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ANALYTICAL REPORT

INDEPENDENCE, IMPARTIALITY, PROFESSIONALISM AND EFFICIENCY OF THE JUDICIAL SYSTEM

ANALYSIS AND ASSESSMENT OF THE ALIGNMENT OF MACEDONIA'S LEGAL
FRAMEWORK WITH THE STANDARDS ENVISAGED BY THE EUROPEAN UNION



This report is a résumé of a broader analysis with a complete and detailed analytical examination of the alignment with standards envisaged by the EU in this area, which was prepared by the Association for Development Initiatives "Zenith", the Ministry of Justice of the Republic of Macedonia and Denis Preshova, M.E.S., LL.M.

DECEMBER 2014

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I. SUMMARY

According to Article 2 of the Treaty on European Union (TEU), the European Union is founded, above all, on rule of law, freedom, democracy and respect for human rights. These values are common to the Member States, but EU aspirant countries are also expected to advocate and respect them. The judiciary is an important factor for the fulfilment and respect for these values.

In the EU context, the national judiciary has a dual role. On the one hand, independent and impartial judiciary is one of the fundamental pillars of the rule of law, and thus of any functioning democracy, which is a prerequisite for accession in the EU. On the other hand, the national courts are one of the key allies of the European Union in the development and application of EU law. Membership in the European Union gives the judiciary, as a particularly important segment of the political and constitutional system, a so-called European mandate. The term refers to the fact that national courts and judges have an obligation to directly apply, to protect and to develop the EU law, for which they need adequate capacity and status. Hence, the European Union puts a strong emphasis on the judiciary in the pre-accession and the accession process. The Union looks at the issues related to the judiciary as part of the political components of the Copenhagen criteria and as part of Chapter 23 – *Judiciary and fundamental rights* in the accession negotiations.

In addition to Article 47 of the Charter of Fundamental Rights of the EU, the primary and secondary EU law contains no provisions related to the status of the national judiciary. This is due to the principle of respect for national autonomy by the Union in the organization and regulation of the domestic institutional structure. So, when it comes to national courts, the Member States have models for organizing the judiciary. However, chronic problems in this area in some of the more recent Member States initiated a process of defining “European standards” for independent and impartial judiciary, through the promotion of documents and standards of the Council of Europe and the United Nations concerning the judicial branch of power. Precisely these documents form the basis for chapter 23 in the field of judiciary, which renders a model of an independent, impartial, professional and efficient judiciary.

Macedonia was one of the first countries in the region which began reforms in the judiciary in the context of the European integration process, with the adoption of a Judicial System Reform Strategy for the period 2004–2007 and the constitutional amendments in this area. Ten years after the commencement of these important reforms, the legal framework in the country incorporates almost all important international standards for independent and impartial judiciary. Major reforms were carried out, in terms of the constitutional safeguards and the organizational structure of the judiciary, as well as in relation to other aspects of the judiciary, such as guaranteeing its financial independence, increasing its efficiency, the introduction of objective criteria for the selection and dismissal of judges, strengthening the status of the Public Prosecutor and the like.

This publication related to the judiciary, analyses and assesses the alignment of the national legal framework with the standards set forth by the EU on independent and impartial judiciary. The report does not go into a detailed analysis of the implementation and observance of these standards by the courts and other institutions in the country. The results of the analysis are presented in seven sections. This brief summary is followed by an overview of trends in the

negotiation process (Chapter II), which also concerns justice reform. The third part of this publication addresses the specific aspects of the judiciary, as presented and discussed by the Union in the progress reports of the European Commission and reports on legal alignment with the EU law¹ for countries that have already started accession negotiations with Union (Chapter III). These aspects relate to the independence, impartiality, professionalism and efficiency of the judiciary. This summary is followed by a detailed review of the alignment of the national legal framework with European standards, i.e., specific documents of the Council of Europe and the United Nations (Chapter IV). The publication then presents policies, strategies and plans of the Ministry of Justice, i.e., the Government, to improve the domestic legal framework and achieve full alignment with the standards (chapter V). The next section (Chapter VI) explains the need for public involvement in the judicial reforms and efforts to ensure the participation of civil society. Finally, the last section (Chapter VII), based on the analysis of alignment, presents concluding observations and recommendations that should help further steps in the reform of the judiciary.

¹ So-called screening reports on specific chapters.

II. TRENDS IN THE EU ACCESSION NEGOTIATION PROCESS

According to the 2014 EU Enlargement strategy, strengthening the rule of law is central to the accession process. This new approach to accession negotiation was introduced in 2012 as part of the negotiation framework for Montenegro. Thus, the chapters relating to the rule of law area are opened early in the negotiation process, remain open for the entire duration of the negotiations and finally, are closed in the final negotiation stages.

In the case of Montenegro, the opening benchmark for the chapter “Judiciary and Fundamental Rights” was to prepare an action plan according to the findings identified in the screening report. Recommendations deriving from the report were laid out as long and short term goals of the Action Plan for the period 2014–2018. The structure of the Action Plan follows the format of the chapter according to thematic areas. Intermediate benchmarks were set by the EU on the basis of the prepared Action Plan, which actually represents a Roadmap for reforms in the area of judiciary and fundamental rights in the accession negotiation process.

From a total of 45 interim benchmarks for chapter 23, three quarters relate to the legislative framework and administrative capacities, while a quarter on achieving initial track record. Out of these, 18 benchmarks refer to the judiciary, 14 to anti-corruption measures and 11 to fundamental rights. One benchmark relates to adequate involvement of the civil society in the negotiations for this chapter, as well as on monitoring the implementation of the Action Plan.

As for the institutional structure for monitoring the negotiation process with the EU, in March 2014, the Government of Montenegro established the Rule of law Council, headed by the Minister of Justice. The Council will monitor and coordinate the activities related to the implementation of the action plans relating to the rule of law chapter. In this line is also the establishment of the Committee on European Integration, chaired by the chief negotiator, with a mandate to monitor the implementation of the Accession programme 2014–2018, and the fulfillment of obligations arising from the Stabilisation and Association Agreement.

The established new approach to accession negotiation initiated with Montenegro indicated the way all other Western Balkan countries would conduct negotiations with the EU in the future. Serbia has started negotiations according to the new approach and is currently in the process of preparing an Action Plan for chapter 23 for addressing the obligations deriving from the screening report. Accordingly, Macedonia, as a country waiting to start accession negotiations, could expect the application of the new methodology for opening negotiations with the two key chapters in the area of rule of law² continuous monitoring throughout the duration of the negotiations, as well as showcasing track records in implementing various reforms.

² Chapters 23 and 24.

III. OVERVIEW BY SPECIFIC ASPECTS OF THE JUDICIARY – INDEPENDENCE, IMPARTIALITY, PROFESSIONALISM AND EFFICIENCY

1. Independence

Standards on independence envisaged by the EU	Body
Magna Carta of Judges (paragraphs 1–13)	Consultative Council of European Judges, Council of Europe
Basic Principles on the Independence of the Judiciary	United Nations
Recommendation CM/Rec (2010) 12 of the Committee of Ministers to member states on judges: independence, efficiency and responsibilities (paragraphs 1–29, 44–55)	Council of Europe
Recommendation Rec (2000)19 of the Committee of Ministers to member states on the role of public prosecution in the criminal justice system (paragraphs 1–23)	Council of Europe

The independence of the judiciary in Macedonia is regulated at the highest level, i.e., with the Constitution of the Republic of Macedonia. According to article 8, the division of powers is envisaged as one of the fundamental constitutional values, while article 98 of the Constitution and article 1 of the Courts Act regulates that the courts are exercising the judicial power and that they are independent and autonomous in doing so. In this manner, the judiciary is clearly separated from the other two branches of power, the legislative and the executive.

Judges decide on the basis of the Constitution, laws and international agreements ratified in accordance with the Constitution. Emergency courts are prohibited. The types of courts, their judicial competence, their establishment, abrogation, organization and composition of the courts, and the procedure they follow are regulated by a law adopted by a two-thirds majority of the total number of Members of Parliament.³ Court hearings and the passing of verdicts are public. The public can be excluded in cases determined by law.⁴

Judicial power in the Republic of Macedonia

Supreme Court	The Supreme Court of the Republic of Macedonia is the highest court in the Republic, providing uniformity in the implementation of the laws by the courts. The Court exercises judicial power on the entire territory of the Republic of Macedonia, and its headquarters is in Skopje.
Administrative Court	The Administrative Court, for the purpose of providing judicial protection of the rights and legal interests of natural and juridical persons, and in order to ensure legality, in administrative disputes decides on the legality of the acts of the state administration authorities, the Government, and other state authorities, municipalities and the City of Skopje, organizations determined by law and juridical persons and other entities exercising public mandates (agents of public mandates), when deciding on rights and responsibilities in individual administrative matters, as well as acts issued in misdemeanor procedure.

³ Amendment XXV of Macedonia's Constitution.

⁴ Article 102 of Macedonia's Constitution.

⁵ Article 101 of Macedonia's Constitution.

Judicial power in the Republic of Macedonia

Higher Administrative Court

The Higher Administrative Court decides upon appeals against decisions of the Administrative Court and decides in case of conflict of competences between the bodies of the Republic, municipalities, as well as in disputes concerning conflict of competences between holders of public powers.

Appellate Courts in Skopje, Bitola, Shtip and Gostivar

Appellate Courts are second-instance courts, i.e. are deciding on appeals against the decisions of the Basic Courts.

27 Basic Courts

The Basic Courts operate as first instance courts and decide in first instance on criminal matters and misdemeanours, civil disputes, and execution of criminal sanctions. Basic Courts are established as courts with basic jurisdiction and courts with expanded jurisdiction.

A specialized court department with jurisdiction in deciding in cases of organized crime and corruption for the whole territory of the Republic of Macedonia is established in the Basic Court Skopje I – Skopje.

There are no restrictions associated to judge's term in office.⁶ Their term ends if the conditions for retirement are fulfilled. In addition, article 99, amendment XXVI of the Constitution outlines the cases when judge's term in office ceases and when a judge is discharged from office. This is further regulated in the Courts Act and the Act on the Judicial Council of the Republic of Macedonia. The judge, according to article 39 of the Courts Act, cannot be transferred against their will. As an exception, the judge may be transferred, on temporary basis, and in a predefined situation. In this case, the judge may file an appeal against the decision for transfer.

