IMPACT OF THE MERIT SYSTEM OVER THE JUDICIAL INDEPENDENCE AND PROFESIONALISM IN NORTH MACEDONIA

Skopje, 2021

Publisher:

Coalition of Citizens' Associations All for Fair Trials – Skopje

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This project was funded through a U.S. Embassy grant. The opinions, findings, and conclusions or recommendations expressed herein are those of the implementers/authors and do not necessarily reflect those of the U.S. Government.

U.S. Embassy Skopje

KOALICIONI КОАЛИЦИЈА KOALICIJA
СИТЕ ЗА ПРАВИЧНО СУДЕЊЕ
TË GJITHË PËR GJYKIME TË DREJTA
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LIST OF ABBREVIATION

RNM	Republic of North Macedonia
EU	European Union
ECtHR	European Court of Human Rights
ECHR	European Convention on Human Rights
JCRNM	Judcial Council of Republic of North Macedonia
AJPP	Academy for Judges and Public Prosecutor

INTRODUCTION

The independence, impartiality and professionalism of the judiciary is considered as a foundation of the rule of law. The main mission of the judiciary in Republic of North Macedonia (RNM) is to protect the human rights and to provide equality of all citizens in front of the law and providing legal safety in the state which tends towards becoming a member of the European family. This may be provided only through independent judges which would increase the trust in the judiciary with their own credibility and professionalism, and which would perform their work diligently and honestly in conformity with the applicable laws.

The judicial impartiality shall be guaranteed by the state through the Constitution or existing laws, and all bodies and individuals are obliged to respect the judicial impartiality.[1] Starting from the Universal Declaration on Human Rights from 1948 and the Council of Europe goals for protection and promotion of human rights and freedoms, the principle of independence and impartiality in reaching judgments may be realized only in case of respecting the processes as prescribed in the written documents.

A functional judicial system is of key importance for the European integration processes, and it is enlisted amongst the most important conditions for the future EU membership towards which RNM aspires. The effective justice systems are necessary for mutual trust, legal safety and sustainability of the long-term growth. Due to this, the improvement of efficacy, quality and independence of the national justice systems continue to be enlisted amongst the priorities of the European Union. Regarding judiciary, the European Union policies aim towards ensuring good-quality justice and access to justice for the citizens. Apart from this, it is essential that the judiciary is prepared for the accession of the country to the EU, since it will be the key for application of the EU law in RNM, bearing in mind that the national courts are authorized for securing efficient enforcement of the laws and the obligations arising from the laws.

The trust, which the courts in one democratic society shall have in the public, is sublimed in the saying that "the justice must not only be satisfied, but to also seem satisfied". Each citizen shall accept the independence of the judges as a warranty for the truth, freedom, respect of human rights and impartial justice freed from external influences. This unambiguously draws the conclusion that the faith that the citizens have in the judiciary depends on its independence and impartiality rate.

In the past decade, RNM received much criticism and suggestions by European experts and institutions which had detected low quality court justice, result of the so called "captured state". Due to this, the RNM Government adopted the Strategy for reform in the judiciary sector 2017-2022, with an Action Plan according to which the judiciary was supposed to be return to the right track, in order to regain the citizens' trust in the institutions and the judiciary. However, 4 years after the adoption of this Strategy, the public trust in the judiciary is still very low. As per the International Republican Institute – IRI for Macedonia, which has been monitoring the judiciary for the past 5-6 years, only 23 percent of the citizens stated that they trust the judiciary, opposite to 76 percent of persons who claimed no trust. This means that the ratio of people lacking trust in the judiciary is three to one.

Focusing on the independence and professionalism of the judiciary, which turned out to be one of the biggest problems of our judiciary, this Analysis will examine several aspects of the work of the courts, as well as of the Judicial Council, which is an administrative body of the judiciary, set between the political institutions and the judicial power, which has been obliged by the Constitution to guarantee the autonomy and the independence of the judiciary. Also, we will include and analyze the manner in which the Judicial council elects and dismisses judges, i.e. which criteria are taken into consideration; at the same time, we will include the opinion of the judges on the Judicial council. Apart from this, an Analysis will be performed on the career development of the judges, i.e. the manner in which they are progressing, as well as the role of the Academy for Judges and Public Prosecutors in the continuous training of the judges.

[1] UN Basic principles

JUDICIAL INDEPENDENCE, INTEGRITY AND LIABLITY

The judicial independence, integrity and liability are the three ground pillars of the judicial system. Leaning on the theory on separation of powers, the independence of the judiciary anticipates and also relates both to the court as an institution and to the judges themselves. The bearers of this office must be capable to conduct their professional duties freed from any influence from the executive or legislative powers, as well as from any stakeholders, economic interest groups or political centers of power. The principle of independence of judiciary does not anticipate protection regarding the personal gain of the judges; it aims towards protection of people against power abuse, due to which it does not represent privilege for the judges, but a gain for the public.

The impartiality as one of the pillars for a solid legal, i.e. judicial system anticipates analysis on the facts on grounds of the applicable law in a well-balanced manner, without prejudices and pre-conviction regarding the case, as well as in lack of privilege or favors for any of the parties involved in the case.

Integrity, on the other hand, is acting in accordance with the specific principles and values, which include honest, action in good faith, just and efficient conduction of the working duties. In this context, "integrity" can be observed in two directions: "rule of law", where the integrity is related to the professionalism of the judge, and "democracy" where the integrity relates to the responsibility of the judicial system and its institutions towards the public, in order to gain the public trust.

The independent, accountable and reliable judiciary is essential for the delivery of an efficient and effective justice system in favor of the citizen, and it is an important feature of the rule of law in democratic societies. The situation with the judicial independence in one country is not determined only by the laws regulating this issue – it is a result of respecting of the independence of the judiciary in practice, respect of the conditions and circumstances under which the justice is being conducted.

JUDICIAL INDEPENDENCE

The main function of independence is to warrant the right of the individual to determine and protect his own rights and freedoms, through procedures conducted by independent and impartial judge. The Consultation council of European Judges in its opinion on the positioning on the court and its relation to other powers in the countries states that the judiciary is one of the three powers in each democratic society, which function complementary one to another and none of them has the primate, nor is dominant in relation to the others. Also, these authorities function as a "check and balance" sustem which anticipates and holds them mutually liable in the interest of the society. The principle of division of power is a guarantee of the judicial independence, because the judiciary needs to be independent in order to fulfill its constitutional role in relation to the other powers. In this manner, the other powers need to recognize the legitimate constitutional role borne by the judiciary power and to provide sufficient resources so that it could function fully in an independent capacity.

The culture of judicial independence is something that should be built and maintained in continuity. Each democratic society needs to tend towards building and maintaining culture of judicial independence, which, besides being necessary for the democracy and guaranteeing human rights, is exceptionally important for the rule of law. It provides equity, predictability and safety of the legal system and is thus crucial for gaining and maintaining trust of the citizens in the legal system, since, inter alia, the independence of the court protects the citizens from the power of the executive power in one country. Due to this, the judicial independence needs to be guaranteed by the states and provided at the highest level possible, with the highest legal act – the Constitution and the remaining legislative, especially if we take into consideration that the government, as well as any other institution, are obliged to respect and monitor the independence of the judiciary. This has also been anticipated by the Consultative council of European Judges in 2001 with an opinion which explains that the independence of the judiciary is the prerequisite for the rule of law and the main warranty for fair trial, and also, that the independence

is not a privilege for the judges, but it is in interest of the rule of law and to those who seek and expect justice[2], due to which, this principle should be guaranteed at highest level.[3]

The key for any democratic society is that each individual judge, but also the judicial system in total to be fully independent from any external pressure and inappropriate influence. Amongst the minimum criteria which could provide this, the financial safety is enlisted. In order to attract, but also to keep candidates and judges with highest quality for the judicial office, and by that, to maintain the judicial independence, the reimbursements for these people shall be proportional to their professional liabilities, duties and dignity within their office. The insufficient financial sustainability and safety may increase the political vulnerability of the judiciary and it could remain a hostage of the political interests and under direct political control, especially when it comes to the resources (human or material) which are given at disposal of the third power.

In order to provide complete independence in the judiciary, any action that could lead to intervening, pressure or threats against the carriers of this office, which could affect the independent and impartial deciding. If contrary, these persons would be prevented from objectively performing their duties. The intervening in the deciding and above stated pressures may come from various parts, such as: the executive or legislative power, local self-governments, individual government officials or the legislators, political parties or political and economic elites, criminal networks, but also from their own circles, i.e. from the court hierarchy.

