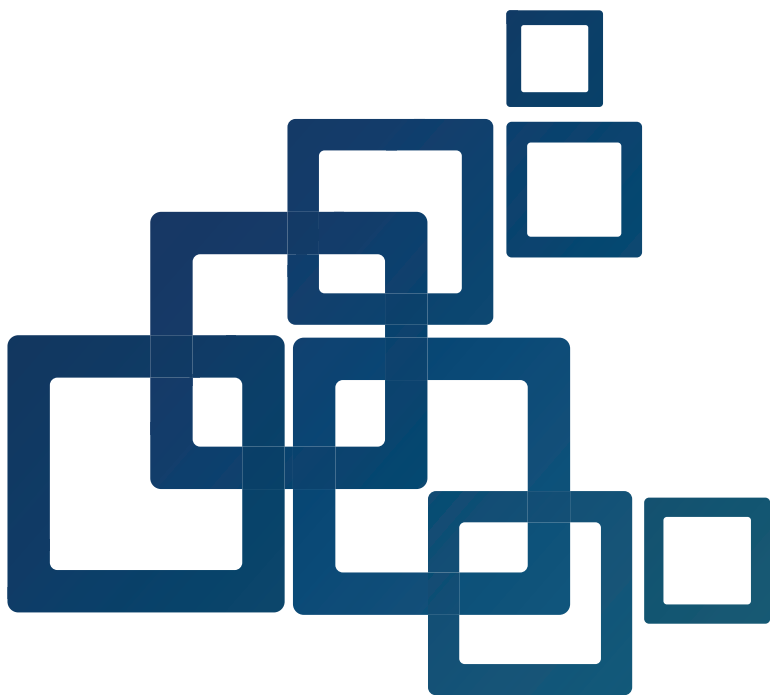




ЦЕНТАР ЗА ПРАВНИ
ИСТРАЖУВАЊА И АНАЛИЗИ
CENTER FOR LEGAL RESEARCH AND ANALYSIS

MATRIX

FOR MONITORING
THE PERFORMANCE
OF THE JUDICIARY
IN MACEDONIA



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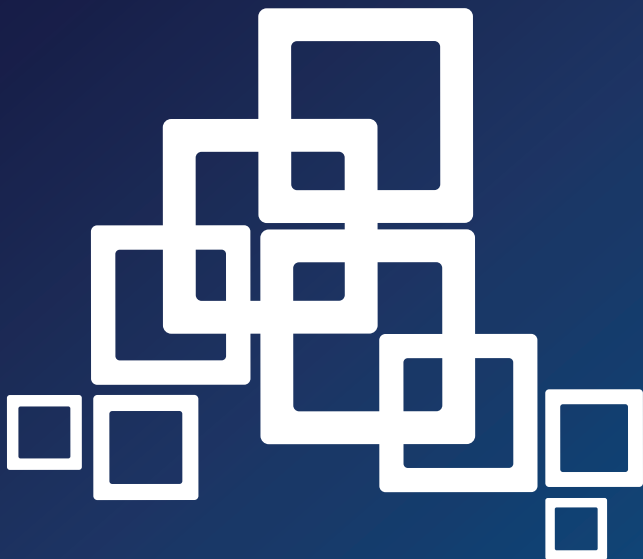
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INTRODUCTION

The Matrix for monitoring the performance of the judiciary in Macedonia is a tool developed by the Center for Legal Research and Analysis in cooperation with the Ministry of Justice and the Judicial Council of the Republic of Macedonia as part of the program “Improving the quality of justice in Macedonia” funded by the British Embassy Skopje. The tool aims to help the judicial system evaluate different areas of activity and evaluate the achievements of the reforms in specific sectors.

The purpose of this Matrix is to assess the current condition in the judiciary through a comprehensive and inclusive process and to measure the results of the implemented initiatives and reforms. In doing so, it can also serve as an instrument for internal evaluation and identification of the areas to be improved and the measures to be applied.

The new Strategy for reforms in the justice sector for the next period (of 5 years) will set new priorities for judicial reform and further development. It is therefore important to establish the initial lines for systematic measurement of the progress vis a vis the goals set in the strategy, in accordance with European and international standards and practices.

METHODOLOGY

The methodological design of the the Matrix for monitoring the performance of the judiciary seeks to have a comprehensive insight into the work of the justice system through an analysis based on 3 data pillars:

1

Exploring the perceptions of the work of the judiciary

2

Relevant data available to the Judicial Council

3

Data collected from international sources

The research on the perceptions on judicial performance will focus on 4 categories of target groups:

1

Category:

Judges, legal associate and court administration

2

Category:

Lawyers, public prosecutors and state attorneys, notaries, enforcement agents and mediators

3

Category:

Individuals and Legal entity (as parties to litigation)

4

Category:

Academy of judges and public prosecutors, media, civil society and academic community

The main methodological instrument is the matrix of indicators for measuring performance in the judiciary structured from the 5 main areas of measurement: Efficiency, Transparency and Accountability, Quality of Judicial Justice, Independence and Impartiality, Professional Development and adequate representation. Each of these areas has sub-areas that relate to relevant specific aspects of the work of the judiciary.

The purpose of this approach is to examine each of the above-mentioned areas and their sub-areas and to obtain an initial picture of the work by researching the perceptions of the target groups. This basic study would be the reference basis for the evaluations received from all target groups, which then can be followed longitudinally, ie, for a certain period of time, in order to determine statistically significant trends in the performance of the judiciary (For example, if the area of Independence and Transparency was assessed at 3.5 in this year, and for the next average score is 4.1, with which can be ascertained that there is an improvement in this segment of the work of the judiciary if the relevant difference is statistically significant).

The matrix indicators will be intended for those target groups that are competent and relevant to the respective indicator, i.e. all questions will not be posted to all target groups.

However, the legal team of the project has identified five general issues/indicators, one for each of the areas that will be answered by all target groups in order to obtain a cumulative assessment for each of the measurement areas listed above. The in-depth insight into the reasons for these integral assessments will be obtained through the assessments made by each target group separately for each indicator, whereby the differences or compatibility between the scores of the different target groups for one indicator can be determined (for example, whether there is an inequality between the perception of judges and legal entities involved in litigation over the independence and transparency of the judiciary).

The general public (the general population) is excluded from this research due to the specificity and expertise of the issues because it has no competencies or a substantiated opinion, which can result in invalidity ie, distorted results that may impair the objectivity of the findings.

