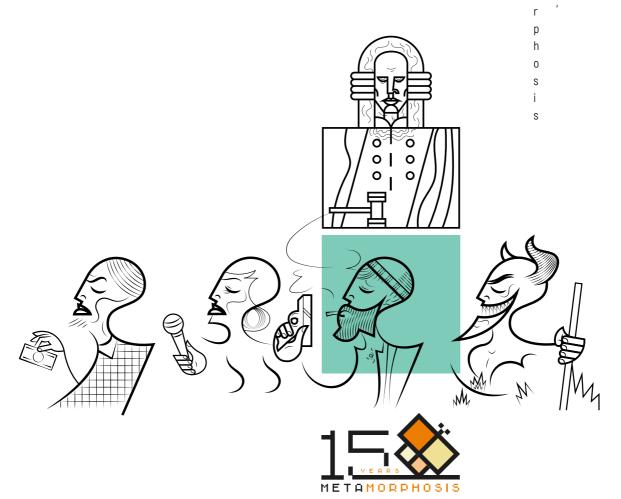
The electoral system remains a source of crisis in North Macedonia









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With the latest amendments to the Electoral Code, some improvements have been made, primarily in the registration of voters, voting procedures and in expanding and specifying the competencies of the State Audit Office (SAO) and the State Commission for Prevention of Corruption (SCPC) regarding the control of finances. However, the election model remained with six constituencies and a proportional collection of results, favouring only the major parties, reducing citizen participation and cyclically causing political crises

Authors: Teofil Blaževski and Goran Rizaov

The electoral system as a whole, and especially the electoral model, remains a source of crisis in North Macedonia, although the electoral system has been improved with recent amendments to the main law. This is the main conclusion of our research on what has been done within about one year, regarding the electoral system reforms.

The answer is that there are some achievements, but more needs to be done. Several amendments to the Electoral Code (EC) were made in February 2020. But most of the major recommendations our experts made in last year's survey have still not been met.

Specifically, this means that:

- The electoral model has not changed there are still six constituencies instead of one (in RNM) and the voting is still done by a proportional model with closed lists, which excludes the chances of smaller parties or independent candidates.
- The Electoral Code has been amended with specifications in several places, thus improving it in terms of accepting some of the OSCE-ODIHR recommendations. However, the fact remains that with about 35 changes and amendments done, a NEW Electoral Code is needed
- There are still weaknesses in voter registration in the electoral list due to which part of the electorate remains out of the election process. However, there are improvements in the area of adults living in out-of-family facilities and in the coverage of persons that are over 18 years of age but still do not have a valid passport.

- Penal policy regarding voter pressure has not been enhanced, and very little has been done to avoid clientelism.
- Due to the increased transparency, there is a noticeable improvement in the non-use of state funds in the election campaigns.
- The Anti-Corruption Commission is finally fully functional and is ready to control the election process. The SCPC and also the State Audit Office (SAO) are on the list of the EC for further specification, but because there is still no satisfactory number of employees and technical equipment, the question remains whether these two institutions can meet all the requirements and fulfil their competencies.
- The State Election Commission (SEC) has not been transformed into a professional and independent body of experts, nor is it a mixed, political-expert body, but remains a fully political body that should conduct the elections professionally. The SEC also has a problem with the professional employment of officials, as the remarks from the last elections are that some of them have been employed with temporary contracts.
- The media and the election campaign also remain a problem. By amending the Electoral Code of 2018 with a provision by which the campaign of the parties in the media is paid from the state budget, there is room for constant suspicion of corruption of the editorial policies in the media.
- An additional problem has emerged due to the coronavirus crisis. In
 the time of writing of this report, it is being negotiated when and how
 the 2020 elections will be held, because the date for the early elections
 on 12 April was not an option due to the country's state of emergency. A
 list of general protocols on how to conduct elections exists, but there are
 still many unanswered questions that could affect the legitimacy of the
 elections.

There is no change of the election model

"Almost half (46.6%) of the respondents think that there is a need for electoral system reform, i.e. to have one constituency instead of six. However, 29.4% of respondents said that such a reform is not necessary, and 23% responded with "I do not know".

