



ЦЕНТАР ЗА ПРАВНИ
ИСТРАЖУВАЊА И АНАЛИЗИ
CENTER FOR LEGAL RESEARCH AND ANALYSIS

EFFICIENCY



**TRANSPARENCY AND
ACCOUNTABILITY**



**QUALITY OF
JUDICIAL JUSTICE**

IV

**INDEPENDENCE AND
IMPARTIALITY**

V

**PROFESSIONAL
DEVELOPMENT AND
APPROPRIATE
REPRESENTATION**

FIRST NATIONAL REPORT

ON THE JUDICIAL INDICATOR MATRIX
FOR MEASURING THE PERFORMANCE
AND REFORM OF THE JUDICIARY

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AND REFORM OF THE JUDICIARY

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First National Report from the Judicial Indicator Matrix for measuring the performance and the reform in the judiciary

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CONTENTS

LIST OF ABBREVIATION:	7
GRATITUDE	9
EXECUTIVE SUMMARY	11
INTRODUCTION	14
METHODOLOGY OF THE FIRST REPORT FOR MEASURING OF THE PERFORMANCE AND REFORMS OF THE JUDICIARY	15
Judicial indicator Matrix for measuring the performance and reform in the judiciary	16
Data from the judicial institutions	17
Data from international sources	18
Methodology of the process of monitoring of the performance and reforms of the judiciary	18
I. AREA: EFFICIENCY	21
1. LEGAL FRAMEWORK, KEY PRINCIPLES, STANDARDS, AND PRACTICES: AREA OF EFFICIENCY	22
A) Sub-area: Human resources	24
B) Sub-area: The workload of the courts	26
C) Sub-area: System for submitting and tracking cases	27
D) Sub-area: Infrastructure and modernization	28
2. LEGAL FRAMEWORK, KEY PRINCIPLES, STANDARDS, AND PRACTICES: AREA OF EFFICIENCY	31
2.1 LEGAL FRAMEWORK	31
2.2 DATA FROM DOMESTIC INSTITUTIONS	32
2.3 DATA FROM INTERNATIONAL REPORTS	33
3. CORRELATIONS: EFFICIENCY	35
II. AREA: TRANSPARENCY AND ACCOUNTABILITY	37
1. ANALYSIS OF THE PERCEPTIONS FROM THE MEASURING: TRANSPARENCY AND ACCOUNTABILITY	38
A) Sub-area: Access to court decisions	40
B) Sub-area: Openness of the judiciary towards the public	43
C) Sub-area: Storing court records	46
D) Sub-area: Cooperation with other bodies and institutions	47
2. LEGAL FRAMEWORK, KEY PRINCIPLES, STANDARDS, AND PRACTICES: AREA OF TRANSPARENCY AND ACCOUNTABILITY	50
2.1 LEGAL FRAMEWORK	50
2.2 DATA FROM DOMESTIC INSTITUTIONS	51
2.3 DATA FROM INTERNATIONAL REPORTS	53
3. CORRELATIONS: TRANSPARENCY AND ACCOUNTABILITY	54

III. AREA: QUALITY OF JUDICIAL JUSTICE.....	55
1. ANALYSIS OF THE PERCEPTIONS FROM THE MEASURING: QUALITY OF JUDICIAL JUSTICE.....	56
A) Sub-area: Court functioning.....	60
B) Sub-area: Quality and effect of the court decision.....	64
C) Sub-area: Court competences and safeguards.....	71
2. LEGAL FRAMEWORK, KEY PRINCIPLES, STANDARDS, AND PRACTICES: AREA OF QUALITY OF JUDICIAL JUSTICE.....	74
2.1 LEGAL FRAMEWORK.....	74
2.2 DATA FROM DOMESTIC INSTITUTIONS.....	77
2.3 DATA FROM INTERNATIONAL REPORTS.....	80
3. CORRELATIONS: QUALITY OF JUDICIAL JUSTICE.....	82
IV. AREA: INDEPENDENCE AND IMPARTIALITY.....	85
1. ANALYSIS OF THE PERCEPTIONS FROM THE MEASURING: INDEPENDENCE AND IMPARTIALITY.....	86
A) Sub-area: The process of election and dismissal.....	89
B) Sub-area: Disciplinary process.....	93
C) Sub-area: Evaluation and promotion.....	94
D) Sub-area: External and internal influences in the judiciary.....	96
E) Sub-area: Financial resources and court compensation.....	98
F) Sub-area: Judicial impartiality.....	102
2. LEGAL FRAMEWORK, KEY PRINCIPLES, STANDARDS, AND PRACTICES: AREA OF INDEPENDENCE AND IMPARTIALITY.....	104
2.1. LEGAL FRAMEWORK AND DATA FROM DOMESTIC INSTITUTIONS.....	104
2.2 DATA FROM INTERNATIONAL REPORTS.....	114
3. CORRELATIONS: INDEPENDENCE AND IMPARTIALITY.....	116
V. AREA: PROFESSIONAL DEVELOPMENT AND APPROPRIATE REPRESENTATION.....	119
1. ANALYSIS OF THE PERCEPTIONS FROM THE MEASURING: PROFESSIONAL DEVELOPMENT AND APPROPRIATE REPRESENTATION.....	120
A) Sub-area: Continuing legal education.....	123
B) Sub-area: Ethnic and gender equality.....	125
2. LEGAL FRAMEWORK, KEY PRINCIPLES, STANDARDS, AND PRACTICES: PROFESSIONAL DEVELOPMENT AND APPROPRIATE REPRESENTATION.....	127
2.1. LEGAL FRAMEWORK AND DATA FROM DOMESTIC INSTITUTIONS.....	127
2.2 DATA FROM INTERNATIONAL REPORTS.....	130
3. CORRELATIONS: PROFESSIONAL DEVELOPMENT AND APPROPRIATE REPRESENTATION.....	131

LIST OF ABBREVIATION:

ACMIS	Automated Case Management Information System
AC	Appellate court
AJPP	Academy for Judges and Public Prosecutors
SCRNM	Supreme Court of Republic of North Macedonia
CSO	Civil society organization
GRECO	Group of States against Corruption
EC	European Commission
ECHR	European Convention of Human Rights
ENJC	European Network of Judicial Council
ECtHR	European Court of Human Rights
EU	European Union
LCP	Law on Criminal Procedure
LCP	Law on Civil Procedure
ICT	Informatics and communication technology
PPRNM	Public Prosecutors of North Macedonia
CCEJ	Consultative Council of European Judges
BPP	Basic Public Prosecutors
BC	Basic Court
RNM	Republic of North Macedonia
CJB	Court Judicial Budget
SPP	Special Public Prosecutors
CPPRNM	Council of prosecutors of Republic of North Macedonia
SRJS	Strategy for Reform of the Justice Sector
JCRNM	Judicial Council of Republic of North Macedonia
CCRNM	Constitutional Court of Republic of North Macedonia
USAID	United States Agency for International Development
CLRA	Center for Legal Research and Analysis
CEPEJ	Council of Europe European Commission for the efficiency of justice
ROLI	Rule of Law Index
WJP	World Justice Project

GRATITUDE

The preparation of the First national report from the Judicial Indicator Matrix for measuring the performance and reforms in the judiciary is a result from several years of CLRA's efforts to support the reform of the judiciary for measuring the performance and reforms in the judiciary is a result from several years of CLRA's efforts to support the reform of the judiciary and creating an efficient, just and independent court system. The Judicial Indicator Matrix for measuring the performance and reform in the judiciary is created by CLRA's programme team in close cooperation with the representatives from the Ministry of Justice and the Judicial Council of the Republic of North Macedonia. More over, in the creation of the Matrix representatives from all the included target groups were included.

In that sense, the CLRA is expressing its gratitude towards the significant contribution and active involvement and cooperation in the process of the first national implementation and measuring of the performance in the judiciary towards the representatives in all the basic and appellate court, the Supreme Court of RNM, the Administrative and Higher Administrative court, the Public prosecution of RNM along with the basic and high public prosecutions, the Council of Public Prosecutors, the Bar association, the Chamber of Notaries, the Enforcement Chamber, the Chamber of Mediators, the Academy for Judges and public prosecutors Pavel Shatev, the State attorneys of RNM, the civil society organizations that work in the field of judiciary, as well as the representatives from the academic community and the media that gave their support towards successful implementation of this process.

The Centar is expressing its special gratitude and appreciation towards the British Embassy Skopje for the confidence and long year support and cooperation, aimed for the successful implementation of the first national measurement of the performance and reform in the justice system in Republic of North Macedonia.

Respectfully,
Center for Legal Research and Analysis

EXECUTIVE SUMMARY

The report from the Matrix of indicators for the national monitoring of the performance and reform in the judiciary is the first report of its kind, which through accurate data obtained through a scientific methodological approach, analyses the performances of the judiciary as a whole.

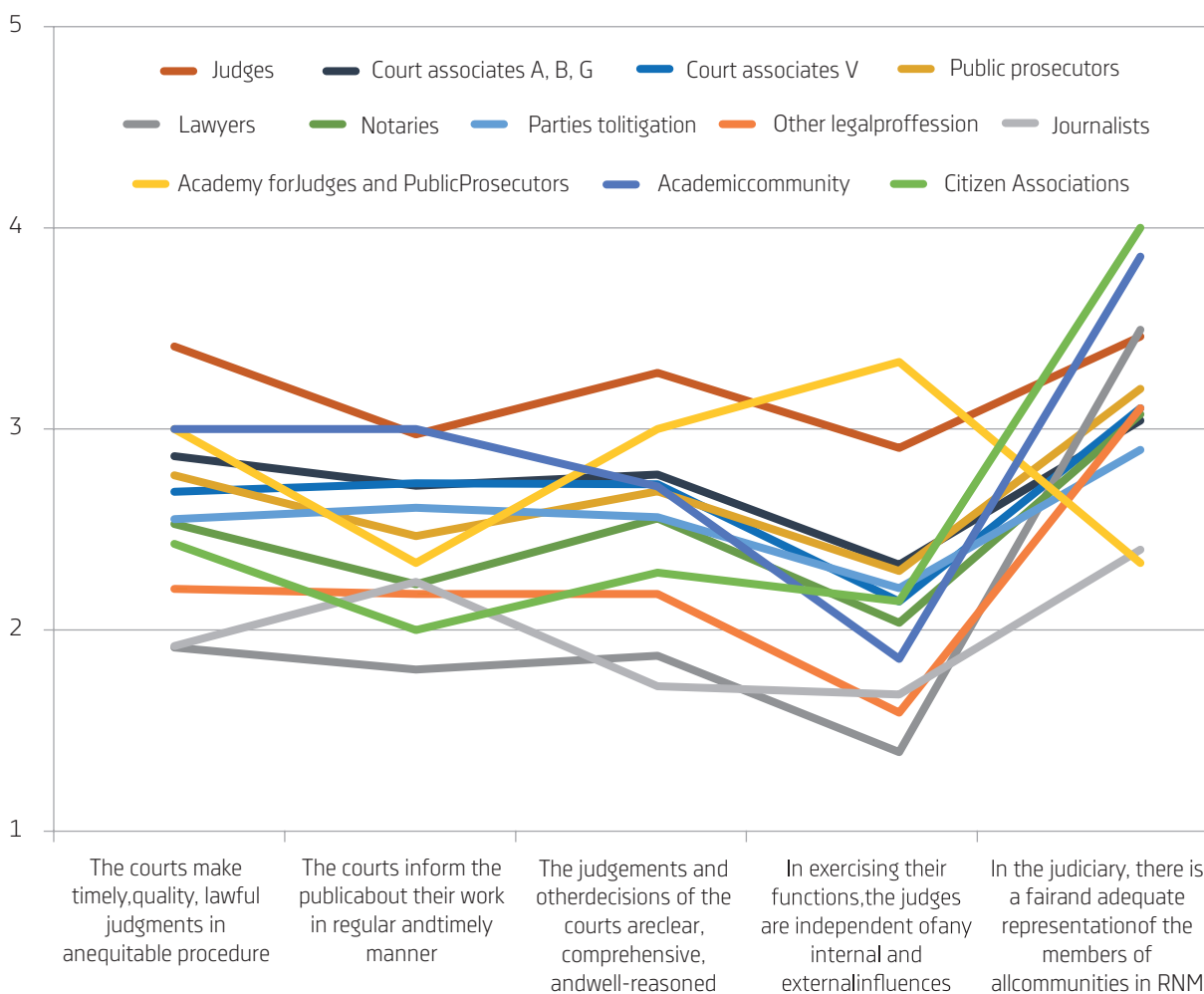
The Matrix is a tool created by the Center for Legal Research and Analysis in cooperation with the Ministry of Justice and the Judicial Council of the Republic of Macedonia, within the framework of the programme “improving transparency, legal certainty and efficiency of the judiciary in Macedonia”, and comes as a result of years of program activities supported by the British Embassy in Skopje.

The Matrix for monitoring of the performance and reform in the judiciary is based on internationally recognized judiciary standards, as well as the country's priorities vis-à-vis the judiciary contained in the Strategy for Reform of the Judiciary Sector 2017 – 2022. The goal of this approach is to measure the results of the implemented initiatives and reforms in an all-encompassing and inclusive process, thus setting the basis for a systemic monitoring of the goals contained in the Strategy and the European standards and practices. The application of the tool enables an assessment of the performances in five key areas: *efficiency, transparency and accountability, quality of judicial justice, independence, impartiality and professional development and appropriate representation.*

The Matrix of indicators provides an initial measurement and analysis of the perceptions of all relevant target groups that come in touch with the work of the judicial system, and whose views and opinions may provide a significant contribution in building a realistic perception of the state of things, as well as the system's performances overall. However, perceptions are only one segment of the overall monitoring that is the subject of this report. For the purpose of obtaining a realistic view of the performances of the judiciary or a specific aspect related to the functioning of the judicial system, the following topics were analysed: **1) perceptions of those in direct communication with the judicial system** (through application of the Matrix), **2) the legal framework and relevant reports (domestic and international)**, which follow the judiciary and the development of the judicial reforms, and **3) data from the judicial institutions** (courts, Judicial Council, Ministry of Justice, Supreme Court, Academy for Judges and Public Prosecutors, Association of Judges etc).

The main findings from researching the perception of all the target groups for the judiciary through the 5 designated areas are visually presented in the following table:

Table 1- Graphic illustration of the perception of the relevant target groups



AREA	AVERAGE SCORE
EFFICIENCY	2.7
TRANSPARENCY AND ACCOUNTABILITY	2.6
QUALITY OF JUDICIAL JUSTICE	2.7
INDEPENDENCE AND IMPARTIALITY	2.2
PROFESSIONAL DEVELOPMENT AND APPROPRIATE REPRESENTATION	3.1

Average grade of the perception for all of the areas in the judiciary is **2.5/5**

The results from the in-depth analysis which crossed the perceptions, legal framework and relevant reports and the data of the judicial institutions are presented in the table below, summarily and desegregated by area:

Table 2 – Main results and correlations for the areas subject to evaluation

I. Efficiency
Despite the lack of a court service and insufficiently developed infrastructure, the courts display a high level of efficiency in their work.
II. Transparency and Accountability
The current system of publishing of judicial decisions has no functional application, neither for the expert, nor the general community. The accountability of the Judicial Council of the RoM has increase, but is still low on the level of the entire judiciary.
III. Quality of judicial justice
There are no appropriate criteria for monitoring the quality of judicial justice, but conditions are being created for its monitoring through amendments in the legal framework, improved argumentation in the court decisions and the application of the court practice.
IV. Independence and Impartiality
There is partial independence of the judiciary, conditioned by financial and political factors. Impartiality is still at a low level, although there is a trend of creating mechanisms for its consistent maintenance
V. Professional Development and Appropriate Representation
Professional development should mandatorily be specialized and continue to follow the trends and needs of the judiciary. The appropriate representation on grounds of sex, age and ethnicity is at a solid level, although there is a need for appointment of judges of Roma ethnicity.

The regular and cycle-based implementation of the *Matrix of indicators for monitoring of the performance and reform in the judiciary* will serve to measure the reform processes across a certain period of time, through diagnosing of problems and obstacles the judiciary faces. The end goal of this approach is to evaluate and encourage further reform in the justice system, toward securing of legal certainty, as well as increasing the citizens' trust in the judiciary.



INTRODUCTION

This First National Report from the Judicial Indicator Matrix for measuring the performance and reform in the judiciary is reflecting the findings from the initial implementation of the JIM which is embedded in the Strategy for Reform of the Judiciary (2017-2022) and the Action Plan of the Ministry of Justice.

The report is structured in two parts:

1. The first part of the report is providing an overview of the methodological design, the representative sample, the target groups that are included in the research, as well as the structure of the JIM;
2. The second and most substantial part of the report is providing an assessment of the results obtained from the analysis of the perception given within the frame of the selected target groups for all of the five areas of evaluation relevant for the judiciary. The findings from the analysis in which the perceptions, the relevant domestic and international reports and the data from the judicial institutions are presented at the end of each of the area that is a subject to evaluation with this research;

METHODOLOGY OF THE FIRST REPORT FOR MEASURING OF THE PERFORMANCE AND REFORMS OF THE JUDICIARY

The methodological design of the Judicial Indicator Matrix for measuring of the performance and reforms of the Judiciary has the goal of providing an all-encompassing insight into the operation of the Macedonian judicial system, through an analysis grounded in three (3) foundations of data: perceptions from the relevant target groups, data from the judicial institutions¹ and international sources.



Judicial indicator Matrix for measuring the performance and reform in the judiciary

The main research instrument is the Judicial indicator *Matrix for Measuring of the Performance and Reforms of the Judiciary*,² consisting of five general issues/indicators: **Efficiency, Transparency and Accountability, Quality of Judicial Justice, Independence and Impartiality, Professional Development and Appropriate Representation**. Each of these areas has sub-areas that relate to relevant specific aspects of the work of the judiciary.³

AREAS OF EVALUATION

I. EFFICIENCY
II. TRANSPARENCY AND ACCOUNTABILITY
III. QUALITY OF JUDICIAL JUSTICE
IV. INDEPENDENCE AND IMPARTIALITY
V. PROFESSIONAL DEVELOPMENT AND APPROPRIATE REPRESENTATION

Through the application of this monitoring approach, quantified data was obtained on the perceptions of the target groups for each of the aforementioned areas and their respective sub-areas. Thus, this report sets the referential basis of the marks received from all target groups within the judiciary, which will be monitored over a certain period with the purpose of ascertaining of statistical trends in the performance of the judiciary in the Republic of North Macedonia.

¹ For the purpose of this research, data and reports from the key judicial institutions were used (Judicial Council, the Supreme Court, the Academy for Judges and Public Prosecutors etc.)

² Center for Legal Research and Analysis (2017) *Matrix for Monitoring of the Performance of the Judiciary in the Republic of Macedonia*; available: <https://goo.gl/vN6Fd1>

³ Annex Matrix

Data from the judicial institutions

For the purpose of drafting an all-encompassing analysis of the functioning of the judicial system, exact data was used from the judicial institutions in the country (courts, the Judicial Council of the Republic of Macedonia), the Supreme Court of the Republic of North Macedonia, the Academy for Judges and Public Prosecutors and the Ministry of Justice).

This research primarily used the data at disposal to the Judicial Council and the Judicial Budgetary Council of the Republic of North Macedonia. The Judicial Council of the Republic of Macedonia has at disposal statistical data on the number of selected and dismissed judges and lay judges, the number of initiated and completed disciplinary proceedings, the staffing and material-financial situation and the national and gender structure in the judiciary. However, it is worth mentioning that the Judicial Council currently has at its disposal only a limited set of data and statistical indicators that are comparatively relevant only to a small number of indicators from the Matrix. This research used the Annual Report on the work of the Judicial Council for 2017 and partial data for 2018. As concerns the Judicial Budgetary Council, data was used from the Report on the Implementation of the Judicial Budget for 2017,m which includes data on the staffing situation in the judiciary, the salaries of judges and the judicial service, the special and IT capacities, the enforcement of the judicial budget, as well as the budget of the Academy for Judges and Public Prosecutors. The annual report of the Supreme Court of the Republic of Macedonia for 2017 and the report Grades and Conclusions on the Reports on the Work of the Courts in the Republic of Macedonia for 2017, provide an overview of the case-by-case work at the court level and the department level, as well as the condition of the judicial administration, backlogged cases, human resources and the working conditions at the courts in the country.

Based on the guidelines and the priorities ascertained in the Strategy for Reform of the Judicial Sector (2017 - 2022), the research used the data from the Annual Report of the Ministry of Justice on the Implementation of the Strategy for Reform of the Judicial Sector for 2018. The data from the Annual Report provide insight into the level of implementation of the measures and activities envisaged in the Action Plan of the Strategy.

The Judicial Council of the Republic of North Macedonia drafts monthly, quarterly, semi-annual and annual reports, containing data on the work of the courts in the country. The annual reports contain statistical data on the number of appointed and dismissed judges and lay judge, the number of initiated and completed discipline procedures, the human capacity state of the judiciary, the material-financial state of the judiciary, the national and sexual structure of the judiciary, as well as other data that depict the state of the judicial system. Part of this data, related to the indicators in the Matrix and relevant for comparison with the perceptions of the target groups⁴, are included in this research. Nevertheless, it should be mentioned that the Judicial Council currently has at its disposal quite a limited set of data and statistical indicators relevant to the comparison with a relatively small number of indicators from the Matrix.

⁴ Judges, court administration, professional legal community, parties in disputes, journalists, Academy for Judges and Public Prosecutors, academic community and civil society.

Data from international sources

Most international reports have varying methodological approach and evaluation system for the state of the judiciary, in the sense of collection of data, statistical processing, legal analysis and presentation of the results. Therefore, the analysis was made through the prism of the through the indicators contained in the Matrix.

In order to select the credible and relevant international sources, CLRA after a detailed analysis, ascertained the following most relevant sources relevant to the Matrix for Monitoring of the Performance of the Judiciary:

The following is the most characteristic:

- a) Different methodological approach** - Most of the international reports have diverse methodologies for assessing the situation in the judiciary from the aspect of data, statistical processing, legal analysis and the presentation of the findings;
- b) Diverse system of evaluation** - Because of the different methods of evaluation, the comparing of the results with the Judicial Indicator Matrix is difficult;
- c) Partial and limited focus** - None of the international reports is not providing for a comprehensive assessment of the judicial systems and the reform processes in it.
- d) Limited access to information** - Most of the international reports have regional or global approach evaluating most of the countries.
- d) Focus on quantitative parameters** - The international reports are mostly based on quantitative data which are easily accessible on account of the qualitative. With this approach the comparing of the data from the Matrix obtained with quantitative methods and establishing certain discrepancies in regard to the international sources is hardened.
- e) Time frame and reach** - The international reports are mostly produced on certain timeline and that is why in the report only the reports that show certain trend of improvement and worsening of the situation are being analyzed.

1. The Rule of Law Index of the World Justice Project (WJP)⁵

The WJP's Rule of Law Index researches the standards for the rule of all through an all-encompassing, multidimensional set of indicators in the following areas: limitations of governmental authority; absence of corruption; transparency and openness of the government; protection of fundamental rights; public order and security; enforcement of the laws in practice; justice in the civic sphere and justice in the criminal sphere.

2. European Commission for the Efficiency of Justice (CEPEJ)

The European Commission for the Efficiency of Justice – CEPEJ has the goal of improving the efficiency and functioning of the judiciary in the member-states of the Council of Europe. The scope of the grading of the judicial systems does not only concern efficiency, but also quality and effectiveness. Although CEPEJ announces its reports with a two-year delay some of the areas include judicial budgets, salaries, human resources, infrastructure and efficiency of the judicial system, are relevant for part of the areas subject to monitoring under the Matrix.

⁵ World Justice Project, Global Insights on Access to Justice, Достапно на: <https://goo.gl/JWpfbq>;

3. The European Commission's progress reports for candidate-states for membership in the EU⁶

The European Commission's reports for North Macedonia give meaningful information on the progress in multiple areas of the reform processes in the country. Of special interest to the comparison of the results from the Matrix is the Chapter 23 of the European Commission's report, which is in direct correlation with the functioning of the judicial system in the Republic of North Macedonia.

Methodology of the process of monitoring of the performance and reforms of the judiciary

The first national monitoring of the performance and reforms in the judiciary (hereinafter: the research) was conducted between **24 October and 24 November 2018**, on the following target-group categories:

1. **First category:** Judges, court staff and court administration,
2. **Second category:** Attorneys, public prosecutors and state attorneys, notaries, enforcement agents, mediators and journalists,
3. **Third category:** individuals (such as parties of disputes) and
4. **Fourth category:** Academy for Judges and Public Prosecutors, academic community and civil society

The Matrix indicators were adjusted to those target groups competent and relevant to the respective indicator, i.e. all questions were not posed to all target groups. Nevertheless, the Matrix of Indicators for Monitoring of the Performance of the Judiciary has ascertained five general questions/indicators, one for each of the researched areas. These questions were answered by all target groups.

Target groups:

First category of target groups

Target group: All judges and court staff/court administration, which were continuously in working engagement during the conducting of the research (pursuant to the Law on Judicial Service).

Second category of target groups⁷

Target group: All attorneys actively registered in the Attorneys' Chamber and all registered notaries, mediators and enforcement agents active in the period of conducting of the research. This target group includes the media. Public Prosecutors and State Attorneys in continuous working engagement during the conducting of the research.

Third category of target groups

Target group: Natural persons (such as parties to court disputes). Surveying of natural persons as parties of disputes. The sample in this target group was examined through the use of the snowballing technique (quasi-random sample), by way of proportionate surveying in all courts.

Fourth category of target groups

Target group: Academy for Judges and Public Prosecutors, academic community and civil society. The manner of data collection was through conducting of in-depth interviews with the designated persons or legal representatives for the institutions falling within the target group. The reason for such an approach is the impossibility to form a representative sample of 30 examinees within each target group, respectively, which is the minimal precondition for their grades to gain statistical relevance.

*Table of categories of target groups obtained with the measuring process.

⁶ https://ec.europa.eu/neighbourhood-enlargement/countries/package_en

⁷ The presented charts measure the perceptions of the following target groups: notaries, mediators and state attorneys are marked as "other legal profession".

Method of examining the target groups:

Judges Court staff, a, b, and d Court staff c Public prosecutors	Printed questionnaires delivered to judges in sealed boxes, to each court
Parties to disputes	Field surveys of parties
Attorneys, notaries, enforcement agents, mediators, state attorneys and journalists	Online questionnaire, link for filling in sent to official e-mails delivered by the competent officials from the institutions/chambers/databases (registry of notaries, attorneys etc.)
Academy for Judges and Public Prosecutors, academic community and civil society	In-depth interviews on the indicators from the Matrix with designated persons or legal representatives for the institutions

A combined approach of online and field surveys at the national level was applied for the research. The field survey included the examinees from the first category, only the public prosecutors from the second category, and the third category from the Matrix, who were delivered printouts of the questionnaires for each examinee by category, along with an accompanying support letter from the Ministry of Justice and the Judicial Council of the Republic of Macedonia. After the completion of the monitoring, the CLRA organized their handover in closed and marked boxes. The monitoring of the performance was conducted at the national level, in 27 basic courts, 4 appellate courts, the Supreme Court of the Republic of Macedonia, the Administrative and Higher Administrative Courts of the Republic of Macedonia. The preparation and the conducting of this part of the monitoring was done by CLRA. The monitoring meant for these target groups unfolded between 24 October and 14 November. The third category of examinees was surveyed through the engagement of 19 field researchers, who during the monitoring period surveyed the natural persons as parties to disputes before the basic and appellate courts in the country.

The online part of the research only included the examinees from the second category as listed in the Matrix, who answered a previously prepared, structured, anonymous questionnaire in electronic form. This method included attorneys, notaries, enforcement agents, mediators, state attorneys and journalists. For the purposes of the online part of the research, a specialized agency for data processing was engaged.

With regard to the fourth category of examinees, three legal experts were engaged, which conducted interviews with representatives of the Academy for Judges and Public Prosecutors (Director, President and Board Member), professors of law (from the civil, criminal and administrative areas) and civil society organizations operating in the judiciary. The interviews were conducted based on previously defined questions from the indicators of the Matrix. The answers from these target groups qualitatively complement and contextualize the results of this report, whereas the five main issues for each analyzed area were also graded.

The research included a total of **6.595** examinees from the following samples of the target groups:

PERCENTAGE OF ANSWERED QUESTIONNAIRES AND CATEGORIES	SENT QUESTIONNAIRES	ANSWERED RECEIVED	RESPONSE
JUDGES	511	347	68%
COURT STAFF A, B И D	1329	1026	77%
COURT STAFF C	597	427	72%
PUBLIC PROSECUTORS	176	128	73%
PARTIES TO DISPUTES	1550	845	55%
ATTORNEYS	2038	219	11%
NOTARIES	188	110	59%
ENFORCEMENT AGENTS	99	7	7%
MEDIATORS	30	14	47%
STATE ATTORNEYS	33	18	55%
JOURNALISTS ⁸	44	25	57%
TOTAL	6595	3166	48%

The areas that were subject to evaluation in this research pertained to the work of the judiciary followed by way of indicators, based on which the examinees would choose the answer closest to their position and opinion. Thus, the examinees had the opportunity to choose among five degrees of statements regarding the matters from the sub-areas, including: **I completely agree; I agree; I neither agree, nor disagree; I disagree; I fully disagree and I do not know.**

The examinees from each category groups within the examination gave a general grade on the common matters for each of the five areas, starting from 1 (Insufficient) to 5 (Excellent). The middle general grades for each of the areas were extrapolated from the grades of all categories of examinees for that particular area.

With the exception of judges, who answered all 70 indicators/questions, the examinees from the other categories of target groups provided their opinion on those matters that directly correlate to that group, or that can give additional information on important matters from the work of the courts and the operation of the judiciary in general.

During the creation of the Matrix, five general common indicators were ascertained, one for each of the areas of analysis that were graded by all target groups, with the goal of getting an overall grade for each of the measured areas. The in-depth insight into the causes of these integral grades will be received through the grades provided by each target group for each indicator, which will shed light on the discrepancy or the matching of grades of different target groups for one indicator (for example, whether there is a discrepancy between the perception of the judges and the judicial service, or the public prosecutors).

After the conducted analysis on these sources with the perceptions falling within the monitoring, the method of synthesis was applied. Through it, information and conclusions were extrapolated from the measured perceptions at the indicator level in each of the Matrix's areas.

⁸ In the analysis only the journalist that work in the field of judiciary are taken in analysis.



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1. ANALYSIS OF THE PERCEPTIONS FROM THE MEASURING: EFFICIENCY

The efficiency of justice is one of the main components of the concept of a fair trial. Article 6 of the European Convention on Human Rights, which protects the right to a fair trial, in the first paragraph provides that “everyone is entitled to... trial within reasonable time...” The requirement for efficiency of the court proceedings, expressed through the concept of trial within reasonable time, is enshrined in the domestic law as one of the main components of the broader concept of right to fair trial. Thus, efficiency as one of the most important parameters which reflect the judiciary performance success, is also covered by the Matrix.⁹

Regarding the area of ‘Efficiency’, the respondents have been asked to give their opinion about the quality of the support that the judges receive by the judicial service while doing their work, both in the area of professional and administrative support. The respondents have also evaluated the workload of judges, trial in a reasonable time, Automated Court Case Management Information System - ACCMIS. Additionally, in the area of ‘Efficiency’, the respondents have also evaluated the conditions in the courts and the access to them, as well as the information-technical equipment and functionality of the existing information systems.

The respondents from all target groups also have provided an opinion about one common indicator in order to obtain a cumulative score for this specific area.

The area of ‘Efficiency’ from the Matrix is comprised of one common indicator and eight (8) individual indicators divided in four (4) sub-areas:

>>> **Sub-area a)** Human resources: Court administration and support staff by three (3) individual indicators:

1. The courts make timely, quality, lawful judgments in an equitable procedure;
2. The courts have a sufficient number of judicial officers to carry out their activities;
3. The courts have appropriate personnel to perform documentation and legal research;
4. The conduct, professionalism, and expertise of the judicial service is at satisfactory level;

>>> **Sub-area b)** Workload of the court by one (1) individual indicator:

5. The judges handle the workload and timely resolve the cases;

>>> **Sub-area c)** System for submitting and tracking cases by one (1) indicator:

6. The Automated Court Case Management Information System (ACCMIS) distributes cases without external interference;

>>> **Sub-area d)** Infrastructure and modernization by three (3) individual indicators:

7. The conditions in the court, the access, and the courtrooms are appropriate and satisfactory;
8. The courts work with a sufficient number of computers and other equipment;
9. The information infrastructure (electronic archive, data management system, intranet) is appropriate, fast, reliable, and easily accessible.

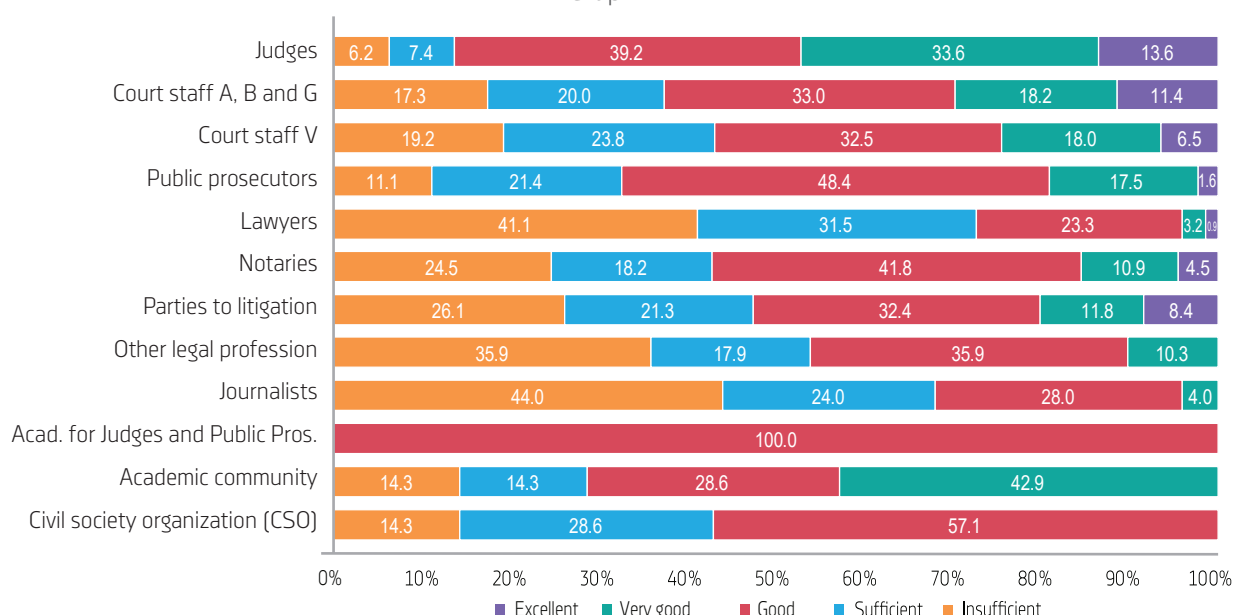
⁹ A detailed analysis of the legal framework and the sources as a starting point for the creation of the Matrix is attached to this Report as Annex 4, part 1.

The respondents of all categories covered by the research responded to the question:

How would you assess the efficiency of the courts in RNM defined by the following statement:

“The courts make timely, quality, lawful judgments in an equitable procedure”

Common indicator for the area of Efficiency for all target groups:
The courts make timely, quality, lawful judgments in an equitable procedure
Graph 1



Target group:	Average grade
Judges	3.4
Court staff A, B and G	2.9
Court staff V	2.7
Public prosecutors	2.8
Lawyers	1.9
Notaries	2.5
Parties to litigation	2.6
Other legal profession	2.2
Journalists	1.9
Academy for Judges and Public Prosecutors	3.0
Academic community	3.0
Civil society organization (CSO)	2.4
Total	2.7

The perceptions for this common indicator for all target groups included in the research can be divided in three separate categories.

The first category includes the judges who by 47.2% (13.6% have responded with 'excellent' while 33.6% with 'very good') agree with the statement that the courts make timely, quality, lawful judgments in an equitable procedure. The high percentage (39.2 %) of respondents, judges who have provided an average score, i.e. have responded with 'good' is indicative. Only 6.2 % of the judges have responded with 'insufficient'.

The second category includes the judicial service and public prosecutors. What is common for them is that the percentage of the total scores for 'excellent' and 'very good' in average are higher than the percentage of the respondents that have given the lowest score, i.e. 'insufficient'. Thus, the judicial service by 24.5% and 29.6% has positively assessed the efficiency of the judiciary, while less than 20% have expressed the contrary. However, almost 1/3 of the judicial service respondents have provided an average score of 'good', while high percentage (over 48%) of the respondents, public prosecutors have underlined the same response.

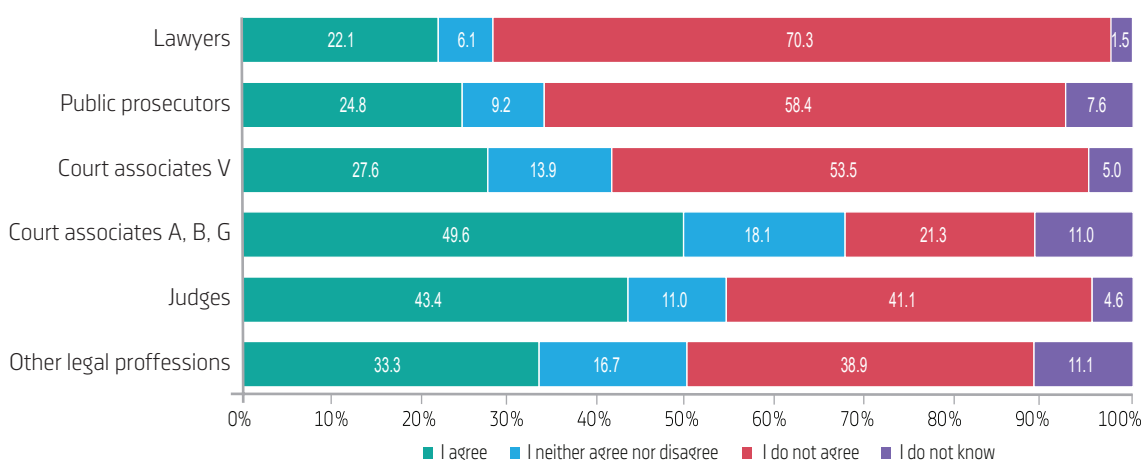
The third category includes the other target groups which are characterized by the fact that at least 1/4 of them have stated that the efficiency of the courts is at an unsatisfactory level, and have given the lowest score (insufficient). Thus, 1/4 of the respondents, notaries and parties in disputes have expressed a negative opinion in regard to this indicator, while 1/3 of the professional legal community shares the same view. Majority of the lawyers (41.4 %) and the journalists (44%) think that the courts make timely, quality, lawful judgments in an equitable procedure. There is a significantly high percentage (in the range from 23% to 41%) of the respondents from these target groups who have provided an average score of 'good'.

Based on the in-depth interviews conducted with the representatives of the the Academy for Judges and Public Prosecutors (AJPP), regarding the indicator for the efficiency of the courts expressed through the statement: "The courts make timely, quality, lawful judgments in an equitable procedure", all respondents have provided an average score of 'good'. Regarding the same indicator, most of the academic community respondents (43%), i.e. (29%) have expressed a positive opinion and think that the courts are 'very good', i.e. 'good' in making timely, quality, lawful judgments in an equitable procedure. Contrary to the academic community, the civil society organizations that monitor the performance and the reform processes in the judiciary are more reserved in regard to this indicator and far more negatively assess the performance of the courts (3 organizations with 'good', 2 with 'sufficient' and 1 with 'insufficient').

The average score for this common indicator for all target groups included in the research is: 2.7.

A) Sub-area: Human resources

Indicator 2: The courts have a sufficient number of judicial officers to carry out their activities
Graph 2



More than 2/3 of the judges (70.3%) do not agree with the statement according to which the courts have a sufficient number of judicial officers to carry out their activities. The respondents that work in the judiciary from the category of judicial officers and judicial service also have similar opinion and a pretty high percentage of 58.3%, i.e. 53.5%.

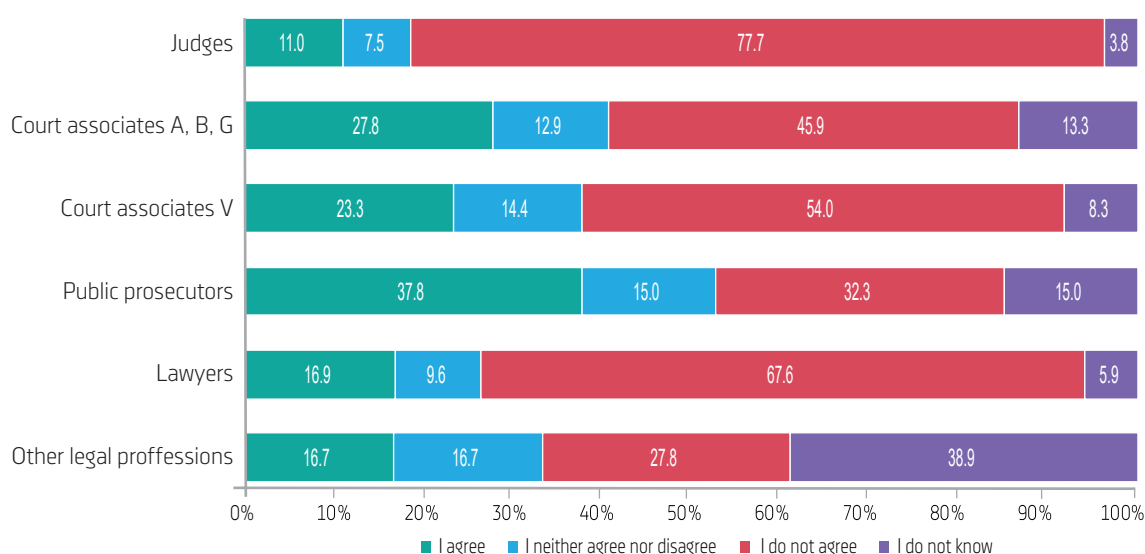
Contrary to the above-mentioned target groups, almost one half (49.1%) of the public prosecutors agree that courts have enough available human resources. There is an evident division of the lawyers' perceptions regarding this indicator where 43.4% agree, while 41.1% do not agree. Additionally, 1/3 of the other legal professions think that the courts have sufficient human resources needed for efficient conducting of activities.

Regarding this indicator, through the in-depth interviews, the academic community and AJPP representatives have been also asked, and most of them agree that the courts do not have sufficient number of judicial officers, and that this situation impacts the quality of work of the judges, and in general, the judgements they make. Additionally, most of the respondents from the ranks of civil society organizations involved in this research agree with this statement and think that the courts do not have enough judicial officers, especially the courts in Skopje, and some of the other courts with extended competence. While some of the respondents from the same target group think that the courts have a sufficient number of judicial officers, but the problem is in the organizational management and human resource management in the courts.

The opinion that the courts do not have a sufficient number of judicial officers to carry out their activities is dominant.

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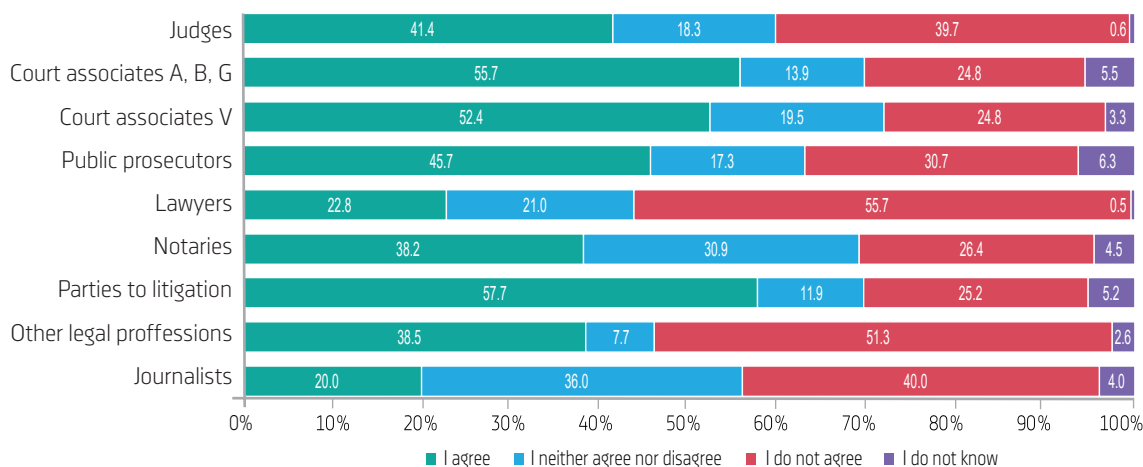
Indicator 3: The courts have appropriate personnel to perform documentation and legal research
Graph 3



Regarding this indicator, majority of the judges (more than 3/4 or 77.7%) do not agree that the courts have appropriate personnel to perform documentation and legal research. Within a range from 45.9% to 54%, the employees in the court service, public prosecutors (32.3%) do not agree with this statement and almost 2/3 of the lawyers where 67.6% of disagreement with this statement is significantly more evident. There is also a significant percentage (38.9%) of respondents within the professional legal community who have responded with "I don't know".

