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Coordinating fundamental rights in view of EU accession: challenges and opportunities





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Publisher:
European Policy Institute - Skopje

About the publisher:
Simonida Kacarska, PhD

Graphic design:
Relativ

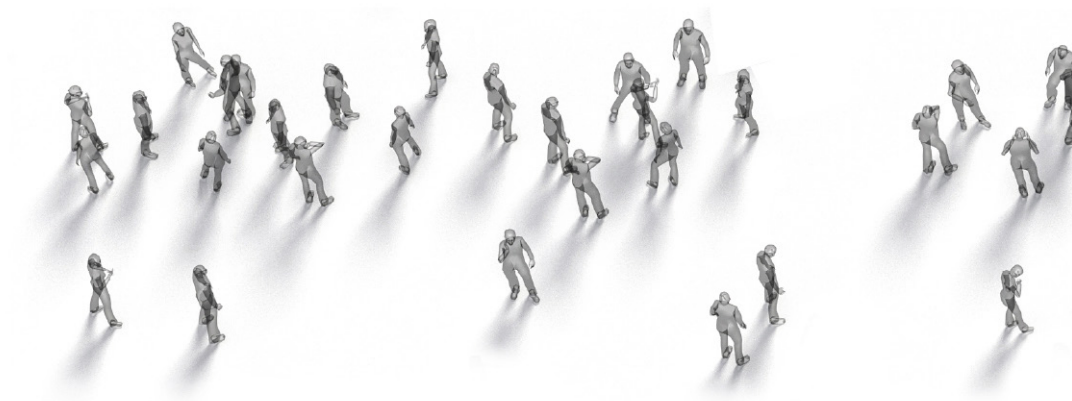
Skopje, December 2022



This brief was prepared within the project “Advancing fundamental rights in view of EU accession in North Macedonia”, financed by Civil Rights Defenders.

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Introduction

Fundamental rights and rule of law are the cornerstones of the functioning of the European Union. In the EU accession negotiation process, Chapter 23 of the EU acquis - Judiciary and fundamental rights - represents the key chapter and simultaneously the most dynamic and challenging one of the whole negotiation process. That is due to its nature, as it encompasses key elements of a functioning democratic society, namely a functioning judiciary; fight against corruption; and fundamental rights. With the 2020 revised enlargement methodology, the chapters of the EU acquis were rearranged, thus creating six clusters. Cluster 1, also called Fundamentals, includes a plethora of topics and carries enormous weight in the whole negotiation process with the fact that it opens firsts and closes last.

The rhetoric around Cluster 1 and Chapter 23 is heavily focused on the functioning of democratic institutions, the judiciary, and the fight against corruption, leading to a weakened focus on the part of fundamental rights. Notwithstanding the importance of the former for the rule of law in the country, nonetheless, the progress of fundamental rights is equally important in the negotiation process. In addition, aside from the plethora of the rights this subchapter includes,¹ it also focuses on the functioning of independent human rights bodies such as the Ombudsman and the Commission for Prevention and Protection from Discrimination. This shows that cross-institutional cooperation is needed for the enhancement of fundamental rights.

¹ Such as torture or other cruel, inhumane or degrading treatment or punishment; prison and detention facilities; data protection; freedom of expression; rights of the child; rights of vulnerable groups and antidiscrimination; LGBTQI+ rights; Roma; Gender.



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In early December 2022, the bilateral screening meeting for Chapter 23 was held. In the meeting, the progress made in the Chapter was elaborated, however from the perspective of national level stakeholders mainly focused on anticorruption politics, legal framework regarding the fight against corruption, administrative capacities and instruments, and judicial reforms.² Yet, fundamental rights in the case of North Macedonia and with the new methodology will be part of key upcoming documents relevant for the EU accession such as the Roadmap for the Rule of Law Chapters (23 - Judiciary and fundamental rights and 24 - Justice, Freedom and Security), the Roadmap for the functioning of democratic institutions. North Macedonia, also specifically will need to prepare an Action Plan dedicated to the protection of the rights of persons belonging to minorities or communities, including, inter alia, in the field of non-discrimination, fight against hate speech, education, setting up effective measures, reporting mechanisms and identifying respective responsible institutions.³

For the preparation of this brief, the team at the European Policy Institute, Skopje conducted desk research, interviews with stakeholders and two closed workshops with the national working group for the EU accession negotiations on fundamental rights with participation of regional experts.⁴ The objective of these workshops was to reflect on the experience of the bilateral screening in the area of fundamental rights and to create an opportunity to reflect on the key findings of the research.

The brief is structured as follows: first, it assesses the evolution of the EU's approach on fundamental rights in enlargement policy since 2005; second, it looks at the key institutions identified as bearers of responsibilities in this sub-chapter; third, it provides an overview of the EC assessment in 2022 on fundamental rights and last summarises the key findings and challenges in the coordination of this sub-area in view of the accession negotiations of North Macedonia.

2 Secretariat for European Affairs, 'Maricikj on Chapter 23: The Judicial Reform Is Crucial for Joining the EU, We Still Have Work to Do (2 December 2022) <<https://www.sep.gov.mk/post/?id=13298>>.

