

THE INDEPENDENCE OF THE JUDICIARY AS A PRECONDITION TO TRUST IN THE JUSTICE SYSTEM

Author:
Iva Conevska Vangelova

Skopje, September, 2022

Independence, quality and efficiency are essential parameters of an effective justice system. Well-functioning and fully independent justice systems are key to ensuring that justice works for the benefit of citizens and businesses.¹ Effective judicial systems are essential for mutual trust and for improving the investment climate and ensuring the sustainability of long-term economic growth, something we constantly forget. It is therefore precisely because of their impact on the economy and investments, that efficiency, quality and independence of justice systems are one of the priorities of the European Semester – the annual cycle of coordination of EU economic policy.²

The recommendations made by the European Commission (EC) in its latest report on Rule of Law³ in order to improve the situation in some EU member states, and the data on perceptions from the EU Justice Scoreboard for 2022, should be a good roadmap for us as well, bearing in mind that an effective, quality and independent justice system is a prerequisite to the implementation of EU law, ensuring the rule of law and respect for the fundamental values on which the European Union is founded.

In this document, the focus is on the independence of judicial systems as a European standard and the perceptions of independence. Initially it gives an overview of the data from the EU Justice Scoreboard for 2022, regarding the perceptions of the judicial independence in the EU member states, than it gives a picture of the perceptions of judicial independence from the Balkan Barometer for 2022 for the Western Balkan countries, and in the end it gives a conclusion as to what our country should do to maintain and promote judicial independence.

1 „The 2022 Rule of Law Report“ p. 2, <https://ec.europa.eu/info/sites/default/files/1_1_194062_communication_ro_l_en_0.pdf>.

2 Ec.europa.eu, „EU Justice Scoreboard – Questions and Answers, 2020“, <https://ec.europa.eu/commission/presscorner/detail/el/qanda_20_1315>.

3 European Commission, The 2022 Rule of Law Report p. 1.



Judicial independence as a European standard

The independence of the judiciary is neither an end in itself nor a personal privilege of judges. The main function of independence is to guarantee the right of the individual, to define, protect and execute his/her rights and freedoms by an independent and impartial judge. We can say that the independence of the judiciary as a whole is an essential condition of judicial independence, which allows judges to fulfil their role as guardians of people's rights and freedoms. From this point of view, the independence of judges is a prerequisite to the rule of law.⁴

The independence of the judiciary can be external, which reflects the relationship of the judiciary as a whole (and of judges as individuals) with political power – especially government, legislative power, political parties, economic centers of power, etc. The other aspect of judicial independence is the internal one expressed in the relations of each judge with other judges – the president of the court and the higher judges, i.e. independence in the performance of judicial functions in relation to the structure to which the judge belongs.⁵

In the context of EU law, judicial independence is an integral part of the judicial decision-making process and is a requirement stemming from Article 19 of the TEU⁶ and from the right to an effective remedy before a court or tribunal provided for in Article 47 of the EU Charter of Fundamental Rights.⁷

The independence of the judiciary is also part of the guarantees set out in Article 6 – Right to a fair trial of the European Convention on Human Rights.⁸

The independence of the judiciary in the EU Member States through the prism of the EU Justice Scoreboard 2022 and the 2022 Rule of Law Report

The perceptions of independence shown in the EU Justice Scoreboard each year are of great importance, as the high perceived independence of the judiciary is most important for the confidence that justice in a society governed by the rule of law must inspire individuals and contribute to an improved business environment, as a perceived lack of independence can deter investments.⁹

Data from the EU Justice Scoreboard 2022¹⁰ and the 2022 Rule of Law Report¹¹ show that some European Union (EU) Member States still face challenges in the functioning of their justice systems.

In this regard, from the EU Justice Scoreboard 2022 (EU Justice Scoreboard 2022)¹² we can conclude that the perceptions of EU citizens regarding the independence of their judicial systems varies greatly. Namely, the perception of independence of the judiciary in more than half of the member states compared to 2021 is decreasing, yet the general public's perception of independence has improved in half of the member states facing specific challenges compared to 2016.

In Finland, Denmark, Austria, Luxembourg, the Netherlands and Germany, the level of perceived independence remains particularly high among the general public (over 75%), while in Slovakia, Poland and Croatia, the perception of independence is at a very low level, i.e. below 30%. The major reason for the perceived lack of independence of courts and judges was the interference or pressure from the government and politicians, and then pressure from economic or other specific interests. Compared to previous years, in several Member States, the two following reasons prevail for the perceived low independence.¹³

4 Mr. Guido NEPPI-MODONA, „The Various Aspects of the External and Internal Independence of the Judiciary“, p. 2, <[https://www.venice.coe.int/webforms/documents/?pdf=CDL\(2012\)035-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL(2012)035-e)>.