Majority of the respondents think that the courts do not have appropriate personnel to perform documentation and legal research.

Indicator 4: The conduct, professionalism, and expertise of the judicial service is at satisfactory level
Graph 4

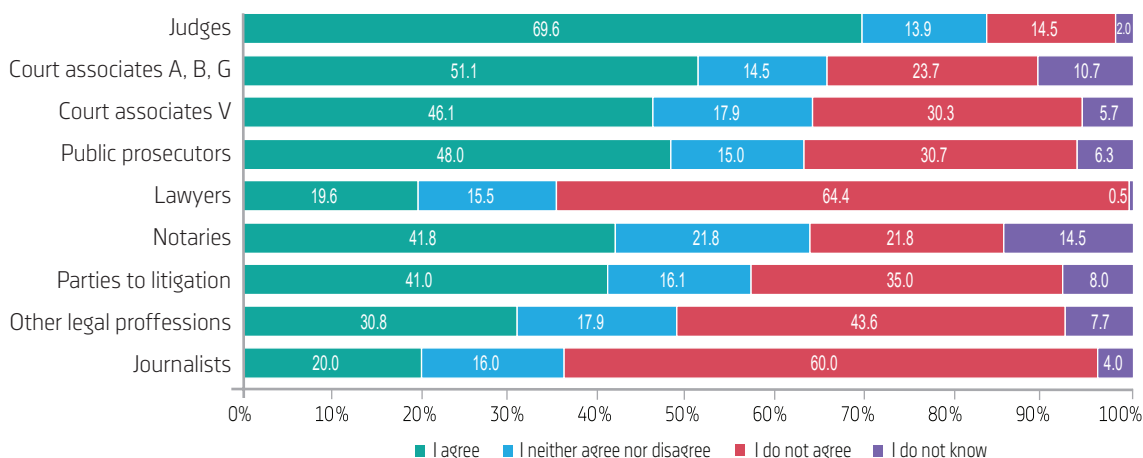


What is characteristic for this indicator is the evident division among all target groups included in the research. The judges who have a direct insight into the work of the professional service assess it positively by 41.4%, while 39.7% think that the conduct, professionalism, and expertise of the judicial service is not at satisfactory level. More than one half (57.7%) of the parties in disputes, as well as the employees in the judicial professional service (52.4% and 55.7%) have a positive opinion about this issue. On the other hand, more than one half of the lawyers and the other legal professions do not agree that the conduct, professionalism, and expertise of the judicial service is at satisfactory level. High percentage of the respondents, journalists do not agree with the statement (40%), while more than 1/3 neither agree nor disagree, i.e. they have a neutral attitude towards this indicator.

There is an evident division among all target groups included in the research. The pretty high percentage of judges and lawyers who think that the conduct, professionalism, and expertise of the judicial service is not at satisfactory level is indicative.

B) Sub-area: The workload of the courts

Indicator 5: The judges handle the workload and timely resolve the cases
Graph 5



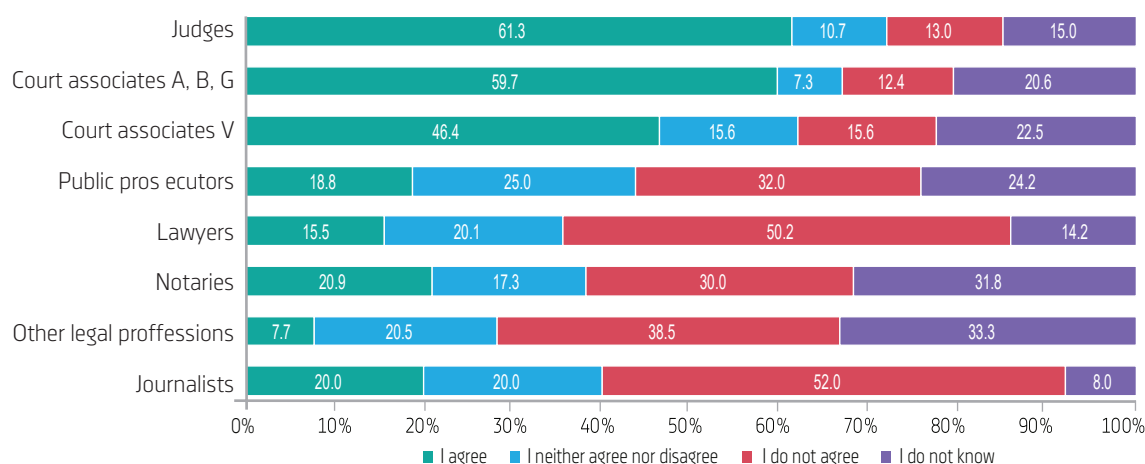
Regarding this indicator which is closely linked to the concept of trial within a reasonable time and efficiency in performance, the majority of the judges (more than 2/3 or 69.6%) express a positive opinion and think that they successfully handle the workload and timely resolve the cases. Within a range from 41% to 51% also the public prosecutors (48%), notaries (41.9%), parties in disputes (41%), as well as half of the employees in the judicial service agree with this statement. Contrary to the above-mentioned target groups, most of the lawyers (64.4%) and the journalists (60%) do not agree with the statement that the judges are efficient in fulfilling the norms and successfully handle the workload.

As for this indicator, through in-depth interviews, the representatives of the academic community, AJPP and civil society organizations with a relevant experience and knowledge of the situation in the judiciary have been also asked about their opinion. Among the academic community respondents there is a division regarding this question. While some of them agree that the norm is a necessity and it must exist to keep the judges in dynamics and continuous work, the others think that through the pressure for fulfilment, the norm may reduce the judges to administrative workers, and that it does not represent the judge who decides about human freedoms and rights. Thus, the norm can never have a positive impact on the quality of judgements. According to most of the AJPP representatives, in assessing the efficiency of the judges through fulfilment of norms, a care must be taken about the quality of judgements at the expense of the quantity, especially taking into consideration the different degree of complexity of cases. Contrary to the above-mentioned target groups, the civil sector representatives are completely against the existence of norms as one of the criteria for monitoring of the courts' performance efficiency. Most of the interviewed persons think that the norm impacts the quality, but at the same time it must not be a justification for actions which are not carried out in accordance with the law or for judgements with inappropriate quality.

Majority of the judges think that they successfully handle the workload and timely resolve the cases. A high percentage of the lawyers and journalists think the opposite.

C) Sub-area: System for submitting and tracking cases

Indicator 6: The Automated Court Case Management Information System (ACCMIS) distributes cases without external interference
Graph 6



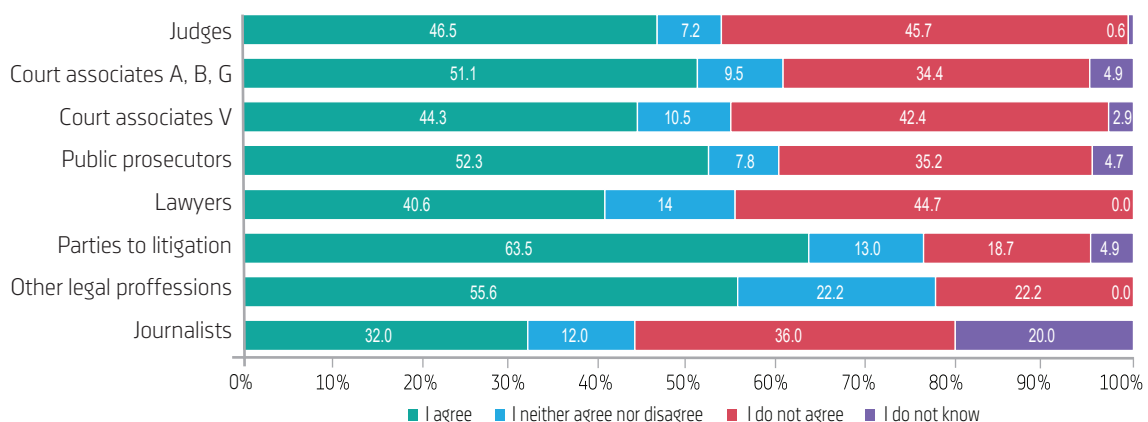
The analysis of the perceptions related with this indicator indicates an evident discrepancy and great differences in the views among the three separate groups: On one side we have the judges and the employees in the judicial service, that, with a pretty high percentage (over 60%), completely agree with the statement, on the other side we have the respondents, lawyers and journalists who (over 50%) express open distrust and think that the Automated Court Case Management Information System (ACCMIS) is a subject to external influences. The third group includes the public prosecutors, notaries, and other legal professions, that in a range from 32% to 38% express distrust in an objective and independent functioning of ACCMIS, but at the same time, almost 1/3 in average of the same respondents have said that they are not familiar with some eventual influences and misuses related with the automated information system.

Based on the in-depth interviews conducted with AJPP, all respondents from this target group have the opinion that ACCMIS failed as a systemic solution for an independent and random assignment of cases, having in mind the information about the misuse of the system and the flagrant arrangements of cases. Regarding the question whether there is a need for upgrade or a completely new software solution, the opinions about the first option are dominant. The academic community representatives have the same opinion that ACCMIS as an information tool for an independent and random assignment of cases shows great security weaknesses and evident external influences which compromise its objectivity. However, the representatives of this target groups think that the new software solution is a safer and more secure way of ensuring future impartial and independent assignment of cases. Finally, the civil sector respondents think that there has been a prominent misuse of the system. Some of the respondents suspect that ACCMIS has been misused by the lawyers, and that there has been a space for influence in the smaller courts as well. As for the upgrade of ACCMIS or completely new solution, the opinion about a new software solution is dominant.

A high percentage of judges and judicial officers think that the Automated Court Case Management Information System assigns cases without external interference. More than half of the respondents, lawyers and journalists, do not agree with this.

D) Sub-area: Infrastructure and modernization

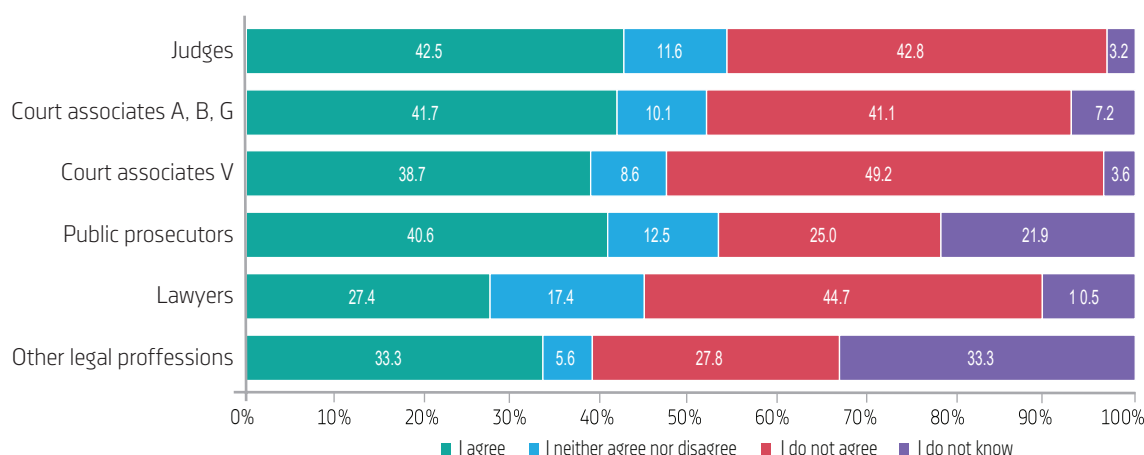
Indicator 7: The conditions in the court, the access, and the courtrooms are appropriate and satisfactory
Graph 7



During the evaluation of infrastructure and modernization in the courts as drivers of efficient justice application, most of the respondents, parties in disputes (63.5%) and other legal professions (55.6%) have said that the conditions in the court, the access, and the courtrooms are appropriate and satisfactory. Contrary to them, a significant number of judges (45.7%) have responded that they do not agree that the conditions in the court are satisfactory, while exactly the same number of them (46.5%) think that there are appropriate and satisfactory conditions and access to the court. A similar division in the perceptions about this aspect of the efficiency of courts is present among the respondents from the judicial service, the lawyers and the journalists. It is notable that more than half of the public prosecutors¹⁰ (52.3 %) included in the research have a positive opinion in regard to this indicator.

While majority of the parties in disputes think that the conditions in the court, the access, and the courtrooms are appropriate and satisfactory, the significant number of judges and lawyers who think the opposite is indicative.

Indicator 8: The courts work with a sufficient number of computers and other equipment
Graph 8



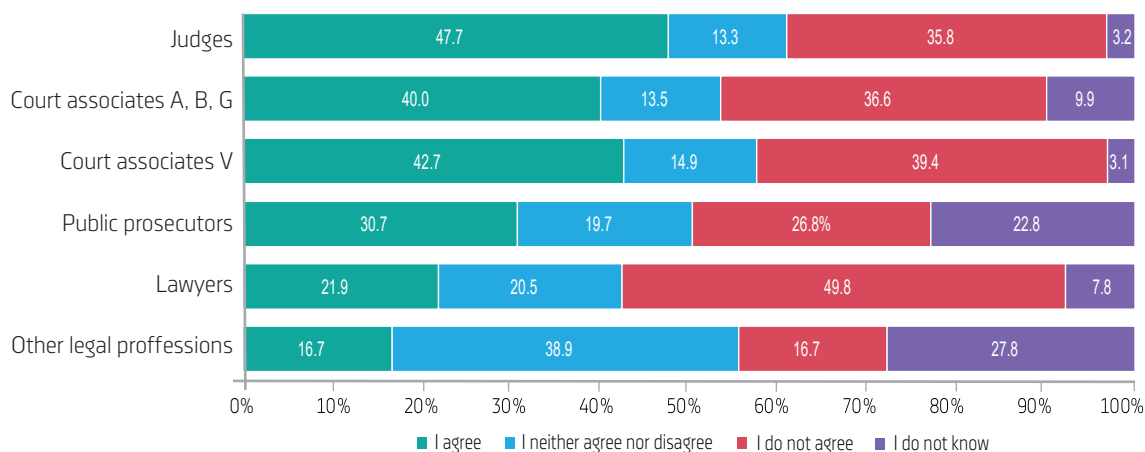
In regard to the equipping of the courts by computers and other technical equipment which is in a direct correlation with the efficiency of execution of work obligations, in most cases there is a division of the perceptions among the selected target groups relevant for providing opinion in regard to this indicator. Within a range from 40.6% to 42.5% some of the judges, employees in the judicial service and the public prosecutors agree with this statement, while by almost an identical percentage the respondents from the same target groups have expressed just the opposite. Most of the lawyers (44.7%) do not agree that the technical equipment in the courts is appropriate for an efficient execution of tasks. Among the other legal professions there is not a clear consensus regarding this question and the division of the perceptions is most evident exactly within this group of respondents.

There is a division of opinions among the greater number of respondents. A high percentage of judges, judicial officers and lawyers think that the courts do not have a sufficient number of computers and other equipment.

The Public Prosecution Offices and the courts are located in the same buildings/facilities and share the access and some of the premises within these buildings.

¹⁰ The Public Prosecutions and the Courts share the same buildings and share access and part of the space within these buildings.

Indicator 9: The information infrastructure (electronic archive, data management system, intranet) is appropriate, fast, reliable, and easily accessible
Graph 9



Regarding this indicator, most of the judges (47.7%) agree with the statement according to which the courts have an appropriate information infrastructure, while 35.8% have expressed just the opposite opinion. There is a similar division of the opinions regarding this indicator among the judicial service and the public prosecutors, while almost half of the respondents, lawyers (49.8%) do not agree that information structure in the courts is sufficiently fast, appropriate, reliable and easily accessible. There is a more significant variation from these opinions among the other legal professions where 38.8% neither agree, nor disagree, while there is a significant number of those (27.8%) who responded with “I don’t know”.

There is an evident division among all target groups included in the research. A significant percentage of the judges, judicial officers and lawyers think that the information infrastructure in the courts is not appropriate, fast, reliable, and easily accessible.

2. LEGAL FRAMEWORK, KEY PRINCIPLES, STANDARDS, AND PRACTICES: AREA OF EFFICIENCY

2.1 LEGAL FRAMEWORK

The efficiency of justice is one of the main components of the concept of a fair trial. Namely, the efficiency means ensuring final judgements within a reasonable time. In this sense, Article 6 of the European Convention on Human Rights, which protects the right to a fair trial, in the first paragraph, stipulates that everyone is entitled to... a trial within a reasonable time..."

According to the practice of the European Court of Human Rights, the reasonable length of the proceedings has to be determined in the light of the circumstances of the case, whereby a comprehensive assessment is required (*Boddaert v. Belgium*, § 36).¹¹ In the case where certain stages of the proceedings are per se implemented at an acceptable speed, the overall duration of the proceedings may nevertheless exceed the "reasonable time" (*Dobbertin v. France*, § 44).¹²

Article 6 of the European Convention on Human Rights requires court proceedings to be expeditious, but it also establishes the more general principle of proper enforcement of justice. A fair balance should be drawn between the various aspects of this basic requirement (*Boddaert v. Belgium*, § 39).¹³

In determining whether the length of the court proceedings is reasonable, the European Court of Human Rights has taken into consideration the factors such as the complexity of the case, the conduct of the applicant, and the conduct of the relevant administrative and judicial authorities (*König v. Germany*, § 99 ;¹⁴; *Neumeister v. Austria*, § 21¹⁵; *Ringeisen v. Austria*, § 110¹⁶; *Kemmache v. France*, § 60¹⁷; *Pélissier and Sassi v. France* [GC], § 67¹⁸; *Pedersen and Baadsgaard v. Denmark*, § 45¹⁹). While assessing whether the length of the proceedings is reasonable, there must also be taken into consideration what is at stake for the applicant in the particular case (*Abdoella v. the Netherlands*, § 24²⁰).

The requirement for the efficiency of the court proceedings, expressed through the concept of a trial within a reasonable time is also enshrined in the domestic law, as one of the main components of the broader concept of the right to a fair trial.

Thus, Article 6(2) of the Law on Courts stipulates that "when deciding about citizens' rights and obligations and when deciding about the criminal liability, everyone shall be entitled to... trial within a reasonable time...", while Article 10(1) of the same law stipulates that one of the principles upon which the procedure before the court shall be based is the principle of a trial within a reasonable time. Moreover, Article 36 of the Law on Courts provides for a legal remedy within the framework of the domestic law for protection of the right to a trial within a reasonable time. Thus, if the party "considers that the competent court has violated its right to a trial within a reasonable time, it shall have the right to submit a request for protection of the right to a trial within a reasonable time to the Supreme Court of the Republic of North Macedonia".

11 European Court of Human Rights, *Boddaert v. Belgium*, no. 65/1991/317/389, § 36, 12 October 1992

12 European Court of Human Rights, *Dobbertin v. France*, no. 13089/87, § 44, 25 February 1993

13 European Court of Human Rights, *Boddaert v. Belgium*, no. 65/1991/317/389, § 39, 12 October 1992

14 European Court of Human Rights, *König v. Germany*, no. 6232/73, § 99, 28 June 1978

15 European Court of Human Rights, *Neumeister v. Austria*, no. 1936/63, § 21, 27 June 1968

16 European Court of Human Rights, *Ringeisen v. Austria*, no. 2614/65, § 110, 16 July 1971

17 European Court of Human Rights, *Kemmache v. France*, no. 12325/86 & 14992/89, 21 March and 22 October 1991

18 European Court of Human Rights, *Pélissier and Sassi v. France* [GC], no. 25444/94, § 67, 25 March 1999

19 European Court of Human Rights, *Pedersen and Baadsgaard v. Denmark*, no. 49017/99, § 45, 17 December 2004

20 European Court of Human Rights, *Abdoella v. the Netherlands*, no. 12728/87, § 24, 25 November 1992

Certainly, in order to achieve an appropriate level of efficiency of the proceedings, appropriate working conditions are also needed. In that regard, Article 6 of the Opinion No. 3 (2002) of the Consultative Council of European Judges at the Council of Europe to the attention of the Committee of Ministers of the Council of Europe on the principles and rules governing judges' professional conduct, ethics, incompatible behaviour and impartiality, establishes the following: "Judges must also fulfil their functions with diligence and within a reasonable time. For this purpose, it is certainly necessary that they should be provided with proper conditions, equipment, and assistance. Thus provided, the judges should be able to attentively perform their obligations under Article 6 (1) of the European Convention on Human Rights, that is to deliver judgements within a reasonable time".

2.2 DATA FROM DOMESTIC INSTITUTIONS

Annual report on the implementation of the Strategy for reform of the judiciary sector for the period of 2017-2022

According to the annual report for 2018 of the Ministry of Justice, on the implementation of the Strategy for reform of the judiciary sector for the period of 2017/2022, the section on efficiency establishes that the Judicial Council of the Republic of North Macedonia monitors the situation of unresolved court cases older than 3, 7 and 10 years at quarterly level.²¹ The Ministry of Justice has prepared a detailed analysis of the situation with the number of judges and the number of cases in the judicial system, which would serve as a basis for the future planning within the judiciary.²²

Annual and quarterly reports on the work of the Judicial Council of the Republic of North Macedonia

Regarding the efficiency, the Judicial Council, in the last report for 2017 and the quarterly reports from 2018, states the following:

>>> The average number of active judges in 2016 is 576, while in 2017, it is 553 active judges indicating the evident drop of the number of active judges for 23. This trend of drop of the number of active judges also continues in 2018 since, according to the penultimate quarterly report of the Judicial Council, the number of filled positions for judges until that moment is 517.

>>> According to the findings from the penultimate quarterly report of the Judicial Council for 2018, where out of 4164 job positions planned for judicial officers in all courts, only 51% i.e. 2119 job positions are filled.

>>> On the other side, the annual report of the Judicial Council for 2017 identifies extremely small percentage of funds for capital costs (1.25% of the total budget) which also includes the investments for computer and software modernization.

>>> Regarding the efficiency of resolving cases, the Judicial Council, according to the unofficial report for 2018, identifies an average of 101.54% of unresolved cases in all courts, but also an average level of resolving cases expressed in days (65.36 an average for all courts).²³

>>> The courts in 2018 had a total of 603.156 cases to work on, of which 511.548 have been resolved. There are 91.608 cases left unresolved.

21 Strategic guideline 2.4.2: Consistent implementation of the Action Plan for the resolution of the residual caseload and monitoring of the situation of backlogged cases

22 Strategic guideline 2.4.3: Alignment of the number of judges in the Republic of North Macedonia with the with the European average per capita

23 It is worth noting that the length of the judicial proceedings in days amounting to 65.36 days is an average value of the work of all courts desegregated by the type of case. However, according to unofficial data obtained from the Judicial Council of the Republic of North Macedonia in February 2019, it is evident that the workload in the Administrative Courts affects their efficiency (on average, 1,022 days for administrative misdemeanours – competition, 545 days for administrative disputes resulting from denationalization. Concerning civil cases, inheritance proceedings last 339.54 days on average, whereas judicial proceedings for cases from organized crime last 479.06 days).

Evaluations and conclusions on the work of courts for 2017 by the Supreme Court of the Republic of Macedonia²⁴

According to the Evaluations and conclusions on the work of courts for 2017 by the Supreme Court of the Republic of Macedonia, as of 29.10.2018, the courts in the Republic of North Macedonia have invested a great effort concluding that almost all courts with the existing staff, material and financial conditions for work, have managed to overcome the influx of new cases, and they have been also resolving the old cases thus efficiently completing the year of 2017. The courts in 2017 had a total work on 568.388 cases, of which 473.985 have been resolved. And 94.403 case have remained unresolved. This, according to the Supreme Court, is a success by itself since the courts have managed to overcome the influx of cases and at the same time to reduce the rest of 34.406 old cases.

In regard to the working conditions which are closely linked to the concept of efficiency, the Supreme Court of RNM thinks that the Higher Administrative Court is equipped with appropriate technical equipment (computers) and office space for normal functioning. What is missing is the office furniture and archiving of cases. On the other side, the Supreme Court estimates that the Administrative Court does not have appropriate premises for efficient and normal functioning. Regarding the Basic and Appellate Courts, the Supreme Court considers that the courts in Skopje do not have appropriate premises (buildings and offices) for successful execution of their work, while there is a division of the opinions regarding this issue about the other courts throughout the country.

2.3 DATA FROM INTERNATIONAL REPORTS

European Commission for the Efficiency of Justice – CEPEJ²⁵

According to CEPEJ, the Republic of North Macedonia has **1.6 courts per 100.000 population (which is the European average)**, whereas each professional judge has at their disposal an average of **3.9 additional/administrative staff**, which is near the European average. The perceptions for this indicator largely correspond with the results of the last quarterly report of the Judicial Council for 2018, where out of the envisaged 4,164 working positions for judicial officials in all courts, only 2,119 positions are occupied.

With regard to the efficiency and the dealing with civil cases, in the case of the Republic of North Macedonia, a negative trend has been ascertained between 2010 and 2016, from 131% in 2012, to 95% in 2016, and a constant growth of unresolved cases. On the other hand, according to the data from the Judicial Council from 2018, **the average of 101.41% resolved cases in the basic courts somewhat corresponds to CEPEJ's data.**

With regard to administrative cases, after the progress and the increase in the efficiency of resolving cases from 2010 to 2014, the last cycle saw a decline in this segment of the judiciary. According to the data from the Judicial Council **from 2018, the rate of resolved cases before the Administrative Court is 113.27%, whereas before the Higher Administrative Court it is 97.5%.** Still, the average time of resolving of cases before the Administrative Court (184.54 days) is almost three times the time of resolving of cases before the Higher Administrative Court (65.07 days).

With regard to the dealing with cases before the second-instance courts and the highest court instances, North Macedonia falls within the group of countries such as Germany, Lithuania, Sweden, Slovenia and others, in which a positive trend has been noted in the last monitoring cycles. The data from the Judicial Council indicate a **99.86% success rate in resolving of cases in the appellate courts and the 106.16% before the Supreme Court of the Republic of North Macedonia.**

²⁴ Supreme Court of the Republic of North Macedonia (2017) Evaluations and conclusions on the work of courts for 2017 by the Supreme Court of the Republic of Macedonia: available at <https://goo.gl/shu9ws>;

²⁵ The European Commission for the Efficiency of Justice (CEPEJ) European judicial systems Efficiency and quality of justice 2018 report;

The European Commission's Report on the Progress of the Republic of North Macedonia from 2018²⁶

The last report of the EC on the country's progress from 2018 comments on the examining of the Strategy for Information Technology within the Judiciary in 2018, but ascertains that the **IT system in the courts remains largely dependent from donors' aid and the maintenance and renewal of this system has been derailed due to lack of funds and staff.**

With regard to the efficiency and the dealing with cases, the EC's Report ascertains that the courts were almost 100% efficient and that the backlog of unresolved cases has not been a problem for several years. This largely corresponds with other sources (CEPEJ), where despite the ascertained declining trend in the efficiency on average over the last few years, the percentage of resolving of cases is nonetheless quite high.

26 European Commission, EU Enlargement Package 2018, Strategy and Reports;

3. CORRELATIONS: EFFICIENCY

Judicial Administration and additional staff

Although CEPEJ's Report ascertains that each professional judge has at their disposal an average of 3.9 additional/administrative staff, which is near the European average, the report conducted through the Matrix, regarding the matter of whether courts have sufficient judicial officials to complete their activities and for documenting and legal research, the majority of the interviewees, particularly judges, responded negatively. The perceptions for this indicator are largely correspondent with the findings of the second to last quarterly report of the Judicial Council for 2018, where **out of all envisaged working positions for judicial officials at the courts, only 51% were occupied.**

Workload of the court

There is a general alignment of the international and domestic reports regarding efficiency in resolving of court cases. The last report of the EC ascertains **that the courts were almost 100% efficient and that the backlog of unresolved cases has not been a problem for several years.** The reports from CEPEJ and the Judicial Council of the Republic of North Macedonia for the third quarterly report largely correspond with each other and ascertain an average of 95% of resolved cases before all courts, but also quite a high average level of resolving of cases in terms of days (368 days on average for all courts). Furthermore, the Supreme Court of the Republic of North Macedonia ascertains in its last report that the courts are efficient, i.e. that they succeeded in overcoming the influx of cases and at the same time, decrease the backlog. The analysis of the perceptions regarding this matter indicates that the majority of the courts are of the opinion that they successfully handle the workload and resolve the cases in a timely manner. However, a high percentage of lawyers and journalists have an opposing opinion.

Infrastructure and modernization

There is a strong alignment between the international and domestic reports with the measured perceptions regarding infrastructure and working conditions in the courts. According to the EC's Progress Report for the country for 2018, the Commission commends the examining of the Strategy for Information Technology in the Judiciary in 2018, but ascertains that the IT system in the courts remains largely dependent on donors' aid and maintenance and renewal of this system is undermined due to a lack of funds and staff. This largely corresponds with the Judicial Council's annual report for 2017, which ascertains an **extremely small percentage of designated funds for capital expenses (1.25% of the total budget), which includes the investment in computer and software modernization.** According to the monitoring results from the Matrix, a high percentage of judges, judicial officials and lawyers believe that courts do not have a sufficient number of computers and other equipment, as well as that the information infrastructure in the courts is inappropriate, slow and unsafe.

EFFICIENCY



**TRANSPARENCY AND
ACCOUNTABILITY**



**QUALITY OF
JUDICIAL JUSTICE**

IV

**INDEPENDENCE AND
IMPARTIALITY**

V

**PROFESSIONAL
DEVELOPMENT AND
APPROPRIATE
REPRESENTATION**

1. ANALYSIS OF THE PERCEPTIONS FROM THE MEASURING: TRANSPARENCY AND ACCOUNTABILITY

The transparency and accountability of justice are the fundamental postulates of the right to a fair trial. They are implemented through the principle of publicity of court proceedings and public availability of court decisions. Article 6 of the European Convention on Human Rights provides that the judgement shall be pronounced publicly and determines the exactly identified situations in which the public may be excluded from the court proceedings. The principle of public court proceedings and public announcements of court decisions, as important components of the broader right to a fair trial, is enshrined in the domestic law in the Constitution of the Republic of North Macedonia, Criminal Procedure Law, Law on Litigation Procedure, Law on Courts, Law on Case Flow Management in Courts, Court's Rules of Procedure and other.

In the area of 'Transparency and accountability', the respondents from the relevant target groups have assessed the access of the expert and general public to court decisions, the regular publishing of court decisions and decisions of the Judicial Council of RNM, as well as the means of regular and timely information to the public. Furthermore, the respondents have assessed the areas of budget transparency in budget planning and spending by the judiciary, participation of the public in trials, and development and publishing of annual reports as an aspect of accountability in the work of courts, records of trials, and equipment used during trials. And finally, the respondents have also assessed the cooperation of the courts with the highest judicial institutions, but also with the other state bodies important for an efficient and quality implementation of justice.

The area of "Transparency and accountability" from the Matrix is comprised of one common indicator and fourteen (14) individual indicators divided in four (4) sub-areas:

>>> **Sub-area a)** Access to court decisions by four (4) individual indicators:

10. The courts inform the public about their work in regular and timely manner
11. The system for free access to court decisions exists and is regularly updated
12. The decisions of the Judicial Council are published in full
13. The evaluations of the conducted assessment of judges should be publicly announced
14. The courts' websites are regularly updated with accurate and new information

>>> **Sub-area b)** Openness of the judiciary towards the public by four (4) individual indicators;

15. The planning and spending of the judicial budget is public
16. The proceedings in the courtrooms are open and have the capacity to accommodate the public and the media
17. The courts have an appointed person for communication with the media
18. There is an annual public report on the quality and functioning of the judicial system

>>> **Sub-area c)** Storing court records by two (2) individual indicators;

19. The minutes and audio records accurately reflect everything that happens in the courtroom
20. The audio recording equipment is compulsorily used for recording during the trials

>>> **Sub-area d)** Cooperation with other bodies and institutions by four (4) individual indicators;

21. The communication between the higher courts (the Supreme Court and Higher Administrative Court) and the Judicial Council is at a satisfactory level
22. The Ministry of Interior (the police) provides the necessary support when requested by the court
23. The cooperation between the courts and other bodies and institutions is at satisfactory level
24. The level of cooperation between the courts and the enforcement agents in terms of efficient enforcement of decisions is at satisfactory

The respondents from all categories covered by the research have responded to the question:

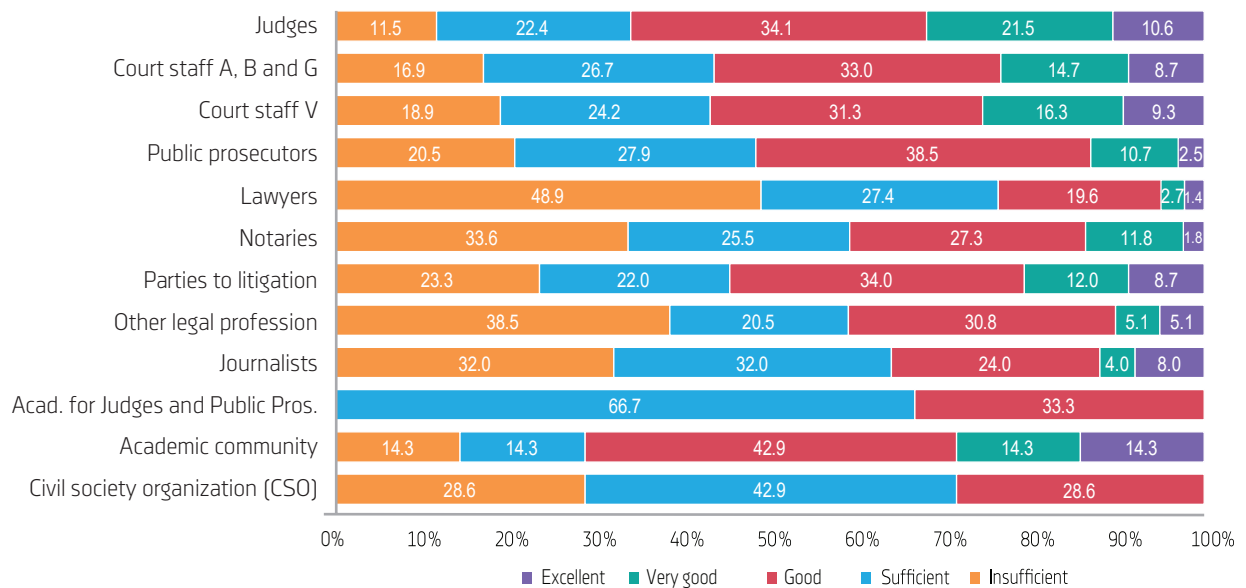
How would you assess the transparency and accountability in the courts of RM defined by the following statement:

“The courts inform the public about their work in regular and timely manner”

Common indicator for all target groups:

The courts inform the public about their work in regular and timely manner

Graph 10



Target group:	Average grade
Judges	3.0
Court staff A, B and G	2.7
Court staff V	2.7
Public prosecutors	2.5
Lawyers	1.8
Notaries	2.2
Parties to litigation	2.6
Other legal profession	2.2
Journalists	2.2
Academy for Judges and Public Prosecutors	2.3
Academic community	3.0
Civil society organization (CSO)	2.0
Total	2.6

The analysis of the perceptions related with this common indicator for all target groups indicates an evident discrepancy and great differences in the views among them regarding the question about the transparency of the judicial system.

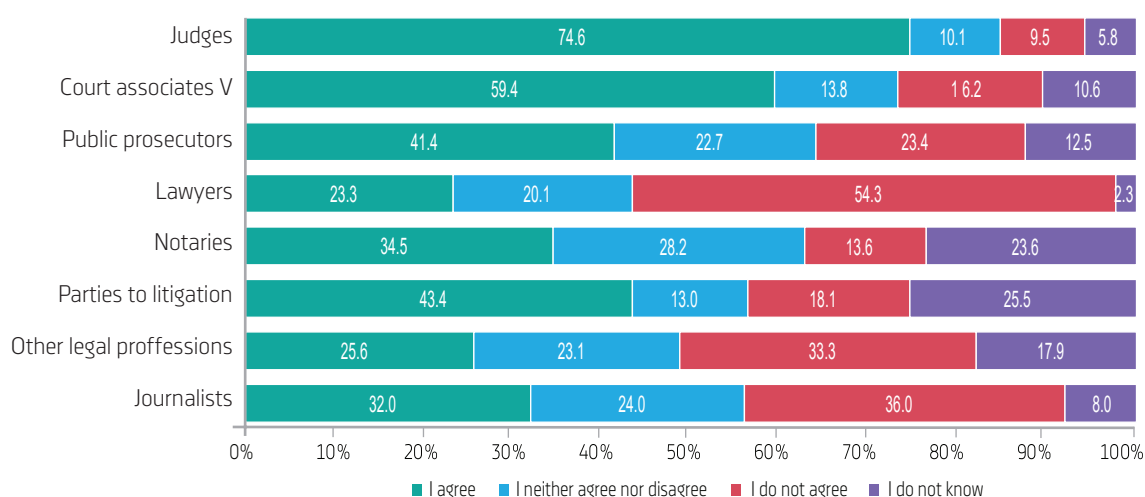
It is characteristic that almost 1/3 of the judges have responded with 'excellent' and 'very good', while only 11.5% think the opposite and have provided the lowest score. Almost 1/4 of the employees of the judicial service are relatively satisfied with the openness of the judicial system towards the public, while 17% i.e. 19% do not agree with this statement. However, within a range from 20.5% to 48.9%, most of the respondents of all other target groups that belong to the general and professional public, and that most directly feel the benefit of an increased transparency and accountability of the judiciary, have expressed an opinion that they do not agree with indicator and they have provided the lowest score (insufficient). The high number of respondents from all target groups included in the research (in average over 30%) that have provided an average score, i.e. responded with 'good' is indicative.

Based on the in-depth interviews conducted with the AJPP representatives, regarding the indicator on transparency of the courts expressed through the statement: "The courts inform the public about their work in regular and timely manner", most of the respondents do not agree with this statement and assess negatively the transparency and accountability of the courts expressed through given scores only for 'sufficient' and 'good'. Regarding the same indicator, most of the academic community respondents (43%) have provided an average score of 'good', while the rest of the respondents from this target group in an equal percentage from 14 to 15% have opted for the rest of the possible responses. Contrary to the academic community, among the most of the civil society organizations included in the research there is a greater consensus and they have expressed a negative opinion regarding the statement that the courts inform the public in timely and regular manner.

The average score for this common indicator for all target groups included in the research is: 2.6

A) Sub-area: Access to court decisions

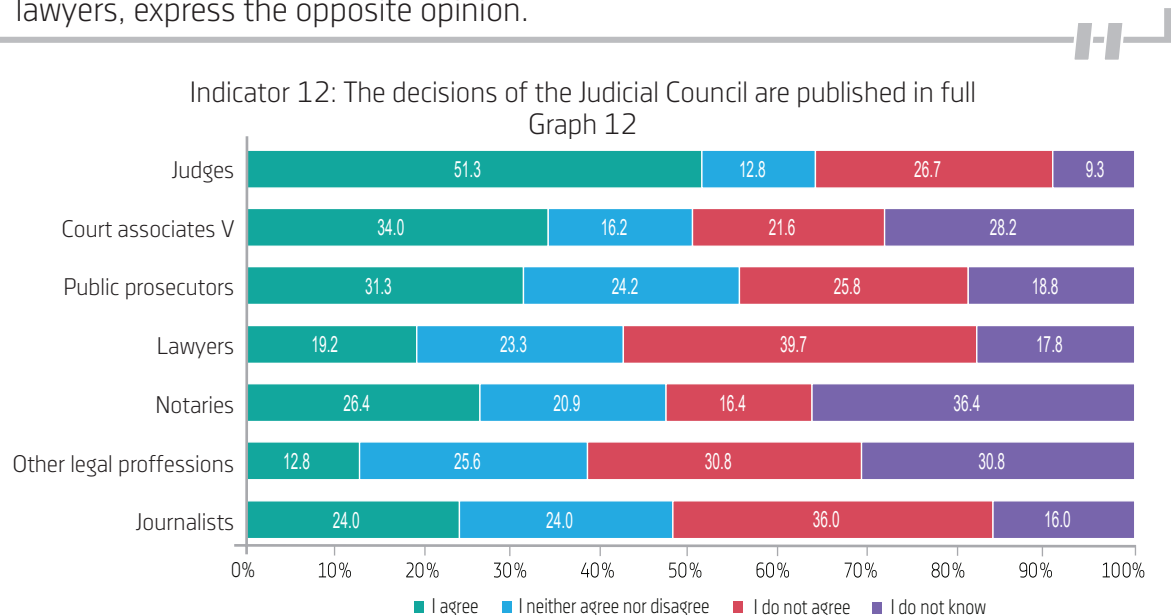
Indicator 11: The system for free access to court decisions exists and is regularly updated
Graph 11



When the respondents have evaluated the system for free access to court decisions, i.e. whether it exists and it is regularly updated, majority of the judges (more than 2/3 or 74.6%) as well as the employees in the judicial service (59.4%) have a positive opinion in regard to this indicator. However, more than 54% of the lawyers, as main users of the system for free access to court decisions, and who by default seem to act as counterbalance to the above-mentioned two categories, do not agree with this statement.

At the same time, even those categories of respondents that generally evaluate poorly that the courts regularly inform the public (professional legal community, parties in disputes, and notaries) have stated that they don't know (within a range from 18% to 25.5%) whether the system for access to court decisions exists and is regularly updated, which indicates that perceptions of the same are based on indirect experiences, i.e. through the media or other secondary sources of information.

Majority of the judges and judicial officers think that the system for free access to court decisions exists and is regularly updated. More than half of the respondents, lawyers, express the opposite opinion.

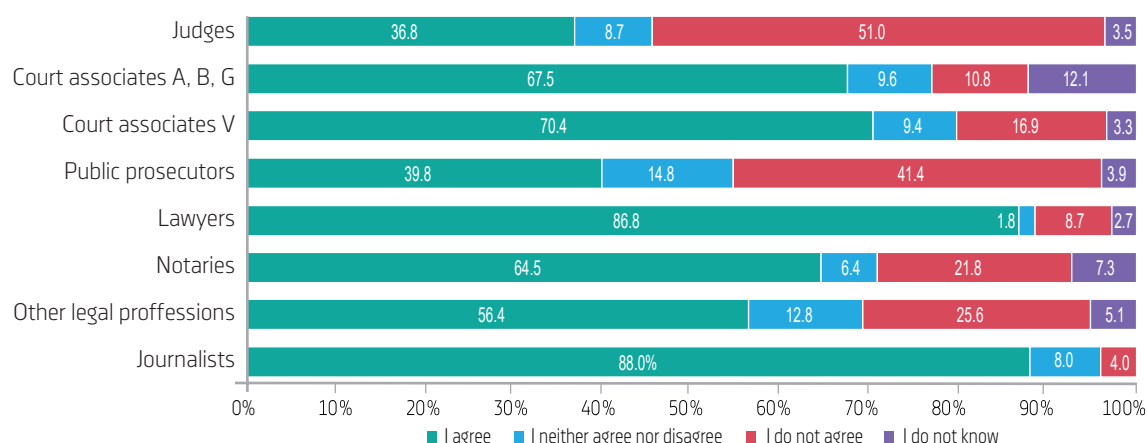


Regarding this indicator, only the judges by over 51% have positive opinion, although there is also a significant percentage of not like-minded persons from the same group (26.7%) who have said just the opposite. There is a similar situation among the other categories regarding the question of public announcement of the decisions of the Judicial Council in full, with which an average of 1/3 of the respondents agree (in the range from 24% to 34%), and the number of those who stated that they “don't know” about this (for example 28.2% of the judicial officers, 30.8% of the other legal professions or even up to 36.4% of the notaries) is indicative. This situation indicates insufficient information for the public, but also for the professionals in the judiciary about the work of the Judicial Council of RNM.