Possible answers to each question that the respondents will answer are as follows:



- I fully agree
- I agree
- I partially agree
- I neither agree nor disagree
- I partially disagree
- I do not agree
- I completely disagree
- I do not know

Methodological design:

Category 1

Target group: All judges and court clerks (officers)/court administrators in permanent employment during the research (according to the Law on Judicial Service).

Sample: A more stratified representative sample at the national level. The number of respondents (judges and court administration) in each stratum (geographic region) is determined according to the size of the court (number of employees judges) and the necessity to investigate a minimum of 30 respondents in each sampling unit. The number of respondents (court administration) per court is distributed proportionally to the size of the court within each region.

For a total of 589 judges, the sample size to be investigated is $N = 380$ (95% confidence interval and statistical error $+ -3\%$).

For a total of 2,600 court administrations, the size of the sample to be investigated is $N = 759$ (95% confidence interval and statistical error $+ -3\%$ sample size).

Collecting data method composed by structured questionnaire with questions from the matrix intended for the relevant target group, which the respondents would fill in by them self, for the sake of discretion and confidentiality of the answers. Personalized envelopes that, after filling in, will be returned in a sealed box will be delivered to the target group by an interviewer / responsible person in the institution.

Category 2

Target group: All actively registered lawyers in the Bar Association and all registered notaries, mediators and enforcement agents active in the period of conducting the research, Public prosecutors and State attorneys in permanent working engagement during the research.

Sample: Lawyers - A more stratified nationwide representative sample of lawyers stratified according to the region where lawyers are registered. For a population of 2422 lawyers with a confidence interval of 95% and statistical error + -3%, the size of the sample is $N = 743$.

Sample: Public prosecutors. A more stratified representative sample at the national level stratified according to the statistical region in which are located the basic and upper public prosecution offices (including the Public Prosecutor's Office for Prosecuting Organized Crime and Corruption). For a population of 207 public prosecutors with a confidence interval of 95% and a statistical error of + -3% the sample size is $N = 174$.

Sample: State Attorneys. A more stratified nation-wide representative sample stratified according to the statistical region in which the state attorneys' offices are located. For a population of 33 state attorneys, including the Ombudsman of the Republic of Macedonia, with 95% confidence interval and statistical error + -3%, the size of the sample is $N = 33$, concerning that it is necessary to investigate all attorneys.

On a population of 188 notaries with confidentiality of 95% and statistical error + -3% sample size is $N = 160$ and 99 executor agents with 95% confidentiality and statistical error + -3% sample size is $N = 91$.

For the necessities of the Matrix, it is required to examine all 26 mediators registered during the research period.

Selection Method: OPTION A / Structured questionnaire with questions from the matrix intended for the relevant target group which the respondents would fill in by them self, due to discretion and confidentiality of the answers. Envelopes, in which the questionnaire is provided, with a predefined return address and paid postage, are submitted to the target group by an interviewer / responsible person in the institution. In addition to the questionnaire, a letter with an instruction for filling in and returning in a secure envelope is also enclosed. The envelope is sent by mail or given to the interviewer at the previously established date and location.

OPTION B/ Online structured questionnaire. Each respondent receives a link (anonymous) to an online questionnaire that fills in.

The method of collecting data is via an online questionnaire.

Category 3

Target group: Natural persons and Legal entities (as parties to the litigation) that are listed (named) in the register.

Sample: Natural persons. First Stratum: Regional distribution of the population according to statistical geographical regions - Second Stratum: type of settlement urban-rural areas. The sample for pertinent target group will be prepared with a usage of snowballing technique (quasi-random sample) a proportional distribution of quotas by region, age, education and type of settlement. The size of the sample is $N = 800$.

Sample: Business entities (legal entities that are parties in a dispute) non-stratified random sample or stratified according to the size of a business entity (income and number of employees) and its activity. It is necessary to determine precisely number of the existing population, but at least 30 business entities must be taken into consideration.

For the remaining target groups, it is necessary to determine the existing population, but the number of participants it should not be less than 30 representatives.

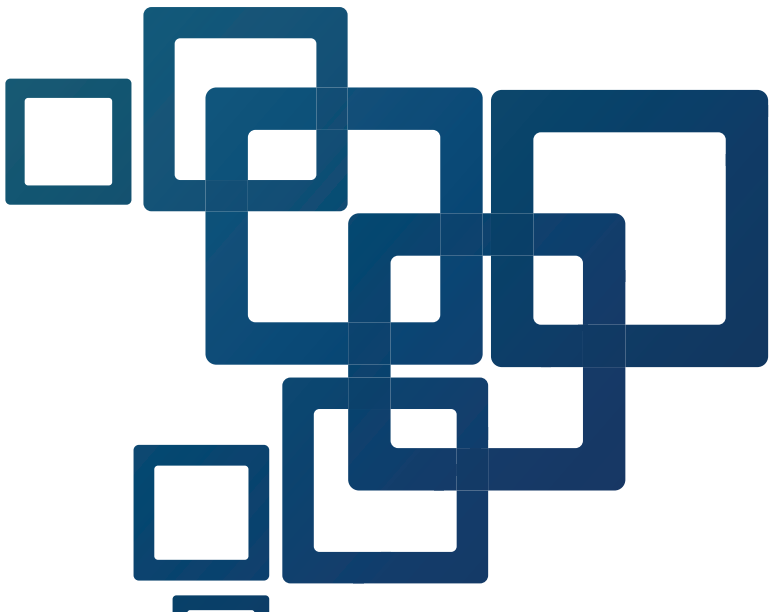
The collecting method comprises interviews with particular persons or representatives of legal affairs in the companies.