3 See Negotiating framework for North Macedonia, available at: https://vlada.mk/sites/default/files/dokumenti/draft_general_eu_position.pdf

4 A workshop was held at the end of December 2022 with the group responsible for coordinating fundamental rights in the EU accession negotiations, with key CSOs in this area. Regional experiences from Croatia and Serbia were also discussed at the event. We would like to thank all of the participants and speakers for their input.

Evolution of the EU's approach to fundamental rights in enlargement policy since 2005

Given its longstanding experience as a candidate for EU accession, from the EU reports on the country, one can trace the evolution of the EU's approach to fundamental rights overall. Between 2005 and 2009 the topic is treated in parallel in the political criteria and Chapter 23 and the structure of the report follows largely the approach of the European Convention on Human Rights.





Table 1: Overview of topics covered in the fundamental rights section of the European Commission analytical opinion on the country 2005

Political criteria and chapter 23

Observance of international human rights law	Civil and political rights	Economic and social rights	Minority rights, protection of minorities and cultural rights
European Convention for the Protection of Human Rights and Fundamental Freedoms and its main additional protocols	Access to justice	Gender equality	Status of the Framework Convention for the protection of the rights of national minorities
Membership obligations in the Council of Europe	Freedom from torture and inhumane and degrading treatment (chapter 23 also)	Education	Participation of minorities
Status of applications before the European Court of Human rights	Freedom from forced or obligatory labour	Rights of the child	Language rights
	Freedom from arbitrary arrest	Rights of persons with disabilities	Rights of Roma
	Right to privacy (chapter 23 also)	Trade union rights	Internally displaced persons
	Freedom of thought, conscience and religion (chapter 23 also)		
	Freedom of expression (chapter 23 also)		
	Right to vote		
	Freedom of association and assembly (chapter 23 also)		
	Freedom from discrimination (chapter 23 also)		
	Right to property (chapter 23 also)		



Since 2009 and the entry into force of the European Charter of Fundamental Rights we see a closer alignment with this document, although the scope of rights covered by the country reports as part of the enlargement package remains broader, as can be seen from the table below.⁵ The overall tendency is towards increasing the topics that are part of the fundamental rights as part of chapter 23, which later would become an essential element of the accession negotiations, as explained above, further strengthened with the revised methodology and its role in the cluster on fundamentals.

Table 2: Overview of topics covered by the fundamental rights of the EU report in 2022⁶

International human rights instruments	Property rights
European Court for Human Rights	Non discrimination
Promotion and protection of human rights	Gender equality
Prevention of torture and ill treatment	Rights of the child
Prison system	Rights of persons with disabilities
Protection of personal data	Rights of lesbian, gay, bisexual, transgender, intersex and queer (LGBTIQ) persons
Freedom of thought, conscience and religion	Procedural rights
Freedom of expression	Protection of minorities
Freedom of assembly and association	Roma
Labour and trade unions	EU citizens' rights

5 For an overview of the evolution of the treatment of the topic over the years, see: <https://epi.org.mk/publications/epi-analysis-of-the-ec-reports?lang=en>

6 European Commission 2022 Report on North Macedonia, available at: https://neighbourhood-enlargement.ec.europa.eu/north-macedonia-report-2022_en



Institutions -

members of the working group for the accession negotiations for Chapter 23, sub-area fundamental rights:

- Ministry of Justice,
 - » Bureau for representation of the Republic of North Macedonia before the ECtHR
 - » Sanctions Enforcement Administration
 - » Office for Management of Registers of Births, Marriages and Deaths
- Ministry of Foreign Affairs
- Ministry of Interior
- Ministry of Finance
- Ministry of Labour & Social Policy
- Ministry of Health
- Ministry of Information Society and Administration
- Ministry of Education and Science
- Ministry of Political System and Inter-Community Relations
- Secretariat for European Affairs
- Public Prosecutor's Office
- Judicial Council
- Supreme Court
- Commission for Prevention and Protection against Discrimination
- Commission for Relations with Religious Communities and Groups
- Personal Data Protection Agency
- Agency for Audio and Audiovisual Media Services
- Agency for Real Estate Cadastre
- Agency for Protection of the Right to Free Access to Public Information
- Agency for Community Rights Realization
- The Ombudsperson
- Public Defender's Office
- Government - National coordination body on the implementation of the CRPD

The diversity of bodies represented in the group, including the independent nature of many of them represents a challenge for the coordination of the fundamental rights in the context of EU accession. These include the national human rights institutions, but also various courts, and court management bodies. In addition, the national structure for the coordination of the accession negotiations still does not have a definite model for the inclusion of stakeholders in the EU accession negotiations, despite the commitment to this announced by the government at several occasions. The inclusion of CSOs is expected to create yet further challenges due to the diversity and number of active organisations in various aspects of the fundamental rights. The absence of a systematic database of CSOs active in each of the areas and the weak consultation mechanisms have also been highlighted in the 2021 SIGMA monitoring report on North Macedonia. The report points that despite the existence of clear rules and procedures for public consultation on new policies, the requirements are not consistently followed in practice, and other tools and forms of engagement with external stakeholders are not fully utilized. Engagement of external stakeholders is thus not ensured and systematic quality control of public consultation is not performed.⁷