These results were obtained after a comprehensive survey¹ published in December 2019 by the Macedonian Center for International Cooperation (MCIC). The change in the number of constituencies was one of the main political topics in 2019, which was raised by MPs from smaller political parties in the spring, and then other MPs from several MP groups joined the initiative in the fall of the same year. Under pressure from the public,

2 DW - (6 November 2019) - One constituency - a theatre play - (available at https://bit.ly/2L3ZE9r)

3 2019) – Counterspin: Had SDSM truly wished for... - (available at https://vistinomer.mk/kontraspin-dokolku-sdsm-iskreno-sakashe-edna-izborna-edinica-%d1%9ce-pokreneshe-inici%d1%98ativa-ushte-pred-dve-godini/)

4 Parliamentary Institute – March 2017 – The proportional electoral system in one constituency as opposed to the proportional electoral system in several constituencies (available at https://bit.ly/2zrrdqU)

5 Republika – 16 October 2019 – Why the one constituency model is a bad idea – (available at https://respublica.edu.mk/blog/2019-10-16)

even at the end of the debate and when it was announced that the country would go to early elections, the ruling party SDSM joined the initiative, and their election promise from the 2016 elections was that they will change the electoral system and the voting model and make one instead of six constituencies and also open the lists of candidates. However, this statement the public² has assessed as an insincere commitmen³, as it is clear that such an electoral system works well for the two largest parties in Macedonia, as well as to the major parties on the Albanian electoral campus.

The study⁴ prepared for the needs of the Parliamentary Institute at the Assembly of RNM in 2017 speaks about the greater representation of different categories of citizens with one constituency. In this study the advantages of the proportional electoral system in one constituency are compared to the advantages of having more than one constituency. In truth, there are conflicting opinions⁵ that one constituency, although a more representative electoral model, would still lead to greater political instability and even more difficulty in government formation, due to the large number of parties entering the Assembly.

Many of the OSCE-ODIHR remarks remain in force

"Many prior ODIHR recommendations regarding the legal framework remain unaddressed, including those related to the right to stand, voting rights of persons with mental disabilities, scrutiny of interim campaign finance reports, and legal standing to file complaints. Overall, regulatory shortcomings undermined legal certainty and highlighted the importance of finalizing legislative reform."

This is stated in the summary of the OSCE-ODIHR Final Report⁶ after the last elections in RNM, i.e. the presidential elections held in April and May 2019. Although the election was generally assessed as democratic, fair and transparent, many remarks remained, and the first remark concerns the way voter registration is conducted. However, some improvements have been made to the latest amendments to the Electoral Code in February 2020. Now, for example, the registration in the electoral list covers all citizens living in non-institutional communities and institutions, and this mostly applies to adults living in nursing homes, as well as to young people under state protection, living in some of the centers under the auspices of the Ministry of Labour and Social Policy.

At the same time, the electoral list includes all persons who have reached the age of 18 and have a valid ID card and passport, persons who are 18 years of age, and whose documents expire before election day (first and second round), as well as persons over 18 years of age by the date of the

6 OSCE/ODIHR Final Report on 2019 Presidential Elections – (available at https:// www.osce.org/odihr/elections/north-macedoni a/428369?download=true) election. With this amendment, some of the previous remarks of the OSCE-ODIHR have been fulfilled.

However, there are still remarks about the denial of the right to vote due to changes in the situation between the two rounds of elections, and there is also denial of the right to vote to persons whose work ability has been revoked by a court decision, and who, according to international conventions signed or adopted by RNM, have the right to vote. These remarks have been repeated throughout the years.

The issue of how many of the more than 1.8 million registered voters live in RNM, and how many of them live abroad, remains unresolved. This problem, which can be solved by a census, is important because it has reduced the electoral census for the presidential election to 40 percent, and proved to be very important for the referendum held in 2018 when the condition for the census of 50 percent turnout from registered voters was not met.

Some domestic experts suggest active electoral list registration, as the only fair methodological operation in a situation where there is a great deal of ignorance because of the lack of a census..

Professionalization of the election administration

One of the more important issues that are subject to remarks is the efficiency and the issue of professionalization of the election administration. The existing composition of the SEC was chosen in 2018 as a transitional solution for six months, for conducting the referendum in September the same year. Now it is working with an extended mandate by the Assembly, and additionally, with the Government's Decree with force of law due to the coronavirus crisis, their mandate has been extended until 25 July this year. The SEC is constituted of political parties' representatives, and such a choice, although democratically permissible and legitimate for conducting elections, sometimes faces the issue of efficiency and bias, so there is still an ongoing public debate that professionalization of the SEC would be a good solution.