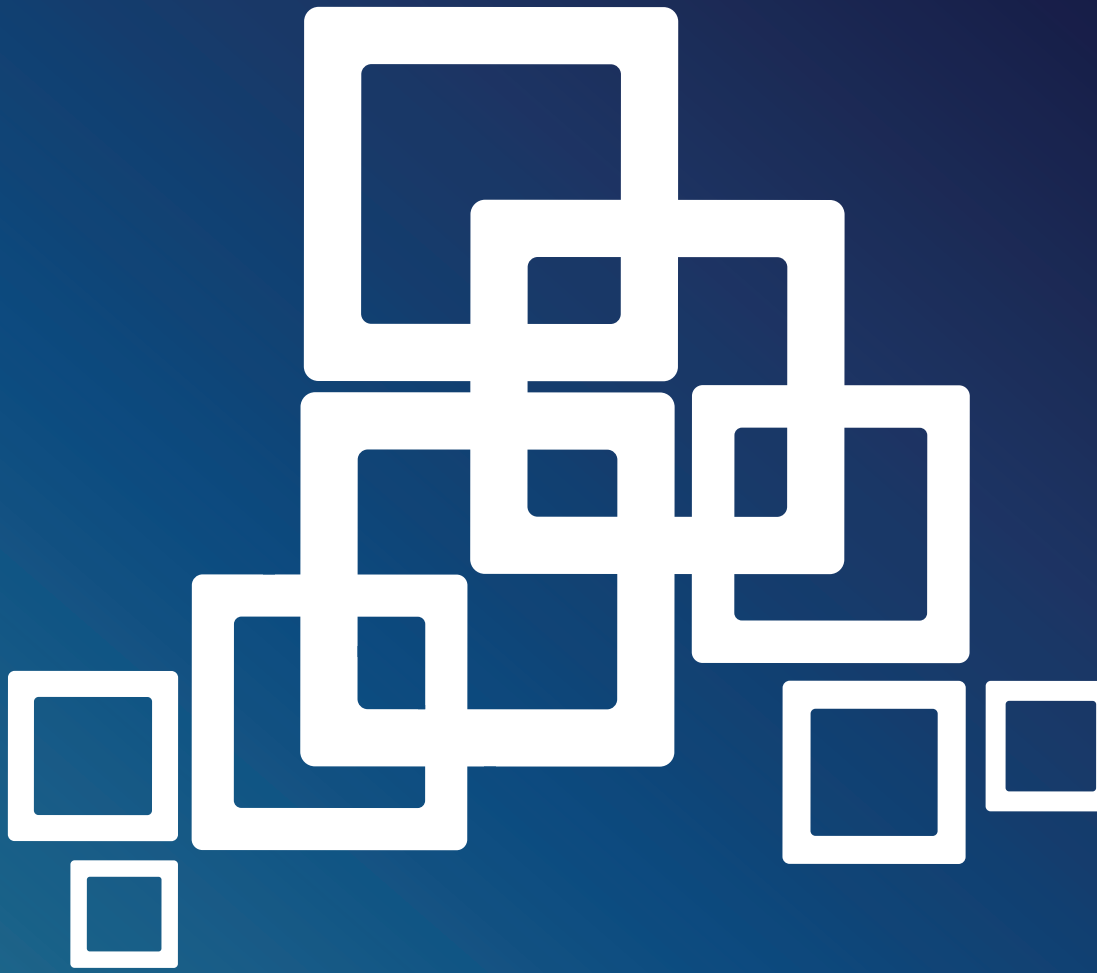
Category 4

Target group: Academy for judges and public prosecutors, media, non-government sector and academic community face-to-face interview.

In the relevant target group, interviews with particular persons or legal representatives for the institutions are going to be held as a method of collecting data.

The opinions and perceptions of the target groups of the media, the non-governmental sector, the academic community and the academy for judges and public prosecutors will be determined through comprehensive interviews with regard to the matrix indicators, but they will not give an assessment. For this reason, it is a high probability that a representative sample of 30 respondents cannot be established within each group separately, which is a minimum requirement for their assessment to be statistically significant. The target groups' responses will qualitatively complement and contextualize the findings of the monitoring matrix, along with the data from the Judicial Council and research of the international data regarding the relevant topic.





**AREAS
OF EVALUATION
AND INDICATORS**

EFFICIENCY

The efficiency of justice is one of the main components of the concept of a fair trial. Namely, the efficiency means ensuring final judgments within a reasonable period of time. In this regard, 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...hearing 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). 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).

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).

In determining whether the length of the court proceedings is reasonable, the European Court of Human Rights has taken into account 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; *Neumeister v. Austria*, § 21; *Ringeisen v. Austria*, § 110; *Pélissier and Sassi v. France [GC]*, § 67; *Pedersen and Baadsgaard v. Denmark*, § 45). While assessing whether the length of the proceedings is reasonable, it must also be taken into consideration what is at stake for the applicant in the particular case (*Abdoella v. the Netherlands*, § 24).

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

Thus, Article 6(1) of the Law on Courts provides that “when deciding about citizens’ rights and obligations and deciding about criminal liability, everyone shall be entitled to...trial...within a reasonable period of time...”, while Article 10(1) of the same law provides that one of the principles upon which the procedure

before the court shall be based is the principle of a trial within a reasonable period of 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 period of time. Thus, if the party “considers that the competent court has violated its right to trial within a reasonable period of time, shall have the right to submit a request for protection of the right to a trial within a reasonable period of time to the Supreme Court in the Republic of Macedonia”.

Certainly, in order to achieve an appropriate level of efficiency of the proceedings, appropriate working conditions are also needed. In that regard, paragraph 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, in particular ethics, incompatible behaviour and impartiality, determines the following: “Judges must also fulfil their functions with diligence and reasonable despatch. For this, it is of course necessary that they should be provided with proper facilities, equipment and assistance. So provided, judges should both be mindful of and be able to perform their obligations under Article 6(1) of the European Convention on Human Rights to deliver judgment within a reasonable time”.

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

a) Human resources: Court administration and support staff

2 The courts have a sufficient number of court officers to carry out their activities

3 The courts have adequate personnel to perform documentation and legal research

4 The conduct, professionalism and expertise of the court service is at a satisfactory level

b) Workload of the court

5 The judges handle the workload and timely solve the cases

c) System for submitting and tracking cases

6 The Automated Court Management Information System (ACMIS) distributes cases without external interference

d) Infrastructure and modernization

- 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

RESOURCES:

Law on Courts (Official Gazette of the Republic of Macedonia no. 58/06 of 11.05.2006): Article 6(1), 6(2), 8, 10(1) (supplemented by Article 1 of the Law on Amendment and Supplementation of the Law on Courts, Off.Gazette of RM no. 150/2010 of 18.11.2010), 36 (amended by Article 4 of Law on Amendment and Supplementation of the Law on Courts, Off.Gazette of RM no. 35/2008 of 14.03.2008), 83(2), 83(3), 83(4) (amended by Article 31 of Law on Amendment and Supplementation of the Law on Courts, Off.Gazette of RM no. 150/2010 of 18.11.2010) and 96.

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, in particular ethics, incompatible behaviour and impartiality: Paragraph 25.