Judges enjoy immunity. A judge cannot be held criminally liable for an opinion and deciding in the process of rendering a court decision. A judge shall not be detained without the consent of the Judicial Council, except when caught in committing a criminal act for which a prison sentence of at least five years is prescribed.⁷

According to article 104 of the Constitution and article 2 of the Act on the Judicial Council of the Republic of Macedonia, the Judicial Council is autonomous and independent judicial body with a primary function to ensure and guarantee the independence of the judicial branch. The Council, in accordance with international principles, is composed of 15 members, of which, 8 members are elected by the judges from their own ranks. Furthermore, the principle of equitable representation of citizens in terms of ethnicity is ensured, as well as representation of different judicial levels, i.e., levels of jurisdiction.⁸ The selection and dismissal of judges, lay judges and presidents of courts is within the exclusive jurisdiction of the Judicial Council and is based on objective criteria stipulated by the Courts Act in articles 45 and 46. In addition to these competencies, the Judicial Council is responsible for determining the disciplinary liability of a judge and evaluation of the work of judges.

The issues related to the Council of Public Prosecutors and the status of the Public Prosecutor Office are regulated in a similar fashion, the only difference made is that the Public Prosecutor

⁶ In 2014, the judiciary power in Macedonia was executed by 622 judges. Out of these, 23 judges are from the Supreme Court of the Republic of Macedonia, 30 from the Administrative Court, 10 from the Higher Administrative Court, 101 from the 4 Appellate Courts and 458 from the Basic Courts. In addition, the court administration counts 1973 employees.

⁷ Article 100, Amendment XXVII, paragraph 1 of the Constitution of the Republic of Macedonia.

⁸ One member is elected per each appellate area, and one from the Supreme Court of the Republic of Macedonia.

of the Republic of Macedonia is elected by the Parliament, on a proposal by the Government, and upon obtained opinion by the Judicial Council.

The Courts Act regulates the internal independence of courts and judges in a way that within the structure of the judiciary is determined that the higher courts should not in any way affect the independence of the courts of lower instance in reaching verdicts on specific cases or adversely affect the independence and autonomy of the lower courts in making judicial decisions.

Financial independence is guaranteed in the domestic legal order. Therefore, issues related to financing the judicial branch of power, as well as the drafting, adoption and enforcement of the Court budget is exercised by the Court Budget Council on the basis of the Court Budget Act. On the other hand, individual financial independence of judges is guaranteed by the Act on the Salaries of Judges. In this manner, the judiciary has the opportunity to directly participate in formulating decisions on their financial matters.

Judges may establish associations in order to exercise their rights and further promote their interests, to advocate for professional development and to protect the independence and autonomy of the judicial function. The individual independence of judges is further strengthened by determining the functional immunity of judges in article 100 of the Constitution.

Partial alignment is noted in the segment of disciplinary procedure and dismissal of judges, more specifically, in the procedure on appeal against a decision of the Judicial Council to impose disciplinary action and/or dismissal of a certain judge. Namely, it is disputable whether the institution which decides on the appeal – the Council for deciding upon an appeals from the Judicial Council, established by the Supreme Court – is independent and impartial in its functioning.⁹ This is due to the fact that one of the competences of the Judicial Council is to elect judges for all courts in Macedonia – including the Supreme Court.¹⁰ In addition, dismissing judges based on disciplinary violations is perceived as problematic also from the standpoint of international standards and principles. The grounds for discrimination on which the decision on selection of judges must not be based are defined and elaborated in acts regulating the judiciary. Finally, the domestic legal order does not provide an opportunity to appeal the decision of the Judicial Council to elect a judge.¹¹

⁹ At the time when this publication went to press (December 2014), amendments have already been initiated to the Constitution and the Judicial Council Act of the Republic of Macedonia, in an effort, among other things, to address this issue.

¹⁰ Ibid.

¹¹ Ibid.

2. Impartiality

Standards on impartiality envisaged by the EU	Body
Magna Carta of Judges (paragraphs 18–22)	Consultative Council of European Judges, Council of Europe
Bangalore Principles of Judicial Conduct	United Nations Human Rights Council
Recommendation CM/Rec (2010) 12 of the Committee of Ministers to member states on judges: independence, efficiency and responsibilities (paragraphs 59–74)	Council of Europe
Recommendation Rec (2000)19 of the Committee of Ministers to member states on the role of public prosecution in the criminal justice system (paragraphs 24–36)	Council of Europe
„European Guidelines on ethics and conduct for public prosecutors “The Budapest Guidelines”	Conference of Prosecutors Generals of Europe
European Convention on Human Rights (articles 6 and 13)	Council of Europe

Article 9 of the Constitution guarantees the equality of citizens before the Constitution and laws, whereas the laws, especially the procedural ones, guarantee the right to a fair trial within a reasonable time, and access to the courts. The impartiality of judges is also guaranteed by the Constitution and is provided in the Courts Act (article 11), as a right to decide impartially by applying the law on the basis of free evaluation of the evidence. Furthermore, it is prohibited to exert influence in any form and by any entity on the independence, impartiality and autonomy of the judge in their exercise of the judicial office. This prohibition was also introduced in the Criminal Code by incriminating such influence on judges. This complements the functional immunity of judges laid down in the Constitution.

Conflicts of interest among judges is regulated in two ways – through rules for exemption and the rules of incompatibility of the judicial function with other functions. Procedural laws, such as the Civil Procedure Act and the Criminal Procedure Act stipulate clear criteria for exemption of judges on specific court proceedings, although they are not as broadly defined and envisage certain situations as in international documents. On the other hand, the Constitution (article 100) determines incompatibility of the judicial function with membership in a political party or another public function or profession, as stipulated by the Courts Act (article 52).

The distribution of court cases between judges according to objective criteria, i.e. according to their admission into the court is regulated by the Courts Act, especially the Act on Case Flow Management in the Courts and the Court Rulebook. The Automated Information System for Court Case Management System (ACCMIS) is introduced in all courts, which provides court cases recordkeeping and management, as well as connecting the external documents with the appropriate court cases.

Concerning the judge’s ethical and behaviour standards, in 2014 the Association of Judges of the Republic of Macedonia has adopted a new Code of Judicial Ethics for Judges of the Republic of Macedonia. The Code is a collection of the most important principles in judicial ethics in which, issues of the judge’s independence, impartiality, integrity, propriety, equality, competence and ethics, conflicts of interest, corruption and violation of the judge’s principles

are elaborated. For their implementation and enforcement, an advisory opinion is given by the Advisory Council for judicial ethics. The Code fully incorporates the principles of judicial ethics elaborated in the Bangalore principles of judicial conduct.

3. Professionalism

Standards on professionalism envisaged by the EU	Body
Magna Carta of Judges (paragraph 8)	Consultative Council of European Judges, Council of Europe
Basic Principles on the Independence of the Judiciary (paragraph 10)	United Nations
Recommendation CM/Rec (2010) 12 of the Committee of Ministers to member states on judges: independence, efficiency and responsibilities (paragraphs 41, 56–58)	Council of Europe
Recommendation Rec (2000)19 of the Committee of Ministers to member states on the role of public prosecution in the criminal justice system (paragraph 7)	Council of Europe

The establishment of the Academy for Judges and Public Prosecutors in 2006 and the adoption of the Act on the Academy for Judges and Public Prosecutors in 2010 significantly raised the level of professionalism of the judiciary and the prosecution services in Macedonia. The Academy is considered as an independent, autonomous institution with a predetermined budget, its own premises, equipment and human resources, as well as a Steering committee composed of representatives from the main judicial institutions. It is responsible for initial and continuous training of judges and public prosecutors. Within the framework of the initial training, the Academy is responsible for the selection of candidates, based on examination for qualification, acceptance and final examinations, basing the whole process of selection of candidates for judges and public prosecutors on objective criteria set to raise the level of quality. Continued training is mandatory according to the Act on the Academy for Judges and Public Prosecutors for all judges, prosecutors, court presidents and prosecutors of the public prosecutions.

Besides the training, the domestic legal order also envisages an evaluation of the work of judges, as an important element for maintaining the professionalism of the judiciary. The Judicial Council is responsible for assessing the performance of judges on regular basis based on qualitative and quantitative criteria stipulated in the Judicial Council Act. The assessment of the work of judges is an important factor for advancement in the judicial career.

4. Efficiency

Standards on efficiency envisaged by the EU	Body
Recommendation No. R (86) 12 of the Committee of Ministers to member states concerning measures to prevent and reduce the excessive workload in the courts	Council of Europe
Recommendation CM/Rec (2010) 12 of the Committee of Ministers to member states on judges: independence, efficiency and responsibilities (paragraphs 30–41)	Council of Europe

Efficiency is defined in accordance with the Recommendation of the Council of Europe on the independence, efficiency and accountability, as reaching a decision in a reasonable time and fair procedure. Individual judges are obliged to ensure efficient management of court cases for which they are personally responsible, including the execution of verdicts in cases when the execution is part of their competence.

Improving the efficiency in Macedonia is made possible by enactment of certain legislation that envisages the possibility of alternative dispute resolution in the form of mediation. In this segment, national legislation has achieved full alignment, primarily of the Civil Procedure Act and the Mediation Act, with relevant international documents where there is a clear obligation for judges to encourage alternative dispute resolution.

In addition, the introduction of the notaries and expanding their competencies allowed a certain reduction of the number of court cases which do not have strictly judicial character.

The establishment of the obligation in domestic legislation to introduce information and communication technologies in the administration and management of court cases and the judiciary in general, gave a new impetus in the improvement of the efficiency of the judiciary.

With the amendments to the Court Rulebook of 2009, as of January 1, 2010 all courts in Macedonia have to introduced the Automated Information System for Court Case Management System (ACCMIS), which electronically records all court activities, however, the cases are also kept in paper version, in addition to the electronic version of the ACCMIS system.