The legitimacy of the debate on the professionalization of the SEC can be seen even now, during the coronavirus crisis. The president of the SEC is a former MP and has been nominated by the largest opposition party, VMRO-DPMNE. During the preparation of this report, he advocated the views of his party, i.e. that elections could not be held in June or early July (which is the current request of the ruling party SDSM) with the explanation that there are many technical and security obstacles. Some of his arguments, such as updating the electoral list, have been challenged by some election

participants, such as the current President of the Assembly Talat Xhaferi, who belongs to the major Albanian party - DUI.

According to remarks of international observers, during the last presidential election, the SEC worked well, although there were delays in preparations, remarks about the open sessions that were only a proforma, while the decisions were mainly made in closed sessions, as well as remarks regarding the professional administration that assists the SEC. The recommendations here are that this administration should be composed of people who are permanently employed, not people with temporary employment contracts.

There are also remarks about transparency in the work of the Municipal Election Commissions (MECs) because although the law requires their work to be public, according to OSCE-ODIHR, the transparency has varied from one municipality to the other.

Clear rules against pressure on the administration

Although the OSCE-ODIHR stated that it had received several remarks about the use of state resources in the campaign, such findings had not been confirmed and election participants generally gave the impression that this ban had been respected.

The mission also received several remarks for pressure on employees in the state and public administration or the public sector in general. However, these remarks could not be confirmed either. The mission highlights the efforts of the Ministry of Information Society and Public Administration, i.e. the introduction of an online tool through which administration staff could report pressure. However, the mission recommends that these activities must be ongoing and coherent:

"Continued vigorous efforts should be taken by the authorities to counter any form of pressure on public sector employees, including clear public statements and written instructions by senior state officials that such pressure will not be tolerated and that no citizen should fear any negative consequences as a result of supporting or not supporting any candidate or party. Public-sector employees should be actively encouraged to report any instances of pressure, and such cases should be thoroughly investigated and prosecuted, with protection for those who report these cases."

Group and family voting and vote-buying

On last year's presidential election the appearance of family or group voting and indications of vote-buying were still noticed.

7 CIVIL media – 18 October 2017 – Family and group voting, a long-standing tradition – (available at https://civilmedia.mk/semejno-i-grupno-glasanje/)

8 META – 29 October 2017 – MOST: Group voting and photographing of ballots registered – (available at https://meta. mk/most-zabelezhano-grupno-glasane-ifotografirane-na-glasachki-livchina/)

9 OSCE/ODIHR Final Report on 2019 Presidential Elections (p.27) – (available at https://www.osce.org/odihr/elections/ north-macedonia/428369?download=true)

10 Sloboden pecat – 13 May 2020 – Interview Zijadin Sela: Optimal date... - (available at https://www.slobodenpecat. mk/intervju-zijadin-sela-optimalentermin-za-izbori-e-krajot-na-juli-ilipochetokot-na-avgust/) Despite numerous elections and campaigns against family or group voting, observers once more registered a high 3 percent of family or group voting cases at the observed polling stations. Such voting has been registered in about one-third of the total number of polling stations, which if taken as a representative sample at the level of all polling stations, can be approximated to the figure of about 9 percent, which is not a small indicator. Group voting, according to the same estimates, indicates to the hindered right of women to personally exercise their right to vote.

This problem has been noticed by domestic observers in several election cycles. The NGO CIVIL reacted to the reports about family and group voting that reach about 10% of the overall reports during the local elections in 2017. The same trend during these elections was also noticed by the non-governmental organization MOST that deals exclusively with election monitoring. Such remarks can be also found for the 2016 elections and the elections in 2014 and 2012. The conclusion remains that this is a recurring problem and that in addition to training and propaganda campaigns against such voting methods, the SEC and other authorities in the country should make greater efforts to eradicate this harmful phenomenon.

What certainly does not go in favour of the good conduct of the elections in RNM, is the fact that in the last elections "credible allegations of vote-buying" were observed, which were submitted to international observers, who in turn in the second round of the presidential elections in 2019, observed "clear indications of vote-buying in Štip and Strumica."