The existence, but also the level of judicial independence is directly connected with specific institutional categories, such as: guaranteeing the existence of a fixed office, during which the determination of liability and termination of the office are regulated separately; category salaries, i.e. appropriately anticipated and fixed amount; satisfying and high-sufficient minimal qualifications for education and experience, and limited judicial immunity. Each of these categories has an effect and protects the judges from external pressures, provide assets for establishing and maintaining the judicial integrity, as well as their respect in the society, but also the direct protection of the independence through the limited civil immunity enjoyed by the judges.

- ***External independence***

The external independence of the judges is neither a privilege, or is it provided for realization of personal interests of the judges – it is a guarantee in the interest of the rule of law and administering impartial justice. The independence and impartiality of the judges is essential for guaranteeing equality before courts and it shall be considered as a guarantee of freedom, respect of human rights and impartial application of the law. The external independence as regards to the division of powers of the state to legislature, executive and judicial does not necessarily exclude the cooperation between these three powers, especially when it comes to managing the judiciary system.

- ***Institutional independence***

The institutional independence of the courts as carriers of the judicial office means to conduct this office freely and impartially from social, economic and political pressure, but also from other judges administering the justice.

The judiciary is one of the three ground pillars of every democratic society and it has significant role and function in relation to the other two – legislature and executive authorities. It anticipates liability for the executive authorities and administration when prescribed, but it also provides for application of the laws which are product of the legislature and their harmonization with the Constitutions of the states or higher legislature as determined with international instruments. In order to fulfill its function, the judiciary must be independent from these two branches, and this independence means independence and reaching decisions free from any possible influences from these two. Hence, the independence means guarantee for impartiality, which has implication in almost any segment of the career progress of the judges – from their education, appointment, advancement, even disciplinary measures, i.e. dismissal.

[2] Consultative Council of European Judges (2001) § 10; also Consultative Council of European Judges (2015).
[3] Consultative Council of European Judges судии (2001) § 14.

However, the independence of the Court cannot be anticipated in case of lack of the necessary interaction and cooperation with the other two authorities. For example, provision of sufficient amount of budget assets for the operations of the judiciary is a school example for the need of appropriate cooperation which would provide optimal functioning for one of the authorities, as a direct "policy" to another. It is highly significant that for this situation, persons from the judiciary are included in the drafting the budget necessary for the function of the judiciary, in order to plan and to accordingly elaborate the needs of this authority, without leaving any possibility for intervention or modeling of the policies as per the needs or perception of the executive authorities, or for them to be subject to political fluctuation. It is necessary to allocate sufficient amount of budget assets for the judiciary with the strict respect of its independence. On the other hand, the execution of the judicial decisions is directly related to the authorities of the executive power, i.e. the preparedness of the executive power to cooperate with the legislature. Due to this it is inevitable to state that the cooperation is key and significantly important for the uninterrupted functioning of each one of the three pillars, but without any attempts for influencing or interferences into the individual policies of any of these three authorities. Especially when it comes to stating satisfaction or criticism for some court decisions which could erode the independence or the public trust in the judiciary. When it comes to the legislature, it is highly important to state that it shall not reach laws which could retroactively amend the said court decisions.

The minimum standards for judicial independence when it comes to the judiciary and executive power anticipate that the individual judges shall enjoy personal independence and essential independence. The personal independence means that the conditions for conducting the judicial office are provided accordingly in order to guarantee the individual independence of the judges to be out of the control of the executive power, while the essential independence means that while conducting the judicial function, the judge may not be subjected to anything else but to the law and his own conscience. The judiciary as a whole need to enjoy autonomy and collective independence vis-à-vis executive and legislature authorities. This led to the criterion for appointments and advancement by a judiciary body in which the members of the judiciary and the legal profession form the majority, instead of directly by the executive or legislature authorities. When it comes to disciplinary procedures and dismissal, identically, the executive power can be included only for initiation of such procedures, not in the decision making process regarding his issue. The decisions for determining such liability shall be under the authority of an independent body which would be completely independent from the executive power.

The limited activities of the executive power and the guarantees for autonomy of the legislature are reflected to the everyday work of the judges. The executive power shall refrain from any act (or omission) which would prevent the court closure of one dispute or would prevent from correct execution of the court verdict. The due diligence shall also be emphasized and shall encompass the power it has for amnesty of defendants and directions for its exceptionally careful practicing in order not to be perceived as interfering to the judicial decision-making process.

- ***Personal liability***

The basic principles for independent deciding within the judiciary lead to the fact that the judges need to solve the issues and subjects that is elaborated before them, independently and on grounds of facts in accordance with the determined legislation. This means lack of any limitations, inappropriate influences, pressures, direct or indirect threats whatsoever, but also lack of inappropriate or unexcused interference in the court process, as well as prohibition from revising court decisions by an external factor outside of the judiciary. This undoubtedly includes limitation, i.e. lack of any possible influences from internal authorities from the aspect of the hierarchical setting, such as, influences through giving instruction and directions to the lower courts by the higher, regarding how to conduct work or how to decide in cases which are not sent for deciding to the higher courts upon an Appeal.

The need for internal or personal judicial independence is recognized by the ECtHR, implicitly in 2010, and explicitly in 2009[4]. The violations of the internal judicial independence are stated in the ECtHR decisions against some of the former socialist states such as Croatia, Hungary, Lithuania, Romania, Slovakia, Russia and

[4] The concept of "internal judicial independence" in the case law of the European Court of Human Rights, J. Sillen European Constitutional Law Review, Vol. 15(1), 2019

Ukraine. This concept has been elaborated in the decision for Parlov-Tkacic v. Croatia[5], where the Court had stated "the judicial independence requires that the individual judges are freed not only from the unneeded influences outside of the judiciary, but also from the inside. This internal judicial independence requires that they are freed from directives or pressures from the colleagues-judges or those having administrative responsibilities in the court, such as the president of the court or the president of a court department." In the decision Moyseyev v. Russia[6], the Court has determined violation of the internal judiciary independence due to the fact that the president of the court has replaced all of the judges of the council which had been working on the case three times, supporting an impression that they have been replaced in order to guarantee certain outcome from the case.[7]

INTEGRITY

The integrity as a value means legal, professional, independent, impartial, ethic, responsible, transparent and accountable conduction of works through which the elected persons maintain their reputation and the reputation of the institution, eliminate the risks and doubts from corruption development, and by that, they provide trust of the citizens in the conduction of the public offices and in the work of the public institutions. The integrity of the institutions is essentially connected with the existence and maintenance of the integrity at personal level. Only persons with integrity may maintain the reputation and to maintain the integrity of any institution, including the judiciary in general.

The judicial integrity is a precondition for maintaining the trust in the judiciary. It has been anticipated as a principle in the Code of Ethics for judges and jurors: "Integrity is considered an attribute to honesty and equity. The judge or juror always, not only while conducting the formal duties, acts honestly and in a manner that is useful for the appropriate conduction of the judicial office" and which regulates and provides directions for further operations of the bearers of this profession, in order for it to be conducted freed from impartiality, pre-convictions or prejudices.

Principles that have set standards for the judicial integrity and which have been recognized globally, i.e. the Bangalore principles are developed by the Judicial group for strengthening the court integrity. This group has been established in 2000 under patronage of the Global Program against Corruption – UN Office on Drugs and Crime in Wien, and the principles determined here were then adopted by the round table of main judges, from all main legal traditions in November 2002. These principles are initially directed towards the judicial bodies for implementation and execution, not towards the state or other types of authorities in the state.

The Bangalore principles determine six basic values that shall lead the conduction of the judicial office: independence, impartiality, integrity, equality, propriety, competence and diligence. For each of these values, the principles describe specific standings and situations the judges need to be aware of, in order to maintain the trust of the citizens in the judicial integrity. The focus on this principle for practical direction and specifics, in comparison to the other international standards, makes them useful for the bearers of the judicial office. The fact that they elaborate values, i.e. principles related to the judicial function represented in every culture and legal systems just increases their usefulness.

They contain separate part which tackles integrity, and it has been defined as essential for correct administering and execution of the judicial office. They state that the behavior and actions of the judges must reform the trust of the citizens in the integrity of the judiciary. The integrity is an attribute to the propriety and equity, and its components are the honesty and judicial moral. These principles emphasize that the judge shall always, not only while conducting official duties, act honestly and in a manner adequate to the judicial office, since the integrity as it is, is not only a virtue, it is also a necessity.