Law on Courts (Official Gazette of the Republic of Macedonia no. 58/06 of 11.05.2006): Article 100 (amended by Article 38 of the Law on Amendment and Supplementation of the Law on Courts, Off.Gazette of RM no. 150/2010 of 18.11.2010), 101 (amended by Article 39 of the Law on Amendment and Supplementation of the Law on Courts, Off. Gazette of RM no. 150/2010 of 18.11.2010) and 102 (amended by Article 40 of the Law on Amendment and Supplementation of the Law on Courts, Off.Gazette of RM no. 150/2010 of 18.11.2010), 103 (amended by Article 41 of the Law on Amendment and Supplementation of the Law on Courts, Off.Gazette of RM no. 150/2010 of 18.11.2010).

Law on Judicial Service (Official Gazette of the Republic of Macedonia no. 43 of 04.03.2014): Article 2, 3, 4, 6 and 7.

Report on the work of the Judicial Council of the Republic of Macedonia for 2016 (http://sud.mk/wps/wcm/connect/ssrm/64671434-2331-4bc3-8fba-f58f15f89cdc/IZVESTAJ+ZA+RABOTATA+NA+SSRM+2016.pdf?MOD=AJPERES&CACHEID=ROOTWORKSPACE.Z18_L8CC1J41L0B520APQFKICD0CR4-64671434-2331-4bc3-8fba-f58f15f89cdc-IQIfXWY), Page 11 and 23-24.

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Law on Judicial Council of the Republic of Macedonia (Official Gazette of the Republic of Macedonia no. 60/06 of 15.05.2006): Article 31(1).

Report on the work of the Judicial Council of the Republic of Macedonia for 2016 (http://sud.mk/wps/wcm/connect/ssrm/64671434-2331-4bc3-8fba-f58f15f89cdc/IZVESTAJ+ZA+RABOTATA+NA+SSRM+2016.pdf?MOD=AJPERES&CACHEID=ROOTWORKSPACE.Z18_L8CC1J41L0B520APQFKICD0CR4-64671434-2331-4bc3-8fba-f58f15f89cdc-IQIfXWY), Page 13-18.

Law on Courts (Official Gazette of the Republic of Macedonia no. 58/06 of 11.05.2006): Article 7 and 77 (amended by Article 29 of the Law on Amendment and Supplementation of the Law on Courts, Off.Gazette of RM no. 150/2010 of 18.11.2010).

Law on Case Flow Management in Courts (Official Gazette of the Republic of Macedonia no. 171 of 30.12.2010): Article 3 and 4.

Law on Courts (Official Gazette of the Republic of Macedonia no. 58/06 of 11.05.2006): Article 82, 83(1) and 99 (supplemented by Article 36 of the Law on Amendment and Supplementation of the Law on Courts, Off.Gazette of RM no. 150/2010 of 18.11.2010).

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, in particular ethics, incompatible behaviour and impartiality: Paragraph 26.

Opinion no. 14 (2011) 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 justice and information technologies (IT): Conclusions - Recommendations.

TRANSPARENCY AND ACCOUNTABILITY

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 provides the following: «Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the 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 practice of the European Court of Human Rights, the publicity of court proceedings allows the implementation of the objectives of Article 6 of the Convention, i.e. it realizes the right to a fair trial (*Diennet v. France*, § 33; *Martinie v. France [GC]*, § 39). Furthermore, the ECtHR determines that in order to assess whether a procedure was conducted on the basis of the principle of publicity, it should be analyzed as a whole (*Axen v. Germany*, § 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*, § 69, *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 proceedings at the same time contributes to citizens' trust in the judiciary (*Pretto and Others v. Italy*, § 21).

The principle of public court proceedings and public announcement of court decisions as important components of the wider right to a fair trial is incorporated in the domestic law.

Thus, Article 102 of the Constitution of the Republic of Macedonia determines: «Court hearings and delivery of the court decisions are public. The public can be excluded in cases determined by law.» According to Article 354 of the Criminal Procedure Law, the Judicial Chamber 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 for the preservation of a state, military, official or

important business secret, protection of the private life of the defendant, witness or victim, protection of the witness's or victim's safety and/or protection of the interests of the juvenile». According to the Law on Litigation Procedure, the public can be excluded: «during the whole main contention or during one part of it, if so requested by the interests of keeping an official, business or personal secret, the interests of the public order or the moral reasons» and «in case when the measures for keeping the order, anticipated by his Law, would not be able to provide incessant holding of the contention». In both procedures, the exclusion of the public from the main hearing represents an essential violation of the procedure provisions and as such represents a legal basis for filing an appeal against the verdict of the Chamber.

The Law on Courts in Article 10 lists the publicity and transparency among the main principles of court proceedings. This Law also regulates the manner of transferring information from the court to the public and the media. Taking into consideration 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 web site 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 judgments are regulated by the Law on Case Flow Management in Courts. The court's relations with the public are regulated in detail in Articles 101-111 of the Court Rules of Procedure.

Transparency of the work of the courts is closely related to the publicity of information about the court budget. According to Article 106 of the Law on Judicial Budget, the Judicial Budget Council is established for carrying out the activities related to the court budget. According to Article 17 of this Law, the Judicial Budget Council monitors the execution of the financial plan and in case the performed controls detect irregularities and abuses by the president of the court in the process of execution of the financial plan, it informs the Supreme Court of the Republic of Macedonia, the Ministry of Justice, the Judicial Council, the Ministry of Finance and the State Audit Office. Control of the execution of the court budget, 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 to submit at least once a year a report on the execution of the judicial budget to the Ministry of Finance, the Government of the Republic of Macedonia and the Assembly of the Republic of Macedonia. 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 the funds of the court budget. 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 Law on Prevention of Corruption apply, in which Article 29 prohibits the influence on the employment of close relatives. Furthermore, the accountability of the courts and judicial institutions is associated with the obligation to report property contained in Article 33 of the same Law.

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

a) Access to court decisions

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

12 The decisions of the Court Chamber 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

b) Openness of the judiciary towards the public

15 The planning and spending of the court 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 a regular annual public report on the quality and functioning of the judicial system

c) Storing court records

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

d) Cooperation with other bodies and institutions

- 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 a satisfactory level
- 24) The level of cooperation between the courts and the enforcement agents in terms of efficient execution of decisions is satisfactory

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Council of Europe, Guide on Article 6 of the European Convention on Human Rights, 2013 (http://www.echr.coe.int/Documents/Guide_Art_6_ENG.pdf).

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

Constitution of the Republic of Macedonia with the Amendments from I to XXXI (Official Gazette of the Republic of Macedonia no. 52/91, 1/92, 31/98, 91/01, 84/03, 107/05, 3/09): Article 102.