Electronic delivery and audio recording of the court proceedings, stipulated with the procedural laws (Civil and Criminal Procedure Acts) and the new Court Rulebook, are partially included in the courts, primarily, because of the necessary human, technical and organizational conditions needed for their proper functioning.¹²

In addition to these mechanisms, the Courts Act provides a specific jurisdiction of the Supreme Court of the Republic of Macedonia to protect the right to trial within a reasonable time, which, also allows to further increase the efficiency of the courts. For this purpose, a special department was set up at the Supreme Court to protect the right to trial within a reasonable time.

What is lacking in the national legal system is a provision which requires a regular review of the organization of the judiciary, i.e. of the local and actual jurisdiction of the various courts

¹² Measures have been taken for achieving full technical capacity, thus, making the system fully operational.

on the basis of their workload in order to ensure even workload distribution between courts on national level, and not just at the level of individual courts.¹³

The judge may require transfer from one to another department. According to the Courts Act, a judge cannot be transferred from one to another court department against his/her will, with the only exception being, in cases of a decision decision of the president of the court, upon previously obtained opinion from the general session of the Supreme Court of the Republic of Macedonia, when it is required by the increased workload and the subject of work of the court, but for a period of one year at the most. The judge may file a complaint against the decisions.

In case of abolishment or reorganization of a court, the Judicial Council shall transfer the judge of such court to another court in the same or lower instance.

¹³ At the time when this publication went to press (December 2014), amendments have already been initiated to the Constitution and a number of acts related to the judiciary, in an effort, among other things, to address this issue.

IV. OVERVIEW OF THE DEGREE OF ALIGNMENT OF THE NATIONAL LEGAL FRAMEWORK

1. Magna Carta of Judges (Fundamental principles)

Standard envisaged by the EU

Magna Carta of judges (Fundamental principles); Consultative Council of European Judges, Council of Europe, 17 November 2010 CCJE (2010)3.

National legal framework

- Constitution of the Republic of Macedonia ("Official Gazette of the Republic of Macedonia" No. 52/1991, 1/1992, 3/1998, 91/2001, 84/2003, 107/2005, 3/2009 and 49/2011);
- Courts Act ("Official Gazette of the Republic of Macedonia" No. 58/2006, 62/2006, 35/2008 and 150/2010);
- Public Prosecution Office Act ("Official Gazette of the Republic of Macedonia" No. 150/2007 and 111/2008);
- Act on the Judicial Council of the Republic of Macedonia ("Official Gazette of the Republic of Macedonia" No. 60/2006, 150/2010 and 100/2011);
- Act on the Council of Public Prosecutors of the Republic of Macedonia ("Official Gazette of the Republic of Macedonia" No. 150/2007 and 100/2011);
- Act on the Salaries of the Members of the Council of Public Prosecutors of the Republic of Macedonia ("Official Gazette of the Republic of Macedonia" No. 139/2009, 67/2010 and 97/2010);
- Court Budget Act ("Official Gazette of the Republic of Macedonia" No. 60/2003, 37/2006; 103/2008 and 145/2010);
- Act on the Salaries of Judges ("Official Gazette of the Republic of Macedonia" No. 110/2007, 103/2008, 161/2008, 153/2009, 67/2010, 97/2010 and 135/2011);
- Act on the Salaries of Public Prosecutors ("Official Gazette of the Republic of Macedonia" No. 153/2009, 67/2010 and 97/2010);
- Act on the Academy for Judges and Public Prosecutors ("Official Gazette of the Republic of Macedonia" No. 88/2010, 166/2012 and 26/2013);
- Act on Case Flow Management in the Courts ("Official Gazette of the Republic of Macedonia" No. 171/2010);
- Civil Procedure Act ("Official Gazette of the Republic of Macedonia" No. 7/2011 – consolidated text);
- Criminal Procedure Act ("Official Gazette of the Republic of Macedonia" No. 150/2010 and 100/2012);
- Administrative Disputes Act ("Official Gazette of the Republic of Macedonia" No. 62/2006 and 150/2010);
- Pension and Disability Insurance Act ("Official Gazette of the Republic of Macedonia" No. 98/2012, 166/2012, 15/2013, 170/2013, 43/2014, 44/2014, 97/2014, 113/2014 and 160/2014);
- Enforcement Act ("Official Gazette of the Republic of Macedonia" No. 35/2005, 59/2011 – consolidated text, 148/2011 and 187/2013);
- Act on Execution of Sanctions ("Official Gazette of the Republic of Macedonia" No. 2/2006, 57/2010, 170/2013, 43/2014 and 166/2014);
- Court Rulebook ("Official Gazette of the Republic of Macedonia" No. 66/2013 and 114/2014);
- Code of Judicial Ethics for Judges of the Republic of Macedonia, 2014.

The Magna Carta of Judges (Fundamental principles) adopted by the Consultative Council of European Judges within the Council of Europe codifies the basic principles underpinning the judiciary of a European country. The document includes twenty-three provisions relating to seven areas: the rule of law and justice, independence of the judiciary, guarantees of independence, institution responsible for guaranteeing the independence, access to justice and transparency, ethics and accountability, and international courts.

The Rule of Law and Justice

Full alignment in this segment is ensured with the constitutional provisions as well as by ensuring the separation of powers under which the judiciary is one of the three branches of power. The provisions of the Courts Act clearly define the objectives of the judiciary which correspond to those provided in the Magna Carta.

Judicial Independence

Domestic legal acts which relate to judicial independence and impartiality of judges are virtually fully aligned with the principles of the Magna Carta. Judicial independence, first and foremost, is guaranteed by the highest national legal act, i.e., the Constitution of Macedonia. The constitutional and law provisions (the Courts Act, the Act on the Judicial Council of the Republic of Macedonia, the Act on the Academy for Judges and Public Prosecutors and the Code of Judicial Ethics for Judges) to a great extent ensure the statutory, as well as functional and financial independence, thus making the judiciary separated from the other branches of power. In addition, the state and its institutions, including the Judicial Council, as well as individual judge are obliged to protect and promote judicial independence. The reforms in the past several years have: provided a higher degree of objectiveness in the selection process for judges, secured and safeguarded the tenure of judges, introduced the judicial career, initial and continuous training, refined judicial immunity, reformed the salaries of the judges and changed the financing of the judiciary. Partial alignment, which will be additionally elaborated in the context of the other principles, is noted in the segment of disciplinary measures and procedure for judges, dismissal of judges, as well as their continued evaluation.

Guarantees of independence

In regard to the guarantees of independence there is full alignment in terms of most of the principles. Thus, the procedures for selection and promotion of judges, especially those amendments to the Courts Act which entered into force in 2013, are based on objective criteria and are implemented by the Judicial Council as an independent body which also guarantees the independence of the judiciary. The financial independence of the judiciary has been strengthened with the amendments to the Court Budget Act from 2010. The amended act mandates the provision of a certain minimum, as percentage of the gross domestic product per year, to the judicial branch. Furthermore, in terms of the individual financial independence of judges, it is regulated and guaranteed by the specific Act on the Salaries of Judges and the Pension and Disability Insurance Act. Since its establishment, the Academy for Judges and Public Prosecutors carries out initial and continuous training for judges and prosecutors, in order to further promote the independence, as well as the quality and efficiency of the judiciary. The judiciary is fully involved – through the Judicial Council, the Court Budget Council, and the Association of Judges – in reaching important decisions which affect it, such as the structure of the judicial system, court proceedings and other acts regulating similar issues. In this sense, the level of involvement could always be improved. The provisions of the Courts Act safeguard the impartiality of judges, and stipulate that judges are independent in their decision-making, whereas it is prohibited to exert any influence on them.

However, partial alignment is observed in the part of the disciplinary procedures, particularly in the segment of the procedure for determining the disciplinary responsibility of judges, and related sanctions. There are certain shortcomings in the process and in the competent bodies, as well as in the possibility of a serious disciplinary offense which might lead towards dismissal of judges, all of which can adversely affect the independence of an individual judge.¹⁴

As an important aspect of the independence and impartiality of the judiciary, especially with the new criminal procedure and the extensive reforms in this area, a high degree of equality in the procedural rights and obligations of the prosecutor and the defense in criminal procedures has been ensured. Furthermore, the reform of the judicial system started in 2005 with the constitutional and legal provisions, the independence of the prosecution service is ensured. Finally, the judges have the opportunity and the right to establish and become members of national associations of judges in order to protect and promote their rights and interests, the independence and autonomy of the judicial function.

Lastly, compared to the recommendations from the Magna Carta, there is no provision in the national legal acts which regulates the participation of judges in international organizations of judges.

Institution in charge of guaranteeing independence

The constitutional and law provisions fully meets the standard related to the independence of the judiciary, so that the institution is fully responsible for guaranteeing of the independence of the judiciary and the individual independence of the judges, and the Judicial Council, is separated from the legislative branch and the executive. The majority of members of the Judicial Council are from the judiciary and elected through direct elections by the judges themselves.

Access to justice and transparency

Standards and principles related to access to justice and transparency are to a great extent fully harmonized, however, there are certain aspects which are not completely alligned. The constitutional and law provisions in Macedonia guarantee the principle of transparency as one of the basic principles which underpins the functioning of the judiciary. The respective procedural laws for civil and criminal procedure, also determines the principle of transparency as particularly significant, and is the presence of the public during the court proceedings is precisely regulated, as well as the announcement of the verdicts. It should be emphasized that the legal provisions also regulate the obligation to publish verdicts through a separate database, which still needs to be improved to deliver best results. In addition, the courts are obliged to establish an public relations office, so as to bring their work closer to the citizens. The Judicial Council is obliged to hold a public session at least once a month to discuss the complaints filed by citizens and legal entities on the work of the judges and the courts, as well as to examine longstanding court proceedings and reach a decision on each complaint and appeal. However, it is necessary to further enhance the transparency of the Judicial Council, since there is no specific provision that mandates the creation of a public relations

¹⁴ At the time when this publication went to press (December 2014), a number of legislative changes have already been initiated which addressed the issue of proportionality of criminal sanctions and the procedure for determining the disciplinary responsibility.

office within the Judicial Council, although the institution has already designated a public relations officer. The constitutional and law provisions ensure a good basis for access to fast, efficient and affordable resolution of litigation. There is an obligation for the judges to promote methods of alternative dispute resolution (for example, mediation) and numerous provisions which allow a clear application of these methods. Regarding court documents and decisions, there is considerable alignment related to their formulation using a clear and understandable language, explanations of the decisions reached and their publication within reasonable time. In terms of the accessibility and simplicity of the language used in the judicial decisions, it can be noted that the legal provisions apply only to the disposition of the verdicts, whereas the same provisions do not apply in respect to the explanation of court verdicts. This partial harmonization of the legal provisions is compensated with the provisions of the Court Rulebook. On the other hand, the legal framework regarding the managing of court cases within the courts is harmonized to a great extent. Alignment is also observed in relation to the enforcement of court decisions, especially through extra-judicial execution by enforcement agents.

