Plan (hereinafter referred to as the Strategy).<sup>20</sup>

The justice system reform efforts were focused on the implementation of the 2017-2022 Justice System Reform Strategy,<sup>21</sup> and its Action Plan, while implementing Urgent Reform Priorities, recommendations of the Venice Commission and of the Priebe led Senior Experts' Group. The major priority is attached to monitoring reforms in respect of which there is an open dialogue with the EC and other partners with a view to ensuring the quality of adopted strategies and legislation.<sup>22</sup>

A number of reform laws were adopted and drafts of laws were developed with a view to implementing the Strategy. This Shadow Report elaborates upon the implementation of some of the key importance reform laws, as set forth under the Strategy. The implementation of laws, i.e. amendments to the legislative framework adopted in 2020 or which are to be applied as of 2020, will be elaborated in the next Shadow Report on Chapter 23.

Hence, amendments to the Law on Courts were adopted in an inclusive procedure of drafting the said amendments.<sup>23</sup> The amended Law on Courts was favourably assessed by the Venice Commission. A new Law on the Judicial Council was adopted, which sets the basis for enhanced accountability and transparency of the work of the Judicial Council.<sup>24</sup> According to the new Law on the Judicial Council, "deliberations of the Judicial Council, as a rule, shall be public. The public may be excluded only if certain legal requirements are fulfilled, in terms of protecting the person and integrity of a concerned judge".<sup>25</sup> "The Judicial Council shall adopt decisions to exclude the public with two third majority of votes of the total number of Council members having the right to vote."<sup>26</sup> "In cases in which the Council has decided to exclude the public from its session, the President of the Council shall inform the public about the reasons thereto and in case at the said session the Council is to adopt a decision by voting, then the voting for the decision shall be public."<sup>27</sup> In addition, upon election of judges, every member of the Judicial Council shall be obliged to publicly offer reasoning for their vote.<sup>28</sup>

The new Law on Administrative Disputes, to be applied as of May 2020, sets forth more obligations for administrative courts, envisaging for example public hearings before the Administrative Court. A new Law on Misdemeanours was adopted, followed by activities for harmonization of substantive laws containing misdemeanour provisions. There were also amendments adopted with respect to the enforcement procedure, which are to facilitate

19 Чаловска, Стојановски, and Јовановски, "Извештај во сенка за Поглавје 23." (Chalovska, Stojanovski and Jovanovski, *Shadow Report on Chapter 23*).

20 European Policy Institute, *Public Policy Brief- Implementation of the 2017-2022 Justice System Reform Strategy*.

21 Ministry of Justice, 2017-2022 Justice System Reform Strategy and Action Plan.

22 The same was underlined in the Update on the Republic of North Macedonia Source: European Commission, "Update on the Republic of North Macedonia."

23 Цонеvsка et al., "Извештај Во Сенка За Поглавје 23 За Периодот Јуни 2018 — Март 2019 Година." (Conevska et al. *Shadow Report on Chapter 23 for the period from June 2018 to March 2019*).

24 European Policy Institute, *Public Policy Brief- Implementation of the 2017-2022 Justice System Reform Strategy*.

25 Official Gazette of the Republic of North Macedonia No. 102/2019, Law on the Judicial Council of the Republic of North Macedonia.

26 Ibid.

27 Ibid.

28 Ibid.

social justice, while as regards the Notaries Public court fees for certain procedures were abolished.<sup>29</sup> The new Law on the Academy for Judges and Public Prosecutors was endorsed by the Government at its July 2019 session.<sup>30</sup> However, the draft Law remained in parliamentary procedure until the Parliament dissolved. A new Law on Free Legal Assistance was adopted, which expands the categories of citizens eligible for free legal assistance, while the Law on Case Management in Courts was adopted in a shortened parliamentary procedure on 16 February 2020.<sup>31</sup> The Ministry of Justice drafted new laws, such as the draft Law on International Private Law (which was still in parliamentary procedure until the dissolving of the Parliament),<sup>32</sup> the draft Law on Criminal Procedure, the draft Law on Pecuniary Compensation to Victims of Violent Crimes and there are activities underway for drafting a new Law on Justice for Children. In the area of civil law, amendments to the Law of Obligations and Contracts are drafted. The Minister of Justice underlined that the amendments to the said Law will be defined following an inclusive debate, in light of the fact that it is a matter of a systemic law which regulates every-day relations among citizens. In the civil procedure law area, a Working Group was established to draft amendments to the Law on the Litigation Procedure, which until the proclamation of the state of emergency had regular meetings every Wednesday.<sup>33</sup> Some of the members of the said Working Group drafting the amendments and supplements to the Law on Litigation Procedure are representatives of a number of civil society organizations<sup>34</sup> Following extensive debates among political parties and a public expert debate at the Parliament, the new Law on the Public Prosecutor's Office was adopted on 16 February 2020.<sup>35</sup> The amendments and supplements to the Law on the Council of Public Prosecutors Council were adopted at the same parliamentary session.<sup>36</sup>

**The expectations are that in the forthcoming period the focus will be placed on the consistent implementation of laws and amendments to laws in the judiciary area, which will help enhance the efficiency and independence of the judiciary, thus strengthening the trust of citizens in the justice system. In addition, the monitoring of the implementation of new legal solutions will be of crucial importance to show tangible results in the context of preparatory work for accession talks under Chapter 23.**

29 European Policy Institute, *Public Policy Brief- Implementation of the 2017-2022 Justice System Reform Strategy*.

30 Академик, "Новиот Закон За Академијата За Судии и Јавни Обвинители Влегува Во Собраниска Процедура." (Academic, *The new Law on the Academy for Judges and Public Prosecutors enters parliamentary procedure*).

31 Parliament of the Republic of North Macedonia, Session No. 131 of the Parliament of the Republic of North Macedonia.

32 Ibid.

33 Contribution by the Ministry of Justice prepared for this Shadow Report.

34 Young Lawyers, Centre for Legal Research and Analysis. Source: Contribution by the Ministry of Justice prepared for this Show Report.

35 Official Gazette of the Republic of North Macedonia No. 42/2020, Law on the Public Prosecutor's Office.

36 Official Gazette of the Republic of North Macedonia No. 42/2020, Law Amending and Supplementing the Law on the Council of Public Prosecutors.

## STRATEGIC DOCUMENTS

In November 2017, the Government of the Republic of Macedonia adopted the 2017-2022 Justice System Reform Strategy, accompanied with an Action Plan, with a view to advancing the judicial system in the country in following with principles of independence, impartiality, accountability, efficiency and quality.<sup>37</sup> The timeframe set forth under the Strategy did not fully correspond with the capabilities and the complex nature of developing policies for specific justice system reforms. Consequently, the Action Plan was amended with a view to setting a realistic timeline and ensuring room for a comprehensive debate on certain solutions proposed or obligations to be assumed, such a debate being necessary in light of the fact that major part of the laws governing the judiciary area are systemic laws adopted with two third majority of MP votes, which on its part requires sufficient time for a relevant consultation process in order to choose the best solutions. In addition, the complex nature of justice system reforms must be born in mind, for they demand strong commitments and concerted action by all three branches of power in the country – the executive branch, which prepares policies, the parliament, which adopts the laws relevant to this area and the judiciary, which is to appropriately implement the said laws.<sup>38</sup>

The 2017-2022 Justice Reform Strategy<sup>39</sup> sets forth guidelines for the consolidation of the justice system, by remedying established deficiencies of normative and institutional nature that undermine it. The Strategy states that “Normative measures envisaged under the Strategy will often require “regressing” to legislative solutions applicable prior to 2009, because analyses have shown that the normative chaos in the penal, administrative, misdemeanours and civil law started exactly at this period, persisting without interruption until 2017.”<sup>40</sup> It is against this background that laws and legislative amendments were adopted, which help implement relevant standards in the justice system area and the Venice Commission recommendations. This primarily applies to the last amendments to the Law on Courts<sup>41</sup> and the new Law on the Judicial Council,<sup>42</sup> as well as to the implementation of the Priebe led Senior Experts’ Group recommendations and the Urgent Reform Priorities. In addition to adoption of laws and legislative amendments, other measures stipulated under the Strategy were also implemented.

A number of working groups were established at the Ministry of Justice, having on board legal practitioners and representatives of the non-governmental sector, tasked with drafting legislative solutions in the justice system area. As stated, the Working Groups have on board representatives of civil society organizations, as relevant stakeholders, but civil society organizations were not involved in the preparation of laws in the criminal law area, such as the drafts of the Law on the Public Prosecutor’s Office and the Law on the Council of Public Prosecutors.<sup>43</sup>

37 Ministry of Justice, Annual Report on the Implementation of the 2017-2022 Justice System Reform Strategy.

38 European Policy Institute *Public Policy Brief- Implementation of the 2017-2022 Justice System Reform Strategy*.

39 Ministry of Justice, 2017-2022 Justice System Reform Strategy and Action Plan.

40 Ibid.

41 Official Gazette of the Republic of North Macedonia No. 96/19, Law Amending and Supplementing the Law on Courts.

42 Official Gazette of the Republic of North Macedonia No. 102/2019, Law on the Judicial Council of the Republic of North Macedonia.

43 Блупринт група за правосудство, “Податоци Од Вториот Квартален Извештај За Следење На Спроведувањето На Стратегијата За Реформи Во Правосудството (2017-2022) Во Однос На Транспарентноста, Вклученоста На Засегнатите Страни Како и Временската Рамка На Спроведување На Стратегијата.” (Blueprint Judicial Reform Group “Data of the Second Quarterly Report on the Monitoring of the Implementation of the (2017-2022 Justice System Reform Strategy regarding the transparency, inclusion of Stakeholders and the timeframe for the implementation of the Strategy).



As of its establishment, the Council Monitoring the Implementation of the Justice System Reform Strategy had 12 meetings, of which two were held in the reporting period<sup>44</sup>, discussing and reviewing important reform laws, as well as measures undertaken for the implementation of the Justice System Reform Strategy. In May 2019, the Prime Minister of the Republic of North Macedonia ceased fulfilling the duties of President of the Council, with the Minister of Justice taking over these duties.<sup>45</sup>

In February 2019, the Ministry of Justice adopted the 2019-2024 Strategy for Information-Communication Technology in the Justice System (revised Strategy). The Strategy was developed by representatives of the Ministry of Justice, courts, the Judicial Council, the Public Prosecutor's Office, the Academy for Judges and Public Prosecutors, the Bar Association, the Public Notary Chamber, as well as representatives of Enforcement Agents and of Mediators.

The Strategy envisages that its implementation will be continually monitored with a view to effectively undertaking set forth activities. Hence, the Information Communication Technology Council (ICT Council) is tasked with the monitoring. The said Council may, *inter alia*, envisage revision of the Strategy and Action Plan in line with established requirements.<sup>46</sup>

The ICT Council was established following the amendments and supplements to the Law on Courts,<sup>47</sup> according to which the ICT Council is to put forth proposals setting the policy priorities and facilitating the coordination of justice system bodies in the functioning of the information communication technology system. This was considered as a necessary step in order to harmonize data produced by all justice system bodies, having in mind that the Ministry of Justice is the in-line institution to prepare and monitor the implementation of the 2019-2024 Strategy for Information-Communication Technology in the Justice System.<sup>48</sup> The ICT Council had its constitutive meeting on 6 November 2019.<sup>49</sup>

The ICT Council adopted a Work Plan, covering the period from February to June 2020, following which it distributed relevant tasks in order to establish a structure enabling organized activities to facilitate the implementation of the Work Plan of the Council for the said period. In this context, tasks were entrusted to Council members and as necessary they were authorized to establish working groups, composed of Council members, who in pursuance with their competencies would be able to fulfil the working groups' tasks, being also authorized to coordinate the activities of working groups, facilitate the cooperation among working groups and then submit a report about their work to the Council, at least once a month.<sup>50</sup>

44 XII Session of the Council, 19 June 2019, June 12, 2019.

45 Government of the Republic of North Macedonia, 134<sup>th</sup> Session of the Government.

46 Ministry of Justice, 2019-2024, *Strategy for Information Communication Technology in the Justice System (Revised Strategy)*.

47 Official Gazette of the Republic of North Macedonia No. 96/2019, Law Amending and Supplementing the Law on Courts.

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

49 Академик, "Конституиран Советот За Координирање На ИКТ Во Правосудството." (Academic, *The Justice System ICT Coordination Council established*).

50 Contribution by the Ministry of Justice prepared for this Shadow Report.

The Work Plan<sup>51</sup> sets forth 6 tasks, which were distributed to the ICT Council members as follows:

- 1. Monitoring procurements in the ICT area in order to avoid technological fragmentation (with a particular focus on the on-going procurement procedure at the Supreme Court).*
- 2. Introducing centralized management of the ICT system in the justice system by provision of relevant human resources.*
- 3. Ensuring adequate infrastructure, architecture and technologies used in the ICT Sector in the justice system.*
- 4. Reorganization and strengthening the human resource capacities of the ICT Sector, in order that this Sector could appropriately support all on-going processes in the justice system.*
- 5. Planning and ensuring relevant funding required for the functioning of the ICT Sector (from the state budgeted and from donors).*
- 6. Keeping up with laws and regulations relating to the work of the ICT Council.*

Under the third component of the IPA Project *Support to Reforms in the Justice Sector* support is provided to the ICT Council and in general to the implementation of the ICT Strategy. The following documents were developed under the said Project: Proposal for data protection and information security, Proposal for business continuity development in the ICT area in the justice system, Proposal for upgrading the right to access and Recommendations for operating management and coordination of the ICT system in the justice system.<sup>52</sup>

In the forthcoming period, it will be necessary to undertake measures and activities for the relevant implementation of the ICT Strategy and its monitoring by all relevant stakeholders.

Following the adoption of the 2017-2022 Justice System Reform Strategy and Action Plan, major part of the reforms involving amendments to the legislative framework were implemented, while also implementing the Urgent Reform Priorities, the Venice Commission recommendations and the Priebe led Senior Experts' Group recommendations. Other measures set forth under the Strategy were also implemented. The Action Plan supporting the Strategy was amended in order to set a realistic timeframe and ensure room for a comprehensive debate regarding certain legal solutions. The implementation of some of the key reform laws can be monitored, but only within a very brief period. However, the implementation of major part of the reform laws will have to be monitored in the coming period.

The expectations are that in the forthcoming period the focus will be placed on the consistent implementation of laws and amendments to laws in the justice area, which will help enhance the efficiency and independence of justice institutions, thus strengthening the trust of citizens in the justice system. In addition, the monitoring of the implementation of new legal solutions will be of crucial importance to show tangible results in the context of the preparatory work for accession talks under Chapter 23.

It is also expected that the practice of setting up inclusive processes will continue and will be even more strengthened with respect to the establishment and activities of working groups drafting various laws, and that there will be more extensive debates on proposals for solutions on issues, which are of exceptional importance for citizens. The Ministry of Justice established a Working Group tasked with drafting amendments and supplements to the Law on the Litigation Procedure. Some of the members of this Working Group are representatives of civil society organizations.

51 Contribution by the Ministry of Justice prepared for this Shadow Report.

52 Contribution by the Ministry of Justice prepared for this Shadow Report.

In addition to monitoring the 2017-2022 Justice System Reform Strategy, in the forthcoming period it will be exceptionally important that the implementation of the ICT Strategy is monitored, both by the ICT Council, but also by all other relevant stakeholders, including civil society organizations.

## MANAGEMENT BODIES

Activities and measures set forth under the Justice System Reform Strategy,<sup>53</sup> relating to the independence and impartiality of the justice system indeed required the adoption of the new Law on the Judicial Council and of the Law Amending and Supplementing the Law on the Council of Public Prosecutors. There are also activities and measures aimed at the fulfilment of the urgent reform priorities, as well as of the recommendations of the Venice Commission relating to the Law on the Judicial Council. The adoption of the new Law on the Judicial Council<sup>54</sup> and the Law Amending and Supplementing the Law on the Council of Public Prosecutors<sup>55</sup> is part of the implementation of some of the measures set forth under the Strategy, enhancing on their part the independence of the justice system.

The new Law on the Judicial Council<sup>56</sup> sets the basis to improve the accountability and transparency in the work of the Judicial Council. The deliberations of the Judicial Council are public. The public may be excluded only if certain legal requirements are fulfilled in terms of protecting the person and integrity of a concerned judge. However, even in such cases the President of the Judicial Council must provide a reasoned explanation as to why the public has been excluded. In addition, upon election of judges, each member of the Judicial Council has the duty to present publicly the reasoning for the decision, i.e. vote.

Despite the fact that the Law on the Judicial Council was favourably assessed by the Venice Commission,<sup>57</sup> there are objections coming from the ranks of judges regarding the organizational set-up of the Council and regarding the election of Council members from the ranks of judges and members elected by the Parliament.<sup>58</sup> As regards the organizational set-up, judges have objections against a provision of the Law according to which the President of the Judicial Council is elected by members of the Judicial Council elected as Council members by the Parliament of the Republic of North Macedonia, the reasoning being that the Judicial Council has the duty of ensuring and guaranteeing the independence and autonomy of the judiciary, as stipulated by the Constitution and laws of the Republic of North Macedonia. According to the positions of judges having objections, this manner of electing the President of the Council, in fact helps sneak through the back door partisan policy in the work of the Judicial Council. There is also discrimination in the re-election of members of the Judicial Council. Thus, members of the Judicial Council coming from the ranks of judges do not have

53 Ministry of Justice, 2017-2022 Justice System Reform Strategy and Action Plan.

54 Official Gazette of the Republic of North Macedonia No. 102/2019, Law on the Judicial Council of the Republic of North Macedonia.

55 Official Gazette of the Republic of North Macedonia No. 42/2020, Law Amending and Supplementing the Law on the Council of Public Prosecutors.

56 Official Gazette of the Republic of North Macedonia No. 102/2019, Law on the Judicial Council of the Republic of North Macedonia.

57 Barrett, Dimitrov, and RIBIČIĆ, "Opinion on the Draft Law on the Judicial Council, Adopted by the Venice Commission at its 118<sup>th</sup> Plenary Session."

58 According to the address of the President of the Judicial Council delivered at the Public Policy Dialogue. Source: European Policy Institute, *Public Policy Brief- Implementation of the 2017-2022 Justice System Reform Strategy*.

the right to be re-elected, i.e. they may be re-elected after six years following the end of their term of office, while members of the Judicial Council, elected as Council members by the Parliament, have the right to be re-elected two consecutive times as members of the Judicial Council.<sup>59</sup> On 25 April 2019, in pursuance with the Law on the Judicial Council, applicable at that time, the members of the Judicial Council elected the President and the Deputy President of the Judicial Council.<sup>60</sup> Considering that on 22 October 2019 the term of office of the Deputy President of the Judicial Council ended in his capacity of a member of the Judicial Council, a new Deputy President of the Judicial Council was elected.<sup>61</sup>

In the context of the implementation of the Law on the Judicial Council, it must be underlined that the Parliament of the Republic of North Macedonia delayed the procedure for election of members of the Judicial Council.<sup>62</sup> On 12 December 2019, following a wave of reactions by the media, civil society organizations<sup>63</sup> and other stakeholders, the Parliament elected two members of the Judicial Council from the ranks of renowned lawyers, one of whom was proposed by the President of the country.

The new Law on Judicial Council,<sup>64</sup> adopted in May 2019, defines the conditions governing who may be elected as a member of the Judicial Council of the Republic of North Macedonia upon the proposal of the President of the country, and elected by the Parliament of the Republic of North Macedonia. In pursuance with recommendations contained in the Priebe Report<sup>65</sup> and of the EC,<sup>66</sup> a new definition was adopted of the term 'renowned lawyer'.<sup>67</sup> Thus, the Parliament may elect as a member of the Council, upon the proposal of the President of the country, a candidate who must be a national of the Republic of North Macedonia, then who has not been convicted with a legally valid judgement for the crime of abuse of official duties and powers or for other crime to a prison sentence of at least six months, which makes the candidate not qualified for the office of member of the Council. In addition, the candidate must have at least 15 years of experience in the legal profession, must have passed the bar exam and must be a legal professional, who has become renowned on the grounds of their scientific or professional work or public engagement, who enjoys a good reputation and has integrity required for the discharge of duties of a member of the Judicial Council. Furthermore, the Law defines who may be elected as a member of the Judicial Council of the Republic of North Macedonia, hence referring to university law professors, lawyers, former judges of the Constitutional Court of the Republic of North Macedonia, judges at international courts and other renowned lawyers. However, the Blueprint Judicial Reform Group considers that the application of these provisions still remains problematic "since one cannot see whether legal requirements defining the concept of a 'renowned

59 According to the address of the President of the Judicial Council delivered at the Public Policy Dialogue. Source: Ibid

60 Judicial Council of the Republic of North Macedonia, *Press Release on the 305<sup>th</sup> Session held on 25 April 2019*.

61 Judicial Council of the Republic of North Macedonia, *Press Release on the 321<sup>st</sup> Session held on 22 October 2019*.

62 European Policy Institute, Public Policy Brief- Implementation of the 2017-2022 Justice System Reform Strategy.

63 "Граѓанските Организации Побараа Итен Избор и Именување На Кадар Во Повеќе Институции и Тела." (*Civil society organizations demand urgent election and appointment of staff at a number of institutions and bodies*).

64 Official Gazette of the Republic of North Macedonia No. 102/2019, Law on the Judicial Council of the Republic of North Macedonia.

65 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."

66 The former Yugoslav Republic of Macedonia 2016 Report, European Commission.

67 Article 11 of the Law on the Judicial Council of the Republic of North Macedonia, Official Gazette of the Republic of North Macedonia No. 102/2019.

lawyer' have been met or not"<sup>68</sup> Thus, according to the Blueprint Judicial Reform Group the practice continues of electing as members of the Judicial Council candidates proposed by the President of the State and elected by the Parliament, who have years of service in the executive or in the judicial branch, while their CVs do not contain any data, based upon which one could establish whether such candidates satisfy the legal requirements governing the term 'renowned lawyer'.<sup>69</sup>

The Judicial Council published on time the public advertisement for election of a member of the Judicial Council coming from non-majority communities in the country. The procedure for election of this member of the Council was pursued in line with the new Law on the Judicial Council.<sup>70</sup> The Election Panel was established transparently and in line with the law, being composed of a President, one member and their deputies coming from the Association of Judges and one member and a deputy coming from the ranks of representatives of associations and foundations working for more than five years in areas of human rights and the rule of law. Based on the summed-up results from the voting for election, on 22 January 2020 a member of the Judicial Council of the Republic of North Macedonia was elected from the ranks of judges belonging to the non-majority community in the Republic of North Macedonia.<sup>71</sup>

"Despite the fact that the relevant provision of the Law on the Judicial Council, facilitated expanding the right to access to the Judicial Council, enabling thus every citizens to file a request for establishment of the responsibility of a given judge, yet the workload of the Judicial Council in discharging its duties in this context is overwhelming and thus the threat arises that the Judicial Council will not be able to fulfil its other legally prescribed duties".<sup>72</sup>

The Judicial Council started pursuing a number of project-supported activities with a view to consistently implementing the new Law. The Judicial Council<sup>73</sup> drafted the Rules of Procedure of the Judicial Council of the Republic of North Macedonia,<sup>74</sup> as well as other secondary legislation, required under the Law on the Judicial Council, including the Rulebook on the ranking of candidates for election as judges trained at the Academy for Judges and Public Prosecutors, which was adopted on 26 December 2019, which regulates the manner of ranking of candidates from the list of candidates submitted by the Academy for Judges and Public Prosecutors, who applied for election as judges at first instance courts. Under the old Law, this ranking was established by the Academy for Judges and Public Prosecutors.<sup>75</sup> The Judicial Council of the Republic of North Macedonia drafted<sup>76</sup> and adopted on 4 February 2020 the Rulebook on the ranking of candidates for election as judges at higher instance courts.<sup>77</sup>

68 Блупринт група за правосудство, "Реакција По Повод Изборот На Член На Судскиот Совет На РСМ." (Blueprint Judicial Reform Group, *Reaction upon the election of a member of the Judicial Council of the Republic of North Macedonia*).

