

MONITORING THE  
EU INTEGRATION PROCESS

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## JUDICIAL REFORMS

**THE JUDICIARY NEEDS A  
FINANCIAL “BOOSTER” DOSE**

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## THE JUDICIARY NEEDS A FINANCIAL “BOOSTER” DOSE

The strategic framework, the laws, and the implementation are the three key pillars for the reforms in the judiciary, above all, of the judiciary and the prosecution, from the aspect of the European integration changes. While the first two pillars have a relatively satisfactory rating, the implementation of judicial reform is an element that needs a reform “booster” dose, in all areas. All indicators show that this “booster” dose should be, above all, financial, i.e. more money from the budget is needed to implement reforms. This would be a brief conclusion about the situation in this area during 2021 from the monitoring we conducted in the last two quarters of the year.

Author: Teofil Blaževski

## ABOUT THE PROJECT AND THE METHODOLOGY

The document is the result of research conducted within the project “**Fact-checking of the progress of the Republic of North Macedonia towards the EU**”, implemented by the Metamorphosis Foundation for Internet and Society from Skopje, with the support of the US National Endowment for Democracy. The project is being implemented during 2021 and 2022.

The project activities aim to present facts translated into journalistic texts from different genres, analyses, and conclusions from public debates on the level of reform activities and achievements of the Republic of North Macedonia in several key areas that are pointed out in the EU progress reports of RNM. These key areas are **reforms in the field of public administration, judiciary, fundamental rights of citizens, and freedom of expression/media**.

The project will prepare four (quarterly) monitoring reports, which, guided by a qualitative methodology, provide an assessment of the situation in specific areas, and thus paint a picture of the democracy in the country.

Each monitoring report thoroughly addresses one of the four key areas and provides a summary of the other three. The first monitoring report referred to the implementation of reforms in the media sector. This one, the second, refers to judicial reform.

The methodology relevant to this report relies on three pillars: (1) desk research, (2) journalistic articles by journalists and editors from Metamorphosis Foundation media projects, and (3) interviews with experts in the field conducted through focus groups known to the donor and the Metamorphosis Foundation, but to avoid any inconvenience or conflict in the areas where they work (because they work with both governmental and non-governmental organizations and in the media), will remain anonymous in this report. Information obtained from informal conversations with other experts, journalists, or public reactions observed during the year was also used.

In addition to the interviews, the experts fill out a survey questionnaire listing dozens of questions in the field, which allows for cross-comparison - to extract a score from the questionnaire and compare it with the scores obtained from interviews and desk research.

The main document, the report on the situation in the judiciary, is accompanied by information on the significant situation and activities in the other three areas, public administration reforms, media sector reforms, and fundamental rights reforms in the RNM, which were implemented quarterly from July until the end of 2021.

## EXECUTIVE SUMMARY

The strategic framework, the laws, and the implementation are the three key pillars for the reforms in the judiciary, above all, of the judiciary and the prosecution from the aspect of the European integration changes. While the first two pillars have a relatively satisfactory rating, the implementation of judicial reform is the element that needs a reform “booster” dose. All indicators show that this “booster” dose should be, above all, financial, i.e. more money from the budget is needed to implement reforms. This would be a brief conclusion about the situation in the area during 2021 from the monitoring we conducted in the last two quarters of the year.

Separately by areas, the following observations remain:

- The independence of both the judiciary and the prosecution, although legally guaranteed, remains debatable and an issue that needs to be addressed in the next period. That assessment is derived from the monitoring of both areas of the NGO sector, from the opinions of both representatives of the judiciary and the prosecution highlighted in reports and analyzes, as well as the assessment of the experts in the focus group that assisted in the making of this report.
- Budgeting, whether for the entire judiciary or especially for courts and prosecutors’ offices, is still far from the legally guaranteed amounts, although there is very little progress in the 2021 and 2022 budgets. In general, the state allocates around 55 million Euros annually for all segments of the judiciary, although the judiciary alone needs over 90 million Euros, according to the legal budget rate of 0.8 percent of GDP. According to the budget projections for 2022, the total amount would be around 61 million Euros. But the needs are huge and much more money is needed in the judiciary and the prosecution, and of course in other areas of the judiciary.
- The transparency of the judiciary and the prosecution, although improved compared to the situation a few years ago, is still one of the issues to be addressed, and it is also related to budgeting.
- The efficiency of the judiciary in new cases is satisfactory; it faces a possible conflict regarding the quality of delivered justice (in terms of poorly reasoned judgments or inequality of penal policy), due to the pressure to complete cases within legally acceptable deadlines, and in the absence of judges. The efficiency is additionally questioned by the Public Prosecutor’s Office due to the evident lack of necessary prosecutors, but also the lack of employees in the Public Prosecutor’s Office.
- Digitalization is a process that has taken a step forward and is a visible part of the reform agenda in the judiciary but faces major challenges. The necessary staffing with IT experts in both the judiciary and the prosecution is an element that can be problematic, and the procurement of compatible and interoperable hardware and software in both the judiciary and the prosecution is a challenge, which is a conclusion from functional analyzes performed in both segments. However, in terms of what has been done so far as an activity and what is planned for 2022, it can be described as a promising process that will positively affect all the above-mentioned components of the judiciary.

## STRATEGIC FRAMEWORK AND LEGISLATION

A strategic framework for judicial reform exists and was adopted in 2017 with validity until 2022, together with an action plan for its implementation. In addition, there is a Strategy for ICT in the judiciary for the period 2019-2024 and a Communication Strategy for free legal aid adopted in 2020.

By 2020, most of the necessary reform laws in various areas of the judiciary have been adopted, including the new law on the Public Prosecutor’s Office, the Judicial Council, the Courts, the Case Management System in the courts, and key changes are underway in The Academy for Judges and Prosecutors, a new law on the origin of property and amendments to the existing main laws regarding criminal matters, i.e. the Criminal Code and the Law on Criminal Procedure, which according to the announcements from the Ministry of Justice, “are in the process of reform following the latest developments and recommendations of the EU.” On the government portal ENER, consultations are underway for a completely new law on expertise, whose procedure was opened in September, and the draft law should be completed by 30 December 2021. At the same time, in the process of a first reading in the Parliament is the new law on litigation procedure, which introduces numerous innovations for the course of the procedure to obtain efficiency and improve the delivery of justice by the courts. The adoption of this law is one of the recommendations of the EC in the report on RNM for 2021.

Implementation is assessed as relatively consistent with the Action Plan, which was revised in 2020, although the revised version has not yet been published on the websites of the Government or the Ministry of Justice.

However, if we look at the changes in the judiciary in terms of the main elements (efficiency, transparency and accountability, quality of judicial justice, independence and impartiality, and professional development) and from the perspective of the parties in the procedure, there is a downward trend from a few to over 10 percent by all parameters. This statistic, as of May 2021, is published by the Ministry of Justice itself, comparing them as benchmark years 2018 and 2021.<sup>1</sup>

## INCLUSIVENESS IN MAKING LEGAL CHANGES

In terms of inclusion in the adoption of strategies, action plans, and, above all, laws, according to the focus group, in general, inclusiveness is at a much higher level compared to the period before 2017, if taken as a benchmark, because the Judicial Reform Strategy with the Action Plan for implementation were adopted that year. The expert from the focus group points out the laws adopted so far and those that are forthcoming as positive examples, such as the preparation of a new draft law on mediation, the law on children's rights, the law on obligations, which has already been submitted to the Parliament.

In addition, as a benchmark for inclusiveness, they point out that it refers to much greater involvement of civil society organizations, but also all associations and professional associations concerned with the adoption of any special law, including international institutions, such as the Venice Commission, specialized bodies or organizations under the auspices of the EU or the United Nations.

According to the focus group, it can be concluded that inclusiveness works much better than a few years ago, but also that it is debatable in terms of efficiency because the process of changing legislation or bylaws is slower. As an example, they point to the work on the new draft Law on Criminal Procedure, which was supposed to be ready by the end of 2021, but it did not happen. In addition, some of the experts in the focus group state that they occasionally have the impression that the remarks noted by the civil sector are only formally noted, especially for key paragraphs which are the subject of a discussion for a change in the law.