[5] Case Parlov-Tklacic v. Croatia (Application no.. 24810/06), December 22nd 2009
[6] Case Moiseyev v. Russia (Application no. 62936/00), October 9th 2008
[7] Council of Europe standards on judicial independence, EPRS | European Parliamentary Research Service, May 2021

The judiciary with an inviolable integrity is essential for providing harmonization between the democracy and the rule of law. Even if all the other protective measures fail, it should provide protection for the public from any limitation of rights and freedoms guaranteed by law.

LIABILITY

The term "judicial liability" leads towards the standing that the judges should be somehow liable for their operations. The liability that can be before the public, i.e. society, and liability before the body that elects them. This principle is closely related to the judicial independence, and understandably, opens a lot of delicate issues. If the judge is completely independent, there is lack of liability, on the other hand – the judge that is completely liable may feel pressure to reach a decision that would follow the interest of those to which the judge is subjected. Due to this, the issue regarding the balance between the judicial independence and judicial liability is legitimate.

The judicial independence is a barrier before the possible influences on the carriers of court decisions by the political actors or other centers of power, and it does not only encompass the concept of independence as stated by the Constitution, but also personal independence of the judges, according to which they would be free to decide on grounds of application of the rule of law concept. But this is widened by the need for protection from arbitrary application of the law and identically arbitrary actions by the judges which have concentration of power to decide upon protection and guarantees of the freedoms and rights of people. The philosophical goal of the accountability is to guarantee that the one that has the power must be liable towards the community, in the same way as its pragmatic goal is to provide that the institutional and individual offices are conducted efficiently.

The judiciary as an authority and an institution is liable before the society to guarantee that all court decisions will be reached independently and impartially, with integrity and without corruption, and to that aim, the society reasonably expects that the court would undertake measures against the individual judges which have unacceptable behavior which compromises these values. The individuals concerned by certain inappropriate behavior of a judge, also, shall be able to expect that the judge would be held liable for the misconduct and that any damage would be sanctioned.[8]

As per the international law, the judiciary, as well as other state bodies is not only liable for application of the internal law of the state, but also for respect of the internationally protected human rights and the international humanitarian law. This is an obligation for which the judiciary is effectively liable before the inhabitants of the country to which it belongs, before the individuals and other subjects concerned by any practice of authority outside the regular territory of their state, through the liability of the state towards other states as per international law. The judiciary is liable before the other branches of power- legislature and executive power – in the same manner as before the society in general: as an institution, it needs to be able to show that the court decisions are based on legal rules and elaboration, and detecting facts on grounds of evidence, through independent and impartial manner freed from corruption and other inappropriate influences. The principle of court independence excludes, on the other hand, any claim that the judiciary shall be liable before the executive power or legislature power in terms of "liability" or "subsidiary" to these branches of power.[9]

As per domestic regulations, the judges when performing the judicial function enjoy immunity and they cannot be criminally liable for given opinion and deciding when reaching a court decision. Their liability shall be determined within the scope of their work by the Judicial council of RNM, which decides upon initiated procedure for determining liability. This procedure will be more widely elaborated in this Analysis.

CORRUPTION IN THE JUDICIARY

Main challenges in the judicial anti-corruption refers are located around the balance which needs to be set to the discretional authorizations possessed by the judges, to provide their independent functioning, as well as to introduce appropriate supervisory mechanisms which would assume the liability and accountability. But the most

[8] Manual on Independence, Impartiality and Integrity of the Judiciary, CEELI Institute, Prague, March 2020.
[9] IBID

important thing is to identify the possible threats and possibilities for the actors in the judiciary to act corrupted, and that is to identify the risks from corruption within the judiciary institutions.

The judiciary anti-corruption reforms shall provide balance between the liability required from the bearers of these offices and protection and provision of their independence. The judicial independence shall be a shield from the possible influences on the bearers of judicial decisions by the political actors and other centers of power. The judicial independence does not include only the concept of independence as set by the Constitution through division of powers in the state in three pillars (legislative, executive and judicial), but also the personal independence of the judges, as per which they are free to decide on grounds on application of the rule of law concept. The delivery of successful anti-corruption reforms is in direct correlation with handling the risks from corruption, related to the role of the bearers of judiciary professions within the judiciary.

There are various forms of corruption affecting the judiciary system and its actors in fulfilling their roles and authorizations, such as: possible political influences to the outcome of the court procedures; the bearers of these positions may be subjected to bribery for impacting the court processes; they can be subjected to extortion and to be forced to corruptive actions under threat of force or reveal information about them; they may be connected with nepotism or their people close to them may have benefit from some of their decisions related to, for example, their discretional authorizations; or continuous delay and reaching the statute of limitation for cases related to abuse of public money and funds.

There are key areas in which the actors from the judiciary system may be included or exposed to forms of corruption, such as in the management process of the courts and their operations, the criminal and civil procedures which are at risk from direct impact on the outcome of the procedures, delay and prolongation of the procedures to reach the statute of limitation, influencing the jurors etc., including the part for (non)execution of the court decisions. Due to this, it is highly important to apply approaches and solutions which would anticipate: strengthening the control mechanisms for supervision over the judiciary which could be integrated in the judiciary, but to exist outside of it, stated, for example, through the role of the civil society sector who, through own supervisory activities may contribute towards increased supervision and monitoring the conditions in the judiciary. Improvement of the human resource management in the judiciary through tools which in this context would contribute towards increased transparency and liability. Well-thought standards for appointment and promotion of the judges and public prosecutors through the merit system and objective and transparent process identically, could contribute towards avoiding possible risks from corruption in the judiciary. The improvement of the education and training of the bearers of these functions would contribute towards promotion of high standards for professionalism, mostly through training programs which would encompass ethic issues, but also handling ethical dilemmas. Strengthening of the liability and discipline through internal disciplinary mechanisms which could contribute and be protective mechanism for the judicial integrity. The bearers of these professions should be obliged to sign statements with which they would abide to the rulebooks, i.e. codes for appropriate behavior and conflict of interest, and this could be strengthened with the obligation for regular verification and submission of survey lists regarding gained property, and appropriate sanctioning in case of failure to comply with the obligation. Another possible tool is monitoring over the judiciary, especially court monitoring through civil society programs. This gives an assessment for possible inconsistencies in the court procedures, which not necessarily will detect corruptive behavior, but might indicate possible problems that should be treated carefully and maybe will lead towards examination of the root of the problem. Especially if considering the oversized discretional authorizations of the bearers of these functions.

Due to all this, it is essential first to assess the risks from corruption in order to act. A methodology should be created for risk assessment, then potential areas should be mapped, risks shall be identified and analyzed and then measures for decrease, complete elimination or appropriate treatment shall be created.

ELECTION AND APPOINTMENT OF JUDGES

CRITERIA FOR ELECTION AND APPOINTMENT

As per domestic legislation, the judicial power is conducted by the courts in RNM, and their aim is to apply the law impartially, independent from the position and capacity of the parties in the procedure, to protect, provide respect and promotion of human rights and basic freedoms, to provide equality, equity and non-discrimination on any ground and to provide legal certainty on grounds of the rule of law. The judicial office is conducted by judges, which are elected for an unlimited period of time by the Judicial council of RNM under conditions and procedure determined by law, and which act in all affairs put under court authority with law.

The criteria for election of judges are anticipated with the Law on Courts, which in this part, starting with the initial text from 2006, has additional 3 amendments – in 2010, 2018 and 2019. The initial criteria for election anticipated that a person fulfilling these criteria may be elected as a judge: 1) To be a citizen of the Republic of Macedonia - to be fluent in Macedonian; 2) to have working capacity and satisfy the general health conditions; 3) to have a university diploma for a law graduate in Republic of Macedonia or an acknowledged diploma from a law faculty from abroad and 4) to have passed the bar exam in the Republic of Macedonia[10]. In 2010, these criteria are amended with more detailed description of the educational qualifications, i.e. it is stated that the future judge shall be "graduated lawyer with completed four years of higher education – legal studies with grade point average of at least eight or graduated lawyer with 300 credits under the European Credit Transfer System (ECTS) with grade point average of at least eight in each of the two cycles of university studies, or formally recognized foreign diploma from a law faculty from abroad for gained 300 credits"[11]. But the candidate should actively know: one of the official languages of the European Union, out of which the English language is mandatory, which is proven with one of the internationally recognized certificates; practical work with computers; and to enjoy reputation, to possess integrity for conducting the judicial office and to possess social capabilities for conducting the judicial position, for which tests for integrity and psychological tests are conducted. This is widened with introduction of health examinations, form and contents of the psychological test and integrity test, as well as the level of practical work with computers, which as per law are determined by the Judicial council of RNM.[12]

In 2018, the amendments to this Article eliminate the necessary grade point average "of at least eight" and generalizes the knowledge of foreign languages with a possibility for knowing one of the three most commonly used languages in the European Union – English, French or German. Additionally, they state that the practical work with computers is "needed for reception of a candidate for judge for initial training at the Academy for Judges and Public Prosecutors." [13]. In 2019, this paragraph is once again amended, in the part of "active" knowledge of a foreign language, which now is not needed, only knowledge is sufficient, and technically regulates the part with the validity of the certificates for work with computers and the required types of health examinations and integrity tests (based on the existing ethical and professional codes for conducting the position of a judge[14]) and the psychological test (shall affirm the candidates for conducting the profession of a judge through checking the social capabilities[15]), for which, once again, the form and content is regulated by the authorized body – the Judicial council of RNM.