As for this indicator, through the instrument of an in-depth interview, the representatives of the academic community, AJPP and civil society organization with a relevant experience and knowledge of the situation in the judiciary have been additionally asked for an opinion. What is characteristic for this indicator is the division of the opinions among the representatives of all target groups. The general opinion of most of the academic community respondents is that the transparency of the Judicial Council is a problematic issue which has been present ever since its establishment, as well as all along its functioning, and as a result they have the opinion that the evaluations of the conducted assessments of the judges should be available to the public in order to increase the transparency and accountability of the Council. Most of the AJPP representatives, who think that the evaluations should be available to the public by a narrative explanation and clear criteria on the basis of which they have been made, also have a similar opinion. However, this target group also has a divided opinion in regard to this question. Finally, most of the civil sector respondents think that the evaluations should be available to the public, since it will additionally influence both the judges and the Judicial Council to act in accordance with the law.

Only the judges have a positive opinion and think that the decisions of the Judicial Council are published in full. The high percentage of the respondents from the rest of the target groups who stated that they don't know is indicative.

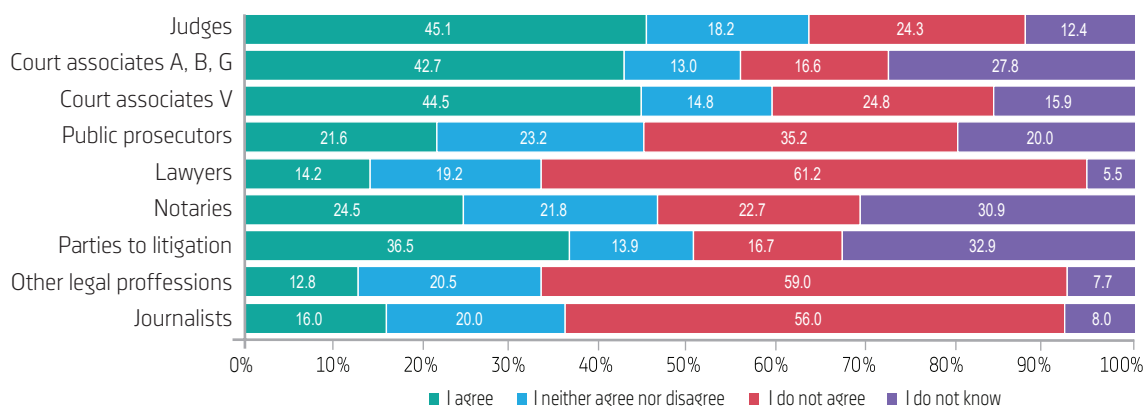
Indicator 13: The evaluations of the conducted assessment of judges should be publicly announced
Graph 13



In regard to this, when asked whether they agree that the evaluations of the conducted assessment of judges should be publicly announced, most of the respondents of all the categories of target groups covered in the research have responded that they agree with the establishment of such practice. Thus, for example, more than 2/3 of the respondents from the ranks of the judicial service (67.5% and 70.4%) think that the evaluation of the judges should be publicly announced. Most of the notaries (64.5%) and other legal professions (56.4%) also agree with this statement. However, we have a highest percentage among the respondents, lawyers (86.8%) and journalists (88%) who strongly agree with this. Only among the category of respondents from the ranks of judges and public prosecutors, there is a clear internal division in regard to this question. Namely, 36.8% of the judges and 39.8% of the public prosecutors agree, while a high percentage of 51% of the judges and 41.4% of the public prosecutors do not agree that the evaluations of the judges should be publicly announced.

Most of the judges think that the results of the evaluations of judges should not be publicly announced. Majority of the respondents from the other groups have expressed the opposite opinion.

Indicator 14: The courts' websites are regularly updated with accurate and new information
Graph 14



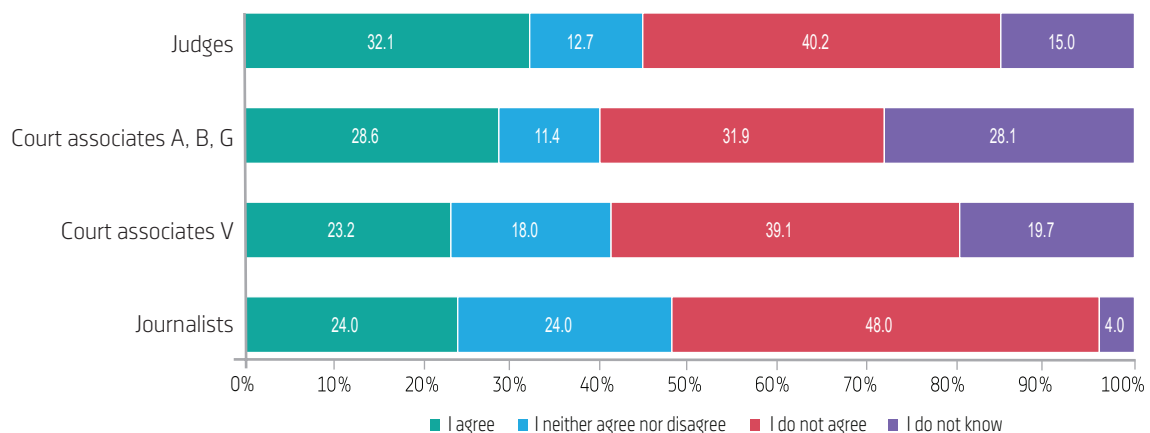
What is characteristic for this indicator is the existence of an evident division of the opinions not only among the separate target groups, but also among the very respondents within these groups. Most of the judges (45.1%) and judicial officers (42.7% and 44.5%) agree that the courts' websites are regularly updated.

On the other side, a high percentage of respondents, lawyers (61.2%), journalists (56%) and other legal professions (59%) do not agree that the websites are updated with accurate and new information. Regarding this indicator, the most interesting is the case of the parties in disputes, notaries and judicial service where almost 1/3 of the respondents have stated that they don't know whether the courts' websites are regularly and timely updated with accurate and new information, although this tool serves mostly for informing and establishing a link between the courts and the general and professional public on regular base.

Most of the judges and the judicial officers state that websites are regularly updated, while majority of the respondents, lawyers and journalists do not agree with this statement.

B) Sub-area: Openness of the judiciary towards the public

Indicator 15: The planning and spending of the judicial budget is public
Graph 15

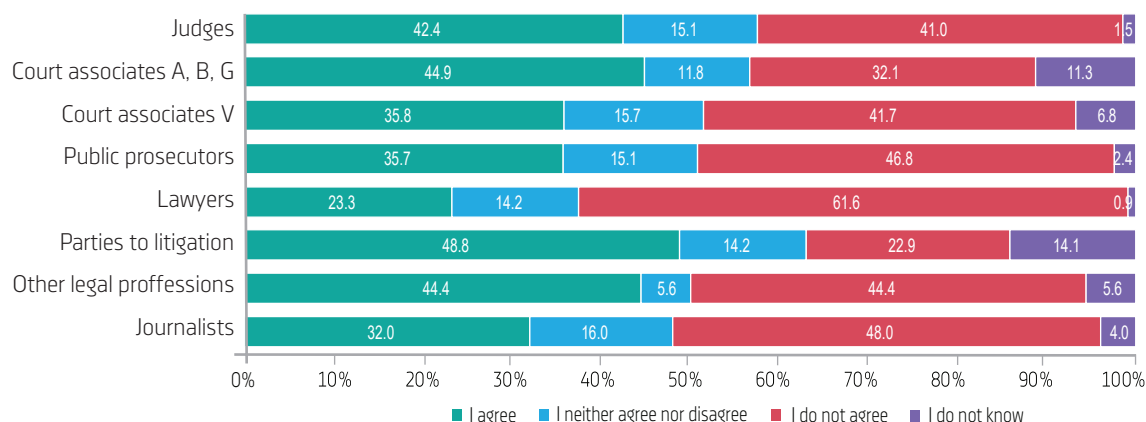


Regarding to this indicator on the budget transparency of the courts as an important factor in building public trust in the manner of functioning of the judicial system, only the categories of respondents working in the courts (judges and professional officers) and journalists have been asked about their opinion. Here, we also have an evident division of opinions among the very respondents within the target groups where we have a higher percentage of those who do not agree that there is a transparent process of planning and spending of funds allocated to the judiciary (judicial service by 31.9% and 39.1%, judges by 40% and journalists by 48%) at the expense of those who have just the opposite opinion. There is also a significant percentage of over 20% of the employees in the judicial service who have stated that they don't know, i.e. they have no response to this question.

Within the framework of in-depth interviews conducted with the representatives of the academic community, AJPP and the civil sector, all AJPP respondents think that the judicial budget should be available to the public. Here we are talking about a part of the state budget, and as such it should be fully available to the public, and not only as a general figure within the total state budget which is publicly available, which does not give a clear picture of the allocation of funds. The respondents from the ranks of the civil society organizations have also the same opinion regarding this question. According to the opinion of some of the interviewed persons there is a need for a reform in the judicial budgeting by real projections and planning, not only in a short term, but in a medium term as well. The academic community representatives included in the research think that the budget should be available to the public. Namely, the recommendation of all is that there is a need to work on a judicial budget which will be independent from the executive power.

Majority of the respondents from all relevant target groups do not agree that the planning and spending of the judicial budget is public.

Indicator 16: The proceedings in the courtrooms are open and have the capacity to accommodate the public and the media
Graph 16

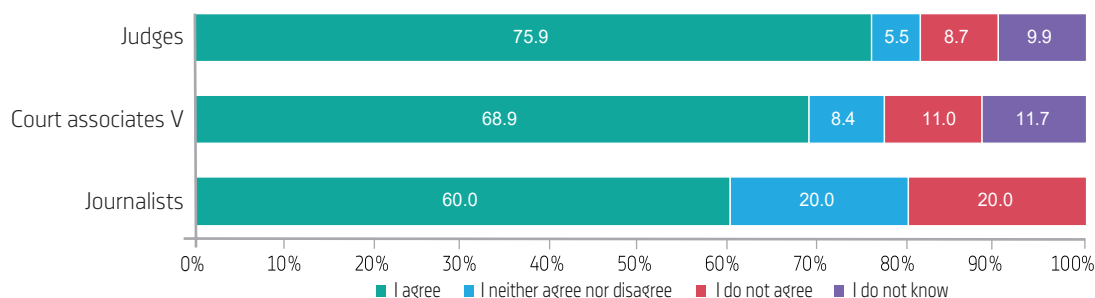


The respondents have evaluated the openness of the courtrooms and the capacity to accommodate the public and the media. Here, the most evident is almost the equal division of the respondents, judges, whereas 42.4% agree, while 41% do not agree that the courtrooms are open to the public and have a sufficient capacity to accommodate the citizens and the media. There is also a similar ratio among the respondents from the judicial service, other legal professions and public prosecutors. On the other side, there is a significantly higher percentage (48%) of the journalists and the highest percentage of lawyers (over 68%) who do not agree that there is a possibility for the public to directly follow the trials in the courts and that they have appropriate accommodation capacities for this purpose.

There is an evident division among all target groups included in the research.

The high percentage of the respondents, judges, public prosecutors, lawyers and journalists, who do not agree that the proceedings in the courtrooms are open and have the capacity to accommodate the public and the media, is indicative.

Indicator 17: The courts have an appointed person for communication with the media
Graph 17

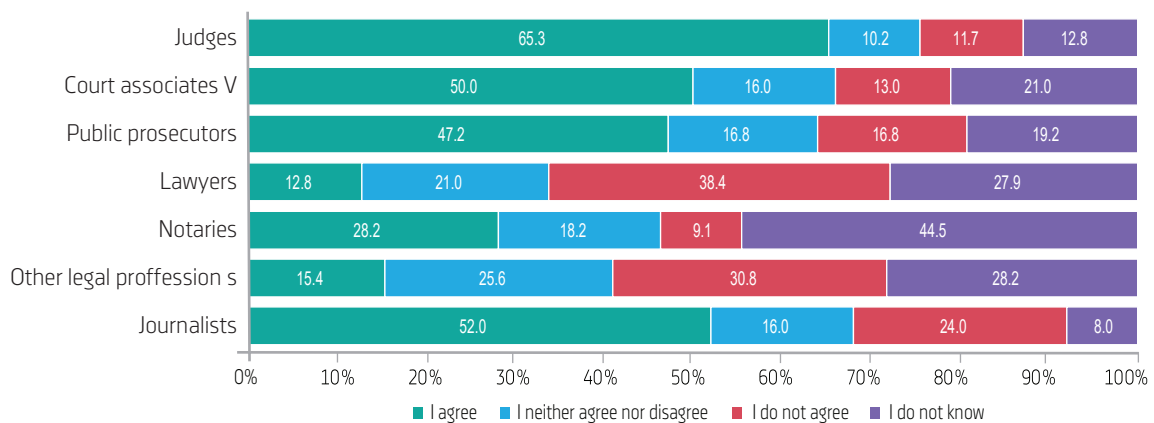


In regard to whether the courts have an appointed person for communication with the media, only the categories of respondents working in the courts (judges and professional officers) and the journalists covering topics in the area of judiciary have been asked for an opinion. In all three groups of respondents there is a notably high percentage of agreement (judges by 75.9%, judicial service by 68.9% and journalists by 60%) and a clear consensus that the courts have an appointed person for communication with the media and the public. However, 20% of the respondents, journalists, neither agree, nor disagree, and there is a same percentage (20%) of respondents from the same target group who are not familiar with this.

As for this indicator, through the instrument of in-depth interview, also the representatives of the academic community, AJPP and civil society organizations with relevant experience and knowledge of the situation in the judiciary have been additionally asked about their opinion. Regarding this question, all respondents from the ranks of the academic community have stated that they have information that there are appointed person for communication with the media. Some of them think that those persons are the presidents of the courts, but all of them have the opinion that there is a need of improvements in this segment of courts' functioning. On the other side, most of the AJPP respondents think that some of the courts have appointed persons for communication with the media, while some do not have. According to them, where there is a specific person appointed, the communication between the courts and journalists is on a much higher level, which has an extremely positive impact on the building of perception of transparency and openness among the general public. Most of the civil society organization representatives think that there has been a notably significant progress in this segment in the last years. However, according to them, the courts rarely and insufficiently inform the public about their work. The perception of closedness of the courts is dominant.

Majority of the respondents of all relevant target groups agree that the courts have an appointed person for communication with the media.

Indicator 18: There is an annual public report on the quality and functioning of the judicial system
Graph 18

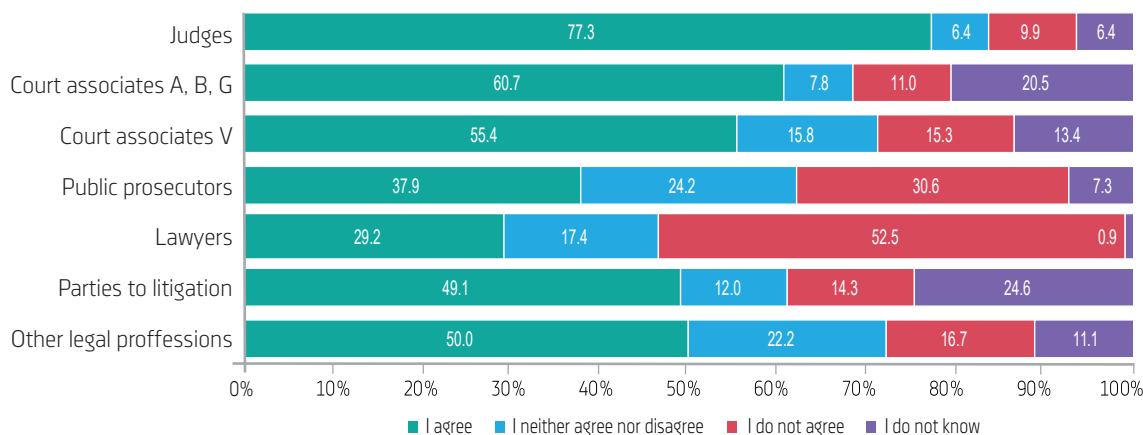


The regular annual public reporting on the quality and functioning of the judicial system contributes to a more quality current monitoring and evaluation of the situation in the judiciary, to the process of implementation of the reforms and additionally increases the public trust as a result of the accountability and transparency. There is a notably significant number of respondents who don't know that such reports about the judiciary exist, thus, 44.5% of the notaries who have participated in the research do not know that there is such annual report, and the case is the same with the other categories (21% of the judicial officers and 28% of the lawyers and other legal professions). 2/3 of the judges and half of the judicial officers and the journalists agree that there are annual public reports about the judicial system which are available to the public.

Majority of the judges think that there is an annual public report on the quality and functioning of the judicial system. There is a notably significant number of respondents who don't know that such reports about the judiciary exist.

C) Sub-area: Storing court records

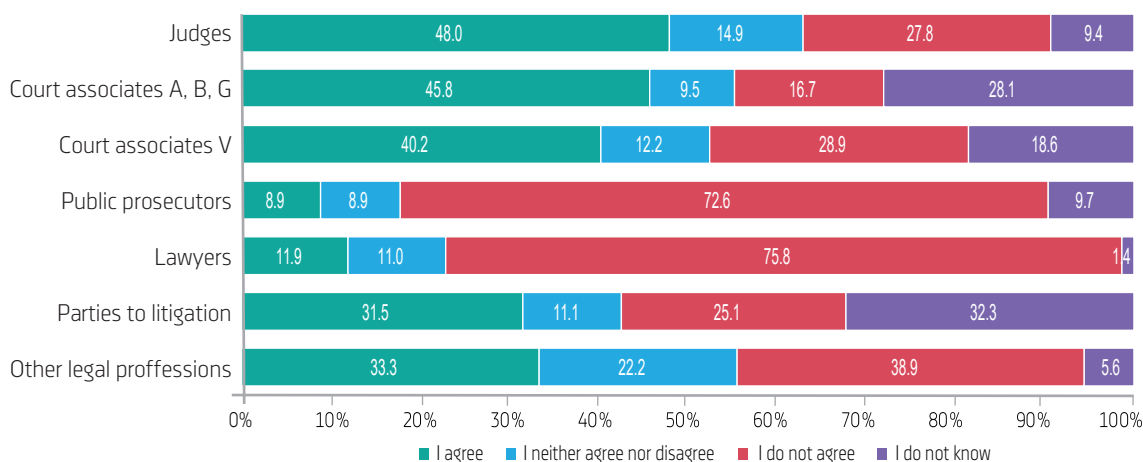
Indicator 19: The minutes and audio records accurately reflect everything that happens in the courtroom
Graph 19



In the area of transparency and accountability in the judiciary, the respondents have been asked whether and to what degree they agree that the minutes and audio records accurately reflect the activities in the courtroom. Majority of the judges (over 77%) have stated that the minutes and audio records accurately reflect everything that happens in the courtroom. Within a range from 49% to 60%, the employees in the judicial service, parties in disputes, as well as the other legal professions agree with this statement. On the other side, 30.6% of the public prosecutors and more than a half of the respondents, lawyers, think that the minutes and audio records do not accurately reflect everything that happens in the courtroom. There is a significant number of parties in disputes (almost 1/4) who have responded with 'I don't know'.

Majority of the judges and judicial officers have stated that the minutes and audio records accurately reflect everything that happens in the courtroom. A high percentage of the respondents, lawyers, have a divided opinion regarding this indicator.

Indicator 20: The audio recording equipment is compulsorily used for recording during the trials
Graph 20



Regarding this indicator, within a range from 40.2% to 48%, the judicial service and the judges agree that the audio recording equipment is compulsorily used for recording during the trials, even though there is a significantly high number of respondents from these groups (judges by 27.8% and judicial service by

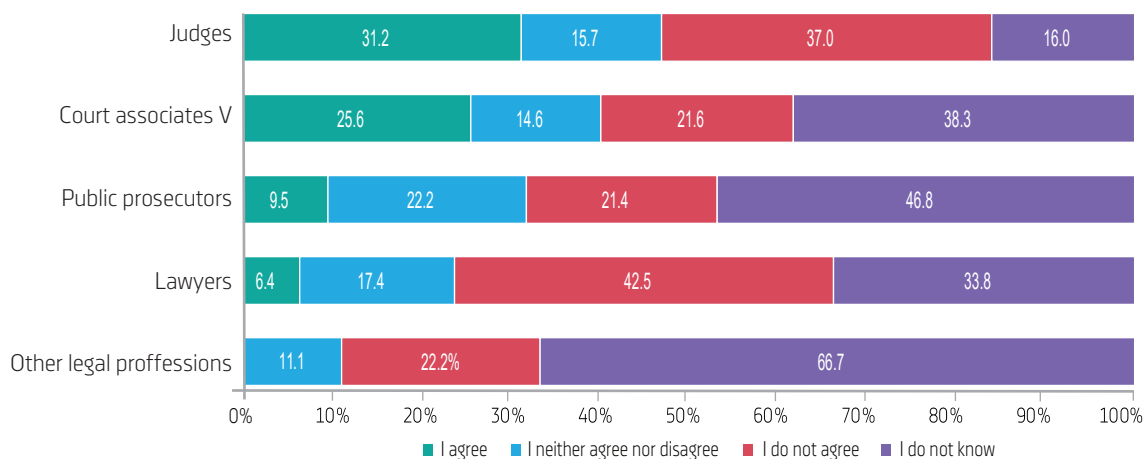
28.9%) who think that such equipment is not used during the trials at all. It is indicative that almost 3/4 of the respondents, public prosecutors (72.6%) and lawyers (75.8%) completely do not agree with this statement and practically refer to inconsistency in the use of audio recording equipment. There is also a significant number of parties in disputes (almost 1/3) who have responded with 'I don't know'.

Majority of the public prosecutors and lawyers think that audio recording equipment is not used at all. A significantly high percentage of respondents judges share the same opinion.

D) Sub-area: Cooperation with other bodies and institutions

Indicator 21: The communication between the higher courts (the Supreme Court and Higher Administrative Court) and the Judicial Council is at a satisfactory level

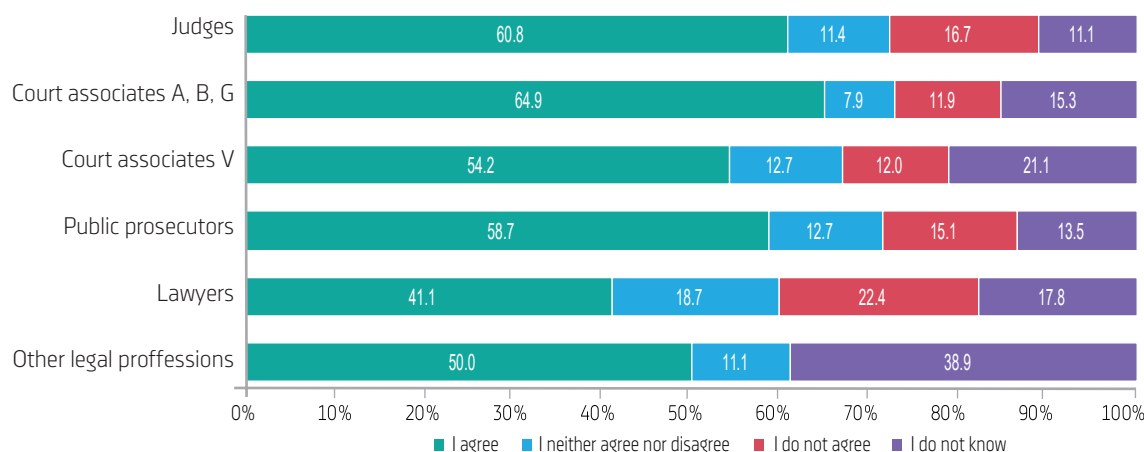
Graph 21



The transparency and accountability in the judicial system can be also observed through the regular and continuous core cooperation of the judges, both horizontally (with courts of the same instance) and vertically (with higher court instances), as well as through the cooperation between the highest court instances. Even though the opinions among the target groups, but also within the target groups are divided, there is a notably pretty high percentage of respondents (judges by 37%, judicial service, public prosecutors and other legal professions by over 21%, and lawyers by 42.5%) who do not agree that the communication between the higher courts (the Supreme Court and Higher Administrative Court) and the Judicial Council is at a satisfactory level. There is a high percentage of respondents from all target groups (within a range from 22.8% to 66.7%) who have stated that they are not familiar with it, and have responded with 'I don't know'.

A significant percentage of judges and lawyers think that the communication between the highest court instances and the Judicial Council is not at a satisfactory level. The high number of respondents who are not familiar with it is indicative.

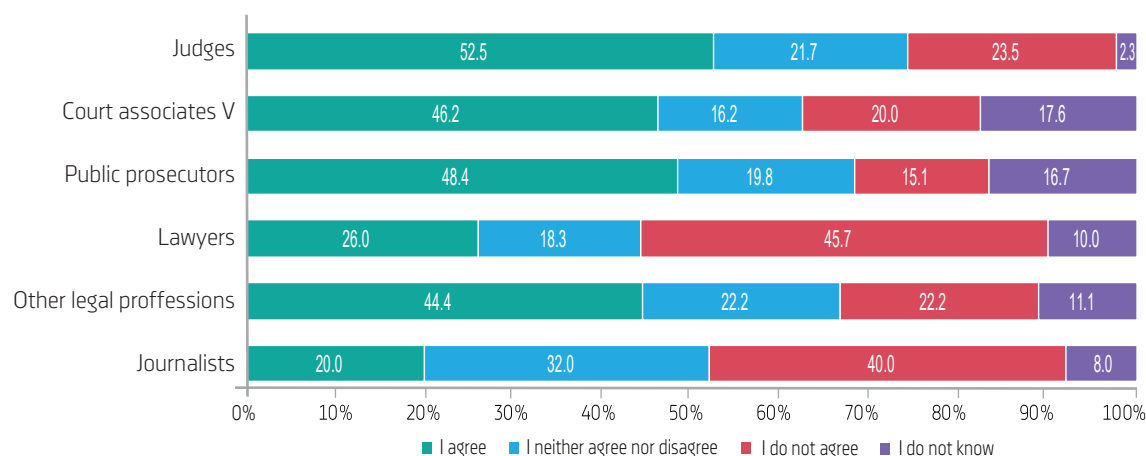
Indicator 22: The Ministry of Interior (the police) provides the necessary support when requested by the court
Graph 22



What is characteristic about this indicator is the existence of a wider consensus among the separate target groups which in a range from 41.4% of the lawyers to 60.8% of the judges and 64.9% of the judicial service agree that the Ministry of Interior (the police) provides the necessary support when it is requested by the court. Some of the respondents, lawyers (22.4%) have stated that they do not agree with this statement while more than 1/3 of the respondents from the other legal professions have responded with 'I don't know'.

There is a wider consensus among all target groups which think that the police provide the necessary support when it is requested by the court.

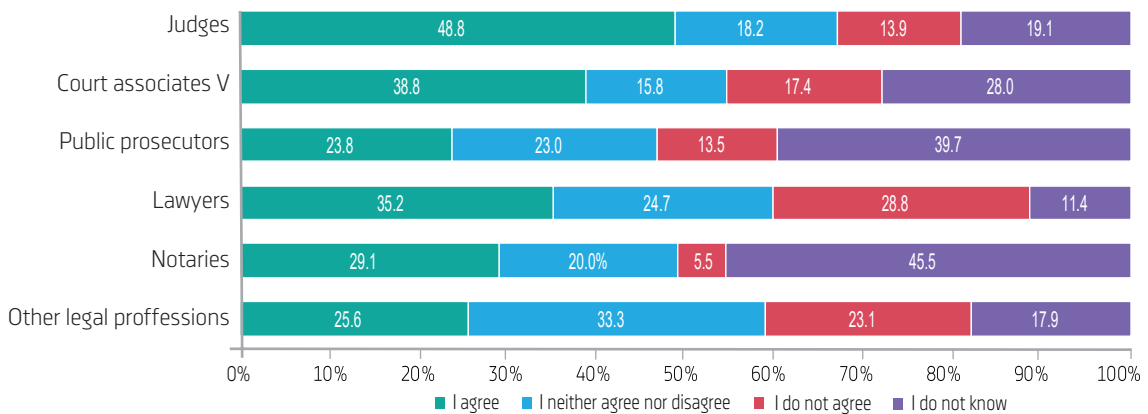
Indicator 23: The cooperation between the courts and other bodies and institutions is at satisfactory level
Graph 23



The respondents have been asked to tell how they assess the statement that the cooperation between the courts and other bodies and institutions is at satisfactory level. Regarding this indicator, all target groups can be divided in three groups. The first group is comprised of the courts which by 52.5%, judicial service by 46.2% and public prosecutors by 48.4% mostly agree with this statement, even though there is a significant percentage of respondents from these groups (especially the judges) who do not agree with the statement. The second group is comprised of the journalists who by 40% and lawyers by over 45% do not agree at all that there is a well-established system of communication and cooperation between the courts and the other relevant institutions. The third, and the last, group is comprised of respondents from the ranks of the other legal professions who are completely divided in their opinions regarding this question.

Most of the judges and judicial officers think that the cooperation between the courts and other bodies and institutions is at satisfactory level, while majority of the respondents, lawyers and journalists, do not agree with this statement.

Indicator 24: The level of cooperation between the courts and the enforcement agents in terms of efficient enforcement of decisions is at satisfactory
Graph 24



In regard to whether the level of cooperation between the courts and the enforcement agents in terms of efficient enforcement of decisions is at satisfactory, the respondents from the ranks of the judges by 48.8% have a positive opinion regarding this question by what they are ahead of the other target groups which are far more reserved in regard to this statement. While the public prosecutors (22.3%), lawyers (35.2%), notaries (29.1%) and the other legal professions (25.6%) agree that the cooperation between the courts and the enforcement agents is satisfactory, and almost in an identical percentage, the respondents from these target groups have stated that they neither agree, nor disagree, but there are also those who do not agree with this statement at all. There is a notable high percentage (45.5%) of respondents, notaries, who have been reserved and have responded with 'I don't know'.

Half of the respondents from the ranks of judges have expressed a positive opinion regarding this indicator. Insignificant is the percentage of public prosecutors and notaries who don't know about the level of cooperation between the courts and the enforcement agents in terms of efficient enforcement of decisions.

2. LEGAL FRAMEWORK, KEY PRINCIPLES, STANDARDS, AND PRACTICES: AREA OF TRANSPARENCY AND ACCOUNTABILITY

2.1 LEGAL FRAMEWORK

The transparency and accountability of justice are among the main components of the right to a fair trial. They are implemented through the principle of publicity of court proceedings and public availability of court decisions. Article 6 of the European Convention on Human Rights, in the first paragraph, stipulates the following: “The judgement shall be pronounced publicly, but the press and public may be excluded from all or part of the proceedings in the interest of moral, public order or national security in a democratic society, where the interests of juveniles or the protection of private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.” The European Convention provides for precisely defined situations in which the public can be excluded from the court proceedings, and these principles are consistently transposed in the domestic law of the States Parties to this Convention.

According to the case law of the European Court of Human Rights, the publicity of court proceedings allows for the implementation of the objectives of Article 6 of the Convention, i.e. it implements the right to a fair trial (*Diennet v. France*, § 33; *Martinie v. France* [GC], § 39).²⁷ Furthermore, ECtHR establishes that in order to assess whether a procedure was conducted on the basis of the principle of publicity, it should be analysed as a whole (*Axen v. Germany*, § 28)²⁸. The publicity of court proceedings and the public announcement of court decisions protects the citizen from secret enforcement of justice without control by the public (*Fazliyski v. Bulgaria*, § 69²⁹, linked to a case that has been declared as an official secret – a violation of Article 6 of the Convention has been found). The publicity of the proceedings at the same time contributes to citizens’ trust in the judiciary (*Pretto and Others v. Italy*, § 21)³⁰.

The principle of public court proceedings and public announcement of court decisions as important component of the broader right to a fair trial is enshrined in the domestic law.

Thus, Article 102 of the Constitution of RNM sets forth that: “Court hearings and delivery of the court decisions are public. The public may be excluded in cases determined by law.” Pursuant to Article 354 of the Criminal Procedure Law, the Council that adjudicates in a particular case may “exclude the public from a part of the main hearing or during the entire main hearing, if it is necessary to protect a state, military, official, or important business secret, protect the public order, protect the private life of the defendant, witness, or victim, protect the witness or victim safety and/or protect the interests of the juvenile”. According to the Law on Litigation Procedure, the public may be excluded: “during the whole main hearing or during one part of it, if thus requested by the interests of keeping an official, business, or personal secret, the interests of the public order or the moral reasons” as well as “in case when the measures for keeping the order provided for in this law could not provide incessant holding of the hearing.” In both procedures, the exclusion of the public from the main hearing represents an essential violation of the procedure provisions, and as such it represents a legal basis for filing an appeal against the verdict of the Council.

27 European Court of Human Rights, *Diennet v. France*, no. 18160/91, § 33, 26 September 1995.

28 European Court of Human Rights, *Axen v. Germany*, 8 December 1983, Series A no. 72.

29 European Court of Human Rights, *Fazliyski v. Bulgaria*, no. 40908/05, 16 April 2013

30 European Court of Human Rights, *Pretto and Others v. Italy*, 8 December 1983, Series A no. 71.

The Law on Courts, in Article 10, lists the publicity and transparency among the main principles of the court proceedings. This Law also regulates the manner of dissemination of information from the court to the public and the media. Taking into consideration the fact that the availability of court decisions does not cover only their public reading in the last part of the main hearing, but also the delivery of the complete court decision to the parties, but also to the public, a website has been created where the court decisions are published electronically, which makes a great contribution to the transparency of the work of the courts. The manner and deadlines for electronic publication of court judgements are regulated by the Law on Case Flow Management in Courts. The court's public relations are regulated in detail in Articles 101-111 of the Court's Rules of Procedure.

The transparency of the work of the courts is closely related to the publicity of information about the judicial budget. Pursuant to Article 106 of the Law on Judicial Budget, the Judicial Budget Council is established to carry out the activities related to the judicial budget. Pursuant to Article 17 of this Law, the Judicial Budget Council monitors the execution of the financial plan and in case irregularities and abuses by the president of the court in the process of execution of the financial plan are detected by the performed controls, it informs the Supreme Court of RNM, the Ministry of Justice, the Judicial Court, the Ministry of Finance, and the State Audit Office. The control of the judicial budget execution, pursuant to Article 18 of this Law, shall be performed in accordance with the provisions of the Budget Law. The Judicial Budget Council is obliged, at least once a year, to submit a report on the judicial budget execution to the Ministry of Finance, the Government of RNM, and the Assembly of RNM. The Law on Judicial Budget does not contain special provisions for publicity of the sessions of the Judicial Budget Council, but the fact that the financial report is part of the annual reports of the courts and the Judicial Council enables the public to have access to the manner of spending of judicial budget funds.

The transparency of the courts is associated with the requirement for transparency in the process of recruitment of new persons in the courts, in relation to which the provisions of the new Law on Prevention of Corruption and Conflict of Interest as of January apply, which prohibits the influence for employment of close relatives. Furthermore, the accountability of the courts and judicial institutions is associated with the obligation to report on property in accordance with the same Law.

2.2 DATA FROM DOMESTIC INSTITUTIONS

Annual report on the implementation of the Strategy for reform of the judiciary sector for the period of 2017-2022

According to the annual report for 2018 of the Ministry of Justice of RNM, on the implementation of the Strategy for reform of the judiciary sector for the period of 2017/2022, the section on transparency states that over 500.000 decisions have been published on the court portal (www.sud.mk).

Regarding the strengthening of the transparency of the Judicial Council, the Ministry of Justice considers that the law³¹ clearly prescribes that the sessions of the Council shall be public. When the Council decides to exclude the public, the president of the Council is obliged to inform the public about the reasons for exclusion of the public and in the case when at the session a decision is made by voting, the voting on the decision is public. When the Council decides on the election of a judge or a president of a court, the public cannot be excluded by any circumstances. The Ministry of Justice sees improvement in the area of transparency through the announcement of the report on the control conducted on ACCMIS which identifies any misuse, and which is publicly available on the website of the Ministry.³²

31 Law amending the Law on the Judicial Council of the Republic of Macedonia ("Official Gazette of the Republic of Macedonia" no. 197/17)

32 Report on the functionality of the informational system and oversight of the application of the provisions from the Judicial Rules of Procedure in the courts, available at: <https://goo.gl/Y1wBBg>

Annual and quarterly reports on the work of the Judicial Council of the Republic of North Macedonia

In the section on building and affirmation of the transparency of the work, in the annual report, the Council emphasizes that it continues with its activities, meaning that the overall work of the Council is public, including also the sessions of the Council, except for those from which, according to the Law, the public is excluded.

The Council provides explanation of the information on internet on the website www.ssrn.mk about the decisions made by the Council, about elections and dismissals of judges being conducted, publishing of effective decisions, determined responsibility of judges in exercising their judicial office, decisions and conclusions regarding the monitoring and evaluation of the work of judges and courts, as well as other activities of the Council.

The Law on the Judicial Council (with the amendments from December 2017 and May 2018) stipulates that the sessions of the Judicial Council of RNM shall be public. The public can be excluded only by a decision of the Council due to protection and integrity of the judge or the candidate for a judge. For exclusion of the public from the sessions, the Council decides by two-thirds majority of votes of the total number of members of the Council having the right to vote. In the case when the Council has decided to exclude the public from the session, the president of the Council is obliged to inform the public about the reasons for exclusion, and in the case when at the session a decision is made by voting, the voting on the decision is public. When the Council decides on the election of a president of court or election of a judge, the public cannot be excluded by any circumstances. The Council prepares a minutes on the voting on the decision and it is publicly announced on the website of the Council. For the work at the session of the Council, minutes is kept and there is an audio recording. The adopted minutes is published on the website of the Council. The Judicial Council has a competence to review and evaluate the trimestral and annual reports on the work of the courts and to publish them publicly on its website. Each member of the Council, who has a right to vote, has the obligation to publicly explain his/her decision on the election of the judge.

The procedure for determining the liability of a judge or a president of court is conducted without the presence of the public and with respect for the reputation and dignity of the judge or the president of the court, while taking care of the protection of personal data of the judge or the president of the court, in accordance with the regulations on personal data protection. Upon request of the judge or the president of the court, the Council shall decide the procedure to be public. A representative of the Association of Judges may also attend the session upon a request of the judge or the president of the court.

The Council has the legal obligation to submit an annual report³³ to the Assembly of the Republic of North Macedonia not later than 30th April of the current year.

According to the last Report of EC, the new portal for access to case law, having the purpose of increasing the transparency and improving the 'search' is directed towards fulfilment of the objectives of the urgent reform priorities. However, information feeding in the database varies from court to court, which indicates that there is an inconsistency and need for improvement. A progress in the area of legal reasoning of judgements as well as invocation of the case law of the ECtHR has been noted.

Additionally, the Report of EC determines that for the first time the Ministry of Justice has taken initiative for inspection of ACCMIS on the basis of indications for flagrant misuse of the system. The results from the inspection were submitted to the Judicial Council and the Public Prosecution Office of RNM for additional processing. The report of the Ministry of Justice is available to the public through the website of the Ministry.

³³ Annual Report on the work of the Judicial Council of the Republic of Macedonia for 2017: <https://goo.gl/7zj1tz>;

2.3 DATA FROM INTERNATIONAL REPORTS

Report of the European Commission on the Progress of the Republic of Macedonia from 2018

According to the last Report of the EC, the new portal for access to court practice, which has the purpose of increasing transparency and improving “searching”, contributes to the completion of the goals of the urgent reform priorities. However, the feeding of information to the database differs from court to court, which indicates inconsistency and a need for improvement. Progress has neither been noted in the area of legal reasoning in the judgements, nor concerning invoking the ECtHR’s practice.

In addition, the EC’s Report ascertains that for the first time the Ministry of Justice took initiative for inspection of the AKMIS based on indications of flagrant abuse of the system. The results from the inspection were delivered to the Judicial Council and the Public Prosecution of the Republic of North Macedonia for further processing. The Ministry of Justice’s report is publicly available at the Ministry’s website.

3. CORRELATIONS: TRANSPARENCY AND ACCOUNTABILITY

Access to judicial decisions

Although in the annual report for 2018 of the Ministry of Justice of the Republic of North Macedonia on the implementation of the Strategy for Reform in the Judiciary Sector for the period 2017/2022 it is noted under transparency that over 500,000 decisions were made publicly available at the court portal (www.sud.mk), the EC considers in its last report that the portal for access to the court practice should improve the “searching” of decisions and that the feeding of data to the database differs from court to court, which indicates inconsistency and a need for improvement. No progress has been noted concerning the legal reasoning in the judgements either, or concerning invoking of the ECtHR’s practice. Contrarily, the analysis of the perceptions ascertains that the majority of judges and judicial officials consider that the system for free access to court decisions exists and is regularly updated. However, more than half of the lawyers and journalists among interviewees stated the exact contrary to the above.

Openness of the judiciary to the public

Although the new legal amendments improve the transparency of the Judicial Council vis-à-vis the procedure for appointment of judges, the publishing of the minutes and the reports on the courts’ work on the website, as well as the possibility to have a representative of the Macedonian Association of Judges upon taking decisions on responsibility, there are legal obstacles to the transparent working of the Judicial Council concerning taking decisions on ascertaining responsibility of a judge or a court president, whereby, the sessions are closed to the public even when its presence is explicitly requested. Contrarily, the analysis of the perceptions indicates that only the judges had positive comments, believing that the decisions of the Judicial Council of the Republic of North Macedonia are transparently and completely announced, and that there is an annual public report on the quality and functioning of the judicial system. The high percentage of interviewees from the remaining target groups that said they did not know, is also indicative.

EFFICIENCY



TRANSPARENCY AND
ACCOUNTABILITY



QUALITY OF
JUDICIAL JUSTICE

IV

INDEPENDENCE AND
IMPARTIALITY

V

PROFESSIONAL
DEVELOPMENT AND
APPROPRIATE
REPRESENTATION

1. ANALYSIS OF THE PERCEPTIONS FROM THE MEASURING: QUALITY OF JUDICIAL JUSTICE

All the other perceptions being measured by the Matrix would not be complete if we did not measure those which express the opinion of the target groups regarding the quality of judicial justice.

The first associations, when we talk about the court and its work, are certainly the independence and efficiency. Together with the transparency and accountability, they provide a picture of the situation in the judiciary. What unites all these postulates is certainly the quality. Without the quality of court decision, the other elements do not get their own true sense.

When we talk about quality of judicial justice, it is exceptionally difficult to establish measurable and exact criteria according to which that quality could be expressed in quantitative form. The quality of the court decision is not only a question of the form and procedure, but also the application of law. That is why, through the system for measuring perceptions, the acquired data resulting from the individual indicators in this Matrix, are quantified more easily, and they should further result in the bases for policy making through adaptation and supplementation of the existing ones, but also according to the need for making new regulations.

Such measuring of perceptions regarding the quality is not arbitrary when it comes to whether it has or it doesn't have a legal base. On the contrary, the question of quality of judicial justice results from the domestic and international LEGAL FRAMEWORK and practice. In the first place, there is the Constitution of the Republic of North Macedonia, where the rule of law and the legal certainty are placed on a level of fundamental values even in the Preamble, and further on in the normative part of the Constitution, to provide guidelines and frameworks in which the courts should administer justice. According to the Constitution, a fundamental value in Article 8 is a rule of law and compliance with the generally accepted norms of the international law. A whole chapter in the Constitution is dedicated to the civic and political freedoms and rights, the guarantees for their achievement through the judiciary mechanisms. The Supreme Court, according to the Constitution is obliged to ensure unified application of laws, i.e. unification of the judicial practice by the courts, which should lead to legal certainty. The issue of the quality of judicial justice, even though not explicitly, is also derived from the provisions of the Law on Courts, where the postulates set out by the Constitution of RNM are elaborated in detail. Furthermore, the supranational instruments which according to the Constitution are part of the internal legal order are also within the legal framework. Above all, it is about the European Convention on Human Rights and the European Court of Human Rights whose competence is also recognized by the Republic of North Macedonia, normatively in the Article 6, but also through the interpretation of the Convention, they regulate the right to fair trial, which is closely related to the quality of judicial justice, which is reflected not only through the quality of court proceedings and procedures regarding the form, but also the content, clarity and reasoning of the court decisions and their efficient execution i.e. enforcement.

In the area of 'Quality of Judicial Justice', the respondents have responded to questions related to: important aspects of the functioning of the court (content and efficiency of delivery of summons, the schedule of hearings, attitude and professionalism of the judges during the hearings, preparedness of the judges), the quality and effect of the court decision (unification of the judicial practice, the role of the general views and legal opinions of the higher courts, the structure and content of judgements, legal deadlines, and the like), court competences and protective measures (the role of the Supreme Court, and of the Constitutional Court and the regular courts in the protection of the citizens' freedoms and rights, judicial immunity, etc.).