## INDEPENDENCE IS LEGALLY SECURED, BUT THERE ARE STILL DOUBTS IN PRACTICE

The main focus on ensuring the independence of judges and prosecutors is given to the supreme bodies in both areas, namely the Judicial Council (SC) and the Council of Public Prosecutors (SPO), which as institutions were introduced in the legal system in 2006/7. Constitutionally and legally, minimum guarantees are provided, i.e. preconditions to guarantee the independence of the judiciary and the prosecution. For example, with the Law on Courts<sup>2</sup>, judges in the courts are elected by the Judicial Council based on several criteria, but for an **unlimited term**, unless the conditions for revoking the mandate are met. This can be seen from the laws on the Judicial Council and the Law on the Council of Public Prosecutors.

Independence is also highly emphasized by the EU in the latest EC progress report on RNM:

It is important to ensure that the judiciary is protected from any risk or perception of inappropriate interference. The Association of Judges and the Judicial Media Council have actively promoted the strengthening of transparency as one of the tools for restoring public confidence in the judiciary.<sup>3</sup>

However, in practice, there are still issues that call into question the functionality of the laws and the practical guarantee of independence in the judiciary and prosecution. The last such case in the fourth

1 - MoJ - Statistical analysis of the Second National Report from the Matrix of indicators for measuring performance and reforms in the judiciary - (available at <https://bit.ly/3o1Yoa4>)

2 - Law on Courts, consolidated text, Article 38 - (available at [https://www.aa.mk/WBStorage/Files/Zakon\\_sudo-vite.pdf](https://www.aa.mk/WBStorage/Files/Zakon_sudo-vite.pdf))

3 - European Commission Report on North Macedonia for 2021, p.22 - (available at: <https://www.sep.gov.mk/data/file/Pregovori/North-Macedonia-Report-2021-%D0%9C%D0%9A2.pdf>)

quarter of this year was the decision of the Criminal Council of the Skopje Court of Appeals to lift the measure of physical detention of the former head of the Security and Intelligence Directorate **Sašo Mijalkov**, for one of the numerous cases for which he is being charged (sentenced to several years in prison for some of these), with property mortgages worth EUR 11 million attached as collateral. The Minister of Justice in the Government of the RNM also reacted to this decision of the Criminal Council in the Court of Appeals, which was interpreted by the media and part of the expert public as pressure on the judiciary.<sup>4</sup> The same day, the prosecutor for another case against the mentioned Mijalkov, submitted a request for detention, which was accepted by the Criminal Council of the Basic Court. A day later, the Judicial Council of RNM announced that the judiciary is independent in terms of both the constitution and the law and that the case and the interest of the public are decided internally by the Judicial Council if necessary. At first glance, the JC with this statement defended the judges who made the decision but left the opportunity to further discuss the same decision.<sup>5</sup> However, ambiguities remain about how the Minister of Justice knew that only two of the three judges in the Criminal Chamber of the Court of Appeals voted to release him from custody, but also that the Judicial Council has no jurisdiction over this decision because the decisions of one court can only be reviewed by a higher court, not the Judicial Council.<sup>6</sup>

This is just one example. There are others and this can be seen from the public perceptions (for example, the political agreement between the ruling party and a smaller opposition party to enter the Government<sup>7</sup>), but also from the research and analysis conducted by civil society organizations.

One such research and analysis aimed at assessing the independence of the judiciary and the merit system in the country is the analysis made by the Coalition “All for Fair Trials”, which shows that despite all the changes in the laws of the Judicial Council, there are still weaknesses that call into question the independence of the judiciary, especially in the procedures for the election of new judges or court presidents, but also in the dismissal of judges or the application of disciplinary measures.<sup>8</sup> The issue of dismissal of judges or their disciplinary responsibility has become more announced in recent months. The Judicial Council has already decided to dismiss several judges for a year and a half, but the work of more than 30 judges is being reviewed, for which the SC is in the process of forming commissions for each case separately, and among the judges are one from the Supreme Court and four from the appellate courts in Skopje and Stip.<sup>9</sup>

As part of the monitoring of the work of the Judicial Council and the analysis of the Coalition “All for Fair Trialc” mentioned in reference 4, a survey was conducted with twenty judges, most coming from the largest court in the country - the Criminal Court in Skopje. Conclusions were reached that there is insufficient communication of the Judicial Council with the judges and the Association of Judges, insufficient transparency in the decision-making of the Judicial Council when it comes to the assessments of judges, both for promotion and punishment, and even weaknesses in the bylaws it adopts to decide on these issues. In general, the survey shows that judges do not trust the Council and do not feel it is a body that can protect their independence. A part of the analysis based on the interviews with the judges states the following conclusion:

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4 - 360 Stepeni - Maricikj “hit” the judges who released Mijalkov from custody - (available at <https://360stepeni.mk/marichik-udri-po-sudiite-shto-go-pushtija-mijalkov-od-pritvor/>)

5 - 360 Stepeni - The Judicial Council has announced ...: We do not work under political influence - (available at <https://360stepeni.mk/sudskiot-sovet-se-oglasia-za-sluchajot-so-mijalkov-ne-rabotime-pod-politichki-vlijanija/>)

6 - A1On.mk - It is inadmissible for Maricic and Nikolovski to express dissatisfaction ... (available at <https://a1on.mk/macedonia/nedozvolivo-e-marichikj-i-nikolovski-da-izrazuvaat-nezadovolstvo-protiv-sudska-odluka-za-mijalkov/>)

7 - 360 Stepeni, TV show - 10.12.2021 - Interview with min. for Justice Bojan Maricic - (available at <https://www.youtube.com/watch?v=A8ANzeK7xBM>)

8 - Impact of the merit system on judicial independence and professionalism in North Macedonia - (available at <https://bit.ly/3bUFU5H>)

9 - SDK.mk - 2021 - The Judicial Council is examining the responsibility of one Supreme Court and four judges from the Skopje Appellate Court - (available at <https://bit.ly/3lBgKrS>)



*“Most judges have stated that they do not have full confidence in the Judicial Council and do not consider it to be an independent body of the judiciary that is on the side of judges, but see it as a remote and isolated body with the sole authority to elect and dismiss judges. An additional problem in this regard is that judges do not have confidence in the decisions of the Council, whether they relate to the election or dismissal of judges, and therefore it is necessary to create special activities to promote mutual trust between judges and the Council, as well as the mutual acquaintance with the real needs and expectations they have from each other” (see reference 4, p.41).*

*This distrust of the Judicial Council can be seen even more clearly from the survey among judges when it comes to perceptions of corruption in the judiciary and the competencies of the Council:*

*“Most judges, however, believe that the Judicial Council has neither the legitimacy nor the credibility to take action to prevent corruption because they believe that the biggest problems with conflicts of interest and corruption are in the Council itself. In this regard, the judges point out that the greatest risks of corruption and conflict of interest are found in the procedures for selection and dismissal of judges, where there are still serious political influences. The biggest risks of corruption in the JC listed by judges are the following: political influence, especially on the election of judges and the election of judges in higher courts, conflict of interest due to relatives or other close personal ties between members of the Judicial Council and candidates for election as a judge or judge in a higher court, the existence of corruption risks through offering bribes or services to the candidates themselves for them to be elected, associating with the government or with political or business elites to abuse their office for illegal gain, etc. Accordingly, judges believe that the greatest and most common risk of corruption is precisely in the political influence and involvement of the executive branch of power in the judiciary through the Judicial Council. According to the judges, this is most obvious in the procedures and decisions for election and dismissal of judges, as well as in the decisions for election in the higher court, for which they point out the lack of explanations for the decisions, as well as the absence of explanations given to the judges that are not selected” (see reference 4, pp. 42 and 43).*

This slightly longer quote from the research is intended to highlight the judges’ view of vital issues for the independence of judges and the judiciary, as well as the influence of the Judicial Council on these issues. As can be seen, one of the problems is the way of electing the members of the Judicial Council and this issue was discussed with the focus group.

## IS THE WAY OF THE ELECTION STILL HIDING THE DANGERS OF THREATENED INDEPENDENCE?

The election of members in these two key bodies in the judiciary and the prosecution is combined, i.e. most of the members are elected from the ranks of judges and prosecutors, and a smaller number are elected by the members of the Assembly on the proposal of the parties or the president of the state.