69 Ibid.

70 Official Gazette of the Republic of North Macedonia No. 102/2019, Law on the Judicial Council of the Republic of North Macedonia.

71 Judicial Council of the Republic of North Macedonia, *Press Release*.

72 European Policy Institute, *Public Policy Brief- Implementation of the 2017-2022 Justice System Reform Strategy*.

73 Under the IPA Project- *Support to the Justice System Reforms*.

74 Published in the Official Gazette of the Republic of North Macedonia No. 274/2019.

75 European Policy Institute, *Public Policy Brief- Implementation of the 2017-2022 Justice System Reform Strategy*.

76 This Rulebook was developed under the IPA Project *Support to the Justice System Reforms*.

77 Contribution by the Ministry of Justice to the Shadow Report.

Under a project funded by the Kingdom of the Netherlands, and implemented by the Centre for Legal Research and Analysis and with the support under the IPA Project *Support to the Justice System Reforms*, there are on-going activities for the development of a methodology, supported by indicators of the complexity of cases and a separate Rulebook on the evaluation, i.e. for assessment of judges themselves. “This methodology is of major importance, both in terms of determining the approximate quota of cases to be dealt with by judges within a month, and in terms of further guiding the upcoming activities of the Judicial Council for revision of rulebooks for systematization of job positions, i.e. determining the required number of judges and judicial administrative officers. This Rulebook is also greatly important for the evaluation of the work of courts and of judges that will be assessed against realistic and objective criteria, while taking into consideration the complexity of cases. Therefore, it would be most appropriate if all courts and judges in the country made their contribution to the development of the Rulebook on the evaluation of judges<sup>78</sup>.”<sup>79</sup> Other on-going projects are the following: Support to the Justice System Reforms, the Human Resource Strategy, Functional Analysis of the Human Resources of the Judicial Council, and Strategic Plan of the Judicial Council.<sup>80</sup>

In 2019, the Judicial Council had 35 sessions, as different from 2018 when it had 23 sessions.<sup>81</sup>

Before the Parliament of the Republic of North Macedonia dissolved in February 2020, after a delay of almost a whole year, the Parliament adopted the amendments and supplements to the Law on the Council of Public Prosecutors.<sup>82</sup> According to the said amendments, the Council is entrusted with more duties, i.e. the Council now has the mandate to decide upon a filed request for establishment of disciplinary responsibility of a member of the Council. The amendment has the goal of enhancing the responsibility of members of the Council in their work, while they perform their duties as members of the Council, prompting their pro-active approach and the proper and lawful performance of their duties. A new duty of the Council of Public Prosecutors is the duty to directly inspect the work of Public Prosecutors. The Law envisages enhanced transparency, i.e. public work of the Council. Furthermore, a new chapter is added, which elaborates the procedure for dismissal of a member of the Council. In addition, a Chapter is introduced, which regulates the procedure for exclusion of a member of the Council from the work of the Council of Public Prosecutors. There are also changes in the manner, in which members of the Council are elected and in the voting procedure.

78 Judges participating in the discussions under the Public Policy Dialogue –*Implementation of the 2017–2022 Justice System Reform Strategy*, considered that it was necessary that judges themselves make their contribution to the development of the Rulebook on the Evaluation of Judges. This discussion is documented at: European Policy Institute, *Public Policy Brief- Implementation of the 2017–2022 Justice System Reform Strategy*.

79 European Policy Institute, *Public Policy Brief- Implementation of the 2017–2022 Justice System Reform Strategy*”

80 President of the Judicial Council of the Republic of North Macedonia, *Communication from the President of the Judicial Council of the Republic of North Macedonia to the European Policy Institute*.

81 Ibid.

82 Parliament of the Republic of North Macedonia, *135<sup>th</sup> Session of the Parliament of the Republic of North Macedonia*.

In August 2019, the Council of Public Prosecutors elected its new President.<sup>83</sup> On 12 December 2019, a member of the Council of Public Prosecutors of the Republic of North Macedonia coming from the ranks of public prosecutors was elected.<sup>84</sup> At its session held on 4 February 2020,<sup>85</sup> the Parliament of the Republic of North Macedonia elected a member of the Council of Public Prosecutors.

In the reporting period, both the Judicial Council<sup>86</sup> and the Council of Public Prosecutors<sup>87</sup> strengthened the transparency and accountability in their work. The advancements in the transparency and accountability are especially evident in the work of the Judicial Council. Thus, on a number of occasions, the Judicial Council defended the independence of judges, while pro-actively presenting public statements on issues within its purview and on current developments in the judiciary.<sup>88</sup> However, it is necessary that both Councils publish their respective decisions, press releases in a timely fashion, as well as that they provide detailed reasoning of decisions on election of judges and public prosecutors, respectively.

Despite the fact that the new Law on the Judicial Council of the Republic of North Macedonia precisely defines the term 'renowned lawyer', still there are reactions to the election of the member of the Judicial Council, proposed by the President of the country and elected by the Parliament.

The Judicial Council started pursuing a number of project-supported activities with a view to consistently implementing the new Law on the Judicial Council. Under such projects, the Judicial Council drafted and adopted the Rules of Procedure of the Judicial Council of the Republic of North Macedonia, the Rulebook on the ranking of candidates for judges trained at the Academy for Judges and Public Prosecutors and the Rulebook on the ranking of candidates for election as judges at higher instance courts. There are on-going activities for developing a methodology, supported by indicators of the complexity of cases and a separate Rulebook on the Evaluation of Judges. It would be therefore most appropriate if all judges and courts in the country made their contribution to the development of the Rulebook on the Evaluation of Judges.

Before the Parliament of the Republic of North Macedonia dissolved in February 2020, after a delay of almost a whole year, the Parliament adopted the amendments and supplements to the Law on the Council of Public Prosecutors. This Law needs to be consistently implemented.

There are improvements in the transparency and accountability in the work of the Judicial Council and of the Council of Public Prosecutors. However, stronger commitments are needed in this regard. The improvements in the transparency and accountability are especially evident in the work of the Judicial Council.

83 Правдиго, "Избран Новиот Претседател На Советот На Јавни Обвинители." (Pravdiko, *New President of the Council of Public Prosecutors Elected*).

84 Council of Public Prosecutors, *Press Release*.

85 Parliament of the Republic of North Macedonia, *Decision on the Election of a Member of the Council of Public Prosecutors of the Republic of North Macedonia*.

86 Court Portal of the Republic of North Macedonia, *Court portal*.

87 Council of Public Prosecutors, *Council of Public Prosecutors*.

88 President of the Judicial Council of the Republic of North Macedonia, *Communication from the President of the Judicial Council of the Republic of North Macedonia to the European Policy Institute*.



## INDEPENDENCE AND IMPARTIALITY

Part of the activities and measures set forth under the Justice System Reform Strategy,<sup>89</sup> relating to independence and impartiality were implemented with the adoption of the third set of amendments to the Law on Courts and the new Law on the Judicial Council. The adoption of the Law on the Public Prosecutor's Office and the Law Amending and Supplementing the Law on the Council of Public Prosecutors is a contribution to the enhancement of the independence of the justice system.<sup>90</sup>

The last Report of the State Department on Human Rights<sup>91</sup> underlines that the Government demonstrated greater respect for judicial independence and impartiality compared with previous years. However, limited judicial independence, politicization of the judicial oversight body, and inadequate funding of the judiciary continued to hamper court operations and effectiveness.<sup>92</sup>

Certain representatives of political parties and high-ranking Government officials raised the issue of background checks i.e. vetting of judges and public prosecutors. The issue of vetting of judges was raised in light of the low level of public trust in the judiciary, then cases involving politicians, in which the statute of limitations expires very easily, different criteria used in the penal policy and other problematic issues, which increased the pressure for examining the work of judges and public prosecutors.<sup>93</sup> The views of the international community are much more reserved or more precisely they are opposed to vetting in the Republic of North Macedonia. In this context, in 2017,<sup>94</sup> the Priebe Report stated that a general vetting of all judges is not recommended "as judicial misbehaviour is by no means universal" and "there is a small number of judges in powerful positions who continue to serve and promote political interests." This minority of politically-influenced judges should be subject to effective professional and ethical rules and, where evidence is available to prove criminal responsibility, should be made criminally liable for their misconduct.<sup>95</sup> At the XIV meeting of the Justice and Home Affairs Sub-Committee,<sup>96</sup> held in November 2019, representatives of the European Commission presented the EC position, according to which first existing mechanisms<sup>97</sup> should be applied for checking judges and public prosecutors, while vetting should be used only as a measure of last resort, in case regular mechanisms do not produce results.

89 Ministry of Justice, 2017-2022 Justice System Reform Strategy and Action Plan.

90 Parliament of the Republic of North Macedonia, 135<sup>th</sup> Session of the Parliament of the Republic of North Macedonia.

91 State Department, "North Macedonia 2019 Human Rights Report."

92 Ibid.

93 Contribution by the Ministry of Justice to this Shadow Report.

94 Senior Experts' Group, "The Former Yugoslav Republic of Macedonia: Assessment and Recommendations of the Senior Experts' Group on Systemic Rule of Law Issues 2017."

95 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."

96 Contribution by the Ministry of Justice to this Shadow Report.

97 The State Commission for the Prevention of Corruption and the Judicial Council of the Republic of North Macedonia, by examining statements of conflict of interests, assets declarations, disciplinary proceedings, etc.



The public policy dialogue organized by the EPI<sup>98</sup> and focused on the issue of vetting produced a number of conclusions. Vetting as an extraordinary measure would produce extraordinary problems, especially considering that the vetting process in the country was announced in the pre-election context and was not clearly defined, preventing thus any discussion about any eventual results from this process. Experiences from the Region point to the need of being especially cautious and engaging in an all-inclusive debate about the vetting process, while according to experts the better solution, given the circumstances in the country, would be checks of the integrity and of the capabilities, by deploying existing institutions.<sup>99</sup> The President of the Judicial Council openly opposed vetting in the judiciary.<sup>100</sup> The vetting process could call into question the independence of the justice system and the attained level of efficiency of the judiciary.<sup>101</sup> In addition, the vetting issue infringes upon judges' independence, which is guaranteed under the Constitution, and its implementation would require Constitutional amendments.<sup>102</sup> In light of the above stated, it could be concluded that the potential risks of negative consequences and outcome of the vetting greatly outweigh the possible positive effects of the vetting. Therefore, the approach towards vetting in the judiciary should be especially cautious, since an extraordinary measure could very easily produce extraordinary problems, with which the institutions in the country do not have the capacity to deal.<sup>103</sup>

In addition to the independence of the judiciary, the independence of the public prosecution service is also of great importance for the overall independence of the justice system. The Law on the Public Prosecutor's Office was adopted in February 2020, in a shortened parliamentary procedure.<sup>104</sup> The Working Group tasked with drafting this Law was established on 1 November 2017, and representatives of civil society organizations formally did not participate in its work<sup>105</sup>. Having filed a request to the Ministry of Justice for participation in this Working Group, a representative of the Blueprint Judicial Reform Group was included in this Working Group, but took part only in a few meetings.<sup>106</sup> After long political negotiations on a key importance law related to the organizational set-up of the public prosecution system, on 28-29 January 2020, at the Parliament of the Republic of North Macedonia, there was a public hearing elaborating upon solutions offered under this Law. Political bargaining for a Law, which is part of the group of systemic laws and which regulates the organizational set-up and the independence of the public prosecution service is unacceptable. In addition, as different from the proposed amendments to the Law on Courts and the draft of the new Law on the Judicial Council, this Law was not submitted to the Venice Commission for its opinion. The only opinion that the Venice Commission has given about the public prosecution service, i.e. about the Law on the Public Prosecutor's Office and the Law on the Council

98 European Policy Institute, *Policy Dialogue – Vetting as an Extraordinary Measure will Create Extraordinary Problems*.

99 Ibid.

100 President of the Judicial Council of the Republic of North Macedonia, *Communication from the President of the Judicial Council of the Republic of North Macedonia to the European Policy Institute*.

101 European Policy Institute *Policy Dialogue – Vetting as an Extraordinary Measure will Create Extraordinary Problems*.

102 Ibid.

103 д-р Денис Прешова, "Ветинг Во Судството: Од Вонредна Мерка До Вонредни Проблеми." (Denis Preshova, Ph.D. *Vetting in the Judiciary: From an Extraordinary Measure over to Extraordinary Problems*).

104 Parliament of the Republic of North Macedonia, *135<sup>th</sup> Session of the Parliament of the Republic of North Macedonia*.

105 Аврамовски et al., "Анализа на спроведувањето на Стратегијата за реформа на правосудниот сектор (2017-2022) за периодот 2018/2019." (Avramovski et al. *Analysis of the implementation of the 2017-2022 Justice System Reform Strategy in the 2018/2019 period*).

106 Contribution by the Open Society Foundation to this Report, submitted on 29 April 2019.

of Public Prosecutors, dates back to 2007, i.e. more than a decade ago.<sup>107</sup> Some of the solutions envisaged in this Law facilitate the implementation of recommendations presented in the Priebe Reports, the recommendations of the Group of States against Corruption (GRECO) and the measures set forth under the Justice System Reform Strategy. One of the reasons for adoption of this Law cited in the draft of the Law itself<sup>108</sup> is the need to harmonize this Law with the Law on Criminal Procedure. Yet the issue, which still remains open<sup>109</sup> is the issue of regulating the use of materials of intercepted communications as evidence under the Law on the Public Prosecutor's Office,<sup>110</sup> considering that the use of evidence and the principle of free assessment of evidence is regulated under the Law on Criminal Procedure. In addition, there is still no answer to the dilemma "whether a law may restrict the use of certain type of evidence regarding which the national case law and the case law of the European Court of Human Rights have established that the purpose for which such material has been gathered justifies its use."<sup>111</sup>

It is positive that on a number of occasions the Judicial Council stood in defence of the judiciary. With a view to protecting the person and integrity of judges, the Judicial Council informed the public at large that that far no procedures had been instituted for establishment of responsibility, nor an application has been filed against Judge Dobrila Kacarska in the 'racket case'.<sup>112</sup> The Judicial Council strongly reacted to the threats by the Public Prosecutor against Organized Crime targeted at judges of the Appellate Court, endeavouring to protect the person and integrity of judges.<sup>113</sup> The Skopje Appellate Court also showed a pro-active approach in protecting the independence of the judiciary and the integrity of judges in this specific case.<sup>114</sup>

It is more than evident that the indictment against the Special Public Prosecutor in the 'racket case' cast a dark shadow on the independence of the public prosecution service, and especially on the work of the Special Public Prosecutor's Office. However, the reasonable suspicions about the involvement of the Special Public Prosecutor and the procedure instituted against her in the specific case should not call into question all procedures instituted by the Special Public Prosecutor's Office and the integrity of the other public prosecutors working in the Special Public Prosecutor's Office. The SPPO set a good example of a functioning public prosecutor's office in terms of organizational set-up, human and material resources, as well as financial independence.<sup>115</sup> However, this should serve as a reminder of the importance of the process of election of judges and public prosecutors and the weight attached to their integrity, as an indispensable element for an independent justice system.<sup>116</sup>

107 Venice Commission, "Draft Opinion on the Draft Law on the Public Prosecutors Office and the Draft Law on the Council of Public Prosecutors of the Former Yugoslav Republic of Macedonia."

108 Parliament of the Republic of North Macedonia, 135<sup>th</sup> Session of the Parliament of the Republic of North Macedonia.

109 This issue was raised at the expert debate on the Draft Law on the Public Prosecutor's Office, which was held on 28-29 January at the Parliament of the Republic of North Macedonia, Source: MIA - *Great interest in the debate on the Law on the Public Prosecutor's Office*. The Blueprint Judicial Reform Group also had comments on such solutions. Source: Blueprint Judicial Reform Group, *Comments of the Blueprint Judicial Reform Group on the Draft Law on the Public Prosecutor's Office*.

110 Article 110 of the Law on the Public Prosecutor's Office.

111 Блупринт група за правосудство, "Коментари На Блупринт-Групата За Предлог-Законот За Јавното Обвинителство." (Blueprint Judicial Reform Group, *Comments of the Blueprint Judicial Reform Group on the Draft Law on the Public Prosecutor's Office*).

112 Judicial Council of the Republic of North Macedonia, *Press Release*.

113 President of the Judicial Council of the Republic of North Macedonia, *Communication from the President of the Judicial Council of the Republic of North Macedonia to the European Policy Institute*.

114 Skopje Appellate court, *Press Release*.

115 European Policy Institute, *Public Policy Brief- Implementation of the 2017-2022 Justice System Reform Strategy*.

116 European Policy Institute, *Policy Dialogue – Vetting as an Extraordinary Measure will Create Extraordinary Problems*.

An important element of independence of the justice system is of course financial independence. The Judicial Budget Council has made significant efforts to improve the material status of judges. There are on-going negotiations with the executive power regarding the increase of the coefficient for calculating the salaries.<sup>117</sup> However, the fact remains that the judicial power is not sufficiently funded. “The judiciary cannot be fully independent if it is not financially independent and if it does not have the freedom to decide on the expenditures, running activities and procurements. In the country, the judiciary is still allocated twice less the funds than envisaged by law. In addition, regarding all procurements and recruitments, the judiciary must first receive an approval from the Ministry of Finance. The judicial budget *per capita* is the lowest, compared with other 32 European countries.”<sup>118</sup> Judges agree that the judiciary needs to have its own budget and its treasury system, governed by a body that will decide on recruitments and the needs of the judiciary. This would help attain greater independence, while procurements and recruitments would be done without the need to first get an approval from the executive power.<sup>119</sup>

It is necessary to increase the funds allocated to the public prosecution service, this service being of key importance in countering crime and corruption. The Law on the Public Prosecutor’s Office<sup>120</sup> envisages that the funds for the work of the public prosecution service are to amount to at least 0.4% of the Budget of the Republic of North Macedonia. Such a provision does not correspond at all to the commitment to guaranteed provision of minimum finances, nor does it represent a significant increase of the already allocated amount of funds. In 2020, the Ministry of Finance approved for the Public Prosecutor’s Office of the Republic of North Macedonia funds in the amount of MKD 773,164,000, which is an increase compared to the budget approved in 2019 (MKD 774,765,000) and in 2018 (MKD 661,645,000). “In order to ensure the successful functioning and to guarantee the independence of the public prosecution service, the Council of Public Prosecutors needs to have its own budget, that it will manage independently, by autonomously deciding on the needs and on the public procurements for the public prosecution service”.<sup>121</sup>

### ACCMIS System

The supervision of the ACCMIS system started in 2019 and was completed as planned, with the Supervision Commission having inspected 16 courts. June 2019, inclusive, there was supervision of 8 courts, and to the end of the year the other 8 courts were inspected.<sup>122</sup> There was progress noted in the application of the ACCMIS system in courts. The case management in courts is done with the ACCMIS system, while the distribution and redistribution of cases is done electronically and thus far there have been no instances recorded of cases being distributed by hand.<sup>123</sup>

The Law on Case Management in Courts was adopted in February 2020, in a shortened parliamentary procedure.<sup>124</sup>

<sup>117</sup> European Policy Institute *Public Policy Brief- Implementation of the 2017-2022 Justice System Reform Strategy*.

<sup>118</sup> Centre for Legal Research and Analysis *Financial Independence of the Judiciary*.

<sup>119</sup> Ibid.

<sup>120</sup> Official Gazette of the Republic of North Macedonia No. 42/2020, *Law on the Public Prosecutor’s Office*.

<sup>121</sup> Blueprint Judicial Reform Group, *Analysis of the Capacities and Resources of the Public Prosecutor’s Office of the Republic of North Macedonia*.

<sup>122</sup> Contribution by the Ministry of Justice to this Shadow Report.

<sup>123</sup> Government of the Republic of North Macedonia, *Regular supervision of the ACCMIS system in courts – Cases are distributed electronically- there are no cases distributed by hand*.

<sup>124</sup> Parliament of the Republic of North Macedonia, *131<sup>st</sup> Session of the Parliament of the Republic of North Macedonia*.

After the submission of the Report on the inspection of the application of the ACCMIS system and the Court Rules of Procedure<sup>125</sup>, on 8 July 2019, the Skopje Basic Public Prosecutor's Office filed a proposal for indictment for the crime of *abuse of official duties* against the former President of the Skopje First Instance Criminal Court. On 5 February 2018, there was a request sent to the Ministry of Justice to declassify the Report, based on the review of the Report on the inspection of the functionality of the IT system and the inspection of the application of the provisions of the Court Rules of Procedure. The Ministry of Justice replied to the request for declassification of the Report on 22 February 2018, after which there was an intensive investigation of the case.<sup>126</sup> The court procedure in this case is pending.

As regards the application of the ACCMIS system, "it is necessary to revise and advance the court IT system. It is also needed to harmonize the data under the ACCMIS system. The Judicial Council, the Supreme Court and the Ministry of Justice produce different figures that are fed into the ACCMIS. If there is a request for an exact number of investigations in a certain period, or assessment of indictments, petty claim disputes, provisional measures, then the exact numbers need to be extracted manually. Some of the judicial administrative officers manually collect these numbers and submit them as reports to the Supreme Court of the Republic of Macedonia. It is necessary to assess the work of judges at the Criminal Chamber, in addition to the assessment of the President of the Criminal Chamber."<sup>127</sup>

Certain representatives of political parties and high-ranking Government officials raised the issue of background checks i.e. vetting of judges and public prosecutors. The issue of vetting of judges was raised in light of the low level of public trust in the judiciary, then cases involving politicians, in which the statute of limitations expires very easily, different criteria used in the penal policy and other problematic issues, which increased the pressure for monitoring the work of judges and public prosecutors. However, the approach towards vetting in the judiciary should be especially cautious, since an extraordinary measure could very easily produce extraordinary problems, with which the institutions in the country do not have the appropriate capacity to deal.

The Law on the Public Prosecutor's Office was adopted in February 2020, in a shorten procedure. After long political negotiations concerning the organizational set-up of the public prosecution system, on 28 and 29 January 2020, at the Parliament of the Republic of North Macedonia there was a public hearing on the solutions offered in the said Law. Political bargaining for a Law, which is part of the group of systemic laws and which regulates the organizational set-up and the independence of the public prosecution service is unacceptable.

It is positive that on a number of occasions the Judicial Council stood in defence of the independence of the judiciary, while protecting the integrity of judges.

It is necessary to increase the funds allocated to the judiciary and to public prosecution service. Judges agree that the judiciary needs to have its own budget and its treasury system, governed by a body that will decide on recruitments and the needs of the judiciary. This would help attain greater independence, while procurements and recruitments would be done without the need to first get an approval from the executive power.

125 Ministry of Justice, *Report following the inspection of the functionality of the Information System and supervision of the application of the provisions of the Court Rules of Procedure in courts*.

126 Skopje Basic Public Prosecutor's Office, *Indictment filed against abuse of the Information Court Case Management Information System – ACCMIS*.

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

There was progress noted in the application of the ACCMIS system in courts. The case management in courts is done with the ACCMIS system, while the distribution and redistribution of cases is done electronically and thus far there have been no instances recorded of cases being distributed by hand. As regards the application of the ACCMIS system, it is necessary to advance the court IT system. It is also needed to harmonize data under the ACCMIS system.

## ACCOUNTABILITY

The amendments to the Law on Courts,<sup>128</sup> related to the grounds for accountability of judges serve the purpose of strengthening the independence of judges and of the judiciary. The amendments also serve to implement the recommendations presented in the GRECO Report<sup>129</sup> and to implement the measures set forth under the Justice System Reform Strategy. The Venice Commission too favourably assessed these amendments.<sup>130</sup> The amendments help better define the grounds for dismissal,<sup>131</sup> taking thus into consideration the gravity of the violation and the culpability of the judge.