The area of “Quality of Judicial Justice” from the Matrix is comprised of one common indicator and 22 individual indicators divided in 3 sub-areas:

- >>> **A) Sub-area:** Court functioning (comprised of 6 individual indicators),
 - 25. The judgements and other decisions of the courts are clear, comprehensive, and well-reasoned
 - 26. Court summons is clear and concise
 - 27. Court summons is efficiently delivered
 - 28. The time period between a court summons and a scheduled hearing is appropriate and within the limits of the legal deadlines
 - 29. The attitude and professionalism of judges during the hearings are at a satisfactory level
 - 30. The judge is prepared for court hearings with a good knowledge of the circumstances and details of the case
 - 31. The judge complies with the procedural laws and the Court's Rules of Procedure
- >>> **B) Sub-area:** Quality and effect of the court decision (comprised of 10 individual indicators)
 - 32. The courts comply with the established case law of the higher courts
 - 33. The courts follow the general legal views and legal opinions of the higher courts (the Supreme Court and the Higher Administrative Court)
 - 34. In their decisions, the judges invoke and follow the case law of the European Court of Human Rights
 - 35. The judgements and other court decisions are well-structured
 - 36. The judgements and other decisions are clear, comprehensive, and well-reasoned
 - 37. The court verbally announces the judgements and other decisions in accordance with the legal deadlines
 - 38. The legal deadlines for delivering a written decision are respected
 - 39. The laws provide for sufficient legal remedies and mechanisms for uniform application of the law
 - 40. The implementation of the procedure as a whole is impartial and objective
 - 41. The judgements and decisions are enforced in an efficient manner
- >>> **C) Sub-area:** Judicial competences and safeguards (comprised of 6 individual indicators)
 - 42. The Supreme Court ensures uniform application of the law
 - 43. The Constitutional Court effectively decides on the constitutionality of laws and other acts and these decisions are enforced
 - 44. The Constitutional Court provides effective and efficient protection of civil rights and freedoms
 - 45. The courts provide effective and efficient protection of human rights and freedoms
 - 46. The judiciary decides on the merits in administrative matters
 - 47. The judicial immunity is respected for actions taken within the framework of the performance of official duties

Additionally, the respondents from all target groups have provided opinion on one common indicator in order to obtain one cumulative score about this specific area.

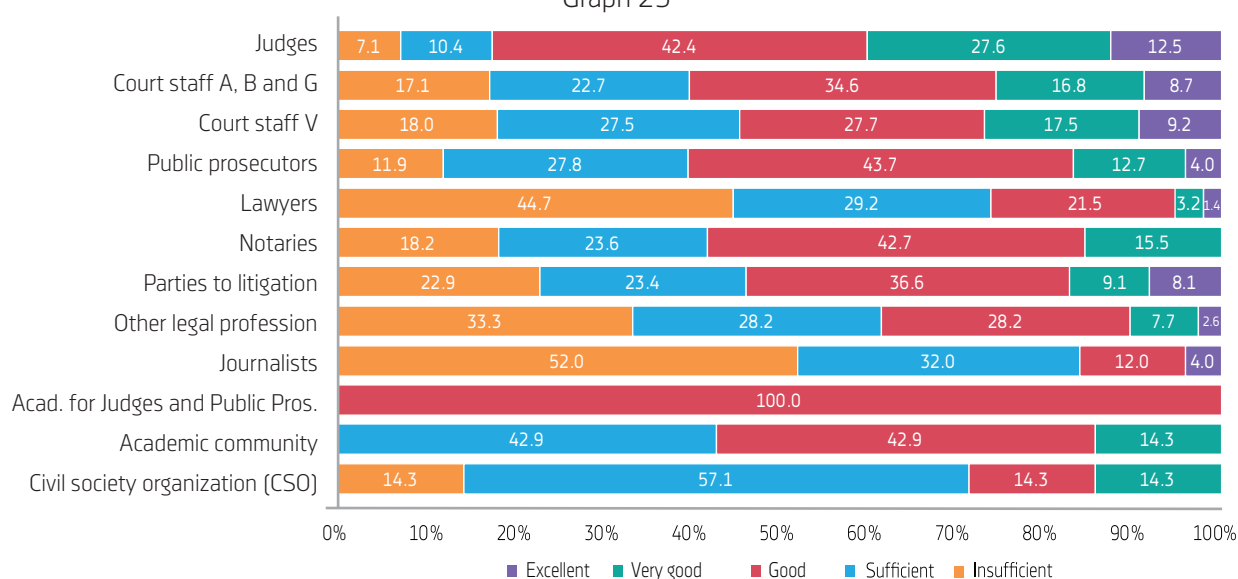
How would you assess the quality of the judicial justice in the courts in RM defined by the following statement:

“The judgements and other decisions of the courts are clear, comprehensive, and well-reasoned”

3. Common indicator for all target groups:

The judgements and other decisions of the courts are clear, comprehensive, and well-reasoned

Graph 25



Target group:	Average grade
Judges	3.3
Court staff A, B and G	2.8
Court staff V	2.7
Public prosecutors	2.7
Lawyers	1.9
Notaries	2.6
Parties to litigation	2.6
Other legal profession	2.2
Journalists	1.7
Academy for Judges and Public Prosecutors	3.0
Academic community	2.7
Civil society organization (CSO)	2.3
TOTAL	2.7

It is characteristic that the judges as a target group, 7.1% i.e. 10.4% have responded with insufficient, i.e. sufficient, which means that together 17.5% or somewhat less than 1/5 of the judges think that the quality is at a low level. The judges dominantly think that the quality is good (42.4%) i.e. very good (27.6%). Only 12.5% of the judges have assessed the quality with excellent.

More than half of the public, covered through the journalists thinks that the quality of judicial practice is insufficient (52%), while the score of sufficient was given by 32% of the respondents, journalists. It means that more than 4 to 5 (84%) of the journalists have given a low score for quality, as opposed to only 4% who think that the quality is excellent.

The lawyers, who have distributed the scores of insufficient, sufficient and good by 44.7%, 29.2% and 21.5% respectively, have a similar opinion. While the public prosecutors, mainly think that the quality is good (43.7%), while almost 40% think that it is sufficient, i.e. insufficient (27.8% i.e.11.9%).

Most of the natural persons as parties in disputes (82.9%) have distributed their scores among insufficient (22.9%), sufficient (23.4%) and good (36.6%), and only 8.1% think that it is excellent. The rest of this target group thinks that the quality is very good (9.1%).

Regarding this common question for all target groups, interviews with representatives of the civil society, i.e. civil society organization, the academic community and the AJPP have been conducted. The purpose of these interviews was to obtain narrative responses, not only for this specific question, but also for the other questions, which are most characteristic for area of “Quality of judicial justice” of the Matrix.

Specifically, to the question: “How would you assess the efficiency of the courts expressed through the statement: Courts make timely, quality and legal judgements in a fair procedure”, it results that the perception of both academic community and civil sector is not very favourable in regard to the quality. The possible responses have been given on a scale from 1-insufficient to 5-excellent.

Out of the interviewed persons from the academic community: 4% have responded that the courts insufficiently make timely, quality and legal judgements in a fair procedure, 14% have responded that courts sufficiently make timely, quality and legal judgements in a fair procedure. 29% of the respondents have responded that judges make timely, quality and legal judgements in a fair procedure giving the score of good, 43% of the respondents have given the score of very good in regard to making timely, quality and legal judgements in a fair procedure. None of the academic community respondents thinks that that courts make timely, quality and legal judgements in a fair procedure by giving the score of 5-excellent.

While the situation of the civil society organizations regarding this question is the following: out of a total number of 7 interviewed persons, having the possible responses from 1-insufficient to 5-excellent, four of the interviewed persons have responded with 3-good, two of the interviewed persons with 2-sufficient and one of the interviewed persons have responded with 1-insufficient. None of the interviewed persons have responded with 4-very good or 5-excellent to this question.

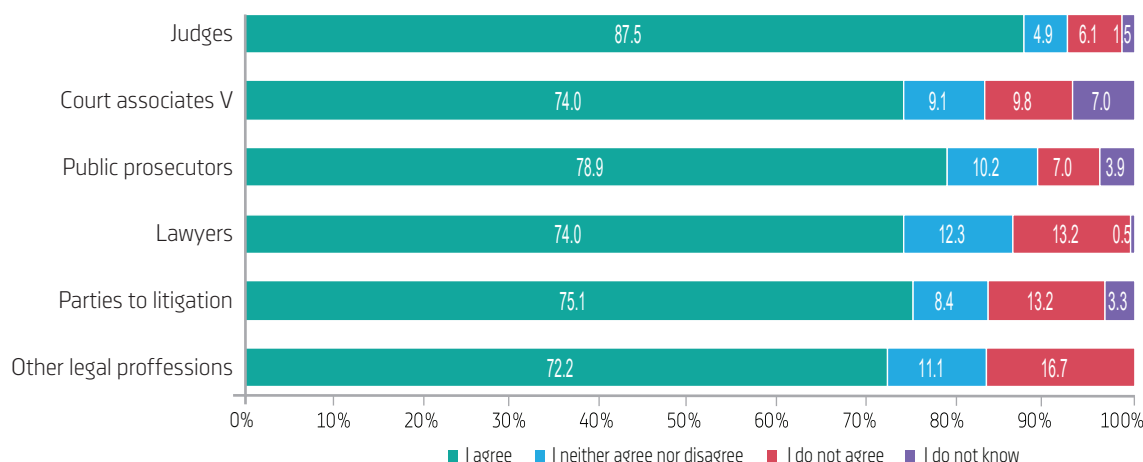
Regarding this question, the AJPP representatives think that the judgements and other decisions of the courts are good.

The average score for this common indicator for all target groups included in the research is: 2.7.



A) Sub-area: Court functioning

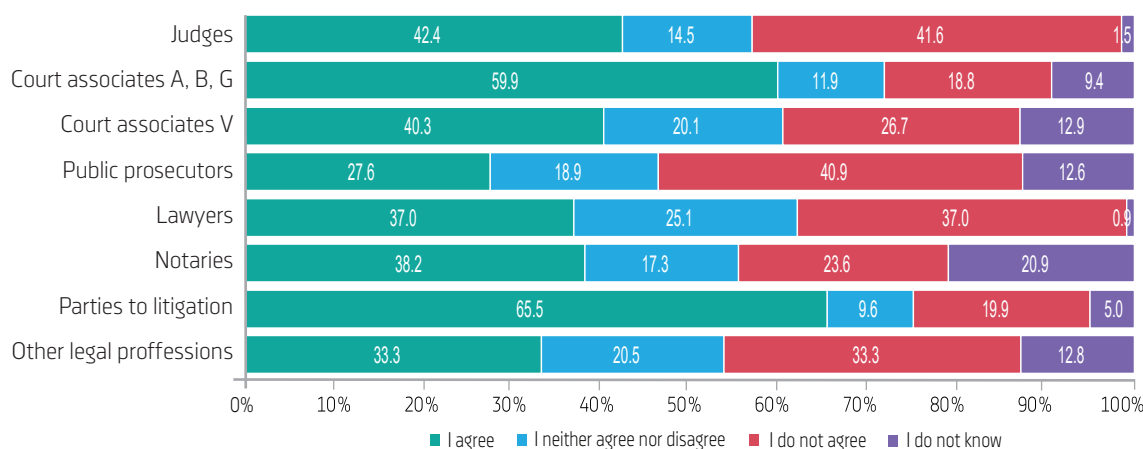
Indicator 26: Court summons is clear and concise;
Graph 26



Among all respondents there is a relative consensus that the summons is clear and concise, whereas most of the respondents completely agree with this statement. Natural persons, as well as the other legal professions, by 13.2% i.e. 16.7%, respectively do not agree with this statement, which is important regarding the target groups, especially natural persons as parties in disputes, but also the other legal professions as direct participants in the creation of this summons. A small number of the respondents from the target groups (with an exception of the judicial service [7%]) are those who have responded with "I don't know".

Most of the respondents think that the court summons is clear and concise.

Indicator 27: Court summons are efficiently delivered;
Graph 27



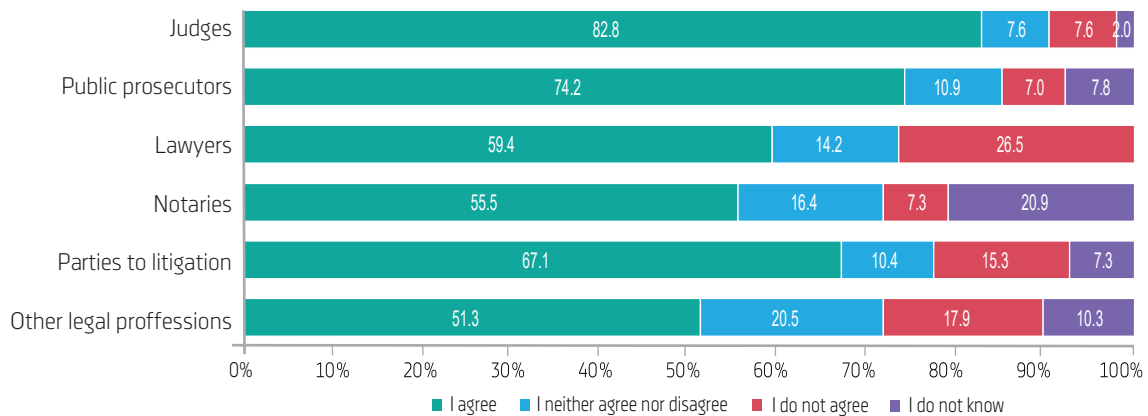
To the question about the efficiency of delivery of court summons, one third of the judges do not agree with this statement. In a range from 20.9% to 34.6% there is a disagreement with this statement by the notaries (20.9%), lawyers (26.9%) and public prosecutors where the disagreement (34.6%), with this statement is most strongly expressed.

Almost one half of the parties in disputes think that the court summons is efficiently delivered (46.9%), while 9.6% of the parties in disputes neither agree, nor disagree, i.e. have a neutral opinion regarding this indicator.

Most of the respondents do not agree that the delivery of court summons is efficient.

Indicator 28: The time period between a court summons and a scheduled hearing is appropriate and within the limits of the legal deadlines

Graph 28

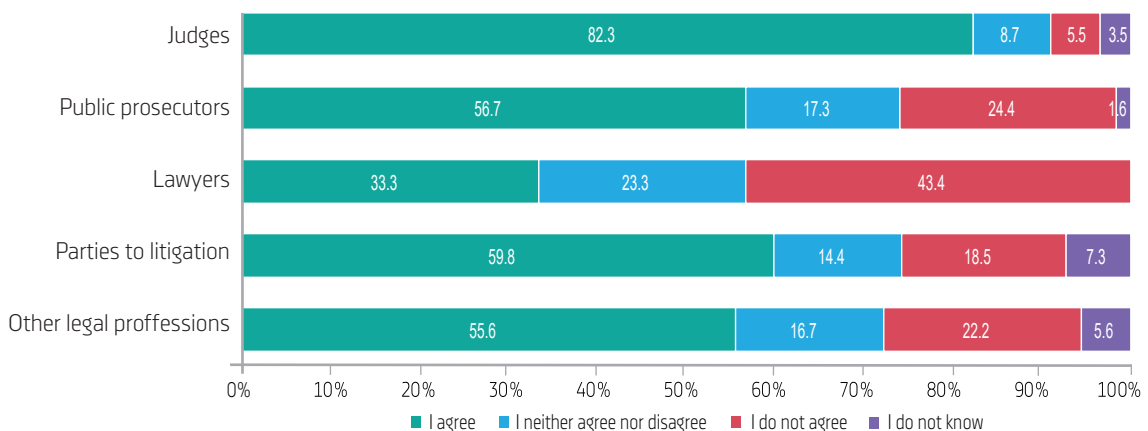


The delivery and the deadlines as a subject of analysis were especially interesting. Regarding the question about the appropriateness of the time period between the delivery of court summons and scheduled hearing and their correlation with the legal deadlines, it seems that a positive score for this indicator is dominant. Especially, it is illustrative that the judges by 82.8% completely agree with this statement, followed by public prosecutors by 74.2%, natural persons and legal entities as parties in disputes by 67.1 % i.e. 2/3, and lawyers and notaries by a slightly more than a half (59.4 % i.e. 55.5%).

Most of the respondents think that the time period between a court summons and a scheduled hearing is appropriate. However, a significant number of the lawyers do not agree with this statement.

Indicator 29: The attitude and professionalism of judges during the hearings are at a satisfactory level

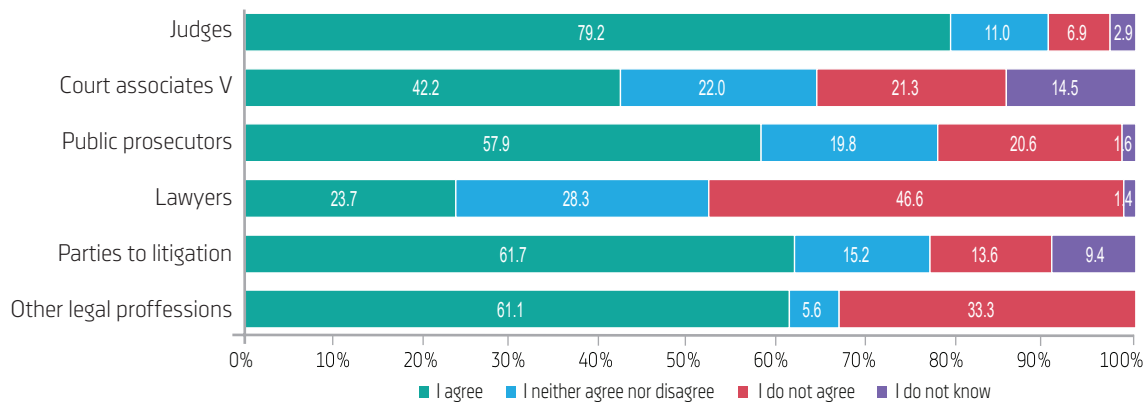
Graph 29



For this indicator, a positive score about the attitude and professionalism of judges during the hearings is dominant. More than half of the target groups of public prosecutors (56.7%), natural persons as parties in disputes (59.8%) and other legal professions by (55.6%) agree with the indicator, except for the lawyers who compared to the other target groups only by 1/3 i.e. 33.3% think that the attitude and professionalism of judges during the hearings are at satisfactory level. The judges by 82.3% completely agree with this statement. However, some of the judges do not agree with the indicator by 5.5%, and 8.7% have a neutral opinion regarding this question, i.e. neither agree, nor disagree.

Most of the respondents think that the attitude and professionalism in hearings are at satisfactory level contrary to the public prosecutors and especially the lawyers who by a greater percentage think that the attitude is not at a satisfactory level.

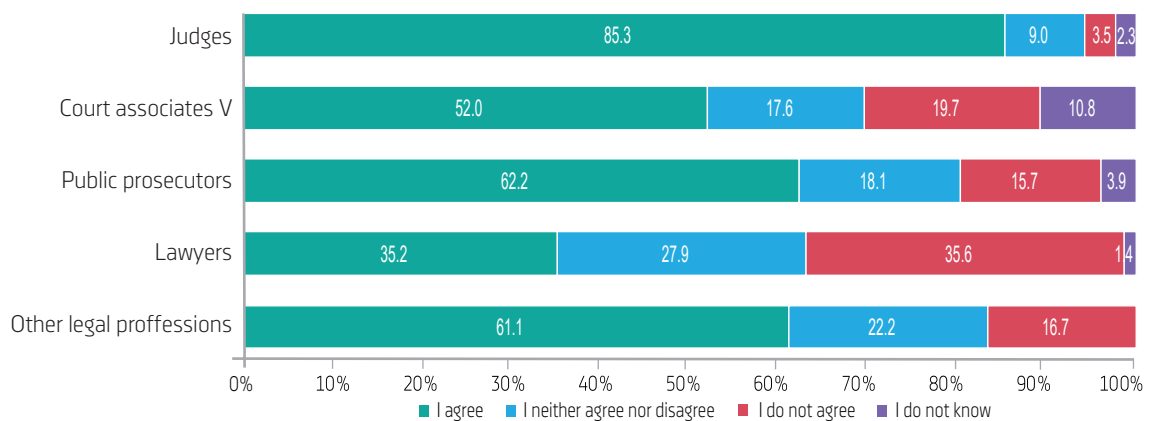
Indicator 30: The judge is prepared for court hearings with a good knowledge of the circumstances and details of the case
Graph 30



According to this indicator, almost 4/5 of the judges i.e. 79.2% think that they are prepared for court hearings. However, even though by a small percentage (6.9 %) which is insignificant, the judges think that they are not prepared for court hearings. The public prosecutors by 57.9% and the parties in disputes by 61.7% agree with this indicator. On the other side, the lawyers by 46.6% do not agree, and slightly less than ¼ of them (23.7%) think that the judges are prepared for court hearings. However, even though in a small percentage, 2.9 % of the judges think that they are not prepared for court hearings.

Majority of the judges think that they are generally prepared for court hearings, but that perception is not shared by a significant number of the judicial service, the lawyers, some of the public prosecutors, and the other legal professions.

Indicator 31: The judge complies with the procedural laws and the Court's Rules of Procedure
Graph 31

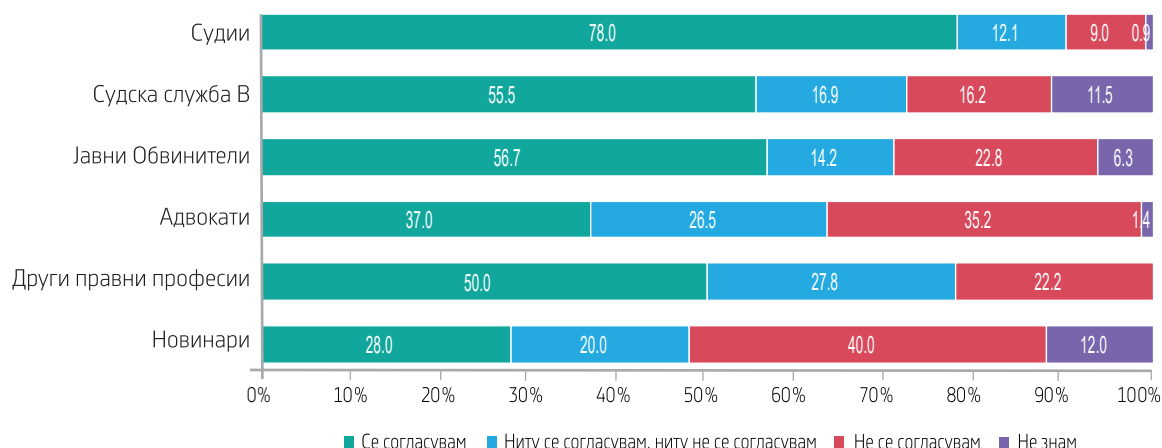


According to this indicator, a great number of the judges (85.3%) think that they comply with the procedural laws and the Court's Rules of Procedure. The professional legal community by 61.1% and public prosecutors by 62.2% share this opinion. Yet, among the public prosecutors, there are some who do not agree with this statement (15.7%). While the opinion of the lawyers, on the other side, is divided among those who have a neutral opinion (27.9%), those who do not agree (35.6%) and those who agree (35.2%).

Most of the respondents think that the judge complies with the procedural laws and the Court's Rules of Procedure, but a great percentage of the lawyers and a certain percentage of the public prosecutors and the other legal professions do not share that perception.

B) Sub-area: Quality and effect of the court decision

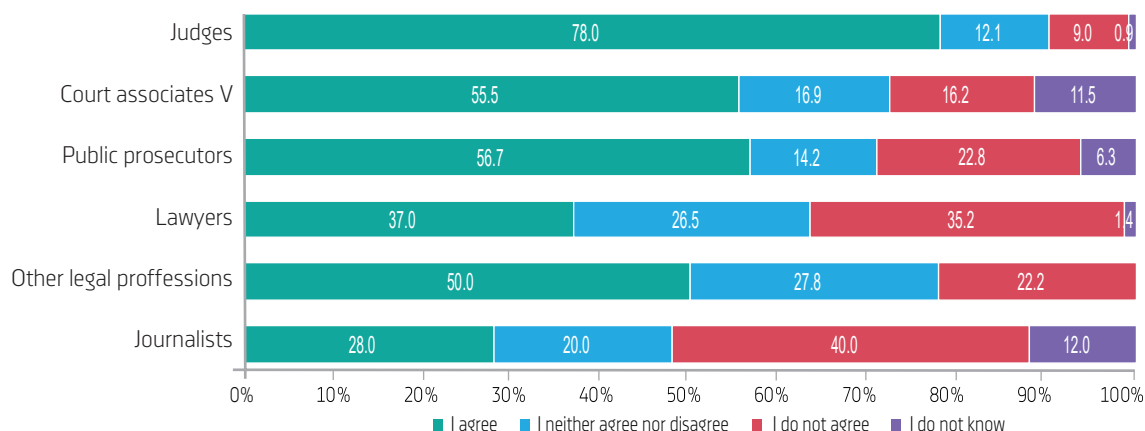
Indicator 32: The courts comply with the established case law of the higher courts
Graph 32



According to this question, which is one of the indicators on legal certainty, 78% of the judges think that they comply with the case law of the higher courts. However, almost one tenth, i.e. 9% of them do not agree with this statement. The judicial service and the public prosecutors agree by 55.5% i.e. 56.7%. While the lawyers, again as it was the case in the previous indicator 31, have divided opinions between those who agree by 37% and almost the same number of those who do not agree by 35.2%. The journalists by 40% think that the courts do not follow the established judicial practice of the higher courts, as opposed to 28% who agree with the indicator. It is relevant to mention that 1/5 of the journalists have no opinion in regard to this question.

Most of the respondents think that the case law of higher courts is complied with. But, there is a disagreement among certain target groups such as journalists and lawyers.

Indicator 33: The courts follow the general legal views and legal opinions of the higher courts (the Supreme Court and the Higher Administrative Court)
Graph 33



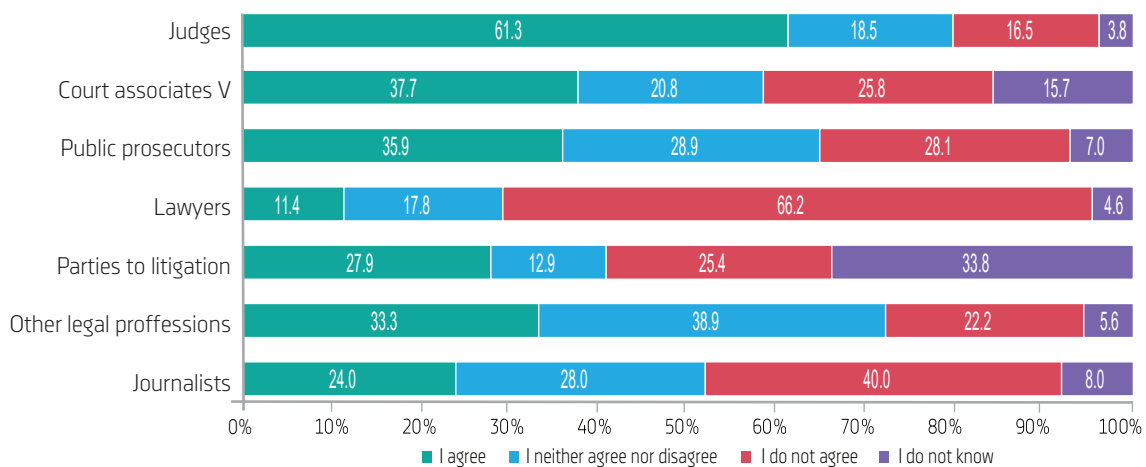
According to this indicator, judges by 82.7% think that they follow the general legal views and legal opinions of the Supreme Court of RNM and the Higher Administrative Court of RNM. The judicial service and the public prosecutors by 59.7% i.e. 61.1% have relatively the same opinion.

However, there is a notable discrepancy of more than 30% between the judges and the judicial service in regard to this indicator (82.7% versus 59.7%). With a slightly smaller number, the lawyers agree by 45.7%, but it is worth mentioning that 26.5% of them do not agree with this statement. While the responses of the journalists are divided in those who agree (24%), those who do not agree (28%), and those who have a neutral opinion, i.e. neither agree, nor disagree (32%).

Majority of the judges, public prosecutors and judicial service think that the general legal views and legal opinion of the higher courts are followed. But we also must stress a certain percentage of disagreement especially among the journalists and lawyers.

Indicator 34: In their decisions, the judges invoke and follow the case law of the European Court of Human Rights

Graph 34



In regard to this indicator, there is an evident discrepancy between the opinion of the judges on one side, who by 61.3% think that they invoke the decisions of ECtHR and follow the case law of ECtHR, and the lawyers, who by 66.2% do not agree with this statement, as opposed to only 11.4% who agree. The responses of the public prosecutors are divided among 35.9% who agree, 28.9% who have a neutral opinion, and 28.1% who do not agree. The parties in disputes - natural persons similarly to the public prosecutors by 27.9% agree, 25.4% do not agree, but a great number of them (33.8%) don't know if the judges invoke and follow the case law of the European Court of Human Rights.

While the judicial service, by 37.7% agrees as opposed to 25.8% that does not agree. 1/5 of them neither agree, nor disagree.

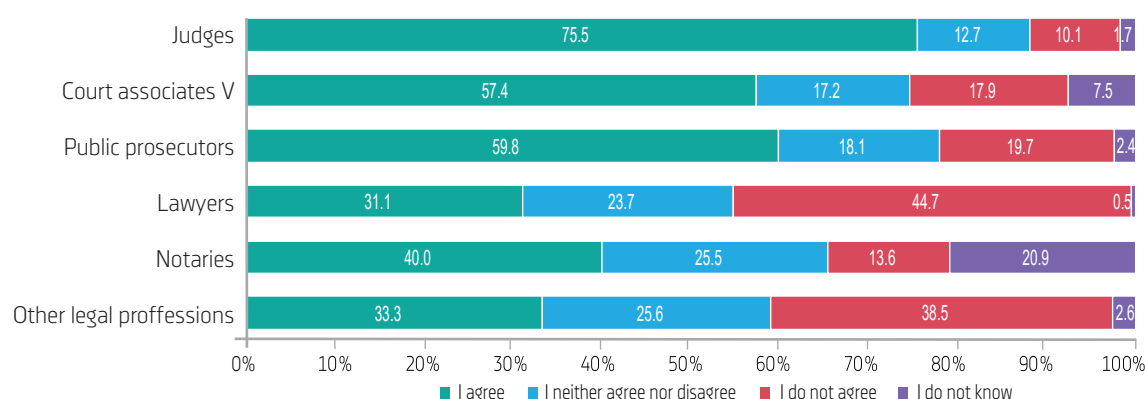
Most of the lawyers think that courts do not sufficiently invoke and comply with the case law of the European Court of Human Rights.

As for these three indicators (32, 33 and 34), through the interviews conducted with the representatives of the academic community, civil society organizations and the Academy for Judges and Public Prosecutors regarding the question: Do the courts invoke and comply with the case law of the higher courts and the case law of ECtHR, especially whether the case law established by the higher courts is complied with, the academic community thinks that the lower courts comply with the case law of the Appellate Courts more as a result of the fear of having their judgements annulled, and the case law of different appellate areas is not aligned. Regarding the case law of ECtHR, the opinion of most of the academic community respondents is that there is an improvement and that there is an interest by the judges to invoke and comply with the case law of ECtHR, but still there is an insufficient invocation of the judgements of the ECtHR in Strasbourg by the judges.

While the civil society organizations, in regard to these three indicator given through the same composite question, think that the case law is not sufficiently aligned/unified and that the same negatively impacts the legal certainty (6 of 7 interviewed persons). Only one of the interviewed persons thinks that the case law is mainly aligned. According to interviewed persons, in most of the cases, the judges comply with the directions contained in the decisions of the higher courts in the cases which have been remanded upon an appeal, sometimes even contrary to their personal conviction. As far as the compliance with the case law of the European Court of Human Rights is concerned, there is some progress, especially in the detention cases, but, the perception, however, is that it is not applied consistently and sufficiently, and most of the judges are not familiar at all with the judgements of ECtHR in which the Republic of North Macedonia is not a party in the proceedings.

While the results from the interviews with the AJPP representatives indicate that there is lack of uniformity of the case law and that there is not an established system through which the case law of the higher courts would be available to judges, because the Court practice unit, existing in each court, does not function, but the insufficient application of case law of ECtHR is also noted.

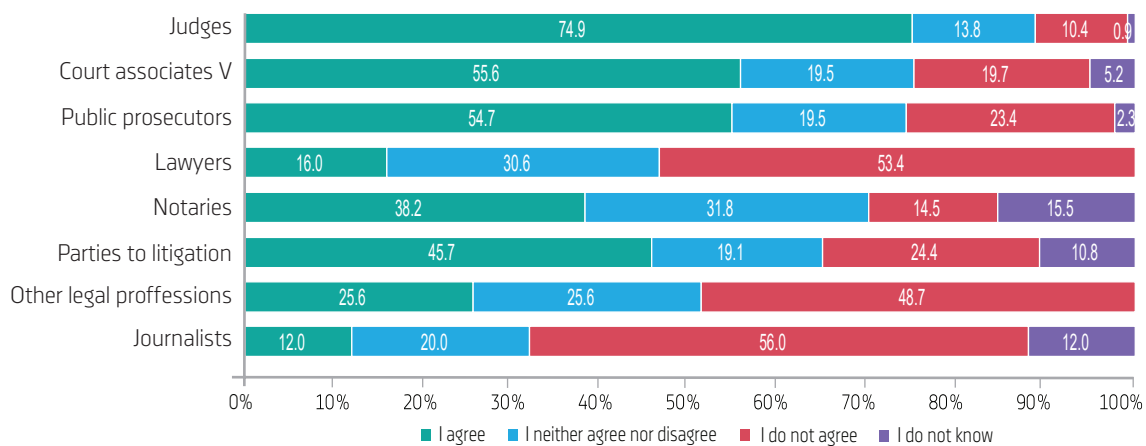
Indicator 35: The judgements and other court decisions are well-structured
Graph 35



According to this indicator, the lawyers (31.1%) and the professional legal community (33.3%) have almost the same positive response, i.e. they agree. The notaries provide their agreement by a slightly higher percentage (40%). Contrary to these target groups, we have the others, where the judges dominate by 75.5% and the public prosecutors by 59.8%. However, the lawyers, by 44.7%, do not agree, as well as the professional legal community by a slightly lower percentage (38.5%). It is important to mention that 10.1% of the judges think that judgements and other court decisions are not well-structured, i.e. they do not agree with the indicator. By a slightly higher percentage than the judges, the judicial service also does not agree by 17.9%. The public prosecutors are also on the same line, who by 19.7% do not agree with the indicator.

Majority of the respondents think that judgements and other court decisions are well-structured which is contrary to the majority of the lawyers who have the opposite opinion.

Indicator 36: The judgements and other decisions are clear, comprehensive, and well-reasoned
Graph 36



As for this indicator, there is a characteristic difference in the responses between the lawyers on one side who by 53.4% do not agree with the statement that the judgements and other decisions are clear, comprehensive, and well-reasoned, and only 16% of them agree, as opposed to the public prosecutors who by 55.6% agree, and by 23.4% do not agree. The responses of the journalists are somewhat on the same line with the ones of the lawyers who by 12% agree, and by 56% do not agree. Natural persons as parties in disputes by 45.5% agree, as opposed to 24.4% who do not agree. The judicial service by 55.6% agrees, which is less than the judges who by 74.9% agree, but by 10.4% do not agree with the statement that their judgements are clear, comprehensive, and well-reasoned.

The judgements and other decisions are clear, comprehensive, and well-reasoned according to most of the judges, but majority of the journalists and lawyers do not agree with this statement.

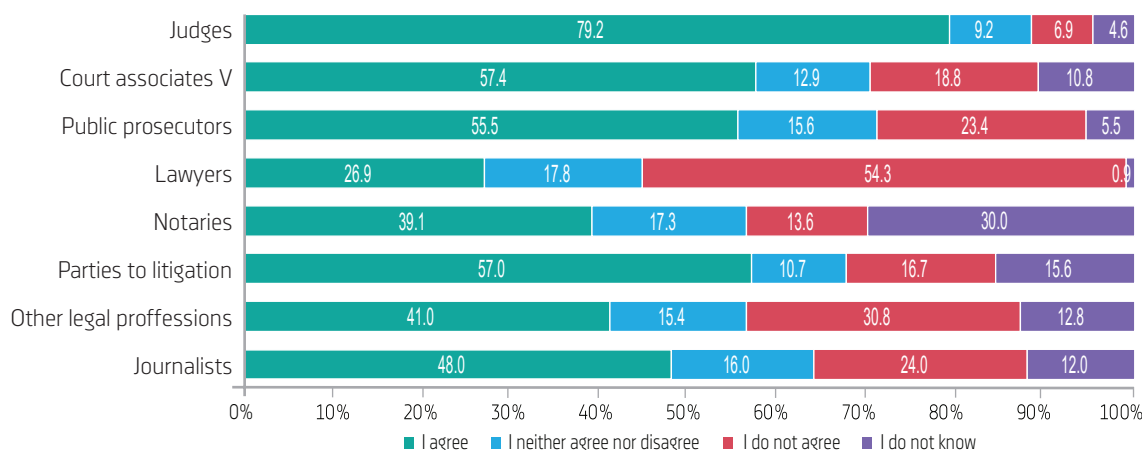
The indicators 35 and 36 were a subject to interviews with the representatives of the academic community and civil society organizations and the Academy for Judges and Public Prosecutors through the composite question: Do you think that the judgements made by courts are well-structured, clear, comprehensive and well-reasoned.

According to the academic community the need for improvement of the practice in this area is generally emphasized, especially by the fact that the judgements need to include an explanation of the factual situation, application of law, invocation to the domestic case law and the case law of ECtHR. An emphasis is placed on the need for the reasoning to be well-structured, clear and the basis of such decision should be clear during its reading.

Among the civil society organizations there are differences from court to court and from judge to judge regarding this question, but the perception which is dominant (6 of 7 interviewed persons) is that a great number of the judgements is not appropriately reasoned, they are not sufficiently clear, and there is a lack of appropriate legal argumentation.

According to the AJPP representatives, some of the decisions are well-structured, which is not the case with other decisions. According to some of them, it depends on the individual style of each judge. According to the results from the interviews, there should be an established form of a judgement which should be followed by all judges in one court, instead of having each judge to write differently the same document.

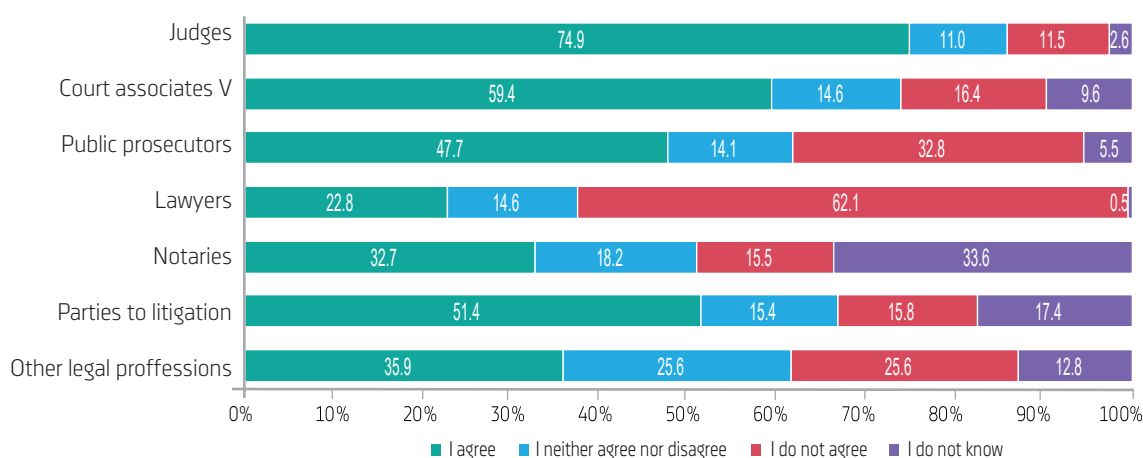
Indicator 37: The court verbally announces the judgements and other decisions in accordance with the legal deadlines
Graph 37



The verbal announcement of the decisions in accordance with the legal deadlines is part to the compliance with the procedural rules. The judges by 79.2% think that they are announced in accordance with the legal deadlines, but 6.9% of them think that it is not the case. Most of the half of the public prosecutors (55.5%) agree with the fact that judges verbally and timely announce the judgements and other decisions, similarly as the judicial service by 57.4%. Natural persons as parties in disputes agree almost identically as the judicial service by 57%. The lawyers on the other hand by more than a half (54.3%) think that courts do not do it in accordance with the legal deadlines. Almost half of the journalists think that courts timely and verbally announce the decisions (48%), but a good number of them (24%) do not agree with this statement.

Majority of the respondents think that the legal deadlines of verbal announcement are respected. This perception is not shared by majority of the lawyers and some of the other legal professions.

Indicator 38: The legal deadlines for delivering a written decision are respected
Graph 38

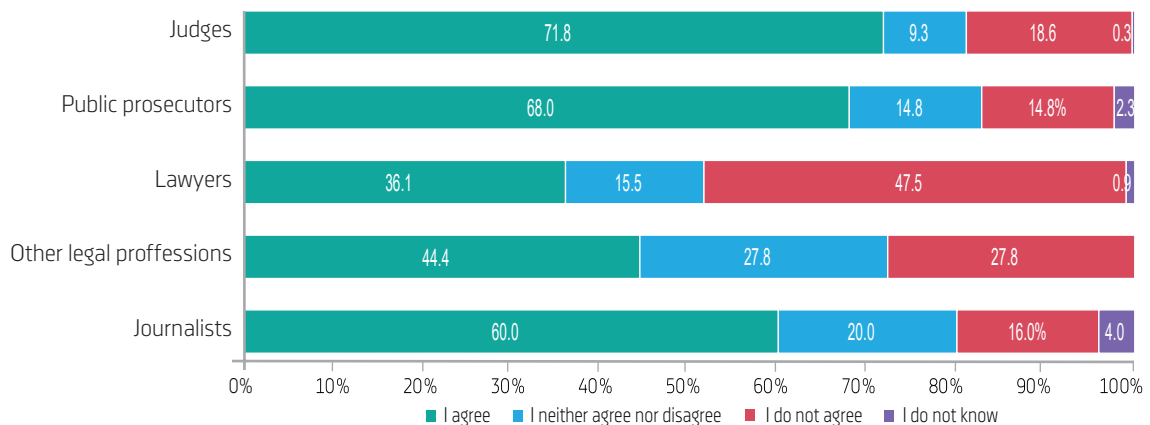


According to this indicator, most of the lawyers (62.1%) think that the courts do not respect the deadlines for delivering written decisions, as opposed to 74.9% of the judges who think that the deadlines are respected. While 11.5% of the judges think that the deadlines are not respected.

The public prosecutors also have a relatively high percentage of disagreement in regard to this indicator (32.8%), which represents almost 1/3 of this target group, as opposed to almost one half of them (47.7%) who agree. A slightly more than a half of the parties in disputes (51.4%) agree. The percentage of those who neither agree, nor disagree varies from 11% (judges) to 25.6% (other legal professions).

Majority of the lawyers and public prosecutors do not agree that the legal deadlines for delivering a written decision are respected. This opinion is not shared by the majority of the judges and the judicial service C.

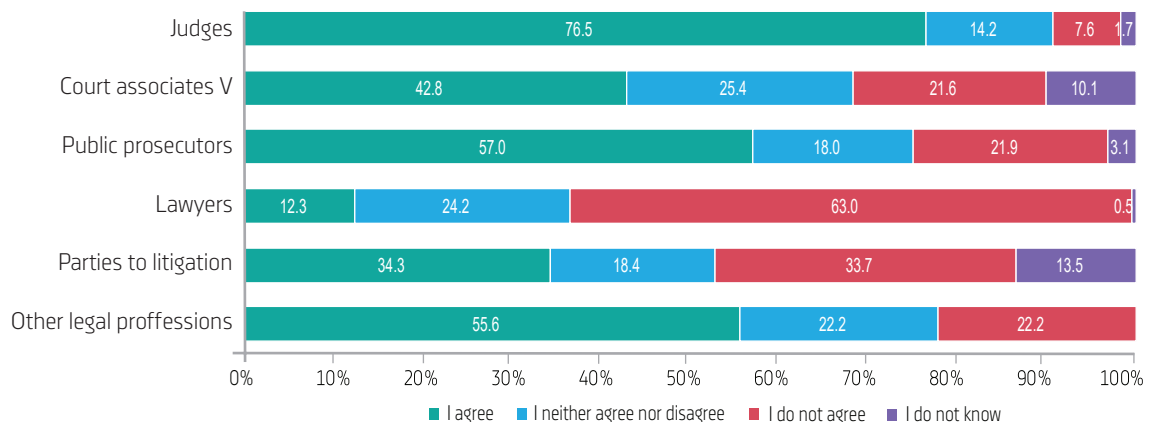
Indicator 39: The laws provide for sufficient legal remedies and mechanisms for uniform application of the law
Graph 39



It is interesting that the target groups covered by this indicator, except for the lawyers by 36.1% and the professional legal community 44.4%, more than a half of the others (judges – 71.8%, public prosecutors - 68% and journalists - 60%) agree with the fact that the laws provide for sufficient legal remedies and mechanisms for uniform application of the law. The lawyers by 47.5% do not agree with this statement. However, a certain number of judges (18.8%) and public prosecutors (14.8%), also do not agree with this statement.