Apart from these general conditions for election of judges, the Law prescribes special conditions which must be fulfilled for the candidate to be able to be elected by the Judicial council of RNM. As with the general conditions, this part of the law has been amended within the past 15 years in an attempt to be more precise and upgraded. So, the initial Law on Courts[16] in 2006 anticipates the following special conditions for election of a judge:

[10] Article 45 from the Law on Courts, Official Gazette no. 58/2006
[11] Law amending the Law on Courts, Official Gazette no. 150/2010
[12] IBID
[13] Law amending the Law on Courts, Official Gazette no. 83/2018
[14] Article 45-a para.2 from the Law on Courts
[15] Article45-a para.1 from the Law on Courts
[16] Article 46 from the Law on Courts, Official Gazette no. 58/2006

- For a basic court judge a person that finished training in the Academy for training of Judges and Public Prosecutors can be elected,
- For a judge in an appellate court a person that has at least 5 years working experience in a court, with recognized results, or 8 years working experience in legal matters after passing the Bar exam can be elected,
- For a judge in the Administrative Court a person that also has at least 5 years working experience in a court, with recognized results, or at least 8 years working experience in legal matters after passing the Bar exam, or he/she is a university law professor with a PhD,
- For a judge of the Supreme Court of Republic of Macedonia a person that has at least 8 years working experience in a court, with recognized results, or 12 years working experience in legal matters after passing the Bar exam can be elected. For a judge of the Supreme court of Republic of Macedonia a regular or visiting university professor who had been teaching legal subject related to court practices for more than ten years.

The amendments in 2008[17] changed the conditions for promotion to the higher courts, so the determined conditions for election to the appellate court of having at least five years of experience as a judge with confirmed results in the work or eight years' experience in legal affairs after passing the bar exam, now only the five-year working experience in legal affairs after passing the bar exam with confirmed results from the work is sufficient, while to be elected in the Administrative court, the criteria of at least five years at court with confirmed results from the work or eight years' experience in legal affairs after passing the bar exam, or a university law professor with a title PhD., now is decreased to necessary five-year working experience in legal affairs after passing the bar exam with confirmed results from the work, while the category "university professor" of law with a title PhD., remains the same. The working experience for the highest court – Supreme, has been decreased from at least eight years of experience as a judge with confirmed results in the work or 12 years' experience with confirmed results in legal affairs after passing the bar exam to eight years of working experience with confirmed results from legal affairs after passing the bar exam.

The next amendments in 2010[18] in the part regarding special conditions for election of judges to the basic and appellate court and Supreme Court of Republic of Macedonia anticipate that: a person that has completed the initial training at the Academy for training of judges and public prosecutors may be elected as a basic court judge; a person can be elected for an appellate court judge if demonstrates at least four years of uninterrupted experience as a basic court judge until the moment of applying for election, which in the last year has been assessed with the highest positive grade by the Judicial Council of Republic of Macedonia and has gained highest number of points in comparison with the other candidates as per law, or a judge in the Administrative Court or Higher administrative Court which in the last year has been assessed with the highest positive grade by the Judicial Council of Republic of Macedonia and has gained highest number of points in comparison with the other candidates as per law; and a person can be elected for a Supreme court of Republic of Macedonia judge if demonstrates at least six years of uninterrupted experience as an appellate court judge until the moment of applying for election, which in the last year has been assessed with the highest positive grade by the Judicial Council of Republic of Macedonia and has gained highest number of points in comparison with the other candidates as per law, or a judge in the Administrative Court or Higher administrative Court which in the last year has been assessed with the highest positive grade by the Judicial Council of Republic of Macedonia and has gained highest number of points in comparison with the other candidates as per law.

A person can be elected for an Administrative court judge if demonstrates at least four years of uninterrupted experience as a basic court judge until the moment of applying for election, which in the last year has been assessed with the highest positive grade by the Judicial Council of Republic of Macedonia and has gained highest number of points in comparison with the other candidates as per law, or if it has five years of experience in a state body with confirmed results from the work or which has been assessed with the highest positive grade for the last year as per law; and a person can be elected as a Higher Administrative Court judge if demonstrates at least three years of uninterrupted experience as a judge in the Administrative Court until the

[17] Law amending the Law on Courts, Official Gazette no 35/2008
[18] Article 17 from the Law amending the Law on Courts, Official Gazette no. 150/2010

moment of application for election, and which during the last year has been assessed by the Judicial council with highest positive grade and has gained highest number of points in comparison to the other candidates, as per law, or a person with six years of experience with legal affairs in a state body with confirmed working results or which has been assessed with the highest positive grade in the last year, as per law.

The amendments from 2018 change the frequency of assessment as criteria for election, so instead of the assessment "in the past year" the assessment system taken into consideration is defined as "two regular consequent assessments" of the judges. The last amendments to this Article are in 2019 and they anticipate, apart from election of a basic court judge within the framework of person that had completed the AJPP, a person with working experience of at least four years as a judge in another basic court until the moment of applying for election, which had been evaluated with the highest positive grade by the Judicial council of RM, as per the Law on Judicial council of Republic of Macedonia can be elected. Furthermore, when it comes to election of judges in the appellate court, a distinction of the approach for needed experience is made, and a condition is introduced, that a person can be elected for a judge of the appellate court with uninterrupted working experience of at least six years as a basic court judge, Administrative or Higher Administrative court until the moment of application for the election, which had been evaluated with the highest positive grade by the Judicial council of RM, as per the Law on Judicial council of Republic of Macedonia, or a person with at least four years of uninterrupted working experience as a judge in another appellate court until the moment of applying for election, which had been evaluated with the highest positive grade by the Judicial council of RM, as per the Law on Judicial council of Republic of Macedonia. A person can be elected for a judge of the Supreme court of Republic of Macedonia in case of at least six years uninterrupted working experience as an appellate court judge until the moment of applying for election and which had been evaluated with the highest positive grade by the Judicial council of RM, as per the Law on Judicial council of Republic of Macedonia, with which the previous solution that included possible election of a judge in the Administrative or Higher Administrative court is dismissed.

The special criteria for election of a judge in the Administrative court and Higher administrative court as per this law anticipate a possibility for election of a judge in the Administrative court for a person with at least four years of uninterrupted working experience as a basic court judge until the moment of applying for election, which had been evaluated with the highest positive grade by the Judicial council of RM, as per the Law on Judicial council of Republic of Macedonia, while as a Higher administrative court judge a person can be elected with demonstrated uninterrupted working experience as a judge in the appellate or administrative court of six years until the moment of application for election, which had been evaluated with the highest positive grade by the Judicial council of RM, as per the Law on Judicial council of Republic of Macedonia. These amendments introduce an alternative for electing a judge from the category of persons which had been judges in international courts for at least one term, and which fulfil the general criteria set in the law, which applies for election of a judge in every court.

PROCEDURES FOR ELECTION AND APPOINTMENT

Election of judges is one of the authorizations of the Judicial council of RNM as determined by law. This procedure is initiated by an assessment and determination of the vacant judge positions in the courts, taking into consideration the total number of vacancies for basic court judges, as well as a projection for the need of the positions, which shall be fulfilled after completion of the initial training of the AJPP. After the conducted assessment, this body reaches a decision which shall be further delivered to the Academy for judges and public prosecutors until March 31st in the year in which the decision has been reached, so that this institution would initiate the processes of preparation and capacity planning.

As per Article 46 from the Law on the Judicial Council, it shall adopt a decision on publication of an announcement for selection of a judge immediately after a judge position becomes vacant or after the need for opening a judge position is established, which shall include the necessary specialization (in the criminal, civil, economic, administrative area or another area within the scope of work of the court) for filling the vacant judicial position, and in accordance with the previously submitted request by the court to the Council by which filling the judicial position is required.