Law on Courts (Official Gazette of the Republic of Macedonia no. 58/06, 150/10, 35/08): Article 10, 97 and 99.

Law on Prevention of Corruption (Consolidated text) (Official Gazette of the Republic of Macedonia no. 83/04, 126/06, 10/08, 97/15): Article 29, 33 and 35.

Criminal Procedure Law (Official Gazette of the Republic of Macedonia no. 150/10, 51/11, 100/12, 142/16): Article 126, 353, 354, 355, 356, 405 and 415.

Law on Litigation Procedure (Official Gazette of the Republic of Macedonia no. 7/11, 124/15) (Consolidated text): Article 292, 293, 294, 295, 296, 324, 325, 326, 342, 343, 372 and 375.

Law on Administrative Disputes (Official Gazette of the Republic of Macedonia no. 62/06, 150/10): Article 30, 30-a, 32, 33, 39, 40, 41, 42-d.

Rules of Procedure of the Constitutional Court of the Republic of Macedonia, 7 October 1992: Article 83, 84 and 85.

EUROPEAN COMMISSION, Report on the Republic of Macedonia for 2016 (9 November 2016): Page 21 and 79-80.

Law on Case Flow Management in Courts (Official Gazette of the Republic of Macedonia no. 171/10): Article 2, 6, 9, 10, 11 and 12.

Law on Courts (Official Gazette of the Republic of Macedonia no. 58/06, 150/10, 35/08): Article 44.

Law on the Judicial Council of the Republic of Macedonia (Official Gazette of the Republic of Macedonia no. 60/06, 150/10, 100/11, 20/15, 61/15): Article 33 and 64.

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Court Book of Rules (Official Gazette of the Republic of Macedonia no. 66/13): Article 96, 97, 98, 99 and 100.

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QUALITY OF JUDICIAL JUSTICE

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

One of the most important criteria that determines the quality of judicial justice is the way of explaining court decisions. The practice of the European Court of Human Rights on several occasions establishes clear requirements and standards in connection to this issue. The guarantees established by Article 6 paragraph 1 of the ECHR include the duty of the courts to provide a satisfactory explanation of their decisions (*H. v. Belgium*, § 53). The decision, which is reasonably explained, 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 explain their actions by explaining the reasons for the decision (*Suominen v. Finland*, § 36). The given reasoning should allow the parties to effectively use the anticipated remedies (*Hirvisaari v. Finland*, § 30 *in fine*). Article 6 paragraph 1 of the ECHR obliges the domestic courts to explain their decisions, but that does not mean that they have to give a detailed answer to all separately stated arguments (*Van de Hurk v. The Netherlands*, § 61; *García Ruiz v. Spain [GC]*, § 26; *Jahnke and Lenoble v. France (déc.)*; *Perez v. France [GC]*, § 81). The domestic courts must compulsorily evaluate and explain: 1) the main arguments of the parties (*Buzescu v. Romania*, § 67; *Donadzé v. Georgia*, § 35); 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).

The quality of judicial justice also depends heavily on the fact whether the court practice is harmonized or inconsistent. Although Article 6 paragraph 1 of the ECHR does not explicitly provide for the right to a harmonized court practice of the domestic courts to which a citizen can call upon, in several cases, however, the European Court of Human Rights found a violation of this article of the 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 court practice of the same degree, or it is about court practice of different degrees that are completely independent of each other. When there are visibly different decisions in similar cases made by the only Supreme Court of the country or by a number of courts which adjudicate in the highest and final degree, such inconsistent and noncompliant

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 the rule of law. 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 court practice are profound and durable; 2) whether the domestic law provides for mechanisms to overcome such noncompliance, 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 resolving the serious contradictions through appropriate legal remedies (*Beian v. Romania* (No. 1), §§ 37 and 39; *Nejdet Şahin and Perihan Şahin v. Turkey* [GC], §§ 56-57 and 80). An additional criterion that the ECtHR has in mind when deciding on these cases is whether the non-compliance is an isolated case or refers to a greater number of persons (*Albu and Others v. Romania*, § 38).

In the Opinion no. 17 (2014) of the Consultative Council of European Judges (CCJE) on the evaluation of judges' work, the 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. Judges must take steps to provide efficient and affordable dispute resolution and decide cases in a timely manner and independently and must be bound only by the law. They must give cogent reasons for their decisions and must write in a clear and comprehensible manner. Moreover, all binding decisions of judges must also be enforced effectively. Judicial independence does not mean that judges are not accountable for their work. The 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 should aim at improving the judiciary while ensuring the highest quality possible. That exercise must be done in the interest of the public as a whole."

Furthermore, the conclusions of this document outline the following: The 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 justice 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 the legal education and training of judges and other lawyers are crucial in ensuring high quality judicial decisions. It is also important to provide judges with training in issues outside the legal field and to train court employees in order to free judges from administrative and technical obligations and to enable them to focus on the intellectual aspects of decision-making.

The request for judicial decisions to be explained is also part of the conclusions and recommendations of this document: “Judicial decisions must in principle be explained. Their quality depends mainly on the quality of the explanation. The explanation 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 the Consultative Council of European Judges (CCJE) on the role of judges in the enforcement of judicial decisions, the conclusions state: “The effective enforcement of a binding judicial decision is a fundamental element of the rule of law. It is essential to ensure the trust of the public in the authority of the judiciary. 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 deferral should be subject to the judge’s assessment. The enforcement agents should not have the power to challenge or vary the terms of the judgment... The CCJE considers that, in a state governed by the rule of law, public entities are above all bound to respect judicial decisions, and to implement them in a rapid way “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 Commission, DG Neighborhood Policy and Enlargement Negotiations: Urgent Reform Priorities for the Republic of Macedonia and Recommendations from the Senior Experts’ Group (June, 2015) reads: “Ensure speedy execution of all ECtHR judgments against the country (in particular by developing practical end effective measures for each category of cases).”

In the domestic law, the manner of making court decisions, their content as well as the manner of their enforcement are regulated by the provisions of the Law on Courts, the Law on Criminal Procedure, the Law on Litigation Procedure, the Law on Administrative Procedure, and others. Regarding the harmonization of the court practice, the Constitution of the Republic of Macedonia in Article 101 stipulates that the Supreme Court of the Republic of 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 between the court practice in different regions of the Republic of Macedonia, a special Law has been adopted for determining the type and the amount of penalty. However, from the annual reports of the Supreme Court of the Republic of Macedonia and from other analyzes related to this issue, it is obvious that there are serious problems in connection to the harmonization of court practice in the Republic of Macedonia.