Majority of the respondents think that the laws provide for sufficient legal remedies and mechanisms for uniform application of the law. On the other side, majority of the lawyers do not agree with that.

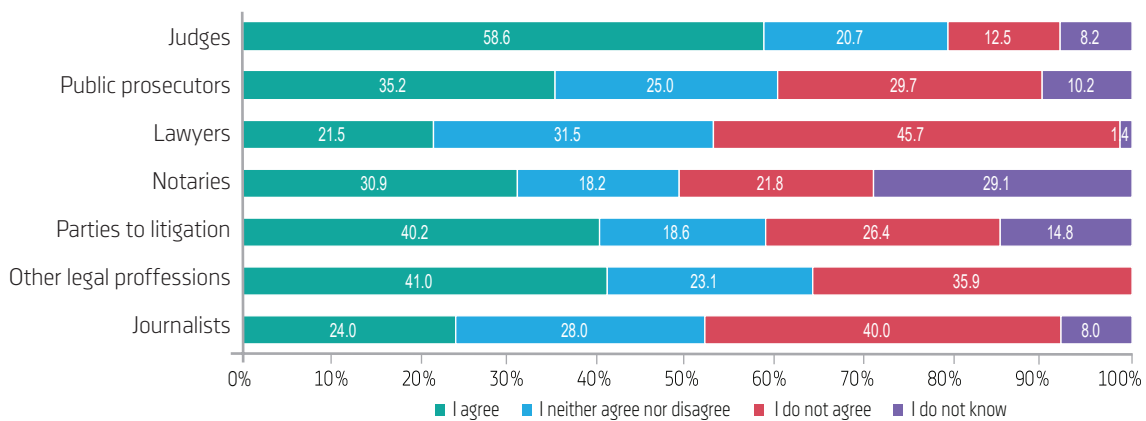
Indicator 40: The implementation of the procedure as a whole is impartial and objective
Graph 40



To the question whether the procedures as a whole are impartial and objective, almost 2/3 of the lawyers do not agree with this statement. Out of the lawyers only 12.3% think that the procedures are impartial and objective. One third of natural persons also shares the opinion with the lawyers that the procedures are not impartial and objective, and the same opinion is shared by little more than 1/5 of the public prosecutors (21.9%) and the professional community (22.2%). Contrary to such negative perceptions, 76.5% of the judges and 57 % of the public prosecutors agree with the indicator. However, 7.6% of the judges think that procedures as a whole are not impartial and objective, while 14.2% neither agree, nor disagree.

Majority of the judges think that the implementation of the procedure is impartial and objective, but this perception is not shared by the majority of the lawyers and some of the parties in disputes.

Indicator 41: The judgements and decisions are enforced in an efficient manner
Graph 41

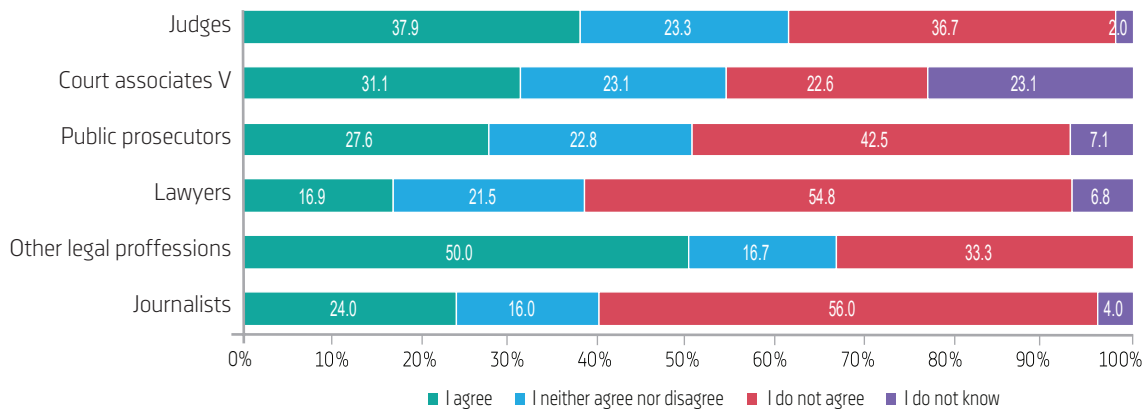


Except for the judges with more than half of the respondents (58.6%), all other target groups think within a range from 21.5% lawyers to 41% other legal professions that the judgements are efficiently enforced. However, 40% of the journalists and even 45.7% of the lawyers think that it is not the case. The natural persons by 35.9% also do not agree with the indicator. It is interesting that 29.7% of the public prosecutors do not agree as well, while the professional legal community also expresses a disagreement by a high percentage (35.9%).

The opinion of the respondents about the efficient enforcement of the court decisions is divided. Majority of the judges think that they are enforced in an efficient manner, while a significant number of the lawyers and journalists do not agree.

C) Sub-area: Court competences and safeguards

Indicator 42 - The Supreme Court ensures uniform application of the law
Graph 42

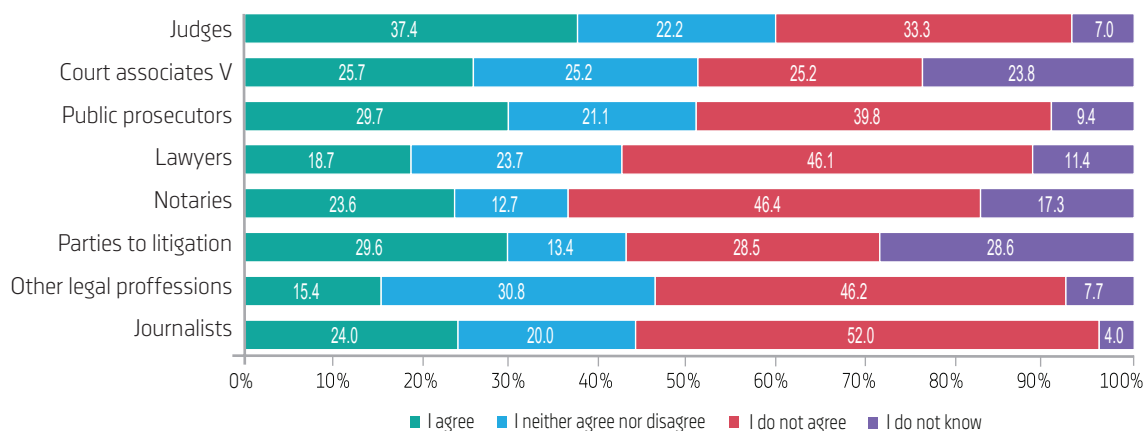


As for this indicator, almost a same number of judges agree (37.9%) and do not agree (36.7%). The other 23.3% nether agree, nor disagree. It is interesting that 42.5% of the public prosecutors and 54.8% of the lawyers do not agree with the statement that the Supreme Court ensures uniform application of the law. 56% of the journalists also do not agree, as opposed to 24% who agree with the indicator. One half of the professional legal community agrees (50%), as opposed to the one third which does not agree (33.3%).

Most of the journalists, lawyers and public prosecutors think that the Supreme Court does not ensure uniform application of the law. The opinion of the judges is divided in regard to this question.

Indicator 43: The Constitutional Court effectively decides on the constitutionality of laws and other acts and these decisions are enforced

Graph 43

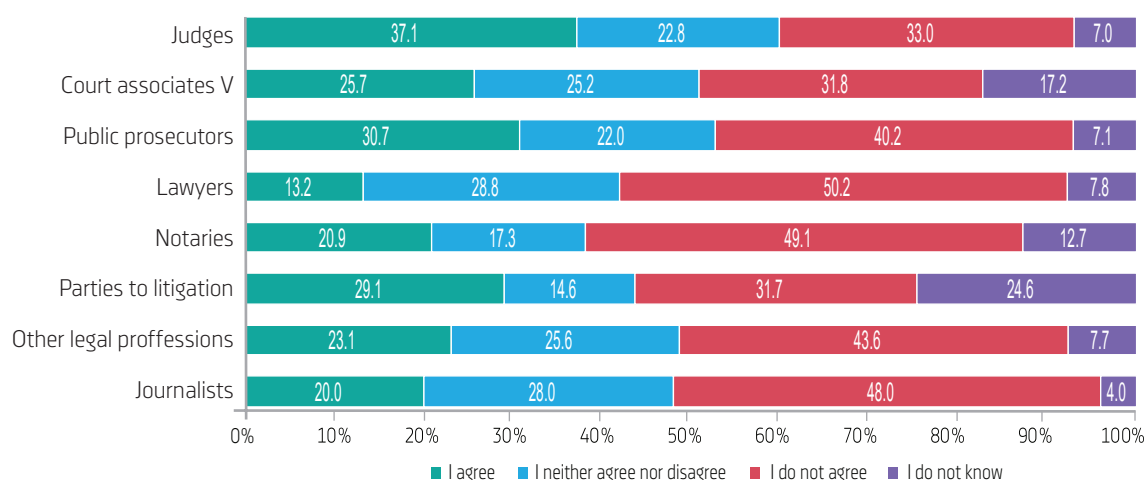


Most (37.4%) of the target groups (judges) think that the Constitutional Court effectively decides within its competences and its decisions are enforced. All the other target groups agree in a smaller percentage than this (public prosecutors 29.7%, parties in disputes 29.6%, journalists 24%, and a smallest number of lawyers agree with this statement (18.7%). Contrary to the agreement, more than half of the journalists do not agree (52 %), one third of the judges (33.3%), and a good number of the lawyers (46.1%), public prosecutors (39.8%) and notaries (46.4%) do not agree as well.

According to most of the respondents, the Constitutional Court does not effectively decide on the constitutionality of laws and does not enforce the decisions.

Indicator 44: The Constitutional Court provides effective and efficient protection of civil rights and freedoms

Graph 44

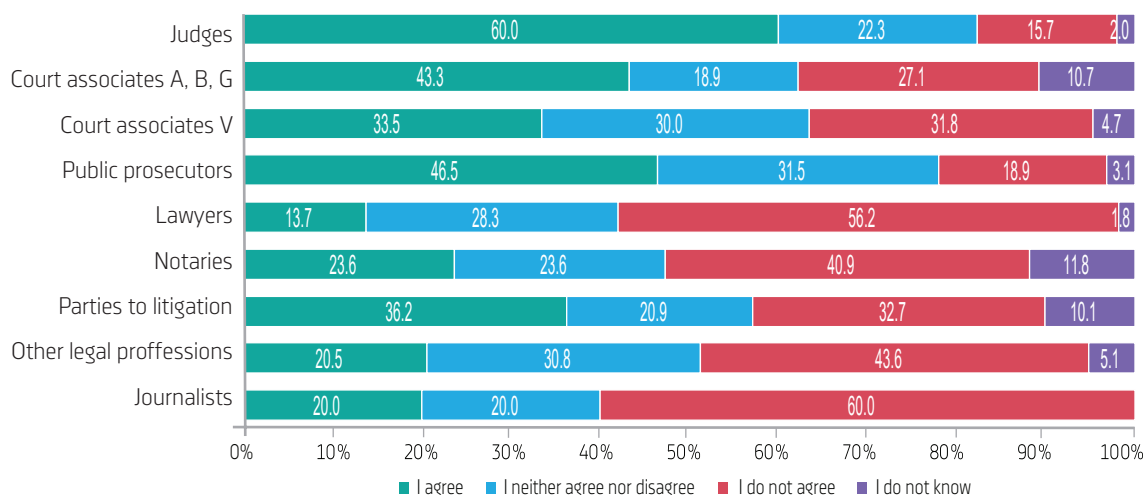


According to the target groups, only the judges who by a small percentage are more of those who agree (37.1%) as opposed to those who do not agree (33%), for all the other target groups dominates the disagreement with the statement that the Constitutional Court of RNM provides efficient protection of civil rights and freedoms. Thus, half of the lawyers (50.2%), 49.1% of the notaries, 48.9 % of the journalists, 40.2% of the public prosecutors, 31.8% of the judicial service, 31.7% of the natural persons do not agree.

According to most of the respondents the opinion that the Constitutional Court does not provide effective and efficient protection of civil rights and freedoms is dominant.

Indicator 45: The courts provide effective and efficient protection of human rights and freedoms

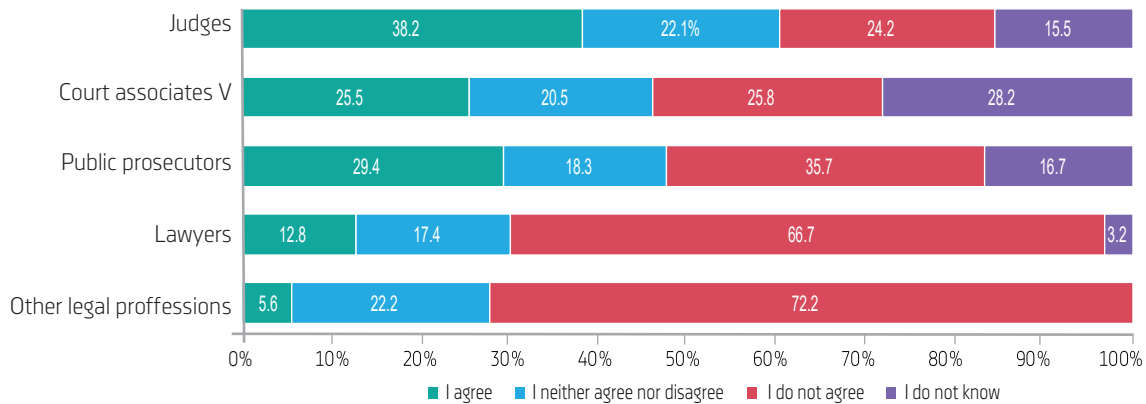
Graph 45



According to this indicator 60% of the judges think that they provide effective and efficient protection of human rights and freedoms. While contrary to that, the same percentage of journalists do not agree, and a slightly lower percentage of disagreement is present among the lawyers (56.2%). Almost one third of the natural persons as parties in disputes (32.7%) also express disagreement. Besides these target groups, a great percentage of disagreement is present among the notaries (40.9%) and the professional legal community (43.6%).

Most of the journalists, lawyers, notaries and other legal professions think that the courts do not provide effective and efficient protection of human rights and freedoms. The public prosecutors and the judicial service C have an opposite opinion.

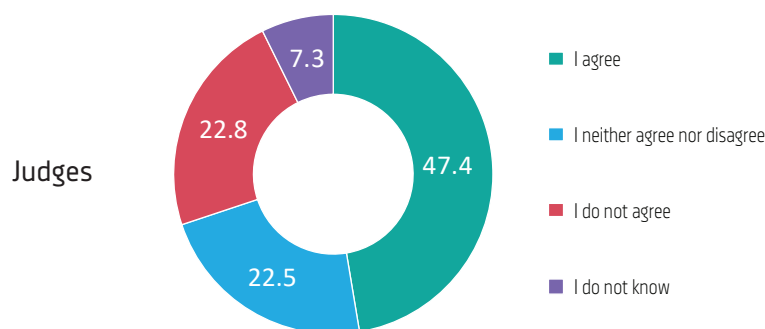
Indicator 46: The judiciary decides on the merits in administrative matters
Graph 46



According to this indicator which refers to the meritorious decisions within the administrative judiciary, even 72.2% of the professional community has expressed a disagreement with this statement. The lawyers take the second place based on number of respondents who as a target group also do not agree, i.e. 2/3 of them (66.7%). The judicial service almost both equally agrees (25.5%) and disagrees (25.8%). It is interesting that almost one fourth of the judges, i.e. 24.2%, do not agree with the indicator.

Most of the lawyers and other legal professions think that the judiciary does not decide on the merits in administrative matters.

Indicator 47: The judicial immunity is respected for actions taken within the framework of the performance of official duties
Graph 47



To the question about the respect of the judicial immunity for actions taken within the framework of the performance of official duties, almost half of the judges think that it is respected. However, 22.8% do not agree, and 22.5% neither agree, nor disagree.

Almost half of the judges think that the judicial immunity is respected for actions taken within the framework of the performance of official duties.

2. LEGAL FRAMEWORK, KEY PRINCIPLES, STANDARDS, AND PRACTICES: AREA OF QUALITY OF JUDICIAL JUSTICE

2.1 LEGAL FRAMEWORK

Article 6 of the European Convention on Human Rights does not only mean a formal administration of justice by ensuring the right to a trial before a court established by law. The right to a fair trial is closely related with the quality of judicial justice, which reflects the quality of court proceedings, court decisions, and their efficient enforcement.

One of the most relevant criteria that determines the quality of judicial justice is the manner of reasoning of court decisions. The case law of the European Court of Human Rights on several occasions establishes clear requirements and standards in relation to this issue. The guarantees established by Article 6, paragraph 1 of the ECHR also include the duty of the courts to provide a satisfactory reasoning of their decisions (*H. v. Belgium*, § 53).³⁴ The decision, which is well-reasoned, shows the parties that their case has been really heard by the court.

Although the domestic courts may be limited in the choice of arguments and the evidence on which they base their decision, they are nevertheless obliged to elaborate their actions by explaining the reasons for the decision being made (*Suominen v. Finland*, § 36).³⁵ The given reasoning should allow the parties to effectively use the anticipated legal remedies (*Hirvisaari v. Finland*, § 30 in fine).³⁶ Article 6, paragraph 1 of ECHR obliges the domestic courts to explain their decisions, however it does not mean that they have to give a detailed response to all separately stated arguments (*Van de Hurk v. the Netherlands*³⁷, § 61; *García Ruiz v. Spain* [GC], § 26³⁸; *Jahnke and Lenoble v. France* (déc.)³⁹; *Perez v. France* [GC], § 81⁴⁰). The domestic courts have to compulsorily evaluate and explain: 1) the main arguments of the parties (*Buzescu v. Romania*, § 67⁴¹; *Donadzé v. Georgia*, §35⁴²); and 2) the requirements concerning the rights and freedoms guaranteed by the ECHR and the Protocols: the domestic courts are obliged to evaluate these requests with special care and attention (*Wagner and J.M.W.L. v. Luxembourg*, § 96).⁴³

The quality of judicial justice also depends heavily on the fact whether the case law is harmonized or inconsistent. Although Article 6, paragraph 1 of ECHR does not explicitly provide for the right to a harmonized case law of the domestic courts to which a citizen may refer to, however, in several cases, the European Court of Human Rights found a violation of this article of ECHR due to the large differences in the decisions of the domestic courts in similar cases. The attitude of the ECtHR differs on the basis of whether it is about differences in the case law of the same instance, or it is about case law of different instances that are completely independent of each other. When for similar cases, there are visibly different decisions made by the only Supreme Court of the country or by a number of courts which adjudicate in the highest or final instance, such inconsistent and non-compliant decisions may create legal uncertainty and reduce the confidence of citizens in the judiciary, which is, in fact, one of the most important components of rule of law.

34 European Court of Human Rights, *H. v. Belgium*, no. 8950/80, § 53, 30 November 1987

35 European Court of Human Rights, *Suominen v. Finland*, no. 37801/97, § 36, 1 July 2003

36 European Court of Human Rights, *Hirvisaari v. Finland*, no. 49684/99, § 30, 27 September 2001

37 European Court of Human Rights, *Van de Hurk v. the Netherlands*, no. 16034/90, § 61, 19 April 2004, Series A no. 288

38 European Court of Human Rights, *García Ruiz v. Spain* no. 30544/96, § 26, 21 January 1996

39 European Court of Human Rights, *Jahnke and Lenoble v. France*, [December] no. 40490/98, ECHR 2000-IX

40 European Court of Human Rights, *Perez v. France* [GCC], no. 47287/99, § 81, 12 February 2004

41 European Court of Human Rights, *Buzescu v. Romania*, no. 61302/00, § 67, 24 May 2005

42 European Court of Human Rights, *Donadzé v. Georgia*, no. 74644/01, § 35, 24 May 2005

43 European Court of Human Rights, *Wagner and J.M.W.L. v. Luxembourg*, no. 76240/01, § 96, 28 June 2007

The European Court of Human Rights determines the existence of such legal uncertainty case by case, on the basis of three main criteria: 1) whether the differences in the case law are profound and durable; 2) whether the domestic law provides for mechanisms to overcome such non-compliance, and 3) whether those mechanisms are being implemented and to what extent. The states are obliged to organize their legal system by avoiding making different decisions on similar cases and by resolving the serious contradictions through appropriate legal remedies (*Beian v. Romania* (no. 1), §§ 37 и 39⁴⁴; *Nejdet Sahin and Perihan Şahin v. Turkey* [GC], §§ 56-57 и 80⁴⁵). An additional criterion that the ECtHR takes into consideration when deciding on these cases is whether the non-compliance is an isolated case or it refers to a greater number of persons (*Albu and Others v. Romania*, § 38).⁴⁶

In the Opinion No. 17 (2014) of the Consultative Council of European Judges (CCJE)⁴⁷ in regard to the evaluation of judges' work, quality of justice, and respect for judicial independence, Point 4, the following is highlighted: "Judges perform indispensable duties in each democratic society that respects the rule of law. Judges must protect the rights and freedoms of all persons equally. They must take all the necessary measures to provide efficient and acceptable dispute resolution and make timely and independent decisions in individual cases, and at the same time they should depend on the law and comply only with the law. The judges must give convincing and indisputable reasoning of their decisions, and they must write the judgements in a clear and comprehensive manner. Moreover, all binding court decisions must also be enforced effectively. Judicial independence does not mean that judges are not accountable for their work. CCJE has laid emphasis on maintaining and improving the quality and efficiency of judicial systems in the interest of all citizens. Where it exists, the individual evaluation of judges' work should aim at improving the judiciary, while guaranteeing the highest work quality possible. Such activity must be done in the interest of the public as a whole."

Furthermore, the conclusions of this document outline the following things: external indicators on which the quality of judicial decisions depends include the quality of the laws adopted by the legislative authorities. It is therefore important that the national Assemblies evaluate and monitor the impact of the laws in force and the draft laws on the judicial system. The quality of decision-making depends on the human, financial, and material resources allocated to each judicial system, as well as on ensuring financial security for each judge in that system. The quality of legal education and training of judges and other jurists are crucial in ensuring high quality court decisions. It is also important to provide judges with training in issues outside the legal field and to train court employees in order to relieve the judges from administrative and technical obligations and to enable them to focus on the intellectual aspects of decision-making.

The request for court decisions to be well-reasoned is also part of the conclusions and recommendations of this document: "the court decisions must in principle be well-reasoned. Their quality depends mainly on the quality of the reasoning. The reasoning may include an interpretation of the legal principles and care to always ensure legal certainty and consistency. However, when the court decides to depart from the previous common law, it should be clearly mentioned in the decision."

In the Opinion No. 13 (2010) of Consultative Council of European Judges (CCJE)⁴⁸ on the role of judges in the enforcement of court decisions, the conclusions state: ("The effective enforcement of a binding court decision is a fundamental element of the rule of law. It is essential to ensure the public trust in the judiciary authority. The judicial independence and the right to a fair trial is in vain if the decision is not enforced... There should be no postponement of the enforcement procedure, except on grounds prescribed by law. Any

44 European Court of Human Rights, *Beian v. Romania* (no. 1), no. 30658/05, § 37 and § 39, 6 December 2007

45 European Court of Human Rights, *Nejdet Sahin and Perihan Şahin v. Turkey* [GC], § 56-57 and 80, no. 13279/05

46 European Court of Human Rights, *Albu and Others v. Romania*, no. 34796/09, §38, 10 May 2012

47 Opinion n°17 (2014) of the Consultative Council of European Judges of the Council of Europe for the Committee of Ministers on the evaluation of judges' work, the quality of justice and respect for judicial independence

48 Opinion no. 13 [2010] of the Consultative Council of European judges of the Council of Europe for the Committee of Ministers of the Council of Europe on the role of judges in the enforcement of judicial decisions;

deferral should be a subject to judge's assessment. The enforcement agents should not have the power to challenge or vary the terms of the judgement...) CCJE considers that, in a state governed by the rule of law public entities are above all bound to respect court decisions, and to enforce them rapidly ex officio. The very idea of a state body refusing to obey a court decision undermines the concept of primacy of the law."

One of the recommendations of the report of the European Commission⁴⁹, DG Neighbourhood Policy and Enlargement Negotiations: Urgent Reform Priorities for the Republic of Macedonia and recommendations from the Senior Experts' Group (June, 2015) reads: „ensure swift enforcement of all ECtHR judgements against the country (in particular by developing practical and effective measures for each category of cases).“⁵⁰

In the domestic law, the manner of delivering court decisions, their content as well as the manner of their enforcement are regulated by the provisions of the Law on Courts⁵¹, Criminal Procedure Law⁵², the Law on Litigation Procedure⁵³, the Law on General Administrative Procedure⁵⁴ and other. In regard to the compliance with the case law, the Constitution of RNM, in Article 101, stipulates that the Supreme Court of the Republic of North Macedonia is the highest court in the Republic and ensures the unity in the application of laws by the courts. In order to provide better harmonization of the case law in different regions of RNM, a special Law for determining the type and the amount of penalty has been adopted. However, from the annual reports of the Supreme Court of RNM and from other analyses related to this issue, it is evident that there are serious problems in relation to the harmonization of the case law in the Republic of North Macedonia.

In regard to the implementation of the decision of the European Court of Human Rights in the domestic law, it should be taken into consideration that according to the domestic laws, the parties concerned should file a request for repetition of the procedure (Article 400 of LLP⁵⁵ and Article 392 of CPL⁵⁶), in cases when the European Court of Human Rights with a decision establishes a violation of any human right or fundamental freedom. If the party concerned does not file a request for repetition of the procedure, then it is not possible to initiate a new procedure ex officio in which there would be an opportunity to correct the violations of human rights that have been committed in the specific court procedure.

Within this context, the Supreme Court explains that there is a small percentage of cases requiring a repetition of the procedure when the European Court of Human Rights with a decision establishes a violation of certain human right or fundamental freedoms provided for in the European Convention for protection of fundamental human rights and freedoms and in the Additional Protocols to the Convention (the Supreme Court of the Republic of North Macedonia, the Role of the Supreme Court in Ensuring Unity in Enforcement of Laws).

49 European Commission [2018], the former Yugoslav Republic of Macedonia 2018 Report [18 April 2018]: page 18, available at: <https://goo.gl/F9WfZB>

50 European Commission [2015], Urgent reform priorities for the Republic of Macedonia and recommendations of the high-level group of experts, Point 1, Rule of Law and Judiciary

51 Articles 6, 13, 15, 16, 18 and 99 of the Law on Courts (Official Gazette of the Republic of Macedonia no. 58/06, 150/10, 35/08, 61/08, 118/08, 16/09, 150/10, 39/12, 83/18, 198/18)

52 Articles 405, 407, 408, 410, 411, 439, 440, 446, 449, 457 and 463 of the Law on Criminal Procedure ("Official Gazette of the Republic of Macedonia" no. 150/2010, 100/2012, 142/2016, 198/2018)

53 Articles 324, 325, 326, 327, 337, 338, 368, 372 and 392 of the Law on Litigation Procedure ("Official Gazette of the Republic of Macedonia" no. 79/2005, 110/2008, 83/2009, 116/2010 and 124/2015)

54 Articles 28, 29 and 30 of the Law on General Administrative Procedure ("Official Gazette of the Republic of Macedonia" no. 124/15)

55 Article 400 of the Law on Litigation Procedure ("Official Gazette of the Republic of Macedonia" no. 79/2005, 110/2008, 83/2009, 116/2010 and 124/2015)

56 Article 392 of the Law on Criminal Procedure ("Official Gazette of the Republic of Macedonia" no. 150/2010, 100/2012, 142/2016 and 198/2018)

2.2 DATA FROM DOMESTIC INSTITUTIONS

Evaluations and conclusions of the work of the courts for 2017 of the Supreme Court of Republic of Macedonia⁵⁷

According to Evaluations and conclusions of the work of the courts for 2017 of the Supreme Court of Republic of Macedonia, as of 29.10.2018, even though the quality is mentioned, there are no more detailed data about how the quality of court decisions is measured. The quality, according to this Report, is expressed through the ratio between the received and resolved cases, and often through the number of confirmed judgements, as opposed to number of annulled i.e. reversed judgements, based on legal areas as parameter on which we can make a conclusion on the quality. However, it has been noted that there is no more detailed referral to the quality, except for the given indicators.

Report on the work of the Supreme Court of the Republic of Macedonia for 2017⁵⁸

According to the Report on the work of the Supreme Court of the Republic of Macedonia for 2017, the emphasis is given to the harmonization of the court practice, i.e. unified application of the laws.

The court practice, as an attribute to the legal certainty, i.e. quality of judicial justice, is covered in this report, in order to ensure horizontal and vertical harmonization of the court practice, i.e. achievement of the primary objective – ensuring unity in the application of the laws by the courts. It would be especially good to note that through the Court Practice Unit, the Supreme Court of the Republic of North Macedonia is included in the Superior Courts Network through which it communicates with the European Court of Human Rights in Strasbourg for certain legal issues⁵⁹ which certainly contributes to the increase of the quality of court decision-making.

Annual report on the work of the Judicial Council of the Republic of Macedonia for 2017⁶⁰

According to what is stated in the section of this annual report concerning the evaluation of the work of judges in the Republic of North Macedonia in regard to the quality and efficiency of their work, as well as other issues regarding the achievement of independence and autonomy of the judiciary in the work of the judges in the Republic of North Macedonia, the Judicial Council of RNM provides quantitative indicators about the number of received and resolved cases in the courts for all courts, all appellate courts, and of the Supreme Court of RNM, however without a special referral to the quality, i.e. the content of court decisions. The same is the guideline for the activities for improvement of the quality of the work,⁶¹ which rely on transparency, effectiveness and efficiency, accountability, without having closely planned activities for monitoring of the quality, i.e. it is identified in some way with the other attributes of the judiciary (independence, transparency, efficiency).

The conclusions and recommendations in this document do not refer specifically to the quality as well.⁶²

57 Supreme Court of the Republic of North Macedonia (2017) Evaluations and conclusions on the work of courts for 2017 by the Supreme Court of the Republic of Macedonia: available at <https://goo.gl/shu9ws>;

58 Report on the work of the Supreme Court of the Republic of Macedonia for 2017, page 23

59 Ibid.

60 Annual Report on the work of the Judicial Council of the Republic of Macedonia for 2017, page 15 et seq.

61 Ibid page 15, available at: <https://bit.ly/2GVBaAd>

62 Annual Report on the work of the Judicial Council of the Republic of Macedonia for 2017, page 40 et seq, available at: <https://bit.ly/2GVBaAd>

Strategy for reform of the judiciary sector for the period 2017-2022 with an Action plan of the Ministry of Justice of the Republic of Macedonia⁶³

According to the Strategy for reform of the judiciary sector for the period 2017-2022 with an Action plan of the Ministry of Justice of the Republic of North Macedonia, the quality of the judicial justice, the development of a system of autonomous, independent and impartial judiciary and institutions that gravitate towards the achievement of its function of effective, quality and equitable justice is a central postulate of the principle of rule of law of the humane and sustainable development of the Macedonian society as a community based on the right legitimized by respecting the highest general civilization values.

The Strategy notes that the results achieved in the field of judiciary efficiency remain overshadowed by its impaired independence resulting in a low degree of quality and distrust of citizens in the institutions of the judiciary system.

Among other things, this Strategy has included as an objective, the re-examination of the system for evaluation of the quality and efficiency of the work of judges and public prosecutors.⁶⁴ In this direction, the Strategy notes that „in order to align the case law, the Supreme Court should fulfil its constitutional obligation by establishing principle views and principle legal opinions. It is necessary to emphasize this role and competence of the Supreme Court in providing appropriate safeguards for greater uniformity of the case law and clarity and predictability of court judgements due to a greater legal certainty of citizens.”

Furthermore, the Strategy notes that “Regarding the assessment of the quality of the work and the procedure for promotion of judges and public prosecutors, the existing regulations do not provide objective criteria and definition of accurate and precise procedures. The evaluation system has to be aimed at promoting the quality of the court decisions and that the Judicial Council elects and announces the promoted judges (elected in a higher court) without providing any specific arguments and without providing the reasons why judges are considered to be the best.”⁶⁵

In the section for the Strategic guidelines of the Strategy concerning the quality, there is a recommendation for harmonization of the case law through an increased number of trainings of judges within the AJPP in analysis of the announced court decisions, but also for review of the criteria for evaluation by using comparative good practices and experiences. The evaluation should primarily be based on new objective quantitative and qualitative criteria and it should focus on the professional skills, capability, integrity and experience: professional ability (knowledge of the law, ability to conduct court proceedings, capacity to write well-reasoned judgements), personal ability (ability to deal with assigned number of case for handling, ability to decide, openness to accept new technologies), social skills, i.e. ability to mediate and show respect for parties and, in addition, to possess leadership ability and skills for those in positions where they are required.⁶⁶

What is more important, in the section on quality, this document emphasizes the lack of qualitative criteria for evaluation and the reliance on quantitative criteria only.⁶⁷

63 Strategy for reform of the judicial system for the period 2017 – 2022 with an Action Plan, Introduction, available at: <https://goo.gl/cKpqG>

64 Ibid. page 7

65 Ibid. page 11

66 Strategy for reform of the Judicial System for the period 2017 – 2022 with an Action Plan, Introduction, available at: <https://goo.gl/cKpqG>

67 Strategy for reform of the judicial system for the period 2017 – 2022 with an Action Plan of the Ministry of Justice of the Republic of North Macedonia, page 11

Annual report on the implementation of the Strategy for reform of the judiciary sector for the period 2017-2022

According to the annual report for 2018 of the Ministry of Justice of RNM, on the implementation of the Strategy for reform of the judiciary sector for the period 2017/2022 which also refers to the quality, it seems that the harmonization of case law is a priority,⁶⁸ as part of the strategic guidelines established by this document, by mentioning the joint meetings of the Appellate Courts and the Supreme Court of RNM. Thus, the other sections of the document, the strategic guidelines which have something in common with and most directly impact the quality predict:

>>>Review of the criteria for evaluation of judges and public prosecutors, whereas the qualitative criteria should be dominant.⁶⁹

>>>Equitable acting by strengthening the rights to defence and protection of human rights in criminal proceedings.⁷⁰

>>>Compensation to victims of crime.⁷¹

>>>More frequent meritorious decision-making of the Administrative Court, i.e. deciding in a dispute of full jurisdiction.⁷²

Сите овие стратешки насоки укажуваат на **исклучителната важност која се придава на квалитетот на судската правда и согледаната состојба со квалитетот и што е уште поважно нејзиното следење и изразување преку индикатори.**

68 **Strategic guideline 2.2.1, Harmonization of judicial practice**

In 2018, two meetings of the Appellate Courts and the Supreme Court took place aimed at harmonization of judicial practice (12 and 13 April 2018 in Struga and 5-7 December 2018 in Strumica). During the reporting period, the Academy for Judges and Public Prosecutors held a total number of three working meetings where the Appellate Courts and the Supreme Court for the harmonization of judicial practice, with the participation of 72 participants. The regular publishing of the judicial decisions on the judicial portal www.sud.mk, continued.

69 **Strategic guideline 2.2.2, Revision of the criteria for evaluation of judges and public prosecutors**

The draft Law for the Judicial Council of the Republic of Macedonia, which is in parliamentary procedure, completely revises the system for evaluation of judges, where qualitative outnumber quantitative criteria in evaluation 60% to 40%. These changes have been completely aligned with the Venice Commission.

70 **Strategic guideline 5.1.2: Equitable processing with strengthening of rights to defense and protection of human rights in the criminal procedure**

A new text has been prepared for the Law on Criminal Procedure that is aligned with the latest European directives in the relevant area (Directive 2012/29/EU for establishing minimum standards on the rights, support and protection of victims of crime; Directive 2016/343 of the European Parliament and of the Council of 9 March 2016 on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings; Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty; Directive 2012/13/EU on the right to information in criminal proceedings; Directive 2010/64/EU on the right to interpretation and translation in criminal proceedings; Directive 2016/800/EU on procedural safeguards for children who are suspects or accused persons in criminal proceedings). In addition, the draft law specifies the provisions for determining, extension and revocation of the measure of detention in accordance with the practice of the European Court of Human Rights. The matter concerning the victim of crimes is also additionally regulated.

71 **Strategic guideline 5.1.3: Compensation for victims of crimes**

A working version has been drafted for a new Law for Payment of Monetary Compensation to Victims of Crimes. It will enter the Governmental procedure as soon as the inter-sectoral consultation is concluded.

72 **Strategic guideline 5.2.3: More frequent meritorious decision-making of the Administrative Court, i.e. deciding in a dispute of full jurisdiction**

For the purpose of having more frequent public hearings and decisions taken on the merits by the Administrative Court, the Law outlines an obligation to hold a public hearing strictly limiting the exception from such obligation. The flow of the public hearings is clearly and accurately outlined. In principle, the Court decides in full jurisdiction, meaning that if it finds that the disputed administrative act is unlawful it will adopt the claim with a judgement, cancel the disputed individual administrative act and take its own decision on the administrative matter (judgement in a dispute of full jurisdiction), in which case the judgement completely replaces the cancelled individual act. Should the Court find that the public body did not adopt an individual act it should have adopted pursuant to the relevant regulations, it shall adopt the claim by the judgement and decide upon the administrative matter on its own. By way of exception, the Court shall cancel the disputed individual administrative act and return it to the first instance to the body that initially adopted it, in case: if the administrative body decided upon its own discretion, or if the nature of the administrative matter did not allow for taking a decision of full jurisdiction, i.e. if it cannot fully ascertain the facts on the substantial issues and the factual situation is yet to be determined in the administrative procedure. Should the Court find that the disputed administrative act had been adopted by a body lacking the competence for such, it shall declare such act as null with the judgement. Should the Court cancel the administrative act and return the case to the body that adopted the administrative act, it shall order that body in the judgement to adopt an individual act within 15 days from the day the decision is final. The body is thereby obligated by the legal opinion of the Court with regard to the application of material law and its positions pertaining to the procedure. In the judgement, the Court shall also decide on the pecuniary claim or the claim for returning of objects, within the claim of the case.

2.3 DATA FROM INTERNATIONAL REPORTS

European Commission for the Efficiency of Justice (CEPEJ) – Monitoring of the Quality of Justice⁷³

According to this report, adopted on 7 December 2016, on the 28 plenary meeting of the CEPEJ, the term “quality” possesses a very broad meaning. If the “ordinary” definition of quality is overcome, it is necessary to accept the method of classification of the level of quality required, at which point we enter the area of “monitoring of quality”. According to CEPEJ, there are two methods of measuring quality. The first one is whether the subject of measuring is compliant with predefined indicators (compliance with the demands), and the second one measures it with deviations recorded by the consumers, between their expectations and what they received. All of this means that there must be two fulfilled conditions to begin measuring quality:

- >>>Existence of (pre)defined quality parameters;
- >>>Existence of fixed quality standards.⁷⁴

According to this report, the interest in **statistical data for the court performances** comes from the following elements:

- >>>There should be **sources of information from various aspects of the judiciary**, collected through scientific and analytical methods;
- >>>Data of **high degree of social and economic utility**, keeping in mind the importance of the court procedures in people's lives, families, business and their relations with each other;
- >>>Are **instruments used by international bodies** to measure the systemic efficiency of a certain state, to guarantee the efficient implementation of the reforms, and in particular, display an objective measurement of the level of respect for human rights;
- >>>Are a **fundamental instrument for the organization and functioning** of the judiciary.⁷⁵

What is interesting about measuring the quality of the processes and decisions is that, according to this report, it should be clarified that the measuring method does not comment on the merits of the decisions and does not have the purpose of applying peculiar algorithms, which would be used to measure the inherent quality of the judges' decisions. Still, the possibility of measuring what is at the contours of the decisions and what could decrease their quality is not excluded. For this reason, the methodology that this report proposes holds the purpose of being applied to a high number of elements of “justice as service”, which are complementary with the deciding process.⁷⁶ In conclusion, **the measuring of the quality is necessary and has to be an all-encompassing process that cannot be isolated from the remaining parameters: efficiency, transparency, independence etc., but instead complement them, as well as be a part integral to the meaning of the remaining parameters.**

73 The European Commission for the Efficiency of Justice (CEPEJ) European judicial systems Efficiency and quality of justice 2018 report; Available at: <https://goo.gl/Ytjt7k>;

74 The European Commission for the Efficiency of Justice (CEPEJ) European judicial systems Efficiency and quality of justice 2018 report- Measuring of the Judicial Justice adopted on 7 December on CEPEJ 28th plenary session, par. 1

75 Ibid, par.4

76 Ibid, par.21

The European Commission's Report on the Progress of the Republic from 2018

The EC's Progress Report on the Republic of North Macedonia for 2018 notes the need for increasing of the quality and the searchability of the courts' portal for access to judicial justice. However, in relation with this matter, progress is required with regard to the information made available by these databases and which vary based on the court and their consistency, including regarding the present statistical data. What is particularly important is that this report notes that **there is no further progress in the improvement of the reasoning in the court decisions**. Furthermore, although the urgent reform priorities encourage addressing the European Court of Human Rights, this has not been the case.

Opinion of the Venice Commission on the Law for Amendment of the Law on the Judicial Council and the Law for Amendment of the Law on Courts from 2018.⁷⁷

Although not directly, through the method of monitoring judges, the Venice Commission provides its own view of the quality of judicial justice. According to this Commission's report, in the sense in which they are defined in the evaluation process, vary across Europe. What value is attributed to various elements depends on the priorities set by the legislation. For example, is the system is prone to chronic stagnation, productivity will be attributed greater weight ahead of other factors.⁷⁸ However, the Venice Commission further recommends, as general advice, **that the evaluation of the work of the courts not rely on the levels of productivity and missed deadlines, and particularly on the ratio of reversed decisions. Such system does not necessarily improve the quality of justice and the promotion of the best judges to high positions.**⁷⁹

The second area touching upon the quality of justice in this report is the part concerning the **effects of the decisions from the European Court of Human Rights by themselves**, but also in the context of the discipline responsibility. The Commission welcomes Article 18(b) from the Law on Courts, which provides directions to the judges to apply the positions of the final judgements of the European Court of Human Rights. According to the report, when encountered by human rights issues, the domestic courts should resolve them in line with the positions contained in the practice of the European Court of Human Rights.

However, in the context of discipline responsibility of judges regarding the obligation to follow the reasoning of the practice of the European Court of Human Rights, from a quality aspect, the report reads that the **judge should have the discretion of interpreting the practice of the European Court of Human Rights and should not be punished in using this discretion**. Furthermore, the report poses the question of who will decide on whether a particular decision is compatible with the practice of the European Court of Human Rights.

⁷⁷ The opinion of the Venice commission for the amendments of the Law on Judicial Council and the Law on amendments for the Law on courts no. 927/2018 from 22 October 2018.

⁷⁸ The opinion of the Venice commission for the amendments of the Law on Judicial Council and the Law on amendments for the Law on courts no. 927/2018 from 22 October 2018, paragraph 45

⁷⁹ Ibid.

3. CORRELATIONS: QUALITY OF JUDICIAL JUSTICE

The analysis of the perceptions produces brief summary observations regarding each individual indicator of the matrix. The correlations will be made in the sub-areas of each area, so as to show what (if any) is the correlation and the realization of the perceptions, the legal framework and the domestic and international sources and standards for measuring of results in the judiciary.

Functioning of the court

When it comes to the functioning of the court, its contours are drawn by the legal framework, i.e. the Constitution of the Republic of North Macedonia, clearly established within the ascertained values and democratic standards on the legal state and the rule of law at the current level of development of societies.

At the legislative level, more work was done on these established principles, though not to the degree that affects the quality of the functioning of the court. This exists *de lege lata*. The application of the legislation in practice, through the expressed perceptions about the functioning of the court, indicates certain difficulties, particularly concerning the efficiency of delivery, and to a lesser extent the other indicators, with a strong antagonism from the target groups as opposed to the perceptions of the judges, above all the lawyers, and to some extent the public prosecutors.

The results from the data collected and analysed by the competent domestic institutions, particularly the Judicial Council of the Republic of North Macedonia and the Ministry of Justice of the Republic of North Macedonia, barely even touch upon the axioms given in this area's indicators. The international documents and measurements also do not go deeper than the traditional results processed in the other areas falling within the scope of this Matrix.