Regarding these problems of group and family voting, the OSCE-ODIHR demands greater education, but also more effective control and sanctions for those responsible from the law enforcement agencies:

The State Election Commission and other actors should continue voter and civic education efforts to prevent family voting and preserve free choice for each voter. These education efforts should also tackle vote-buying, while law enforcement agencies should investigate vote-buying allegations and hold their organizers to account.9

But it is not just a matter of vote-buying or group and family voting. There are credible reports of the deliberate annulment of polling station results to assure the win of the desired candidate. Those reports were placed by the leader of the Alliance for Albanians, Zijadin Sela in 2017, who was then competing for the mayoral mandate in Struga. Now, in 2020, he notes these reports once again. Sela claims that SDSM, in coalition cooperation with DUI, used its people in the election administration at the local level to annul some results to ensure a sufficient number of votes for the DUI candidate, Ramiz Merko¹⁰ marks include non-compliance with procedures for opening ballot boxes after closing election day, inaccessible and poorly equipped polling stations for persons with disabilities, violation of the secrecy of the ballot especially in those polling stations with less than 10 voters etc.

These remarks of the ODIHR are in part addressed by the new Article 108-a, which, with the new amendments to the EC of February, describes in detail the steps for conducting voting procedures using technical equipment for voter identification at the moment the voter approaches the polling stations and also in front of the election board.

Another part of the remarks is addressed to the amendments to the chapter "Protection of the right to vote", where articles 147 and 148 are much more detailed. These two articles explain the steps and procedures when a voter, or another on their behalf, files a complaint or appeal for the conduct of the voting process, or the inability to exercise their right to vote.

Financial supervision remains a problem, but it has been improved

Although the rules for financing election campaigns and monitoring those finances are subject to several laws and solutions from twenty years ago until the last elections in 2019, remarks on these solutions still exist in both the domestic and international public dealing with the implementation and observation of elections. The rules on one hand are much clearer regarding fundraising for campaign financing, and, on the other hand are ambiguous or problematic when it comes to the obligation for submitting reports, reviewing those reports and the timeframe for submission of final reports and giving audit opinion on these reports.

The general laws regulating these issues are the Law on Financing Political Parties, the Electoral Code, the Law on Prevention of Corruption and Conflict of Interest, and other regulations. The OSCE-ODIHR's recent remarks make it clear that many recommendations that have been repeated for years have not yet been implemented. The biggest remarks are regarding the publication of the two periodic reports during the campaign and the lack of time for the competent institutions to check them for irregularities. It is also worth noting that the final financial report must be submitted by election participants within four months of the election. The ODIHR considers this to be too much time and that the report should be submitted within one month after the election. Then, the State Audit Office should review the report and publish the findings within 60 days.

The necessity of the implementation of these remarks is not only the basis of the GRECO reports or the common views of the OSCE-ODIHR and the Venice Commission, but also the reality in RNM. Although it is widely known, since the elections in 2011, that the then ruling party VMRO-DPMNE remained indebted 3 million Euros, neither criminal

11 SAO – 2020 – All Audits – (available at https://dzr.mk/mk/revizorski-izvestai)

12 SAO – 2 February 2020 - Announcement: International Foundation for Electoral Systems at a meeting in the SAO – (available at https://dzr.mk/mk/200206megunarodnata-fondacija-za-izbornisistemi-na-sredba-vo-dzr)

13 AO – 11 February 2020 – Statement: The role of the SAO in the process of financing political parties- (available at https://dzr. mk/mk/200211-ulogata-na-dzr-vo-procesotna-finansirane-na-politichkite-partii)

charges were filed, nor this affair was closed in a lawful manner. Also the "Talir" trial is ongoing, which was initiated by the former Special Public Prosecutor's Office. This trial deals with the illegal financing of the party and their election campaign. Finally, the need for change is evidenced by the fact that almost a year after the presidential election, the SAO published audit reports on the final reports of the then-presidential candidates Blerim Reka, Stevo Pendarovski and Gordana Siljanovska Davkova". Who would benefit from such a belated finding, regardless of the results?

Experts say that the role of the Public Revenue Office in controlling party funding should be enhanced, and the OSCE-ODIHR notes that the competences of the SCPC are, in fact, difficult to implement in timely control and prevention, primarily due to a lack of resources.

However, some of these remarks are incorporated with the latest amendments to the EC. For example, the request of the SAO to have the right to investigative competences is now embedded in Article 85-b, which has so far been general and stated only that the SAO is conducting the audit. Now, this article has been expanded and elaborated with 9 paragraphs, which precisely indicate that if the SAO requests additional information from the parties, other election participants or third actors, the entities required to do so are obliged to submit the information to the SAO immediately. Also, if irregularities or criminal liability are established, the SAO has the right to file a request for violation with the Public Prosecutor.

