

THE INDEPENDENCE OF THE JUDICIARY IN NORTH MACEDONIA: WHERE ARE WE AND WHERE ARE WE HEADING?

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This brief provides a summary of three reports analyzing the independence of the judiciary in the Republic of North Macedonia, and the resulting recommendations to improve the situation.

The path that the Republic of North Macedonia has chosen, leading to the European Union, includes the necessary internal reforms, but it is also important to closely follow the situation in the member states and the recommendations from the EU institutions. Therefore, it is necessary to refer to the Country Progress report that the European Commission produces every year, analyzing the degree of progress of the countries in different areas, followed by recommendations on how to improve the problematic aspects. Among other things, this report contains a reference to the state of the judiciary as part of Chapter 23. A more specific example of the analysis of the judicial sector is the Evaluation Report of the European Commission for the Efficiency of Justice (CEPEJ) of the Council of Europe, which reviews the situation of the judiciary in the Council of Europe member states and the observer states. In addition to these reports, it is important to consider domestic analyses. The Blueprint Group for Judicial Reform prepared an analysis for a comprehensive assessment of the implementation of the Strategy for Reform of the Judicial Sector (2017-2022), which, among other things, addresses the independence and impartiality of the judiciary, Strategy measures that have been implemented or not, and provides recommendations in this regard.



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European Commission progress report on the Republic of North Macedonia in 2022

The EC annual Progress Report¹ on the Republic of North Macedonia, states that reforms in the judiciary, just as in last year's report², show some progress, and in this regard it emphasizes strengthened judicial independence.

However, the EC remains reticent about the role of the Judicial Council as guardian of the independence of the judiciary.³ Although the 2020⁴ report commended the proactive role of the Judicial Council, last year's⁵ report emphasized the need for the Judicial Council to preserve the role of guardian of the judiciary. This year, the EC is more critical and notes that the Council needs to strengthen its role as guardian of the independence and impartiality of the judiciary, and to enhance transparency. On the other hand, the Council of Public Prosecutors should elaborate on its decisions and ensure regular access of the media to its sessions, thereby increasing transparency.⁶

The report emphasizes the importance of monitoring the commitment of the Judiciary Council and the Council of Public Prosecutors to enhance the independence of the judiciary and improve perceptions of the independence of the judicial sector. In this regard, the report notes the signing of the Open Judiciary Declaration in March this year is noted,⁷ which is expected to improve transparency and increase public confidence in the judiciary.

Regarding the ACCMIS system, the report notes that accurate statistics need to be provided and the system needs to be fully functional.

The report 'European Judicial Systems' – CEPEJ evaluation report'

At the beginning of October, the European Commission for the Efficiency of Justice (CEPEJ) of the Council of Europe presented the main trends of the judicial systems of 44 European countries and three observer countries in the Report "European Judicial Systems – CEPEJ Evaluation Report - Evaluation Cycle 2022 (2020 data)".⁸ This is the tenth evaluation report since CEPEJ was founded in 2002 and it enables measuring the effectiveness and quality of the judicial systems, according to data from 2020, in the countries under evaluation. The Republic of North Macedonia, as a member of the Council of Europe, received its own evaluation of the judicial system in this report.

1 EC, Republic of North Macedonia 2021 Report (European Commission 2022) [EC, 'Republic of North Macedonia 2021 Report' (European Commission 2022)] < > https://neighbourhood-enlargement.ec.europa.eu/north-macedonia-report-2022_en.

2 EC, Republic of North Macedonia 2021 Report (European Commission 2021) [EC, 'Republic of North Macedonia 2021 Report' (European Commission 2021)] < https://neighbourhood-enlargement.ec.europa.eu/north-macedonia-report-2021_en>.

3 Blueprint Group for Judicial Reform, "Commentary of the Blueprint Group for Judicial Reform on the European Commission's 2022 Report on the Judiciary – Where are we and what furthe", [Блупринт-група за реформи во правосудство, „Коментар на Блупринт-групата за правосудство на извештајот на Европската комисија 2022 година во делот на правосудството – до каде сме и што понатаму?“,] 8 November 2022, http://blueprint.org.mk/wp-content/uploads/2022/11/Final_Blueprint-policy-document.pdf.

4 EC, Republic of North Macedonia, 2020 Report (European Commission 2020) [EC, 'Republic of North Macedonia 2020 Report' (European Commission 2020)] < https://neighbourhood-enlargement.ec.europa.eu/system/files/2020-10/north_macedonia_report_2020.pdf>.

5 EC, Republic of North Macedonia 2021 Report (European Commission 2021) [EC, 'Republic of North Macedonia 2021 Report' (European Commission 2021)] < https://neighbourhood-enlargement.ec.europa.eu/north-macedonia-report-2021_en>.

6 Blueprint Group for Judicial Reform, "Commentary of the Blueprint Group for Judicial Reform on the European Commission's 2022 Report on the Judiciary – Where are we and what furthe", [Блупринт-група за реформи во правосудство, „Коментар на Блупринт-групата за правосудство на извештајот на Европската комисија 2022 година во делот на правосудството – до каде сме и што понатаму?“,]

7 "The Open Judiciary Council was founded and the Open Judiciary Declaration was signed", [Основен Советот за отворено судство и потпишана декларацијата за отворено судство], March 30, 2022, <https://akademik.mk/osnovan-sovetot-za-otvoreno-sudstvo-i-potpishana-deklaratsijata-za-otvoreno-sudstvo/>.