This hybrid model of the election of members of the Judicial Council and the Council of Public Prosecutors from the focus group is assessed as generally good because it avoids the danger of utilization of these bodies, i.e. that this method of election provides a balance between representatives of the profession and representatives of the citizens.

However, part of the experts from the focus group assesses that there are issues that can be better resolved, such as that in the election of the President of the Judicial Council can be nominated only members who are elected by the Assembly, and not from the profession. The opinion that can be heard from experts in public debates is that when electing members outside the judiciary or the prosecution, more precise definitions of the conditions should be worked on, such as that the elected candidate should be a “prominent lawyer”. For now, the only improvement is that in the definition in the law on the election of members of the Judicial Council and the Law on the Council of Public Prosecutors it is added that in addition to being a “prominent lawyer”, they should have 15 years of professional experience.

## BUDGET

Experts from the focus group assessed the budgeting of the judiciary and the prosecution as perhaps the most important element in achieving effective independence in the areas. According to the legal regulations,



the state is the main source of income in both the judiciary and the prosecution, mainly through the state budget, part of which is provided from its funds, and part through grants from international donors.

In the judiciary, the main legal basis for budgeting is the percentage of the gross domestic product of the state and that percentage for years is 0.8. But also things have not changed for years, i.e. the judiciary is still far from this figure. In 2020 and 2021, according to experts in the focus group, funding was about 0.3 percent of GDP.

In 2021, according to the budget of RSM, there is a slight increase in the numbers of both the judiciary and the prosecution, but it is still far from the legally guaranteed amounts that should be allocated for both areas. This can be seen from the EC Report on RNM for 2021, where in the part on the financing of the judiciary (Quality of Justice, p.23 / 24), the following conclusion is drawn:

**According to the European Commission for the Efficiency of Justice (CEPEJ), the implemented budget of the justice system for 2020 is 40 million Euros, or 19.5 Euros per capita, which is less than the average amount for the Western Balkans of 37.8 Euros. The budget (budget for courts, services in the public prosecutor's office, and legal aid) has been reduced by 8.3% from 2019.**

Examining these data in more detail, we compared the budgets for the judiciary and prosecution in 2020 and 2021, as well as the projections for 2022.

## **PUBLIC PROSECUTOR'S OFFICE, BUDGETING - THEY ASKED FOR 19 MILLION EUROS, BUT RECEIVED ONLY 9 MILLION!**

According to the Law on Public Prosecution, from 2020 the state should have allocated "at least 0.4 percent of the budget for the current year" and this was a positive step because previously the budget was determined in a direct agreement and consultation between the public prosecutor and the Minister of Finance, although Article 100 of the Law on Public Prosecutor still states this obligation, but only for part of the budget.<sup>10</sup>

If you look at the state budget for 2021, which lists the figures that were allocated in 2020, you will see that the Public Prosecutor's Office had a slight increase compared to 2020. Then, the Public Prosecutor was allocated 558 million denars, and for 2021, 568 million or 9,079 million Euros for 2020, as opposed to 9.25 million Euros<sup>11</sup> (for 2020 the figure is from the Budget Rebalance stated in the reference). Another additional increase was made with the rebalancing of the budget for 2021 from July so that the Public Prosecutor of RNM should end the year with 574.3 million denars or about 9.4 million Euros. On the website of the Public Prosecutor of the Republic of Macedonia in the budget column, for 2020 is shown a total approved budget of about 644 million denars or 10.4 million Euros.<sup>12</sup> But even if this figure is considered relevant, it is something between 0.2 and 0.3 percent of the state budget expenditures for the mentioned year, which means that the legal obligation has not yet been fulfilled by the state.

Additionally, if one looks at the structure of that budget, it can be seen that most of it goes to salaries, and the second big item is for contract services. Thus, the Public Prosecutor's majority of the budget - 394.5 million denars or 6.4 million Euros, or about 70 percent - is spent on salaries and compensation.

These different data become clearer if we take into account the Annual Report of the Public Prosecutor for 2020, published on the website of the Public Prosecutor in the budget column. All the explanations and how these confusing different numbers can be reconciled are published. **According to the financial part of the report, the Public Prosecutor of RNM for 2020 requested 1.18 billion denars or about 19 million Euros and was approved a basic budget of about 644 million Denars or about 10.4 million Euros, as of 31.12.2020 the state transferred 527 million denars or about 9.3 million Euros.**<sup>13</sup>

10 - Law on Public Prosecution – available at: <https://jorm.gov.mk/wp-content/uploads/2020/02/sluzhben-vesnik-na-rsm-br-42-od-16.2.2020-godina-1.pdf>

11 - MF - Rebalance of the Budget of RSM for 2020 and Budget for 2021 - (available at <https://arhiva.finance.gov.mk/files/u6/REBALANS%202020%20-%202020%20%28dopolnet%20predlog%29%2026.10.2020%20%284%29.pdf> & <https://finance.gov.mk/budget2021/>)

12 - PPO of RNM/ 2020 Budget – (available at <https://jorm.gov.mk/wp-content/uploads/2020/02/31010-javno-obvinitelstvo-na-republika-severna-makedonija.pdf>)

13 - PPO of RNM – 2020 Annual Report – financial data, p. 9 and 10 – (available at: <https://jorm.gov.mk/wp-content/uploads/2021/08/2020-1-finansiski-podatoczi-za-godishen-izveshta%D1%98-za-2020-god..pdf>)

In this part of the report, the Public Prosecutor warns that the main debts arise from the overdue liabilities of the former Special Public Prosecutor's Office, as well as debts arising from the ongoing criminal proceedings (annually, those costs, according to the Public Prosecutor, amount to about 150 million denars or about 2, 4 million Euros). Thus, the Public Prosecutor in the Report addresses the following dramatic conclusion:

*If we add to this the fact that every year this lack of funds increases due to the debt transferred from previous years, given the above, it is more than obvious that the performance of the function of public prosecutor is determined by the Constitution and laws (see reference 8, p.2).*

**The budget for 2022 for the Public Prosecutor is slightly increased and amounts to 662 million denars or 10.8 million Euros. This is an increase of over one million Euros compared to the approved budget for 2021, according to the rebalance of the budget from July 2021.**

## JUDICIARY, BUDGETING - THEY DEMANDED 52 MILLION EUROS; THEY ENDED UP WITH 32!

According to the documents for the budgets of RNM for 2020 and 2021, the Judiciary in 2020 had 1.92 billion denars or 31.2 million Euros, and for 2021, 2.156 billion denars or 35.2 million Euros are allocated, if self-financing activities are taken into account and the supplementary budget for 2021. But there are two things to keep in mind.

First, in 2020, the judiciary twice suffered funding cuts, so from the initial approved budget of 2.163 billion denars or about 35.2 million Euros, they ended up with approved 1.9 billion denars or 31.2 million Euros.

Second, the legal provision for financing an annual level of 0.8 percent of GDP is from 2010, with a gradual increase from 2012, when it was supposed to be 0.5 percent, was not implemented even 8 years later in 2020! This is stated by the Judicial Budget Council itself in its annual report for 2020.

This means that the state is still far from its legal obligation to finance the judiciary with 0.8 percent of GDP. If we take into account that the GDP in 2019 was around 11.3 billion euros, the judiciary is three times shorter than the legal obligation, i.e. in that year, it should be financed with about 90.4 million euros.

It should be borne in mind that the judiciary was proactive in compiling the budget, requested 3.2 billion denars for 2020 or about 52 million euros, and ended up with 31.3 million euros allocated (see reference 9, p.35). ).

In 2021, according to the budget rebalance, a total of 2.047 billion denars or about 33.2 million euros were allocated to the Judiciary, and together with the self-financing activities, they had at their disposal about 35 million euros.

**The budget for the Judiciary in 2022 has been increased and the basic expenditures from the state treasury will amount to 2.18 billion denars or about 35.5 million euros, while with self-financing activities and donations about 37.7 million euros will be available to the Judiciary. This is an increase of only 2.5 million Euros (taking into account budget expenditures and self-financing and donations), compared to the 2021 Budget.**

Both the judiciary and the Public Prosecutor's Office system impose the conclusions (in fact, these institutions themselves state in the reports) that the budgets are not developmental, that three-quarters of the budget of the Public Prosecutor and more than two-thirds of the budget of the judiciary are spent on salaries, that it is not possible to implement reforms in both areas, which means improving investigations in the Public Prosecutor's Office and improving the independence and efficiency of the judiciary.