Ethics and responsibility

In 2014 the Association of Judges of the Republic of Macedonia has passed a new Code of Judicial Ethics for Judges which is based on and is aligned with international documents. The constitutional and law provisions define disciplinary responsibility of judges and the procedure by which it should be determined. Judicial immunity is regulated by the Constitution and the Courts Act, and it protects judges from criminal responsibility for any voiced opinion and decision-making in reaching judicial decisions, but not from criminal liability which is not related to their judicial function. The judge has immunity and cannot be detained without the approval of the Judicial Council. In this manner, the judges are only partially exempt from criminal liability in performing their judicial function.

On the other hand, the provisions of the Courts Act clearly determine that the judge would not be made accountable for errors in the proceedings, unless it is a violation for which the judge is dismissed. In such instance, the state may launch a litigation seeking damages in the amount which the state has paid out to citizens or legal entities for the irregularities. The reasons due to which a judge can be dismissed are broadly defined, in order to distinguish between intentional or unintentional error or damage as required by the Magna Carta. Due to this, there is partial alignment in relation to this issue.

2. Basic Principles on the Independence of the judiciary

Standard envisaged by the EU

Basic Principles on the Independence of the Judiciary; United Nations; 29 November 1985.

National legal framework

- Constitution of the Republic of Macedonia ("Official Gazette of the Republic of Macedonia" No. 52/1991, 1/1992, 3/1998, 91/2001, 84/2003, 107/2005, 3/2009 and 49/2011);
- Courts Act ("Official Gazette of the Republic of Macedonia" No. 58/2006, 62/2006, 35/2008 and 150/2010);
- Act on the Judicial Council of the Republic of Macedonia ("Official Gazette of the Republic of Macedonia" No. 60/2006, 150/2010 and 100/2011);
- Court Budget Act ("Official Gazette of the Republic of Macedonia" No. 60/2003, 103/2008 and 145/2010);
- Act on the Academy for Judges and Public Prosecutors ("Official Gazette of the Republic of Macedonia" No. 88/2010, 166/2012 and 26/2013);
- Act on the Salaries of Judges ("Official Gazette of the Republic of Macedonia" No. 110/2007, 103/2008, 161/2008, 153/2009, 67/2010, 97/2010 and 135/2011);
- Criminal Code ("Official Gazette of the Republic of Macedonia" No. 37/1996, 80/1999, 4/2002, 43/2003, 19/2004, 81/2005, 60/2006, 73/2006, 7/2008, 139/2008, 114/2009, 51/2011, 135/2011, 185/2011, 142/2012, 166/2012, 55/2013, 82/2013, 14/2014, 27/2014, 28/2014, 115/2014, 132/2014 and 160/2014);
- Criminal Procedure Act ("Official Gazette of the Republic of Macedonia" No. 150/2010 and 100/2012);
- Civil Procedure Act ("Official Gazette of the Republic of Macedonia" No. 7/2011 – consolidated text);
- Act on Case Flow Management in the Courts ("Official Gazette of the Republic of Macedonia" No. 171/2010);
- Misdemeanours Act ("Official Gazette of the Republic of Macedonia" No. 62/2006 and 51/2011);
- Administrative Disputes Act ("Official Gazette of the Republic of Macedonia" No. 62/2006 and 150/2010);
- Code of Judicial Ethics for Judges of the Republic of Macedonia, 2014;
- Court Rulebook ("Official Gazette of the Republic of Macedonia" 66/2013 and 114/2014).

With the aim of ensuring and promoting independence of the judiciary, the United Nations have adopted the Basic Principles on the Independence of the Judiciary. This document envisages the essential principles applicable in this area, through 20 provisions divided into six sections, as follows: independence of the judiciary, freedom of expression and association, qualifications, selection and training, conditions of service and tenure, professional secrecy and immunity, and discipline, suspension and dismissal. The constitutional and legal framework in Macedonia is fully harmonized with this document.

Independence of the Judiciary

With the constitutional provisions relating to the judiciary and the relevant legal provisions, primarily, deriving from the Courts Act and the Act on the Judicial Council and procedural laws, Macedonia is fully aligned with the basic principles for judicial independence. In addition, the Code of Judicial Ethics for Judges has incorporated part of the basic principles in its provisions. The independence of the judiciary is guaranteed with the highest legal act, the Constitution, as well as with specific legislation, and additionally, impartiality is ensured in the functioning and decision making of the judges without any restrictions, improper influences, inducements, pressures, threats or interferences. Furthermore, in terms of court jurisdiction,

the domestic legal provisions correspond fully with the obligation for jurisdiction of courts in matters of judicial nature and the exclusive right of the judiciary to independently determine whether an issue is part of its jurisdiction. Also, these provisions provide the right to appeal court decisions and the conditions under which the decision may be altered or revoked. Full alignment has been achieved in relation to the equal access to the courts and judicial procedure, in front of ordinary courts, and not in front of special or extraordinary courts which do not apply regular procedures regulated by national legislation. The provisions of the Courts Act and procedural laws ensure full alignment with the principle of fair trial and respect for the rights of the parties in the procedure. As a necessary component of the judicial independence, financial independence is fully ensured with the provisions of the Courts Act and the Court Budget Act.

Freedom of expression and association

The Constitution and the relevant provisions of the Courts Act and the Code for Judicial Ethics of Judges, judges are guaranteed the freedom of expression, belief, association and assembly, freedoms which are exercised and practiced in accordance with the dignity of the judicial function, independence and autonomy of the judiciary. Furthermore, the right of the judges to establish associations and organizations which would represent their interests and protect the independence of the judiciary is also guaranteed. In this manner, full alignment with the principles of the United Nations is achieved.

Qualifications, selection and training

Full alignment with this principle is achieved through the constitutional and law provisions which determine objective criteria for the selection of judges, whereas it is guaranteed that the selection would not be conducted on discriminatory grounds.

Conditions of service and tenure

In Macedonia, the tenure of judges, their independence, security, adequate remuneration, conditions of service, pension and the age of retirement, are governed by respective constitutional and legislative provisions. The tenure of judges is guaranteed until the fulfillment of the conditions for retirement. Promotion in the judicial career is based on objective criteria, primarily, on personal integrity and experience, which are regulated by specific conditions for the selection of judges in the Courts Act – which has been a subject of multiple improvements. The Courts Act, the law on the management of case flow in courts and the Court Rulebook defines the manners in which the court cases are assigned to judges, primarily, by the time of receipt of the case, and without prejudice from the President of the court, the judge or court administration. As a result of this, the domestic legal framework is fully harmonized with these principles.

Professional secrecy and immunity

Partial harmonization of national legislation has been achieved with this specific UN principle. Namely, national legislation regulates the obligation to keep official or professional secrecy

with regard to information acquired in the course of proceedings in more restrictive manner. However, this is only limited to classified information. In the same vein, the relevant legislation lacks a clear obligation, or right of the judge not be forced to testify for information and findings acquired during the court procedure. Also, in terms of the second principle of this section, partial alignment of national legislation has been observed, since the conditions under which the judge compensates the damage which occurred as a result on their unlawful conduct, determined with a court decision in accordance with the law, and compensated to claimants initially by the state, is stipulated too widely compared to the principle. Namely, according to Article 70 of the Courts Act the Republic of Macedonia is liable for damages when a judge or lay judge caused harm to citizens or legal entities by unlawful exercise of their office. When the judge is dismissed due to the inflicted harm, the Republic of Macedonia will file a lawsuit demanding compensation from the judge for the paid damages, in an amount determined by the court in accordance with law. Based on this article of the Courts Act, the state may claim such compensation from the judge in relation to any of the reasons for dismissal from office.

Discipline, suspension and removal

In regards to the principles relating to the disciplinary procedure, the national legal order is fully aligned. The procedure regulated by the Act on the Judicial Council of the Republic of Macedonia enables the judge who is subject of a disciplinary procedure to express their opinion on the allegations against them, as well as to file a complaint against the decision. The Constitution, the Courts Act and the Act on the Judicial Council determine the grounds for suspension and dismissal of judges, whereas it is stipulated that a judge can be dismissed from judicial function due to serious disciplinary that makes him/her unfit to exercise the its function. Hence, on this rather general level, Macedonia has achieved full alignment. The right to appeal in a disciplinary procedure and procedure for dismissal of judges is provided by article 96 of the Act on the Judicial Council in a manner that the judge can appeal to the decision of the Council, to the Council for decisions on appeals of the Judicial Council against the dismissal orders or instituted disciplinary measures established by the Supreme Court of the Republic of Macedonia. Partial alignment is observed as it is questionable the extent of independence of this institution taking in consideration its competence to select judges on all court in Macedonia – including the Supreme Court.¹⁵

¹⁵ At the time when this publication was sent to press (December 2014), amendments have already been initiated to the Constitution and the Act on the Judicial Council of the Republic of Macedonia, in an effort, among other things, to address this issue.

3. Measures to prevent and reduce workload in the courts

Standard envisaged by the EU

Recommendation No. R (86) 12 of the Committee of Ministers to member states concerning measures to prevent and reduce the excessive workload in the courts; Council of Europe Committee of Ministers; 16 September 1986.