5 Ibid., p. 2, 3.

6 Official Journal of the European Union, Treaty on European Union (OJ C 202, 7.6.2016).

7 Official Journal of the European Union, Charter of Fundamental Rights of the European Union (OJ C 202, 7.6.2016).

8 Council of Europe, European Convention on Human Rights.

9 European Commission, „EU Justice Scoreboard 2020“, <https://ec.europa.eu/info/sites/default/files/eu_justice_scoreboard_2022.pdf>.

10 Ibid.

11 European Commission, „The 2022 Rule of Law Report“ p. 1, <https://ec.europa.eu/info/sites/default/files/1_1_194062_communication_rol_en_0.pdf>.

12 European Commission, EU Justice Scoreboard 2020, p. 9, <https://ec.europa.eu/info/sites/default/files/eu_justice_scoreboard_2022.pdf>.

13 Ibid.

In order to improve the situation in the justice systems, including the independence of the judiciary, the European Commission in its latest Rule of Law Report¹⁴ provides an overview of the work done and recommendations for the promotion of the situation in Member States, mainly in the following five areas: Judicial councils and procedures for the selection/promotion of judges as key safeguards for the independence of the judiciary; autonomy and independence of prosecutors as essential elements for the good functioning of the criminal justice system; disciplinary frameworks and accountability for judges and prosecutors; investment in the quality and efficiency of justice and lawyers as key actors for judicial systems based on the rule of law.

When it comes to the independence of the judiciary, the findings of the 2022 Rule of Law Report,¹⁵ concerning the Judicial Councils and the selection/promotion procedures for judges, are key.

Regarding the Judicial Councils, as guardians of the independence of the judiciary, the Report¹⁶ notes legislative efforts to promote the independence of the Judicial Councils in Luxembourg, Croatia, Italy, Cyprus, the Netherlands and Sweden. The independence of the Judicial Councils leaves room for concern in Spain, Bulgaria, Ireland, Slovakia and Portugal. In Poland and Hungary, the situation is most worrying, where structural or systemic problems have not been resolved.

When it comes to the selection/promotion of judges, the Report¹⁷ notes the improvement of selection procedures in Ireland, Croatia, the Czech Republic, Cyprus and the Netherlands. Malta, Greece and Austria have taken steps to improve these procedures, but challenges remain, particularly with regard to promotion to higher courts and the election of court presidents. Proceedings to promote judges to higher courts remain a key challenge to the independence of the judiciary in Latvia, Lithuania, Poland, Hungary and Bulgaria.

Perceptions of the independence of the Judiciary in the Western Balkan Countries – Balkan Barometer 2022

According to the perception of citizens surveyed in the Western Balkan countries, judicial systems remain the least independent of political influence: on average, two-thirds (66%) of them disagree with the claim that they are independent of political influence, while only 29% agree that they are independent.¹⁸

By country, in North Macedonia and Albania, perceptions of the independence of the judiciary from political influence are at the lowest level, compared to the remaining Western Balkan countries. Namely, in Kosovo, trust is highest, i.e. 56% believe the judiciary is independent. In Albania and North Macedonia, on the other hand, 78% believe that the judiciary is not independent of political influence. In terms of these perceptions, North Macedonia declined from the previous year, where distrust increased by 3%. In Montenegro, distrust in the judiciary's independence from political influence is 70%, while in Serbia it is 60%.¹⁹

14 European Commission, „The 2022 Rule of Law Report“ p. 1, <https://ec.europa.eu/info/sites/default/files/1_1_194062_communication_rol_en_0.pdf>.

15 Ibid.

16 Ibid.

17 Ibid.

18 „Balkan Barometer 2022, Public Opinion Analytical Report“, <[file:///C:/Users/lva%20Conevska/Downloads/Balkan%20Barometer%202022%20-%20PO%20\(1\).pdf](file:///C:/Users/lva%20Conevska/Downloads/Balkan%20Barometer%202022%20-%20PO%20(1).pdf)>.

19 Ibid.

How far out is our state in meeting European standards for judicial independence and what further?

The European Commission report notes a setback in the progress of judicial reforms for the Republic of North Macedonia in 2016²⁰. This situation improved with the adoption of the Strategy for Reform of the Justice Sector 2017-2022 with an Action Plan, as well as by the efforts to enhance the legal framework in the area of judicial independence, above all the efforts in the preparation and adoption of a new Judicial Council Law and the amendments to the Law on Courts of 2019 that address the recommendations made by the Venice Commission. The European Commission's reports on our country for 2018²¹, 2019²² and 2020²³, note progress in the reform processes in the judiciary. However, in the annual report for 2021²⁴, the European Commission was more reserved and assessed the judiciary reform processes as "good progress".