If the public might think that it is only a matter of promoting and implementing the investigative centers / judicial police at the Public Prosecutor's Office or the digitalization process with the judiciary, that would be a wrong conclusion. If we look in detail at the reports from these institutions, we will see that the basic elements of the daily functioning of the prosecutor's offices and courts are in question - from lack of printing paper, colloquially speaking, to keeping the archive of existing and completed cases with the

prosecutor's office and in the courts. Just as an example of how far things have come, the judiciary in

its annual report states that one of the problems they face is the facade of the Supreme Court building! More can be seen from the Functional Analysis of the Basic Courts in RNM prepared by the Center for Legal Research and Analysis from Skopje<sup>14</sup>, especially in the section “Findings and Conclusions - Spatial Capacities and Technical Capacities”.

Hence, it is good that the budget for 2022 envisages certain increases in funds for the prosecution system - by 20 percent<sup>15</sup> and the judiciary - by 6 percent<sup>16</sup> but, the conclusion is still valid that all this is insufficient in terms of needs.

**In 2021, the state “invested” in the entire system of the judiciary (judiciary, public prosecutor’s office, state attorney’s office, court expertise, Constitutional Court ...) around 56.5 million Euros.<sup>17</sup> Here we are talking about allocated funds, and only in the spring of 2022, when the news reports of the judiciary and the prosecution, and other institutions will be ready, it will be seen how many of these allocated funds were realized as of 31 December 2021. By 2022, the overall budget for the judiciary is planned just over 61 million Euros.<sup>18</sup>**

## TRANSPARENCY AND ACCOUNTABILITY IN BOTH THE JUDICIARY AND THE PROSECUTION

“Timely, accurate, precise, and relevant information presented to the public is a very important segment in the work of the courts. Properly prepared and proactive information about the concrete or the general public can greatly limit speculation and create a better image of the courts, which is an important prerequisite for building trust in the courts. In developed countries, courts have been set several standards to be met, and one of the most important of these is educating the public about the work of the courts. To establish good communication with the public and all other important actors in society, it is necessary to increase trust in the courts, and a strong instrument for achieving trust is a proper communication strategy of the courts and employment of new professional staff in the judiciary. **In the past period, only four judicial institutions employed public relations persons, namely the Judicial Council of RNM, the Supreme Court of RNM, OKS Skopje, and OGS Skopje. In all other institutions, public relations persons are appointed from the ranks of judges and professional court associates. For a truly proactive attitude of the judiciary, in the future, we should work on improving public relations.**”

This data from the Judicial Budget Council Report for 2020 says enough about only one segment of transparency, and that is informing the public about the work of the courts. This is an old statement, but obviously, there is still a problem to convince the courts or to convince the state to provide funds in the budget for this purpose as well. If we talk about the level of informing the public about the work of the judiciary or the work of the prosecution, two different grades can be given in general and two different grades in each of the areas.

The Public Prosecutor’s Office has always been to a degree more closed than the judiciary, above all, given the constitutional and legal position of the prosecution in society and the principle of subordination of the institution, but also the limiting facts from the Law on Criminal Procedure for pre-investigations and investigations conducted by prosecutors. The Public Prosecutor of RNM has a website with a sufficient number

14 - Center for Legal Research and Analysis - Functional Analysis of the Basic Courts in RNM, 18.11.2021 - (available at <https://bit.ly/3nEiR5N>)

15 - Government of RNM - Announcement on 9.11.2022 - (available at <https://vlada.mk/node/26958>)

16 - Government of RNM - Statement of the Minister of Justice Bojan Maricic on 18.11.2022 - (available at <https://vlada.mk/node/27013>)

17 - MF - Budget of RNM for 2021 / rebalance, p. 84 Courts - (available at <https://bit.ly/3nEiR5N> <https://vlada.mk/node/27143y/3nyphUa>)

18 - Assembly of RNM - Budget for 2022, section 7033 - (available at <https://www.sobranie.mk/materialdetails.nsp?materialId=60a3a254-9fc0-4ff1-b0b2-4c009a2073c6>)

of data according to the norms for transparency, the page and the footnotes are updated regularly, the current procedures of the prosecutor's offices are published within the column of announcements, and although maybe not fast enough, the public relations department on central level is also functional. However, a very limiting factor is the rigidity of the right of prosecutors to communicate with the public and many dilemmas were caused by the Code of Ethics of Public Prosecutors of RNM which was adopted by the Council of Public Prosecutors in 2021.<sup>19</sup> On this issue, the SPO and the Chief Prosecutor of RNM did not express willingness to think about reviewing such provisions and rigidly maintained their position that they are necessary for the Code of Ethics. Some public prosecutors have called for a collision of the rigid provisions of the Code of Ethics with the more liberal solutions contained in the Law on Public Prosecution. By the way, this issue reached the public after dilemmas were presented in the media and among the prosecutors themselves about the argumentation of the Council of Public Prosecutors and the Chief Prosecutor in the country regarding the election or non-election of certain prosecutors in the Higher Prosecutor's Office of RNM.

Focus group experts also spoke negatively about the openness of the main body in the prosecution, the Council of Public Prosecutors. According to these sources, its pronounced closure to the public is characteristic, i.e. the reduction of transparency. The Council of the Public Prosecutor held several sessions during the year, which was reported after the sessions, journalists were not allowed to attend the sessions under the pretext that the hall was small, but there are remarks about the complete absence of criteria when choosing new prosecutors in the prosecution or the promotion of certain prosecutors in the career, in higher prosecution, say experts from the focus group.

Things are a little different in the judiciary. The courts, although not staffed with professional public relations staff, have relatively good co-operation in ongoing court proceedings, cases before the courts, and the like. However, a big problem is the closure of the court portal, i.e. the difficult search of court decisions for various crimes in the proceedings, the very application of the provisions of the Law on Management of the movement of cases in the courts to publish decisions in terms of time distance specified in the laws, as well as the spatial problems of ensuring public presence in most courts in RNM.

As for the Judicial Council itself, this body has good communication with the public when it comes to scheduling sessions and the agenda, but it stands much weaker in terms of explanations of its decisions. This can be seen from the mentioned final conference of the Coalition "All for Fair Trials" entitled "The Impact of the Merit System on Judicial Independence and Professionalism in North Macedonia" (September 28, 2021). It was mentioned at the public hearing that there is a discussion, but there are no explanations, except for the formal ones, and expressed in blunt terminology. A university professor, on the other hand, reacted to the proceedings and the reasons for dismissal of judges, noting that the data on 16 dismissed judges in just over a year by the JC does not speak well of the guaranteed independence of judges and that it could create a problem in regarding the proceedings before the European Court of Human Rights in Strasbourg.

## EFFICIENCY

Efficiency has generally been consistently good in recent years, as it was a bigger problem before 2016. And this is stated not only by the judiciary but also by the non-governmental sector that monitors and analyzes the judiciary.