National legal framework

- Constitution of the Republic of Macedonia ("Official Gazette of the Republic of Macedonia" No. 52/1991, 1/1992, 3/1998, 91/2001, 84/2003, 107/2005, 3/2009 and 49/2011);
- Criminal Procedure Act ("Official Gazette of the Republic of Macedonia" No. 150/2010 and 100/2012);
- Civil Procedure Act ("Official Gazette of the Republic of Macedonia" No. 7/2011 – consolidated text);
- Obligations Act ("Official Gazette of the Republic of Macedonia" No. 18/2001, 4/2002, 5/2003, 84/2008, 81/2009 and 161/2009);
- Mediation Act ("Official Gazette of the Republic of Macedonia" No. 188/2013);
- Labour Relations Act ("Official Gazette of the Republic of Macedonia" No. 145/2014 – consolidated text);
- Family Act ("Official Gazette of the Republic of Macedonia" No. 153/2014 – consolidated text);
- Law on Out of Court Procedures ("Official Gazette of the Republic of Macedonia" No. 9/2008);
- Law on Real Estate Cadastre ("Official Gazette of the Republic of Macedonia" No. 55/2013, 41/2014 and 115/2014);
- Tax Procedure Act ("Official Gazette of the Republic of Macedonia" No. 13/2006, 90/2007, 213/2007, 21/2008, 88/2008, 159/2008, 105/2009, 133/2009, 145/2010, 171/2010, 53/2011, 39/2012, 84/2012 and 187/2013);
- Company Law ("Official Gazette of the Republic of Macedonia" No. 28/2004, 84/2005, 71/2006, 25/2007, 87/2008, 17/2009, 23/2009, 42/2010, 42/2010, 48/2010, 24/2011, 166/2012, 70/2013, 119/2013, 120/2013, 187/2013, 38/2014 and 41/2014);
- Economic Chambers Act ("Official Gazette of the Republic of Macedonia" No. 17/2011);
- Act on International Commercial Arbitration of the Republic of Macedonia ("Official Gazette of the Republic of Macedonia" No. 39/2006);
- Enforcement Act ("Official Gazette of the Republic of Macedonia" No. 35/2005, 59/2011 – consolidated text, 148/2011 and 187/2013);
- Court Fees Act ("Official Gazette of the Republic of Macedonia" No. 114/2009, 148/2011 and 106/2013).

The Recommendation No. R (86) 12 of the Committee of ministers to the Member States stipulates measures that should be implemented to increase judicial efficiency. These measures should unburden the judiciary from procedures which do not have judicial character and should boost out-of-court and friendly resolution of disputes. The Recommendation consists of 7 provisions which refer to different aspects of the efficiency of judiciary.

The national legal framework is largely aligned with the Recommendation. A significant number of legal grounds in the Republic of Macedonia enable friendly dispute resolution both before court proceedings, as well as by out of court procedures. Several laws, adopted in the past few years, significantly decreased the burden of the courts from responsibilities that cannot be qualified as disputes, which improved the court efficiency. This unburdening is also noticeable regarding small court claims, and especially in some specific areas. Furthermore, the legal provisions enable arbitration in certain cases as alternative measure to court procedures. Also, the Constitution, along with the acts on civil and criminal procedure, strictly foresees situations – with less complex cases – where a trial by a single judge is enabled, which increases the efficiency of the courts.

The alignment is partial due to the lack of direct and explicit obligation for the courts to encourage and demand alternative dispute resolution during the procedure. Also, partial

alignment is noted regarding the regular revision of the jurisdiction of different courts based on their workload, with the aim to secure more equal workload distribution. In the Republic of Macedonia a judge can be reallocated from one judicial department to another and there is even the option of temporarily reallocating a judge from one court to another. However, the legal framework does not regulate the revision of the organization of the judicial branch of power, i.e., reassessment of the territorial and subject-matter jurisdiction of different courts based on their workload.

4. Bangalore principles of judicial conduct

Standard envisaged by the EU

Bangalore Principles of Judicial Conduct; endorsed by the United Nations Human Rights Council; 23 April 2003.

National legal framework

- Constitution of the Republic of Macedonia ("Official Gazette of the Republic of Macedonia" No. 52/1991, 1/1992, 3/1998, 91/2001, 84/2003, 107/2005, 3/2009 and 49/2011);
- Courts Act ("Official Gazette of the Republic of Macedonia" No. 58/2006, 62/2006, 35/2008 and 150/2010);
- Act on the Judicial Council of the Republic of Macedonia ("Official Gazette of the Republic of Macedonia" No. 60/2006, 150/2010 and 100/2011);
- Criminal Procedure Act ("Official Gazette of the Republic of Macedonia" No. 150/2010 and 100/2012);
- Civil Procedure Act ("Official Gazette of the Republic of Macedonia" No. 7/2011 – consolidated text);
- Code of Judicial Ethics for Judges of the Republic of Macedonia, 2014.

The aim of the Bangalore principles is to set ethical conduct standards for judges. Basically, they are intended to provide guidelines for the judges and a judicial framework for regulation of judges' conduct. Also, they are aimed at assisting the executive and legislative branch of power, as well as the lawyers and the public, to better understand and support the judiciary. These principles assume that the judges are responsible for their conduct towards adequate institutions which are established with the purpose to safeguard the judicial standards and complement, not derogate, current legal rules. This document contains a total of six principles, i.e., values which are complemented with principles for their application. Those principles are: independence, impartiality, integrity, propriety, equality, competence and diligence. It is often debated whether these principles should be perceived as being fulfilled by the public and by an "objective observer", and not only formally – through their transposition in the domestic legal order. This aspect of the principles – perception – is very difficult to be measured and considered through the analysis of the transposed principles.

Concerning alignment of national law with the Bangalore principles, it should be stated that the new Code of Judicial Ethics has completely included and regulated all the principles and therefore it is completely in line with this document.

The Code regulates the same six principles: independence, impartiality, integrity, propriety, equality, competence and diligence. These principles are appropriately complemented with rules for their application as in the Bangalore Principles. Aside from regulating the principles, the Code contains specific provisions for issues related to conflict of interest, corruption and

violation of the principles, enforcement of the Code and the advisory committee on judicial ethics. The full alignment with the Bangalore Principles has removed the shortcomings from the previous, 2006 Code of Judicial Ethics.

The procedural acts – the Civil procedure act and the Criminal procedure act – stipulate clear criteria for recusal of judges in specific judicial proceedings, although they are not so broadly defined as in the Bangalore Principles. For example, they don't envisage recusal due to economic interest of the judge's family in the outcome of the proceeding.

5. Independence, efficiency and responsibilities of the judges

Standard envisaged by the EU

Recommendation CM/Rec (2010)12 of the Committee of Ministers to member states on judges: independence, efficiency and responsibilities; Council of Europe Committee of Ministers; 17 November 2010.

National legal framework

- Constitution of the Republic of Macedonia ("Official Gazette of the Republic of Macedonia" No. 52/1991, 1/1992, 3/1998, 91/2001, 84/2003, 107/2005, 3/2009 and 49/2011);
- Courts Act ("Official Gazette of the Republic of Macedonia" No. 58/2006, 62/2006, 35/2008 and 150/2010);
- Act on the Judicial Council of the Republic of Macedonia ("Official Gazette of the Republic of Macedonia" No. 60/2006, 150/2010 and 100/2011);
- Act on the Academy for Judges and Public Prosecutors ("Official Gazette of the Republic of Macedonia" No. 88/2010, 166/2012 and 26/2013);
- Court Budget Act ("Official Gazette of the Republic of Macedonia" No. 60/2003, 103/2008 and 145/2010);
- Act on the Salaries of Judges ("Official Gazette of the Republic of Macedonia" No. 110/2007, 103/2008, 161/2008, 153/2009, 67/2010, 97/2010 and 135/2011);
- Act on Case Flow Management in the Courts ("Official Gazette of the Republic of Macedonia" No. 171/2010);
- Criminal Code ("Official Gazette of the Republic of Macedonia" No. 37/1996, 80/1999, 4/2002, 43/2003, 19/2004, 81/2005, 60/2006, 73/2006, 7/2008, 139/2008, 114/2009, 51/2011, 135/2011, 185/2011, 142/2012, 166/2012, 55/2013, 82/2013, 14/2014, 27/2014, 28/2014, 115/2014, 132/2014 and 160/2014);
- Civil Procedure Act ("Official Gazette of the Republic of Macedonia" No. 7/2011 – consolidated text);
- Criminal Procedure Act ("Official Gazette of the Republic of Macedonia" No. 150/2010 and 100/2012);
- Code of Judicial Ethics for Judges of the Republic of Macedonia, 2014;
- Court Rulebook ("Official Gazette of the Republic of Macedonia" No. 66/2013 and 114/2014).

The Recommendation of the Council of Europe Committee of Ministers for independence, efficiency and responsibilities of the judges defines the basic principles that should serve as a foundation for creating common judicial culture in the different legal systems and judicial structures of member states. The Recommendation is systematized in eight chapters: General aspects; External independence; Internal independence; Councils for the judiciary; Independence, efficiency and resources; Status of the judge; Duties and responsibilities; and Ethics of judges.

General aspects

This chapter stipulates the basic principles of independence and the level on which it is guaranteed, the impartiality and autonomy of the judges while deciding on cases, competences and authority of the courts, the Judicial Council as a guarantor and protector of the independence and authority of the courts and judges, as well as the rules for exemption of the judges. The domestic legal framework is fully aligned with these principles, mainly through the Constitution of Republic of Macedonia, the Courts Act, the Act on Judicial Council and the acts on proceedings. In the Republic of Macedonia, the independence of the judiciary and judges is guaranteed at the highest level, and it is protected and guaranteed by a special judicial body – the Judicial Council. There is a clear definition of the bases for recusal of judges from court proceedings, as well as of the legal rules for impartiality and autonomy of the judges – any influence in this regard is prohibited. Furthermore, the jurisdiction of courts is strictly outlined and the judges have the right, based on law, to decide on issues related to their jurisdiction.