The Law on the Judicial Council incorporates recommendations given by the Venice Commission.<sup>132</sup> The Law defines the procedure for establishing responsibility of presidents and of judges, as well as the grounds for institution of disciplinary proceedings against a member of the Council, defining as well the procedure itself.<sup>133</sup>

In 2019, the Judicial Council had 35 sessions, as different from 2018 when it had 23 sessions. This is primarily owed to the determination to complete procedures for establishment of responsibility of presidents and judges instituted earlier, as well as to consistently apply the new Law on the Judicial Council.<sup>134</sup>

The new Law on the Judicial Council<sup>135</sup> expands the right of natural and legal persons to access the Judicial Council, by enabling them to file a request for establishment of responsibility of judges and presidents of courts. This enhanced the responsibility of members of the Judicial Council in terms of determining whether filed requests have any grounds.<sup>136</sup> As different from 2018, when requests for establishment of responsibility were filed against 10 judges, in 2019, there were requests filed for establishment of responsibility of 107 judges or presidents of courts. In 2019 and in the period until March 2020, the Judicial Council dismissed 1 president of a court and 5 judges, of whom 4 in procedures pending

128 Official Gazette of the Republic of North Macedonia No. 96/2019, Law Amending and Supplementing the Law on Courts.

129 Adopted by GRECO at its 80<sup>th</sup> Session IV EVALUATION ROUND Corruption Prevention in Respect of members of parliament, judges and prosecutors Second Compliance Report

130 Barrett et al., "Opinion on the Draft Amendments to the Law on Courts, Adopted by the Venice Commission at Its 117th Plenary Session."

131 Official Gazette of the Republic of North Macedonia No. 96/2019, Law Amending and Supplementing the Law on Courts.

132 Barrett, Dimitrov, and RIBIČIĆ, "Opinion on the Draft Law on the Judicial Council, Adopted by the Venice Commission at Its 118th Plenary Session."

133 Official Gazette of the Republic of North Macedonia No. 102/2019, Law on the Judicial Council of the Republic of North Macedonia.

134 President of the Judicial Council of the Republic of North Macedonia, *Communication from the President of the Judicial Council of the Republic of North Macedonia to the European Policy Institute*.

135 Official Gazette of the Republic of North Macedonia No. 102/2019, Law on the Judicial Council of the Republic of North Macedonia.

136 President of the Judicial Council of the Republic of North Macedonia, *Communication from the President of the Judicial Council of the Republic of North Macedonia to the European Policy Institute*.

since 2017 and two in procedures pending since 2019. Two judges were deprived of their judicial immunity.<sup>137</sup> Hence, in May 2019, the Judicial Council adopted a decision under which one judge was deprived of immunity and a decision approving the request for pre-trial detention of a judge.<sup>138</sup> On 31 December 2019, the Judicial Council deprived one judge of his immunity, but denied the request of the Public Prosecutor for a 30-day pre-trial detention of another judge and a member of the Council.<sup>139</sup>

The Law on the Public Prosecutor's Office<sup>140</sup> defines the grounds for termination of office, dismissal and disciplinary responsibility of public prosecutors. It is positive that as in the case with the Law on Courts, this Law too clearly defines the grounds for dismissal, envisaging that for a minor violation of the grounds defining grave disciplinary violations, the concerned public prosecutor is to be subject of a disciplinary sanction, instead of being dismissed. In respect of grounds for dismissal of public prosecutors the gravity of the violation and the liability of the public prosecutor are taken into consideration.<sup>141</sup> The Law defines the required majority of votes by which the Council of Public Prosecutors may dismiss public prosecutors. The Rule-book governing the procedure for establishing responsibility of public prosecutors 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.<sup>142</sup> It remains to be seen how the Law on the Public Prosecutor's Office will be applied in the practice.

The amendments to the Law on Courts, which entered into force in May 2019, related to the grounds for accountability of judges serve the purpose of strengthening the independence of judges and of the judiciary. The amendments also serve to implement the recommendations presented in the GRECO Report, the Venice Commission recommendations and to implement the measures set forth under the Justice System Reform Strategy. The amendments are also in line with recommendations given by judges themselves.

The new Law on the Judicial Council defines the procedure for establishing responsibility of presidents and of judges, as well as the grounds for institution of disciplinary proceedings against a member of the Council, defining as well the procedure itself. The new Law on the Judicial Council expands the right of natural and legal persons to access the Judicial Council, by enabling them to file a request for establishment of responsibility of judges and presidents of courts. This enhanced the responsibility of members of the Judicial Council in terms of determining whether filed requests have any grounds. As different from 2018 when requests for establishment of responsibility were filed against 10 judges, in 2019, there were requests filed for establishment of the responsibility of 107 judges or presidents of courts. In 2019 and until March 2020, inclusive, the Judicial Council dismissed 1 president and 5 judges, of whom 4 judges in procedures pending since 2017, and two in procedures pending since 2019. Two judges were deprived of their immunity.

The Law on the Public Prosecutor's Office defines the grounds for termination of office, dismissal and disciplinary responsibility of public prosecutors. It remains to be seen how these amendments will be applied in the practice.

137 Ibid.

138 Judicial Council of the Republic of North Macedonia, Press Release of the 306<sup>th</sup> session of the Judicial Council of the Republic of North Macedonia held on 3 May 2019.

139 Judicial Council of the Republic of North Macedonia, Press Release of the 329<sup>th</sup> session of the Judicial Council of the Republic of North Macedonia held on 31 December 2019.

140 Official Gazette of the Republic of North Macedonia No. 42/2020, Law on the Public Prosecutor's Office.

141 Ibid.

142 Ibid.

## PROFESSIONALISM AND COMPETENCE

Recommendation IX of the GRECO Report<sup>143</sup> relating to the enhancement of qualitative rather than quantitative criteria for evaluation of judges were implemented with the adoption of the new Law on the Judicial Council.<sup>144</sup> The Judicial Council is preparing the Rulebook for evaluation of judges. “In light of the role that the new Law grants judges in this process, all judges and courts in the country need to make their contribution in developing this Rulebook.”<sup>145</sup> The Judicial Council evaluated the work of judges and presidents of courts for 2017 and for 2018.<sup>146</sup>

Under the new amendments to the Law on Courts, the criteria for election of judges were changed.<sup>147</sup> According to the amendments the entry into the judicial office will be done only through the Academy for Judges and Public Prosecutors. The only exception is applied to judges at international courts, who provided that they fulfil the general conditions for election to the office of a judge, may be elected as judges in courts of all instances. Under the IPA Project *Support to the Justice System Reforms*, the Judicial Council drafted and then adopted the Rulebook on the ranking of candidates for judges trained at the Academy for Judges and Public Prosecutors (for election as judges at first instance courts) and the Rulebook on the ranking of candidates for election as judges at higher instance courts.<sup>148</sup>

In the context of the issue of transferring a judge to another court and reassigning judges to another chamber, according to the Law on Courts, a judge may be transferred or reassigned for a period of one year, but not more than once in a five year period.<sup>149</sup> “These guarantees were introduced upon the proposal of the Venice Commission, in case of transferring judges to another court or in case of reassigning judges to a lower instance court. Thus, there is a limitation on the calculation of the one-year period for which a judge may be transferred or reassigned. Under the proposed solution, the transfer or reassignment may be done once in five years, at the most. This solution prevents abuse of transfer or reassignment as a form of pressure”.<sup>150</sup>

In terms of legal protection of judges with respect to certain measures undertaken against judges, the right to lodge an appeal with the Appeal Council at the Supreme Court is introduced, as a form of guaranteed legal protection.<sup>151</sup>

In the period from April 2019 to March 2020, the Judicial Council designated 17 presidents of courts *ad interim*, and elected 11 presidents of courts.<sup>152</sup> On 10 September 2019, a decision was adopted appointing a judge at the Supreme Court to work on criminal matters.<sup>153</sup>

143 Adopted by GRECO at its 80<sup>th</sup> Session IV EVALUATION ROUND Corruption Prevention in Respect of members of parliament, judges and prosecutors, Second Compliance Report.

144 Official Gazette of the Republic of North Macedonia No. 102/2019, Law on the Judicial Council of the Republic of North Macedonia.

145 European Policy Institute, *Public Policy Brief- Implementation of the 2017–2022 Justice System Reform Strategy*.

146 Court Portal of the Republic of North Macedonia, *Court Portal*.

147 Official Gazette of the Republic of North Macedonia No. 96/2019, Law Amending and Supplementing the Law on Courts.

148 Contribution by the Ministry of Justice to this Shadow Report.

149 Цоневска et al., “Извештај Во Сенка За Поглавје 23 За Периодот Јуни 2018 – Март 2019 Година.” (Conevska et al. *Shadow Report on Chapter 23 for the period from June 2018 to March 2019*).

150 Цоневска and Камбери, “Процена на влијание на регулативата на законот за судови.” (Conevska and Kamberi *Regulation Impact Assessment of the Law on Courts*).

151 Official Gazette of the Republic of North Macedonia No. 96/2019, Law Amending and Supplementing the Law on Courts.

152 Court Portal of the Republic of North Macedonia, *Court Portal*.

153 Judicial Council of the Republic of North Macedonia, Press Release of the 317<sup>th</sup> session of the Judicial Council of the Republic of North Macedonia held on 10 September 2019.



On 7 February 2020, the Judicial Council adopted a decision for the election of three judges at the Supreme Court, under the public competition published on 27 September 2019, adopting as well as decision for election of one judge at the Supreme Court, under the public competition published on 12 November 2019.<sup>154</sup> At the same session,<sup>155</sup> the Judicial Council adopted a decision for the election of 13 judges at first instance courts, 11 of whom were candidates coming from the Academy for Judges and Public Prosecutors, and two candidates were judges elected in line with the new solution defined under the Law on Courts, which provides for mobility of judges, i.e. judges having experience of at least four consecutive years of serving as a judge in a first instance court until the period of applying for election and who have been favourably evaluated for their work may apply for election as judges in another court. In line the previous legal solution, which provided for the possibility of electing as judges at the Administrative Court candidates who have at least five year experience on legal matters in a state administration body and who have been favourably evaluated for their work, on 2 October 2019 the Judicial Council elected two judges at the Administrative Court. The election was made with unnecessary delays, under the public competition published in January 2019. With the election of these judges all vacancies at the Administrative Court were filled.<sup>156</sup> It took the Judicial Council of the Republic of North Macedonia more than a year to elect six judges at the Skopje Appellate Court. Finally, on 10 February 2020,<sup>157</sup> in line with the old criteria for election under a Law which was applicable at the time of publication of the public competition for election, 3 judges were elected to work on criminal matters, 2 judges to work on civil matters and 1 judge to work on commercial law matters. “Despite the fact that the deadlines for election of judges by the Judicial Council are not defined, it would be a logical presumption that when the formal part of the procedure has been completed the election of judges should be done within the shortest possible period. After a longer period, the interest in these judicial positions was quite great, with more than 90 candidates applying, while the unjustified delays in the election caused the sense of uncertainty among applying candidates, as regards their future career”.<sup>158</sup>

The Blueprint Judicial Reform Group considers that the delays in the election of judges called into question the efficiency and effectiveness of the Judicial Council in electing and dismissing judges.<sup>159</sup> “The Judicial Council is a body that is to take due account of the efficiency of courts and to ensure conditions for unimpeded work of courts. The delays furthermore open the room for speculations about possible external political influences on the work of the Council, which ultimately resulted in the delays and arbitrary treatment”. According to the Blueprint Group, such a situation indeed has an influence on the trust of citizens in the Judicial Council and in the judiciary overall, trust, which in any case is at a very low level.<sup>160</sup>

154 Judicial Council of the Republic of North Macedonia, Press Release of the 332<sup>nd</sup> session of the Judicial Council of the Republic of North Macedonia held on 7 February 2020.

155 Ibid.

156 Monitoring Report on the Work of the Judicial Council – Report No. 2 (reporting period October 2018- January 2019).

157 Judicial Council of the Republic of North Macedonia, Press Release of the continued 320<sup>th</sup> session of the Judicial Council of the Republic of North Macedonia held on 10 February 2020.

158 Blueprint Judicial Reform Group, *The delays in the election of judges calls into question the efficiency and effectiveness of the Judicial Council in electing and dismissing judges*.

159 Ibid.

160 Ibid.



As regards the provisional transfer of judges, the Judicial Council transferred provisionally 5 judges to another court for a period of 1 year, in line with the latest amendments.<sup>161</sup>

The Law on the Public Prosecutor's Office regulates the conditions for election of public prosecutors. This Law incorporates the Priebe recommendations to maintain the Academy for Judges and Prosecutors as the sole point of entry to the judiciary and public prosecution service.<sup>162</sup> According to this Law, only candidates who have completed the training as set forth under the Law on the Academy for Judges and Public Prosecutors may be elected as public prosecutors in basic public prosecutor's offices. Promotion of public prosecutors has also been limited by the stipulated criterion for having sufficient number of years of service as a public prosecutor and for having favourable evaluation of their work. The only exception is the appointment of the Chief Public Prosecutor of the Republic of North Macedonia. Thus, a candidate who has at least 10 consecutive years of service as a public prosecutor or as a judge in criminal matters may be appointed as the chief public prosecutor.<sup>163</sup>

The Law on the Public Prosecutor's Office offers a solution similar to the one envisaged under the Law on Courts with respect to deliberation in cases by younger judges<sup>164</sup>. Thus, this Law stipulates that a public prosecutor at a basic public prosecutor's office (BPPO), having up to three years of service as a public prosecutors may process, at the public prosecutor's office where they have been designated, only cases, which according to the law fall within the jurisdiction of first instance courts of original jurisdiction.<sup>165</sup>

The procedure for evaluation of the work of public prosecutions is still not consistently applied in the practice.<sup>166</sup> Furthermore, the work of public prosecutor at the SPPO has not been evaluated in the past period. This seems to limit the right to promotion within the public prosecution service. Therefore, it is necessary to consistently apply provisions on evaluation of the work of public prosecutors.

On 17 December 2019,<sup>167</sup> the Council of Public Prosecutors elected 5 public prosecutors at basic public prosecutor's offices, while on 17 January 2020,<sup>168</sup> it elected another 4 public prosecutors at public prosecutor's offices.

Upon the introduction of the state of emergency in the country, the Government adopted a Decree<sup>169</sup> with the force of law regulating the status of lay judges whose term of offices ends in the course of the state of emergency period. According to the Decree,<sup>170</sup> lay judges whose term of office ends in the course of the state of emergency will have their term of office extended until the completion of the court procedure in the pending court case.

161 Official Gazette of the Republic of North Macedonia No. 96/2019, Law Amending and Supplementing the Law on Courts.

162 Senior Experts' Group, "The Former Yugoslav Republic of Macedonia: Assessment and Recommendations of the Senior Experts' Group on Systemic Rule of Law Issues 2017."

163 Official Gazette of the Republic of North Macedonia No. 42/2020, Law on the Public Prosecutor's Office.

164 With respect to the analysis of provisions regulating the work of judges with up to two years of service, see at Цонеvsка et al., "Извештај Во Сенка За Поглавје 23 За Периодот Јуни 2018 – Март 2019 Година.(Conevska et al. *Shadow Report on Chapter 23 for the period from June 2018 to March 2019*).

165 Official Gazette of the Republic of North Macedonia No. 42/2020, Law on the Public Prosecutor's Office.

166 Expert Debate at the Parliament on the Law on the Public Prosecutor's Office.

167 Council of Public Prosecutors, *Decision on Election of Public Prosecutors*.

168 Council of Public Prosecutors *Press Release from the 85<sup>th</sup> Session of the Council of Public Prosecutors of the Republic of North Macedonia*.

169 Government of the Republic of North Macedonia, *Decree with the force of law on the deadlines in court procedures during the state of emergency and on the work of courts and public prosecutor's offices*.

170 Ibid.

The new Law on the Judicial Council is already being applied in terms of evaluation of judges and presidents of courts. The Judicial Council is preparing the Rulebook on the evaluation of judges. The new Law on the Judicial Council envisages that the evaluation against qualitative criteria is to be done by judges themselves, while the Judicial Council would only sum up the results. Therefore, it would be most appropriate if all judges and courts in the country made their contribution to the preparation of the said Rulebook.

Under the IPA Project Support to the Justice System Reforms, the Judicial Council drafted and then adopted the Rulebook on the ranking of candidates for judges trained at the Academy for Judges and Public Prosecutors (for election as judges at first instance courts) and the Rulebook on the ranking of candidates for election as judges at higher instance courts. The Blueprint Judicial Reform Group considers that the delays in the election of judges at the Skopje Appellate Court bring into question the efficiency and effectiveness of the Judicial Council in electing and dismissing judges.

The Law on the Public Prosecutor's Office defines the conditions for election of public prosecutors. This Law incorporates the Priebe recommendations to maintain the Academy for Judges and Prosecutors as the sole point of entry to the judiciary and public prosecution service. Promotion of public prosecutors has also been limited by the set forth criterion for having sufficient number of years of service as public prosecutors and for having favourable evaluation of their work. The only exception is the appointment of the Chief Public Prosecutor of the Republic of North Macedonia. Thus, a candidate who has at least 10 consecutive years of service as a public prosecutor or as a judge in criminal matters may be appointed as the chief public prosecutor.

It is necessary to consistently apply the provisions on evaluation of the work of public prosecutors.

## QUALITY OF JUSTICE

As noted in the previous Shadow Report,<sup>171</sup> in December 2018, the Ministry of Justice prepared an *Analysis of the court network of the Republic of Macedonia*.<sup>172</sup> The optimization of the court network requires a more in-depth analysis of each court individually.<sup>173</sup> Such an analysis has still not been made. According to the amendments and supplements to the Law on Courts,<sup>174</sup> as of 2020 the Gevgelija First Instance Court, the Kavadarci First Instance Court and the Kichevo First Instance Court are courts with expanded jurisdiction. In order to establish the realistic number of required judges and courts, in addition to the already prepared Analysis of the Court Network in the Republic of Macedonia (first instance courts), the following analyses were also prepared: Functional Analysis of Appellate Courts and Functional Analysis of the Supreme Court of the Republic of North Macedonia.<sup>175</sup> In addition, there are on-going activities for the preparation of a Human Resource Strategy for the Judiciary, as well as a methodology, supported by indicators of the complexity of court cases. A functional analysis of the Public Prosecutors Office was also developed.<sup>176</sup>

171 Чаловска, Стојановски, and Јовановски, "Извештај во сенка за Поглавје 23." (Chalovska, Stojanovski and Jovanovski, *Shadow Report on Chapter 23*).

172 Караманди Попчевски and Наумов, "Анализа На Судската Мрежа Во Република Македонија." (Karamandi Popchevska and Naumov *Analysis of the Court Network in the Republic of Macedonia*).

173 Ibid.

174 Official Gazette of the Republic of North Macedonia No. 96/2019, Law Amending and Supplementing the Law on Courts.

175 The functional analyses of appellate courts, of the Supreme Court and the functional analysis of the Public Prosecutor's Office were developed under the project *Enhanced efficiency of the justice system by improving the performances of justice system bodies*, implemented by the Centre for Legal Research and Analysis.

176 Contribution by the Ministry of Justice to this Shadow Report.

The new Law on the Bar Exam,<sup>177</sup> which improves the manner of taking the bar exam, also contributes to improving the quality of justice.

The Academy for Judges and Public Prosecutors (AJPP) continually works to advance the quality of training and to introduce the required topics for training, based on evaluations of the trainings and topics proposed by the Judicial Council, the Council of Public Prosecutors, experts and non-governmental organizations. In February 2020, the AJPP sent a communication<sup>178</sup> to all stakeholders asking for their proposals for topics to be included in the 2021-2022 Programme for Continual Training. In 2019, the AJPP organized trainings in pursuance with the 2019 Catalogue of obligatory continual training for judges and public prosecutors.<sup>179</sup>

In July 2019, the AJPP organized the final exam for the Sixth class of candidates. In May 2019, the AJPP published a public competition for the next Seventh class of candidates.<sup>180</sup> Considering the required number of judges and public prosecutors, it is expected that the next generation of candidates will be the most numerous one. Candidates take the tests in accordance with the Law on the AJPP. However, the training of the Seventh class of candidates has still not started, considering the procedures still pending before the Administrative Court.

“On 8 February 2019, the Ministry of Justice established a Working Group tasked with drafting a new Law on the Academy for Judges and Public Prosecutors. The Working Group is composed of 10 members, among whom the Director of the AJPP, then representatives of the Ministry of Justice, judges, public prosecutors and representatives of civil society organizations. The drafting of the new Law is aimed at eliminating obstacles that the AJPP faces in its work”.<sup>181</sup> However, despite the fact that the Government endorsed this Law in July 2019, the draft Law was still in parliamentary procedure until the dissolving of the Parliament in February 2020.<sup>182</sup>

It is necessary to strengthen the capacities of the Academy, i.e. the premises, mainly training classrooms, but also the budget and the staff if the Academy is expected or is tasked with ensuring larger scope and better training for judges, public prosecutors and auxiliary staff (including professional associates). Upon the admission of the new class of candidates, the AJPP will not have sufficient premises to organize continual trainings at its present seat.

In line with the Law on the AJPP, the Academy published a public competition for lecturers at the Academy.<sup>183</sup> The Deputy Director of the AJPP has still not been appointed.<sup>184</sup>

177 Official Gazette of the Republic of North Macedonia No. 190/2020 Law on the Bar Exam.

178 Academy for Judges and Public Prosecutors, *Communication from the AJPP for proposing topics to be covered by the 2021-2022 General Programme for Continual Training*.

179 Academy for Judges and Public Prosecutors, *webpage of the Academy for Judges and Public Prosecutors*.

180 Ibid.

181 Цоневска et al., “Извештај Во Сенка За Поглавје 23 За Периодот Јуни 2018 – Март 2019 Година.” (Conevska et al. *Shadow Report on Chapter 23 for the period from June 2018 to March 2019*).

182 Parliament of the Republic of North Macedonia, *Session No. 123 of the Parliament of the Republic of North Macedonia*.

183 Academy for Judges and Public Prosecutors, *Call for submission of application for lecturers at the Academy*.

184 Academy for Judges and Public Prosecutors, *webpage of the Academy for Judges and Public Prosecutors*.

The Supreme Court of the Republic of North Macedonia is included in the Superior Courts Network, through its Case Law Department, which serves as the conduit for communication with the Strasbourg Court of Human Rights regarding specific legal issues.<sup>185</sup> In the context of harmonizing the case law, the Case Law Department at the Supreme Court had seven meetings in 2019.<sup>186</sup> In 2019, the Supreme Court held three meetings with representatives of the four Appellate Courts, focused on the harmonization of the case law.<sup>187</sup>

As regards amendments to laws which are to contribute to the improvement of the quality of justice, there have been amendments adopted, *inter alia*, to the enforcement procedure, which are to contribute to attaining social justice, while in the context of Notaries Public, court fees for certain procedures have been abolished. A new Law on Misdemeanours was adopted, followed by activities for the harmonization of substantive laws containing misdemeanour provisions. A new Law on Free Legal Assistance was adopted, which expands the categories of citizens eligible to apply to free legal assistance.<sup>188</sup> There is an on-going project,<sup>189</sup> under which support is provided to local units of the Ministry of Justice to improve the processing of free legal assistance applications, as well as to strengthen their capacities to provide larger scale and better quality legal assistance.<sup>190</sup> Under the same Project, the Ministry of Justice will be supported in implementing a campaign for raising the awareness of citizens about their right to free legal assistance. In this regard, a National Coordination Body was established in January 2020, and then in the city of Bitola the first Local Coordination Body was formed.<sup>191</sup>

The Law on Case Management in Courts was adopted in a shortened parliamentary procedure on 16 February 2020.<sup>192</sup> There are draft laws in parliamentary procedures such as: the draft Law on International Private Law<sup>193</sup>, the draft Law on Criminal Procedure, the draft Law on Pecuniary Compensation to Victims of Violent Crimes and there are activities underway for drafting a new Law on Justice for Children. In the area of civil law, a new Law on Obligations and Contracts is drafted. The Minister of Justice underlined that the adoption of the said Law will be preceded by a longer and inclusive process of debates about the amendments in light of the fact that it is a matter of a systemic law, which regulates every-day relations among citizens.<sup>194</sup> In the civil procedural law area, a Working Group was established tasked with drafting amendments and supplements to the Law on the Litigation Procedure, which thus far has held 6 meetings. The Working Group has regular weekly meetings and it has on board representatives of non-governmental organizations, as well.<sup>195</sup>

185 Стојкова Зафировска, Алексов, and Гоџо, "Прв Национален Извештај Од Матрицата За Мерење На Перформансите и Реформите Во Правосудството." (Stojkova Zafirovska, Aleksov and Godjo, *First National Report under the Matrix Measuring the Performance and Reforms of the Justice System*).