The data on the movement of cases in the courts show the high efficiency of resolving cases in the basic courts, with a high-resolution rate, which is higher than 100% despite the material and personnel shortcomings. According to the projections in the analysis, there is a different workload of judges according to the number of resolved cases per judge and the time they devote to resolving cases.<sup>20</sup> Another analysis by the NGO sector also points to high efficiency, despite all the limiting factors:

*"The analysis of the efficiency of the basic courts covered the dynamics in the movement of cases in the courts over the years and through the ratio of resolved cases and total cases in the work of the court. It was found that all basic courts show a high rate of efficiency in resolving cases, but given the lack of*

19 - SDK.mk - 16.7.2021 - The Council of Public Prosecutors banned speaking against it immediately after the prosecutor Lence Ristoska rebelled - (available at: <https://bit.ly/3kKU1zN>)

20 - CPIA - 18.11.2021 - Plan for improvement of the work and conditions in the basic courts, p. 6 - (available at <https://bit.ly/32emkzG>)

*elected judges and employed court clerks, it can be concluded that there is a high workload on judges in the performance of judicial functions. Namely, the judges in the basic courts decide on average 5 cases a day throughout the year.” (Functional Analysis of the Basic Courts, reference 13, p.14 / 15).*

However, there are still old cases that are listed as unresolved after many years and they are systematically “cleared”, but reduced efficiency was observed during the first “pandemic” year - 2020. This is stated in the “Shadow Report for Chapter 23” of the Institute for European Policy, where the diligence of the courts has declined, so, generally looking at 2020, 15 courts have been declared up to date and 19 out of date, with an increase of cases for about 2500.<sup>21</sup>

What remains as a real problem in long court proceedings is most noticeable in many cases of the former Special Public Prosecutor’s Office that after the amendments to the Law on Public Prosecution of 2019, which entered into force in spring 2020, the Public Prosecutor’s Office of RNM took over. Recently, as a “bizarre” piece of information in the public was placed that in one case, even after 100 hearings, the main hearing has not started yet. The media during the announcement point out this case is “Titanic”, one of the most extensive cases of the SPO, that even after 3 years and 7 months the main hearing has not started and that there is a danger that the criminal association will become obsolete through “absolute obsolescence”, which would occur in 2023 if by then there is no verdict.<sup>22</sup> A slightly more detailed examination outside the media reports, however, shows that this is a case with the largest number of witnesses and material evidence (over 200 witnesses, 5900 material evidence, and 1000 audio recordings) and that obsolescence may occur in 2024 for 14 out of 19 defendants, but only for one of the acts, while for the other, the statute of limitations occurs in 2031 (clarification of one of the experts in the focus group).

The lack of judges is a problem highlighted in several reports, as is the problem that the influx of new judges (and prosecutors), exclusively through the Academy for Judges and Prosecutors, is far below the required number and the natural outflow due to the retirement of existing staff. For example, the number of existing judges in the judiciary continues to decline. In 2017, the judiciary had at its disposal 530 judges, 511 in 2018, then 499 in 2019, to end with 493 in 2020 (source: [Annual Report on the work of the JC of RNM](#) for 2020, p. 30). And according to the Report on the realization of the court budget for 2021, **by the period 31 July 2021, the number of judges has already dropped to 486.** According to the systematization in the judiciary, RNM should have over 600 judges. At the same time, a problem highlighted in all reports is the number of employees in the court administration, from management staff who should assist court presidents, to professional and administrative staff who should assist judges.

As far as the Public Prosecutor’s Office is concerned, in general, in the prosecutor’s offices in RNM at the end of 2020, 194 people were employed, and 258 positions for prosecutors were systematized. However, according to the report on PPO for 2020, **the real need is around 290 prosecutors deployed in prosecutorial posts.**<sup>23</sup> But it is not only prosecutors that are missing. The Public Prosecutor’s Office of the Republic of Macedonia especially emphasizes the lack of all profiles of staff from the Public Prosecutor’s Office. From senior collaborators and advisors, through investigators, i.e. officials in the investigation centers to minutes and registrars, IT staff, - emphasized in the Report, but also in the functional analysis of PPO of RNM.<sup>24</sup> Namely, in all 28 public prosecutor’s offices in the country at the end of 2020, only 4 IT specialists worked, which calls into question the successful functioning of the electronic system for handling and managing cases, which was implemented in 2015/16 with the help of IPA funds from the EU (see reference 18, p. 12).

21 - IPI - 12.2021 - Shadow report for chapter 23 for the period April 2020-September 2021 (p.37) - (available at <https://bit.ly/3H4tDt7>)

22 - 360 Degrees - New postponement of “Titanic” - the trial started three years and seven months ago <https://360stepeni.mk/novo-odlozhuvane-na-titanik-sudeneto-pochna-pred-tri-godini-i-sedum-mesetsi/>)

23 - PPO of RNM – Report on the work of PPO for 2020, p. 8/9 – (available at <https://jorm.gov.mk/wp-content/uploads/2021/08/izveshta%D1%98-za-2020-%D1%98o-na-rsm.pdf>)

24 - META - 2020 - A well-staffed Public Prosecutor’s Office is a prerequisite for an independent and efficient Public Prosecutor’s Office - (available at <https://meta.mk/dobro-ekipirana-%d1%98avnoobvinitelska-sluzhba-e-pre-duslov-za-nezavisno-i-efikasno-%d1%98avno-obvinitelstvo-infografik/>)



According to the response from the Public Prosecutor that we received during the compilation of this report, by the end of 2021, the Public Prosecutor filed another position provided for IT staff, in the Prosecutor's Office in Gostivar, which, at the end of 2021, **the total number of IT specialists is 5**. However, the information that another job was not approved by the Ministry of Finance for the beginning of 2022 when compiling the budget for that year, is disturbing. From the Council of Public Prosecutors, we received an answer that in 2021 dozens of employments have been made, but, of public prosecutors who are already doing that job, and it is about vacancies for different positions within the prosecution system. By the end of 2021 job advertisements were underway for four more prosecutors, according to the Council.

Of course, when it comes to efficiency, although all reports state that it is good in the courts given all the shortcomings in the staffing structure, the question arises as to whether such efficiency reflects on the quality of justice. Although this category is not a topic for special elaboration in this report, the focus group confirms that the pressure on judges for quick resolution of cases can also affect the quality of court rulings, and especially the explanations and arguments why a specific judgment has been rendered.

## DIGITALIZATION IN THE JUDICIARY IS TAKING A STEP OUT OF STAGNATION

The process of digitalization of the judiciary is generally conducted according to the Strategy for ICT in the judiciary 2019 – 2024,<sup>25</sup> which in the meantime was revised. Although this strategy lists both short-term and long-term goals, based on the current situation and the vision of where this process in the judiciary should move, it seems that more serious steps have been taken this year.

At the end of the first quarter of 2021, at a Government session, the Information with planned activities for digitalization in the judiciary for 2021 was adopted, which planned a series of activities that will take place in phases and whose goal was ambitiously announced to be fulfilled by the end of 2021, which is the complete digitalization of 100 courtrooms in 34 courts in RNM:

**“In addition to equipping more than 100 courtrooms in 34 courts in North Macedonia (27 basic courts, four appellate courts, Administrative and Senior Administrative as well as the Supreme Court), the plan for digitalization in the judiciary envisages equipping a courtroom within the Academy for judges and public prosecutors, as well as in the “Idrizovo” Prison. The equipping of the courts for online trial is planned to be realized by the end of 2021”,** it is stated in the announcement from the Government.<sup>26</sup>

This is certainly not fulfilled by the end of 2021, however, digitalization has started in the process of services offered by the judiciary. In October 2021, it was communicated to the public at the highest level that the electronic issuance of certificates from the criminal records for the needs of the citizens will start. At the same press conference<sup>27</sup> it was announced that the service from the criminal records will start soon, as well as certificates whether some of the citizens were imposed any sanctions.

In addition to the effects of saving time, using the government portal for E-services, the then Prime Minister **Zoran Zaev** and the Minister of Justice **Bojan Maricikj** said that this step, according to the analysis, will save large funds in the judiciary, that the possibility of corruption is reduced, but also highlighted the environmental dimension of huge paper savings. The whole process of digitalization is managed by a National Working Group, i.e. ICT Council in the judiciary, led by Judge **Lazar Nanev**, who as President of the Basic Court in Kavadarci in 2020 conducted the first online trial in RNM.

The mentioned Strategy for ICT in the judiciary, in 2019, accurately describes the bad situation in the judiciary and the even worse situation in the public prosecution system. In general, the findings are stated that there is fragmentation in the development of ICT technology in the judiciary, that in the courts the situation with the hardware is bad, and somewhere at a critical level, that the situation with the software

25 - Strategy for ICT in the judiciary 2019 – 2024 (revised) – available at: <https://bit.ly/3xp8Cpq>

26 - Government of RNM - Government Session, Announcement - (available at <https://vlada.mk/node/24948>)

27 - Government of RNM - Zaev, Maricikj, and Judge Nanev: No more waiting at the counters ... (available at <https://vlada.mk/node/26789>)



is different, but of course the needs for new software development or promotion of the existing, such as AKMIS for example and similar in the Public Prosecutor's Office, which is key for the movement and distribution of cases in both institutions, but also for court statistics, then that there is a lack of IT, staff, especially in the Public Prosecutor's Office and, finally, the interoperability of the justice system with other users, including citizens, which is envisaged as a long-term goal. The only satisfactory condition was found in the Supreme Court of RNM and almost completely good condition in the Academy for Judges and Prosecutors.