The election of a basic court judge is anticipated with Article 47 of the Law and states that the he Council elects a judge from the list of candidates, submitted by the Academy for Judges and Public Prosecutors that

applied on the announcement, taking into account the year of completion of the training and the achieved success, as well as the results of the interview conducted by Council, where their personal and social competences are estimated. After the determination of the manner of ranking as per the previously set criteria and manner of conducting the interview with the candidates, the Council elects the best ranked candidate.

An election of a judge in the Appellate court, Administrative court, Highest administrative court and the Supreme court of Republic of North Macedonia is conducted from among the candidates who have applied to the announcement and who meet the requirements and criteria anticipated by the Law in a manner that it shall rank the candidates that have applied according to the necessary specialization for filling a judge's position. The Council elects the persons with highest expert knowledge and professional qualities, which enjoy reputation in conducting the judicial office, on grounds of the following criteria: expert knowledge and specialization in the field and participation in continuous training; positive evaluation of his work; capability in verbal and written expression; undertaking additional work when performing judicial office by participating in procedures to resolve backlog of cases; undertaking additional work when performing judicial office by means of mentorship, education, and alike and the length of judicial service. If the candidate is from among the judges, the Council shall obtain an opinion from the court. The ranking will be done by the commission consisted of three members of Council selected by lot.

The Council shall discuss and decide on the selection of a judge at a session, attended by at least eight members of the total number of members of the Council having voting rights. When the Council elects a judge and president of a basic court and appellate court located in the area of a unit of local self-government where 20% of the citizens speak an official language other than the Macedonian, it decides identically as in any other case, but in this situation, the Council needs to have the majority of votes from the present members belonging to the communities that are not the majority in the Republic of Northern Macedonia. The Council shall elect the candidate which had gained at least eight votes from the present council members belonging to the communities, but every member with a right to vote is obliged to elaborate its decision. After the conducted voting process, the Council notifies each candidate in written about the decision for election of a judge, and the candidates which were not elected are entitled to an Appeal to the Appeal Council at the Supreme Court of Republic of North Macedonia.

If after the procedure conducted for election of a judge or president of a court the Council finds that no candidate has applied or all candidates who have applied were given a negative evaluation, it shall be decided to re-advertise the election of a judge or president of a court.[19]

[19] Article 52 from the Law on Judicial Council of RNM

TERMINATION, DISSOLUTION AND GROUNDS FOR LIABILITY

GROUNDS FOR TERMINATION, DISSOLUTION AND LIABILITY

The Law on Courts from 2006 states the following conditions for termination of the judicial office: If he/she demands so; I f he/she permanently looses the ability to exercise the judicial function, which is determined by the Judicial Council of Republic of North Macedonia; if he/she meets the conditions for age retirement; if he/she is elected or appointed to another public function, except when the judicial function is in temporary stay, under conditions set by law; and If he/she is convicted to at least 6 months of mandatory imprisonment by a final court verdict for a criminal act. In these cases, the Judicial Council of the Republic of Macedonia shall establish the termination of the judicial office.

With a Decision of the Constitutional court of Republic of Macedonia U. no. 124/2008 from January 14th 2009, Official Gazette no. 16/2009, the Constitutional court of Republic of Macedonia annulled Article 73 para 1 item 3 from the Law on Courts (Official Gazette of Republic of Macedonia no. 58/2006 and 35/2008), which determines termination of the judicial office due to meeting conditions for age retirement. Only later with the Law amending the Law on Courts, Official Gazette no. 150/2010 includes a new item to replace the annulled one, determining termination of office "with turning 64 years of age".

The latest amendments to the regulations regarding termination of judicial office are adopted in 2019, when the law amending the existing one, in Article 26 anticipates that the previously stated definition for termination of office due to retirement is amended, and the novelty introduced is: "fulfilled criteria for age retirement, with a possibility for continuance of office as per the provisions defining the labor relations". Additionally, an amendment to the item prescribing termination of office due to election of the judge for another public office and its rest was introduced. These amendments close the amendments related to termination of office, and the Council is entitled to ten days from the day of learning about the existence of the cases to state the termination of office.

The dismissal from the judicial office on the other hand, is termination of office for its bearer due to determined graver disciplinary violation, which makes the judge unworthy for conducting such office, or due to unprofessional or negligent conduction of the judicial office. Identically, these decisions are adopted by the Judicial council of RNM, but the judge is dismissed from judicial office as per legal grounds if the violation is done with an intention or with obvious negligence due to the judge's fault without any justifiable reasons and if the violation had caused grave consequences. In case of a lighter violation, the judge may be given disciplinary measure, a decision which had not been anticipated with the initial legal solution from 2006, and has been introduced as a novelty in 2019.

The Law has anticipated the following graver disciplinary violations, on grounds of which a procedure for determining liability of a judge shall be initiated: 1) serious violation of the public order that demean the image of the court and his/her reputation; 2) severe influence and interference in conducting the judicial office to another judge; 3) refusal to file a statement on his/hers property standing as per law, or the information disclosed in the statement are mostly untrue or 4) obvious violation of the rules for exemption in cases where the judge knew or should have known about the existence of some of the grounds for dismissal as prescribed by Law[20]. For these violations, the president of the court in which the judge is employed is obliged to notify the Judicial council within 8, but no longer than 3 months from learning about the conducted violation. The court and the president of the court have the same obligation for notifying the Judicial council in case of initiated procedure or reached final court decision against a judge.

On the other hand, the unprofessional and neglectful exercise of the judicial office means insufficient professionalism or negligence of the judge that affects the work quality and efficiency, as follows: 1) if in two regular consecutive assessments, he/she does not meet the criteria for successful performance of the work, due to his/her fault without any justifiable reasons, for which he/she is assessed with two negative gradings, and in accordance with the procedure determined by the Law on Judicial Council of the Republic of North Macedonia; 2)

[20] Article 75 from the Law on Courts

if he/she was convicted by a final court verdict, with punishment lower than that determined in the Art. 73, paragraph(1) point 5 of this law which is a direct result of acting in the performance of the judicial office, deliberately or with conscious negligence; 3) is publishing unauthorized classified information, i.e. provided information and data on court cases that violates the obligation to protect the secrecy of the procedure established by law and when the public is excluded in accordance with the law; 4) without justified reasons, does not schedule the hearings in the cases assigned to him or otherwise delay the procedure; 5) does not take the matter into consideration because of which expiration of a criminal prosecution or statute of limitations on the execution of a criminal sanction for a crime occur; 6) takes on a case that has not been allocated to him through the automatic computer system for conducting of court cases in the courts; 7) Intentionally and inexcusably makes gross professional mistake, while differences in interpretation of law and facts cannot be taken as ground for determination of judges' liability[21]. In the same manner as with the cases of graver disciplinary violations, the president of the court is obliged, within 8 days, but no longer than 6 months from the day of learning about the violation, to notify the Judicial council of RNM, and identically the court which had reached a final decision against a judge.

The widening of the scope of the two categories of conditions for dismissal of judges is obvious through the legal solutions and amendments, from the initial text in 2006 through the amendments in 2010, 2018 and 2019. So, not going into a detailed overview of the latter through the years, we would only state the initially stated in comparison to current conditions for graver disciplinary violation.

So, the initial law from 2006 states the following conditions for graver disciplinary violations which would result with dismissal:

- Severe violation of the public peace and order that harms their reputation and the reputation of the court;
- severe violation of the rights of the parties and of other participants in the procedure, damaging the reputation of the court and the judicial function;
- violation of the principle of non-discrimination on any grounds.

Nowadays, with the latest amendments from 2019, the current regulations on graver disciplinary violations have been enriched with several more conditions, as follows:

- severe violation of public order and peace and other more serious forms of misconduct that violates the reputation of the court and his/her reputation;
- gross influence and interference in the performance of the judicial function of another judge;
- if he/she refuses to file a statement of assets and interests according to law or if his statement contains gross inaccuracies; or
- manifestly violation of the rules for exemption in situations in which the judge knew or should have known about the existence of one of the grounds for exemption provided for by law.

From the initially set conditions for unprofessional and neglectful exercise of the judicial office in 2006, today we have only 4 of them left, and those that had determined "Unprofessional, untimely and inattentive exercising of the judicial office in conducting the court proceedings on specific cases", "Biased conduct of the court proceedings, especially in view of the equal treatment of the parties", "Public disclosure of information and data on court cases on which no final court decision has been taken", "Deliberate violation of the rules for fair trial", "Violation of regulations or other kind of violation of the autonomy of judges during trial" and "Severe violation of rules of the Judicial Code, undermining the reputation of the judicial office" are excluded from the current legal solution.