The SAO itself is becoming a more active factor in improving the legal situation and the conditions for conducting elections regarding finance. This can be observed from the meetings between the SAO with the leadership of IFES in Skopje and with experts from the Council of Europe realized at the beginning of 2020¹². At the second meeting¹³ "the need for the competent authorities to act in the field of the stated systemic weaknesses in the Law on Financing Political Parties and the Electoral Code" was emphasised. Given the above facts, it can be concluded that further improvements are needed in the legislation that determines the financing of political entities, and the financing and control of elections and election campaigns.

The media and political campaigns - area for corruption

With the change of the Electoral Code in 2018, the financing of the campaign of the election candidates in the media is done through the Budget of RNM. To this end, from the beginning of the announcement of elections, the media should register with the SEC, and indicate that they will monitor the elections and cover the campaign. With these changes, in addition to broadcasters and print media, electronic media (i.e. the portals, as called in the EC) were allowed, for the first time, to cover the candidates' campaign, a service that will be paid from the Budget.

From the start, this measure was problematic for journalists' associations, and in the new Strategy for Prevention of Corruption, drafted by the SCPC, it is referred to as a high-risk measure for media corruption and requires its amendment or removal.

From the figures known to the public, in September 2018 the media received almost one million Euros to cover the referendum, and for the presidential elections in April and May 2019 about 3,8 million Euros. In January this year, the 2020 elections were even bided with an enormous figure of as much as 6,5 million Euros, but still, with the amendments to the EC from February 2020, that figure is limited to two Euros per registered voter, which translates to just over 3,6 million Euros because the voter list is expected to contain just over 1,8 million voters. There is another limitation, i.e. the total amount for electronic media/portals cannot exceed 15 thousand Euros. According to the finalized SEC media register, 338 media outlets have reported that they would monitor the 2020 elections, of which 230 are portals. This indicates that the money they will receive will be significantly less than the maximum of 15 thousand Euros, given that the total amount of over 3.6 million Euros will be shared with both print media and broadcasters, which, on the other hand, are limited by the price per second with an average of the last five election cycles.

Discrimination regarding media presentation time

Paid political advertising brings another major flaw, i.e. contains discriminatory provisions for some of the participants in the election campaigns. Namely, the restrictions start with the provisions that limit the time in the information blocks of public broadcasting service according to Article 75-a. According to this article, the time of the Public Broadcasting Service allocated for informative programs is distributed on the principle of 30-30-30-10 percent. At the same time, only those 10 percent of the time are given to non-parliamentary parties and independent candidates who were not represented in the Assembly before the elections.

Article 75-gj de facto legalizes the discrimination with apparent disproportion in the representation of all political entities or individuals. Namely, the total time allowed for paid political advertising, which, to state again, is paid by the state Budget, is a maximum of 9 minutes per real hour program of the broadcaster. Besides, the parties that secured seats in the Assembly in the last elections, the two largest ruling parties and the two largest parties in the opposition, are provided with 4 minutes each, which means a total of 8 minutes, while the other smaller parties or independent candidates are provided with only 1 minute.

This raises the question of fairness and equality in political advertising. It is quite clear that in this way the major political parties have provided drastically more time for themselves than for the smaller parties or independent candidates.

COVID 19 elections – still a lot of ambiguities

14 Government of RNM – 22 March 2020 – Announcement on a Decree with force of law – (available at https://vlada.mk/node/20643)

15 IFES – May 2020 – Safeguarding health and elections – (available at https://www. ifes.org/sites/default/files/ifes_covid19_ briefing_series_safeguarding_health_and_ elections may 2020.pdf)

16 Telma TV, Win-Win – 21 May 2020 – Debate/ O. Derkovski – (available at https://telma.com.mk/vin-vin-21-05-2020/)

While this report was being completed in the last days of May 2020, debates between the political elites of the ruling party and the opposition are still ongoing over when to reschedule the postponed early parliamentary elections. The election campaign led by the SEC was terminated by a Government Decree with force of law issued on 22 March 2020¹⁴. With that decree, all election activities that were completed until then remain in force, and the SEC is obliged one day after the suspension of the state of emergency to prepare a new schedule and to announce it, for completing the remaining activities. However, there is not a new election date given in the Decree, and all election activities were suspended 22 days before the previous date - 12 April. Given that the Constitution and the EC state that the elections are announced by the President of the Assembly, and in the meantime he claims that he has no legitimacy to convene the Assembly again and get a mandate for a new date, the leaders of the parliamentary parties gather for negotiations mediated by the President of the RNM, Stevo Pendarovski, to agree on a new date for the elections.