Moreover, these findings of the poor state of IT technology in the judiciary, meanwhile, received confirmation from the Functional Analysis of the Basic Courts in NSM presented in November 2021.

*“The Functional analysis confirmed that the computer support in the basic courts is insufficient to support all the information processes provided in the legal framework for the courts. The analysis shows data on computer equipment in the courts and found that it is outdated or non-functional to ensure the basic courts in fulfilling their competencies, and additionally determined the absence of a special organizational unit that will monitor the work processes using ICT in the courts. In this context, the analysis shows the potential of the Automated Computer System for distributing court cases (AKMIS) and the possibilities it has for collecting, processing, and analyzing case data, but which in the absence of established procedures and competencies are underused in the basic courts.”<sup>28</sup>*

## FROM NO NAME COMPUTERS TO ONLINE TRIALS

If you look in detail at this functional analysis, and to get the true picture of IT equipment in the judiciary, one can find bizarre data when listing the existing equipment in the courts. Only as a randomly selected example in the report, the Basic Court in Ohrid is singled out. The description of the hardware equipment, in the section on computers, lists 89 workstations (probably desktops, because the court did not provide data for laptops). They were procured in the period from 2006 to 2019. The latest purchases were made in 2018 and 2019 - 22 Lenovo workstations.

**But what is a vivid description of the fragmentation of procurement and the situation with IT equipment, is certainly the striking fact that in this Basic Court there are 13 computers marked as “No name”, most purchased in 2008 and 2 purchased in 2016!**

Fortunately, in the functional analysis, apart from this example, no other pieces of IT equipment in the judiciary can be found that are “No name”.

Another, but opposite example, is the Basic Court in Kavadarci. Although the court itself stated that needs equipment, especially in the part of the server solution, which is from 2014, still, with the existing average equipment with computers and software, during 2020, due to the pandemic and protection recommendations, it managed to conduct the first online trial in the judicial history of RNM for the crime of “robbery”.

## THE STRATEGY CANNOT BE IMPLEMENTED WITH THE EXISTING ICT EQUIPMENT

The conclusions from this Functional Analysis of the Basic Courts in RNM, concerning ICT, state the following alarming conclusions:

“Delivery in writing to the parties is a challenge for the basic courts and affects the effectiveness of court proceedings. The electronic connection of the courts is still non-functional, except for the registered lawyers, notaries, bailiffs, and parties in the procedure who communicate via e-mail. Delivery of judgments, summonses for hearings, decisions, confirmations, certificates, etc. is done in person by mail

<sup>28</sup> - Center for Legal Research and Analysis - Functional Analysis of the Basic Courts in RNM, p. 16 -18.11.2021 - (available at <https://bit.ly/3nEiR5N>)

or through a court courier. There is a need to analyze the current application of the procedural provisions and determine the reasons for the difficulty of orderly delivery by the court ... Electronic delivery is used by parties and lawyers who are previously registered on the court portal and who have an electronic certificate of identification, where communication is one-way, i.e. only from the basic courts to the parties and the lawyers. It is problematic that this communication is one-way and lawyers and parties can not submit in writing to the basic court, which affects the efficiency and economy of the court” (Conclusions 4 and 5 of the Analysis on pages 381 and 382).

As well as the conclusion, which indicates the technical means as a factor for the achievement of the goals of the ICT strategy:

“Basic courts have outdated information equipment, which does not meet the needs for the introduction of new ICT systems. The efficiency is also affected by the hardware equipment, which is outdated and defective in most of the courts and makes the application of the software solutions used in the courts more difficult and limits the application of new ICT processes” (Conclusion 7 of the Analysis, ref. 13 and 28, p. 382).

Regarding the ICT strategy and the efficiency and access to justice through digitalization, the opinion of the experts from the focus group is that special attention should be paid to the digitalization process in the area of online trials. According to these opinions, digitalization will be especially useful in the area of services and liaison between the courts themselves, as well as the courts with other institutions, but in the area of online trials, there are also practical and ethical issues. From the conduct of the court proceedings and the obstacles in the procedural actions, cross-examination, protected witnesses, etc., to access to the evidence and materials related to the process.

Caution is suggested in the recommendations of the European Commission for the efficiency of justice at the Council of Europe SEREJ, which in 2018 adopted an Ethical Charter for the application of artificial intelligence in the judiciary,<sup>29</sup> which is based on 5 principles, the first of which is directly related to respect for human rights:

**Principle of respect for fundamental rights: To ensure that the creation and application of electronic tools and services are compatible with fundamental rights.**

The body of the Council of Europe returns to this same topic in 2020, in the Declaration entitled “Lessons learned and challenges for the judiciary during and after the Covid-19 pandemic”, emphasizing that: **IT solutions such as online services, remote hearing, and videoconferencing, as well as tools for the future development of digital justice, must always respect the fundamental rights and principles of a fair trial.**<sup>30</sup>

## SUPPORT FROM DOMESTIC FUNDS OF OVER 1.5 MILLION EUROS FOR 2022

Given the current poor state of ICT in the judiciary and prosecution, the Ministry of Justice and the Ministry of Finance for 2022 have provided support from the domestic budget of over 1.5 million Euros, which are intended for new hardware equipment, primarily servers, but also other means for all courts. Judge Lazar Nanev, who is leading the digitalization process since September 2021, at a conference dedicated to digitalization, specified that **“for 2022, purchases of 800 computers, 650 printers, 270 scanners, and photocopiers are planned, which will refresh the courts of all levels in the country.”**<sup>31</sup> Nanev then announced that by the end of the year, the connection of at least 15 institutions out of 85 is planned, with which the courts communicate daily, improving the AKMIS system, an ongoing process that will lead to accurate statistical performance indicators of courts and judges on cases in the judiciary, developing an E-submission system, which will now go from one-way to two-way 100 percent, and developing a mobile E-court application, which will allow all parties to the proceedings to follow the proceedings, scheduled hearings, and attached evidence, to the extent that it will be considered security acceptable.

29 - CEPEJ – 2018 - European Ethical Charter on the use of Artificial Intelligence in judicial systems and their environment – p. 7 – (available at <https://bit.ly/3qj4Z17>)

30 - CEPEJ – 2020 – Declaration... - p. 3, - (available at <https://rm.coe.int/declaration-en/16809ea1e2>)

31 - IEP - Digital Judiciary - New Reform of the Macedonian Judiciary - (available at <https://epi.org.mk/post/18200>, from 51 min.)

For this report, the Ministry of Justice pointed out that by the end of 2021 it can be concluded that the tender procedure has been completed and the procurement and installation of equipment for five pilot courts has begun with the help of funds from the OSCE Mission. The interior design of the courtrooms in the five courts runs in parallel with financial resources from the Court Budget. The Ministry also emphasizes that it faced cancellation of the public procurement tender in two cases “due to lack of IT equipment following the technical specifications”, caused by global interest in procurement of IT equipment, and reduced production process, due to which the process of “seeking an alternative to replace them” was prolonged.

**“Regarding the equipping of other courtrooms in 34 courts across the country, we would like to inform you that the tendering process has also been fully started by the donor, the data related to the required specification for each courtroom have been fully provided and analyzed. The Covid pandemic prolongs the equipment procurement process. At the beginning of next year, January 2022, four IT experts from abroad, hired by donors, are expected to be present to define the specification and complete analysis for further opening and announcing tenders for procurement of equipment,”** reads the response of the Ministry of Justice.

They confirm that “90 million denars or 1.5 million euros are provided for the procurement of servers for all courts, with the ongoing tender for their public procurement. The 90 million denars that are provided for this tender are transferred for the next year, and additionally, from the budget for 2022, another 20 million denars are provided for hardware, server, and software equipment.”