Regarding the implementation of the decisions of the European Court of Human Rights in the domestic law, it should be taken into consideration that according to domestic laws, the party concerned should file a request for repetition of the procedure (Article 400 of the Law on Litigation Procedure and Article 449 of the Law on Criminal Procedure) in cases when the European Court of Human Rights with a decision establishes any violation of human right or fundamental freedom. If the party concerned does not file a request for repetition of the procedure, it is not possible ex officio to initiate a new procedure in which there would be an opportunity to correct the violations of human rights that have been committed in the specific court procedure. In this context, the Supreme Court explains that the percentage of cases requiring a repetition of the procedure is minor 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 (Supreme Court of the Republic of Macedonia, Role of Supreme Court in Ensuring Unity in Enforcement of Laws (http://sud.mk/wps/wcm/connect/vsrm/4d89b932-9d22-4c88-bec5-cb2b65276f85/Улогата+на+Врховниот+суд+во+обезбедување+на+единство+во+примената+на+законите.pdf?MOD=AJPERES&CACHEID=ROOTWORKSPACE.Z18_L8CC1J41LOB520AP-QFKICD0CU3-4d89b932-9d22-4c88-bec5-cb2b65276f85-lfLTfzQ)).

25) The judgments and other decisions of the courts are clear, comprehensive and well-reasoned:

a) Court functioning

26) Court summons are clear and concise

27) Court summons are 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 ready for court hearings with a good knowledge of the circumstances and details of the case

31) The judge respects the procedural laws and the Court Rules of Procedure

b) Quality and effect of court decision

32) The courts follow the established court practice 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 practice of the European Court of Human Rights

35) The judgments and other court decisions are well structured

36) The judgments and other decisions are clear, comprehensive and well-reasoned

37) The court verbally announces the judgments 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 judgments and decisions are implemented in an efficient manner

c) Judicial competences and safeguards

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 meritorily in administrative matters
- 47 The judicial immunity is respected for actions taken within the framework of the performance of official duties

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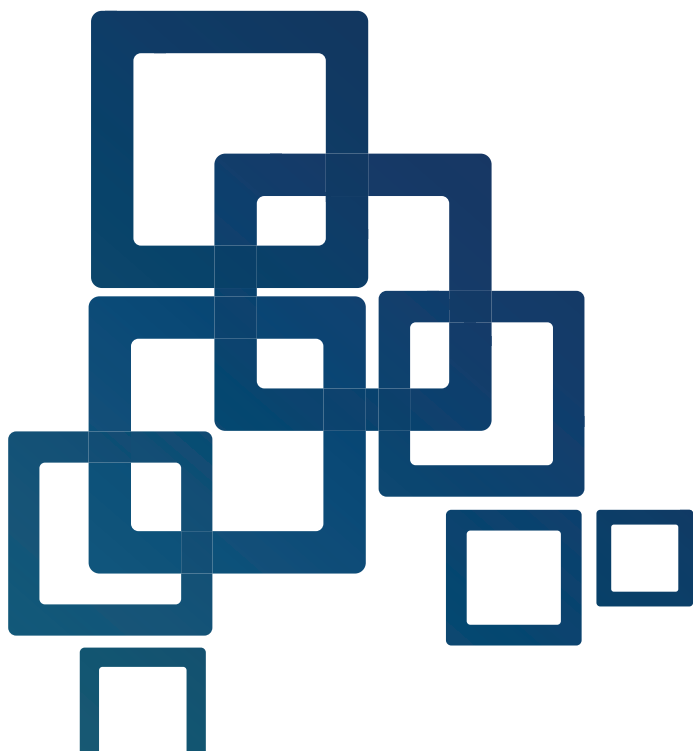
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INDEPENDENCE AND IMPARTIALITY

The existence of an independent and impartial tribunal is one of the main pillars of the fair trial concept. In this respect, 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 (*Kleyn and Others v. the Netherlands* [GC], § 192).

According to the practice of the European Court of Human Rights, the term “independence” refers to independence vis-à-vis the other authorities (executive and the Parliament) (*Beaumartin v. France*, § 38) and also vis-à-vis the parties (*Sramek v. Austria*, § 42).

In determining whether a body can be considered to be “independent”, the European Court of Human Rights has regard to the following criteria (*Findlay v. The United Kingdom*, § 73): 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 an appearance of independence.

Article 6(1) of the European Convention on Human Rights requires a tribunal, falling within its scope, to be impartial. Impartiality normally denotes the absence of prejudice or bias and its existence can be tested in various ways (*Kyprianou v. Cyprus* [GC], § 118; *Micallef v. Malta* [GC], § 93). Thus, the European Court of Human Rights has distinguished between: a subjective approach (endeavouring to ascertain the personal conviction or interest of a given judge in a particular case) and an objective approach (determining whether she or he offered sufficient guarantees to exclude any legitimate doubt in this respect) (*Kyprianou v. Cyprus* [GC], § 118; *Piersack v. Belgium*, § 30; and *Grievés v. The United Kingdom* [GC], § 69).

According to 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 independence of the judiciary and the 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". Furthermore, according to Recommendation no. 7 of the same opinion, "the irremovability of judges should be an express element of the independence enshrined at the highest internal level". Recommendation no. 8 of this opinion refers to the salaries of judges. It 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 provision against reduction and there should be provision for increases in line with the cost of living."

According to paragraph 2 of the Opinion no. 2 (2001) of the Consultative Council of European Judges at the Council of Europe for the attention of the Committee of Ministers of the Council of Europe on the funding and management of courts with reference to the efficiency of the judiciary and to Article 6 of the European Convention on Human Rights, "the funding of courts is closely linked to the issue of the independence of judges in that it determines the conditions in which the courts perform their functions".

The principle of having an independent and impartial tribunal, as one of the main pillars of the fair trial concept, is integrated into domestic law as well.

Thus, the basic principles of judicial independence are stipulated in the Constitution of the Republic of Macedonia, as the highest legal act. In this regard, Article 98(2) of the Constitution states: "The courts are autonomous and independent. The courts judge on the basis of the Constitution, the laws and the international agreements ratified in accordance with the Constitution." The unlimited duration of the term of office of judges, as well as the grounds for termination of the judicial office and the discharge 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.