186 Supreme Court, Judgement (2/2020) on the application for free access to information.

187 Supreme Court, Judgement (3/2020) on the application for free access to information.

188 European Policy Institute, *Public Policy Brief- Implementation of the 2017-2022 Justice System Reform Strategy*.

189 The Project *Support to the Legal Assistance System Reforms*, is part of the joint initiative of the European Union and the Council of Europe - Horizontal Facility for the Western Balkans and Turkey.

190 Contribution by the Ministry of Justice to this Shadow Report.

191 Contribution by the Ministry of Justice to this Shadow Report.

192 Parliament of the Republic of North Macedonia, 131<sup>st</sup> Session of the Parliament of the Republic of North Macedonia.

193 Ibid.

194 According to the statement of the Minister of Justice at the Public Policy Dialogue held on 11 December 2019. Source: European Policy Institute, *Public Policy Brief- Implementation of the 2017-2022 Justice System Reform Strategy*.

195 Contribution of the Ministry of Justice to this Shadow Report.

Despite the fact that the Law on Probation has been adopted, the Probation Service is not sufficiently utilized by judges. This Law is of exceptional importance in meting out the type and duration of the sentence. Therefore, it is recommended to organize intensive trainings for judges regarding the application of the Law on Probation, considering that the cooperation with the Probation Service ensures appropriate approach to the individualization of the sentence for each defendant.<sup>196</sup> A positive development is that under the Twinning Project *Strengthening the penal -correctional system and the probation service*,<sup>197</sup> in cooperation with the AJPP, at the Directorate for Execution of Sanctions there were four one-day workshops organized, of which three workshops on the topic of *Alternative measures and probation activities: advantages, planning and promotion* and one workshop entitled as *Electronic surveillance: practical implementation*.

The Probation Service started working actively in 2019. In 2019, the Probation Service received 165 probation cases, most of which are cases of surveillance of conditionally released persons, who have served a prison sentence (111 such cases).<sup>198</sup>

Amendments are necessary of the provisions on enhanced surveillance under the Criminal Code with a view to increasing the number of measures that the court could order in order to reduce the number of repeated offenders. The measures set forth under the Criminal Code are not sufficient, since there are various different situations, requiring to increase the number and diversify the type of available measures.<sup>199</sup>

The third attempt to implement the concept of mediation was made with the drafting of the new Law on Mediation, which is now stuck in parliamentary procedure. This draft Law, similarly to the 2013 Law on Mediation, implements the relevant 2008 Directive. However, “the new Law, drafted by the Ministry of Justice, also takes on board guidelines given by the European Commission for the Efficiency of Justice (CEPEJ) for further advancing mediation, as well as recommendations of the European Parliament. There were additional efforts made to analyse the amendments that would have to be made to other laws in order to advance the concept of mediation”.<sup>200</sup>

In addition to amending relevant laws, the advancement of the concept of mediation requires further measures, as well. “Budget funds are needed to advance the application of mediation in line with the Law on Justice for Children, especially taking into account that mediation implies less costs for the parties. In this context, when designing its budget, the Public Prosecutor’s Office should assess the number of cases involving children”.<sup>201</sup>

In July 2019, in cooperation with the Chamber of Mediators, the Government of the Republic of North Macedonia adopted a Conclusion tasking all state bodies, institutions, public enterprises under state ownership, as well as units of local self-government to make an attempt to settle the case by way of mediation, prior to turning to courts and instituting court procedures.<sup>202</sup>

<sup>196</sup> Ibid.

<sup>197</sup> Academy for Judges and Public Prosecutors, *Strengthening the Penal Correctional System and the Probation Service*.

<sup>198</sup> Directorate for the Execution of Sanctions, *Reply to a request*.

<sup>199</sup> European Policy Institute, *Public Policy Brief- Implementation of the 2017–2022 Justice System Reform Strategy*.

<sup>200</sup> Ibid.

<sup>201</sup> Ibid.

<sup>202</sup> Ibid.

In 2017, 2018 and 2019 there were about 1,464 mediation cases. Out of the said number of mediation cases, 1,111 cases were settled, i.e. 75% of the cases ended in a settlement. Efforts are needed to introduce obligatory prior mediation in labour disputes, legal matters involving children, insurance disputes, and consumer disputes.<sup>203</sup> According to the last survey taken in February 2020 among mediators, commercial law cases are still the most numerous ones (68% of all cases), while the second most numerous cases are labour disputes (9%).<sup>204</sup>

One of the recommendations set forth under the urgent reform priorities<sup>205</sup> is to ensure publication of all court judgements within clear deadlines determined by law (and to ensure full search possibilities as well as facilitated access). The setting up of the court portal was aimed at improving the access to the case law, and at enhancing the transparency of the judiciary. However, the court portal sud.mk is still difficult for search queries. According to the analysis of the Centre for Legal Research and Analysis, the search tool for cases is outdated and users have difficulties applying it. The search of court judgments is very difficult.<sup>206</sup> Despite the expectations that the introduction of the court portal in 2017 would contribute to a greater degree of harmonization in the transparency of courts, the research conducted by the Metamorphosis Foundation<sup>207</sup> shows great variations and differences among courts. The court portal has identical structure for information to be published by all courts in the country. Therefore, stronger commitments are needed by the IT Centre at the Supreme Court of the Republic of North Macedonia and the Justice System Reform Council in order to advance the harmonized publication of updated information by all courts.

According to conducted researches,<sup>208</sup> it is necessary to improve the openness of courts and of public prosecutor's offices. The research made by Metamorphosis Foundation<sup>209</sup> examining the issue of openness of courts in the country and in the Region, shows that the openness of the judiciary in North Macedonia has been improved by 4%. In the case of North Macedonia, the openness of courts is better than the openness of the public prosecution service.<sup>210</sup>

**The new Law on Administrative Disputes, to be applied as of May 2020, sets forth more obligations for administrative courts. Thus, the Administrative Court, equally as other courts, will be obliged to have public hearings. However, it is necessary to better equip administrative courts with staff, as well as to ensure appropriate premises, especially having in mind the solutions set forth under the new Law.**

203 Ibid.

204 European Policy Institute, *Survey of Mediators, conducted in February 2020*.

205 European Policy Institute, *State of Play in the Implementation of Urgent Reform Priorities*.

206 Битраков and Елена, "Отвореност На Судството Во Република Северна Македонија." (Bitrakov and Elena, *Openness of the Judiciary in the Republic of North Macedonia*).

207 Даниловска and Наумовска, "Препораки За Подобрување На Состојбата – Отвореност На Судската Власт Во Регионот и Во Северна Македонија." (Danilovska and Naumovska, *Recommendations for Improvement of the Situation – Openness of the Judiciary in the Region and in North Macedonia*).

208 According to the researches of the Centre for Legal Research and Analysis and the Metamorphosis Foundation. Source: Битраков and Елена, "Отвореност На Судството Во Република Северна Македонија" (Bitrakov and Elena, *Openness of the Judiciary in the Republic of North Macedonia*); Даниловска and Наумовска, "Препораки За Подобрување На Состојбата – Отвореност На Судската Власт Во Регионот и Во Северна Македонија." (Danilovska and Naumovska, *Recommendations for Improvement of the Situation – Openness of the Judiciary in the Region and in North Macedonia*).

209 Даниловска and Наумовска, "Препораки За Подобрување На Состојбата – Отвореност На Судската Власт Во Регионот и Во Северна Македонија." (Danilovska and Naumovska, *Recommendations for Improvement of the Situation – Openness of the Judiciary in the Region and in North Macedonia*).

210 Ibid.

Although in July 2019, the Government of the Republic of North Macedonia endorsed the draft Law on the Academy for Judges and Public Prosecutors, the Parliament has still not adopted this Law until the completion of the reporting period.

The Academy for Judges and Public Prosecutors (AJPP) continually works to advance the quality of trainings and to introduce the required training topics. It is necessary to increase the budget of the AJPP in order to improve the quality of trainings. It is furthermore necessary to better equip the Academy in terms of staff, technical equipment and infrastructure, as well as to consistently implement the measures envisaged to this end under the 2017-2022 Justice System Reform Strategy and Action Plan.

In 2019, the Case Law Department at the Supreme Court had 7 meetings. In 2019, the Supreme Court had three meetings with representatives of Appellate Courts focused on harmonizing the case law.

The Probation Service started actively working in 2019. However, the Probation Service is not sufficiently utilized by judges. This Law is of exceptional importance in meting out the type and duration of the sentence. Therefore, it is recommended to organize intensive trainings for judges regarding the application of the Law on Probation, considering that the cooperation with the Probation Service ensures appropriate approach to the individualization of the sentence for each defendant.

Further efforts are needed to advance the concept of mediation.

It is necessary to improve the functioning of the court portal sud.mk, then to improve judgement search possibilities, and to facilitate harmonized publication of updated information by all courts in the country.

## EFFICIENCY

Efficiency is one of the strategic goals defined under the Justice System Reform Strategy.<sup>211</sup> The Annual Report on the Implementation of the Justice System Reform Strategy<sup>212</sup> describes activities undertaken in accomplishing the strategic goal of increasing the efficiency. The Ministry of Justice has made a detailed analysis of the situation with the number of judges and the caseload in the judicial system, which will serve as basis for future plans relating to the judiciary.<sup>213</sup>

With a view to increasing the efficiency of the judiciary, in the course of 2019,<sup>214</sup> in cooperation with presidents of courts, the Judicial Council undertook specific measures to reduce the backlog of cases in the judiciary, i.e. cases pending for more than three, seven and ten years. In order to reduce the number of cases pending for more than 7 or 10 years, under a Decision of the Council, presidents of courts were tasked with ordering judges sitting in such cases to develop a plan and a forecast for the resolution of each of the said cases. The plans and forecasts were an integral part of reports made and submitted to the Council by working bodies every month. As a result of such measures, a large number of old cases in all courts were resolved. The rate of resolved cases pending for more than 3 years is 59.81%, the rate of resolved cases pending for more than 7 years is 46.03%, and the rate of resolved cases pending for more than 10 years is 25.16%.<sup>215</sup>

<sup>211</sup> Ministry of Justice, 2017-2022, *Justice System Reform Strategy and Action Plan*.

<sup>212</sup> Ministry of Justice, *Annual Report on the Implementation of the 2017-2022 Justice System Reform Strategy*.

<sup>213</sup> Ibid.

<sup>214</sup> Judicial Council of the Republic of North Macedonia, *2019 Annual Report on the Work of the Judicial Council*

<sup>215</sup> Ibid.



According to the last Annual Report of the Judicial Council,<sup>216</sup> on 1 January 2019 inclusive, in all courts in the Republic of North Macedonia, there was a backlog of cases from the previous year in the amount of 91,608 cases, then there were 523,700 new cases, there were 615,308 total number of cases being processed, and 518,216 were resolved. Hence, on 31 December 2019, there was a total of 97,092 still pending cases. This means that at the level of the Republic of North Macedonia, courts did not work efficiently in 2019, as different from 2018,<sup>217</sup> when courts managed to deal with the influx of new cases and reduce the backlog of cases by 7,767. The last Report of 2019<sup>218</sup> establishes that overall the courts did not manage to deal with the influx of new cases, increasing thus the backlog of cases by 5,484 still pending cases.

As regards the conditions for work, which are closely related to the efficiency concept, courts and public prosecutor's offices lack material, and human resources and appropriate equipment. It is necessary to increase the number of public prosecutors and court and public prosecution expert associates. With this aim in mind, it is also necessary to strengthen the capacities of the AJPP for admission of new candidates for induction training.<sup>219</sup>

Despite the fact that the 2017-2022 Justice System Reform Strategy and Action Plan<sup>220</sup> set forth the establishment of a Working Group to draft amendments to the applicable Law on the Judicial Administrative Service, this Working Group was established as late as the end of 2019. No progress has been made either in strengthening the capacities of the judicial administrative service, although this is one of the strategic guidelines under the Justice System Reform Strategy. In the last period, there have been no efforts made to increase the number of professional administrative judicial administrative staff, and the situation of managerial judicial administrative staff, of whom there is one or none in some courts, has not been improved either. It is necessary to strengthen the professional and material status of judicial administrative staff in order to contribute to strengthening the capacities of the judicial administrative service.<sup>221</sup>

In terms of number of judges per 100,000 inhabitants, according to the *European judicial system – efficiency and quality of justice*<sup>222</sup>, the Republic of North Macedonia is above the European average. However, it must be underlined that the data cover the period until 2016 inclusive, when the total number of judges was 566. The number of judges in 2019 was 506.<sup>223</sup> All courts lack expert associates.

According to statistics of the European Commission for the Efficiency of Justice (CEPEJ), the country is above the European average in terms of number of non-judicial employees in courts. However, when it comes to the number of public prosecutors, the country is below the European average.<sup>224</sup>

<sup>216</sup> Ibid.

<sup>217</sup> Judicial Council of the Republic of North Macedonia, *2018 Annual Report on the Work of the Judicial Council*.

<sup>218</sup> Judicial Council of the Republic of North Macedonia, *2019 Annual Report on the Work of the Judicial Council*.

<sup>219</sup> European Policy Institute, *Public Policy Brief- Implementation of the 2017-2022 Justice System Reform Strategy*.

<sup>220</sup> Ministry of Justice, *2017-2022 Justice System Reforms Strategy and Action Plan*.

<sup>221</sup> Contribution and comments by the Association of Judicial Administrative Staff.

<sup>222</sup> CEPEJ, "European Judicial System."

<sup>223</sup> According to the address of the President of the Judicial Council at the Public Policy Dialogue – Implementation of the Justice System Reform Strategy, held on 11 December 2019.

<sup>224</sup> CEPEJ, "European Judicial System."



According to the Decision<sup>225</sup> defining the number of public prosecutors leading public prosecutor's offices and the number of public prosecutors working in public prosecutor's offices, adopted by the Council of Public Prosecutors of the Republic of North Macedonia, the envisaged number of public prosecutors on the territory of the Republic of North Macedonia is 257 public prosecutors. However, the numbers presented in the 2018 Annual Report of the Council of Public Prosecutors of the Republic of North Macedonia show that the public prosecution service in North Macedonia operates with about 20% reduced number of public prosecutors. Namely, out of the envisaged positions of 257 public prosecutors, in 2018, 193 position were filled, as follows: 12 at the chief Public Prosecutor's Office, 32 in higher public prosecutor's offices and 149 at basic public prosecutor's offices. 27 public prosecutors had their employment as public prosecutors suspended- some of them were transferred to the Basic Public Prosecutor's Office for Prosecution of Organized Crime and Corruption (BPPOPOCC), others were elected as public prosecutors at the Special Public Prosecutor's Office, and one was appointed as a judge at the Strasbourg Court.<sup>226</sup>

The new Law on Administrative Disputes, to be applied as of May 2020, sets forth more obligations for administrative courts. Thus, the Administrative Court, equally as other courts, will be obliged to have public hearings.<sup>227</sup> However, it is necessary to better equip administrative courts with staff, as well as to ensure appropriate premises, especially having in mind the solutions set forth under the new Law and the limited capacity of the premises, where the Administrative Court is now seated. The procedure for providing a new office building for the Administrative Court is underway.<sup>228</sup>

The introduction of the state of emergency in the country in March 2020, due to the COVID-19 pandemic has had an impact on the efficiency and course of court proceedings. On 30 March 2020, the Government of the Republic of North Macedonia adopted a Decree<sup>229</sup> with the force of law regulating the deadlines for court procedures during a state of emergency. According to the Decree,<sup>230</sup> the deadlines are suspended as of the date of adoption of the Decree until the end of the state of emergency.

**Almost all courts have managed to deal with the influx of new cases, while resolving cases from the backlog of cases, relying on the presently available staff, material and financial conditions for work.**

**In the context of conditions for work, which are closely related to the concept of efficiency, courts and public prosecutor's offices lack material and human resources, as well as appropriate equipment.**

**It is necessary to increase the number of public prosecutors and judicial and public prosecution expert associates. In this respect, it is needed to strengthen the capacities of the AJPP for admission of new candidates for induction training. The optimal number of judges, which is above the European average, is analysed in order to establish the real needs.**

225 Decision establishing the number of public prosecutors managing public prosecutor's offices and the number of public prosecutors at public prosecutor's offices.

226 Blueprint Judicial Reform Group, *Analysis of the Capacities and Resources of the Public Prosecutor's Office of the Republic of North Macedonia*.

227 European Policy Institute, *Public Policy Brief- Implementation of the 2017-2022 Justice System Reform Strategy*.

228 Ibid.

229 Government of the Republic of North Macedonia, *Decree with the force of law on the deadlines in court procedures during the state of emergency and on the work of courts and public prosecutor's offices*.

230 Ibid.



The background features a white surface with several thin, wavy blue lines of varying shades. A large, dark blue rectangle is positioned on the right side, partially overlapping the wavy lines. A thick, solid blue vertical bar is located on the left edge of the dark blue rectangle.

## 2. FIGHT AGAINST CORRUPTION

According to the last Report of Transparency International on the corruption perception index, the Republic of North Macedonia,<sup>231</sup> is the lowest ranked country among the Balkan countries. It was ranked 106<sup>th</sup><sup>232</sup>, as different from the previous year when it was ranked 93<sup>rd</sup><sup>233</sup>. Despite this low ranking, in the reporting period efforts were made to consolidate the legal and institutional framework for fight against corruption.

## INSTITUTIONAL FRAMEWORK

### State Commission for the Prevention of Corruption

The newly adopted Law on the Prevention of Corruption and Conflict of Interests introduced a new manner of electing the president and members of the State Commission for the Prevention of Corruption (SCPC), according to which in addition to the Parliamentary Committee for Elections and Appointments, a Selection Committee is also established.<sup>234</sup> In pursuance with this Law, the new members of the SCPC were elected in a transparent procedure<sup>235</sup> and the Commission started working in February 2019.

As of its establishment until March 2020 inclusive, the SCPC worked in a transparent fashion and processed a number of cases, opened following submitted reports, while opening a number of cases acting *ex officio* regarding possible conflict of interests. The SCPC had 28 sessions and adopted 391 decisions,<sup>236</sup> all published on its website. Compared to previous years, the SCPC has received a significantly higher number of reports alleging corruption and conflicts of interest<sup>237</sup>, which, *inter alia*, indicates the enhanced public trust in the work of the SCPC. In addition, in the reporting period, this Commission opened cases upon its own initiative,<sup>238</sup> such as cases with findings of nepotism, albeit the number of cases opened upon the initiative of the Commission is still lower than the number of cases opened upon submitted reports. Furthermore, the SCPC raised initiatives with in-line bodies for institutions of proceedings for the establishment of responsibility of official persons<sup>239</sup> and in the period from June to November 2019, the Commission reviewed the legislation in terms of anti-corruption provisions – 4 documents and one draft Law, i.e. the Election Code.<sup>240</sup>

<sup>231</sup> Transparency International, “2019 Corruption Perceptions Index.”

<sup>232</sup> Ibid.

<sup>233</sup> Transparency International, “2018 Corruption Perceptions Index.”

<sup>234</sup> Official Gazette No. 12, 19 January 2019, *Law on the Prevention of Corruption and Conflict of Interests*.

<sup>235</sup> Цоневска et al., “Извештај Во Сенка За Поглавје 23 За Периодот Јуни 2018 – Март 2019 Година.” (Conevska et al. *Shadow Report on Chapter 23 for the period from June 2018 to March 2019*).

<sup>236</sup> State Commission for the Prevention of Corruption, *Decisions from Sessions*.

<sup>237</sup> Ibid.

<sup>238</sup> Institute for Human Rights and Transparency International Macedonia, *Second Quarterly Report September -November 2019 on the monitoring of the work of the State Commission for the Prevention of Corruption*.

<sup>239</sup> Ibid.

<sup>240</sup> Institute for Human Rights and Transparency International Macedonia, *First Quarterly Report June-August -November 2019 on the monitoring of the work of the State Commission for the Prevention of Corruption*; Institute for Human Rights and Transparency International Macedonia, *Second Quarterly Report September -November 2019 on the Monitoring of the work of the State Commission for the Prevention of Corruption*.

In January 2020,<sup>241</sup> the SCPC sent the 2020-2024 National Strategy for the Prevention of Corruption and Conflict of Interests to the Parliament. However, due to the announcement of the early general elections, the Parliament did not manage to adopt the said Strategy. In preparing the Strategy, the SCPC organized a wide encompassing consultative process, i.e. an inclusive Working Group was established, having on board representatives from relevant public institutions, the private and civil sector, the media and experts. An analysis of corruption risks was made and a methodology for the development of the national strategy was also defined. In the period between September and December 2019, the Working Group had three three-day workshops. As a result of the workshops and additional numerous consultative meetings with institutions and stakeholders, focusing on specific issues within their respective purview, the 2020-2024 National Strategy for the Prevention of Corruption and Conflict of Interests and Action Plan for its implementation were drafted and then the SCPC endorsed it.<sup>242</sup>

In terms of transparency and openness, in the reporting period, the SCPC transparently published all information at its website. Its meetings (including discussion on cases) were public and the media were regularly invited to attend the SCPC meetings.<sup>243</sup>

However, this wide scope approach in its work poses the threat of the SCPC being stuck on minor cases and cases that do not fall within the scope of its mandate, which would exhaust the capacities and resources, preventing thus the SCPC to work on high-profile corruption cases. Therefore, a mechanism is needed that would help filter out reports that are not within the competences of the SCPC, as well as those for which the legally prescribed period has expired and those that lack sufficient data.<sup>244</sup> The SCPC needs to focus mostly on high-profile corruption cases.<sup>245</sup>

Of course, the unimpeded work of the SCPC requires increasing its budget and resources. The Commission needs to establish software links with other institutions.<sup>246</sup> After the start of EU accession talks, it will be of exceptional importance to centralize the anti-corruption preventive measures. In this context, digitalization and interoperability are important, i.e. the SCPC should be able to search the entire system with one click on the national identification number of the individual concerned.<sup>247</sup>

241 State Commission for the Prevention of Corruption, *2020-2024 National Strategy for the Prevention of Corruption and Conflict of Interests*.

242 State Commission for the Prevention of Corruption, *Consultative Process on the 2020-2024 National Strategy*.

243 Institute for Human Rights and Transparency International Macedonia, *Second Quarterly Report September–November 2019 on the Monitoring of the work of the State Commission for the Prevention of Corruption*.

244 Ibid.

245 Policy Dialogue, Reforms under Chapter 23, 17 April 2019.

246 According to the conclusions adopted at the workshop for exchange of experiences among EU accession countries. Such conclusions were adopted based on the example of Montenegro and exchange of experiences with the representatives of the SCPC, who took part in the workshop. Source: European Policy Institute, *Report on the Workshop for Exchange of Experiences*.

247 Ibid.

## Public Prosecutor's Office

The last European Commission Update on the Republic of North Macedonia, published in March 2020, states that the country continues to undertake proactive investigations, prosecutions and final convictions in corruption cases, including at high level. In 2019, the Public Prosecutor's Office for Prosecution of Organised Crime and Corruption opened nine new investigations, involving 52 suspects (and one legal entity), against high-level officials (compared to five cases involving seven suspects in 2018 and six cases involving 10 suspects in 2017).<sup>248</sup> In 2019, there was a total of 38 suspects indicted mainly for abuse of official authority in relation to violation of procurement procedures, illegal constructions or illegal sales of state-owned land.<sup>249</sup>

In the reporting period, the Public Prosecutor's Office for Prosecution of Organized Crime and Corruption opened the *Racketeering case*, in which among others the former Special Public Prosecutor was indicted for money extortion and abuse of office.<sup>250</sup> However, this should not call into question the entire work of the Special Public Prosecutor's office and the work of the other public prosecutors.