When it comes to judicial independence, a major step forward was taken with the adoption of the 2017-2022 Justice Sector Reform Strategy with the Action Plan²⁵, in which independence and impartiality were one of the strategic objectives, as well as with the adoption of the new Judicial Council Act²⁶ and the amendments to the 2019 Courts Act²⁷, which are in line with the opinions of the Venice Commission.²⁸

The new Law on the Judicial Council²⁹ aims to promote the transparency of the Council, introducing disciplinary responsibility of the members of the Council, and qualitative criteria for assessing judges. With the adoption of the new law, the Judicial Council started drafting the bylaws to improve the system for assessing judges in accordance with the Law on Judicial Council. In order to implement the Law on Judicial Council, the Judicial Council adopted the Rules of Procedure of the Judicial Council, the Rules for the Selection of Judges from the ranks of the Academy for Judges and Public Prosecutors by specifying the selection procedure and the Rules for the Selection of Judges in the Higher Courts. In order to objectively and impartially assess judges, the Judicial Council adopted a Methodology for qualitative evaluation of judges and a Methodology for evaluation of court presidents. In this regard, Methodology was also prepared with indicators for complexity of cases and judge evaluation. Rules for the establishment of the commissions in the Judicial Council and rules for the composition of the commissions from the higher court were also adopted, which will also play a significant role in the process of evaluation according to the new methodology.³⁰

In the area of financial independence of the judiciary, the measures in the Strategy to increase the judicial budget, are not implemented. The Law on Judicial Budget, with regard to the allocation of GDP to the judiciary, has not been implemented for years.³¹ A new Law on the Judicial Budget is also being drafted.³² Despite efforts,³³ judges' salaries they have not yet been increased.

20 European Commission, "2016 Communication on EU Enlargement Policy", <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20161109_strategy_paper_en.pdf>.

21 European Commission, "Commission Staff Working Document – The Republic of Macedonia 2018 Report", Strasbourg, 17 April 2018, <<https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20180417-the-former-yugoslav-republic-of-macedonia-report.pdf>>.

22 European Commission, Commission Staff Working Document – North Macedonia 2019 Report, Brussels, 29 May 2019, p<<https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20190529-north-macedonia-report.pdf>>.

23 European Commission, Commission Staff Working Document – North Macedonia 2020 Report, 6 October 2020, <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/north_macedonia_report_2020.pdf>.

24 European Commission, Commission Staff Working Document – North Macedonia 2021 Report, Strasbourg 19 October 2021, <https://ec.europa.eu/neighbourhood-enlargement/north-macedonia-report-2021_en>.

25 Ministry of Justice, Justice Sector Reform Strategy 2017-2022 with Action Plan, [https://www.pravda.gov.mk/Upload/Documents/Strategija % 20i %20akciski%20plan_MK-web.pdf](https://www.pravda.gov.mk/Upload/Documents/Strategija%20i%20akciski%20plan_MK-web.pdf).

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

27 Law Amending the Law on Courts, "Official Gazette of the Republic of North Macedonia", no. 96/2019.

28 Richard Barrett et al., "Opinion on the Draft Amendments to the Law on Courts, Adopted by the Venice Commission at Its 117th Plenary Session", Opinion No 944/2018, Strasbourg, 17 December 2018, p<[https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2018\)033-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2018)033-e)>.

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

30 Judicial Council of the Republic of North Macedonia, "Address by the President of the Judicial Council at the Conference 'Promoting Reforms – Restoring Citizens' Trust', (29 March 2022), <shorturl.at/aHY35>.

31 Elena Georgievska and others, "The Implementation of the Justice Sector Reform Strategy (2018-2022) (Елена Георгиевска и други, „Спроведувањето на Стратегијата за реформа на правосудниот сектор (2018-2022)) in 2021: Shadow Report "Macedonian Association of Young Lawyers, (Извештај во сенка", Македонско здружение на млади правници) Skopje, 2022 година, <http://blueprint.org.mk/wp-content/uploads/2022/04/MZMP-Godisen-izvestaj-FINALNO-ZA-WEB.pdf>.

32 ENER, "Draft law amending the Law on the Judicial Budget", (ЕНЕР, „Предлог-закон за изменување и дополнување на законот за судскиот буџет“), 10 May 2021, <https://ener.gov.mk/Default.aspx?item=pub_regulation&subitem=view_reg_detail&itemid=67287>.

33 The Government adopted the package of legislative changes for higher salaries in the justice and prosecution system), official website of the Government of the Republic of North Macedonia, 25 May 2022, p<<https://vlada.mk/node/28948>>.

In addition to all efforts made to promote the independence of the judiciary in line with European standards, citizens' trust in the Macedonian judiciary is still low. Trust is something that is built in the long run and requires the commitment of all key stakeholders.

Being in the process of developing a new strategy for the judiciary, it is crucial to make a cross-section of what has been done, what further needs to be done in the area of judicial independence and insert it in the new strategy. It is necessary to see the recommendations made to the member states in the Rule of Law Report in this section, as well as the recommendations of the European Commission for our country.

Moreover, it will be necessary to monitor the bylaws for the election of judges, the selection of judges in the higher courts and the implementation of the assessment methodologies, both by civil society organizations and the implementation of these bylaws and in accordance with the new Strategy for judiciary, as these data will be crucial in the process of accession to the EU. Finally, additional efforts are needed from the state to enhance the financial independence of the judiciary.