External independence

The second chapter focuses on the separation of the judiciary from the other two branches of power, as well as the individual independence and autonomy of the judges which are key component of the rule of law. The legal provisions in the Republic of Macedonia are largely aligned with the principles. Therefore, the separation of powers, rule of law and the functions of the judiciary are regulated with the highest act, the Constitution of the Republic of Macedonia and with the Courts Act. The constructive relations, which should be based on cooperation and commitment between the judiciary and public authorities and institutions which participate in management and administration of the courts, should be aimed at assisting the judiciary in realization of its purposes and functions, regulated with law provisions. Every obstruction in realization of these aims and functions of the judiciary, and especially the disallowed influence on the judges, is incriminated in article 375 of the Criminal code. The transparency of court proceedings is one of the constitutional principles on which the judiciary is based and is further elaborated in the proceedings laws, stating that the verdicts should be explained and published. The Courts Act strictly defines the conditions for revising a court decision, and it may be conducted only by a court with a higher jurisdiction, following a prescribed procedure. At the same time, the legislative and executive branches of power do not have opportunities to influence and revise the court decisions. The transparency of the courts is enhanced with the 2010 amendments to the Courts Act – which introduced the obligation for creating a public relations office in the courts and designating a public relations officer, the Act on Case Flow Management in the Courts and with the Court Rulebook. The incompatibility of the judicial function with other public functions is regulated with the Courts Act, leaving room for the judges to exercise public functions which are not directly connected to their judicial function.

Internal independence

The internal independence refers to issues related to the independence of the judges in the framework of the judiciary, i.e., the absence of influences and improper interference and restriction of the work of the judges by the other courts and bodies within the judiciary. The review of the national legislation confirms full alignment in this aspect. So, the issues related

to the individual independence and impartiality of the judges and the general prohibition of exerting influence over them are clearly regulated in the Courts Act. The relation between the lower and higher courts, also, is regulated in line with the recommendations, thus the higher courts must not influence the independence and autonomy of the lower courts in their decision-making process. The quantitative and qualitative criteria for evaluation of the work of the judges impact the realization of this principle in practice. Furthermore, the Courts Act, the Act on Case Flow Management in the Courts and the Court Rulebook determine the method for allocation of the cases, which is based on objective criteria – the time of their reception in the court – and is to be implemented by electronic means. Lastly, with the aim to protect and advance the rights and interests of the judges, the Courts Act envisions the possibility for the judges to establish associations in this regard.

Councils for the judiciary

The judicial councils as separate judicial bodies with the aim to guarantee the independence of the judiciary and the judges are in the focus of the fourth chapter. The suitable constitutional and law provisions which regulate the status, aim, competence and composition of the Judicial Council are completely aligned with the recommendations. The Judicial Council has the function of a guarantor of judicial independence and promotes the efficiency of the functioning of the judicial system. The composition of the Judicial Council, with more than half of its members elected on direct elections from the ranks of judges of all judicial instances, fulfils the standards envisaged with the Recommendation.

Regarding the transparency of this institution and its interference in the independence of the judges, it can be noted that there is partial alignment. Namely, while the courts are obliged to create public relations offices, there is no such obligation for the Judicial Council. It is compulsory for the Judicial Council to hold a public session, at least once a month, devoted to discussing and deciding on each grievance and complaint submitted by the citizens and legal entities on the performance of the courts and the judges, as well as on instances of prolongation of the court proceedings. On the other hand, there are some inconsistencies in the proceedings, for example in the disciplinary proceeding, the proceeding for determining unprofessional and negligent conduct and the evaluation procedure.

Independence, efficiency and resources

The fifth chapter of the Recommendation refers to securing the independence of the judiciary through enabling efficiency and adequate allocation of resources, more specifically, ensuring the financial independence of the judiciary. In this regard, the document considers the manner of allocation of the resources for the judiciary and the decision-making on the allocation, the measures of alternative dispute resolution, the courts' administration, the assessment and provision of resources for international cooperation. The national legal framework is fully aligned with the larger part of the principles in this chapter. The principle of efficiency and the different aspects of this principle are regulated in the Courts Act and the procedural acts in line with the Recommendation. The Courts Acts stipulates that the "judicial system administration", i.e., the Ministry of Justice, provides the required conditions for fulfilling the goals and functions of the judiciary in an efficient manner. Thereby, the latest amendments

to the Court Budget Act, provide for a more suitable allocation of the means for the judiciary. When it comes to the administrative capacity of the courts and the judicial professional service, the Courts Act regulates the conditions from this aspect. With the aim to decrease the burden of the courts from functions that do not have judicial nature, the national legislation puts large incentives on the efficiency, especially with the foundation of the notary service and the enforcement agents. In this regard, the national legislation enables relatively broader use of the alternative means of dispute resolution, for example, mediation, arbitration, reconciliation, etc. Furthermore, the national legislation in a few ways encourages the use of the information technologies in everyday work of the courts, although there is space for improvement. The security of the judges and courts is given as a basic function of the judicial police, which is regulated with the Courts Act, the Act on the Judicial Service and the relevant bylaws. With the aim to secure the financial independence of the courts, the Court Budget Act established a specific body within the judiciary – the Judicial Budget Council, with the purpose to manage the judicial budget as a separate part of the Budget of Republic of Macedonia. Lastly, the Judicial Council Act regulates the procedure for regular evaluation of the performance of the judges, based on the determined qualitative and quantitative criteria in the law.

Status of the judges

The recommendations in the chapter dedicated to the status of the judges refer to: selection and career of the judges, tenure and irremovability, remuneration, training and assessment.

Regarding the selection and career of the judges, there is full alignment of national legislation with the Recommendation, with the exception of three issues. First, partial alignment exists due to the absence of a possibility to appeal the decision for selection of the judges. Second, the decision for selection of judges according to the national legislation should be free from discrimination; however, the national legal norms define the prohibited grounds for discrimination more narrowly compared to the text of the Recommendation. Third, it is controversial whether the body that decides on the challenged decision for assessment of the performance of the judges is independent.¹⁶

The initial selection and the selection of the judges for the higher courts is performed by an independent judicial body which is separated from the executive and legislative branch of power. More than half of its members are from the ranks of judges. The criteria for selection of the judges are objective and defined clearly in the Courts Act and the Judicial Council Act. Thus, the selection is not performed on discriminatory bases, although the grounds for discrimination are not identical as in the Recommendation. The national legislation is completely aligned regarding the tenure of the judges and their irremovability, having in mind the Constitution, and moreover, the Courts Act and the Judicial Council Act. A judge is selected with tenure until a mandatory retirement age. The tenure can be shortened if other conditions for termination of the function or dismissal of a judge are met. The Courts Act guarantees that a judge cannot be moved to another judicial office without their consent. The remuneration of the judges, as well as the source, amount and the other details are regulated in the appropriate acts and are aligned with the Recommendation. The training of judges, both initial and in-service, is conducted by a special body, the Academy for judges and public prosecutors, whereby all the

¹⁶ At the time when this publication went to press (December 2014) amendments have already been initiated to the Constitution and a number of laws related to the judiciary, in an effort, among other things, to address this issue.

standards stated in the Recommendation are met. Regarding the assessment of the judges, it is based on objective criteria and is performed by the Judicial Council.

Duties and responsibilities

The principles in the seventh chapter of the Recommendations are related to two areas: duties, and liability and disciplinary proceedings.

Regarding these issues, the national legal acts are largely aligned with the Recommendation. Partial alignment is noted in relation to two principles. First, the criteria for assessment of judges leave space for sanctioning the free assessment of the judges related to the interpretation of laws, assessment of the facts and the weight of the evidence in cases where the judges acted conscientiously and when the violation of rules occurred unintentionally. Second, there is partial alignment regarding the disciplinary proceeding, whereby it is contentious whether the body deciding on appeals to the decisions determining disciplinary liability is independent.

The remaining aspects of the responsibilities of the judges, like the protection of freedoms and rights of the parties in the proceedings, impartial and diligent adjudicating in the proceedings when cases are referred to them, managing cases within a reasonable time, with presentation of clear reasons for their verdicts in language which is clear and comprehensible, as well as the responsibility for professional development, are included and clearly regulated in suitable legal provisions.

The same refers to the remaining issues related to the responsibilities and the disciplinary proceedings of the judges, as the judicial immunity and its scope, freedom in making decisions in the judicial and disciplinary proceedings, which are regulated with appropriate legal provisions.

Ethics of judges

The 2014 Code on Judicial Ethics institutes a Judicial Ethics Advisory Committee, which gives advisory opinions on the implementation of the principles and on ensuring they are respected by the judges, thus accomplishing full alignment with the recommendations.

6. Role of the public prosecutors in the criminal justice system

Standard envisaged by the EU

Recommendation Rec (2000)19 of the Committee of Ministers to member states on the role of public prosecution in the criminal justice system; Council of Europe Committee of Ministers; 6 October 2000.

National legal framework

- Constitution of the Republic of Macedonia ("Official Gazette of the Republic of Macedonia" No. 52/1991, 1/1992, 3/1998, 91/2001, 84/2003, 107/2005, 3/2009 and 49/2011);
- Public Prosecution Office Act ("Official Gazette of the Republic of Macedonia" No. 150/2007 and 111/2008);
- Act on the Council of Public Prosecutors of the Republic of Macedonia ("Official Gazette of the Republic of Macedonia" No. 150/2007 and 100/2011);
- Criminal Procedure Act ("Official Gazette of the Republic of Macedonia" No. 150/2010 and 100/2012);
- Criminal Code ("Official Gazette of the Republic of Macedonia" No. 37/1996, 80/1999, 4/2002, 43/2003, 19/2004, 81/2005, 60/2006, 73/2006, 7/2008, 139/2008, 114/2009, 51/2011, 135/2011, 185/2011, 142/2012, 166/2012, 55/2013, 82/2013, 14/2014, 27/2014, 28/2014, 115/2014, 132/2014 and 160/2014);
- Act on the Academy for Judges and Public Prosecutors ("Official Gazette of the Republic of Macedonia" No. 88/2010, 166/2012 and 26/2013);
- Witness Protection Act ("Official Gazette of the Republic of Macedonia" No. 38/2005 and 58/2005);
- Police Act ("Official Gazette of the Republic of Macedonia" No. 114/2006, 6/2009, 145/2012 and 41/2014);
- Ethical Code of the Public Prosecutors in the Republic of Macedonia, Association of Public Prosecutors of the Republic of Macedonia (in the process of adoption).