The digitalization process, on which the other parameters on which the judiciary is assessed, has experienced a step forward. Of course, this is a very complex process and will not take place with great speed precisely because of the complexity, and one of the challenges, according to an expert from the focus group, will be the necessary change of legislation to comply with the digitalization process. “It will be necessary to harmonize and amend more than 200 laws in the country, and the Ministry of Justice expects the whole process to end in June 2022, which is a very big challenge,” said an expert from the focus group.

## **Metamorphosis Foundation**

### **Monitoring the European integration process**

#### **A Brief Summary of the Reform Degree in Three Areas: Public Administration (PA), Media Sector, and Basic Human Rights**

## **FUNDAMENTAL RIGHTS REFORMS BY THE END OF DECEMBER 2021**

The strategic and legal framework regarding the protection of basic human rights in the RNM remains at a satisfactory level. RNM is a signatory of most international documents in this area and all those conventions and agreements have been ratified by the Assembly, which can be concluded that they are part of domestic law, whether by ratification or through special legal solutions.

The strategic document is the National Strategy for Development of the Concept One Society for All and Interculturalism, which entered into force in 2019, which envisages one of the basic pillars to work on -equality and non-discrimination as a basis for division in Macedonian society, with action plan adopted in October 2019. In addition to this national strategy within the other strategies, most of which are to be implemented under the auspices of the Ministry of Labor and Social Policy, including the National Strategy for Equality and Non-Discrimination, the Strategy for Gender Equality, the Strategy for Roma in RNM, the National Strategy for prevention and protection of children from violence and others, together with action plans, programs, protocols and the like. Some of these strategies, as noted by the experts from the focus group, have expired in 2021 and new documents are expected to be prepared based on the existing ones. Such an example is the Strategy for Gender Equality, the extension of which for the period 2021-2026, is about to be adopted by the Parliament.

Regarding the legal framework, what is new in the quarter we are considering is that in the final phase in the parliamentary procedure are the Law on Payment of Monetary Compensation to Victims of Violent

Crimes, as well as the amendments to the Criminal Code, which introduces the crime of “stalking” to ensure the protection of women from sexual and all other forms of harassment through communication channels, including the Internet. In July 2021, the Law on Prevention and Protection from Violence against Women and Domestic Violence entered into force, which is considered to be the first law to sanction gender-based violence. The most important law in the field of protection of fundamental rights is the Law on Protection and Prevention of Discrimination adopted at the end of 2020 and the establishment of the Commission for Prevention of Discrimination, which according to this new law was elected transparently in the Assembly of public competition. The seven-member commission has a mandate of four members for five years, three for three years, and the right to be re-elected and the president is elected from among the members of the commission for a term of one year.

The Commission for Protection against Discrimination cleared the backlog cases very quickly, and since July this year, according to the Commission, over 160 complaints have been submitted, and are being worked on or completed. Most of them were related to discrimination concerning employment, access for people with disabilities, discrimination in terms of sexual orientation and gender identity. (statement of Igor Jadrovski, member of the Commission for “Morning briefing” on 17 December 2021).

This Commission is facing the need for staffing of professionals and spatial working conditions, and some of these problems are slowly beginning to be resolved. The commission received premises in the center of Skopje, but the capacity building may still be a problem. They do not yet have their website. One of the recommendations of the European Commission in the report for RNM for 2021 was to strengthen the capacities of the Commission and provide an increased budget. However, regarding this issue, the state reacts poorly, because the basic budget of about 15.2 million denars for 2021, for 2022 is projected at 15.32 million, or only 120 thousand denars more. Part of the non-governmental sector also reacts to this. The Network for Protection against Discrimination (several non-governmental organizations), on November 19, 2021, [alerted the public](#) about this situation and asked the parliamentarians to correct this, for them, systemic negligence. **“The projected budget for the CPD in the Draft Law on the Budget of the Republic of Macedonia for 2022 is a manifestation of systemic negligence for the most vulnerable groups of citizens,”** said the Network for Protection against Discrimination.

The proactivity of the Commission for Protection against Discrimination, guaranteed by law, is already obvious to the public, and on 3.12.2021, the International Day of Persons with Disabilities, came out with 4 structural recommendations to the executive and all institutions in charge of implementing the rights of these persons. One of the more important recommendations, apart from equal access to health services and vaccines in times of pandemic, is to finally develop a national register for these people, so that in the future they can adopt more successful and enforceable policies at both central and local levels in the protection and realization of the rights of these persons. According to estimates of experts involved in this issue, who were consulted for this report, there are over 200 thousand people in RNM who have some kind of disability.

Regarding structural discrimination, the Helsinki Committee for Human Rights made its assessment on 10 December 2021, the International Day for Respect of Human Rights. At the very beginning, HC stated that in RNM **“structural discrimination is still most visible in the treatment of Roma, persons with disabilities, sexual and gender minorities, women, persons in closed institutions.”** Other experts on the problems of people with disabilities, with whom we communicated for this report, state that although the legal framework is good, the problem is putting it into practice, i.e. implementation. However, as a field in which the state makes an effort to resolve certain situations, it should be noted that the Government submitted to the Assembly, and the Assembly adopted amendments to the Law on Child Protection, which expands the allowance for children with disabilities concerning the year-round duration and for children who are out of their place of residence during school. In addition, the Ministry of Labor and Social Policy on its website in December announced new amendments to this Law, which will allow the application for a special allowance for these children to be submitted electronically and the service to be obtained electronically. At the same time, in this quarter, i.e. with the beginning of the school year in September, the state provided funds with which about 500 educational assistants are available to children with disabilities in the educational system, textbooks in electronic and audio format were made, but also textbooks printed in Braille. The government says it has also increased the rights for using a personal assistant, which can now be obtained between the ages of 6 and 64.

Regarding the implementation of the provisions of the so-called Istanbul Convention, the responsible Minister in the Government [announced](#) at the end of November that “after the adoption of the Law on Prevention and Protection from Violence against Women and Domestic Violence, in January 2021, several bylaws were adopted for its implementation, prepared by a working group composed of representatives of institutions, citizens’ associations and expert support engaged by international organizations”, but also

that “we are working on a completely new law on gender equality, and in the final stage is the definition of the new law on labor relations, which has important provisions for the realization of gender equality.”

## REFORMS IN THE PUBLIC ADMINISTRATION - THE SITUATION BY THE END OF DECEMBER 2021

Public administration reform is based on the same two fundamental documents - PAR Strategy 2018-2022 and Action Plan of the PAR Reform Strategy 2018-2022.

In addition, there are other strategic documents, such as the Strategy and Action Plan for Open Data, as well as several strategic documents and action plans of the competent Ministry of Information Society and Administration (MISA), and all reforms should be overseen by a centralized body called the Council for PA reform, established in December 2017, with the last report on the sessions held on the government website dating to the eighth session, from December 2020.

However, the impression made by experts in the quarterly report July-October 2021, that the reforms are slightly stagnating, remains.

This is primarily due to the key legislation, which as of 31 December 2021 will complete the process of preparation for changes, which last a total of two years. Namely, out of the three key laws, the Law on Administrative Servants, the Law on Public Sector Employees, and the Law on Senior Management Service, the last one has been in consultation and preparation for two years, and the first two are in the change consultation phase between one and two years. Although the deadlines for consultations on the national portal ENER have expired, there is no information on the extent of the preparation of these amendments to the key laws. The most critical, it seems, is the situation with the Law on Senior Management Service, because, in practice, the executive does not show a willingness to adopt this law, and the practice of “giving away” high positions in institutions at the political level continues, with agreements between political parties.

Exactly at the mentioned eighth meeting of the Reform Council from December 2020, another important law and process were discussed, and that is the Law on Organization and Work of the State Administration Bodies, where a working group discusses possible legal solutions which would enable the achievement of the “global goal, institutional reorganization, and optimization in line with the commitments within the budget reforms and reduction of the number of budget users”.

However, according to a consulted expert, all the work of that working group was stopped in September, with a workshop being held in October for the experts involved. It is also important for this working group that so far it has not received access to functional analyzes for key institutions to have insight in which direction to move the solutions that would be proposed. Moreover, the adoption of this law is one of the recommendations of the EU in the EC report on North Macedonia in 2021.