Quality and effect of the judicial decision

The legal framework on the sub-area quality and effect of the judicial decision has been established already with the constitutional fundamental value – rule of law and legal certainty. The legislative framework contains provisions that represent and reflect the current broadly accepted civilization norms, from the aspect of standards of quality and effect of the judicial decision.

The perceptions for the indicators in this sub-area indicate that the unified application of the laws, i.e. the consistent court practice, the clarity, the reasoning and the legal argumentation of the decisions, as well as the following of the practice of the higher courts and the ECtHR is still on the pedestal of challenges, by way of which they undermine the constitutional and legislatively established standard on independent and objective conducting of the procedures and securing of the goals and functions of the judicial branch of government. However, the collection of data based on this legislation, done by the domestic bodies is not based on a methodology on which indicators within this sub-area are measured in at least a similar manner. The domestic documents envisage measures for addressing the quality through unification of the practice, increased training and legislative interventions with the purpose of establishing of measurable criteria for quality.

On the other hand, the international documents and sources identify progress and good legislative basis, but also detect challenges and problems directly related to the quality and effect of the judicial decision.⁸⁰ Above all, there is an accent on the problem of searchability of the judicial decisions from the aspect of a consistent court practice,⁸¹ particularly the problems with the reasoning of the judicial decisions.⁸²

Court competencies and protective measures

The legal framework for the sub-area court competencies and protective measures has also already been established at the highest legal level – in the Constitution, as well as the legislative framework.

The international documents and reports placed in correlation with the legal framework and perceptions on the indicators for this sub-area, indicate that there is progress by the Supreme Court in securing the unified application of the law, by continuing to publish the judicial decisions, which justifies the *raison d'être* of the legal order.

However, challenges have been identified in the decision upon the merits in the administrative area, but despite recorded progress, accent is placed on the challenges in securing an effective and efficient protection of human rights and liberties.

Of the protective measures, the problem with respect of court immunity for acts committed within the framework of official duty.

Relevant international reports are mostly on the same wavelength when it comes to perceptions in the sub-area court competencies and protective measures.

80 European Commission, Commission staff working document, the Former Yugoslav Republic of Macedonia (17th April 2018), "Quality of judicial justice" assessed in part 2.2. Rule of law and Fundamental rights, 2.2.1 Chapter 23, Judiciary and Fundamental rights, Available at : <https://goo.gl/F9WfZB>,

81 Ibid

82 Ibid



EFFICIENCY



**TRANSPARENCY AND
ACCOUNTABILITY**



**QUALITY OF
JUDICIAL JUSTICE**



IV

**INDEPENDENCE AND
IMPARTIALITY**



V

**PROFESSIONAL
DEVELOPMENT AND
APPROPRIATE
REPRESENTATION**

1. ANALYSIS OF THE PERCEPTIONS FROM THE MEASURING: INDEPENDENCE AND IMPARTIALITY

The existence of an independent and impartial tribunal is one of the main pillars of the concept of fair trial. In this sense, the right to a fair trial under Article 6(1) of the European Convention on Human Rights requires that a case be heard by an “independent and impartial tribunal”. There is a close link between the guarantees for an “independent” and “impartial” tribunal. For this reason, the European Court of Human Rights commonly considers these two requirements together.⁸³

According to the practice of the European Court of Human Rights, the term “independence” refers to independence vis-à-vis the other authorities⁸⁴ (executive and legislative) and, also, vis-à-vis the parties.⁸⁵

In determining whether a body can be considered as “independent”, the European Court of Human Rights takes into consideration the following criteria: the manner of appointment of its members and the duration of their term of office; the existence of guarantees against outside pressures and whether the body presents (demonstrates) an appearance of independence.⁸⁶

These ethical principles⁸⁷ are written in accordance with the decision made by the General Assembly of ENJ (European Network of Judicial Councils) held in Brussels in June 2007. Independence is a right to each citizen in a democratic society who needs judiciary that is (and acts as), independent from the legislative and executive authority, and that is established with the purpose of protecting the freedoms and rights of the citizen according to the rule of law. This independence leads (the judge) to apply the law on issues which stand before him/her in a specific case, without being afraid of satisfying or not satisfying all forms of power, executive, legislative, political, hierarchical, economic, or the media or public opinion. The judge also takes care to remain independent from his/her colleagues and all groups of pressure. The judge fulfils his/her role with integrity, in the interest of justice and society. He/she has the same obligation of integrity both in his/her public and private life.

Article 6(1) of the European Convention on Human Rights requires a tribunal, falling within its scope, to be impartial. Impartiality normally denotes absence of prejudice or bias and their existence can be tested in various ways.⁸⁸ Thus, the European Court of Human Rights has made a distinction between: a subjective approach (endeavouring to ascertain the personal conviction or interest of a given judge in a particular case) and objective approach (determining whether she or he offered sufficient guarantees to exclude any legitimate doubt in this respect).⁸⁹

In the area of independence and impartiality, the respondents provided their observations and assessments about: the process of election and dismissal of judges, disciplinary process, evaluation and promotion, then, about the existence of internal and/or external influences, compensation and financial resources for performing the work, as well as the impartiality of judges as an essential value of justice.

83 European Court of Human Rights, *Kleyn and Others v. the Netherlands* [GC], no. 39343/98, 39651/98, 43147/98 and 46664/98, § 192 and 193, 9 April 2003

84 European Court of Human Rights, *Beaumont v. France*, no. 15287/89, § 38, 24 November 1994

85 European Court of Human Rights, *Sramek v. Austria*, no. 8790/79, § 42, 22 October 1984

86 European Court of Human Rights, *Findlay v. the United Kingdom*, no. 22107/93, § 73, 25 February 1997

87 European Network of Councils for the Judiciary, ENJ Working Group, Judicial Ethics Report 2009-2010, available at: <https://goo.gl/Xn9qLM>

88 European Court of Human Rights, *Kyprianou v. Cyprus* [GC], no. 73797/01, § 118, 15 December 2005

89 European Court of Human Rights, *Kyprianou v. Cyprus* [GC], no. 73797/01, § 118, 15 December 2005; European Court of Human Rights, *Piersack v. Belgium*, no. 8692/79, § 30, 26 October 1984; and European Court of Human Rights, *Grievies v. the United Kingdom* [GC], no. 57067/00, § 69, 16 December 2003

The area of independence and impartiality from the Matrix is comprised of one common indicator and seventeen (17) individual indicators divided in six (6) sub-areas:

>>>a) **Sub-area:** The process of election and dismissal

- 48. In exercising their functions, the judges are independent of any internal and external influences
- 49. The election and dismissal of judges is not a subject to pressures and influences from outside
- 50. The judges are elected to office on the basis of objective criteria and through a transparent procedure
- 51. The process of dismissal of judges from office is based on objective and transparent criteria
- 52. The decisions on election and dismissal of judges are well-reasoned
- 53. The Judicial Council is independent and transparent in decision making

>>>b) **Sub-area:** Disciplinary process

- 54. The disciplinary procedures are conducted in an objective and transparent manner

>>>c) **Sub-area:** Evaluation and promotion

- 55. The judges are promoted through a judicial system based on objective criteria
- 56. The criteria for evaluation of the work of judges do not affect their obligation to adjudicate in accordance with the existing regulations

>>>d) **Sub-area:** External and internal influences in the judiciary

- 57. There is no phenomenon or circumstances of pressure by other institutions
- 58. The court decisions are based solely on facts and the law, without undue influence from private interests
- 59. There is no phenomenon or circumstances of internal pressure and influence from the judiciary
- 60. The Judicial Council successfully takes care of protecting the judiciary independence

>>>e) **Sub-area:** Financial resources and court compensation

- 61. The annual judicial budgets are sufficient to cover the real costs of enforcing justice
- 62. The salaries of judges are in line with the tasks and responsibilities of the workplace
- 63. The salaries of the judicial service are in line with the tasks and responsibilities of the workplace

>>>f) **Sub-area:** Judicial impartiality

- 64. The personal convictions and the subjective attitudes of the judges are not reflected in their work
- 65. The judges are exempt from cases where there are circumstances of conflict of interest and bias

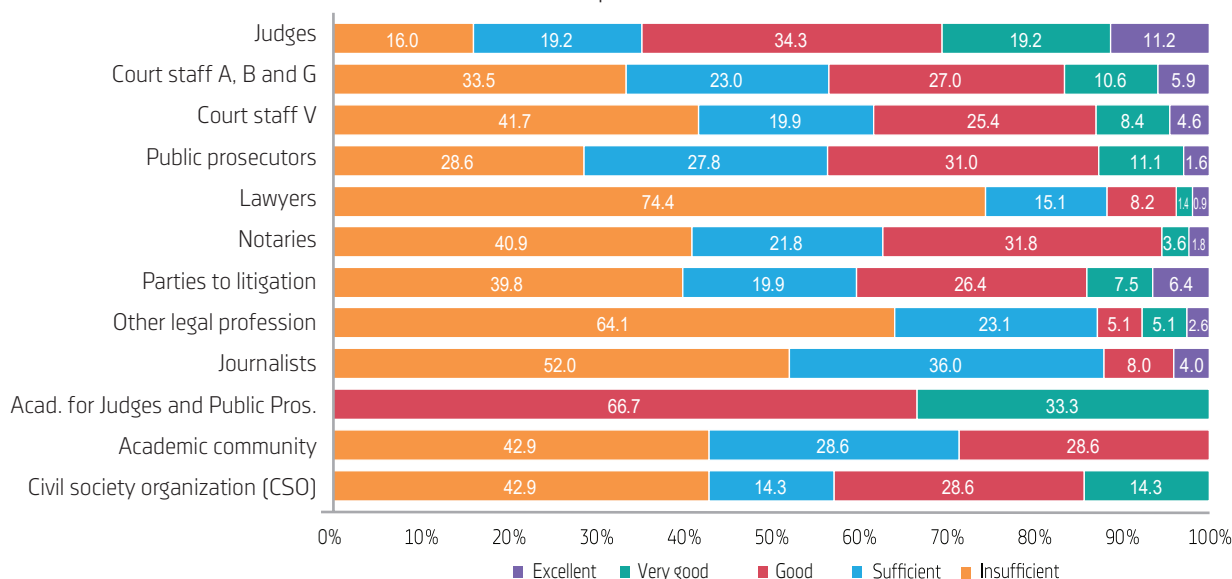
Additionally, the respondents from all target groups also have provided opinion about one common indicator in order to obtain one cumulative score for this specific area.

How would you assess the independence and impartiality of the courts in RM defined by the following statement:

“In exercising their functions, the judges are independent of any internal and external influences.”

Common indicator for all target groups:
Indicator 48: In exercising their functions, the judges are independent
of any internal and external influences.

Graph 48



Target group:	Average grade:
Judges	2.9
Court staff A, B and G	2.3
Court staff V	2.1
Public prosecutors	2.3
Lawyers	1.4
Notaries	2.0
Parties to litigation	2.2
Other legal profession	1.6
Journalists	1.7
Academy for Judges and Public Prosecutors	3.3
Academic community	1.9
Civil society organization (CSO)	2.1
TOTAL	2.2

The respondents from all categories covered by the research mostly (37.9 %) have evaluated the independence of judges of any impermissible influences in their work by the score of “insufficient” (1). The most evident are the negative scores given by the respondents, lawyers, then the respondents from other legal professions (enforcement agents and mediators), as well as journalists. And most of the professional and other judicial officers, have stated that judges are not independent of any internal and external influences, while exercising their functions. The judges and public prosecutors who have participated in the research, mostly (34%) think that the judges manage the influences in their work well, and there is a division among the other judges who think that the independence of judges in exercising their function is very good, even excellent, and those who think that it is sufficient or insufficient. The average score of the judges, respondents, is 2.9 and it is above the average (2.2) for this area of performance in the judiciary.

The interviewed representatives of the civil society organizations that work in the area of rule of law and human rights, have evaluated this question by an average score of 2.14, which means that the score given for this category of respondents is below the average (2.2) given for this area of the judiciary.

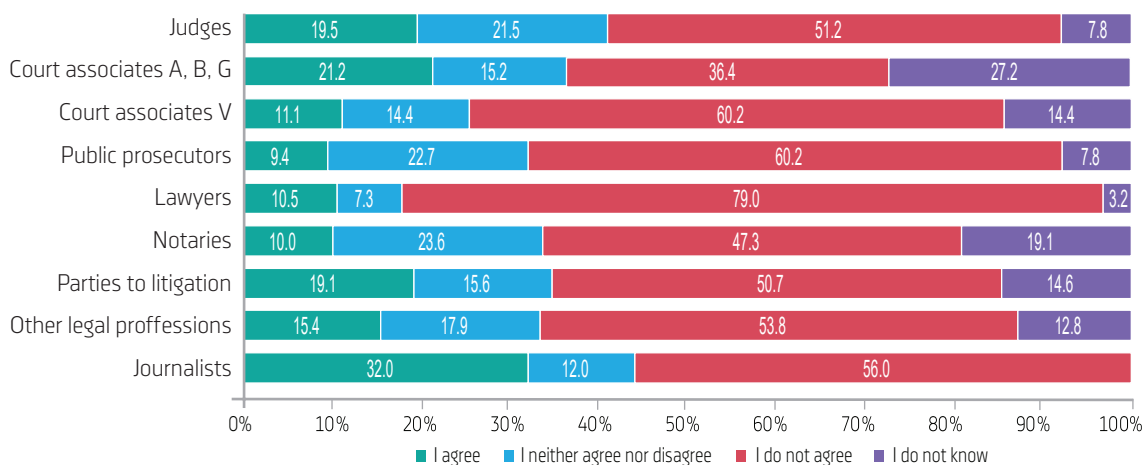
As for the academic community representatives, who have been also interviewed for the need of this measuring, most of the respondents (43%) have responded with a negative score (1), i.e. that the judges are insufficiently independent in exercising their function. The others, in almost an identical percentage (about 28.5%) have assessed the judges with sufficient, or good in regard to the independence in exercising their function. The other 28% have responded that judges are independent of any internal and external influences.

The AJPP representatives, who have been interviewed for the needs of this research, mostly have assessed the judges with good (3) in regard to their independence in exercising their function.

The average score about the independence and impartiality of the judiciary according to the respondents is 2.2 and at the same time it is the area having the lowest score out of all 5 areas covered by the Matrix of indicators for measuring the performance and reforms in the judiciary.

A) Sub-area: The process of election and dismissal

Indicator 49: The election and dismissal of judges is not a subject to pressures and influences from outside
Graph 49



Regarding the question whether the election and dismissal of judges is not a subject to pressures and influences from outside, most of the respondents do not agree that that is the case.

Thus, the respondents from the category of lawyers, by a highest percentage (79%), do not agree that there is no interference in the election and dismissal of judges, and for the public prosecutors and the professional associates in the courts this percentage is over 60%. For the other legal professions (notaries, mediators and enforcement agents) this percentage is very high, and the journalists and parties in disputes mostly (50-56%) do not agree with the statement that there are no pressures and influences in the election and dismissal of judges. The same opinion dominates among the judges, thus the percentage of those who think that there are pressures is more than a half (51.2%).

It is interesting that despite the highest percentage of journalists who do not agree that there are no external pressures in these processes (56%), however, one third of them think that there are such pressures in the election and dismissal of judges.

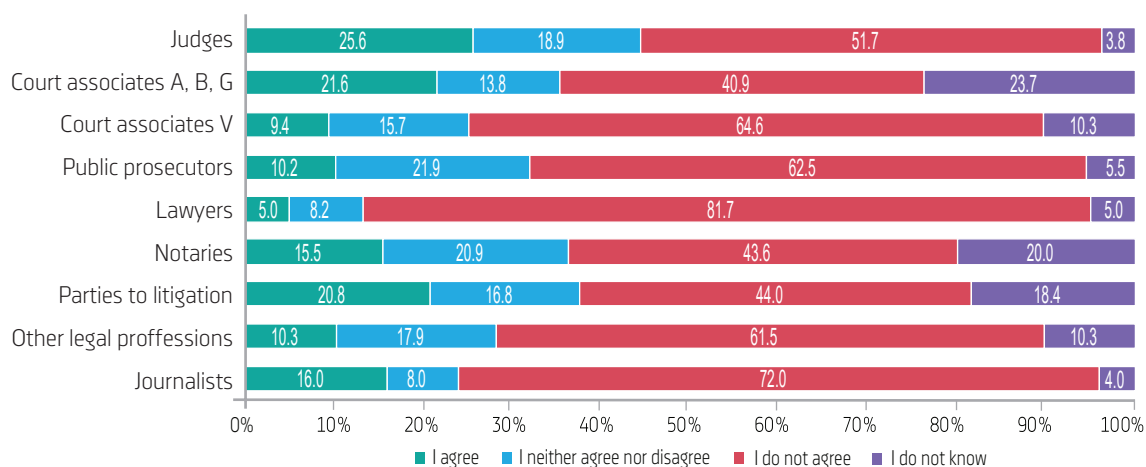
The general opinion of most of the academic community respondents is that even though the criteria are prescribed by law, they are not objective and transparent, and the election and dismissal of judges by the Judicial Council is done in agreement, i.e. under pressure of the executive power and the party influence in the procedure of election and dismissal of judges is evident.

The perception that election, dismissal and promotion is not based on objective and transparent criteria, i.e. instead of by rule, the election and promotion of judges without internal and external pressure is done by exception, dominates among the interviewed persons from the civil society organizations. There are external and internal influences in these processes. The interviewed persons have emphasized as problems, the serious partyzation in the judiciary and the nepotism, both for the election and promotion of judges.

The AJPP representatives note that there has been either external or internal pressure, which is especially noticed by the behaviour of judges when they adjudicate cases in which political persons are involved. The amendments to the Law on Judges for the purpose of establishing clear criteria for election, dismissal and promotion of judges, according to them, provides for a clear legal framework related to this process, leading to an important step forward regarding the establishment of good, precise and easily verifiable criteria about these processes.

Majority of the judges, as well as all other categories of respondents, think that the election and dismissal of judges is a subject to pressures and influences from outside, and the political (party) influence on judiciary is specially emphasized.

Indicator 50: The judges are elected to office on the basis of objective criteria and through a transparent procedure
Graph 50



Related more specifically with the election of judges to office on the basis of objective criteria and through a transparent procedure, the respondents of all categories are especially critical in regard to this question.

Thus, even 81.7% of the respondents, lawyers, think that there are objective criteria and transparency in the election of judges, and this percentage is also high among the journalists (72%), and it is also significant among the professional judicial service (64.6%). According to a great number of respondents from the other

legal professions (mediators and enforcement agents), as well as the notaries, the election of judges is not a subject to transparent procedures and it is not done in accordance with objective criteria. Most of the respondents from the ranks of parties in disputes (over 44%) think that the election of judges is not done objectively and transparently.

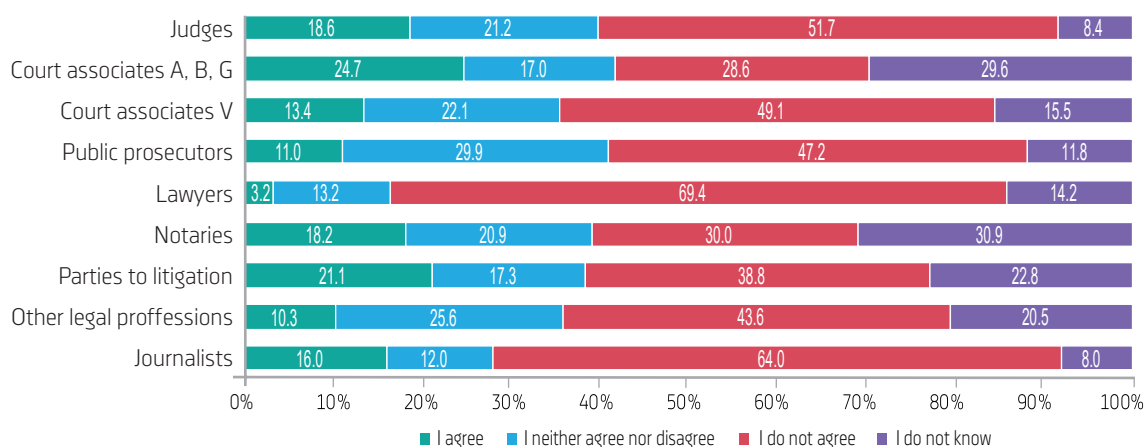
While the respondents, judges, mostly (51.7%) think that the election of judges is not done on the basis of objective and measurable criteria, and 25.6% of them think that it is the case or partially agree with it (18.9%). There is an opinion that the election of judges is still done on a party or ethnic basis among the interviewed respondents from the academic community. "It is still well known in which court the president will be a Macedonian, and in which an Albanian, which is decided by the parties". According to them, the Judicial Council has developed a submissive procedure of election and dismissal of judges. "A model of a Judicial Council which does not have such a centralized power could be considered in Macedonia as well". However, according to the respondents, the greatest challenge are the subjective criteria which should be taken into consideration in election of judges, such as: integrity of the person, dignity and his/her past behaviour while in office, which can be proved regardless of their subjective nature.

Regarding the election of other persons with experience as judges out of AJPP, part of the academic community thinks that also the persons who haven't finished the Academy, but have experience of many years, should be given the opportunity to be elected as judges. But there are also opposite opinions within the academic community which indicate that the Academy is a measurable criterion for election of judge, since there is an institution through which the judges should pass in order to be appointed as judges, and also it would be problematic in this period of reforms in the judiciary and when there hasn't been vetting and evaluation of judges, to allow for another criterion for election of judge, since it could be interpreted as another way of influence on the judicial system. However, the opinion that the quality and professional jurists should be given a chance to become judges and to confirm themselves as quality judges in their work generally dominates in this category of respondents.

One of the interviewed person from the civil society organizations has given the comment that the process of election of new judges through the Academy is not transparent, and that the only opportunity for the public to learn about these candidates is when they give an oath in the Assembly.

Most of the judges and judicial service think that there are no objective criteria and transparency in the election of judges. There is a perception of political influence and lack of transparency of the competent bodies in the election of judges.

Indicator 51: The process of dismissal of judges from office is based on objective and transparent criteria
Graph 51



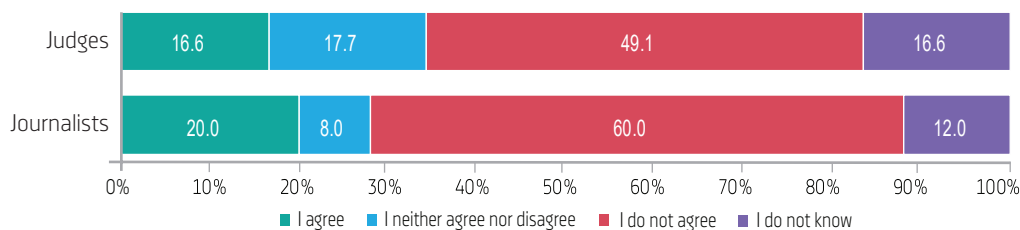
In the case of the dismissal of judges, as a question which is also directly related to the judiciary independence, the scores of the respondents are slightly more positive compared to the process of election.

Majority of the respondents think that there is no objectivity and transparency in the process of dismissal of judges, and the most negative opinion is given by the lawyers, and then the journalists. More than half of the respondents, judges, think that the dismissal of judges is not based on objective and transparent criteria, and the case is the same with the respondents from the judicial service. Within all categories there is a double upward movement in the responses marked by “I don’t know” compared to those given for the question on election of judges.

According to one of the interviewed representatives of the academic community, the way to influence the judiciary has been through the dismissal procedure and through the determination of criteria for dismissal of judges. The initial idea was to have more criteria for dismissal, but the Council for monitoring of the reforms did not agree with it, and after many criticisms, the idea to have a smaller number of criteria for dismissal of judges was accepted. For the criteria that have left, the Venice Commission has given a negative opinion in the last report on this Law on Courts. The representatives of the civil society organizations have also given a comment that the recommendation of the Venice Commission are not respected in the part on dismissal.

Majority of the respondents think that there is no objectivity and transparency in the process of dismissal of judges. The respondents think that the criteria for dismissal should be reviewed

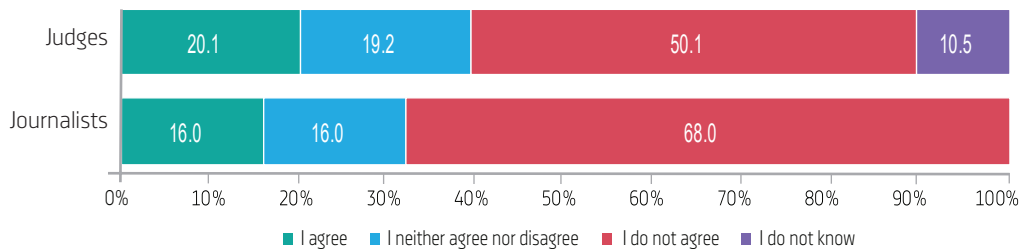
Indicator 52: The decisions on election and dismissal of judges are well-reasoned
Graph 52



This question was posed only to the respondents from the ranks of the judges and journalists (who are supposed to have an insight into the decisions and who follow the situation in the judiciary and the Judicial Council as public). According to the most of the respondents, judges (around 50%), the decisions on election and dismissal of judges made by the Judicial Council are not well-reasoned, and only 16.6% agree or 17.7% partially agree that it is the case. 16.6% of the respondents, judges, also have stated that they don’t know about it. As for the journalists, the percentage of disagreement with the statement that the decisions of the Judicial Council are well-reasoned is over 60%.

According to most of the respondents, judges, the decisions on election and dismissal of judges made by the Judicial Council are not well-reasoned.

Indicator 53: The Judicial Council is independent and transparent in decision-making
Graph 53



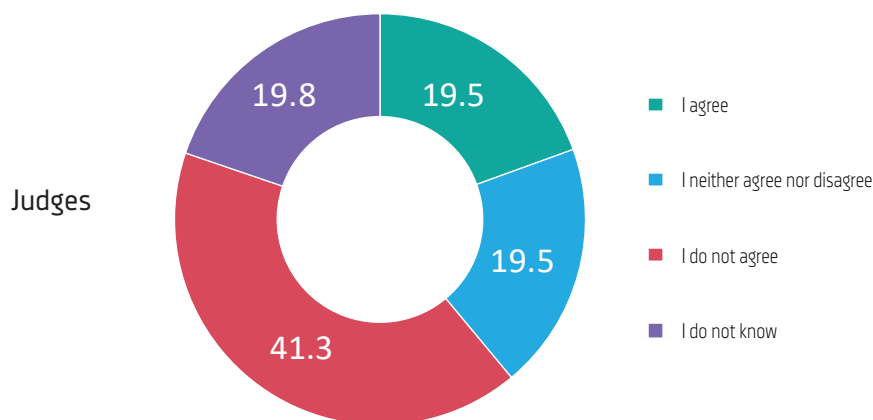
With the statement that the Judicial Council, as most important guarantor for provision of independent judiciary, is independent and transparent in decision-making, over 50% of the respondents, judges do not agree, as opposed to 20% of them who agree or partially (19%) agree. And the journalists, as part of the public, mostly (about 70%) do not agree that the Judicial Council is independent and transparent.

As we have mentioned before, the general opinion of all interviewed representatives of the academic community is that the transparency of the Judicial Council is a problematic issue which has been present ever since the establishment of the Judicial Council and all along its functioning. "The Judicial Council is also problematic as a main body, unfortunately, and besides the high competences and the fact that it is not accountable to anybody, it does not exercise its function of independence. The public trust in this body is very low now, and it would be difficult to make some reforms as well."

Most of the judges and journalists think that the Judicial Council is not an independent and transparent in its work. The respondents think that the public trust in this body is very low.

B) Sub-area: Disciplinary process

Indicator 54: The disciplinary procedures are conducted in an objective and transparent manner
Graph 54

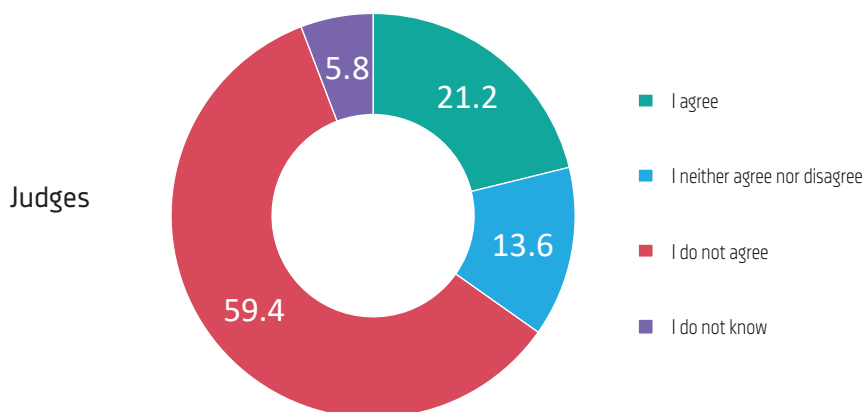


In regard to the disciplinary process, whether the disciplinary procedures are conducted in an objective and transparent manner, most of the respondents, judges (41.3%) don't agree that that is the case, and even 20% of them have stated that they don't know

Most of the judges think that the disciplinary procedures are not conducted in an objective and transparent manner

C) Sub-area: Evaluation and promotion

Indicator 55: The judges are promoted through a judicial system based on objective criteria
Graph 55



Regarding the question about evaluation and promotion of judges, most of the respondents, judges (around 60%) have responded that they do not agree with the manner of evaluation and promotion of judges, 21% of them agree, and 13.6% of them partially agree with this.

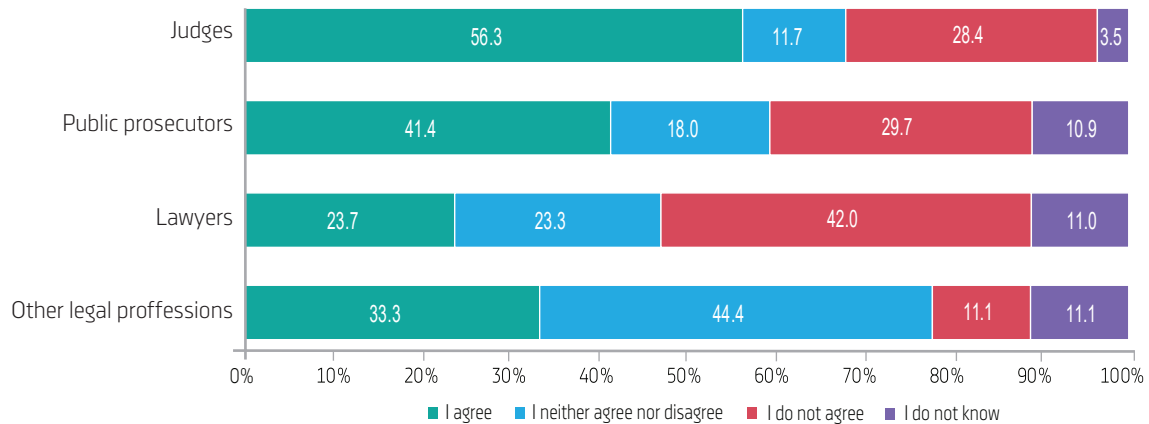
The perception of most of the interviewed persons from the civil society organizations is that the procedure for promotion is good, but the practice is not. The candidates with the highest scores in the evaluation are not promoted, and there is not an appropriate explanation of the reasons for the election.

The AJPP representative has stated that the promotion of judges has been done on the basis of external influences for many years in the past. By the amendments to the Law on Courts and the introduction of well-reasoned evaluation of the work of judges it is expected that in the future such similar situations of inappropriate promotion will not be possible. Some of the respondents think that the problem of election or promotion of judges on the basis of political influence is evident also when the judges belonging to the non-majority ethnic communities are concerned, when based on the party influence, the poor quality judges are elected or promoted, with the explanation that there is not sufficient staff, and in fact, the quality judges remain without promotion or election as a result of those party influences. "the Court's Rules of Procedure states that the head of unit should be a judge from that unit having the longest experience in the court, and in practice it happens for a person who is close to the president of the court and who doesn't show much initiative after the election, but behaves obediently, to be elected as a head of unit."

For some of the interviewed representatives of the academic community, a more acceptable system would be for the judges to be evaluated for re-election and that would be more realistic evaluation and if a procedure has been initiated against them for unprofessional and unethical adjudication. According to some of them, it is illogical for all judges to be constantly evaluated. On the other side, according to them the validity of the evaluation and if it can provide a picture of the quality of the judge's work is very disputable.

Most of the judges do not agree with the manner of their evaluation and promotion. The evaluation not always corresponds to the promotion. The respondents think that the procedure for promotion is good, but not the practice, often due to political and other influences.

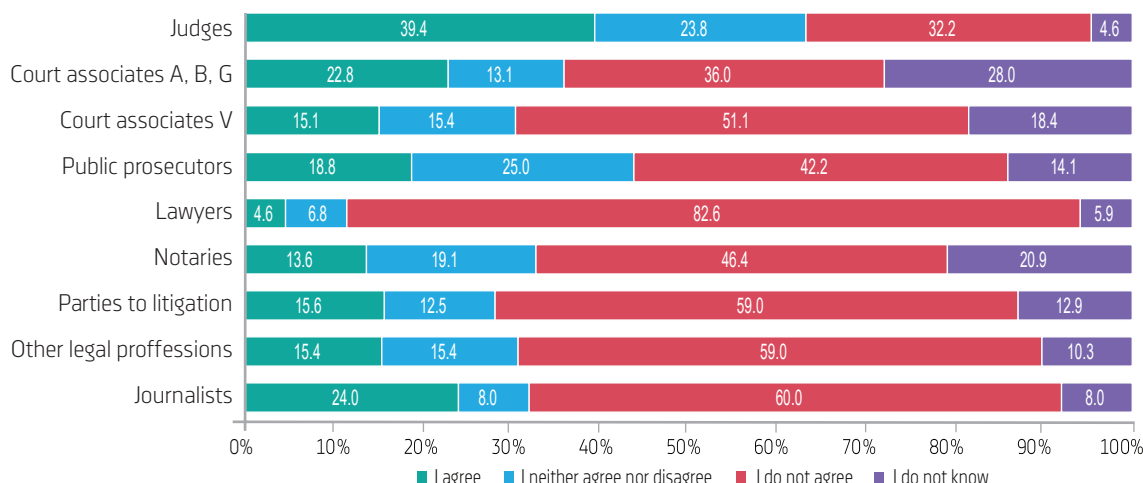
Indicator 56: The criteria for evaluation of the work of judges do not affect their obligation to adjudicate in accordance with the existing regulations
Graph 56



Furthermore, asked about whether the criteria for evaluation of the work of judges do not affect their obligation to adjudicate in accordance with the existing regulations, respondents, judges, mostly (56.3%) agree or partially (11.7%) agree with it, while 28% of them do not agree. The respondents, lawyers, are also divided in regard to this question, thus, about 42% of them do not agree that the criteria for evaluation affect the way judges adjudicate, and about 23.7 % agree or partially agree (23.3%) that it is the case. Most of the public prosecutors also agree that the criteria for evaluation of judges do not affect the way they exercise their function, and almost one third do not agree with it.

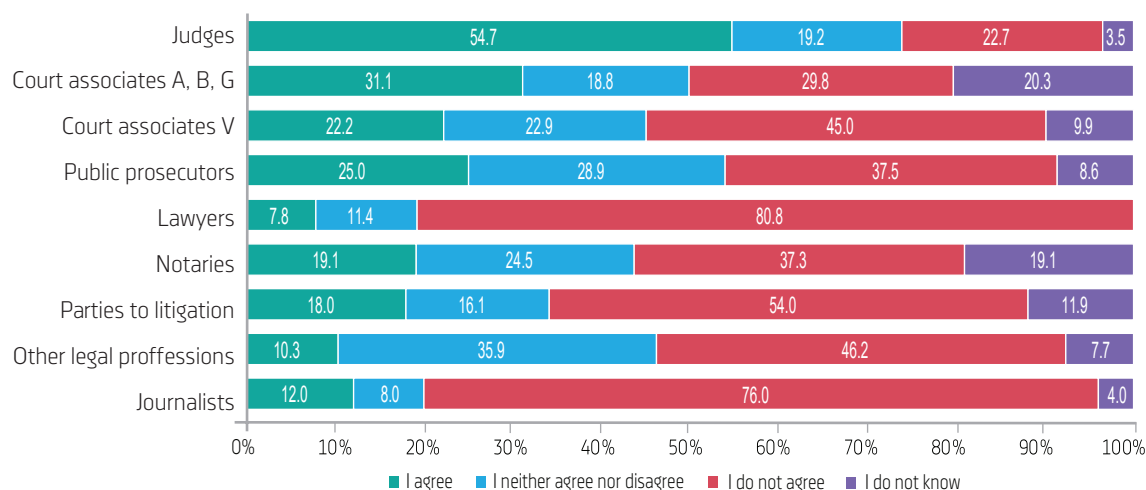
According to most of the respondents, judges, the criteria for evaluation of their work do not affect the obligation to adjudicate in accordance with the laws and other regulations. The opinion that the criteria for evaluation of judges affect the way they adjudicate dominates among the most of the respondents, lawyers, and one third of the public prosecutors have the same opinion.

D) Sub-area: External and internal influences in the judiciary

Indicator 57: There is no phenomenon or circumstances of pressure by other institutions
Graph 57

The judiciary independence, seen through the prism of influences in the judiciary (internal and external) has been more specifically present in the research. The respondents of all categories have been asked whether they agree with the statement that there is no phenomenon or circumstances of pressure by other institutions (from outside) in the judiciary. The highest percentage of disagreement with this statement is expressed by the category of respondents, lawyers (almost 83%), while for the other categories of respondents it is 40%-60%, with the exception of the respondents, judges, who have stated that most of them (about 40%) agree that there is no phenomenon or circumstances of pressure by other institutions on the work of judges or some of them partially (about 24%) agree with it. However, the number of respondents, judges, who think that there are interferences by other institutions in the judiciary is more than one third.

According to most of the respondents from all categories, including the judicial service, there is an external interference and pressure by other institutions in the judiciary. The judges are divided in regard to this question.

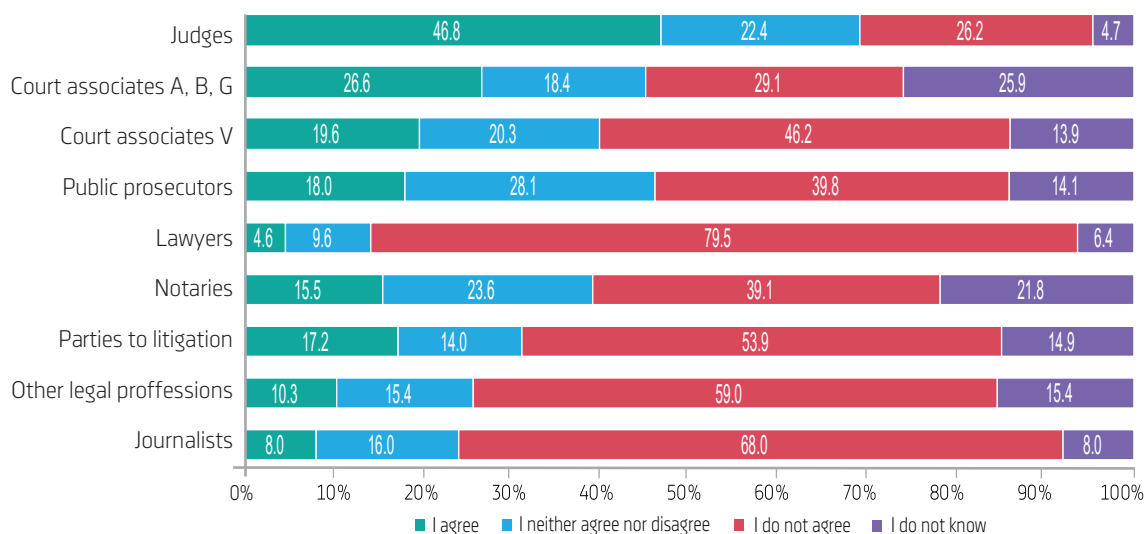
Indicator 58: The court decisions are based solely on facts and the law,
without undue influence from private interests
Graph 58

Regarding the question whether the court decisions are based solely on facts and the law, without undue influence from private interests, the respondents have responded that they mostly do not agree with this. Thus, 80% of the lawyers think that there are private interests in decision-making by the judges, and the journalists (76%) have the same opinion. The respondents from the other legal professions (notaries, mediators and enforcement agents) mostly do not agree with this. Regarding the professional judicial officers, the percentage of those who do not agree that the court decisions are based solely on facts and the law and that there are no undue influences from private interests in decision-making, is 45%, whereas those who agree with this is 22%, while 22% partially agree. Among the other officers there is a division in regard to this question (31% agree, and 30% do not agree), and even 20% said that they don't know about these circumstances. Among the parties in disputes, even though less critical to the fact that judges do not adjudicate solely on the basis of facts and that there are private interests influencing the decision-making, dominate those who do not agree (54%), as opposed to those who agree or partially agree.

Contrary to this dominantly negative opinion about the manner of decision-making which according to the previous categories of respondents is not based solely on facts and the law, but it is a subject to private interests and influences, the respondents, judges, mostly (over 54.7%) think that the decisions are based solely on facts and the law, without undue influence from private interests, while 19% of them partially agree with it. However, 22% of them have stated that they do not agree with it.

According to most of the lawyers, journalists, and other respondents, the judges are subject to undue influence from private interests in decision-making. Most of the judges and some of the judicial service think that the judgements are based solely on facts and laws.

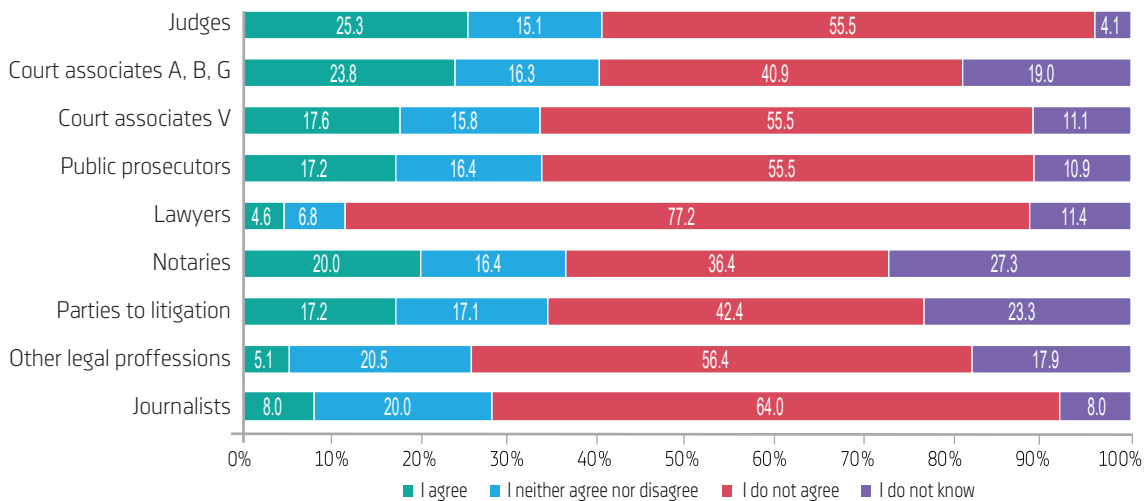
Indicator 59: There is no phenomenon or circumstances of internal pressure and influence from the judiciary
Graph 59



Asked about the existence of a phenomenon or circumstances of internal pressure and influence from the judiciary, the respondents from the ranks of judges have stated that they agree with it (47%), while 26% do not agree with the existence of internal pressure on their work. Among the respondents, professional judicial officers, dominates the opinion (46.2%) that they do not agree with non-existence of pressure on the judges or on them internally. The other employed judicial officers have divided opinion about this, and most of them have stated that they do not know about this. The respondents, lawyers (79.5%), journalists (68%), other professional jurists and parties in disputes mostly (over 50%) do not agree that there are no phenomena or circumstances of exercising pressure on the judges internally.

Most of the respondents, lawyers, and the other categories of respondents, including the professional associates in the courts, think that there are internal pressures in the judiciary. Only the judges mostly agree that there are no internal pressures and influences in the judiciary.