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 on the independence, impartiality and autonomy of the judge in the exercise of the judicial office on any grounds and by any entity". In Articles 45, 45-a and 46 of the Law on Courts, criteria for the election of judges are provided. Thereby, Articles 45 and 45-a provide for the general conditions for the election of a judge, while Article 46 foresees the special conditions for election of a judge to the Basic, Appeal, Administrative and Supreme Court of the Republic

of Macedonia. At the same time, according to Article 52, “the judicial office is incompatible with the office of a member of the parliament, that is, member of a council in the municipality, that is, the City of Skopje, and the offices in state bodies, the municipality and the City of Skopje”, as well as with “any other public office or practice a profession, except an office determined by law which is not contrary to his/her independence and autonomy in the exercise of the judicial office”.

Pursuant to Article 2 of the Law on the Judicial Council, the Judicial Council of the Republic of Macedonia is defined as “an independent and autonomous institution of the judiciary”, which “shall ensure and guarantee the independence and the autonomy of the judiciary”. This provision is taken from Article 104(1) of the Constitution of the Republic of Macedonia. The composition of the Judicial Council of the Republic of Macedonia is provided for by Article 6 of the Law on the Judicial Council, while the conditions for the election of its members are determined in Article 11 of the same law. Its competencies for selection, discharge, assessment and promotion of judges are determined by Article 31 of the Law on the Judicial Council.

The procedure for election of judges by the Judicial Council is determined in 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 responded to 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 Macedonia from the rank of candidates who have replied to the vacancy and who meet the conditions and criteria stipulated by the Law on Courts and this Law”.

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

Some of the recommendations regarding the functioning of a certain Judicial Council, determined by the Opinion no. 10 (2007) 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 Council for the Judiciary at the service of society are the following: the terms of office of members could be full-time but limited in number and in time in order to preserve contact with court practice; the members (judges and non-judges) should be granted guarantees

for their independence and impartiality; the Council for the Judiciary should manage its own budget and be financed to allow an optimum and independent functioning; some decisions of the Council of the Judiciary shall be reasoned and have binding force, subject to the possibility of a judicial appeal.

48) The judges in exercising their functions are independent of any internal and external influences

a) Process of election and dismissal

49) The election and dismissal of judges is not 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 making decisions

b) Disciplinary process

54) The Fact-Finding Council is independent, professional and impartial

55) The disciplinary procedures are conducted in an objective and transparent manner

c) Evaluation and promotion

56) The judges are promoted through a judicial system based on objective criteria

57) The criteria for evaluating the work of judges do not affect their obligation to adjudicate in accordance with the existing regulations

d) External and internal influences in the judiciary

58) There is no phenomenon or circumstances of pressure from other institutions

59) The court decisions are based solely on facts and the law, without undue influence from private interests

60) There is no phenomenon or circumstances of internal pressure and influence from the judiciary

61 The Judicial Council successfully takes care for protecting the independence of the judiciary

e) Financial resources and court compensation

62 The annual court budgets are sufficient to cover the real costs of enforcing justice

63 The salaries of judges are in line with the tasks and responsibilities of the workplace

64 The salaries of judicial service are in line with the tasks and responsibilities of the workplace

f) Judicial impartiality

65 The personal convictions and the subjective attitudes of the judges are not reflected in their work

66 The judges are exempt from cases where there are circumstances of conflict of interest and bias

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Opinion no. 1 (2001) of the Consultative Council of European Judges at the Council of Europe on standards concerning the independence of the judiciary and the irremovability of judges: Recommendation no. 2, 3 and 10 (Paragraph 73).

Opinion no. 17 (2014) of the Consultative Council of European Judges at the Council of Europe on the evaluation of judges' work, the quality of justice and respect for judicial independence: Recommendations (Paragraph 49).

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Opinion no. 2 (2001) of the Consultative Council of European Judges at the Council of Europe for the attention of the Committee of Ministers of the Council of Europe on the funding and management of courts with reference to the efficiency of the judiciary and to Article 6 of the European Convention on Human Rights: Paragraph 2, 3, 4 and 5; Recommendation (Paragraph 14).

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, in particular ethics, incompatible behaviour and impartiality: Paragraph 21, 23, 27, 28, 30 and 37.

Practice of the European Court of Human Rights: Piersack v. Belgium, § 30; De Cubber v. Belgium, § 24; Demicoli v. Malta, § 40; Sainte-Marie v. France, § 34



PROFESSIONAL DEVELOPMENT AND APPROPRIATE REPRESENTATION

Regarding 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, in particular ethics, incompatible behaviour and impartiality, establishes the following: "The effectiveness of the judicial system also requires judges to have a high degree of professional awareness. They should ensure that they maintain a high degree of professional competence through basic and further training, providing them with the appropriate qualifications."

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 appropriate initial and in-service training for judges at national and European levels, in its paragraph 42, gives the following recommendations: training programmes and methods should be subject to frequent assessments by the organs responsible for judicial training; in principle, participation in judges' training initiatives should not be subject to qualitative assessment; their participation in itself, objectively considered, may however be taken into account for professional evaluation of judges; quality of performance of trainees should nonetheless be evaluated, if such evaluation is made necessary by the fact that, in some systems, initial training is a phase of the recruitment process. Within the framework of domestic law, there is an obligation for continuous training for judges. Thus, Article 54 of the Law on Courts stipulates that "the judge shall have 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 the imposition of a disciplinary measure in case of failure to fulfill the duty for continuous training.

Furthermore, the Law on the Academy for Judges and Public Prosecutors, in its Article 114(3), establishes the following: "the continuous training is mandatory for the judges, public prosecutors, presidents of courts and public prosecutors in 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 programmes for the continuous training, the programme for practising the judicial and prosecutorial function, general and specialized training programmes.

The existence of fair and equitable representation of the members of all communities in the judiciary is provided for in the Constitution of the Republic of Macedonia, as the highest legal act. Thus, Article 105(2) of the Constitution provides that “on the election of judges, lay judges and court presidents, equitable representation of citizens belonging the 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 the 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 “equitable representation of the citizens from all communities shall be ensured when electing judges and lay judges without disturbing the criteria prescribed by law”.

Provisions for fair and adequate representation in the judiciary are also enshrined in the Law on Judicial Council (Article 43, as well as in the Law on the Academy for Judges and Public Prosecutors (Articles 8 and 9).