As regards processing of cases opened by the SPPO, 10 days before the termination of her office, the former Special Public Prosecutor sent a communication under which she transferred the cases opened by the SPPO to the Public Prosecutor's Office of the Republic of North Macedonia.<sup>251</sup> After taking over the cases, the cases were distributed to Public Prosecutors at the SPPO, who had that far processed the specific cases, and who would continue processing the said cases until the designation of a competent Public Prosecutor's Office and Public Prosecutors for each of the cases.<sup>252</sup> March 2020 inclusive, the Public Prosecutors designated to process the cases were not changed. On 14 September 2019, the Council of Public Prosecutors dismissed Mrs. Janeva from the office of Special Public Prosecutor for Prosecuting Criminal Offences Related to and Arising from the Content of the Illegally Intercepted Communications.<sup>253</sup>

The EC Update<sup>254</sup> on the Republic of North Macedonia notes that in 2019, there were final convictions in two cases opened by the SPPO against three defendants. A former Minister of Interior was sentenced to six years imprisonment. In the second case, the court found a businessman and one of his associates guilty of forging documentation for winning a tender from the state-owned electricity generation company (ELEM). The legal entities involved in the case were also found guilty. The asset confiscation verdict was confirmed on appeal.<sup>255</sup> Trials are ongoing for 12 cases.<sup>256</sup> In March 2020, two first instance judgements were delivered in the *Transporter case*<sup>257</sup> and in the *Titanic 3 case*.<sup>258</sup>

248 European Commission, "Update on the Republic of North Macedonia."

249 Ibid.

250 Ibid.

251 Academic, *The SPPO Transfers cases to the Public Prosecutor's Office*.

252 Public Prosecutor's Office of the Republic of North Macedonia, *Press Release*.

253 akademik.mk, *Katica Janeva dismissed from Office*.

254 European Commission, "Update on the Republic of North Macedonia."

255 Ibid.

256 Ibid.

257 360 степени, "„Транспортер“: Владимир Талески Осуден На Осум Години Затвор." (360 Degrees, "Transporter: Vladimir Taleski Sentenced to Eight Years in Prison").

258 Фокус, "Казна Затвор Од Три Години и Шест Месеци За Алјими и Гури Од ДУИ, Обвинети Во „Титаник 3“. (Focus, *Prison Sentence of three Years and Six Months for Aljimi and Guri from the DUI indicted in the Titanic 3 case*).

The general statistics about cases of the SPPO<sup>259</sup> show that hearings in these cases are held much more frequently compared with other cases involving organized crime or corruption. According to information of the Coalition *All for Fair Trials*,<sup>260</sup> that in general main hearings in cases opened by the SPPO are delayed in less than one third of cases, which makes a stark difference with the other cases opened by the Department against Organized Crime and Corruption, of which almost two third of the cases are delayed. However, major number of the cases opened by the SPPO are in the evidence presentation stage, which lasts for more than a year for all these cases, and the delays in some of the cases have resulted in reopening the main hearing, considering the termination of the 90 day deadline.<sup>261</sup> There are reactions by civil society organizations<sup>262</sup> regarding the introduction of the new crime of *tax fraud*, under the amendments to the Criminal Code of December 2018. The reactions are owed to the fact that the essence of this crime is almost identical to the already sanctioned crime of *tax evasion*. In addition, the legislator has envisaged significantly lighter sentences for this crime. The said amendments result in shortening the period of statute of limitations in the *Trust case* and in the *Total case*, opened by the SPPO.<sup>263</sup>

The advancement of the efficiency of criminal justice requires serious commitments on the part of the state to remedying deficiencies with respect to staffing, material conditions and increased budget for specialized departments of the court and of the public prosecutor's office for prosecution of high-profile corruption.<sup>264</sup> In this context, it is necessary<sup>265</sup> to ensure relevant number of judges in line with the systematization of job positions and to equally distribute cases, in order to utilize to the optimum capacities available to courts, which on its part would result in efficient and cost-effective processing of cases. It is also necessary to equip the Public Prosecutor's Office for Prosecution of Organized Crime and Corruption with human resources and public prosecution administrative officers, but mainly with financial support under the state budget. Courts need to assume a more pro-active role in managing hearings and coordinating all parties to the proceedings, in order to avoid unnecessary delays of procedures.<sup>266</sup>

The Law on Criminal Procedure<sup>267</sup> envisages the possibility to establish investigation centres covering the jurisdiction of one or several public prosecutor's offices, under a decision of the Chief Public Prosecutor of the Republic of North Macedonia. However, as of the start of the application of the Law on Criminal Procedure until 2018, not one investigation centre had been opened.<sup>268</sup> In 2019, there were some activities undertaken and support was ensured under an EU twinning project for building the institutional capacities of investigation centres. The Chief Public Prosecutor of the Republic of North Macedonia adopted a decision for the establishment of investigation centres at four public prosecutor's offices: the Skopje Public Prosecutor's Office, the Tetovo Public Prosecutor's Office, the Kumanovo Public Prosecutor's Office and at the Public Prosecutor's Office for Prosecution of Organized Crime and Corruption in Skopje.<sup>269</sup> On 7 February 2020, the Chief Public Prosecutor of the Republic of North Macedonia adopted a Decision for appointment

259 Петровска, Амет, and Хаџи-Зафиров, "Ефикасна Кривична Правда: Преглед На Предметите Иницирани Од СЈО." (Petrovska, Amet and Hadji-Zafirov, *Efficient Criminal Justice: Review of Cases Opened by the SPPO*).

260 Ibid.

261 Ibid.

262 Ibid.

263 Ibid.

264 Ibid.

265 Ibid.

266 Ibid.

267 Official Gazette of the Republic of Macedonia No. 150, dated 18 November 2010.

268 Blueprint Judicial Reform Group, *Analysis of the Capacities and Resources of the Public Prosecutor's Office of the Republic of North Macedonia*.

269 Ibid.

of investigators at Investigation Centres at the Basic Public Prosecutor's Office for Prosecution of Organized Crime and Corruption, at the Skopje Basic Public Prosecutor's Office, at the Tetovo Public Prosecutor's Office and at the Kumanovo Public Prosecutor's Office.<sup>270</sup> 5 investigators were recruited at the Basic Public Prosecutor's Office for Prosecution of Organized Crime and Corruption, then 7 investigators at the Skopje Basic Public Prosecutor's Office, 2 investigators at the Tetovo Basic Public Prosecutor's Office and 2 investigators at the Kumanovo Basic Public Prosecutor's Office. The recruited investigators started performing their duties at investigation centres as of 1 March 2020. In addition, on 7 February 2020, the Chief Public Prosecutor of the Republic of North Macedonia adopted the Rulebook on the Organizational Set-Up and Functioning of Investigation Centres.<sup>271</sup>

There were public reactions against the confidentiality bonuses paid to public prosecutors and staff working at the SPPO. The Law on the Special Public Prosecutor's Office,<sup>272</sup> regulates the amounts of salaries of the Special Public Prosecutor and of public prosecutors at the SPPO, while the amount of supplements, i.e. bonuses, among which the confidentiality supplement, is regulated under the Law on the Salaries of Public Prosecutors.<sup>273</sup> The amount of supplements for public prosecution service staff is also regulated by law.<sup>274</sup> The Public Prosecutor's Office for Prosecution of Organized Crime and Corruption opened an investigation into possible abuses in the payment of these bonuses.<sup>275</sup>

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

One of the goals of the Strategy for Strengthening National Capacities for Financial Investigations and Asset Confiscation and Action Plan is the development of a multidisciplinary approach in pursuing financial investigations, i.e. designing measures which will ensure strengthening the capacities of the public prosecution service, of the Ministry of the Interior, of the Customs Administration and of the Financial Police to pursue financial investigations, as well as consolidating the coordination among all these in-line institutions.<sup>276</sup> Another goal is ensuring a pro-active approach to pursuing financial investigations, i.e. pursuing financial investigations in parallel with the investigation into organized crime and opening financial investigations at the same time of opening of the criminal investigation.<sup>277</sup> With the aim of implementing the said Strategy, the Ministry of the Interior, the Customs Administration and the Financial Police amended their respective systematizations of jobs and envisaged the establishment of separate specialized units for financial investigations. The Ministry of the Interior amended its systematization of jobs and organization of job positions and envisaged the establishment of a separate unit for financial investigations, as part of the Department for Suppression of Serious and Organized Crime.<sup>278</sup>

<sup>270</sup> Contribution by the Ministry of Justice to this Shadow Report.

<sup>271</sup> Contribution by the Ministry of Justice to this Shadow Report.

<sup>272</sup> Official Gazette of the Republic of Macedonia No. 159, dated 15 September 2015, *Law on the Public Prosecutor's Office for Prosecuting Criminal Offences Related to and Arising from the Content of the Illegally Intercepted Communications*.

<sup>273</sup> Official Gazette of the Republic of Macedonia No. 231, dated 31 December 2015, *Law Amending and Supplementing the Law on Salaries of Public Prosecutors*.

<sup>274</sup> Official Gazette of the Republic of Macedonia Nos. 62/1, 62/15, 231/15, 11/16, *Law on the Public Prosecution Service*.

<sup>275</sup> Правдикo, "Јовески: За Доверливост Двапати Се Делеле Надоместоци Во СЈО." (Pravdiko, Joveski: The confidentiality bonus was paid two times).

<sup>276</sup> Government of the Republic of North Macedonia, *MOI Spasovski: We establish efficient bodies for financial investigations*.

<sup>277</sup> Ibid.

<sup>278</sup> Ibid.



In the area of confiscation, first instance courts in the Republic of North Macedonia, with the exception of the Skopje First Instance Criminal Court, issue insufficient number of orders for confiscations, even in cases when confiscation is necessary, which is yet another indicator of the inflexible position of courts and law enforcement bodies, which still predominantly resort to the measure of ordering the convicted person to return the illegal proceeds.<sup>279</sup>

It is necessary to strengthen the capacities of investigation bodies to pursue timely and thorough financial investigations, and to organize trainings for judges on the application of the confiscation measure, the manner, cases and scale of application of this measure.<sup>280</sup>

## LEGAL FRAMEWORK

The new Law on the Prevention of Corruption and Conflict of Interests<sup>281</sup> regulates both corruption and conflict of interests and, *inter alia*, introduces changes in the procedure for election of the president and members of the State Commission for the Prevention of Corruption, regulating as well their status and salaries, then the termination of their office and their dismissal. In addition, the Law introduces amendments to the procedure for declaration of assets and reporting conflict of interests by administrative and court officers and public sector employees. The duties of the Commission are expanded. Hence, the Commission now may institute a procedure for inspection of the financing of political parties and is also charged with monitoring the lawfulness of financing election campaigns.<sup>282</sup> The new Law introduces the exclusive duty of the SCPC to examine the asset status of elected and appointed officials, which helps implement one of the recommendations the GRECO, presented following the fourth evaluation round.<sup>283</sup>

The initial draft of the Law on the Public Prosecutor's Office was endorsed by the Government at its session held in March 2019.<sup>284</sup> After long political negotiations concerning this key importance Law, which regulates the organizational set-up of the public prosecution service, on 28-29 January 2020, at the Parliament of the Republic of North Macedonia, there was a public hearing on the solutions offered in the said draft Law. Some of the solutions envisaged in the Law help implement recommendations contained in the Priebe Reports, then the GRECO recommendations and also serve to implement measures set forth under the Justice System Reform Strategy. One of the reasons for adoption of this Law cited in the draft<sup>285</sup> of the Law itself is the need to harmonize this Law with the Law on Criminal Procedure. An issue that remains open is the issue of regulating the use of material from intercepted communications as evidence under the Law on the Public Prose-

279 Аврамовски and Петровска, "Конфискација На Имот Во Судските Постапки Поврзани Со Корупција." (Avramovski and Petrovska, *Asset Confiscation in Corruption Court Cases*).

280 Ibid.

281 Official Gazette No. 12, 19 January 2019 година, *Law on the Prevention of Corruption and Conflict of Interests*.

282 Ibid.

283 Policy Dialogue, *Reforms under Chapter 23*, 17 April 2019.

284 Government of the Republic of North Macedonia, 124<sup>th</sup> Session of the Government of the Republic of North Macedonia: Defined reform package of laws on the Public Prosecutor's Office, Council of Public Prosecutors and on Free Legal Assistance; endorsed amendments to the draft Non-Discrimination Law.

285 Parliament of the Republic of North Macedonia, 135<sup>th</sup> Session of the Parliament of the Republic of North Macedonia.

cutor's Office.<sup>286</sup> In addition, the Law<sup>287</sup> envisages that the funds for the work of the public prosecution service are to amount to at least 0.4% of the Budget of the Republic of North Macedonia, which is not a significant increase of the already allocated amount of funds.

According to the research of the Coalition *All for Fair Trials*<sup>288</sup> in order to better apply the measure of confiscation it is necessary to first harmonize the provisions on confiscation with the new adversarial model of criminal procedure, introduced following the 2010 amendments to the Law on Criminal Procedure, which entered into force in 2013, especially when it comes to the issue of confiscation of assets of third persons. The research underlines that the provisions of the Law on Criminal Procedure are not clear and leave a legal vacuum, especially in regard to rights of third persons in the entire course of the criminal procedure and about the manner in which they are to exercise their rights. It is necessary to resolve the problem of the double capacity of these persons, which arises from their treatment as witnesses in the course of the procedure.<sup>289</sup> Furthermore, the provisions on confiscation outside a criminal procedure (when a criminal procedure may not be instituted) are incomplete, i.e. this procedure is not sufficiently and clearly defined. This on its part requires revision of these provisions and drafting provisions, which are to regulate clearly and in detail the course of the procedure, the manner in which the procedure may be instituted, the calculation of deadlines, the rights of the parties, the manner of their participation in the procedure, the collection and presentation of evidence, etc. In the context of legislative amendments relating to the procedure for confiscation, it is necessary to better regulate the procedure for expanded confiscation of assets of defendants and of third persons.<sup>290</sup>

In the reporting period, the SCPC has been actively working in pursuance with its mandate. The work of the SCPC is transparent and open. However, it is necessary that the SCPC focus mostly on high-profile corruption cases. A mechanism is needed that would help filter out reports that are not within the mandate of the SCPC, in order not to waste time and resources working on cases for which there are no legal grounds to be processed, or cases for which it can be established that legally prescribed period has passed or those that lack sufficient data. Indeed, the unimpeded work of the SCPC would also require increase of its budget and resources.

The Commission needs to establish software links with other institutions. After the start of EU accession talks, it will be of exceptional importance to centralize the anti-corruption preventive measures. In this context, digitalization and interoperability are important, i.e. the SCPC is to be electronically linked to other institutions.

The advancement of the efficiency of criminal justice requires serious commitments on the part of the state to remedying deficiencies with respect to staffing, material conditions and increased budget for specialized departments of courts and of public prosecutor's offices for prosecution of high-profile corruption

It is necessary to strengthen the capacities of investigation bodies to pursue timely and thorough financial investigations, and to organize trainings for judges on the application of the confiscation measure, the manner, type of cases and scale of application of this measure.

<sup>286</sup> For more see the Section on independence and impartiality in this Report.

<sup>287</sup> Official Gazette of the Republic of North Macedonia No. 42/2020, *Law on the Public Prosecutor's Office*.

<sup>288</sup> Аврамовски and Петровска, "Конфискација На Имот Во Судските Постапки Поврзани Со Корупција." (Avramovski and Petrovska, *Asset Confiscation in Corruption Court Cases*).

<sup>289</sup> Ibid.

<sup>290</sup> Ibid.



# 3. FUNDAMENTAL RIGHTS

## FREEDOM OF MOVEMENT

Setting the goal of preventing the spread of the COVID-19 virus and protecting the health of citizens, the Government adopted decrees limiting the freedom of movement of citizens on the entire territory of the country. Thus, the Government introduced a ban on public gatherings,<sup>291</sup> introducing as well ban and special regime of movement on the entire territory of the country,<sup>292</sup> as well as the measure of 14 -day self-isolation for citizens coming back to the country through border crossing points.<sup>293</sup>

## CASE LAW OF THE EUROPEAN COURT OF HUMAN RIGHTS

The enforcement of ECtHR judgments in the country remains a challenge for national institutions. The problem is owed to the fact that institutions do not understand the role of the Government Agent that represents the Government before the ECtHR, especially in the context of enforcing the Court's judgements.<sup>294</sup> Another concerning fact is the large number of so-called recurring cases.<sup>295</sup> The problems in enforcing judgments of the ECtHR was also noted in the 2019 EC Annual Report on the Progress of the country.<sup>296</sup>

In 2019, the ECtHR received 257 applications versus the Republic of North Macedonia, of which 246 were declared inadmissible and thus rejected. Upon the admitted applications, 12 judgments were adopted involving 11 applications, of which in 9 cases, at least one violation of the European Convention on Human Rights was established.<sup>297</sup> Most of the applications are related to the use of force in the treatment by security forces/police and unfair procedures.<sup>298</sup>

Landmark judgements in the context of North Macedonia adopted in the reporting period are the judgment in the *L.R. case*<sup>299</sup> - prohibition of inhuman or degrading treatment and the judgement in the *Trajkovski and Chipovski case*<sup>300</sup> - violation of Article 8 – right to pri-

291 Official Gazette of the Republic of North Macedonia, *Decree with the force of law on the application of the Law on Public Assemblies during State of Emergency*.

292 Official Gazette of the Republic of North Macedonia, *Decision amending the Decision banning and introducing special regime of movement on the territory of the Republic of North Macedonia*.

293 Official Gazette of the Republic of North Macedonia, *Decree with the force of law on the application of the Law on the Protection of the Population against Contagious Diseases during State of Emergency*.

294 Statement by Danica Djonova at the expert meeting on the topic of *European standards in the area of human rights - Enforcement of judgements of the European Court of Human Rights*, held on 30 October 2019. Available at: <https://www.mkd.mk/makedonija/politika/za-4-meseci-do-sudot-vo-strazbur-podneseni-385-baranja-od-gragjani-od-makedonija>

295 mkd.mk, "За 4 Месеци До Судот Во Стразбур Поднесени 385 Барања Од Граѓани Од Македонија." (385 applications filed by citizens of Macedonia with the Strasbourg Court within 4 Months).

296 European Commission, "North Macedonia 2019 Report."

297 European Court of Human Rights, "Press Country Profile – The Republic of North Macedonia."

298 mkd.mk, "За 4 Месеци До Судот Во Стразбур Поднесени 385 Барања Од Граѓани Од Македонија." (385 applications filed by citizens of Macedonia with the Strasbourg Court within 4 Months).

299 European Court of Human Rights, "Case of L.R. v. North Macedonia, Application No. 38067/15."

300 European Court of Human Rights, "Case of Trajkovski and Chipovski v. North Macedonia."

vate and family life. There were also six judgments for compensation of victims of lustration in the total amount of EUR 32,400,<sup>301</sup> while three additional lustration cases are still pending before the Strasbourg Court.

*It is necessary to strengthen the capacities of institutions for enforcement of ECtHR judgments and to educate civil servants and judges about the case law of the ECtHR relating to recurring cases.*

## THE OMBUDSMAN

Based on data of the Office of the Ombudsman, it can be concluded that problems that citizens of North Macedonia face in general remain the same, featured with an increasing number of applications in areas of social protection, health care and rights of the child.<sup>302</sup>

Citizens mostly complain about the work of Enforcement Agents, i.e. not being sent a notification that an enforcement procedure has been instituted, which results in delays in servicing payment obligations and thus in payment of amounts several times higher than the initially intended amount. In the health care area, there is an increased number of applications by citizens complaining about the unlawful payment of amounts as participation in the costs for gynaecological exams, the long duration of procedures with the Health Insurance Fund and the inefficient procedures by the Medical Chamber in examining the work of doctors following complaints by citizens.<sup>303</sup>

The Ombudsman presents the fact that there are mobbing cases (on political or status grounds) and discrimination in all its forms. According to the statistics, out a total number of 60 applications, 25 applications are against mobbing at the workplace, then 11 applications against discrimination on grounds of ethnic affiliation, while the remaining 11 applications are against other forms of discrimination, sanctioned under the law.<sup>304</sup> In the context of mobbing at institutions, the largest number of applications were filed by employees of the Ministry of the Interior, complaining against unlawful transfer to another position within this institution. In addition, in 2019 a record high number of applications for protection of the rights of the child were filed.<sup>305</sup>

As regards the success rate of the Ombudsman, 80 to 85% of the recommendations of this institution are accepted by the persons/institutions committing the violation, i.e. citizens succeed in acquiring the rights to which they are entitled, while in the rest of the cases the Ombudsman refers citizens to other manners of resolving their cases or advises them to institute court proceedings.<sup>306</sup> According to the Helsinki Committee, despite the success achieved in its

301 iportal.mk, “Жртвите Од Лустрација Обесштетени Со Вкупно 32.400 Евра.” (Lustration Victims Compensated with a total of EUR 32,400).

302 Ombudsman, 2019 Annual Report on the degree of ensuring, respecting, advancing and protecting human rights.

303 Ibid.

304 Ibid.

305 24.mk, “Мемети: Годишна Рекорден Број На Поплаки За Детските Права, Најмногу Во Образованието.” (Memeti: This year record high number of applications for protection of the rights of the child, mostly in the area of education).

306 kanal5.com.mk, “Мемети За РСЕ: Зголемен Број Поплаки За Вознемирување На Работното Место.” (Memeti for PCE: Increased number of applications against mobbing at the workplace).

work, the cooperation of the Office of the Ombudsman with civil society organizations is still at a very low level. The lack of cooperation with civil society organizations was also noted in the 2019 EPI Analysis of the Effectiveness of the Ombudsman.<sup>307</sup> Civil society organizations file almost every day requests with the Office of the Ombudsman for information about the number of received application in specific areas, however such information is rarely provided. There is the general impression that this body lacks the motive to cooperate with civil society organizations, which demands making additional efforts to improve the situation in this regard.

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

Thus far, North Macedonia has introduced significant novelties in dealing with ill treatment by the police, mostly as a reaction to various ECtHR judgements. Thus, a new unit was opened at the Basic Public Prosecutor's Office for Prosecution of Organized Crime and Corruption with specialized public prosecutors, who process cases of ill treatment by the police. Furthermore, a new mechanism was introduced according to which the Ombudsman, together with representatives of non-governmental organizations, is to undertake activities and measures to secure, support and protect victims, and their rights and present their interests in all procedures and cases. In this context, it is important to emphasize that this mechanism was established with great delays due to the delays at the Parliament of the Republic of North Macedonia in electing representatives of non-governmental organizations, and that this mechanism is still not fully functional. As part of the reform agenda, the Ministry of Justice plans to amend the Criminal Code, or more precisely its Articles 142 and 143: Torture and other forms of cruel, inhuman or degrading treatment and punishment and harassment in the performance of duty.<sup>308</sup> There are also announcements that the proposed amendments would also contain a provision under which no statute of limitations would apply to both crimes. The text of the draft of the said amendments has not been published until the closing of this Report.

Despite the introduced amendments and mechanisms, the Ombudsman underscores that there are serious deficiencies in the system of punishing prison staff, despite the fact that there is undeniable evidence pointing to the fact that prison staff have overstepped their authorities in the treatment of persons under their custody.<sup>309</sup> The Ombudsman has filed criminal charges against individual prison officers, but to no avail. There is also the challenge of lack of human resources in prisons and lack of training of the staff.

In the first 7 months of 2019, the Sector for Internal Control and Professional Standards processed 27 applications against excessive use of force by police officers. 8 applications were denied as having no grounds, and one application had sufficient grounds.<sup>310</sup>

307 European Policy Institute, "Human Rights Defenders in the Western Balkans - Intimidation Instead of Recognition."

308 24info.mk, "Дескоска Најави Измени На Кривичниот Законик За Кривични Дела Поврзани Со Тортура." (Deskoska announced amendments to the Criminal Code regarding torture related crimes).