8 European Commission for the Efficiency of Justice (CEPEJ), "Report European Judicial Systems – CEPEJ Evaluation Report – 2022 Evaluation Cycle (2020 Data)," 5 October 2022, <https://rm.coe.int/cepej-fiche-pays-2020-22-e-web/1680a86276>.

In 2020, North Macedonia spent a total of 40,002,093 euros on the judicial budget or 19,27 euros per inhabitant, which is one of the lowest amounts in Europe and is much below the average of the Council of Europe (64,5 euros per inhabitant). The total represents 0.37% of gross domestic product, while the Council of Europe average is 0.3% of gross domestic product.⁹ This percentage is much lower than the legal minimum to be granted to the judiciary (at least 0.8% of the gross domestic product),¹⁰ which negatively affects the functioning and independence of the courts.

The allocation of the judicial budget is 77.4% to the courts, 21.8% to the prosecutor's offices and 0.8% for legal aid, which compared to the average European allocation is much more for the courts and less for legal aid.¹¹

Although the legal aid budget has doubled from 0.08 euros to 0.16 euros per inhabitant, it still remains smaller than the Council of Europe average (3.08 euros per inhabitant).¹²

The Blueprint Group Analysis - comprehensive assessment of the implementation of the Strategy for Reform of the Judicial Sector (2017-2022)

The Blueprint group for Judicial Reform, which functions as an informal network of civil society organizations working and acting in the field of justice, has prepared an Analysis - comprehensive assessment of the implementation of the Strategy for the Reform of the Judicial Sector(2017-2022).¹³ The analysis aims to provide a comprehensive and independent assessment of this process and to offer recommendations based on the findings, which could be inserted in the next Strategy for Reform of the Judicial Sector. In the section dedicated to the strategic objective of independence and impartiality, the Blueprint Group followed several measures envisaged in the Strategy and followed the digitalization plan.

The measures concerning the proper functioning of the ACCMIS system (Measures 2.1.5-1 and 2 of the Strategy) provide ways to prevent the misuse of the electronic case allocation system by: establishing a body for evaluation of the use of ACCMIS, conducting procedures for examining the ways of its use and amending the Law on Management of the Movement of Cases in Courts and performing regular annual audits of the functioning of ACCMIS by independent auditors. An inconsistency in the functioning and use of ACCMIS was identified by the ad hoc working group for evaluation of the use of ACCMIS, and the annual audits of the functioning of ACCMIS are regularly conducted, in accordance with the Strategy, through hiring independent auditors. A new Law on the Management of the Movement of Cases in Courts was adopted in February 2020, with a delayed application of three months from the date of its entry into force. Because of this, both measures are considered to be partially implemented.

Measures relating to a self-sufficient and sustainable judicial budget (Measures 2.1.6-1 and 2 of the Strategy) have not been met. Namely, the implementation of the Judicial Budget Law in the area of providing the legally stipulated minimum of 0.8% is still a serious problem. Although it has been noted as an anomaly that creates an imbalance between the judicial branch and the executive branch supported

⁹ Same.

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

¹¹ European Commission for the Efficiency of Justice (CEPEJ), "Report European Judicial Systems - CEPEJ Evaluation Report - 2022 Evaluation Cycle (2020 Data)."

¹² Same.

¹³ Ardita Abazi Imeri et al., "Analysis - Comprehensive Assessment of the Implementation of the Strategy for Reform of the Judicial Sector 2017-2022" (European Policy Institute - Skopje, 10 November 2022), <https://bit.ly/3V21P1e>.

by the legislative branch, there was no attempt at all to implement these measures during the period provided for in the Strategy. This conclusion stems from the fact that the judicial budget in the past years was constantly below the stipulated minimum: the judicial budget amounted to 0.29% for 2019, to 0.39% for 2021, and 0.3% for 2022.¹⁴

The measure regarding the drafting of a new Court Rulebook has been partially implemented, as the working group was established and the text was drafted. But it has not yet been finalized, as it directly depends on provisions in several procedural laws, that are being amended.

The process of digitalization in the judiciary has been carried out over the past 12 months through the Council for Coordination of Information and Communication Technology in the Judiciary, which has conducted several activities during this period. However, the Blueprint Group concluded that the process is conducted in a partially transparent and inclusive manner, because there is no transparency in the reporting on the process and the steps that are being taken, and the citizens' associations, directly involved in the reform of the judiciary, are not included in this process.

Conclusion

Analyzed international and domestic reports, obviously show that there is some progress in the field of independence of the judiciary, but we are far from achieving the level required by the EU, and even the measures for independence and impartiality of the Strategy for Reform of the Judicial Sector (2017-2022) are not fully met. We have a long period of EU accession negotiations ahead of us, and with the new Strategy for Reform of the Judicial Sector we could improve the state of independence of the judiciary and thus the perception of Macedonian citizens and the EU on this issue. However, as the EU does not have a mechanism to exclude a member state from the Union ¹⁵ member states are not strongly motivated to improve the rule of law situation at home. This is where the EU institutions come in with mechanisms such as the conditionality of the funds provided to them by the Union, to strengthen their position and to motivate member states and candidate countries to improve.

¹⁴ Idem.

¹⁵ Alice Tidey, "Member States Can Leave the EU, but Can the Bloc Kick One of Them Out?," Euronews, 12 April 2022, <https://www.euronews.com/my-europe/2022/04/08/member-states-can-leave-the-eu-but-can-the-bloc-kick-one-of-them-out>.