The Recommendation, which focuses on the role of the public prosecutors in criminal proceedings, systematizes the principles in seven chapters: Functions of the public prosecutors; Safeguards provided to public prosecutors for carrying out their functions; Relationship between public prosecutors and the executive and legislative branches of power; Relationship between public prosecutors and the court judges; Relationship between public prosecutors and the police; Duties of the public prosecutors towards individuals; and International cooperation.

Functions of the public prosecutors

This segment states the definition of "public prosecutors" and their role, i.e. responsibilities in the criminal proceedings. There is full alignment of the constitution and laws with the principles regarding these issues.

Safeguards provided to public prosecutors for carrying out their functions

The Recommendation determines the duties of the countries which, in cooperation with the bodies that represent the public prosecutors, must guarantee all proper conditions and resources needed for the public prosecutors to be able to fulfil their professional duties and responsibilities. The suitable principles for selection, career and status of the public prosecutors, (remuneration, pension, security etc.) are completely aligned in national law, whereby the decisions regarding these issues must not be made on discriminatory basis. The training, both initial and in-service, of the public prosecutors is a clearly defined right and duty under the relevant laws. The content and the themes of the training that is conducted annually are

determined in detail in the training program of the Academy for judges and public prosecutors. Moreover, the Public Prosecution Office Act and the Criminal Procedure Act, with the aim to secure better functioning of the prosecution, enable organizing and establishing of separate specialized departments, as well as cooperation on different levels and areas with the other institutions involved in the fight against crime. Regarding the organizational structure of the public prosecution, the principles of hierarchy and subordination, i.e. avocation and delegation are based on objective criteria which do not jeopardize the autonomy and independence of the prosecutors, with the aim to advance and improve the fight against crime.

Relationship between public prosecutors and the executive and legislative powers

National law is completely aligned with the Recommendation regarding the principles in this part. The separation of powers as well as the independence of the public prosecution office is defined in the Constitution of Republic of Macedonia. There is distinction between the legislative and executive powers on the one hand, and the public prosecution on the other hand. The relevant legal norms regulate the other issues related with this relationship. The impartiality and independence of the public prosecutors in performing their duties are guaranteed, especially in the context of criminal prosecution of public officials, and an obligation is determined for cooperation of the relevant institutions with the prosecution office based on the proceedings prescribed with the relevant laws.

Relationship between public prosecutors and the court judges

Almost everything is in alignment also in this part. The constitutional provisions make distinction of the judicial and prosecutorial function, and incompatibility of the functions is determined. The same is determined also with the special conditions for selection of judges in the Courts Act. Furthermore, the law sets an obligation for diligent and professional performance of the courts and the judges, by submission of all relevant facts and legal arguments for reaching correct and objective decisions.

Relationship between public prosecutors and the police

In Republic of Macedonia, the appropriate functional cooperation between the public prosecutor and the police is determined and regulated with the Public Prosecution Office Act, Police Act and the Act on criminal procedure, and there is complete alignment with this principle.

Duties/Responsibilities of the public prosecutors towards individuals

The duties of the public prosecutors in proceedings towards individuals are fully aligned in the national legal framework with the principles of the Recommendation. Only the bases of discrimination are more narrowly defined compared to the Recommendation, and that is also a general remark applicable also to the other laws in the sphere of judiciary. Regarding the remaining aspects, such as the legality and impartiality in the proceedings related to the gathering and use of the evidence, discrimination, equality in the procedural rights and mechanisms, ethical principles, taking into account the interests of witnesses and victims, keeping confidential information, etc., a complete alignment is noted.

International cooperation

The cooperation of the public prosecution within the international framework is regulated with several laws. The domestic legal framework does not regulate all separate aspects of the cooperation, which should not always be part of the law, but it is notable that the legislator leaves space for performing such activity. Because of that, it can be stated that there is complete alignment with the Recommendation in this part.

7. Ethics and conduct for public prosecutors

Standard envisaged by the EU

European Guidelines on ethics and conduct for public prosecutors "The Budapest Guidelines"; Conference of Prosecutors General of Europe; 31 May 2005.

National legal framework

- Constitution of the Republic of Macedonia ("Official Gazette of the Republic of Macedonia" No. 52/1991, 1/1992, 3/1998, 91/2001, 84/2003, 107/2005, 3/2009 and 49/2011);
- Public Prosecution Office Act ("Official Gazette of the Republic of Macedonia" No.150/2007 and 111/2008);
- Act on the Council of Public Prosecutors of the Republic of Macedonia ("Official Gazette of the Republic of Macedonia" No. 150/2007 and 100/2011);
- Criminal Procedure Act ("Official Gazette of the Republic of Macedonia" No. 150/2010 and 100/2012);
- Act on the Academy for Judges and Public Prosecutors ("Official Gazette of the Republic of Macedonia" No. 88/2010, 166/2012 and 26/2013);
- Witness Protection Act ("Official Gazette of the Republic of Macedonia" No. 38/2005 и 58/2005);
- Police Act ("Official Gazette of the Republic of Macedonia" No. 114/2006, 6/2009, 145/2012 and 41/2014);
- Ethical Code of the Public Prosecutors in the Republic of Macedonia, Association of Public Prosecutors of the Republic of Macedonia (in the process of adoption).

The Budapest Guidelines aim to determine standards for the conduct of the public prosecutors in performing their duties, which are based on broadly accepted common principles. The Guidelines are separated in four parts: Basic duties; Professional conduct in general; Professional conduct in the framework of criminal proceedings; and Private conduct.

Regarding the alignment of the national legal framework with the guidelines, it should be mentioned that the Association of public prosecutors launched a procedure for adopting a new ethical code which should be completed at the end of 2014. The draft of the ethical code is largely based on the Budapest Guidelines and the Recommendation of the Council of Europe on the role of the public prosecutors in criminal proceedings. Thus, the alignment of the national legal framework would be even more comprehensive.

Basic duties

National regulations concerning the basic duties of the public prosecutors are completely aligned with the guidelines. They are related to the conduct of the public prosecutors which should always, under any circumstances, respect the domestic and international law, will

perform their duties impartially, consistently, fair and expeditiously, will respect and protect human dignity and human rights, will take into account that they are acting on behalf of the society and will strive to strike a fair balance between the general interest of society and the interests of individuals – citizens and parties.

Professional conduct in general

In this segment, the guidelines are focus on the basic issues related to the conduct of the public prosecutors, such as the different aspect of lawfulness, diligence, impartiality, independence and confidentiality. Besides these principles, the guidelines also state the importance of the cooperation with other institutions as well as the cooperation on international level. The national legal framework is completely in line with the guidelines.

Professional conduct in the framework of criminal proceedings

The principles and guidelines on the conduct of the public prosecutors in criminal proceedings refer to the concrete use of the general principles in the framework of the criminal proceedings. Their conduct in the criminal proceedings should aim towards realization of the principles of fair trial, envisaged in article 6 of the European convention on human rights and the Court case-law. Full alignment is achieved concerning most of the principles.

Private conduct

Regarding the private conduct of the public prosecutors, the domestic legal provisions clearly determine the duty of the public prosecutors to retain the integrity, trust, confidentiality and dignity of the profession from this aspect. There is full alignment of the national legal provisions with the guidelines.

8. Right to a fair trial and right to an effective remedy

Standard envisaged by the EU

European Convention on Human Rights (articles 6 and 13); Council of Europe.

National legal framework

- Constitution of the Republic of Macedonia ("Official Gazette of the Republic of Macedonia" No. 52/1991, 1/1992, 3/1998, 91/2001, 84/2003, 107/2005, 3/2009 and 49/2011);
- Courts Act ("Official Gazette of the Republic of Macedonia" No. 58/2006, 62/2006, 35/2008 and 150/2010);
- Civil Procedure Act ("Official Gazette of the Republic of Macedonia" No. 7/2011 – consolidated text);
- Criminal Procedure Act ("Official Gazette of the Republic of Macedonia" No. 150/2010 and 100/2012);
- Act on the Judicial Council of the Republic of Macedonia ("Official Gazette of the Republic of Macedonia" No. 60/2006, 150/2010 and 100/2011).

When it comes to the specific rights from the European convention on human rights – the right to a fair trial and the right to an effective remedy – it should be stressed that in addition to the appropriate norms of the Convention, the case-law of the European Court of human rights is also very significant, because it depicts a better picture of the scope and content of the rights through their use and interpretation. In this sense, without taking into account the verdicts of the European court of human rights, we cannot obtain a proper impression of the level of alignment. Basically, if we review only the content of the provisions, it can be determined that there is full alignment of the legal norms and principles related to the rights to a fair trial and an effective remedy in the domestic legal order.

The Courts Act envisages special competence of the Supreme Court of Republic of Macedonia for protection of the right to a trial within a reasonable time. The parties can submit a request for protection of the right to a trial within reasonable time. The Supreme Court acts upon such requests, bearing in mind the rules and principles determined in the European convention on human rights, and especially the complexity of the case, the conduct of the parties in the proceedings and the conduct of the court. If the Supreme Court of Republic of Macedonia establishes a violation of the right to a trial within reasonable time, it will set a deadline in which the court must decide regarding the right, duty or criminal charge of the submitter and will award compensation to the submitter due to violation of the right to trial within a reasonable time. The European court for human rights in a verdict from 2011¹⁷ concluded that the proceeding at the Supreme Court is an effective legal remedy regarding the violation of the right to a trial within a reasonable time.

However, it remains to be noted that there are still problems with the long duration of the court proceedings, meaning violation of the article 6 of the European convention on human rights in the part of the right to trial within a reasonable time. Particularly relevant in the

¹⁷ Adzi Spirkoska And others v. The former Yugoslav Republic of Macedonia (dec.) - 38914/05 and 17879/05, 3.11.2011.

context of the judiciary will is the verdict of the European court of human rights regarding the proceedings for dismissal of judges, stipulates in the Judicial Council Act, and whether they violate the rights of article 6 of the European convention.