309 Наум Котеvски, "Тортурата Во Затворите и Нејзината (Не)Казнивост." (Naum Kotevski, *Torture in prisons and its (im)punity*).

310 US Department of State - Bureau of Democracy, Human Rights, and Labour, "North Macedonia 2019 Human Rights Report."

## PRISONS AND DETENTION FACILITIES

Conditions in prisons remain a challenge to be tackled with. The prison police lacks staff and prison police officers are forced to work overtime, and are often called in outside their regular working hours, especially for escorting inmates.<sup>311</sup> According to information of the Ombudsman, one prison police officers in average secures 50 remand inmates in the Shutka Remand Prison,<sup>312</sup> which makes the management of the facility really difficult and increases the risk of violent incidents. A serious challenge in this respect is the lack of female prison staff, which constitutes a violation of Rule No. 53 of the Standard Minimum Rules for the Treatment of Prisoners,<sup>313</sup> which requires that "(2) No male member of the staff shall enter the part of the institution set aside for women unless accompanied by a woman officer and that (3) Women prisoners shall be attended and supervised only by women officers."

Under the Law on Amnesty adopted in January 2018,<sup>314</sup> 800 inmates sentenced to a prison sentence of up to 6 months were released, while the sentences of 3,000 inmates were reduced.<sup>315</sup> However, the problem of overcrowded prisons still prevails, and there are cases in which ten up to twenty persons share one room.

As regards detention conditions for inmates, according to findings of the Helsinki Committee inmates face difficulties in their access to a doctor, as well as the problem of administration of inappropriate medicines. In addition, there is lack of relevant resocialization of inmates, as well as lack of education in the penitentiary system, i.e. in the juvenile prison and at the juvenile correctional-education institution, where all education activities are reduced to completed pilot projects, supported by international organizations.<sup>316</sup> In light of the established situation with the prison buildings, i.e. walls falling apart and cells being humid and damp, which has an additional negative effect on the health of inmates,<sup>317</sup> in 2019, the Ministry of Justice started reconstructing and refurbishing a number of prisons in the country. The reconstruction of the remand ward and prison facilities at the Bitola Prison is in its final stage. The reconstruction activities were funded with EUR 1 million under the EU IPA 2 Programme and by the Government of North Macedonia.<sup>318</sup> A number of cells are reconstructed and the quality of food is improved at the Skopje Prison<sup>319</sup>. The Kumanovo Prison is functioning.<sup>320</sup> Financial support by the EU has been secured in the amount of EUR 1.95 million for improvement of the conditions in the Shutka Remand Prison, the Idrizovo Prison, the Tetovo Prison and the Kumanovo Prison.<sup>321</sup>

311 mkd.mk, "Втор Дел Од Извештај На Омбудсманот - Еден Затворски Чувар Обезбедува 50 Притворени Лица Во Затворот Во Шутка." (Second part of the Ombudsman Report- One prison police officer secures 50 remand inmates in the Shutka Remand Prison).

312 Ibid.

313 United Nations, Office on Drugs and Crime, "Standard Minimum Rules for the Treatment of Prisoners."

314 Official Gazette of the Republic of Macedonia, *Law on Amnesty*.

315 dw.com, "Репортажа: Нехуманите Услови Во Македонските Затвори." (Report: Inhuman Conditions in Macedonian Prisons).

316 Helsinki Committee for Human Rights of the Republic of Macedonia, *Report about the situation and conditions in prisons in the Republic of North Macedonia*.

317 Ibid.

318 apla.mk, "Во Завршна Фаза е Реконструкцијата На Затворот Во Битола." (The Reconstruction of the Bitola Prison is in its final stage).

319 mtm.mk, "Изјава На Есад Рахик, Директор На „КПД Затвор Скопје“ На Конференција: Условите Во Затворите Променети, Но Далеку Од Идеални." (Statement by Esad Rahikj, Governor of the Skopje Prison at the Conference: Conditions in Prisons changed, but far from being ideal).

320 mtm.mk, "Изјава На Јовица Стојановиќ, Директорот На Управата За Извршување Санкции На Конференција: Условите Во Затворите Променети, Но Далеку Од Идеални." (Statement by Jovica Stojanovikj, Director of the Directorate for the Execution of Sanctions at the Conference: Conditions in Prisons changed, but far from being ideal).

321 mkd.mk, "ЕУ Со Грант Од 1,95 Милиони Евра Ке Помога Во Реконструкција На Затворот Во Шутка, Идризово, Тетово и Куманово." (Providing a grant of EUR 1.95 million the EU will support the reconstruction of the Prisons in Shutka, Idrizovo, Tetovo and Kumanovo).

According to information of the Ministry of Justice, 3 September 2019, inclusive prisons housed 1,879 inmates, while their total housing capacity is 2,026 inmates.<sup>322</sup>

*Urgent measures are needed to recruit staff in prisons, including female staff to work on securing remand inmates in line with international standards. The recruitment of relevant staff for prisons needs to take into consideration the need for resocialization and individualized work with inmates, i.e. it is necessary to recruit educators, social workers and psychologists.*

*With a view to advancing the quality of life in prisons, it is necessary to ensure continual trainings of the entire prison staff and to further improve the situation in prisons. In addition, the housing facilities need to be improved, which on its part will enable more humane conditions for inmates, facilitating thus the process of resocialization while serving the sentence.*

*Furthermore, it is urgently needed that the Ministry of Education and Science fulfil without any delays its legally proscribed obligation regarding the access of inmates to education, especially for juveniles deprived of their freedom, while the Ministry of Health needs to assume and fulfil its obligation urgently and ensure, in a coordinated fashion, health care services for all inmates.*

*With a view to appropriate resocialization, it is necessary to develop and implement relevant resocialization programs, as different from the thus far technical activities of keeping individual progress records of inmates. In addition, prisons must undertake serious efforts to re-activate their economic units, and the vocational workshops at prisons in order to ensure work for inmates and their acquiring vocational skills, beneficial to their resocialization.*

*In the context of reintegration of inmates and reducing the reoffending rate, it is necessary to develop modules for post-penal assistance to inmates, who are coming to the end of their prison sentence, by involving in-line institutions and bodies of the local self-government, social work centres, the Employment Agency and non-governmental organizations.*

*In the context of detained juveniles, it is especially important that housing facilities for juveniles are equipped in manner that will ensure encouraging and personalized housing conditions for juveniles, while respecting their dignity and privacy. In addition, it is necessary to train and sensitize the prison police for work with juveniles, then to urgently open the new facilities for the Tetovo Juvenile Correctional - Educational Institution, built in the village of Volkovija and transfer the children now housed at the Ohrid Prison.*

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322 US Department of State - Bureau of Democracy, Human Rights, and Labour, "North Macedonia 2019 Human Rights Report."



## PERSONAL DATA PROTECTION

A year and a half before the end of his term of office, i.e. in May 2019, the Director of the Directorate for Personal Data Protection (DPDP), who was appointed to this office in 2016, submitted his resignation to the Parliament, due to personal reasons.<sup>323</sup> As of his resignation, the DPDP was left without a Director for seven months, i.e. the institution did not have an authorized person to represent it, and the protection of the right to privacy and the protection of personal data of citizens, as guaranteed by the Constitution, was called into question. In addition, the DPDP functioned without a Deputy Director for period of 3 years. Yet, in December 2019, the Parliament appointed a Director and a Deputy Director of the DPDP.<sup>324</sup>

On 16 February 2019, the Parliament adopted the new Law on Personal Data Protection.<sup>325</sup> The purpose of drafting and adopting the new Law was to transpose in the domestic legislation the General Data Protection Regulation 2016/679 (GDPR), which is applied in EU Member-States as of May 2018.<sup>326</sup> In addition, upon the entry into force of the new Law, the DPDP will continue working as an Agency for Personal Data Protection.

In 2019, the DPDP received 356 application, which represents a 10% reduction of the number of applications compared with 2018. 216 (60%) applications of the total number of applications were against abuses on social networks, while 140 (40%) applications were against other forms of violations. As regards supervision inspection, the DPDP conducted 190 supervision inspections, of which 55 regular, i.e. scheduled, 117 extraordinary inspections and 18 follow-up supervisory inspections.<sup>327</sup>

On 5 December 2019, on behalf of the Government, the Minister of Justice, signed the Protocol Amending the Convention for the Protection of Individuals with Regard to Automatic Processing of Personal Data.<sup>328</sup> The purpose of the Protocol is to modernize and improve the Convention (ETS No. 108)<sup>329</sup>, having in mind the protection of individuals against personal data processing in the context of challenges to privacy deriving from the increased use of new information technologies and globalization of personal data processing.

On the occasion of the European Day of Personal Data Protection, in the period from 28 to 31 January 2020, the DPDP organized open days at its premises to inform and offer advice to citizens how to protect their personal data and what to do in case of abuse.

***It will be necessary to adopt a legislative solution to transpose Directive (EU) 2016/680 of the European Parliament and Council of 27 April 2016 (The Police Directive), which will enable final harmonization with the EU Acquis on the area of personal data protection.***

323 makpress.mk, "Горан Трајковски Си Поднесе Оставка Од ДЗЛП, Се Сели Во Банкарскиот Сектор." (Goran Trajkovski resigned from his position at the DPDP).

324 Parliament of the Republic of North Macedonia, Stenograph notes – Second continuation of the 126<sup>th</sup> session of the Parliament of the Republic of North Macedonia, held on 25 December 2019.

325 Law on Personal Data Protection.

326 Directorate for Personal Data Protection, 2019 Annual Report on the Work of the DPDP.

327 Ibid.

328 Council of Europe, "Details of Treaty No. 223. Protocol Amending the Convention for the Protection of Individuals with Regard to Automatic Processing of Personal Data."

329 Council of Europe, "Details of Treaty No. 108, Convention for the Protection of Individuals with Regard to Automatic Processing of Personal Data."

## FREEDOM OF THOUGHT, CONSCIENCE AND RELIGION

In the context of freedom of religion, in the reporting period there have been no religious tensions between or among religious communities. Public opinion polls have shown that the majority of citizens, i.e. 78% believe that religious freedoms and rights in the country are respected, while 89.9% of the public consider that their freedom of religion has never been limited.<sup>330</sup>

As regards freedom of thought, deliberating in the case No. U 57/2019,<sup>331</sup> the Constitutional Court established that the constitutional right to freedom of thought was violated. Namely, the Constitutional Court made null and void the judgements of the Criminal and of the Appellate Court, under which the lawyers Pavlina Zefikj and Panche Toshkovski were fined in the case about the events at the Parliament of 27 April. They were fined because as lawyers they complained against the conditions in which a threatened witness was heard, i.e. at the old building of the Criminal Court, due to technical problems in the new building of the Criminal Court.

In November 2017, the ECtHR established that by not registering the Ohrid Archbishopric, the Government violated the provision on freedom of association and freedom of thought, conscience and religion, guaranteed under the ECHR. After the final judgement, that followed the appeal against the initially issued judgement, filed with the ECtHR Grand Chamber, the Orthodox Ohrid Archbishopric has still not been entered in the Register of Churches, Religious Communities and Religious Groups, as a formal church community.

## FREEDOM OF EXPRESSION

Researches in North Macedonia have shown that journalists feel neither free nor limited in exercising their freedom of thought and expression. This conclusion is based on the general climate in the country regarding the free expression of thought, but also based on continual threats and pressures to which journalists are exposed in exercising this right.<sup>332</sup>

North Macedonia improved its ranking by 14 positions as regards the press freedom index and is currently ranked 95<sup>th</sup> out of a total number of 180 countries ranked by the organization Reporters without Borders.<sup>333</sup> The government made progress in respecting media freedom and freedom of expression, but problems remained, including weak media independence, and violence toward and intimidation of journalists.<sup>334</sup> While the media and civil

330 novamakedonija.com.mk, „Почитување На Верските Слободи и Права“, Спроведено Од Институтот За Политички Истражувања-Скопје.“ (Respecting religious freedoms and rights, Research conducted by the Institute for Political Research- Skopje).

331 Constitutional Court of the Republic of North Macedonia, Ruling No. U. 57/2019.

332 European Policy Institute, “Human Rights Defenders in the Western Balkans – Intimidation Instead of Recognition.”

333 Reporters Without Borders, “Reporters Without Borders – North Macedonia 2019 World Press Freedom Index.”

334 US Department of State – Bureau of Democracy, Human Rights, and Labour, “North Macedonia 2019 Human Rights Report.”

society are active, journalists and activists face pressure and intimidation.<sup>335</sup> “The media landscape was deeply polarized along political lines, and private media outlets were often tied to political or business interests that influenced their content. Some critical and independent outlets operated and were found mainly online.”<sup>336</sup>

## Pressure on Journalists

In the reporting period, there were a number of cases recorded of threats against and harassment of journalists. In April 2020 the news crew of the TV 21 Station was verbally attacked and threatened in the Municipality of Arachinovo. Namely, four persons threatened the news crew that they would break the equipment if the recordings were not deleted, since the news team was there to take a statement from the Mayor of Arachinovo regarding problems that citizens in this Municipality faced.<sup>337</sup> In another case, the journalists Meri Jordanovska and Iskra Koroveshovska faced threats and insults by the person Emil Jakimovski, who at the time of the incident was employed at the Central Registry. After he was reported, Emil Jakimovski was arrested on 17 January 2020 and the court delivered a judgement on 16 March 2020 sentencing Emil Jakimovski to 20 months prison and obligatory psychiatric treatment.<sup>338</sup> Furthermore, the Skopje First Instance Court delivered a judgement convicting the actor Toni Mihajlovski to a suspended prison sentence of three months due to a threat he expressed over social networks against the journalist Branko Trichkovski.

## Implementation of Legislation/Institutions

At its session held on 6 February 2020, the Program Council of the Macedonian Radio and Television (MRT) elected the new Supervisory Board of the MRT, with a five-year term of office, starting on 5 March 2020. The election of the Board is problematic because, the election was made by the MRT Program Council, the term of office of which ended in December 2019, and the procedure for election of new members of the Program Council has been blocked at Parliament for more than a year. Such an election of the Supervisory Board leaves room for suspicions of political influences, and the Association of Journalists of Macedonia underlined that members of the Program Council who took part in the election had conflict of interests.<sup>339</sup> The election of new members of the Council of the Media Regulator is also blocked at Parliament. Namely, the Committee for Elections and Appointments at the Parliament of the Republic of North Macedonia does not institute the procedure for election of members of this body.<sup>340</sup>

335 Freedom House, “Freedom In The World 2019 – North Macedonia.”

336 Ibid.

337 tv21.tv, “Закани За Екипа На ТВ21 Во Арачиново — „Да Избришеш Се, Инаку Ветувам Дека Се Ке Скршам”. (Threats against the TV21 Station in Arachinovo- Delete it all, otherwise I promise you I will break everything).

338 360stepeni.mk, “Емил Јакимовски Доби Затвор Од 20 Месеци и Задолжително Лекување Во Бардовци.” (Emil Jakimovski sentenced to 20 months in prison and obligatory psychiatric treatment in the Bardovci Mental Hospital).

339 meta.mk, “ЗНМ Бара Да Се Поништи Конкурсот За Нови Членови На Надзорниот Одбор На МРТ.” (The Association of Journalists of Macedonia demands that the public competition for election of new members of the MRT Supervisory Board is annulled).

340 Совет за етика во медиумите во Македонија, “Бараме Деблокирање На Медиумските Реформи.” (Council of Media Ethics of Macedonia, *We demand deblocking of the media reforms*).

Considering that lawsuits against journalists could be seen as (an attempted) pressure on the work of journalists, the Agency for Audio and Audiovisual Media Services called upon politicians, especially holders of public offices, to refrain from filing lawsuits against the media in order not to threaten the freedom of expression.<sup>341</sup> This is a reaction by the AVMU when after texts published about the *Racketeering case* referring to alleged links of high-ranking politicians with this case, the then Prime Minister, Zoran Zaev, the Deputy Prime Minister, Radmila Shekerinska, the Minister of Foreign Affairs, Nikola Dimitrov, and the Deputy Speaker of Parliament, Frosina Remenska, stated that the texts were lies and announced that they would file lawsuits.<sup>342</sup> In this regard, the Ministry of Justice announced that draft amendments would be prepared to the Law on Civil Law Responsibility for Offences and Libel, based on an expert analysis of the application of this Law to be completed until May 2020. One of the most important amendments considered in respect of this Law is abolishing offense and abolishing future amounts of fines in case of libel.<sup>343</sup>

## Public Broadcaster

Under the new 2020 Budget, the Government of the Republic of North Macedonia allocated MKD 14.5 million to the MRT, an amount identical to the one allocated in 2019.<sup>344</sup> The Financial Plan of the MRT states that the Public Broadcaster will not be able to set the salary for employees at the Television to the level of minimal net salary at the national level, then that it will not be able to pay the holiday bonus for the employees and that it will not be able to recruit new staff, which jeopardizes the on-going operation of the Television.<sup>345</sup> In this regard, the MISA stated that the funds allocated for the work of the MRT is based on the fact that the Television has not fulfilled the recommendations of a number of relevant international and national institutions, and that the term of office of the current management has ended.<sup>346</sup>

In addition, there is a trend of decreasing revenues of the MRT in last seven years, i.e. reduction from EUR 24.83 million in 2013 to EUR 15.01 million in 2019.<sup>347</sup>

341 Agency for Audio and Audiovisual Media Services, *Press Release*.

342 slobodnaevropa.mk, "Протекоа Документи За Рекет, Заев, Димитров и Шекеринска Најавуваат Тужби." (Documents on the *Racketeering case* have leaked- Zaev, Dimitrov and Shekerinska announce lawsuits).

343 <http://mediaobservatorium.mk>, "До Мај Ќе Се Анализира Примената На Законот За Граѓанска Одговорност За Навреда и Клевета." (The analysis of the application of the Law on Civil Law Responsibility for Libel and Offense will be completed until May).

344 Macedonian Radio and Television, *2020 Financial Plan amending the Financial Plan of the Public Broadcaster – Macedonian Radio and Television*.

345 Ibid.

346 meta.mk, "Нема Реформи, Нема Зголемен Буџет – Владата и Скрати На МРТ Над 6 Милиони Евра." (No Reforms, No increased budget – the Government cuts more than EUR 6 million from the allocated budget).

347 Изјава на Зоран Трајчевски, директор на АВМУ за време на „Тркалезна маса за финансирањето на МРТ“ одржана на 11-ти февруари 2020. (Statement by Zoran Trajchevski, Director of the AVMU at the Roundtable on the financing of the MRT, held on 11 February 2020).

## Economic Factors

For the second consecutive year, printed media were allocated subsidies under the state budget. Namely, in pursuance with the Government 2019 Program for support of printed media and of the distribution of printed media, 12 printed media were granted support in the amount of EUR 714,000, to be distributed proportionally. It remains to see the effect of such measures in terms of development of printed media and of the journalist economic standard in these media outlets.

Journalist Kristina Ozimec notes the fact that journalists in the country have salaries of EUR 300 to 400 in Denar countervalue, which has a direct negative impact on their motivation to investigate topics in the area of corruption and crime.<sup>348</sup> In addition to low salaries, journalists lack sufficient resources required to ensure the quality of their work and consequently their informing the public is based on day-to-day information about current events. At the moment, investigative journalism reporting about corruption and crime in the country is prompted only based on foreign projects, which results in the need for independent initiatives and innovative manner of work of the media.<sup>349</sup>

## Internet

The Government of the Republic of North Macedonia published a draft Plan for a decisive action against spreading of fake news,<sup>350</sup> considering that in the last two years, on a number of occasions the Government faced situations of mass-scale spread of fake news, both via social networks, but also via traditional media outlets. Some of the fake news were spread from territories of other countries.<sup>351</sup> The Association of Journalists emphasized that there are problematic elements in the Plan, but the Plan should be welcomed as “an effort to devise a defence mechanism within institutions, by designing protocols and trainings for civil servants.” However, “substantive reforms in the media landscape are needed, that will ensure the survival of quality media, which would guarantee provision of true and timely information.”<sup>352</sup>

Appellate Courts in the country adopted the conclusion that Internet media, which appear as parties before first instance civil law courts in proceedings against offence or libel, must be treated the same as traditional media. Consequently, the editors and editors in chief of Internet media outlets are responsible for libel and offence contained in texts posted in their virtual space.<sup>353</sup>

348 makpress.mk, “Изјава На Кристина Озимец, Новинарка Дадена За Време На Конференција: Истражувачкото Новинарство Во Земјава Уште Долго Време Ќе Биде Само Посакуван Идеал.” (Statement by Kristina Ozimec, journalist, given during the Conference: Investigative journalism in the country will long remain only a desired ideal).

349 makpress.mk, “Конференција: Со Плати Од 300-400 Евра Во Македонија Не Може Да Има Истражувачко Новинарство.” (Conference: with Salaries of EUR 300 to 400 in Macedonia there cannot be investigative journalism).

350 Government of the Republic of North Macedonia, *Draft Plan for a decisive action against spreading fake news*.

351 Government of the Republic of North Macedonia, *Draft Plan for a decisive action against spreading fake news and against attack on democracy*.

352 okno.mk, “Реакции На Еснафските Здруженија За Најавениот План На Владата За Борба Против Дезинформации.” (Reactions by professional associations regarding the announced Plan of the Government for fight against fake news).

353 Совет за етика во медиумите во Македонија. “Апелациони Судови: Ист Третман На Онлајн Медиумите Како и Традиционалните,” (Council for Media Ethic of Macedonia, *Appellate Courts: same treatment of online media outlets as the treatment of traditional media outlets*).

The Association of Journalists of Macedonia and the Council of Media Ethics of Macedonia started a website,<sup>354</sup> which offers information relevant to professional online media outlets. Currently, 101 internet media outlets that fulfil the CMEM criteria are entered in the Register.<sup>355</sup> The purpose of the Register is to contribute to the development of the process of professionalization of the work of online media outlets, and thus contribute to consolidating their credibility, and recognizing those media outlets that abide by the standards, contrary to unethical media, which undermine the reputation of professional online media outlets.<sup>356</sup>

The AVMU published infographics on media literacy containing guidelines to recognize various types of misdirecting news, such as propaganda, misinformation, sponsored content. In addition, guidelines were published to check news on the Internet.<sup>357</sup>

## Professional Organizations / Professional Conditions

The Association of Journalists of Macedonia signed the Charter of the European Federation of Journalists for the improvement of conditions for work of journalists and media workers (Charter on Journalists Working Conditions), upon the initiative of the Independent Trade Union of Journalists and Media Workers. The Charter is mainly focused on working conditions of journalists and media workers and on professional standards guiding their work.<sup>358</sup>

The CMEM, supported by the OSCE Mission in Skopje, raised the initiative for and established the National Network against Hate Speech in the Media, together with relevant stakeholders coming from professional journalist associations, the civil sector and state and regulatory bodies working on human rights protection.<sup>359</sup> The Network will be focused on preventing hate speech, influence the public opinion and unite all relevant stakeholders in the country in the fight against hate speech. The Media Ethics Council published that as of August 2019, inclusive, 78% of the received applications were against unethical reporting or fake news on Internet portals.<sup>360</sup>

**Law enforcement bodies need to be pro-active in ensuring safe climate for journalists in which they will be able to work without threats and pressures on their work. Freedom of expression is of vital importance for the advancement of democratic processes in the country.**

354 "Промедиа - Професионални Онлајн Медиуми." (Promedia – Professional Online Media Outlets).

355 Совет за етика во медиумите во Македонија, "Правила За Прием На Интернет Портали За Членство Во СЕММ." (Council for Media Ethics of Macedonia, *Rules on admission of internet portals to the membership of the CMEM*).

356 Здружение на новинари на Македонија, "ЗНМ и СЕММ: Регистарот На Професионални Онлајн Медиуми Достапен На [Www.Promedia.Mk](http://www.promedia.mk)." (Association of Journalists of Macedonia, *AJM and CMEM: The Register of professional online media outlets available at [Www.Promedia.Mk](http://www.Promedia.Mk)*).