This overview allows the statement that the concept of severe punishment of the judges through dismissal due to their untimely, inefficiently and unprofessional work has been abandoned. Instead of these strict standards and severe sanctioning due to the later, some of these conditions are anticipated as grounds for disciplinary liability, and for some of them indicators were developed for assessment of the performance of the judges in the anticipated methodologies for their assessment, so their work is initially subjected to assessment and grading by

[21] Article 76 from the Law on Courts

the Judicial council through its commissions for work evaluation, and even later, the possible bad evaluation will somehow reflect to the career advancement or regressing, and of course, in some cases, dismissal.

The disciplinary liability for which a procedure for determining liability of a judge for which a disciplinary measure could be stated includes: 1) less severe breach of public order or other less serious misconduct that violates the reputation of the court and his/her reputation, 2) use of his/her office or the reputation of the court to accomplish his personal interests; 3) failure to perform mentoring duties; 4) violation of the rules on absence from work; 5) failure to attend obligatory trainings or 5) not wearing a court gown during the trials[22]. The disciplinary measures for these violations are given if the disciplinary violation has been done with the intention or apparent negligence by the fault of the judge without justified reasons or the disciplinary violation caused severe consequences. Unlike the initial solution from 2006 which provided wider determination of the circumstances under which the disciplinary measures are imposed, the current Law contains 5, and omits circumstances which involve: Not respecting the specified schedule for acting upon cases; Disabling the exercise of supervision over the judicial proceedings by a higher instance court; Reception of gifts and other benefits related to the judicial office; Partisan and political activities; Exercising another public office or function that is mutually exclusive with exercising the judicial office; Causing severe disruption in the court relations, which shall significantly influence the performance of the judicial office, as well as Lack of achievement of the expected results at work for more than eight successive months without justified reasons.

For these disciplinary violations, i.e. determined liability of a judge, the law anticipates the following measures: a written warning, public reprimand and reduction of the salary in the amount of 15% to 30% of the monthly salary of a judge in duration of one to six months. The legal solution points out another type of sanctioning when imposing one of the disciplinary measures. If a judge has been pronounced a disciplinary measure with a final decision on a salary reduction in the amount of 15% to 30% of the monthly salary, the judge cannot be elected to a higher court, as a member of the Judicial Council, nominated as a judge in international court, director or deputy director of the Academy for Judges and Public Prosecutors[23], for the duration of the measure.

PROCEDURE FOR DETERMINING LIABILITY

The procedure for determining liability of a judge is stated in the Law on the Judicial Council. It prescribes that the procedure shall be initiated within six months from the day of learning about the conducted violation, but no later than three years from the day it had been conducted. It is urgent and of confidential nature, due to which the law prescribes that the procedure is conducted without public presence (except in case the judge personally requires for the procedure to be public) and with respect of the reputation and dignity of the judge or president of the court, while taking special care about protection of the personal data of the judge or president of the court as per the provisions on personal data protection.

The procedure is initiated upon elaborated request delivered to the Council and must contain: Name and surname of the judge or president of the court, address and place of residence, court in which the judge exercises the judge office, description of the violation, legal title of the violation with stating provisions from the Law on Courts and proposed evidence which shall be examined during the trial[24]. The evidence on grounds of which the request is based are given as an addendum to the request.

[22] Article 77 from the Law on Courts
[23] Article 78 para.2 from the Law on Courts
[24] Article 62 para.1 from the Law on Judicial Council

THE ROLE OF THE JUDICIAL COUNCIL

COMPOSITION AND WORKING METHOD

The Judicial council is an autonomous and independent judiciary body which provides and guarantees the independence and autonomy of the judiciary. It is consisted of 15 members, among which in the president of the Supreme court of the RNM and the Minister of Justice as ex officio members; members which are judges and elected for the Council from their orders, members representatives of the communities that are not a majority in RNM, as well as members elected by the Assembly of RNM and members elected by the Assembly of RNM upon proposal of the President of RNM. Out of all these members, only the ex officio members participate in the work of the Council without a right to vote and they do not participate in the work during Council session upon discussion and deciding upon a procedure initiated for determining liability, election or dismissal of a judge or president of a court.

Since the election, i.e. the proposal and background of the members are subjected to variations, their term is also differently defined. The members from the order of the judges have six-year term with a right for one re-election upon expiry of at least six years from the termination of the previous term in the Judicial council, the members elected by the Assembly of RNM have six-year term with a possibility for one re-election while the term of the ex officio members ceases with the termination of their office. Authorized for conduction and management of the Council is its president, who, as its deputy, are elected by the order of the Council members with a right to vote, elected by the Assembly of Republic of North Macedonia, and they have two-year terms without a possibility for re-election.

The authorization of this body is itemized in the Law on Judicial council and even though it is mostly recognizable as a control mechanism for the work of the judges, and by that, responsible for election, dismissal, sanctioning and assessment of the judges, it decides for revocation of the immunity of the judges, as well as upon request for allowing detention of a judge, but it is also included in the control over the operative working of the courts in the aspect of determining the number of the needed judicial posts per court, examination and assessment of the three-month and annual reports for the work of the courts, taking care of the reputation of the judges and the trust of the citizens in the judiciary, determining an orientation number of cases which should be solved by the judge on a monthly basis, examines the annual reports of the Supreme court of RNM regarding the determined ground standings and legal opinions upon issues significant for providing unity in application of the laws, for temporary removal of the judge from executing the judicial office, etc.

The Law prescribes that the Council is oblige to have a session at least on a monthly basis, and this session should be public, and during it, the Council shall discuss upon each and every complaint and petition filed by the citizens and the legal entities regarding the work of the judges, presidents of courts and the courts. The public may be excluded with a decision reached by the Council with a two-third majority of votes from the total number of members with a right to vote, due to protection of the reputation and integrity of the judge or candidate for a judge. In case of reaching a decision by vote, the Council is obliged to make the voting upon the decision public. This exclusion of the public from the Council sessions is not applicable in the cases for election of a judge or president of a court.

ASSESSMENT OF THE WORK OF THE JUDGES

The Council monitors the work of the judge or president of a court through regular and extraordinary assessments. They are assessed on grounds of the results from the success at work, through the determined qualitative and quantitative criteria as per law. Through this, an affirmation for the judiciary is provided, as an independent and autonomous power, the personal motivation of the judges is strengthened, further professional advancement is provided for the judges on grounds of their personal and professional capabilities free from any influence, but this also strengthens the independence and impartiality of the judges during execution of their office. This process is being conducted carefully In order to achieve appropriate professional and functional balance, so that the independence and autonomy of the judges during their work would not be disturbed.

The assessment as a process is necessary since it can provide the objective standing for the quality and efficiency in the work of the bearers of these functions, but to also leave an impression that these persons are not left only to enjoy their discretional authorizations arbitrarily, but that they are practiced in accordance with law and in the best interest of the citizens in relation to the protection of their rights and freedoms during the administering of justice. Due to these reasons, and for the needs of functioning of the judiciary, the Law prescribes regular assessment, which is conducted once in every four years, and for the work of the judges and the president of the court for the previous four years, as well as extraordinary assessment, which is conducted in cases when the judge had applied to be elected in another or higher court, for election of a president of a court or for a Council member.

The assessment is conducted on grounds of developed qualitative and quantitative indicators. The qualitative criteria for assessment include: - the quality of running the court procedure in which it is assessed: the ability to argumentation, readiness to conduct the hearing, compilation of minutes and hearing of parties, readiness to make procedural decisions, as well as the ability to resolve conflicts; quality of prompt handling of court cases in relation to: respecting the legal deadlines for undertaking procedural actions in the procedure, respecting the legal deadlines for adopting, publishing and drafting the decisions, the duration of the court procedure, and quality of the judge's work in the part of the number of reversed decisions due to a serious violation of the procedure in relation to the total number of resolved cases.[25]

The determination of the quality of leading a court proceeding is conducted by five-member commissions from the directly higher court, formed by the Council, through an inspection of five randomly selected cases by an automatic computer system the for management of court cases and five cases chosen by the judge him/herself, during the assessment period. The quality of on-time actions in the cases is assessed through an inspection of the data from automatic computer system for management of court cases. The manner of work for these commissions is anticipated in a manner that each member shall assess the work of the judge in each individual case, and the final grade is received as a middle value from all of the individual values upon all cases by each member of the Commission. After that, the Commission delivers the middle assessment grade to the Council. The forms and the methodology for assessment are reached by the Council, on grounds of an opinion from the general session of the Supreme court of Republic of North Macedonia.