V. REVIEW OF POLICIES, STRATEGIES AND PLANS

The current activities in the sphere of reforms of the judiciary were envisaged in few key documents: Strategy on the reform of the judicial system 2004–2007, ICT strategy for the judiciary 2007–2010 and the Strategy for reform of criminal legislature 2007–2009.

Continuing on the analysis of the previous results, in direction of improving the independence, impartiality, professionalism and efficiency of the judiciary, the activities of the competent authorities in the following period will be aimed at:

- adopting and implementing, through an action plan, a Strategy for reform of the judicial system for the period 2015–2019, where the future priorities are determined: further enhancement of the independence, impartiality and professionalism in the judiciary, improvement of the administrative law, further reforms in the criminal system, alternative dispute resolution (mediation), access to justice;
- drafting an Analysis for improving the system of disciplinary responsibility of judges;
- drafting an Analysis of the current system for assessment of judges;
- continuous systematic obtaining, processing and analysis of data in line with the methodology for judicial statistics;
- activities directed towards promotion of the mediation through adopting a Program for development of the mediation for the period 2014–2017;
- drafting a reports on the performance of the Offices for public relations by the Supreme Court with aim to improve the transparency of the judicial system;
- drafting a guidebook on the procedure of settlement.

The need for making amendments of the relevant legal provisions will be determined based on these plans and activities, with aim to secure full alignment with the international standards in the sphere of judiciary.

VI. INVOLVEMENT OF THE PUBLIC IN JUDICIAL REFORMS AND THE PARTICIPATION OF CIVIL SOCIETY – MECHANISMS IN MONTENEGRO, SERBIA AND MACEDONIA

One of the fundamental features of a modern democratic society is the existence of an open dialogue, cooperation and partnership between stakeholders and government institutions. The success and the efficiency of judicial system reforms, and the whole process of EU integration, depends on communication, coordination and cooperation of many state institutions and stakeholders – including those of civil society. This is crucial not only for better advocating and protecting the interests of different groups in society, but also for the purpose of utilizing all societal potentials in the process of EU accession.

The experiences of Montenegro and Serbia in the accession process suggest that the European Commission places special emphasis on ensuring participation and transparency in the reform processes, particularly those related to Chapter 23 – Judiciary and fundamental rights.

In the case of accession negotiations of Montenegro, an interim benchmark for Chapter 23 refers to adequate involvement of civil society in the process of negotiations and reforms in this chapter. This benchmark requires the provision of adequate participation of civil society in the development, implementation and monitoring of policies related to chapter 23.¹⁸ Montenegro demonstrates such participation in several ways. The structure of the Montenegrin Working Group for Chapter 23 has seven representatives of the wider civil society, including five representatives of non-governmental organizations. In accordance with the negotiating framework, Montenegro has developed a draft action plan for Chapter 23 through a process of consultation with key stakeholders. In the implementation and monitoring of the implementation of the plan, particular support is expected from the civil sector, whose representatives are members of the Working Group 23 and their expert comments and suggestions are expected to contribute to the implementation of each activity, its monitoring, but also to maintaining the required level of transparency.¹⁹ In the area of judicial system reforms, more specific measures that explicitly envisage the participation of civil society are:

- carrying out a survey among citizens on the independence of judges as well as an anonymous survey among judges
- organizing seminars for strengthening the integrity of members of the Judicial and Prosecutorial Councils, judges, presidents of courts, public prosecutors and their deputies;
- rising public awareness on mechanisms to control the work of judges and public prosecutors in compliance with ethical rules for judges and prosecutors.

In addition, a National Convention on European integration has been created in Montenegro. Through several working groups of the Convention, representatives of civil society and state institutions of Montenegro, with the participation of foreign experts and representatives of international institutions, conduct structured public debate on issues related to the EU, define obstacles on the road to EU integration and craft conclusions and recommendations to successfully overcome them. One of these working groups covers the topics related to the

¹⁸ European Union Common Position – Chapter 23: Judiciary and Fundamental Rights, Conference on accession to the European Union – Montenegro, 12 December 2013.

¹⁹ Akcioni plan za poglavje 23. Pravosuđe i temeljna prava, Vlada Crne Gore, 10.9.2013.

chapter Judiciary and fundamental rights. The composition of the bodies of the Convention includes senior representatives from various institutions in Montenegro, including the Minister of Foreign Affairs and European Integration, Secretary General of the Government of Montenegro, the chief negotiator of Montenegro for membership in the European Union, as well as the Secretary General of the Parliament of Montenegro. Civil society is represented in the Convention by non-governmental organizations, media, labour unions, academic institutions and individual experts.²⁰

Similar to this example from Montenegro, in 2014 more than 20 prominent Serbian civil society organizations initiated the establishment the National Convention of the European Union. It is a permanent body which conducts a thematically structured debate on Serbia's accession to the EU between representatives of the public administration, political parties, independent bodies, non-governmental organizations, experts, industry, labour unions and professional organizations. Although the Convention was established primarily as a permanent body for cooperation of the National Assembly of the Republic of Serbia and civil society in the process of negotiations, it is also a platform for cooperation and consultation with the Government and its bodies in charge of EU accession negotiations.²¹ Its bodies include senior representatives of the Government, including the Minister in charge of European integration, the Director of the Office for European Integration and the head of the negotiating team. The Convention brings together approximately 200 civil society organizations in 21 working groups, covering all 35 negotiating chapters.²² One of the working groups of the Convention covers the chapter Judiciary and fundamental rights. The Convention should:

- provide regular consultations with stakeholders in the negotiation process;
- define recommendations and opinions on the negotiating positions of Serbia, as well as monitor the fulfilment of the criteria and requirements for membership in the various segments of the negotiating chapters;
- enable transparent and open dialogue;
- better inform the public about the process of negotiations and consequences.

Similarly to the case of Montenegro, the European Commission also requires Serbia to ensure the participation of civil society in the reforms under chapter 23. For example, the report on the alignment with the acquis for Chapter 23²³ recommends enabling the participation of civil society and the professional organizations in determining further steps in the reform process outlined in the National Strategy for the reform of the judiciary for the period 2013–2018,²⁴ as well as in monitoring the implementation of the related action plans.²⁵

Macedonia has also taken initial steps for greater involvement of civil society and the public in the reform of the judiciary. Article 9 of the Decision on establishing working groups for the adoption of the EU acquis and preparing negotiating positions enables the heads of the working groups to include representatives of business and civil society in the work of the groups on specific issues, as well as other professionals outside of the state administration.

²⁰ <http://eukonvencija.me/> (accessed on 4.12.2014).

²¹ <http://eukonvent.org/o-nacionalnom-konventu/> (accessed on 4.12.2014).

²² Serbia 2014 Progress Report, European Commission.

²³ The screening report. The screening report.

²⁴ Screening report Serbia: Chapter 23 – Judiciary and fundamental rights.

²⁵ A similar recommendation is given regarding the involvement of civil society in the anti-corruption agenda.

Using this possibility, the working group for chapter Judiciary and Fundamental Rights, led by the Ministry of Justice and with the support of civil society organizations, developed rules of procedure containing provisions for cooperation with stakeholders through information sharing, consultation, involvement in the work as external members, and partnership. The state agencies involved in the working group Judiciary and fundamental rights, through the adoption of rules with specific provisions for cooperation with stakeholders created another mechanism for public consultation and information sharing. In January 2014, the Rules of procedure were presented to the Subcommittee of the Working Committee for European integration as a model which should be followed by the other working groups to regulate their work, including issues of cooperation with stakeholders.

In the light of these events, the European Parliament welcomed the possibility of participation of civil society in the working group for chapter 23, headed by the Ministry of Justice, and encouraged other ministries to follow this example. The European Parliament emphasized the key role that civil society organizations can play to make the EU integration process more transparent, accountable and inclusive.²⁶

Furthermore, the Ministry of Justice included civil society representatives in several of the established working groups for development of a Strategy for judicial system reform for the period 2015–2019. This also refers to the working group for sectoral policies and implementation of EU law. It is expected that civil society representatives with their knowledge and data will support the development of the strategy, but will also contribute to its subsequent implementation, monitoring and evaluation of its impact.

²⁶ European Parliament resolution on the 2013 Progress Report on Macedonia (2013/2883(RSP) and European Parliament resolution on the 2012 Progress Report on Macedonia (2013/2866(RSP)).

VII. CONCLUSION AND RECOMMENDATIONS

The analysis of the domestic legal framework alignment with the “European standards” leads to the conclusion that the domestic legal provisions are largely aligned with the international standards. The same is noted in the last progress report on the Republic of Macedonia. Certain steps can be taken to improve in certain segments, but only few of them have substantial meaning. Nonetheless, making broader conclusions about the functioning of the judiciary should be avoided, having in mind that the alignment mainly refers to the legal framework and the domestic standards, but not to their implementation and the courts’ legal practice.

The analysis also enables to put forward a set of recommendations on required measures to improving the situation in the judiciary. The recommendations concern only the transposition of the standards in the domestic legal framework:

- To improve the system for evaluating the work of judges.
- To revise and detail the grounds for dismissal of judges, both for serious disciplinary offenses and for unprofessional and negligent conduct.
- To revise the procedure for determining disciplinary responsibility and the related sanctions.
- To revise the procedure for dismissal of judges, whereby an independent body will decide on appeals to dismissal decisions.²⁷
- To improve the transparency of the Judicial Council through a legal obligation for introducing a public relations function.
- To improve the legal framework with the aim to secure harmonization between the Discrimination Protection Act and the acts in the sphere of judiciary regarding the basis for discrimination.
- To consider the possibility to detail the basis for exemption of judges from the court proceedings with the aim to achieve better alignment with the international standards, regarding the interests of the judge’s family in the result of the proceeding, along the lines of the new Code of Judicial Ethics.
- To consider the possibilities to introduce the right of appeal in the procedure for election of judges and election of Judicial Council members from the ranks of judges.²⁸

²⁷ At the time when this publication went to press (December 2014) amendments to the Constitution have already been initiated, in an effort, among other things, to address this issue.

²⁸ Ibid.



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