67 In the judiciary there is a fair and equitable representation of the members of all communities in the Republic of Macedonia

a) Continuing legal education

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

69 The trainings follow the changes in legislation and court practice

b) Ethnic and gender equality

70 The legal framework guarantees fair and equitable representation in the judiciary of members of non-majority communities

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

RESOURCES:

Constitution of the Republic of Macedonia with the Amendments from I to XXXI (Official Gazette of the Republic of Macedonia no. 52/91, 1/92, 31/98, 91/01, 84/03, 107/05, 3/09): Article 105(1) and 10(2).

Law on Courts (Official Gazette of the Republic of Macedonia no. 58/06 of 11.05.2006): Article 54, 71, 77 (amended with Article 29 of the Law on Amendment and Supplementation of the Law on Courts, Off.Gazette of RM no. 150/2010 of 18.11.2010), 83(1) (amended with Article 31 of the Law on Amendment and Supplementation of the Law on Courts, Off.Gazette of RM no. 150/2010 of 18.11.2010).

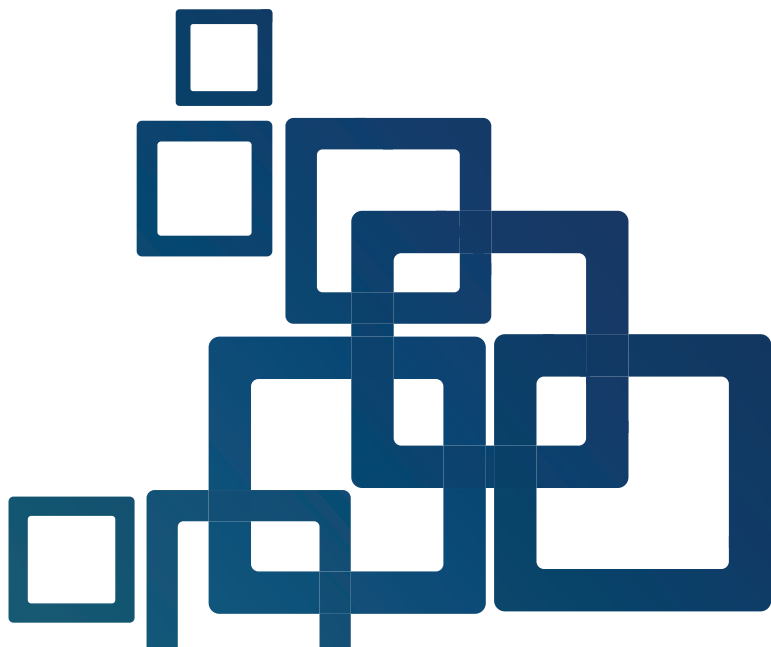
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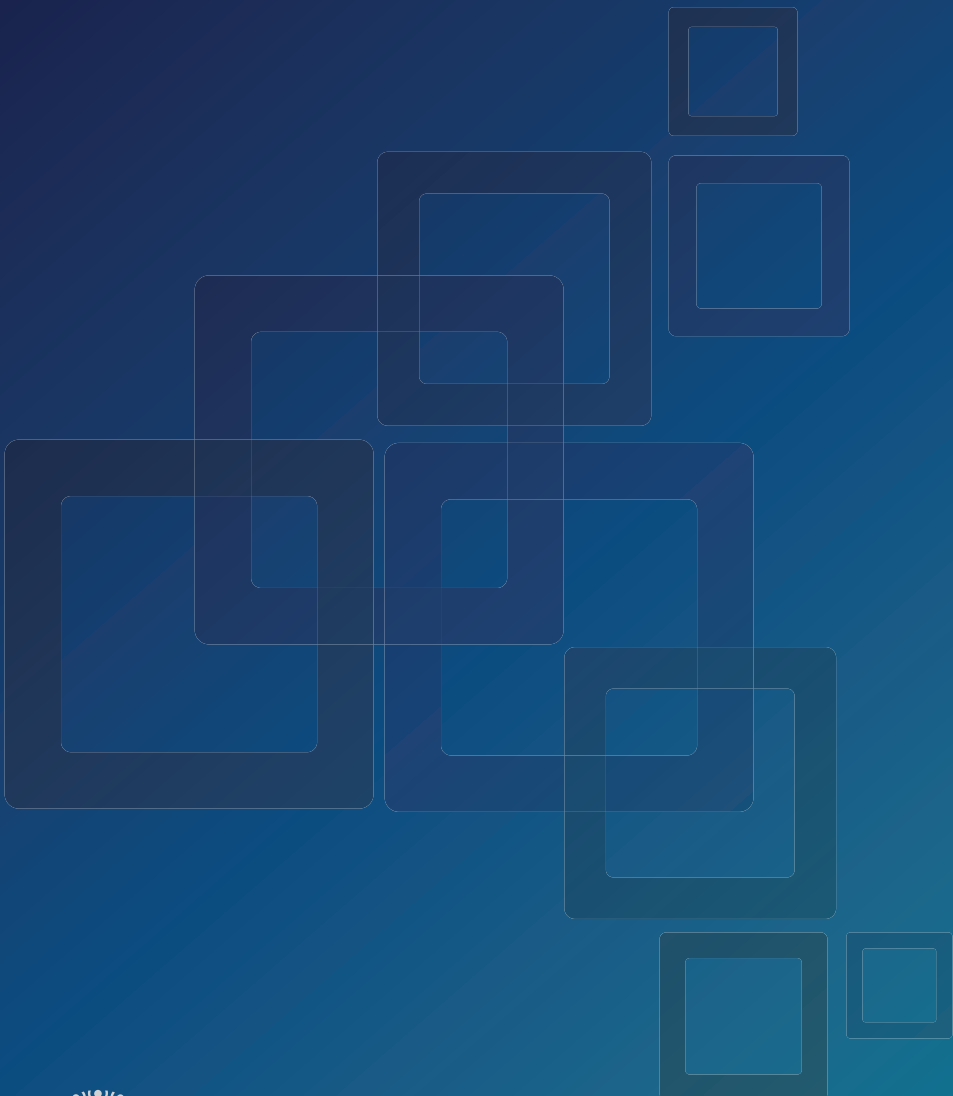
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Opinion no. 4 (2003) of the Consultative Council of European Judges at the Council of Europe to the attention of the Committee of Ministers of the Council of Europe on appropriate initial and in-service training for judges at national and European levels: Paragraph 37 and 42.

Law on Courts (Official Gazette of the Republic of Macedonia no. 58/06 of 11.05.2006): Article 43(1) and 43(2).

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ЦЕНТАР ЗА ПРАВНИ
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