Indicator 60: The Judicial Council successfully takes care of protecting the judiciary independence
Graph 60

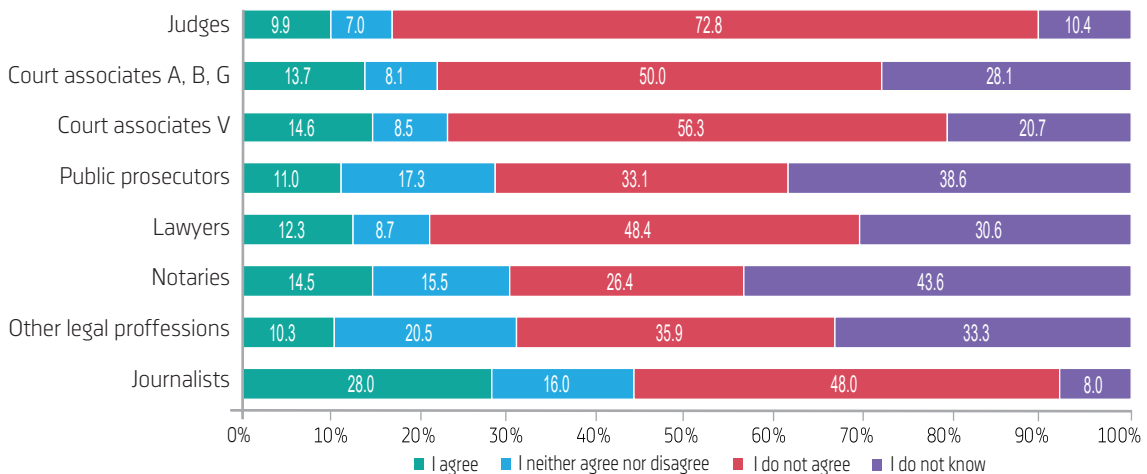


In regard to whether the Judicial Council of RNM successfully works on protecting the judiciary independence, most of the respondents from all categories have a negative opinion. Thus, the judges, professional associates and public prosecutors, respondents, by an identical percentage do not agree with the successfulness of the Judicial Council of RNM in the area of protection of the judiciary independence (55.5%). This percentage of disagreement is highest among the respondents, lawyers (77.2%) and the journalists (64%) which indicates the dissatisfaction with the work of the Judicial Council regarding the protection of the judiciary independence from internal and external influences.

Most of the respondents from all categories think that the Judicial Council of RNM does not successfully take care of protecting the judiciary independence.

E) Sub-area: Financial resources and court compensation

Indicator 61: The annual judicial budgets are sufficient to cover the real costs of enforcing justice
Graph 61



Starting from the fact that the judiciary independence is in a direct correlation with the available funds for its quality functioning and that the appropriate remuneration of judges is an additional guaranty and motivation for their performance without the practice of pressure by any side, the research also included the question related to the financial resources and court compensation.

Thus, the respondents have given their opinion whether they agree with the fact that the annual judicial budgets are sufficient to cover the real costs of enforcing justice. The judges, respondents, mostly (73%) do not agree with it, and over 50% of the judicial service also do not agree that the annual budget is sufficient to cover the regular spending in the judiciary.

The other categories of respondents also mostly do not agree with the amount of the budget funds allocated to the judiciary.

However, within all categories of respondents, the percentage of the respondents who don't know about this question is indicative, especially the legal professions, public prosecutors and the employees in the judicial service.

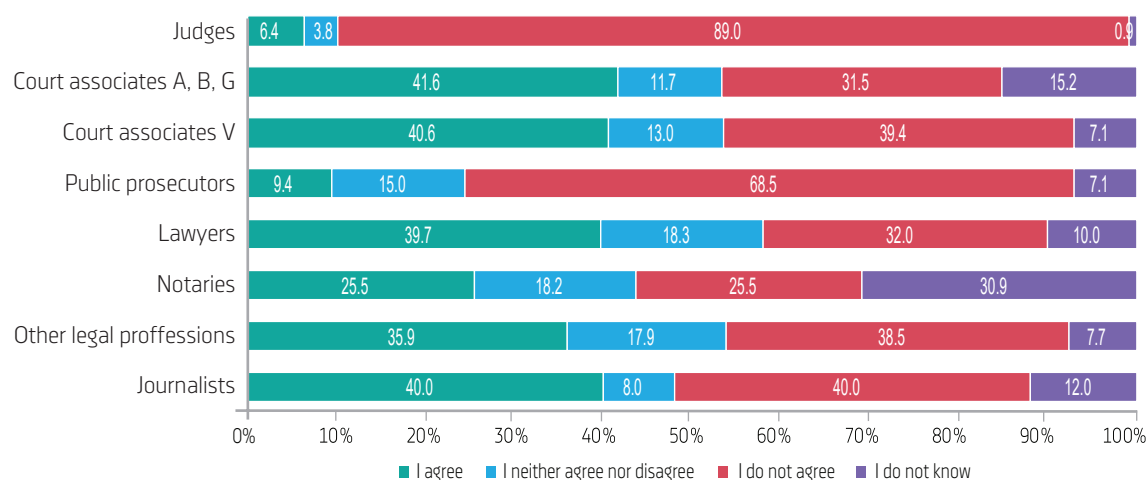
While the recommendation of all interviewed representatives of the academic community is that it is necessary to work on a judicial budget which will be independent from the executive power. According to some of the respondents, the Law on (autonomous) judicial budget is not applied at all, because the courts do not receive at all the percentage they need. There is still influence on the judicial budget by the executive authorities, since the Ministry of Finance determines the amount of the budget, and it is not done in accordance with the needs of the court. By this practice the executive power controls the judicial power and that is why it necessary to urgently find a way for an autonomous judicial budget. According to some of the experts, the Judicial Budget Council has to return in the Supreme Court, and at the moment it is at the Judicial Council which also means too much power concentrated in the Judicial Council which has way too many competences, and additionally decides on the finances. It is important for the judicial budget to depend on the real needs of the judiciary, and it should not be just allocation of a part of what is allocated by the executive power, and it is necessary for the courts to fight for a greater financial independence.

All the interviewed representatives of the civil society organizations have indicated that it is impermissible, contrary to the law, for the budget of the judiciary to be lower than 0.8% of GDP. According to the opinion to some of the interviewed persons, there is a need for a reform of the judicial budgeting, real projections, planning not only in a short-term, but also in a mid-term. "The judges and judicial officers should be involved in the planning process, the necessary employments in the courts and public prosecution office should be approved, as well as the salaries of the court administration be increased".

The AJPP representatives also think that the judicial budget is small and that it should be increased in order to allow for employment of a higher number of professional associates. There should be a certain gradation of remuneration of judges according to the type and scope of their work. The idea about an independent judicial budget that would be prepared by the Judicial Council and approved by the Ministry of Finance of RNM, for now, is hardly achievable. A big problem would be the poor management of that budget, because the courts and public prosecution offices do not have a good management-assessment of the needs in regard to the institution and it is not known whether there is truly a need for that number of judges and public prosecutors and how many new workplaces should be opened in this area.

Most of the judges think that the annual judicial budget is not sufficient to cover the regular spending in the judiciary. The respondents think that it is an imperative to comply with the legally allocated percentage of the budget for the judiciary, and that the judges should fight for a greater financial independence.

Indicator 62: The salaries of judges are in line with the tasks and responsibilities of the workplace
Graph 62



Regarding the salaries of judges, and whether they are in line with the tasks and responsibilities of the workplace, the respondents have different opinion. The respondents from the ranks of judicial officers mainly (over 40%) agree with the statement that the salaries of the judges are in line with the function they exercise, contrary to those who do not agree with it (31%-39%). For most of the respondents, judges (89%) the salaries are not sufficient and in line with the tasks and responsibilities of the workplace, and also the respondents from the ranks of public prosecutors (almost 70%) think the same.

As for all other categories of respondents, the opinion on this question is divided, thus most frequently within one category, the percentage of those who think that the salary of judges is sufficient is equal to the percentage of those who think that it is not.

All academic community representatives think that the judges deserve to be better paid in order to professionally exercise their judicial office and in order to avoid their corruptiveness. It is considered that by the last salary raises they are paid well and there is no need of higher salaries.

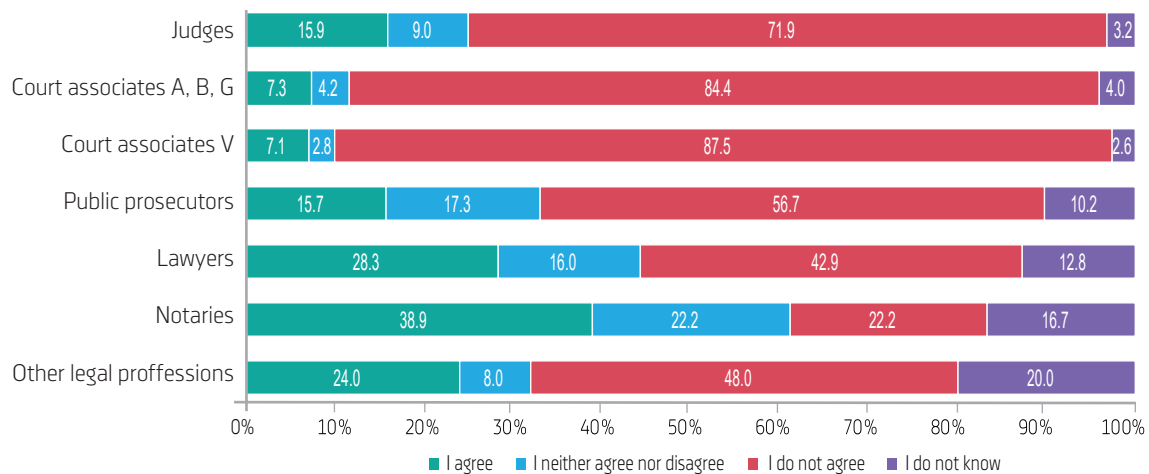
Regarding this question, there is a division among the interviewed persons from the civil society organizations. Some think that the salaries of judges should be increased, while others think that having in mind the standard in the Republic of North Macedonia and in comparison with the salaries in the other sectors, the salaries are in line with the tasks and responsibilities of judges. One of the interviewed persons has explained that the reason why it is necessary to increase the salaries of judges is the fact that according to law they cannot do another activity to earn additional income. Some of the interviewed persons have stated that there should be a difference in the salaries among the judges, because the judges in the overburdened courts act upon and decide on a bigger number of cases, which often are more complex and have more parties involved in the proceedings.

The AJPP representatives think that in regard to the scope and importance of the work, the salaries of judges and public prosecutors can be increased, because it is a responsible and reputable job. There should be a gradation of judges and their salaries in regard to easier and more difficult cases they work on. It has been noted that the judge's profession is connected with the honor and reputation of the judge and that is why the salary should be in line with that aspect.

Almost all interviewed persons have explained that the amount of the salaries should not be indicated as a reason for the existence of corruption within the judicial authority.

The judges, as well as the public prosecutors, mostly think that the salaries of judges are not in line with their tasks and responsibilities. The respondents from the other categories are divided in regard to this question, but the opinion that the judges should be paid in line with the responsibilities, but the salary should not be a reason for corruption in the judiciary generally dominates.

Indicator 63: The salaries of judicial service are in line with the tasks and responsibilities of the workplace
Graph 63



The respondents have been asked whether they agree that salaries of the judicial service are in line with the tasks and responsibilities of the workplace, and most of the respondents of all categories by a high percentage have stated that they do not agree. The respondents, employees in the judicial service by the greatest majority (over 85%) have stated that they are not satisfied with the salaries they receive for executing the tasks and responsibilities of the workplace.

Only the mediators and enforcement agents, by a highest percentage (40%), think that salaries of the judicial officers are in line with the tasks and responsibilities of the workplace.

The opinion of the interviewed representatives of the academic community is that in addition to the judges, the court administration should be also better paid, because without the court administration, neither the court, nor the judges can function well. Thus, it is necessary to make certain corrections to the salaries of the court administration.

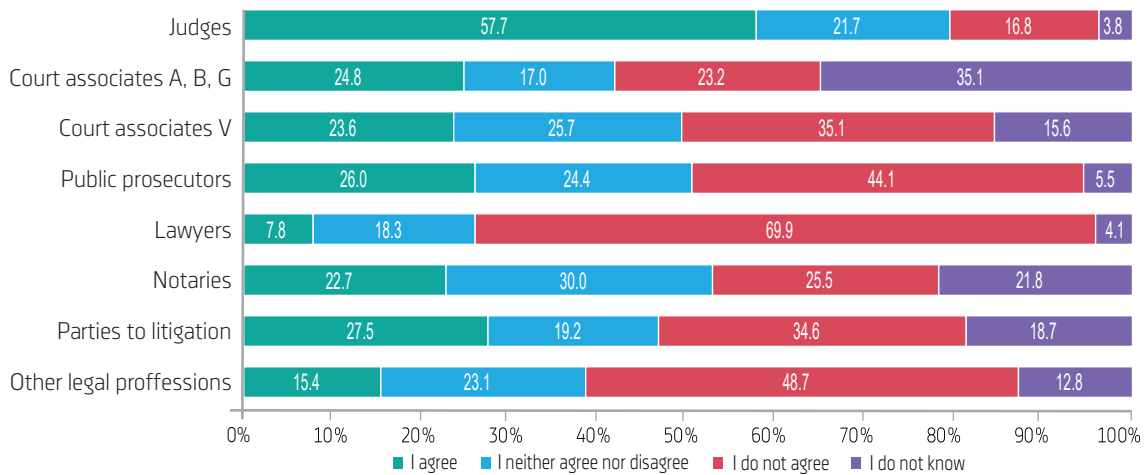
All of the interviewed SCOs have stated that it is necessary to increase the salaries of the court administration.

The respondents from the judicial service, by the greatest majority, have stated that they are not satisfied with the salaries. This opinion is dominant among all categories of respondents.

F) Sub-area: Judicial impartiality

Indicator 64: The personal convictions and the subjective attitudes of the judges are not reflected in their work

Graph 64



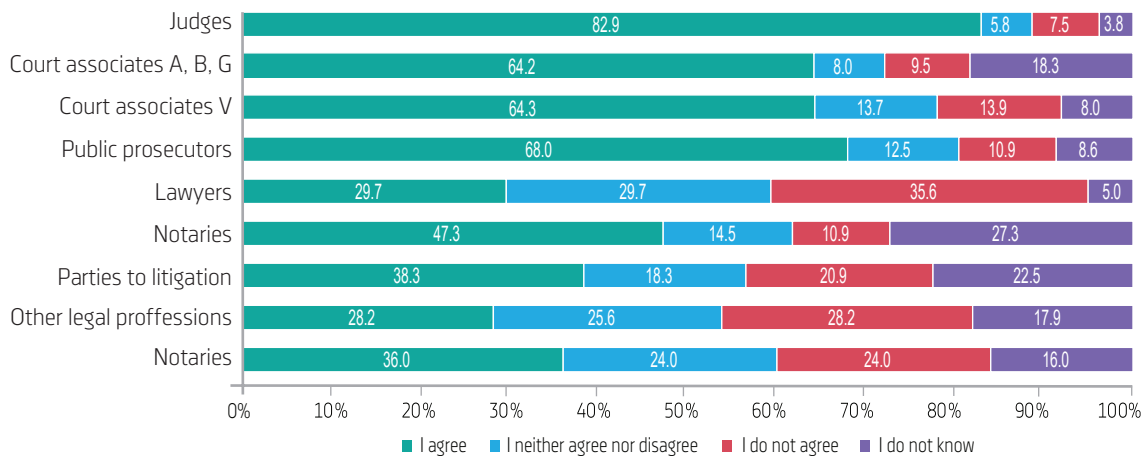
In the area of impartiality in the judiciary, the respondents have been asked whether they agree that the personal convictions and the subjective attitudes of the judges are not reflected in their work. The opinions of the respondents differ both within the group to which they belong, and among the different groups of respondents.

Thus, the majority of the respondents, lawyers (about 70%) think that there is a bias in the work of the judges due to their personal convictions and attitudes. Also the mediators and enforcement agents, as well as the public prosecutors mostly think that there is a bias in the decision-making of judges.

The employees in the judicial service have divided opinions in regard to this question. A great number of the administrative officers (35%) have stated that they don't know about this. And finally, the judges, respondents, by a highest percentage (57.7%) agree that the personal convictions and subjective attitudes are not reflected in the work of the judges.

The respondents, lawyers, public prosecutors and other legal professions, think that there is a bias of the judges in their work. While the judges mostly do not agree with it.

Indicator 65: The judges are exempt from cases where there are circumstances of conflict of interest and bias
Graph 65



In regard to whether the judges are exempt from cases where there are circumstances of conflict of interest and bias, most of the respondents have responded that they agree. However, even though the respondents, lawyers, are divided in regard to this question, most of them do not agree with this statement (35.6%). The respondents from the ranks of judges (83%) agree with the given statement about the exemption of judges from cases where there is a danger of bias, and there is a similar opinion among the employees in the judicial service and public prosecutors who, by a high percentage (64-68%) have confirmed it.

The respondents from the ranks of judges, public prosecutors and judicial service mostly agree that judges are exempted from the cases where there is a conflict of interest, while the lawyers and the other respondents are divided in regard to this question.

2. LEGAL FRAMEWORK, KEY PRINCIPLES, STANDARDS, AND PRACTICES: AREA OF INDEPENDENCE AND IMPARTIALITY

2.1 LEGAL FRAMEWORK AND DATA FROM DOMESTIC INSTITUTIONS

According to the Recommendation No. 1 of the Opinion No. 1 (2001) of the Consultative Council of European Judges at the Council of Europe on standards concerning the judiciary independence and irremovability of judges, (“the fundamental principles of judicial independence should be set out at the constitutional or highest possible legal level in each member State, and its more specific rules at the legislative level”).)

According to the Recommendation No. 7 of the Opinion No. 1 (2001) of the Consultative Council of European Judges at the Council of Europe on standards concerning the judiciary independence and irremovability of judges, (“irremovability of judges should be an express element of the independence enshrined at the highest internal level”).)

The principle of having an independent and impartial tribunal, as one of the main pillars of the concept of fair trial, is integrated into the domestic law as well. Thus, the basic principles of judicial independence are stipulated in the Constitution of the Republic of North Macedonia, as a highest legal act. In this regard, Article 98(2) of the Constitution establishes the following: “The courts are autonomous and independent. The courts adjudicate on the basis of the Constitution, and the laws and the international agreements ratified in accordance with the Constitution”. The unlimited duration of the mandate of judges, as well as the ground for termination of judges’ position and dismissal of judges are clearly provided for in Article 99 of the Constitution. The immunity of judges is guaranteed by Article 100 of the Constitution. All these provisions are almost literally replicated in the Law on Courts.⁹⁰

Election of judges

The procedure for election of judges by the Judicial Council is set forth in the Articles 38 – 42 of the Law on the Judicial Council. Thereby, Article 40(1) stipulates that “the Council shall elect a judge in a court of first instance from the list of candidates delivered by the Academy for Judges and Public Prosecutors who have applied for the vacancy”, while Article 41(1) stipulates that “the Council shall elect a judge in an Appellate Court, the Administrative Court, the Higher Administrative Court, and the Supreme Court of the Republic of North Macedonia from the rank of candidates who has applied for the vacancy and who meets the conditions and criteria stipulated by the Law on Courts and this Law”. The amendments to the Law on the Judicial Council of the Republic of North Macedonia adopted by the Assembly of RNM on 29.12.2017 (“Official Gazette of RNM” No. 197/17) stipulate an obligation of each member of the Judicial Council of RNM to publicly explain, during the session of the Council, his/her decision about the election of a judge and a president of court, and at the same time minutes about the voting on the decision is kept and published publically on the website of the Council.

⁹⁰ Article 98 (2), 99 and 100 of the Constitution of the Republic of North Macedonia, with Amendments I to XXXVI [Official Gazette of the Republic of North Macedonia no. 52/91, 1/92, 31/98, 91/01, 84/03, 107/05, 3/09, 49/11, 6/19]

The Articles 45, 45-a and 46 of the Law on Courts stipulates the criteria for election of judges⁹¹. Thereby, Article 45 and 45-a set forth the general conditions for election of judge, while Article 46 sets forth the special conditions for election of a judge in the Basic, Appellate, Administrative, and Supreme Court of the Republic of North Macedonia. At the same time, according to Article 52, “the judicial office is incompatible with the office of a Member of the Parliament, i.e. member of a Council of the Municipality, i.e. the City of Skopje and with the office in the state bodies, the municipality and the City of Skopje”, as well as “any other public office or profession, except for the office established by law, and which is not contrary to their independence and autonomy of exercising the judicial office”.

The Strategy for reform of the judicial sector 2017 – 2022⁹² provides for establishment of legal criteria for (non) election of graduates of AJPP by the JCRNM and the CPPRNM. According to First annual report on the implementation of the Strategy for reform of the judiciary sector (2017 – 2022)⁹³, adopted by the Council for Monitoring the Reforms in the judiciary, a Draft-Law on the Judicial Council of the Republic of North Macedonia, stipulating the obligation of the Judicial Council of the Republic of North Macedonia to elect a judge in a Basic Court subsequently according to achieved success determined in the final ranking list after the completion of the training, and who has applied to the advertisement for a judge, is in a parliamentary procedure.

In December 2017, the Assembly adopted the Law Amending the Law on the Judicial Council (Official Gazette of the Republic of North Macedonia No. 197/2017). Pursuant to Article 3 of this law: “Each member of the Council who has a right to vote, is obliged to publicly, at the session of the Council, explain his/her decision on the election of judge. The Council is obliged in writing to inform each candidate about the decision on election of a judge, and he/she can appeal to the Supreme Court within eight days after the notification is received”. The same legal provisions are also stipulated for election of a president of a court, pursuant to Article 5 of this law⁹⁴.

Furthermore, according to the annual report, the Draft-Law on the Judicial Council of the Republic of North Macedonia, which is in a parliamentary procedure, the conditions for election of the members of the Council from the ranks of judges are made stricter, i.e. it is required from the candidate for a member of the Council to have at least six years of experience as a judge⁹⁵.

Distinguished jurist

In order achieve more quality functioning of the independent bodies in the judiciary, the Strategy for reform of the judiciary sector (Strategic guideline 2.1.3) provides for a legal precision of the term “distinguished jurist” for election of members of the Judicial Council of RNM and the Council of Public Prosecutors of RNM upon a proposal by the Assembly of the Republic of North Macedonia and the President of the Republic of North Macedonia that should not come from the ranks of judges i.e. public prosecutors.

91 Articles 45, 45-a and 46 of the Law on Courts (“Official Gazette of the Republic of Macedonia no. 58/2006, 62/2006, 35/2008, 150/2010, 83/2018 and 198/2018”)

92 Ministry of Justice (2017). Strategy for reform of the judicial sector for the period 2017 – 2022 with an Action Plan, page 7, available at: <https://goo.gl/cKpqnG>

93 Annual Report on the Implementation of the Strategy for Reform of the Judicial Sector, page 12

94 Some of the recommendations with regard to the functioning of a certain Judicial Council, ascertained in Opinion no. 10 (2007) of the Consultative Council of European Judges of the Council of Europe for the Committee of Ministers of the Council of Europe, envisage the following as concerns the matter of the Judicial Council in service of society: some decisions of the Judicial Council should be elaborated and executive, but still eligible for a court appeal.

95 Concerning Strategic guideline 2.1.2, which envisages that the members of the Judicial Council and the Council of Public Prosecutors be selected from a pool of the most experienced judges and public prosecutors.

The Annual report of the Ministry of Justice of RNM⁹⁶ states that in regard to this strategic goal, by the Draft-Law on the Judicial Council of the Republic of North Macedonia, the definition of the term of “distinguished jurist” is done by extension of the list of persons who can be elected as members of the Council by the Assembly of the Republic of North Macedonia by adding the former judges of the Constitutional Court and international judges.⁹⁷

Besides the big number of vacated positions in 2018, the Judicial Council of RNM conducted the election of only 4 judges of whom 2 judges in the Administrative Court, 1 judge in the Higher Administrative Court and 1 judge in the Appellate Court in Skopje. Election of 2 presidents of courts - AC Skopje and BC Debar was also conducted. In 2018, 131 lay judges were elected⁹⁸.

Liability

The procedures for unprofessional and unethical performance of the judicial office, as well as the procedure for determining the disciplinary liability of a judge in performing the judicial office, before the Council, are conducted in accordance with the provisions of the Law on the Judicial Council of the Republic of North Macedonia⁹⁹ which regulates these procedures

The procedures initiated to determine the liability of a judge have an urgent and confidential character and they are conducted in the presence of the public, except in cases when upon a request of the judge himself/herself against whom the procedure has been initiated, the Council makes a decision and allows the presence of the public at the sessions during which the requests for determining the liability of the judge are discussed.

The disciplinary procedure for determining the disciplinary liability of a judge is stipulated in the Articles 54 – 71 of the Law on the Judicial Council, while the procedure for unprofessional and unethical performance of the judicial office is stipulated in the Articles 77 – 96 of this Law.

The Strategic guideline 2.3.1 of the Strategy for reform of the judiciary sector, sets forth legal criteria and a procedure for determining the individual liability of the members of the JCRNM and CPPRNM. According to the annual report¹⁰⁰ the Draft-Law on the Judicial Council of the Republic of North Macedonia enshrines the provisions for individual liability of the members of the Council in performing their function for the first time.

The Strategy for reform of the judicial sector (Strategic guideline 2.3.2) provides for identification of functional and transparent mechanisms for liability of the judges. According to the strategic guidelines for a judiciary reform, a Law on Termination of the Validity of the Council for Establishment of Facts¹⁰¹ and Initiation of Proceedings for Determination of Accountability for Judges has been adopted. At the same time, the Law Amending the Law on the Judicial Council of the Republic of North Macedonia which returns the competence to the Judicial Council for conducting the procedure for determining the liability of a judge or a president of a court, in accordance with the recommendation of the Venice Commission has been adopted.

96 Annual Report on the Implementation of the Strategy for Reform of the Judicial Sector 2017 – 2022, page 13

97 Based on the draft legal solution, the members of the Council elected by the Parliament of the Republic of North Macedonia, as well as those members elected by the Parliament of North Macedonia upon proposal of the President of the Republic of North Macedonia, are from the pool of university professors of law, attorneys, ex judges at the Constitutional Court of the Republic of North Macedonia, international judges and other distinguished lawyers with at least 15 years of working experience in the legal profession, with a passed bar exam, and who have distinguished themselves in conducting the legal profession with scientific or professional work or with their public actions. Annual Report on the Implementation of the Strategy for Reform of the Judicial Sector 2017 – 2022, page 16

98 Data obtained from the quarterly report of the Judicial Council of the Republic of Macedonia from January 2019

99 Law on Judicial Council of the Republic of North Macedonia (“Official Gazette of the Republic of Macedonia” no. 60/2006, 69/2006, 150/2010, 100/2011, 20/2015, 61/2015, 197/2017 and 83/2018))

100 Annual Report on the Implementation of the Strategy for Reform of the Judicial Sector 2017 - 2022

101 Law on Cessation of the validity of the Council for establishing of facts (“Official Gazette of the Republic of Macedonia” no. 11/18)

Annual report on the implementation of this strategic goal, notes that the Draft-Law Amending the Law on Courts, which is in a parliamentary procedure, completely redefines the provisions regarding the bases for determining the liability of a judge or a president of a court and they are fully harmonized with the opinion of the Venice Commission.

In order to build a culture and awareness of the personal and institutional liability in the judiciary and the public prosecution, the Law Amending the Law on the Judicial Council of the Republic of North Macedonia¹⁰² provides for an opportunity, upon a request of the judge or the president of a court against whom a procedure for determining the liability has been initiated, for a representative of the Association of Judges to be also present at the session during which this request is discussed.

In the Recommendation xii. 59, GRECO¹⁰³ recommended that disciplinary infringements applicable to judges be clearly defined and the range of sanctions be extended to ensure better proportionality and (ii) that dismissal of a judge only be possible for the most serious cases of misconduct, ensuring, in particular, that the possibility to dismiss a judge solely in one of his/her decisions is found to be in violation of the right to a trial within reasonable time be abolished. The Law on Courts provides for a series of serious and less serious violations which should be determined in the disciplinary procedure. The scope of disciplinary measures is extended by addition of a compulsory attendance of professional training. The amended laws¹⁰⁴ provide for dismissal (firing) of judges only for the most severe disciplinary offences, following a disciplinary procedure¹⁰⁵. The amendments as of May 2018 to the Law on Courts, which reform the disciplinary mechanisms, provide for a series of violations in regard to: a) unprofessional and negligent exercise of duties (Article 75); b) serious disciplinary offences (Article 76), to be established within the context of the disciplinary procedure), c) disciplinary violations (Article 77), such as violations of the rules of ethics, disturbance of the court's work, unjustified absences, failure to wear the judge's robe, etc. the sanctions for offences under Articles 75 and 76 are dismissal from office (according to Article 74), whereas for other violations, the penalties are now: written reprimand, public reprimand, decrease in salary, and newly introduced compulsory training.

GRECO notes¹⁰⁶ that excessively vague offences such as "unprofessional, untimely or inattentive exercise of the judicial office" (an offence used frequently in practice) – can still be found in the legal text in Article 75, which now comprises 11 elements... moreover, in regard to the second part of the Recommendation, Article 75 still provides for the type of situations the recommendation calls to abolish (decision found in violation of Articles 5 and 6 of the European Convention on Human Rights). Overall, whilst some improvements may have taken place in regard to the range of offences and sanctions and the automatic sanctions have been abolished, some important elements of the two parts of this recommendation have actually not been addressed.

102 Law Amending the Law on the Judicial Council of the Republic of North Macedonia ("Official Gazette of the Republic of Macedonia" no. 197/17)

103 Evaluation Report for the Republic of Macedonia – Fourth Evaluation Round GRECO – Corruption prevention in respect of members of parliament, judges and prosecutors, pages 7 – 15, available at <https://goo.gl/BSUSWo>

104 Law on the Judicial Council of the Republic of North Macedonia ("Official Gazette of the Republic of Macedonia" no. 60/2006, 69/2006, 150/2010, 100/2011, 20/2015, 61/2015, 197/2017 and 83/2018) and Law on Courts ("Official Gazette of the Republic of Macedonia" no. 58/2006, 62/2006, 35/2008, 150/2010, 83/2018 and 198/2018)

105 The grounds are listed under Article 76 of the amended Law on Courts, namely: 1) participation in partisan and political activities; 2) interference in the oversight of the judicial work by a higher court; 3) abuse of position for personal gain; 4) serious violation of public order and peace in a manner that affects the reputation of the judiciary (to be ascertained by a final court decision, for example, participation in a brawl or a fight); 5) two consecutive unsatisfactory evaluations; 6) conducting of another public duty or other work, profession or activity that is incompatible with the judicial function; 7) accepting presents and other benefits in relation with the conducting of judicial functions; 8) not taking into consideration the content of the final decisions of the European Court of Human Rights; 9) revealing of confidential information.

106 Evaluation Report for the Republic of Macedonia – Fourth Evaluation Round GRECO – Corruption prevention in respect of members of parliament, judges and prosecutors, point 63, page 13, available at <https://goo.gl/BSUSWo>

Upon the recommendation GRECO¹⁰⁷ the infringements are subject to one single disciplinary procedure and with due regard to the principle judicial independence, Article 54¹⁰⁸ of Law on JCRNM provides for authority to initiate proceedings and to investigate to be separated from the authority to decide on sanctions, providing for one single disciplinary procedure. The Law Amending the Law on the Judicial Council (JCRNM), adopted in December 2017, which returned all its competences to the Judicial Council, also amended the procedure to dissociate the respective functions of those involved in proceedings, i.e. the members of JCRNM who initiate the procedure and those who participate in the investigation – they are not allowed anymore to vote in the subsequent decision on a judge's disciplinary liability.

According to the Annual report on the implementation of the SRJS (2017-2022)¹⁰⁹, the Draft-Law Amending the Law on Courts, which is in a parliamentary procedure, provides for one of the grounds for dismissal of a president of court is a violation of provisions for adoption and changes of the annual schedule of judges, since the practice has indicated it as needed.

According to the data from the quarterly report of the Judicial Council of RNM, in 2018 not a single judge was dismissed, and the judicial office was terminated for 25 judges as follows, 21 judge retired, 2 judges died, and 2 upon their own request. A total number of 46 lay judges were dismissed in 2018.

During 2018, before the Judicial Council of RNM, there were filed requests for initiating a procedure for determining the liability against 10 judges. JCRNM has not made decisions as regards the filed requests in 2018. JCRNM acted upon 1 request for determining the liability of a judge filed in 2017 and it made a decision to reject the request for determining the liability of 1 judge of AC Skopje.

Promotion and evaluation

Promotion

The Strategy on reforms in the judiciary sector (Strategic guideline 2.2.3) provides for redefinition of the criteria for promotion of judges and public prosecutors.

According to the statements of the Annual report on the implementation of the Strategy, the proposed amendments to the Law on Courts, intervene in the conditions for promotion of judges. Thus, a person that has had a working experience of at least six years of uninterrupted experience as a judge in the Basic Court, Administrative Court or Higher Administrative Court of RNM can be elected for a judge in the Appellate Court. A person that has had a working experience of at least six years of experience as a judge in the Appellate Court can be elected for a judge in the Supreme Court of the Republic of North Macedonia.

A person that has had a working experience of at least four years of uninterrupted experience as a judge in the Basic Court can be elected for a judge in the Administrative Court of RNM. And, a person that has had a working experience of at least six years of uninterrupted experience as a judge in the Appellate Court or the Administrative Court of RNM can be elected as a judge in the Higher Administrative Court.

At the same time, an opportunity is provided for a judge elected in a region of one basic or appellate court, after the end of the four-year uninterrupted working experience as a judge in the respective court, to be elected in the region of another basic i.e. appellate court.

107 Evaluation Report for the Republic of Macedonia – Fourth Evaluation Round GRECO – Corruption prevention in respect of members of parliament, judges and prosecutors, point 66, page 13, available at <https://goo.gl/BSUSWo>

108 Article 54 of the Law Amending the Law for the Judicial Council of the Republic of North Macedonia ("Official Gazette of the Republic of Macedonia" no. 83/2018)

109 Annual Report on the Implementation of the Strategy for the Reform of the Judicial Sector 2017 - 2022

The opportunity to elect a judge who has performed a judicial office in an international court as a judge in all instances of the judiciary is also proposed. Furthermore, for all the instances in the judiciary, the opportunity for the Judicial Council to elect a judge from the ranks of candidates with a positive evaluation, according to the legal criteria, having in mind its discretionary right to elect a judge, is provided for. The Draft-Law on the Judicial Council of the Republic of North Macedonia amends the criteria for election of a judge in a higher instance in the judiciary by the new criteria, including the length of the working experience as a judge, expert knowledge of the candidate for a judge in a higher court, specialization in the profession and other prescribed criteria.

The Law Amending the Law on JCRNM¹¹⁰ provides for an obligation of each member of the JCRNM to publicly, at a session of the Council, explain his/her decision on the election of a judge and a president of a court and at the same time minutes on the voting on the decision is kept, which is publicly published on the website of the JCRNM. This is also in accordance with the Recommendation (viii) of GRECO, that the decisions of JCRNM on the promotion of judges should be accompanied by a statement of reasons and should be subject to judicial review.

Evaluation

3With due regard to the principle of judicial independence, GRECO recommends that the system of evaluation of judges' performance to be reviewed to (1) introduce more qualitative criteria and (2) remove any automatic lowering of a judge's grade resulting from the reversal of his/her decisions¹¹¹. The amendments to the Law on JCRNM have been adopted in May 2018¹¹² to revise completely the judges' evaluation system, which would put particular emphasis on the qualitative criteria.¹¹³ The new rules provide that the assessments will use computerized court case management system, which allows to obtain (retrieve) data on certain decisions / legal remedies / invalidations / procedural violations, on the level of activity in the management of the case and on compliance of all procedural steps with the deadlines. Regarding the qualitative criteria, the amendments list the following: a) completion of work programme, b) consistency in the application of the Court's Rules of Procedure (annual work schedule, exemption of judges, reallocation of cases, etc.); c) functioning of the automated court case management system; d) quality of decisions performed in the court administration; d) public relations and transparency in the work.

The evaluations shall be based on the Annual report on the respective court workload, after it has been reviewed at the general session of SCRNM, on the Working Programme of the President of the court, as well as on the results of control reports carried out by the higher courts, JCRNM, and the Ministry of Justice of RNM. In the final overall assessment, the weight of the notations for qualitative criteria will represent 60% (quantitative criteria: 40%).¹¹⁴ The working hours will also be taken into consideration. The amended law also provides for a specific list of criteria for the presidents of courts, largely based on the above-mentioned.¹¹⁵

¹¹⁰ Law Amending the Law on the Judicial Council of the Republic of North Macedonia ("Official Gazette of the Republic of Macedonia", no. 197/17)

¹¹¹ Evaluation Report for the Republic of Macedonia – Fourth Evaluation Round GRECO – Corruption prevention in respect of members of parliament, judges and prosecutors, point 47, page 10, available at <https://goo.gl/BSUSWo>

¹¹² Law Amending the Law on the Judicial Council of the Republic of North Macedonia ("Official Gazette of the Republic of Macedonia" no. 83/18)

¹¹³ The amendments envisage the following quantitative criteria: a) the number of cancelled decisions due to serious procedural violations relative to the total number of resolved cases; b) the quality of conducting of the judicial procedures (compliance with the legal deadlines for undertaking of procedural actions and for preparation and publishing of court decisions, duration of the judicial procedures and the level of compliance with the principle of a trial within a reasonable timeframe; c) number of amended decisions relative to the total number of resolved cases; d) level of specialization in the profession; e) the number of well founded submissions and submissions from the parties concerning the work of the judge and the number of well founded requests for exemption upon request from a party; f) imposed disciplinary measures)

¹¹⁴ Articles 107 and 108 of the Law on the Judicial Council of the Republic of North Macedonia ("Official Gazette of the Republic of Macedonia" no. 60/2006, 69/2006, 150/2010, 100/2011, 20/2015, 61/2015, 197/2017 and 83/2018)

¹¹⁵ Evaluation Report for the Republic of Macedonia – Fourth Evaluation Round GRECO – Corruption prevention in respect of members of parliament, judges and prosecutors, point 50, page 10, available at <https://goo.gl/BSUSWo>

Influences in the judiciary

According to Article 2 of the Law on the Judicial Council of the Republic of North Macedonia, the Judicial Council is defined as “an independent and autonomous body of the judiciary”, which “shall ensure and guarantee the independence and autonomy of the judiciary”. This provision is taken from Article 104(1) of the Constitution of the Republic of North Macedonia. The composition of the Judicial Council of the Republic of North Macedonia is provided for in Article 6 of the Law on the Judicial Council, while the conditions for the election of its members are stipulated in Article 11 of the same law. Its competences for election, dismissal, evaluation and promotion of judges are stipulated in Article 104(1) of the Law on the Judicial Council of the Republic of North Macedonia.

The judiciary independence is ensured through clearly defined legal and ethical rules which provide enough mechanisms for tackling any impermissible influences in the judiciary. The Judicial Council, through its members, as a guarantor and active promoter of the judiciary independence and impartiality has the primary role in the achievement of this goal. Thus, the Strategy for reform of the judiciary sector (2017-2022), through the strategic guideline 4.1.2.1 provides for ensuring and guaranteeing independence, professionalism, and responsibility of the members of the Judicial Council of the Republic of North Macedonia.

The annual report on the implementation of the Strategy emphasizes that the Draft-Law on the Judicial Council of the Republic of North Macedonia, which is in a parliamentary procedure, makes the conditions for election of the members of the Council from the ranks of judges stricter, i.e. the candidate for a member of the Judicial Council of RNM is required to have at least six years of experience as a judge. The Draft-Law on the Judicial Council of the Republic of North Macedonia also retains the existing concept, i.e. the members of the Council shall exercise the function on a professional basis¹¹⁶.

In order to raise the accountability and transparency of the work of the Judicial Council of RNM, the amendments to the Law on the Judicial Council of RNM provide for the sessions of the Council to be public. When the Council decides to exclude the public, the president of the Council is obliged to inform the public about the reasons for exclusion of the public and in the case when at the session a decision is made by voting, the voting on the decision is public.

When the Judicial Council of RNM decides on the election of a judge or a president of a court, the public cannot be excluded by any circumstances.

Additionally, for the purpose of strengthening the transparency of the Judicial Council of RNM, the obligation for each member of the Judicial Council of RNM to publicly, at a session of the Judicial Council of RNM, explain his/her decision on the election of a judge and a president of a court, and at the same time minutes on the voting on the decision is kept, which is publicly published in the website of the Judicial Council of RNM is provided for.

116 Some of the recommendations with regard to the functioning of a certain Judicial Council, ascertained in Opinion no. 10 (2007) of the Consultative Council of European Judges of the Council of Europe for the Committee of Ministers of the Council of Europe, envisages, inter alia, the following as concerns the matter of the Judicial Council in service of society: the mandate of the members may be with full working hours, in which case it should be limited in number and duration in order to preserve contact with judicial practice.

Financing (judicial budget)

The judiciary independence is directly linked to the financial independence.

According to paragraph 2 of the Opinion No. 2 (2001) of the Consultative Council of European Judges at the Council of Europe to the attention of the Committee of Ministers of the Council of Europe on funding and management of courts with reference to the efficiency of the judiciary and the Article 6 of the European Convention on Human Rights, “the funding of courts is closely linked to the topic of ‘judiciary independence’, thus determining the conditions in which the courts perform their functions”.

According to the Recommendation No. 8 of the Opinion No. 1 (2001) of the Consultative Council of European Judges at the Council of Europe referring to the salaries of judges stipulates the following: “Judges’ remuneration should be commensurate with their role and responsibilities and should provide appropriately for sickness pay and retirement pay. It should be guaranteed by specific legal provisions against their reduction and there should be provisions for increases in line with the cost of living”.

The Strategy for reform of the judiciary sector 2017-2022¹¹⁷, by one of the objectives, provides for “Creation of financial, personnel, information and other assumptions, with urgent increases of the budgetary investments, in order to increase the efficiency of the judiciary and the public prosecution office”. One of the strategic guidelines in the area of independence and impartiality provides for: “Autonomous and sustainable judicial budget, consistent with the legal allocation of the Gross National Income, with greater participation of the JBC in the achievement of this guideline”. The Strategy also notes that in the current state there is a notable lack of capacities for strategic planning, budget and financial management, as well as insufficiently developed capacities of the professional services in the judiciary.

According to the Law on Judicial Budget¹¹⁸, the judicial budget represents an annual assessment of the income and expenses of the judicial power spending units determined by the Assembly of the Republic of North Macedonia and it is intended for their funding. Article 4 of the Law on Judicial Budget stipulates that the share of funds for “Judicial power” in the Budget of the Republic of North Macedonia, necessary for the functioning of the spending units is determined in the amount of at least 0.8% of the Gross Domestic Product, however this percentage for 2017 was 0.34% of the Gross Domestic Product.

The measures to improve the situation of the judicial budget in RNM have been continuously proposed for many past years. The main role for achieving this strategic goal belongs to the Judicial Budget Council¹¹⁹, which, in order to achieve this role consistently needs to show increased activity in the planning and bringing the judicial budget before the competent bodies (presence of the President of the JBC at the thematic sessions of the Government of the Republic of North Macedonia and the Assembly of the Republic of North Macedonia, providing argumentative explanations for the required amount and allocation of the judicial budget)¹²⁰. Furthermore, it is necessary for the JBC to consistently use all legal mechanisms which, in accordance with the existing legal legislation, are available for achievement of the basic goal for which it has been established¹²¹.

During 2017, the Budget of the Republic of Macedonia (“Official Gazette of Republic of Macedonia” No. 109 as of 13.8.2017) was re-balanced, and the funds allocated to the judicial power funding were reduced, which is contrary to Article 4, paragraph 2 of the Law on Judicial Budget. During the year, numerous reallocations were made for the purpose of maximal utilization of funds according to the needs of the judicial power spending users. In 2018, the planned judicial budget was increased and it was 1.873.404.000 denars (the implemented budget is 1.796.554.202 denars), and in 2019, the planned judicial budget is a total of 1.974.841.000 denars.

117 Ministry of Justice (2017), Strategy for Reform of the Judicial Sector for the period 2017 – 2022 with an Action Plan, page

118 Law on Judicial Budget (“Official Gazette of the Republic of Macedonia” no. 60/03, 37/06, 103/08, 145/10)

119 Ministry of Justice (2017), Strategy for Reform of the Judicial Sector for the period 2017 – 2022 with an Action Plan;

120 Report on the implementation of the judicial budget for 2017, page 5, available at: <https://goo.gl/f2z7Fw>

121 Ibid

Account	Programme			Heading	Budget 2019
	20	Court administration	40	Salaries and additional remuneration	1,522,842,000
	20	Court administration	42	Goods and services	216,108,774
	20	Court administration	46	Subventions and transfers	32,191,226
	20	Court administration	48	Capital Revenues	133,416,000
	20			Total Program 20	1,904,558,000
	30	Academy for judges and public prosecutors	40	Salaries and additional remuneration	48,983,000
	30	Academy for judges and public prosecutors	42	Goods and services	18,700,000
	30	Academy for judges and public prosecutors	48	Capital Revenues	2,600,000
	30			Total Program 30	70,283,000
		TOTAL Judiciary			1,974,841,000

*Table of the Judicial Budget for 2019

The category of salaries and salary contributions takes a dominant share of the total judicial budget. According to the data from the Judicial Council of RNM for 2018, the category of goods and service which, in the total budget, is insufficient to cover all needs of the courts' operations resulting from the regular work of the courts¹²².