On another hand, the quantitative assessment encompasses evaluation of: the scope of work valued through the number and type of solved cases in relation to the orientation number of cases which the judge is to solve monthly, received through the automatic computer system the for management of court cases; quantity of the work of the judge in regards to amended decisions in relation to the total number of solved case from the quota. The quality of the work of the judges when it comes to the nullified and amended decisions is assessed through an insight in the automatic computer system the for management of court cases in the court, while only the number of decisions against which legal remedies are allowed and have been amended due to misapplication of the material law are taken into consideration.[26]

As per Law, the Court reaches a summarized decision on the assessment of the work of the judge and president of the court, in which it determines positive or negative grade for the work and which, within eight days from its reaching, shall be delivered to the judge for which the assessment procedure was conducted. Upon the received decision, the judge is entitled to an elaborated objection to the received grade within eight days from its receipt, and upon this objection, the Court discusses it within seven days from its receipt and reaches a decision on accepting or rejecting he objection, or a decision for re-assessment. Further, against the decision upon the objection, the judge is entitled to an appeal within 8 days from its receipt to the Appellation Council. The Law anticipates that the Council is obliged to conduct the re-assessment of the work of the judge on grounds of a Report of the Commission composed of three Council members and which is free from the members who were included in the Commission that proposed the grade on grounds of the initial assessment, within 30 days from the day of reaching the decision for re-assessment of the work of the judge. Against this re-assessment decision, the judge is not entitled to an Appeal or an Objection.

[25] Article 80 from the Law on Judicial Council
[26] Article 86 para.4 from the Law on Judicial Council

NEW ASSESSMENT METHODOLOGIES

Bearing in mind that the promotion of the judiciary system and its functioning are a key prerequisite for the development of RNM as a democratic legal state and multicultural society of equal in their rights and freedoms citizens and for its Euro-Atlantic integration, the building of a system of autonomous, independent and impartial judiciary and institutions gravitating towards realization of its function of an effective, good-quality and just carriage of justice is the middle postulate of the rule of law principle and of the humane and sustainable development of the Macedonian society as a community based on the law recognized through respect of the highest general civilization values.[27]

The reaching and conduction of the new Strategy for the Reform of the Judicial Sector is significant due to the expected effect with it – maintaining and promotion of the achieved effects/benefits from the previous reform processes and activities, but also prevention from regression in the judiciary sector of the state, determined during the past few years. The new Strategy gives directions, paths for improving the judiciary system through overcoming the existing defaults from normative and institutional nature which are pressing through it, but prior to anything, it takes into consideration the ground problem of interference of the executive power and partisation as a reason for the regression and non-functionality of the judicial sector.[28]

Due to this, one of the goals of the Strategy is "re-assessment of the system of assessment of the quality and efficacy of the actions of the judges and public prosecutors", which further develops the issue on the assessment of the quality of work and the promotion procedure for the judges and public prosecutors, which, as per the current legislation does not provide objective criteria for defining specific and precise procedures. As a result of this, change of the evaluation system was also initiated so that it could better defined and understandable, and for the evaluation to be transparent.

The goal of the professional assessment of the judicial function is to improve the quality of the judicial justice. However, due to the lack of precise procedure for assessment of the work of the judges, in accordance with the international principles and standards, the Strategy for the Reform of the Judiciary Sector 2017-2022 anticipated revision of the system for monitoring the work and assessing the judges through combining qualitative and quantitative criteria.

Bearing in mind that the previous legal provisions which determined the qualitative criteria did not reflect the true quality of executing the judicial function, they had been revised with the legal amendments in 2018, and upon suggestion of the Venice commission, they were more precisely determined. Most of the criteria have been determined by law and have not been fully harmonized with the other procedures, such as the procedure for election of judges and initiation of a disciplinary procedure. For example, as a criterion for election of a judge in a higher court, it is anticipated that a positive grade for the work needs to be given, but also assessment of the expert knowledge and specialization in the judiciary, attendance during continuous trainings, additional work through mentorship and education, etc. These aspects are not considered when the qualitative criteria for assessment of the work of the judges were shaped, and they are quite important for an objective assessment of the quality of the judges and they shall be additionally determined with the bylaws which heed to be reached by the Judicial council.

- ***Methodology for assessment of the work of a judge on grounds of fulfillment of qualitative criteria for the work of a judge***

In order to improve the methodology for assessment of the judges up until highest level, during December 2020, the Judicial council, upon received positive opinion by the Supreme court of RNM, reached a new methodology for assessment of the judges.

The Methodology for assessment of the work of the judges on grounds of meeting the qualitative criteria for judicial work determines indicators for effective monitoring of the level of fulfillment of the first qualitative criterion for assessment of the work of the judge as per Article 86 para.1 from the Law on the Judicial council –

[27] Strategy for the reform of the Judicil Sector 2017-2022 with action plan
[28] IBID

quality of conducting a court procedure. It contains the manner of assessment and scoring points of the sub criteria and indicators by which the level of meeting the criteria quality of conducting court procedure is determined, through an insight in each individual case of the assessed judge, as well as the qualitative criteria from Article 80 para.2 and 3 from the Law – quality of prompt handling of the court case and quality of the work of the judge, which are evaluated through an insight in the data from the automatic computer system the for management of court cases by the Judicial council.

The system of assessment of the quality of conducting a court procedure shall be conducted through an insight in ten cases of the evaluated judge from the assessment period, five of which are received by random choice of the automatic computer system the for management of court cases (AKMIS system), and five are selected by the judge that has been subjected to assessment. The assessment is conducted by the Commissions for Insight and Assessment and they are composed of five members – judges from all of the appellation courts, i.e. from the directly higher court, and are established by the Council by random choice, for the basic courts and commissions composed of five judges of the Supreme court of RNM when the assessment needs to be done for the appellation court, as well as commissions for insight and assessment of judges for the Administrative court, composed of five judges from the Higher administrative court.

The sub criteria taken into consideration for determining the quality of conducting the judicial procedure are: the ability to argumentation, readiness to conduct the hearing, compilation of minutes and hearing of parties, readiness to make procedural decisions, as well as the ability to resolve conflicts.

Each one of these sub criteria has separately developed indicators that are examined. So, when it comes to the ability of the judge for argumentation, the Council had developed the indicators which direct towards justification of the statements in the summary of the decision which supports its dispositive; selection and analysis of the evidence examined during the case, reaching process decisions during the procedure against which an Appeal has been filed, referral to international legal standards and the practices of the international courts, including the practice of the ECtHR, and elaboration for the non-holding public hearing and elaboration on the (non)imposing a sanction to a state body. When it comes to the sub criteria readiness to conduct the hearing, indicators are developed to indicate on-time delivery and scheduling the hearings; correct and on-time determination of the participants of the procedure including the participation of third parties/interested parties; providing dignity and integrity of the parties and members of the procedure; undertaking process activities during prior examination of the lawsuit and on-time removal of the faults of the lawsuit (for cases of civil and administrative areas, as well as activities for preparing hearings for detention and deciding upon objections during the procedure. The quality of compilation of the minutes and hearing the parties is evaluated through an assessment as to whether the Minutes contains all of the necessary elements: easily understandable contents, notion for the undertaken activities for solving conflicts in the procedure and assessment of the relevance of the information stated in the minutes, especially of the statements of the parties given during the procedure. The preparedness of the judge for reaching process decisions is evaluated through reached process decisions against which the parties are entitled to a separate appeal and/or process decisions which may be appealed only with the Appeal to the Verdict; delivery of the lawsuit/appeal for a response; delivering briefs and proposals for getting the parties familiarized with them; dismissal of the lawsuit due to lack of court jurisdiction and other reasons; deciding upon temporary security measures and imposing a sanction to a state body. And finally, the ability of the judge to solve conflicts is measured through the indicators related to the maintenance of the order and discipline in the courtroom; using the authority of a judge, the manner and style of expression in the courtroom for providing and maintaining the court integrity; removal of a previously warned person which had obstructed the work in the courtroom; providing publicity for the hearing; informing the parties about the possibility for judicial settlement, i.e. reconciliation of the parties.