However, few in the public are talking about the exact details of how elections should be held in the face of the still-current pandemic and epidemic with Covid-19.

The Commission on Infectious Diseases has recently issued general recommendations on how to conduct elections, but there are no details on the many electoral procedures to be considered, as recommended by the International Foundation for Electoral Systems (IFES) in early May¹⁵.

SEC President Oliver Derkoski also mentioned some of those details, appearing on a public television programme dedicated to the elections¹⁶. He said, among other things, that many uncertainties remain, such as the election of new polling stations, having in mind that out of about 3,500 polling stations, nearly 700 had substandard conditions that were not conducive to voting during COVID-19 epidemic.

Some of the ambiguities that Derkoski stated are also mentioned by one of our experts who helped us creating this report.

"Voting protocols and guidelines need to be changed to include new emergencies arising from the epidemic," our expert said, pointing to critical points such as: checking the voter list at SEC regional offices (if the public inspection continues), the process of printing confidential and nonconfidential election material, including the verification of the voter list by political parties, the distribution of election material to the Municipal Election Commissions and the Election Boards at the polling stations themselves, all health-protection details, how long will it take for voters, and how will people that are in self-isolation, in prisons, in nursing homes vote, then the moment of handing over the election material to the MEC and the SEC, the announcement of the results, press conferences that follow, etc.

All of these are critical moments in the conduct of elections and the maintenance of public health. SEC and the opposition, have pointed out several times that on election day, 35 to just under 100 thousand people are directly or indirectly involved (election boards from the administration, plus party controllers, plus observers), which makes the process quite complex in conditions of COVID-19 epidemic.

However, other ambiguities have also been mentioned in the public. One of them, which concerns the legitimacy of the elections, is the issue with the voter lists, which have been made final less than three months ago. What if one of those people on the voter lists got infected, has died (so far there is no such information) or is renouncing from the voter list (there is one such confirmed case in the public) in the meantime, and what if this suspension of more than three months has deprived an independent candidate or a list of candidates who want to run in the election?

Methodology

This research by the Metamorphosis Foundation, within the project implemented by the Center for Democratic Transition in Montenegro (CDT), covers five areas: elections, judiciary, fight against corruption and organized crime, media and public administration reform, with each area covered in a separate document. This public policy paper covers the current state of affairs with the improvement of the electoral system.

The areas consist of many sub-areas related to the regulation of the strategic and legal framework, institutional, administrative and material capacity, as well as the practically achieved results.

The analysis is based on the fulfilment of the criteria created by collecting the assessment of the indicators and the issues related to them by experts monitoring the implementation of EU standards, as well as based on an analysis of normative and institutional reforms and their practical results. In this analysis, we would like to express gratitude to the following experts: Marko Trošanovski, President of the Institute for Democracy "Societas Civilis" (IDSC), Aleksandar Kržalovski, First Executive Director of the Macedonian Center for International Cooperation (MCIC) and an



expert from an international organization dedicated to elections and electoral systems, who wished to remain anonymous.

The CDT assessed the progress made in meeting political criteria for the first time in 2017. Then, with the help of Dr Martin Bruce's methodology, indicators were developed for each of the areas mentioned, which serve as a measure to assess the situation in the areas and, in fact, represent an authentic understanding of what the EC is requesting from each country as progress in a given area. Following the first assessment, the CDT in 2018 has expanded the research focus to other countries in the region, and together with colleagues from CRTA (Serbia), the Metamorphosis Foundation (Macedonia), Why Not? (Bosnia and Herzegovina), the methodology has been refined, and based on this methodology are conducted such researches.

The basics for the development of the indicators are the key assessments and recommendations from the European Commission's reports, but also other international reports, comparative studies and research, action plans, as well as numerous international standards and practices and other reference materials. The total number of indicators for all areas is 168, with several indicators added this year in each area in terms of gender representation, budgeting and overall policies.

About the Metamorphosis Foundation

Metamorphosis Foundation for Internet and Society is an independent organization operating in the Republic of North Macedonia and our wider European home. Our team is comprised of dedicated activists who advocate for democracy, united by a common goal and values of mutual accountability, open communication and an unwavering commitment to universal human rights and democracy.

We strive for a society in which engaged and aware citizens actively use innovative tools to fulfil their civil rights and responsibilities, citizens who unconditionally influence the authorities and demand accountability, thereby ensuring democratic, accountable and transparent governance.



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