357 "Промовирани Нови Инфографици За Медиумска Писменост." (New infographics on media literacy promoted).

358 [emagazin.mk](http://emagazin.mk), "Промовирана Повелбата На Европската Федерација За Условите За Работа На Новинарите." (The Charter of the European Federation on Conditions for Work of Journalists promoted).

359 Совет за етика во медиумите во Македонија, "Формирана Мрежа За Борба Против Говор На Омраза Во Медиумите." (Council for Media Ethics of Macedonia, *Established network for fight against hate speech in the media*).

360 US Department of State – Bureau of Democracy, Human Rights, and Labour, "North Macedonia 2019 Human Rights Report."

The authorities need to provide an organized response regarding the grounds for financing certain internet media outlets, which on a number of occasions have spread fake news and have intentionally disinforming citizens in the country. The List of professional internet media outlets is a good start. However, further action is needed to rise to the challenge of preventing the spread of fake news.

The Parliament of the Republic of North Macedonia needs to deblock the process for election of members of the new Council of the media regulator in order that reform processes in the media landscape could continue. In terms of the cost-effectiveness of journalists and available capacities and resources at their disposal, the state must find ways of encouraging independent investigative journalism, which will serve as a watchdog guarding the society.

## PROPERTY RIGHTS

31 August 2019, inclusive the Ombudsman received 116 applications relating to property rights, of which 37 concern restitution of property, 35 are related to property titles, and 20 are related to zoning.<sup>361</sup>

## VULNERABLE GROUPS AND THE NON-DISCRIMINATION PRINCIPLE

Surveys in North Macedonia show that citizens accept people of different political or ethnic affiliation as their neighbours or as employed official persons, showing however certain reservations towards people with a sexual orientation different from the heterosexual one.<sup>362</sup> Furthermore, citizens consider that political discrimination is the most widespread, followed by discrimination on grounds of ethnic affiliation.<sup>363</sup>

On 17 May 2019,<sup>364</sup> the Parliament voted in favour and adopted for the second time the Law on the Prevention of and Protection against Discrimination, with 55 votes in favour, despite the fact that more than 61 MPs were present in the Parliamentary Plenary Hall.<sup>365</sup> The Law was placed on the agenda for adoption for the second time since former President Ivanov refused to sign the document promulgating the Law on the Prevention of and Protection against Discrimination the first time this Law was adopted in March 2019.

<sup>361</sup> Ibid.

<sup>362</sup> Organization for Security and Co-operation in Europe (OSCE), "Barometer Of Equal Opportunities."

<sup>363</sup> Ibid.

<sup>364</sup> Parliament of the Republic of North Macedonia, Session No. 94 of the Parliament of the Republic of North Macedonia, scheduled for 27 March 2019, at 14:00 hrs.

<sup>365</sup> Parliament of the Republic of North Macedonia, *Stenograph notes of the first continuation of the 24<sup>th</sup> session of the Parliament of the Republic of North Macedonia, held on 16 May 2019.*

On 25 June 2019, the Commission for the Protection against Discrimination filed an initiative with the Constitutional Court, which on 28 January 2020 instituted<sup>366</sup> the relevant procedure for the assessment of the constitutionality of the Law on the Prevention of and Protection against Discrimination.<sup>367</sup> The Commission for the Protection against Discrimination filed the initiative on 25 June 2019, arguing that the new Law was adopted in contravention of Article 75 of the Constitution. The entity submitting the initiative disputed the procedure for the adoption of the Law, considering the number of votes in favour, on the basis of which the Law was adopted.<sup>368</sup>

The election of members of the new equality body, in pursuance with the new anti-discrimination Law – the Commission for the Prevention of and Protection against Discrimination, is still stuck at the Parliamentary Committee for Elections and Appointment, due to which the country does not have a functioning equality body since August 2019, when the term of office of the previous members of the Commission ended, in line with transitional provisions of the new Law on the Prevention of and Protection against Discrimination.<sup>369</sup> At its session held on 12 December 2019, the Parliament annulled without any reasoning the first public competition for election of members of the Commission for Protection against Discrimination and decided to again publish the public competition. The President of the Parliamentary Committee, Ilija Dimovski, did not convene a meeting for the election of new members of the Commission until the Parliament dissolved. Consequently, and in light of the election period and the ensuing activities for forming the Parliament and the Government, it is expected that the Commission for the Protection against Discrimination will not be functioning until May 2020, at the least. A number of civil society organizations and networks also reacted to the issue of election of members, demanding the Parliament to complete the procedure for election of members of several (regulatory / independent) bodies, among which the Commission for the Prevention of and Protection against Discrimination.

In 2019, the Ombudsman received more than 80 applications for protection against discrimination and “citizens most often complained against discrimination at the workplace, mobbing, discrimination in employment for certain jobs, and discrimination on grounds of ethnic and religious affiliation.”<sup>370</sup> Most often applications are filed by persons belonging to the Roma community, facing discrimination when exiting the country at border crossing points.<sup>371</sup> According to the Network against Discrimination, in the thus far filed applications, the most present ground of discrimination was political or party belonging, and the least present was discrimination on the ground of sexual orientation.<sup>372</sup> At the local level, the most widespread discrimination is discrimination on political and ethnic grounds, on grounds of disability, sexual harassment, and discrimination by employers against employees.<sup>373</sup>

366 Constitutional Court of the Republic of North Macedonia, Ruling No. U. 115/2019.

367 Official Gazette of the Republic of North Macedonia, *Law on the Prevention of and Protection against Discrimination*.

368 On the occasion of the first voting for the Law, 51 MPs voted, and after the President returned the Law to the Parliament, at the second voting 55 MPs voted.

369 ako.mk, “Дашевски: Смирено Ја Прифативме Одлуката За Наша Смена, Но Сера Државата е Без Комисија За Заштита Од Дискриминација.” (Dashevski: We have calmly accepted the decision for the termination of our office, but now the country will be left without a Commission for Protection against Discrimination).

370 Изјава на Славчо Тимов, заменик народен правобранител од Подрачната канцеларија во Струмица на „Трибина за предизвиците во спроведувањето на законот за спречување и заштита од дискриминација на локално ниво“, Струмица. (Statement by Slavcho Timov, Deputy Ombudsman at the Regional Ombudsman's Office in Strumica, Debate on the challenges in applying the Law on the Prevention of and Protection against Discrimination at the Local Level).

371 Ibid.

372 alfa.mk, “Мрежа За Заштита Од Дискриминација: „Законот За Спречување и Заштита Од Дискриминација Не Се Спроведува Соодветно“ (Network for Protection against Discrimination: The Law on the Prevention of and Protection against Discrimination is not appropriately implemented).

373 kanal5.com.mk, “Во Македонија Хајмногу Се Дискриминира На Политичка Основа.” (Discrimination on political grounds is most widely spread in Macedonia).



## GENDER

North Macedonia is ranked 70<sup>th</sup> according to the 2020 global gender gap index,<sup>374</sup> which represents a regression of four places compared to 2019. For the first time in the country, the Ministry of Labour and Social Policy and the State Statistical Office, in cooperation with the European Institute for Gender Equality (EIGE), developed a gender equality index in following the methodology<sup>375</sup> of the EIGE. The gender equality index in North Macedonia, ranks the country as 15<sup>th</sup> compared with EU Member-States (which a better ranking than half of the EU Member-States) i.e. it reflects the fact that in the country there is still significant gender inequality and lagging behind the average in almost all domains, covered by this index.<sup>376</sup> In terms of domains analysed under the index, North Macedonia significantly lags behind in terms of “money” and “time”, and lags behind the least in the area of “health” among women. The country has a better scoring compared with the European average in the domain of “power”, which reflects the fact that there is greater representation of women in Parliament, institutions, managerial bodies of research institutions and in managerial bodies of national broadcasting institutions.<sup>377</sup>

Women are much more exposed to gender based discrimination at the workplace than men.<sup>378</sup> Furthermore, there is a small number of reported cases of discrimination at the workplace which is owed to the lack of trust in institutions, as well as to the long and expensive procedures required to prove discrimination against the victims.<sup>379</sup>

In terms of monthly income, the pay for the same job is 18% higher for men, compared with women working on the same job.<sup>380</sup> There is inequality among genders in terms of the employment rate among men and among women. Namely, based on data<sup>381</sup> published by the State Statistical Office, in 2017, the employment rate among women was 34.6%, while among men this rate was 53.6%. The unemployment rate among women was 21.8%, and 22.7% among men, while the rate of activity among women was 44.3%, with the same rate among men being significantly higher amounting to 69.3%. In terms of business, the percent of women entrepreneurs is 30%, who primarily work in the service industry, i.e. having companies with low volume of turnover and profit. The reasons for this can be found in the inability of women to strike a balance between the private and professional life, since women much more than men take care of the children and perform household chores.<sup>382</sup> Two thirds of women living in rural areas are outside the labour market, i.e. they do not have pension and health insurance,<sup>383</sup> despite the fact that they farm the land equally with their

374 World Economic Forum, “Global Gender Gap Report 2020.”

375 European Institute for Gender Equality, “Gender Equality Index.”

376 Марија Башевска, “Индекс На Родова Еднаквост Во Северна Македонија.” (Marija Bashevska, *Gender Equality Index in North Macedonia*).

377 Ibid.

378 Реактор — Истражување во акција, “Родово Базирана Дискриминација и Работнички Права Во Северна Македонија.” (Reactor — Research in Action, *Gender Based Discrimination and Labour Rights in North Macedonia*).

379 Ibid.

380 NovaTV.mk, “Заложбите За Еднакви Плати Меѓу Мужите и Жените Кај Нас Се Само На Хартија.” (Commitments to equal pay for men and women are just words on paper in our country).

381 State Statistical Office, (*Women and Men in North Macedonia*).

382 Statement by Valentina Disoska, President of the Association of Businesswomen, available at: <https://sitet.com.mk/zhenite-vleguvaat-vo-biznis-od-potreba-glavno-fokusirani-na-mikro-i-malite-kompanii>

383 24.mk, “Дискриминација На Жените Од Руралните Средини.” (Discrimination of women in rural areas).

husbands. In 2018, 72% of women were victims of violence, and out of a total number of 919 women, every second woman suffered psychological violence, every fourth woman was a victim of physical violence and every seventh woman was a victim of physical violence.<sup>384</sup> According to other researches, “every third woman is a victim of domestic violence, while court proceedings against domestic violence most often have no outcome, owing to the lack of trust in the system.”<sup>385</sup> In this context, despite the fact that the country is a Party to the Istanbul Convention, the Criminal Code still does not envisage crimes of violence on the ground of gender, as required under the Convention, since the incriminated offences under the Criminal Code are covered by the wide term of “domestic violence”.<sup>386</sup> In the course of 2019, a Working Group, established by the Ministry of Labour and Social Policy, drafted the Law for the Prevention of and Protection against all Forms of Violence against Women and Domestic Violence. This Law abides by standards set under the Istanbul Convention, and it will define terms such as gender, sex, gender-based violence, violence against women, woman-victim and gender identity. In addition, this Law will sanction all forms of violence against women and girls, defining as well the procedures to be followed by institutions in protecting victims, prescribing for the first time that in-line institutions need to process such cases with due care and coordinate their activities with various organizations. Last year, a Working Group was established tasked with drafting a new Law on Equal Opportunities for Men and Women.

The Draft Law on Interruption of Pregnancy submitted in 2018, was adopted in May this year. The new Law eliminates some of the administrative obstacles, such as mandatory counselling and three-day waiting period following the counselling, as well as the submission of certificates by women victims of rape or by underprivileged women, by which personal statements of women will be considered sufficient by health care institutions to provide the requested medical service. In addition, the Law envisages that pregnancy may be interrupted until the 12<sup>th</sup> gestation week, under a written consent of the pregnant woman, while the First Instance Panel will be established following the 22<sup>nd</sup> gestation week, instead after the 12<sup>th</sup> gestation week of the pregnancy.

Researches show that almost every female human rights defender has at least once experienced sexual harassment or threats for sexual violence at the workplace, different from men who have not reported such cases.<sup>387</sup> Despite the fact that hate crimes are recognized under the Criminal Code, yet there has not been a criminal case in which the perpetrator has been prosecuted for hate crime on the ground of gender, gender identity or sexual orientation.<sup>388</sup> Women have been the target of attacks by a politician, who published on his social network profile harassing, sexist and misogynistic content aimed at the incumbent Minister of Finance.<sup>389</sup> Although this a message addressed to one person, the narrative

384 Мрежа за заштита од дискриминација, “Колкава е Дискриминацијата Врз Жените? – Сексизмот Во Бројки.” (Network for Protection against Discrimination, *What is the degree of discrimination against women? – Sexism in numbers*).

385 mkd.mk, “Завршна Конференција На Коалиција, Сите За Правично Судење” – Секој Ден Во Земјава Една Жена Пријавува Семејно Насилство.” (Closing conference of the Coalition All for Fair Trials – Every day in the country one woman reports domestic violence).

386 Коалиција сите за правично судење, “Анализа На Податоците Од Набљудуваните Судски Постапки Во Предмети Од Семејно и Родово Базирано Насилство Во 2019 Година.” (Coalition All for Fair Trials, *Analysis of data about observed court proceedings in cases of domestic and gender based violence in 2019*).

387 European Policy Institute, “Human Rights Defenders in the Western Balkans – Intimidation Instead of Recognition.”

388 Ibid.

389 Naum Stoilkovski, VMRO-DPMNE Spokesperson, *Zaev came with Nina Group-party to show his adjusted budget. . . It is now clear that Zaev is the real Minister of Finance, and Nina is a pin up girl promoting the trinkets and thighmasters of the Government.*

created among the public is that the environment for women in the public and political life is degrading and inappropriate. The Public Prosecutor, Fatime Fetaj, was also a target of an attack by a journalist, who published content on social networks,<sup>390</sup> which amounts to hate speech on ethnic and gender grounds. In addition, journalists Meri Jordanovska and Iskra Koroveshovska were victims of an attack on the ground of gender, as described above in the document, in the section entitled *Pressure on Journalists*.

Women have been also placed in subordinate position according to the contents of a textbook on sociology for II year of general secondary education, which caused negative public reaction. Namely, the textbook, published in 2002, states that “if the woman is closed in the house and does not have any public roles, she has no possibility of committing crimes”, further stating that “adultery is a crime”, which is used “to sneak ideas of chauvinist and patriarchal ideologies and discourses, disabling thus the progress and emancipation of new generations.”<sup>391</sup> The Ministry of Education and Science announced that it would amend the textbook, and the new textbook would be available for the 2020/2021 school year.<sup>392</sup> Such contents in textbooks which have been used for more than 18 years raises the need for a comprehensive revision of textbooks that are in use, and adapt their contents in line with modern society trends and views based on latest scientific facts, not only in terms of gender, but also in terms of all grounds of discrimination.

The Law on Labour Relations needs to be gender sensitive and address gender-based problems. In this regard, the analysis prepared by Reactor notes that despite the fact that the Law on Labour Relations bans dismissal of pregnant employees, still it leaves room for employers to choose not to renew their employment contract. Informal female workers (farmers, household workers and similar) cannot exercise the right to compensation for leave from work on grounds of pregnancy. In addition, while the mother is able to utilize 9-month paid maternity leave, after the delivery, this right is granted to fathers as an exception, which provides legitimacy to the thesis that “taking care of children is the “exclusive” right and duty of women and contributes to maintaining the inequality between men and women in the public and in the private sphere.”<sup>393</sup>

When it comes to the presence of women in the media, analyses show that “men are three times more present in the media as experts and news program interlocutors compared with women invited as experts or interlocutors on certain topics.”<sup>394</sup> In addition, when media outlets cover events on the topic of gender, they do not report about the event from the gender perspective, i.e. the gender roles in the society. In this respect, the “patriarchal positioning of women in the house and within the family is evident in the media coverage of religious

390 Ljupcho Zlatev, journalist, “As of tomorrow Fatime Fetaj will again wake up to the song of the early cock in the village of Bogovinje. She will resume her submissive position before the traditional nationalist patriarchy. Regretfully, another “icon” goes bust. Fatime will now have only memories of her urban life, memories accompanied with verses of her favourite singer Aca Lukas. But she will not even be able to drown her sorrows in alcohol, because there, in Bogovinje, women get bitten up if they drink alcohol.”

391 Statement by Irena Cvetkovikj, Executive Director of the Coalition Margins, given on 16 December 2019, available at: <https://meta.mk/czvetkovik-si-protnale-svoi-shovinistichki-i-patrijarhalni-ideologii-vo-uchebnikot-po-sociologija/>

392 360stepeni.mk, “МОН: Учебникот По Социологија Ќе Биде Ревидиран За Следната Учебна Година.” (Ministry of Education and Science: the Sociology textbook will be revised for the next school year).

393 Реактор — Истражување во акција, “Што Треба Да Содржи Новиот Закон За Работни Односи.” (Reactor — Research in Action, *What does the new Law on Labour Relations need to contain?*)

394 Кристина Хаџи-Василева, “Родово Мапирање Во Сферата На ИКТ Во Македонија.” (Kristina Hadji-Vasileva, *Gender mapping in the ICT area in Macedonia*).

holidays, when women mainly are expected to keep and organize the celebration of the traditions. Furthermore, there is also lack of statements and opinions of female politicians when reporting about their activities.”<sup>395</sup>

“The UN Committee on the Elimination of Discrimination against Women (CEDAW) decided in favour of six young Roma women (in two separate cases) who in August 2016 were displaced from their homes, without any warning, while they were pregnant.”<sup>396</sup> Namely on 1 August 2016, tens of Roma families living in a makeshift settlement under the Skopje Fortress were driven out of the area, since they occupied privately owned land. In 2018, the Ministry of Labour and Social Policy provided housing and welfare assistance for almost all Roma living the said settlement.<sup>397</sup>

On 25 May 2019, the Helsinki Committee lodged a Communication with the CEDAW Committee. This is the first communication addressed from the Republic of North Macedonia to the CEDAW Committee. The case identified as admissible to be brought before the Committee, was first processed by national courts and it involves two Roma women, who were denied the right to health care, i.e. their access to gynaecological services was limited.<sup>398</sup>

In the context of the Istanbul Convention, in 2019, the Government allocated MKD 6,400,000 for the implementation of the said Convention, which is twice more the funds allocated in 2018. Thus, activities started for the establishment of a resource centre for gender responsive budgeting and policy design, which is to help mainstream the gender perspective in policies and public finances in the country.<sup>399</sup> The Dutch Embassy provided financial support in the amount of MKD 9,144,300 for the implementation of activities under the National Action Plan for Implementation of the Istanbul Convention.<sup>400</sup>

The National Network to end Violence against Women and Domestic Violence has made a review of the degree of fulfilment of recommendations by the country of the CEDAW Committee, then recommendations under the UPR process and those contained in EC Progress Reports, specifically recommendations relating to violence against women and domestic violence, while also assessing the services available to victims. “The general conclusion is that the country has made progress in this area. However, the progress made is minimal and related to the improvement of the legislative framework, while the situation with respect to direct assistance and protection of women victims of violence remains unchanged.”<sup>401</sup> However, reports indicate that changes are slow and that it is necessary to attach particular priority to dealing with the issue of violence against women and domestic violence.<sup>402</sup>

395 Ibid.

396 European Roma Rights Centre, *North Macedonia is required to pay compensation to pregnant Roma women who were removed from their settlement*.

397 Ministry of Labour and Social Policy, *Housing for homeless persons*.

398 Helsinki Committee for Human Rights of the Republic of Macedonia, *Results of the Project Women Have Rights! Presented – The greatest achievement is the first communication lodged with the CEDAW Committee*.

399 Government of the Republic of North Macedonia, *117<sup>th</sup> session of the Government of the Republic of North Macedonia: Justice System ICT Strategy is being prepared; “Youth Card” for more benefits: Strategy for Development of Women’s Entrepreneurship: A Resource Centre for Gender Sensitive Budgeting and Policy Design will be established*.

400 Ministry of Labour and Social Policy, *The Dutch Government will financially support the implementation of the Istanbul Convention*.

401 Глас против насилство, “Соопштение за Јавност: Напредок на државата по прашањето на насилство врз жени и семејно насилство – Осврт на препораките од меѓународните тела.” (Voice against Violence, Press Release: *The country’s progress on the issue of violence against women and domestic violence – Review of fulfilment of recommendations by international bodies*).

402 Ibid.

## HATE SPEECH

In the reporting period, there were high number of cases of hate speech registered, especially in the pre-election periods prior to the Macedonian presidential elections, held in 2019 and the announced early general elections in 2020. The Prespa Agreement with the Hellenic Republic and the change of the name of the country prompted increased number of hate speech cases on ethnic and political affiliation grounds. According to certain analyses, hate speech is systematic and organized,<sup>403</sup> and is especially present in certain periods when a given societal or political issue becomes very topical. In the reporting period, such times were the election periods,<sup>404</sup> the period when there was a debate between Zoran Zaev and Hristijan Mickoski,<sup>405</sup> sport events,<sup>406</sup> the Pride Parade in Skopje,<sup>407</sup> the period of the spread of COVID-19<sup>408</sup> and the constantly present hate speech on social networks following the change of the name of the country.<sup>409</sup>

Available data leads to the conclusion that hate speech is a serious problem in the country. In 82% of the cases, hate speech is to be found on social media,<sup>410</sup> i.e. in written comments or visual representations, including by public figures, i.e. politicians<sup>411</sup> and journalists.<sup>412</sup> In the period from April 2019 to March 2020, the Helsinki Committee received 250 reports of hate speech on various grounds, mostly on grounds of ethnic affiliation, political affiliation, sexual orientation and gender identity.<sup>413</sup> The Mol has registered an increased number of cases of hate speech in 2019, i.e. an increase by 54.5%; there were 51 registered crimes in which 45 criminal charges were filed against 51 perpetrators.<sup>414</sup> Thus far, there has been only one final judgement in a case involving hate speech.<sup>415</sup>

The AJPP and the Public Prosecutor's Office have signed a Memorandum of Cooperation with the OSCE/ODIHR for the implementation of a program for public prosecutors on the issue of hate speech (the PAHT Program). This cooperation is to facilitate the advancement of the work of the AJPP and the Public Prosecutor's Office, preparing them to better respond

403 civilmedia.mk, "ЦИВИЛ: Црната пропаганда е закана за демократијата и правото на глас." (Civilmedia mk, CIVIL: Black propaganda is a threat to democracy and to the right to vote).

404 Ана Василевска, „Жесток говор на омраза на социјалните мрежи: Бесилка за Зоран Заев порачуваат поддржувачи на ВМРО-ДПМНЕ“. (Ana Vasilevska, *Strong hate speech on social networks: Gallows for Zoran Zaev say supporters of VMRE-DPMNE*).

405 civilmedia.mk, „Анализа на ЦИВИЛ: Изразен говор на омраза на социјалните мрежи во текот на ТВ-дуелот меѓу Заев и Мицкоски“. (CIVIL analysis: Hate speech expressed on social networks during the TV debate between Zaev and Mickoski).

406 a1on.mk, „Социјалните мрежи и навичката (не)култура“. (Social networks and (lack of) culture of fans).

407 civilmedia.mk, „Говор на омраза и повик за насилство за првата парада на гордоста во Скопје“. (Hate Speech and calls to violence during the first Pride Parade in Skopje).

408 frontline.mk, „Говор на омраза: Севериција мора да биде казнета. Ова што се случува е дар божји“. (Hate Speech: Northland must be punished. What is happening now is a gift from God).

409 civilmedia.mk, „МТВ за ЦИВИЛ: Се оградваме од новинарката што шири говор на омраза“. (MTV for CIVIL: We distance ourselves from the journalist spreading hate speech).

410 24info.mk, „Говор На Омраза: Не Ни Требаат Дополнителни Закони, Туку Ефективен Ангажман Од Институциите“. (Hate speech: We do not need new laws, but effective action by institutions).