Category (salary)	Amount of salary
Lowest salary for judge (basic court with basic competence)	74,714 MKD.
Highest salary for judge (Justice at the Supreme Court)	98,994 MKD.
Lowest salary for court staff	34,217 MKD.
Highest salary for court staff	40,551 MKD.

*Table of salaries for judges and court associates for 2018. The overview of the salaries is expressed in gross amount (with remuneration for past work that is different depending of the working experience) Data from the Judicial Council of RNM, February 2019

The Annual report on the implementation of the judicial budget for 2017¹²³ states that despite the employments, the situation of a lack of appropriate staff in the judiciary continues to be present, and especially: management staff that will assist the president of the court, i.e. court administrator in managing the judicial service and exercising the works of the judicial administration; professional and administrative-technical staff that is directly serving the office of the judges and the performance of their office (judicial associates, typists, heads of units, translators, deliverers, employees in the clerk's office and the like) and professional staff in the area of human resource management, internal audit, public internal financial control, strategic planning, and the like, i.e. staff that is not in a direct correlation with the judicial office, but which is imposed as a need by the modern trends of institution functioning. The same need for increase of the appropriate staff in the judiciary, through planning and assessment of the needs, also remains to be a challenge during 2018.

122 Report on the implementation of the judicial budget for 2017, page 33, available at: <https://goo.gl/f2z7Fw>

123 Report on the implementation of the judicial budget for 2017, page 37, available at: <https://goo.gl/f2z7Fw>

Impartiality

The impartiality¹²⁴ and the perceptions of the people about impartiality, together with the independence, are essential for fair trial. The impartiality of the judges represents a lack of prejudices, or previously established opinion in the decision-making, and in the procedure adopted before the judgement is rendered. The judge has to ensure that his/her private life does not influence the public image of impartiality within his/her judicial work [...] the impartiality does not prevent the judge to take part in the social life by conducting his/her professional activity.¹²⁵

Article 11(1) of the Law on Courts stipulates that “the judge shall decide impartially by applying the law on the basis of free evaluation of the evidence”, while Article 11(2) of the same law explicitly prohibits “any form of influence the judge on the independence, impartiality and autonomy of the judge in the exercise of the judicial office on any ground and any entity”.

The Strategy for reform of the judiciary sector (Strategic guideline 2.3.6) also establishes the Code of Judicial Ethics as a legal category. The Annual report on the implementation of the Strategy notes that the Draft-Law Amending the Law on Courts, which is in a parliamentary procedure, stipulates the competence of the Supreme Court of RNM to adopt a Code for judges and lay judges upon the proposal by the Association of Judges.

In January 2018, six of seven members were elected by the Steering Committee (advisory body) of the Association of Judges; the seventh member is proposed by the Supreme Court of RNM and he/she is appointed by the Steering Committee¹²⁶. The activities envisaged in this project, beginning in December 2017, focus directly on establishing the body, supporting its initial development, preparing documents for its functioning as well raising public awareness among judges on the Code of Judicial Ethics and competences of the advisory body.

GRECO recommends¹²⁷ that rules and guidance be developed for judges on the acceptance of gifts and other advantages and that the compliance with these rules be properly monitored.

In regard to this activity of the Association of Judges, GRECO notes that by the “Practical Guide to the Code of Judicial Ethics” it cannot be considered the underlying concerns of the Evaluation Report, i.e. that the Guide does not provide examples, concrete situation explanations, etc., for instance, on what the concept of gifts entails, nor does it refer to hospitality and other possible advantages and benefits in that context¹²⁸. Furthermore, GRECO notes that as for the subject of proper monitoring, the authorities refer to the fact that this is the responsibility of the newly created Advisory body for Judicial Ethics, which is being set up in cooperation of a foreign country and which is meant to elaborate policy documents and provide guidance. GRECO adds that it should reassess the actual role and activities of the newly created body when more specific information becomes available, especially that the function of this body is primarily to advise, whereas GRECO calls for proper monitoring of compliance with the rules on gifts.

124 European Network of Councils for the Judiciary, Judicial Ethics Report 2009-2010, Достапно на: <https://goo.gl/XngqLM>;

125 European Network of Councils for the Judiciary, Judicial Ethics Report 2009-2010, Достапно на: <https://goo.gl/XngqLM>;

126 In November 2017, the Judges' Association signed an agreement with the Embassy of the Kingdom of the Netherlands, for the purpose of supporting the aforementioned body.

127 Evaluation Report for the Republic of Macedonia – Fourth Evaluation Round GRECO – Corruption prevention in respect of members of parliament, judges and prosecutors, point 47, page 10, available at <https://goo.gl/BSUSWo>

128 Ibid

2.2 DATA FROM INTERNATIONAL REPORTS

Rule of Law Index on the World Justice Project (WJP)¹²⁹

The indicators from the Rule of Law Index related to the possibility that the judiciary effectively and independently limits the powers of the government, as well as the (non)existence of external pressures and influences in the courts' work are in narrow correlation with indicator no. 57 from the Matrix (there is no phenomenon or circumstances of pressure from other institutions), as well as the common issue concerning the area of "independence" (During the exercise of their function, judges shall be independent of any internal and external influence). The grades for this area in the Rule of Law Index are by far the lowest (0.36 and 0.37, which, presented on a 1 to 5 grade are 1.8 and 1.85) compared to all the rest. On the other hand, this fully matches the findings of the perceptions from the Matrix, where the average grade of the common issue from the area of "independence" was graded with 2.2, which is also the lowest compared to the others in this research. Such correlation confirms that the perceptions from "within" and "without" are largely aligned, and indicate a lack of trust in the judicial system, concerning independence from external influence.

European Commission for the Efficiency of Justice - CEPEJ¹³⁰

With regard to indicator 61 of the Matrix "The annual court budgets are sufficient to cover the real expenses for implementation of justice", the majority (of which up to 73% of judges and over 50% of the court staff) believe that the annual budget is insufficient to cover the regular expenses in the judiciary. The perceptions with regard to this indicator correspond with the last annual report of the Judicial Council of the Republic of North Macedonia for 2017, with a dominant participation of 81.3% of the category "salaries and benefits", while the category of "goods and services", which participates in the total budget with 16.06% is considered insufficient to satisfy all the needs arising from the courts' regular work.

With regard to the judges' salaries, CEPEJ ascertains two indicators: the starting salary at the beginning of the career, and the average salary of the judges at the Supreme Court of the Republic of North Macedonia as the highest court instance in the country. In both cases, salaries are analyzed through the prism of the average salary in the country. According to these parameters, judges in the Republic of North Macedonia at the beginning of their careers have a coefficient of 2.8 (which is insignificantly higher than the European average) and a coefficient of 3.5 average salaries in the highest court instance. With this, the Republic of North Macedonia falls within the group of countries where judges receive a relatively higher salary (more than twice) than the average salary in the country at the beginning of their careers, whereas its growth with a 0.7 coefficient is below the European average. Nonetheless, it is important to note that the coefficients are of relative meaning, since the judges' salaries are compared to the average salary in the country. Taking into consideration that the Republic of North Macedonia has among the lowest average salaries in Europe, this also means lower salaries for the judges in comparison with other countries.

On the other hand, the Matrix evaluates the subject of judges' salaries through indicator 62: "The judges' salaries are in accordance with the tasks and responsibilities of the working position". For the majority of judges (90%), the salaries are insufficient and inappropriate to the tasks and responsibilities of the working position, which is also agreed by the public prosecutors (almost 70%).

¹²⁹ World Justice Project, Global Insights on Access to Justice, Available at: <https://goo.gl/JWpfbq>;

¹³⁰ The European Commission for the Efficiency of Justice (CEPEJ) European judicial systems Efficiency and quality of justice 2018 report; Достапно на: <https://goo.gl/Ytjt7k>;

The European Commission's Report on the Progress of the Republic of North Macedonia for 2018 Independence

For the first time in a while, in its last progress report on the country from 2018, the EC assesses that a certain level of preparation has been reached, and that good progress has been recorded in the judicial system, particularly in the second part of the reporting period. The regression of the previous years has begun to change through decisive steps taken over the last months, particularly in the sense of strengthening the independence of the judiciary. The Report further acknowledges the significance of the adopted credible new strategy for judicial reform, which sets the basis for further reforms in this area, whereas the key laws have been amended in accordance with the recommendations of the Venice Commission and the "Urgent Reform Priorities". In addition, the report indicates a decline in selective justice in the politically sensitive cases for which court procedures are underway. At the same time, the Special Public Prosecutor is facing less obstructions from the courts, which enables a more efficient manner of working. However, despite the recorded progress in this area, judging from the perceptions of most of the interviewees within the research conducted through the Matrix, the independence and impartiality of the judiciary is graded with an average of 2.2, which represents the lowest grade of all five areas falling within the Matrix of indicators for monitoring of the judiciary. This indicates a need for further commitments for continuous improvement of this area of the judiciary's functioning. Such conclusion is aligned with the recommendation from the EC Report, which ascertains the need for stronger guarantees for the independence of the courts in practice.

According to the EC Report, certain shortcomings were ascertained in the process of appointment of judges by the Judicial Council of the Republic of North Macedonia in 2017, specifically with regard to transparency, procedure and qualifications of the candidates in the process of appointment of presidents of courts. Regarding the period that is subject to analysis, the report indicates a lack of merit-based criteria for objective evaluation of the candidates. The system of selection is mainly based on quantitative, rather than qualitative criteria.

This finding is in complete alignment with the perceptions of all target groups included in the monitoring through the Matrix. Interviewees of all categories are particularly critical with regard to the appointment of judges for the position based on objective criteria and in a transparent procedure (Indicator 50). Thus, 81% of lawyers among interviewees believe that there are no objective and transparent criteria for the selection of judges, while this percentage is also quite high concerning journalists (72%), as well as a significant part of the court service (64.6%). The percentage of judges who believe that the selection is based on objective criteria and in a transparent procedure (over 50%), is also indicative.

3. CORRELATIONS: INDEPENDENCE AND IMPARTIALITY

Besides the noted improvement by the European Commission in the area of independence of the judiciary¹³¹ in 2018, especially with the adoption of the Strategy for Reforms in the Justice Sector, the amendments in the crucial laws in accordance with the Venice Commission recommendations and the “Urgent Democratic Reforms”, the respondents noted a grade 2.2 for the area Independence and Impartiality of the Judiciary.¹³² This is the lowest grade and lowest evaluated area within the Judicial Indicator Matrix for measuring the performance and reform in the judiciary.

Selection and dismissal

According to the EC Report for 2018, during the selection of judges by the Judicial Council in 2017, certain shortcomings have been ascertained with regard to transparency, procedure and the qualifications of the candidates in the process of selection of presidents of courts. This finding is in complete alignment with the perceptions of all target groups included in the measuring with the Matrix. The majority of judges, as well as all other categories of interviewees, believe that the selection and dismissal of the judges is subject to pressure and external influence, highlighting the political (party) influence on the judiciary and the lack of transparency of the competent bodies in the process of selection of judges.¹³³ In this sense, legal amendments are underway with the purpose of improving the process of selection of judges by the Academy for Judges and Public Prosecutors.

The majority of the interviewees believe that the Judicial Council of the Republic of North Macedonia is not independent and transparent in its work and that the public confidence in this body is very low. The envisaged legal amendments set more difficult conditions for the selection of members of the Council among judges, whereas the defining of the term “prominent lawyer” broadens the list of persons that can be selected as members of the Council by the Parliament of the Republic of North Macedonia, with ex judges of the Constitutional Court and international judges, among judges, as well as among prominent lawyers.

Disciplinary proceedings

Judges mostly believe that disciplinary proceedings are not conducted in an objective and transparent manner. The amended laws only envisage dismissal (removal) of judges for the gravest of disciplinary violations, after disciplinary proceedings. The draft legal amendments review the provisions pertaining to the bases of ascertaining responsibility for a judge or a president of a court, envisaging also the possibility to have a representative of the Association of Judges present at the session discussing the request, on demand of the judge or president of a court against whom a procedure for ascertaining responsibility has been initiated.

Furthermore, for the first time, the Draft-Law on the Judicial Council of the Republic of North Macedonia envisages provisions on individual responsibility of the members of the Council in the exercising of their powers.

131 European Commission, Commission staff working document, the Former Yugoslav Republic of Macedonia (17th April 2018), page 19, 20
133 Available at <https://bit.ly/2CFkN5q>

132 Indicator 49 The election and dismissal of judges is not subject to pressures and influences from outside

133 Indicator 50 The judges are elected to office on the basis of objective criteria and through a transparent procedure

Evaluation and promotion

Judges mostly disagree with the manner in which they are graded and promoted. The perception is that the promotion procedure is good, which is not valid for the practice, mostly due to political and other forms of influence. The proposed legislative changes intervene in the conditions and criteria for promotion of judges, while also envisaging an obligation for each member of the Council to publicly, at a session of the Council, elaborate their decision for selection of a judge and a president of a court.

With regard to evaluation, the last legislative amendments envisage the complete revision of the evaluation system for judges, with a view to highlighting qualitative criteria. In the final general assessment, the weight of the notations for qualitative criteria shall be 60% (quantitative criteria: 40%). This is also in accordance with the recommendations of the Venice Commission and the remarks from GRECO.

External and internal influences on the judiciary

Although the European Commission, in its 2018 report, points to a decline in selective justice in the politically sensitive cases for which court proceedings are underway, the majority of interviewees of all categories still believe there is external (political) interference and pressure from other institutions within the judiciary. Most lawyers among interviewees, as well as other categories of interviewees, including the court staff at the courts, believe there are pressures within the judiciary as well, while it is only the judges that agree for the most part that there are no pressures and influences within the judiciary itself. The relatively good impression of the judges about (non) interference in their work may indicate that there is hidden corruption and pressure, or that not all judges are the same, keeping in mind that perceptions are often based on several experiences, but do not cover all judges and all daily conditions and procedures in which judges operate.

The majority of interviewees of all categories believe that the Judicial Council of the Republic of North Macedonia does not successfully look after the judiciary's independence. The draft-Law on the Judicial Council of the Republic of North Macedonia provides for more demanding conditions for selection of members of the Council among the judges, whereas the members of the Council shall continue to perform their function on a professional basis. The legal amendments envisage that the Council's sessions shall be public, whereas as a symbol of the strengthening of transparency of the Council, an obligation is envisaged for each member of the Judicial Council of the Republic of North Macedonia to elaborate on their decision for selection of a judge or a president of a court, while at the same time, a written record will be drafted from the voting for the decision, which is made public on the Council's website.

Financial resources and court benefits

The financing of the judiciary is directly dependent on its independent functioning. The legal obligation for the total budget of the judiciary is not upheld and is far below the European average. Judges mostly believe that the annual budget for the judiciary is insufficient to cover the regular expenses in the judiciary. The interviewees consider it an imperative to respect the legally determined annual budget for the judiciary, and that the judges should struggle for a higher level of financial independence.

Although the strategic documents and orientations hint at an increase in the financing of the judiciary, in reality, the granted funds are far from the legally prescribed percentage and are often subject to decreases. This is due to the lack of political will, as well as the capacities of the judiciary to find use for all disposable funds to improve the financial condition. Although the budgets are mostly used to cover the salaries alone, there is an opinion that the salaries in the judiciary do not match the assigned obligations and the tasks.

The perceptions with regard to this indicator correspond with the last annual report of the Judicial Council of the Republic of North Macedonia for 2018, where there is a noticeable dominance of the category of salaries and benefits, whereas the budget for the category of goods and services in the total budget is considered to be insufficient to cover all the needs arising from the regular work of the courts.

Judicial impartiality

Lawyers, public prosecutors and other legal professions among interviewees believe that judges are impartial in their work. On the other hand, judges mostly disagree with the notion. The Strategy for Reform of the Judiciary Sector also ascertains a Codex for Judicial Ethics as a legal category. The newly proposed legal amendments prescribe the competence of the Supreme Court to adopt a Codex for Judges and lay judge, at the proposal of the Association of Judges of the Republic of North Macedonia.



I
EFFICIENCY

II

**TRANSPARENCY AND
ACCOUNTABILITY**

III

**QUALITY OF
JUDICIAL JUSTICE**

IV

**INDEPENDENCE AND
IMPARTIALITY**

V

**PROFESSIONAL
DEVELOPMENT AND
APPROPRIATE
REPRESENTATION**

1. ANALYSIS OF THE PERCEPTIONS FROM THE MEASURING: PROFESSIONAL DEVELOPMENT AND APPROPRIATE REPRESENTATION

In regard to the professional development and competence of the judges, paragraph 25 of the Opinion No. 3 (2002) of the Consultative Council of European Judges at the Council of Europe to the attention of the Committee of Ministers of the Council of Europe on the principles and rules governing judges' professional conduct, ethics, incompatible behaviour and impartiality establishes the following: "The effectiveness of the judicial system also requires the judges to have a high degree of professional awareness. They should ensure that they maintain a high degree of professional competence through a basic and continuing training, providing them with appropriate qualifications."

The Opinion No. 4 (2003) of the Consultative Council of European Judges at the Council of Europe to the attention of the Committee of Ministers of the Council of Europe on the principles and rules on appropriate initial and continuing training of judges at national and European level, in its paragraph 42, provides the following recommendations: training programmes and methods should be a subject to frequent assessment by the bodies responsible for judicial training; in principle, participation in judges' training initiatives should not be a subject to qualitative assessment; however, their participation, objectively considered, may be taken into consideration for professional evaluation of judges; the trainers' performance quality should be evaluated, whenever such evaluation is necessary due to the fact that in some systems the initial training is a phase in the process of election of judges.

Appropriate representation

The existence of fair and appropriate representation of the members of all communities in the judiciary is provided for in the Constitution of the Republic of North Macedonia, as a highest legal act. Thus, Article 105(2) of the Constitution stipulates that "in election of judges, lay judges, and court presidents, appropriate representation of citizens belonging to all communities shall be observed."

In this sense, Article 43(1) of the Law on Courts stipulates that "discrimination on grounds of gender, race, colour of skin, national and social background, political and religious belief, material and social position shall be prohibited in election of judges and lay judges", while Article 43(2) of the same law stipulates that "appropriate representation of the citizens from all communities shall be ensured when electing judges and lay judges, without violation of the criteria prescribed by law." The provisions for fair and appropriate representation in the judiciary are also enshrined in the Law on Judicial Council (Article 31-a), as well as the Law on the Academy for Judges and Public Prosecutors (Article 8 and 9).

In this area of the research dedicated to professional development of the judges and adequate representation in the judiciary, the respondents have been asked about: aspects of judiciary related to the Academy for Judges and Public Prosecutors, as a generator of new judges and continuing education of the existing ones, adequacy of the training offered to judges in relation to the needs of their current work, ethnic, age and gender representation and equality in the judiciary.

Respondents from all target groups, same as in the other areas, have provided a response to one question which is common for all target groups

The area of professional development and appropriate representation from the Matrix is comprised of one common indicator and four (4) individual indicators divided in two sub-areas:

>>> **A) Sub-area:** Continuing legal education

66. In the judiciary, there is a fair and appropriate representation of the members of all communities in RM

67. The Academy for Judges and Public Prosecutors provides relevant training for judges based on an assessment of their needs

68. The trainings follow the amendments in the legislation and judicial practice

>>> **B) Sub-area:** Ethnic and gender equality

69. The legal framework guarantees fair and appropriate representation of the members of non-majority communities in the judiciary

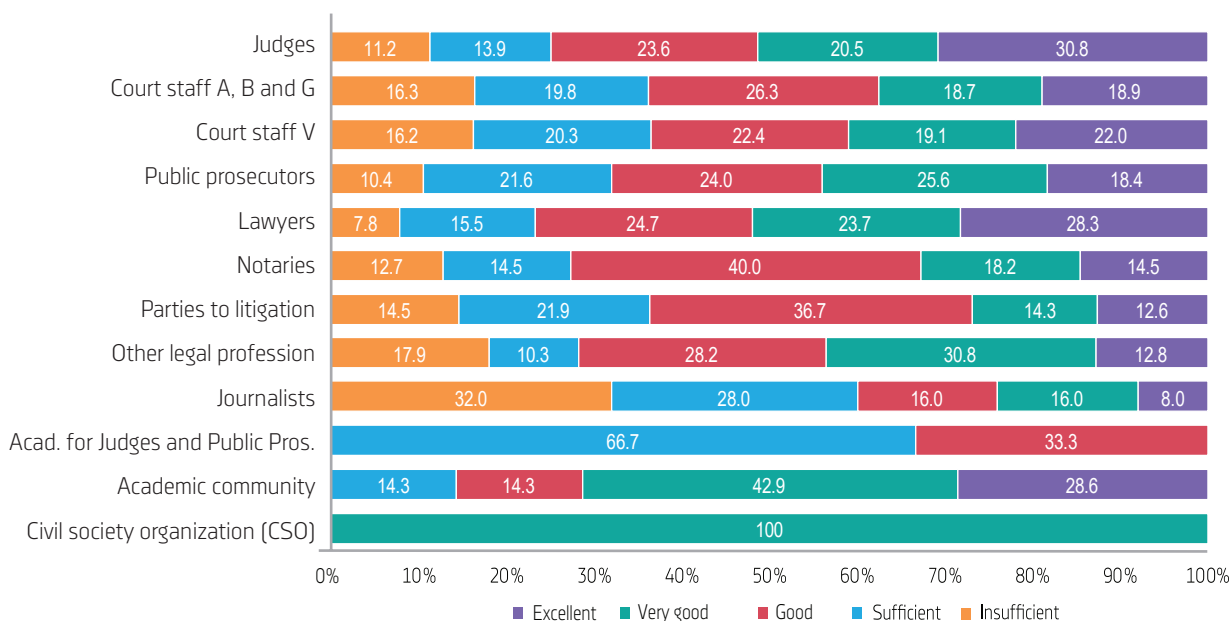
70. The representativeness (gender, age, ethnicity, etc.) in the judicial system is completely respected and implemented

Additionally, the respondents from all target groups also have provided opinion about one common indicator in order to obtain one cumulative score for this specific area.

How would you assess the professional development and appropriate representation in the courts of RM defined by the following statement:

“In the judiciary, there is a fair and appropriate representation
of the members of all communities in RM.”

Common indicator for all target groups (No. 5): In the judiciary, there is a fair and appropriate representation of the members of all communities in RM
Graph 66



Target group: :	Average grade:
Judges	3.5
Court staff A, B and G	3.0
Court staff V	3.1
Public prosecutors	3.2
Lawyers	3.5
Notaries	3.1
Parties to litigation	2.9
Other legal profession	3.1
Journalists	2.4
Academy for Judges and Public Prosecutors	2.3
Academic community	3.9
Civil society organization (CSO)	4.0
TOTAL	3.1

The respondents mainly have evaluated the appropriate representation of all ethnic communities with the score of “good” (3). This indirectly refers to the level of professional development which is an important precondition for the profession and for the active participation of the communities in the judiciary. As highest (“excellent” 5) this appropriate and fair representation is evaluated by the respondents from the ranks of judges, and as lowest (“insufficient” 1) by the respondents, journalists.

None of the respondents from the academic community has responded that there is insufficient fair and appropriate representation of the members of all communities. Most (43%) of the respondents think that the representation of all communities in the courts is very good and 29% of the respondents think that the representation of all communities in the courts is excellent.

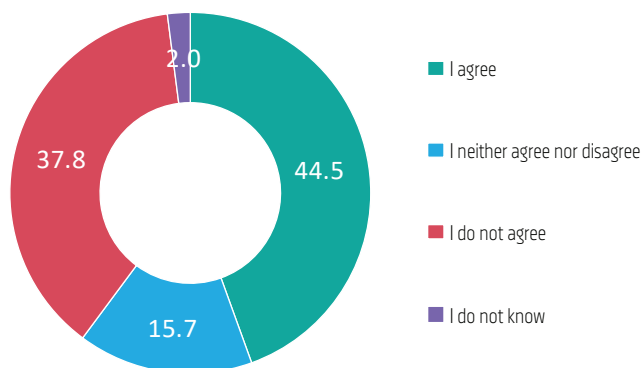
To this question, all interviewed persons from the selected civil society organizations have responded with 4 (very good). However, some of the interviewed persons have emphasized the insufficient representation of the judges from the Roma ethnic community.

The AJPP representatives think that there is a sufficient representation of the members of all communities in the courts, and for some the representation of all communities in the courts is good.

There is a division in the opinions of all categories of respondents in regard to the fair and appropriate representation of all ethnic communities in the judiciary. However, the opinion that there is a good representation of all ethnic communities in the judiciary, with the exception of the judges from the Roma ethnic community, is dominant.

A) Sub-area: Continuing legal education

Indicator 67: The Academy for Judges and Public Prosecutors provides relevant training for judges based on an assessment of their needs
Graph 67



Regarding the continuing legal education of judges, the respondents from the ranks of judges have given their opinions about whether AJPP provides relevant trainings based on an assessment of their needs. Most of the respondents, judges (44.5%) agree, while 37.8% of them do not agree.

According to the academic community representatives, the judges should take more active participation in the trainings. The Academy works well now and it has worked well in the past period, the trainings are good, the professors are also included, and the candidates who attend the Academy have been also questioned about their needs. According to respondents, the quality of the trainings is a good base for further selection of the candidates for judges. However, some of them think that there are not enough quality trainings conducted and the trainings are not individualized according to the needs of candidates. According to some of the interviewed persons, in the recent period, the Academy has failed in regard to the meaning of continuing: "During the trainings, the actual and important topics are not being discussed, but only the number of trainings passed by the candidates is important. That is why there is a need to individualize and invigorate the trainings based on the needs. They should be individualized according to the previous knowledge and experience of the candidate".

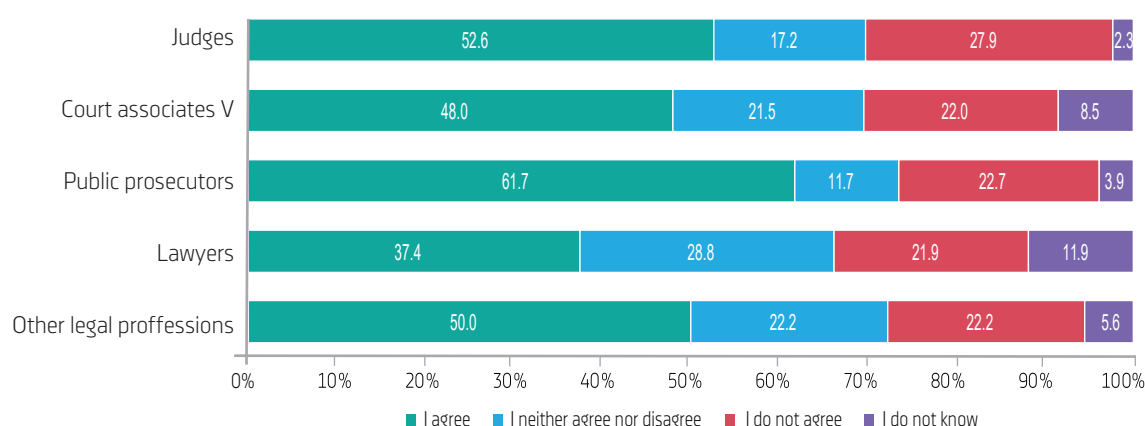
The perception that the trainings provided by the Academy are relevant, but the improvements are necessary, dominates among the civil society organizations. Although, the Academy asks for an opinion from judges, public prosecutors and civil society organizations when it plans the trainings, the problem is the interest of judges for these trainings. The trainings are also not always relevant for all judges being involved.

"The English language knowledge should be a condition for a certain person to apply to be a lecturer for the Academy trainings, has resulted in a great number of more experienced judges not being able to apply to be lecturers, and some of the older judges looking with distrust at the younger lecturers who are not sufficiently experienced to train them".

One of the interviewed persons has shared a comment that the Academy depends heavily on external donors, thus for these reasons the question is asked to what extent the planning of the trainings is aligned with the demand of donors, and not with the real needs of judges.

The trainings for education of judges are partially evaluated as relevant and in accordance with the needs of judges. The respondents think that the trainings of the Academy should be individualized in accordance with the needs of each judge, depending on his/her knowledge and experience.

Indicator 68: The trainings follow the amendments in legislation and judicial practice
Graph 68



While in regard to whether they think that the trainings follow the amendments in the legislation and judicial practice, over 52% of the respondents, judges, have responded that they agree with it, and 28% do not agree. The professional judicial officers have stated that they mainly agree (48%). The lawyers mainly think that the trainings follow the trends of the legislation and the judicial practice, but almost 12% of them have responded that they don't know it. Majority of the mediators and enforcement agents generally agree that the trainings are up to date with the changes.

The highest is the percentage (61.7%) of the respondents, public prosecutors who have stated that the trainings organized by the Academy for Judges and Public Prosecutors follow the current amendments in the legislation and judicial practice.

The interviewed AJPP representatives have stated that they already work on a plan for improvement of the quality of trainings and that the judges should be placed to follow trainings which are directly connected to their work, unlike the past situation, when the judges were forced to attend compulsory trainings, which were not connected with their work at all. The dilemma regarding the quality of the lecturers and the quality of the basic training of judges and public prosecutors so far has also been mentioned and there is a need for a good assessment for this work. According to them, the older judges or public prosecutors having a long working experience might not know foreign languages, however it is not very significant when it comes to the experience in the application of law which they share with the candidates of AJPP as lecturers.

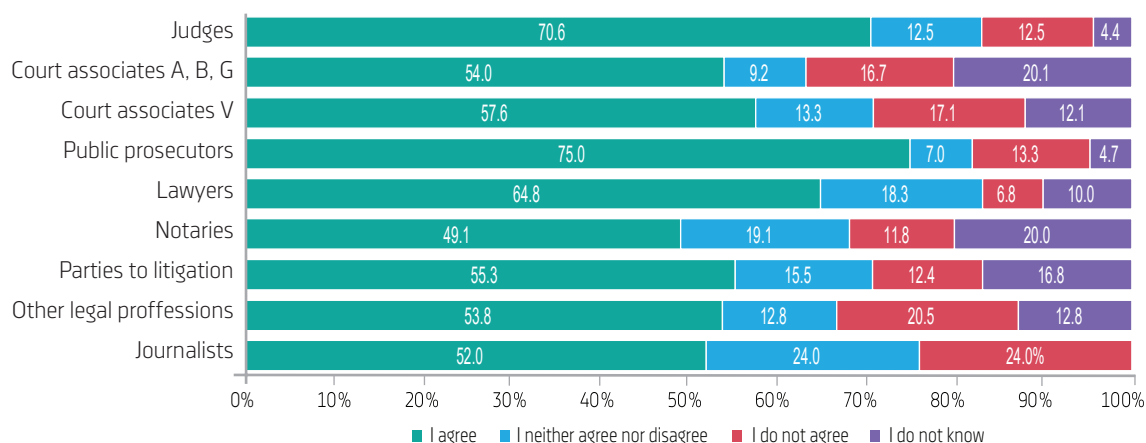
Generally, there is a need for more practical trainings, attendance at new courses and also more discussion about the new trends in the judicial practice.

The respondents think that the trainings organized by the Academy for Judges and Public Prosecutors follow the current amendments in the legislation and judicial practice. However, it is necessary to review the criteria for educators and to provide more practical trainings, with the latest trends in the judicial practice.

B) Sub-area: Ethnic and gender equality

Indicator 69: The legal framework guarantees fair and appropriate representation of the members of non-majority communities in the judiciary

Graph 69



The opinion that the legal framework provides for inclusiveness for participation of the non-majority ethnic communities in RM generally dominates among all categories of respondents. A significant percentage of the respondents have stated that they don't know.

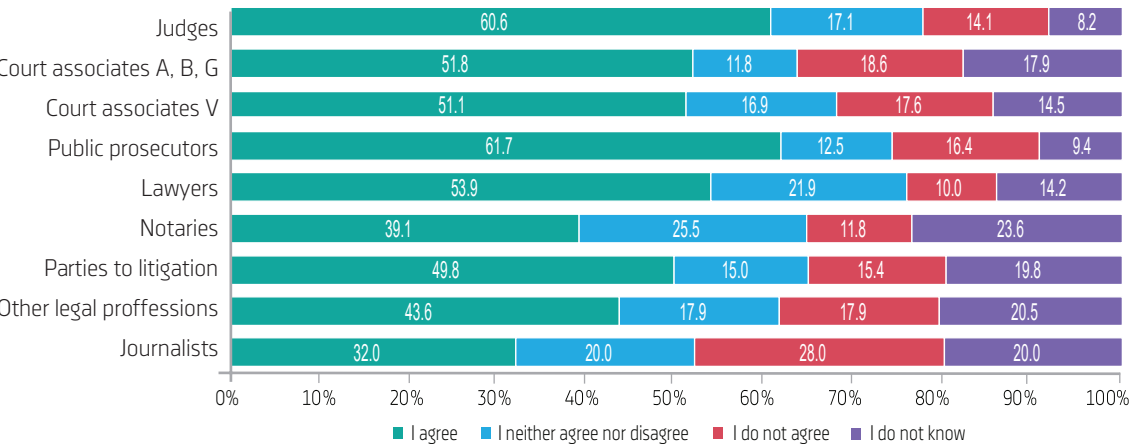
Most of the academic community representatives think that the legal framework guarantees also equitable representation of the non-majority communities. Some of them think that there is a sufficient representation of the non-majority communities and that practice is even exaggerated, which creates a space for entry of poor quality and inappropriate staff in the judicial system. According to the respondents, it is necessary to pay attention to the equitable representation, but it should be also measured by the quality of the candidate. According to some of them, it is necessary to invest more in the manner of training of the candidates much more earlier, i.e. at the faculties. "It is not good if it is done artificially only to meet the given criterion, instead there is a need to invest much earlier in the education at all faculties equally".

The opinion that the legal framework guarantees fair and appropriate representation in the judiciary of the members of non-majority communities dominates among all interviewed representatives of the civil society organizations. The problem arises in the practical implementation and above all, to what extent, in the election of staff from the non-majority communities, the most quality candidates from these communities are elected. Some of the interviewed persons have repeated the comment that there is not a single Roma in the courts of the Republic of North Macedonia.

Some of the AJPP representative think that the legal solutions do not determine clear provisions on fair and appropriate representation of the members of non-majority communities. The text in the Law on AJPP should also contain, not only as a general constitutional category, a formula which will guarantee a fair and appropriate representation of the non-majority communities. That process should also take into account the quality of the candidates. Another representative from AJPP (a judge) thinks that even though the legal framework for fair and appropriate representation is a constitutional category, it is not elaborated in detail within the legal framework. However, there is always agreement within the Judicial Council and the Council of PP on compliance with the appropriate representation of the non-majority communities in the judiciary bodies. Furthermore, the AJPP representatives think that it depends a lot on the number of candidates from non-majority communities who have been interested in applying to the advertisements of the Academy so far, and the number of those who will apply for the future advertisements.

The respondents think that there is need for further precision of the laws on fair and appropriate representation of the members of non-majority communities, and that in parallel with these commitments, the quality of the candidates for judges, and not only the ethnic background, should be also taken into account.

Indicator 70: The representativeness (gender, age, ethnicity, etc.) in the judicial system is completely respected and implemented
Graph 70



In regard to whether they agree that the representativeness (gender, age, ethnicity, etc.) in the judicial system is completely respected and implemented, the respondents of all categories mostly agree with it, while a significant percentage of them doesn't know about it.

The respondents of all categories mostly agree that the representativeness based on gender, age, ethnicity, etc. in the judicial system is implemented and respected.

2. LEGAL FRAMEWORK, KEY PRINCIPLES, STANDARDS, AND PRACTICES: PROFESSIONAL DEVELOPMENT AND APPROPRIATE REPRESENTATION

2.1 LEGAL FRAMEWORK AND DATA FROM DOMESTIC INSTITUTIONS

Professional development – Continuing legal education

Within the framework of domestic law, there is an obligation for continuous training for judges provided for. Thus, Article 54 of the Law on Courts stipulates that “the judge has the right and obligation to continuous professional development during the exercise of the judicial office in accordance with the law”, while Article 77 of the same law provides for imposition of disciplinary measure in case of failure to fulfill the duty of continuous training.

Furthermore, the Law on the Academy for Judges and Public Prosecutors, in its Article 114(3), establishes that: “continuous training is compulsory for the judges, public prosecutors, presidents of courts, and the public prosecutors of the public prosecution offices”. Article 13 of this Law stipulates that the Managing Board of the Academy, upon a proposal by the Programming Council, determines the programmes for the entry exam, the initial training and the final exam, the continuous training programmes, programmes for exercising the judicial and prosecutorial office, general and specialized training programmes.

During 2018, the new legal criteria for election of member of the governing bodies of the Academy for Judges and Public Prosecutors were established, though the amendments to the Law on the Academy for Judges and Public Prosecutors¹³⁴. Based on the new criteria, a new Managing Board of the Academy, as well as a Director, has been elected, and the election of the Programming Council of the Academy is undergoing now¹³⁵.

The Academy's Rules of Procedure for continuous training under Article 7 sets forth 3 to 14 days of training annually, depending on the length of the working experience of the judges. The content of the continuous training programme (Article 11 of the Rules of Procedure for continuous training) includes relevant legal topics from the domestic, international and EU legislation, case law, as well as other areas.

According to the data of the Academy for Judges and Public Prosecutors¹³⁶, during 2018, the Academy, autonomously or in cooperation with other partners, organized and conducted a total of 189 trainings¹³⁷ in the area of continuous education. The trainings were attended by a total of 4154 participants of whom 1898 judges, 1102 judicial and public prosecution officers and other participants.

The Strategy for reform of the judiciary sector 2017-2022 (Strategic guideline 4.1.1.2) introduces a specialization of judges. The Draft-Law on Courts, which is in a parliamentary procedure, provides for a wider opportunity of the courts to establish departments within the court, in order to strengthen the opportunity for specialization of judges to work on certain types of cases.

¹³⁴ See: Law Amending the Law on the Academy for Judges and Public Prosecutors (“Official Gazette of the Republic of Macedonia” no. 163 as of 4 September 2018)

¹³⁵ Ministry of Justice (2018) Annual Report on the Implementation of the Strategy for Reform of the Judicial Sector 2017-2022

¹³⁶ The data was obtained on 18 February 2018 from the Academy for Judges and Public Prosecutors

¹³⁷ Trainings from the area of civil law – 39; Trainings from the area of civil and criminal law – 22; Trainings from the area of criminal law – 57; Trainings on general topics – 40; Trainings from the area of misdemeanors – 2; Specialized trainings – 13; Trainings from the area of trade law – 6; Trainings from the area of administrative law – 10.

Appropriate representation

The existence of fair and appropriate representation of the members of all communities in the judiciary is provided for in the Constitution of the Republic of North Macedonia, as a highest legal act. Thus, Article 105(2) of the Constitution establishes that “in election of judges, lay judges, and court presidents, appropriate representation of citizens belonging to all communities shall be observed.”

In this sense, Article 43(1) of the Law on Courts stipulates that “discrimination on grounds of gender, race, color of skin, national and social background, political and religious belief, material and social position shall be prohibited in election of judges and lay judges”, while Article 43(2) of the same law stipulates that “appropriate representation of the citizens from all communities shall be ensured when electing judges and lay judges, without violation of the criteria prescribed by law.”

The provisions for fair and appropriate representation in the judiciary are also enshrined in the Law on Judicial Council (Article 31-a), as well as the Law on the Academy for Judges and Public Prosecutors (Article 8 and 9).

The Judicial Council of the Republic of North Macedonia is committed to undertaking measures and activities for a consistent application of the Amendment VI of the Constitution of the Republic of North Macedonia for appropriate and appropriate representation of the citizens belonging to all communities in all courts in RNM.

According to the data of the Judicial Council of RNM in 2018, out of the elected judges: 1 judge is male and 3 judges are female. National representation: 1 judge is Macedonian and 3 judges are Albanian.¹³⁸

Occupied places:	517 ¹³⁹	81,29%
Available places:	-119	18,71%
Male:	211	40,81%
Female:	306	59,19%
Macedonians:	392	75,82 %
Albanians:	89	17,21 %
Turks:	6	1,16 %
Vlachs:	11	2,13 %
Serbian:	5	0,97 %
Roma:	1	0,19 %
Bosnians:	7	1,35 %
Other:	6	1,16 %

*Table of gender and etnical structure for judges in 2018 (Judicial Council of RNM, february 2019)

Gender	Number of employers	Percentage representation
Male	865	38.56
Female	1,378	61.44
Total	2,243	100

* Table for gender representation of the court administration, including 31 December 2018 (source: Judicial Council of RNM, February 2019).

138 At the end of 2018, a total number of 518 judges were recorded in the courts in the Republic of Macedonia. One judge (male, Macedonian, Municipality of Vinica) retired at the beginning of 2019

139 Total number of 518 judges were registered in Macedonia till the end of 2018. One judge (male, Macedonian from the BC Vinica) retired at the beginning of 2019.

	Macedonians	Albanians	Turks	Roma	Serbians	Vlachs	Bosnians	Other	Total
Court administration									
Percentage representation	80.16	14.58	1.47	1.11	0.67	1.03	0.45	0.53	100

*Table for etnical structure in the court administration including 31 December 2018. (source: Judicial Council of RM, February 2019).

Age	Number of employees	Percentage representation
0-24 years	7	0.31
25-49 years	1,291	57.56
Older than 50 years	945	42.13
Total	2,243	100

*Table for age structure in the judiciary including 31 December 2018 (source: Judicial Council of RM, February 2019)

2.2 DATA FROM INTERNATIONAL REPORTS

European Commission for the Efficiency of Justice – CEPEJ: Professional development and appropriate representation

According to the CEPEJ report, the European trend shows at some level equal representation of male and female (in average 53% are women in correlation to 47% of male). Significant difference is noticed for the judicial management functions (presidents of courts) where male is significantly more represented than the female (in average 66% in correlation to 34% female).

According to the statistical data from the Judicial Council of RNM for 2018, in average 60% of the judges are female, while 40% are male, which is a higher standard compared to the European average.

Related to the Indicator 70 from the Matrix, “The representativeness (gender, age, ethnicity, etc.) in the judicial system is completely respected and implemented”, the respondents from all the categories mainly agree with this statement, while significant part from the are not familiar.

Related to the general question from the Matrix for all the target groups, “In the judiciary there is a fair and equitable representation of the members of all communities in the Republic of Macedonia”, there is division in the perception. Namely, the average grade for this question from 1 to 5 is 3.1. The statistical data from the Judicial Council for 2018 shows that the Macedonians are mostly represented (76%), the Albanians (17%), while the rest of the ethnicities are less represented.

The European Commission's Report on the Progress of the Republic from 2018

According to the last report from the European Commission (April 2018), it is highlighted that the training program in AJPP, which includes ethical courses and code of conduct are significant for the prevention of corruption and conflict of interests. This was also recommendation from GREKO.

The Academy for Judges and Public Prosecutors organized 201 training in 2017.

3. CORRELATIONS: PROFESSIONAL DEVELOPMENT AND APPROPRIATE REPRESENTATION

There is a division in the opinions at all target groups related to the fair and appropriate representation for all of the ethnicities in the judiciary. Still, prevails the opinion that there is a good representation of all ethnicities in the judiciary, with the exemption of the Roma population for the judges. There is appropriate age and gender representation in the judiciary. This statement is affirmed with the data from the Judicial Council of Republic of North Macedonia

Continuing legal education

The legal framework for the ongoing education for the judges is solid. The respondents think that it is necessary the trainings that the AJPP is organizing should be individualized according to the needs of each of the judges, depending of their knowledge and experience and that is necessary that there are more practical trainings, in accordance with the newest trends in the judicial practice. It is noticed that more attention should be put on the quality of the trainings, not just their number. The European Commission also is giving positive grades for the trainings that is conducted within the AJPP. With the new legislation changes, the scope of the discipline procedure for minor misdemeanors is extended with adding compulsory presence at the professional training.

Ethical and gender equality

The respondents consider that further elaboration in the legislation for fair and appropriate representation is necessary for the representatives of the minority communities, and in accordance with these efforts, special attention should be put for the quality of the candidates for judges, not just for their ethnical origin that is closely related to the partisan influence in the judiciary. It is necessary for more judges to be included from the Roma community.

The respondents from all the categories are agreeing that the representation in the judiciary related to age, gender and ethnicity is respected.

The reports from the Judicial Council of RNM are affirming this situation.



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