7 SIGMA/OECD 2021 Monitoring Report on North Macedonia





The situation of fundamental rights in North Macedonia as per the EC 2022 assessment

The general assessment of the state of Chapter 23 in North Macedonia is that the country has achieved **some level of preparation / is moderately prepared** to apply the EU acquis and European standards in this area. More concretely, in the area of fundamental rights, the Report concluded that while the legal framework on the protection of fundamental rights is largely in line with European standards and the country continues to meet its general obligations on fundamental rights, there are remaining challenges. The situation in the prisons has been labelled as dramatic with significant delays in the implementation of the recommendations of the CPT. The progress in the freedom of expression has been limited, especially as an area which the EU has been following very closely over the years.

Below are the key assessments of the fundamental rights for 2022, as provided by the EC report⁸:

The legal framework on the protection of fundamental rights is largely in line with European standards. The deinstitutionalisation process is progressing with the resettlement of persons with disabilities to community-based care. The Ministry of Labour and Social Policy continues to invest in community services, including supporting victims of gender-based violence. It is of particular importance to implement all the provisions of the Law on prevention and protection from violence against women and domestic violence. Continued improvements can be noted in gender mainstreaming and respect for women's rights. The recommendations made by the European Committee for the Prevention of Torture on the treatment of detained and convicted persons were not adequately addressed. Implementation of the legislation on hate speech and of the national action plan for the Istanbul Convention's provisions needs to be improved. The civilian external oversight mechanism over the police is still not fully functional, lacking representatives from civil society organisations.

8 European Commission 2022 Report on North Macedonia, available at: https://neighbourhood-enlargement.ec.europa.eu/north-macedonia-report-2022_en

Last year's recommendations were addressed only partially and remain valid. In the coming year, the country should, in particular:

- allocate the necessary financial and human resources enabling the Commission for Prevention and Protection against Discrimination to become fully functional and increase the cooperation with the Ombudsman Office;
- the recommendations of international monitoring bodies, especially with regard to the rights of persons in detention/prison and the dramatic conditions in prisons should be implemented with utmost urgency and efforts should be stepped up to promote alternatives to incarceration;
- provide adequate support and community services to vulnerable categories of children, especially children victims of violence, Roma children and children with disabilities.





The institutional coordination on fundamental rights for the accession negotiations: challenges and the way ahead

The research conducted for this policy brief highlighted several key points of relevance for the coordination of fundamental rights in view of the EU accession process as mentioned by our interviewees at the national level, the workshop discussion and the regional transfer of experiences. It must be also mentioned that the research took place largely during the screening of the chapter 23 and prior to the preparation of the EC screening report for this chapter. The findings below are therefore significant for the process of preparation for the management of the accession negotiations.

First, the *sheer diversity of the topics* covered is likely to create challenges for the coordination of the fundamental rights. The coordinative function lies with the Ministry of Justice as foreseen at the moment, yet, there are more than 40 in many cases independent institutions which participate in various aspects of the protection of fundamental rights. One of the recommendations provided by the participants in this project was that coordinators of sub-areas would need to be assigned in specific rights.

Second, *the availability and reliability of data* has been pointed as a challenge. Our interlocutors have underlined that often data is missing and/or different data is provided in various reports of related to specific rights submitted to the UN and the Council of Europe for the realisation of specific rights and conventions. In this respect, the link with the overall reporting on UN/Council of Europe instruments was also pointed as a potential tool, but also a challenge due to occasional delays in the submission of these reports. In this respect, the coordination with the Ministry of Foreign Affairs is also of essential importance as they are the responsible institution for the submission of reports to international bodies.



Third, the coordination and communication between the institutions will be essential for the *devising of specific indicators* which will be the basis for the monitoring of the progress throughout the negotiations process. Given the extended length of the accession negotiations, it will be crucial to devise indicators which can be tracked over time, yet at the same time to balance between qualitative and quantitative measurements as well. Experience from the region warns against the trend of quantification to assess the protection of rights or the promotion of human rights. In addition, it is recommended that the specific indicators would be linked to existing measurements as part of other international instruments. In this respect, the possibility of monitoring *specific cases of violations* of fundamental rights, must also be considered, thus highlighting the link with the judicial reform overall.

Fourth, North Macedonia will face an additional challenge in the area of fundamental rights as to the preparation and monitoring of an Action Plan for dedicated to the Action Plan dedicated to the protection of the rights of persons belonging to minorities or communities, including, inter alia, in the field of non-discrimination, fight against hate speech, education, setting up effective measures, reporting mechanisms and identifying respective responsible institutions as foreseen in its negotiating framework. The preparation of this plan will pose an additional element for coordination and its relationship with the overall coordination of chapter 23 in this respective area.

Fifth, the institutions and the broader public in the country are not sufficiently familiarised with the *European Charter of Fundamental Rights* as the key tool at the EU level for the protection of fundamental rights. The use of the charter would need to be strengthened also because the country since 2017 holds an observer position in the Fundamental Rights Agency of the EU.