The findings remain valid that the reforms in the PA are stuck and that the application of the regulatory impact assessment (RIA) in the legal solutions that are going to be adopted by the Parliament. However, according to an expert from the focus group, the fulfillment of the RIA requirement with each amendment to a law or a new law depends on the institution. As an example, it was pointed out that the RIA for the proposed key legal changes in the Law on Administrative Servants and the Law on Employees in the Public Sector was made with good quality.

The transparency and accountability of the administration are relatively good concerning other parameters in the state and public administration. Certainly, the biggest contribution to this is the political will that the executive power has been expressing continuously from 2017 until now, the fulfillment of the legal solutions and the preconditions for this, primarily through the Law on Access to Public Information, as well as the implementation of the decision. The Government should publish on its websites all 20 key documents that are important for the field and field of work of these institutions. However, as confirmed by the regional project for measuring transparency and accountability implemented by the Metamorphosis Foundation, these categories are excellently assessed at the level of government and ministries, as well as the Parliament, but moving down the vertical line of state administration and public enterprises, that assessment is declining.

The same goes for financial transparency. Although it is not subject to special observation in these reports, the Open Finance project and the citizens’ budget are in line with open data and transparency strategies,



and transparency works very well at the central level. What was, so to speak, a revolutionary step in that direction - the launching of the Ministry of Finance's [open finance portal](#), which provides daily treasury payments to private and legal entities - has now been upgraded and can be used for monitoring the payments from the central budget to the local self-governments or their bodies, and from the local self-government to legal entities or individuals.

The field in which MISA is actively working is digitalization and it is an area that has definitely, colloquially speaking, moved from a dead end. Although the process started three years ago, to catalog the electronic services that citizens should receive, from a total of over 1300 services and accepted over 800 as services that can be received this way until recently the number of fully electronic services amounted to 50. This figure is still present on the national portal for electronic services, but the real situation, according to a statement from MISA given to the public before the end of 2021, is that about 150 electronic services are already possible. The activity of various ministries - the Ministry of Interior, the Ministry of Labor and Social Policy, and also the judiciary - shows that the number of e-services is growing, because, since October, electronic services have been provided by the courts in terms of non-conviction and criminal records. The process, apart from the hardware and software harmonization of the interoperability platform managed by MISA, as well as the portal itself, implies a series of legal changes in each area. As an example, the MLSP submitted amendments to the Law on Child Protection to the Parliament before the end of the year in only one article, which allows the allowance for children with disabilities to be obtained through an electronic application. What is new in the national e-services portal is that such services will soon be available to legal entities, not just individuals. The competent minister, **Jeton Shakiri**, announced on December 22 that the integration of the Register of Legal Entities in the central register with the Document Management System (DMS) has been completed. At the moment **“the tender procedure for integration of the National Portal for Electronic Services with DMS (which) is in progress and the contract for maintenance of the system will be signed soon”**.

The activities in the digitalization of the society and the state are reflected in [the increased volume of finances](#), whereby in the budget for 2022 more than 4.5 million euros are allocated only for digitalization. However, the conclusion of the EU in the report for RNM in 2021 remains that this process takes place, above all, on donations and grants or external funds and that the state should allocate more money in this direction. The problems with better paid IT staff in the state and public administration are expected to be overcome with the Digitalization Agency, which is announced several months, and the strategic framework to be upgraded with a national strategy for ICT, which a representative of MISA said is happening very soon (in days or weeks).

## REFORMS IN THE MEDIA SECTOR - THE SITUATION BY THE END OF DECEMBER 2021

The situation with the reforms in the media sector is unchanged throughout 2021 compared to previous years, except in the field of legislation, where there is a positive step, but which has not yet been approved by the Assembly of RNM.

The main problems remain to be solved in the next period, and that, primarily, concerns the issues of the strategic framework, the safety of journalists and media workers, the financing of the media with public money, the public service and its real role, which are still waiting to be recognized by the state, as well as the role of the process of self-regulation in the media that needs to be strengthened, especially in the area of sustainability, but also greater implementation of the decisions made by the CEMM Appeals Commission. In general, we explain these processes separately.

A strategy for the development of the media sector as a whole, at the state level, does not yet exist, nor are there any announcements that such a thing is being considered. The only one in force is the Regulatory Strategy for the period 2019 - 2023<sup>32</sup>, developed and adopted in 2019 by the Agency for Audio-Visual Media and Media Services (AAAMS).

After long negotiations and reconciliations, the Government of RNM during 2021 agreed to proceed with changes in criminal legislation, which threatens or attacks journalists and media workers will be treated as a crime for which they will be prosecuted ex officio. However, although it was promised, although

32 - AAAMS – 3.2019 - Regulatory strategy for the development of audio and audio-visual activity for the period from 2019 to 2023. (available at: <https://bit.ly/3zVa3MM> )



the journalists' associations requested several times from the Parliament and the political parties, these changes in the criminal legislation were not adopted until the last 4 days from the end of 2021. Also, the proposed amendments to the Civil Code on Insult and Defamation were not adopted, which significantly reduce the penalties provided for owners, editors, and journalists in the media if they are declared violators of the law in the area of insult and defamation.

The problem of financing the media with public money remains at a worrying level, but with the indication that a large part of the commercial media themselves are not worried, and openly advocate to use budget funds as a significant source of their finances, especially in conditions of reduced assets from the marketing market. This primarily refers to budget payments to the media through the election campaign monitoring mechanism, incorporated several years ago in the Electoral Code, through which in each election of most commercial broadcasters, hundreds of online media and more print daily and weekly editions for this service are paid from about 3.5 to about 5 million Euros, depending on the type of election.

Although journalists' associations and experts in the field warn that such a system could lead to a clientelistic attitude of the media towards politics, although the State Commission for Prevention of Corruption in 2019 assessed that such a mechanism in the Electoral Code is potentially risky in terms of corruption, although it has been assessed as an inappropriate model by the OSCE / ODIHR, and it has been recognized by the European Commission in the reports on RNM, there is no indication from the executive, the opposition political parties or the trade unions of the commercial media that a change in the legislation can happen. Undoubtedly, the reduction of the overall advertising market also contributes to this.

The financing of the Public Service remains a problem, which has been going on since the change of the legislation in 2017, when the state decided to change the financing model of MRT / NRT and instead of financing through the broadcasting fee, to be carried out through the state budget. From then until today, the state (legally) does not fulfill its obligation to finance MRT / NRT through the system of the overall financing of Broadcasting, which is shown by the figures in the budget for 2022, where 900 million denars are provided for the entire sector or 14.6 million euros, of which, according to the legal division of funds, MRT will receive just under 11 million euros, which is less than in 2021. In 2021, with the rebalance from July, the broadcasting activity was financed with 1.1 billion denars or over 18 million euros!

The election of new members of the Council of the Agency for Audio-Visual Media Services and the Program Council of MRT, based on the second competition announced by the Assembly of RNM in the first quarter of 2021 can be considered failed because all legal deadlines for conducting the election of members have been breached. It is about dozens of people who have applied for the election of members of both bodies and the procedure has stopped here, although the deadlines for completion of the procedure were a maximum of 40 days from the end of the application deadline. Thus, in two terms, the Assembly failed to implement the legal obligation to elect a new composition of the two bodies, and the existing compositions have been working for two or three years based on extending their terms and acting, de facto, as acting compositions. The experts interviewed in the focus group and the public debate held by Metamorphosis on media sector reforms in early November show that there is practically no political will to make substantial changes in both AAAMS and MRT.

The economic and social position of journalists remains worrying. Wages in the sector are still low, and concerning employment rights through the Labor Law, although they are relatively better realized in the larger media, violations are still observed. At the very end of 2021, a commercial television station with a national terrestrial concession fired 6 employees, and more layoffs are announced, which the independent union of journalists SSNM and the Association of Journalists- AJM assessed as the retaliatory actions of the company manager due to a series of union activities that were taken due to unpaid salaries or their delay during 2021.<sup>33</sup> The results of the survey conducted by SSNM in the third quarter of this year show that the economic and social position of journalists and media workers is worrying. According to the results, [published on December 3, 2021](#), more than half of the surveyed journalists, editors, photojournalists, and TV cameramen stated that they would leave the profession if they had the opportunity to enter other professional waters.

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33 - SSNM - 24.12.2021 - Press conference of SSNM and AJM - (available at <https://bit.ly/32qB6E1>)



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