411 a1on.mk, „Народниот Правобранител Ја Осуди Пораката На Пратеникот На ВМРО-ДПМНЕ Стеванација“. (The Ombudsman condemned the message of the VMRO-DPMNE, Stevanadjija).

412 NovaTV.mk, „Заев: Осуда За Секој Вид Говор На Омраза И Антисемитизам Или Што Може Така Да Се Толкува“. (Zaev: Condemnation for all forms of hate speech and anti-Semitism or any statement that can be interpreted as such).

413 Helsinki Committee for Human Rights of the Republic of Macedonia, *Hate speech — online platform*.

414 24info.mk, „Говор На Омраза: Не Ни Требаат Дополнителни Закони, Туку Ефективен Ангажман Од Институциите“. (Hate speech: We do not need new laws, but effective action by institutions).

415 Statement by Uranija Pirovska, President of the Helsinki Committee for Human Rights of the Republic of Macedonia.

to the challenges of hate speech and hate crime. Thus, public prosecutors will be trained as trainers and a National Plan for Education about hate crime will be adopted, which will cover all public prosecutors in the country.<sup>416</sup>

## HATE CRIMES

In the period between April and December 2019, there were 117 registered cases of hate crime, mainly on grounds of ethnic affiliation; there were also a number of hate crime cases registered on grounds of political affiliation.<sup>417</sup> The type of hate crimes are mostly violent crimes, and in the other cases there could be crimes of damaging the property and spreading racist and xenophobic material, while the perpetrators and the victims are most often minors.<sup>418</sup> In the first quarter of 2020, there were 25 hate based incidents. The trends of the previous year continue, i.e. the motive of most of the incidents is the ethnic affiliation of the victims, while the perpetrators are mostly young people.

The number of incidents motivated by political affiliation was reduced over the past years. This type of incidents most often involve damaging the property owned by political parties (mostly property of the SDSM or of the VMRO-DPMNE) or addressing serious threats against members or supporters of political parties. Of course, trends present in previous years continue, and it should be born in mind that the number of such incidents was raising prior to and during the early general elections in 2014, then during the presidential elections that same year, during the 2016 early general elections and during the 2017 local elections.

The second trend that can be noticed relates to the number of incidents perpetrated due to the Macedonian or Albanian ethnic origin of the perpetrator/victim. In 2019, by taking up 84.9% of all registered incidents (135 out of a total of 159 incidents) these incidents based on the ethnic affiliation of the victims/ perpetrators become the most widely spread type of incidents, with an indeed concerning increasing frequency, as it was the case in the past years (2013/2014)

In the first half of 2019, there were 2 separate incidents motivated by the sexual orientation/gender identity of the victim. This number by no means implies that the society has all of a sudden become tolerant towards the LGBTI community. It should be underscored in this respect that state authorities have still not managed to properly investigate the incidents against the LGBTI community perpetrated in 2013 and in 2014, and the police did not manage to arrest any of the perpetrators. The incidents motivated by sexual orientation/gender identity registered in 2019 took place in the period when the first Pride Parade was organized in Skopje, i.e. in June 2020. At that period, hate speech and threats against the LGBTI community were ever present and widespread.

416 makfax.com.mk, 'Обвинителите ќе се Обучуваат За Справување Со Криминалот Од Омраза' (Prosecutors will be trained to deal with hate crime) (23 May 2019) <<https://makfax.com.mk/makedonija/обвинителите-ке-се-обучуваат-за-справ/>> accessed 30 March 2020.

417 Helsinki Committee for Human Rights of the Republic of Macedonia, *Hate crimes – online platform*.

418 a1on.mk, "Хелсиншки Комитет: Загрижувачки Зголемено Насилство Помеѓу Млади Лица, Институциите Да Вложат Сериозни Напори За Превенција На Делата Од Омраза." (Helsinki Committee: Concerning increase of violence among the young; institutions need to make serious efforts to prevent hate crimes).

On 29 June 2019, the National Network for Fight against Homophobia and Transphobia<sup>419</sup> organized the first Pride Parade in Skopje. The main event was peaceful and without any incidents. However, after the event an LGBTI+ activist was attacked in the village of Saraj.<sup>420</sup> There were also high number of cases of hate speech on grounds of sexual orientation and gender identity registered.<sup>421</sup>

Data collected under a research prepared by the Margini Coalition, shows that 23% of the LGBTI boys have been maltreated at school, contrary to only 6% of heterosexual boys. “As many as 21% of the LGBTI boys have been victims of physical violence, compared to 9% of heterosexual boys. As many as 36% LGBTI boys answered that they have seriously considered committing suicide, as different from 6% of heterosexual boys.”<sup>422</sup> These figures underline the fact that the education system does not ensure equal conditions for all female and male pupils/students, while the sense of tolerance is not present among all children, which highlights the fact that measures are needed to sensitize children as of the earliest age.

Despite the fact that in the case *Xv. the Republic of Macedonia*,<sup>423</sup> the ECtHR delivered a judgment in favour of the person X stating that the right to privacy and family life of person X were violated by the fact that the person was not allowed to change the gender designation in the civil registration records, the Department of Civil Registration Records stated that it had no competence regarding this issue.<sup>424</sup> The decision of the Department is contrary to the judgment of the ECtHR, being also in contravention of the decision of the State Commission deciding in administrative procedures and in procedures of labour relations in the second degree and contrary to the decision of the Government,<sup>425</sup> under which “The Department of Civil Registration Records is obliged to most urgently approve and accept the request of applicant X for change of the gender designation in the national identification number and accordingly inform the Ministry of Justice – the Bureau of the Government Agent representing the Republic of North Macedonia before the European Court of Human Rights.” Despite the judgement and decisions ordering actions to be undertaken, the person is still not able to make the requested changes and is subjected to continued violation of the right to private and family life. In the meantime, the Ministry of Justice made efforts to establish a Working Group tasked with designing a legislative solution for the legal recognition of gender, which would thus produce a systemic solution to this problem.

419 sdk.mk, “Првата Парада На Гордоста Во Скопје Ќе Се Одржи На 29 Јуни, Најави Националната Мрежа За Борба Против Хомофобијата и Трансфобијата.” (The first Pride Parade in Skopje will be held on 29 June announced the National Network for Fight against Homophobia and Transphobia).

420 a1on.mk, “Со Боксови Нападнат ЛГБТИ Активист Во Сарај: Ќе Те Убиеме, А Другарките Ќе Ги Силуваме.” (LGBTI activist attacked with kicks in the village of Saraj: We will kill you and we will rape your “girlfriends”).

421 US Department of State - Bureau of Democracy, Human Rights, and Labour, “North Macedonia 2019 Human Rights Report.”

422 fokus.mk, “Дури 36% Од Момчињата Со Хомосексуална Определба Размислувале За Самоубиство Поради Насилство,” 36. (As far as 36% of boys of homosexual orientation have thought about committing suicide because of suffered violence).

423 ECtHR, *Case X. v. the Republic of Macedonia* (application No. 29683/16).

424 radiomof.mk, “Коалиција Маргини: Управата За Матична Евиденција Се Изживува Со Лицето X и Го Понижува Судот Од Стразбур.” (Coalition Margins: The Department of Civil Registration Records tortures person X and humiliates the Strasbourg Court).

425 Government of the Republic of North Macedonia, *Minutes of the 141<sup>st</sup> session of the Government of the Republic of North Macedonia, held on 25 June 2019.*



The Working Group drafted gender recognition provisions, as part of the applicable Law on Civil Registration Records, which ensure legal recognition of gender in pursuance with the self-determination principle, in an administrative procedure. Despite the fact that the draft provisions were finalized by mid 2019, they were not submitted to the Parliament of the Republic of North Macedonia.

As regards gender reassignment surgeries, which currently are not available for trans-gender people under the state funded health care system, the Ministry of Health established a Working Group, composed of doctors, with a view to ensuring health care services for trans-persons, which are covered under the state Health Insurance Fund. However, there has been no progress thus far. In June 2019, at a conference organized by the Ministry of Labour and Social Policy, the Minister of Health made a public statement that the state Health Insurance Fund would cover gender reassignment surgeries for trans-gender people. His statement<sup>426</sup> caused a surge of transphobia in the media and social networks, including transphobic statements about political figures coming from the conservative and social-democratic blocs. Ultimately, the Minister stated that he would withdraw this decision.

The year saw cases registered of hate speech coming from high-ranking officials.<sup>427</sup> In January of that year, the Deputy Prime Minister, Bujar Osmani, made a statement during a TV program, in which he qualified the LGBTI people as a “disputable category”. This statement caused a reaction by the National Network against Homophobia and Transphobia. Yet this does not change the fact that a high-ranking government official presented such a view. Later, that year Prime Minister Zaev used the word “faggot”,<sup>428</sup> implying a character feature with a negative connotation, not referring specifically to sexual orientation and then at the end of October of the same year there was a homophobic statement by the head of the Islamic Religious Community, Sulejman Rexhepi, who stated that there was no room for “gays” in the Islamic Religious Community.

## THE ROMA

Policies for integration of Roma in areas of health care, education, housing and employment mark a favourable progress. However, the results in the change of the quality of life of Roma are still not visible. In this respect, positive developments are “the increase of the budget for infrastructure projects in Roma settlements, ensuring timely solution for housing of homeless persons, increasing the coverage of Roma with active labour market measures, increasing the coverage of Roma pupils/students with scholarships and reducing the infant mortality rate among the Roma.”<sup>429</sup>

426 Ministry of Health, *The policies of the Ministry of Health correlate to the EC Report on the Progress of the Republic of North Macedonia*.

427 [Govornaomraza.mk](http://Govornaomraza.mk)

428 [Lider.mk](http://Lider.mk), “Zaev: Нема да дозволам еден педер да ја симне оваа Влада дд власт.” ([Lider.mk](http://Lider.mk) Zaev: *I am not going to let a faggot topple this Government*).

429 Institute for Research and Policy Analysis – Romalítico, “Shadow Report – The Implementation of the Strategy for Roma in 2019.”



One third of Roma aged 22 to 25 complete secondary and higher education. However major part of the Roma population faces discrimination and poverty. “The Cycle of discrimination, poverty and exclusion of Roma still persists.”<sup>430</sup> There is still inequitable representation of Roma in institutions; the percentage of representation of Roma is 1.3%, compared to the required percentage of 2.6%. Within the 1.3% percentage of Roma representation, the job positions designated for Roma are at the lowest rank in the hierarchy of positions within institutions, and indeed a minor part of Roma occupy managerial positions in the country.<sup>431</sup>

Roma still face discrimination<sup>432</sup>, and problems with children on the street,<sup>433</sup> poverty, not attending school and living in inhumane conditions are still unresolved problems.<sup>434</sup> It is especially important to underline the intersectional character of discrimination to which Roma women are often exposed,<sup>435</sup> but also all Roma who do not belong to the dominant heteronormative matrix.<sup>436</sup>

In September 2019, the Minister without Portfolio in charge of the implementation of the Strategy for the Roma concluded an agreement with 16 municipalities, which were granted MKD 3 million in support of the implementation of the 2015-2020 Strategy for the Roma.<sup>437</sup> In addition, in 2020 it is planned to award MKD 16 million for utility and infrastructure projects in order to ensure lasting housing for persons, who are provisionally staying in the old military barracks in Kochani.<sup>438</sup> On 15 February 2020, the Parliament adopted the Law on Unregistered Persons and their Entry into the Register of Births.<sup>439</sup> This Law is an attempt to resolve a problem lasting for several decades now, affecting primarily Roma living in the country, whose births have not been registered in the Register of Births, which prevents them from having access to basic services. Before the adoption of the Law, the Ministry of Labour and Social Policy, together with civil society organizations mapped out about 750 persons,<sup>440</sup> who will be covered, and this Law will enable them to be entered in a separate Register of Births, being thus able to get a birth certificate from the separate Birth Register and then identification documents, by which they will be able to exercise their fundamental rights.

430 Statement by Samuel Zbogor, Ambassador of the EU, Head of the Delegation of the European Union to North Macedonia.

431 opserver.mk, “Граѓански Организации Бараат Системски и Трајни Решенија За Проблемите На Ромите Граѓански Организации Бараат Системски и Трајни Решенија За Проблемите На Ромите | Opserver.Mk.” (Civil society organizations demand systemic and lasting solutions for problems of Roma).

432 Ирена Каревска, “Дискриминаторска Училишна Литература: Ромите – „Цигани Лажливци“, „Жените-Слугинки“. (Irena Karevska, *Discriminatory school literature: Roma – “Gypsies liars”, “women-servants”*).

433 Ministry of Labour and Social Policy, Carovska: Activities of Mobile teams are intensified, 167 children on the street identified.

434 Statement by Samuel Zbogor, Ambassador of the EU, Head of the Delegation of the European Union to North Macedonia.

435 Кристина Кифнер, “Двојна Дискриминација На Ромките.” (Kristina Kifner, *Double Discrimination of Roma Women*).

436 Наташа Бошковска-Златкова, “ЛГБТИ Ромите Се Жртви На Интерсекциска Дискриминација. Овие Граѓани Се Истовремено Жртви На Расизам, Хомофобија и Трансфобија.” (Natasha Boshkovska-Zlatkova, *LGBTI Roma are victims of intersectional discrimination. These citizens are at the same time victims of racism, homophobia and transphobia*).

437 Government of the Republic of North Macedonia, *The Minister without Portfolio, Muzafer Bajram at a meeting at the Ministry of Labour and Social Policy*.

438 Office of the Minister without Portfolio in charge of implementation of the Roma Strategy, *Implementation of activities by the Office of the Minister without Portfolio in the period from April 2019 to March 2020*.

439 Official Gazette of the Republic of North Macedonia, Law on Persons not Entered in the Registry of Births.

440 opserver.mk, “Граѓански Организации Бараат Системски и Трајни Решенија За Проблемите На Ромите Граѓански Организации Бараат Системски и Трајни Решенија За Проблемите На Ромите | Opserver.Mk.” (Civil society organizations demand systemic and lasting solutions for problems of Roma).

On 13 December 2019, the Bitola Appellate Court established<sup>441</sup> discrimination against inhabitants of a Roma settlement in Prilep on grounds of ethnic affiliation, since the Municipality of Prilep and the Public Water Supply Company in Prilep did not provide access to clean drinking water for the inhabitants. Namely, the complainants, who are Roma, lived at the outskirts of the city, where they did not have access to water, while other non-Roma inhabitants living in the same area had access to this basic human right. Initially, the Prilep First Instance Court rejected the lawsuit as having no grounds.<sup>442</sup>

## PERSONS WITH DISABILITIES

In April this year, a new Professional Body was established tasked with the implementation of the new model of functional assessment of children with disabilities, in line with the International Classification of Functioning, Disability and Health (ICF). Contrary to the thus far model of categorization of disability with children, which was focused on the degree of disability, the new ICF-based assessment model is focused on developing the available potentials of the child, by analysing the degree of functioning, but also the existing obstacles in the environment. In addition to possibilities for more relevant inclusion of children with disabilities by detecting and developing their individual capabilities, the new assessment model contributes to avoiding self-stigmatization by families of children with disabilities, which was one of the reasons for the avoidance of the old categorization, based on an obsolete model.

The new Centre for functional assessment and support to children and young people, under which there are one national and two professional assessment bodies, is located at the building of the former *11 Oktomuri Orphanage*, in Skopje, which is part of the plan for conversion of the building of the orphanage, as the process of deinstitutionalization continues. Depending on the needs of the child, the assessment may be made either at the premises of the Centre or at the home of the child, but also at education institutions that the child attends. The assessment procedure involves parents, guardians and other caregivers.

Considering that the professional Body for ICF-based assessment operates, as part of a project activity, which is to be completed to the end of this year, a relevant solution needs to be found for its establishment and functioning as a permanent body, which is of particular importance for preparing recommendations for inclusion of children with disabilities in the education process.

On 23 December 2019, the Parliament of the Republic of North Macedonia adopted the Declaration on the Right to Political Participation of Citizens with Disabilities.<sup>443</sup> This Declaration reaffirms the commitment of the legislator to advancing the situation of citizens with disabilities. Yet it remains to be seen what specific steps the authorities will undertake in order to provide systemic solutions for this category of citizens.

<sup>441</sup> Bitola Appellate Court, case No. GZ - 1671/19.

<sup>442</sup> Prilep First Instance Court, case number P4-88/17.

<sup>443</sup> Parliament of the Republic of North Macedonia, *Declaration on the Right to Political Participation of Persons with Disabilities*.

The new Law on Social Protection<sup>444</sup>, adopted in May 2019, defines the category of disabled person as “a person who has long term physical, intellectual, mental or sensory disorders, which in interaction with various obstacles can prevent their full and efficient participation in society on equal basis with others.”<sup>445</sup> The problematic aspect of this Law is that the “disability benefit” set forth under Article 44 is based on a criterion according to which in addition to being disabled, the person is to be beyond 26 years of age, while the amount of the benefit ranges from MKD 4,117 for completely deaf person, to MKD 7,204 for a person with serious or most severe intellectual disability, person with most severe physical disability or completely blind person. However, the legislator deals with this issue under the Law on Protection of Children,<sup>446</sup> which in Article 32 stipulates a “special supplement”, as follows “children with specific needs who have impediments in their physical or mental development or combined development impediments until 26 years of age shall be provided with a special pecuniary supplement”, which amounts to at least MKD 5,021, which may be increased, taking into consideration various circumstances set forth under the law.

Persons with disabilities still face the problem of not having access to institutions and to many hospitality, sport and cultural facilities. There are problems with the proper implementation of the Law on Construction, in light of the fact that the prescribed norms for making buildings accessible and providing free movement to and within the buildings (Article 11)<sup>447</sup> are not respected, which is a problem to be dealt with by inspection services, that issue permits for use of buildings.<sup>448</sup>

The new Law on Primary Education<sup>449</sup> was adopted on 30 July 2019. In the context of persons with disabilities, this Law envisages inclusion of children with disabilities, while prescribing the forms of support to be provided to children with disabilities in the education process, such as introduction of teaching assistant, personal assistant, relevant expert assistance to be provided by an education support centre, inclusive team and use of assistive technology, upon recommendation of a professional assessment body and in line with the individual education plan or modified curriculum.<sup>450</sup> This Law was criticized by civil society organizations that underlined many of its deficiencies mainly regarding the “guarantees for inclusion of children with disabilities in the regular education process and how such inclusion will be implemented.”<sup>451</sup> It is also problematic that Article 11 makes use of the term “reasonable accommodation” when referring to the organization of the education process and satisfying the individual needs of pupils/students. The term itself leaves room for education institutions to adapt and interpret this term as it fits their procedures, in case the accessibility for persons with disabilities has been disrupted, compared with other persons. According to the research conducted by the Office of the Ombudsman, in the first three months of the implementation of the Law, in schools in Skopje, only 26% of the required

444 Official Gazette of the Republic of North Macedonia, Law on Social Protection.

445 Article 4, paragraph 5 of the 2019 Law on Social Protection (Official Gazette of the Republic of North Macedonia No. 104/2019).

446 Official Gazette of the Republic of Macedonia, Law on Child Protection.

447 Official Gazette of the Republic of Macedonia and Official Gazette of the Republic of North Macedonia, Law on Construction.

448 Снежана Калабакова, “Став На Националниот Сојуз На Лица Со Телесен Инвалидитет – Мобилност Македонија.” (Snezhana Kalabakova, *Position of the national Alliance of Persons with Physical Disabilities – Mobility Macedonia*).

449 Official Gazette of the Republic of North Macedonia, Law on Primary Education.

450 Article 19 of the Law on Primary Education, Official Gazette of the Republic of North Macedonia No. 161/2019.

451 coalition.org.mk, Position of the Coalition Margins.

teaching assistants and 73% of the required personal assistants were provided.<sup>452</sup> According to the same research, the most important factors which burden and complicate inclusion is the fact that schools are not prepared for implementation of legislative solutions, i.e. they lack professional teaching staff, the learning environment is not adjusted and there is no access to the school infrastructure. Another difficulty in implementing the new Law is the fact that the secondary legislation required under the Law has still not been adopted.

The deinstitutionalization process continued in this period and involved adults with disabilities, i.e. new small group homes were opened, then existing institutions were transformed, and services were developed in local communities. According to present plans, to the end of 2023 there will be no persons accommodated in any social protection institution.

The election legislation has not been harmonized with the UN Convention on the Rights of Persons with Disabilities. Hence, polling stations are not accessible for persons with disabilities, and most of the media do not report using a language and in a manner accessible for persons with disabilities.<sup>453</sup>

In the context of intersectional discrimination, “women and girls with disabilities are subject to multiple discrimination, they do not have conditions for inclusion in social life, they have difficulties completing their education, and even more difficulties in finding employment, while not having sufficient possibilities for socialization and forming a family.”<sup>454</sup>

It is necessary to organize a positive campaign for sensitizing and educating the population about various vulnerable categories, such as gender, LGBTI+, the Roma, persons with disabilities, etc. This will ensure a healthier society, in which all social groups will have equal comparable possibilities.

The in-line Parliament Committee for election of members of the Commission for the Prevention of and Protection against Discrimination must start and complete the procedure for election of the members of this Commission, in order to reinstate the possibility for protection against discrimination, of which citizens have been deprived for more than half a year.

The Government needs to enhance its effort to advance the position of women in the country. Law enforcement bodies and civil law courts need to be more sensitized when women are victims or damaged parties in proceedings, by which they will facilitate women gaining more trust in the institutions, which on its part will increase the awareness about reporting all cases with the competent bodies.

It is necessary to revise all textbooks that have been used for a longer period in the education, with a view to adapting their contents to modern developments and contemporary scientific achievements. This will help make children become more sensitized to various categories of citizens and it will contribute to building healthier and safer environment and future.

The Law on Labour Relations needs to stipulate a systemic solution that will prevent employers from abusing provisions under which instead of dismissing the employee they can choose not to renew the employment contract for female employees during pregnancy.

452 The Ombudsman, *Special Report on the research of the degree of implementation of the right to education by children with special education needs in primary schools in the region of the City of Skopje*.

453 Здружение за промоција и развој на инклузивно општество ИНКЛУЗИВА, “Бариери и Можности За Инклузивни Избори Во Република Северна Македонија.” (Association for Promotion and Development of Inclusive Society – INCLUSIVA, *Barriers and possibilities for inclusive elections in the Republic of North Macedonia*).

454 Весна Коловска, ‘Жените и Девојките Со Попреченост Се Двојно Дискриминирани’ (Vesna Kolovska, *Women and Girls with Disabilities are subject to double discrimination*) (29 November 2019) <<https://mms.mk/107115/жените-и-девојките-со-попреченост-се-д/>> accessed 30 March 2020.

Hate speech against women, the Roma ethnic community and against the LGBTI+ community must be strictly punished by relevant institutions. The Ministry of the Interior needs to strengthen its capacities for monitoring hate speech, especially on social networks. In addition to repressive measure, it is also necessary to raise the awareness and culture of the population at large.

The state needs to offer systemic solutions for problems of the Roma ethnic community, by devising strong affirmative and sustainable measures. Roma policies need to be mainstreamed into legislative solutions thus prescribing binding obligations for institutions, taking into consideration the need to demonstrate solid results in the negotiations with the EU under Chapter 23. In this context, it is necessary to find solutions for compulsory allocation of funds for Roma settlements in units of local self-government; in addition, it is necessary to resolve the problem of children on the street and the problem of begging; finally the set percentage of equitable representation of Roma at institutions needs to be levelled in comparison with the reached percentages of representation of other ethnic communities.

The legislator needs to improve the text of the Law on Primary Education, taking into consideration recommendations of civil society organizations. As a step forward in this regard, a working group could be established having on board representatives of civil society organizations and of the Ministry of Education and Science, which will be tasked with improving the text of the Law when it comes to the status of children with disabilities.

In respect of persons with disabilities, institutions and polling stations must be made accessible during elections. The same applies to the website of the State Election Commission. It is necessary to improve the registration of such persons in order to better organize and adapt the election process so that all voters could exercise their right to vote.

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