As a part of the approach for examination of the judges by the Judicial council, upon the opinion received by the general session of the Supreme court of RNM, a Methodology was adopted for the assessment of the presidents of courts. Similarly, an Internal plan was reached for monitoring and assessment of the work of the judges in which an additional approach for assessment has been added as per the announced “check” and “clearing: of the judiciary by the executive power.

The internal plan on monitoring and assessment of the work of the judges, presidents of courts and courts is a document whose main goal is to provide further improvement of the quality of work of the judges, monitoring

and assessment of their results and effectiveness of the undertaken measures and activities by the Judicial council of RNM.

The initial goal of this plan is primarily a realization of the priorities as set with the Strategic plan of the Judicial council of Republic of North Macedonia, such as improvement of the system for monitoring and assessment of the work of the courts, judges and presidents of courts, improvement of the independence of the judiciary and strengthening the transparency in order to increase the trust of the citizens. In this manner, a check of the cases for which the citizens have filed complaints to the JCRNM, cases which are considered as so called "old cases, cases that had reached the statute of limitation are at risk from reaching the statute of limitation, cases for which there is doubt for acting in accordance with the laws, cases that woke interest in the public, cases upon which the Department for organized crime and corruption in the Basic criminal court Skopje, separate investigative measures, decisions regarding detention, decisions where the appellation courts have amended a verdict regarding the criminal sanction, check up on cases which failed to meet the deadlines from the moment of hearing a session before the Supreme court of RNM until verification of the verdict, cases for which lifetime imprisonment is prescribed, insolvency cases and cases in which requests are submitted and decisions are reached for exemption of judges. The check up on the cases will be conducted regardless of the stage in which they are – whether current or archived cases.[29]

[29] Internal plan for monitoring and assessment of the work of the courts, judges and presidents of courts for the period from 01.01.2021-31.12.2021, no.01-1980/1 from 21.12.2020., Judicial Council of RNM

ASSESSMENT OF THE WORK OF THE JUDICIAL COUNCIL

For the needs of this analysis and in order to receive more detailed overview of the work of the Judicial council and the effects of its activities on the reputation and quality of the judiciary, the Coalition All for Fair Trials started with monitoring of the Judicial council sessions through physical presence of team members. For the purposes of this monitoring, the monitors noted several indicators related to assessment of the transparency and publicity of the work of the Council, as well as several indicators related to the organization of the work of the Council, but also related to the quality of the discussions of the Council members, especially in regards to the elaborations given during the vote for election of judges and career advancement of the judges. Within the monitoring process, the Coalition team monitored a total of 32 sessions of the Judicial council in the period from September 2020 until the end of July 2021.

This approach was supplemented with an assessment of the work of the Judicial council, through interviews with current and former judges, for which aim we used anonymous half-structured interview. This way, we were enabled to collect relevant data for the assessment of the perception of the judges regarding the transparency of the Council, its communication with the public, but with the judges as well, inclusion and information of the judges about the work of the Council, as well as perceptions of the judges about regarding the quality of the work of the Council, through an evaluation of the procedures for election of judges, career advancement, dismissal and disciplinary liability, as well as for regular and extraordinary assessment of the judges by the Council. In order to conduct this activity, we had collaborated with the branch of the Association of Judges in the Basic criminal court, through which we were able to conduct interviews with 12 judges; we also conducted interview of two judges which are not members of the Association of Judges as well as two former judges, or a total of 16 judges.

DATA COLLECTED FROM MONITORING OF THE SESSIONS

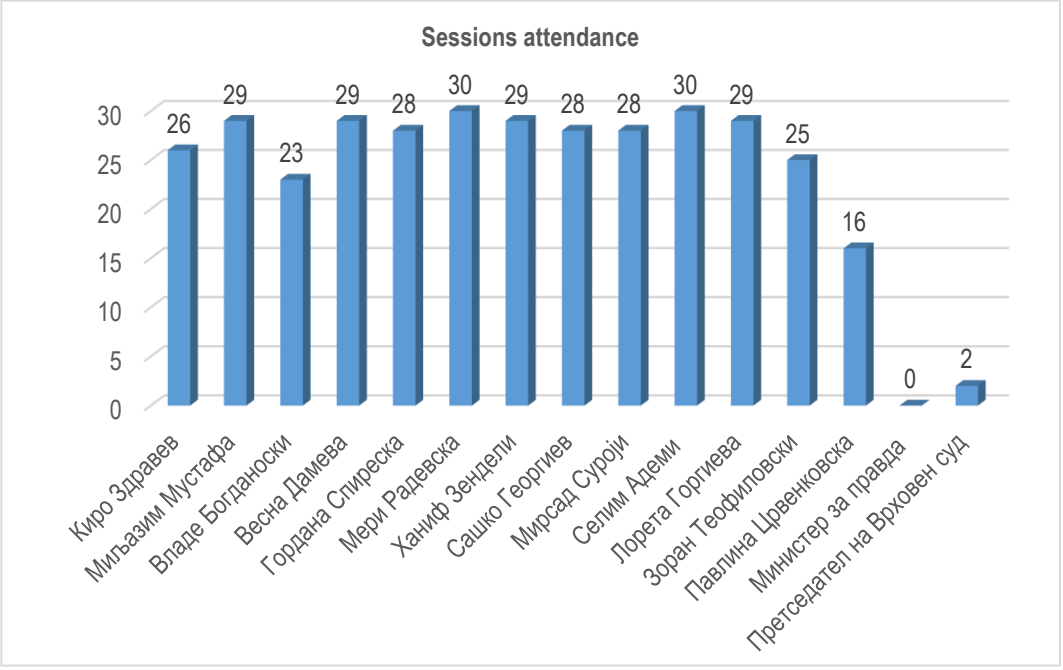
Within this project, we monitored 32 sessions in the period from September 2020 until July 2021, or around 3 meetings per month (2,9) on average, which is a satisfactory work flow for the Judicial council. Before the conduction of each session, the Council had timely published a notification with draft-agenda for the scheduled session, as well as date, time and venue for the session, by which the public could easily be informed and could uninterruptedly attend the meetings. After the closure of each session, the Council published information about the held sessions on its website, with short information about the reached decisions by the Council during the session. With this, the Council satisfied the ground conditions for public and transparent work during its sessions, with brief information about the reached decisions, but the spacious and technical capacities at disposal of the Judicial council remain as a challenge, and they can be an obstacle for the attendance of all interested members of the public, especially if taken into consideration that the hall in which the meetings are held cannot accommodate bigger number of persons in the capacity of a public. Due to this, it is essential that the Council put continuous efforts for finding alternative means of providing access of the public to its sessions and its work, as well as for intensive communication between the Council and the public. In this manner, we are greeting the efforts put by the Council to cooperate with the media, as well as with the specialized civil society organizations working in the area of judiciary, but it shall be noted that this communication is complementary to the source communication between the Council and the public and with its transparency, and cannot be treated as a substitute, or alternative to the latter.

- ***Conditions for holding public sessions***

Since the period for monitoring of the Council sessions was during the COVID-19 pandemics, for which suppression there were several caution measures undertaken, the sessions of the Judicial council were mainly held with physical presence, but also several sessions were noted where some of the Council members attended online through an audio-video conference connection. The Coalition team had noted aggravated conduction of these meetings where some of the members attended through audio-video conference connections, which were mainly due to equipment and internet connection problems. Due to this, we once again state the need for strengthening the material and technical capacities of the judiciary bodies, in order to enable uninterrupted conduction of their work in extraordinary conditions, when physical attendance is impossible or is seriously

aggravated. The Council sessions have audio recordings, and afterwards written minutes are prepared, but these minutes, both the audio recording and the written minutes are not published or available. Since the Council sessions are public, the availability of these minutes, with an exception for the parts where the public is excluded, may be appropriate alternative to the physical presence of the public during the sessions, which is of utmost importance considering the previously stated problems with the limited capacities of the Judicial council hall to accommodate bigger number of members of the public, but also to the everlasting COVID-19 pandemics in the country.[30]

Despite the special challenges imposed by the pandemics, one could notice that the Judicial council members are regularly attending the public sessions, which is a good indicator, but what draws the attention the most is the absence of the Minister for Justice, as well as of the president of the Supreme court, which are ex officio members. This is good practice and is in line with the given recommendations by the Venice commission which are related to even complete removal of the ex officio members from the Council, especially the Minister of Justice or any other representative of the executive power. The absence of the Minister of Justice from the sessions eliminates the possibility for influencing the work of the council members just with its presence, but more importance, improves the impression amongst the citizens about the independence of the judiciary from the executive power, especially for the independence of the Judicial council.



WORKING METHOD FOR THE PUBLIC SESSIONS

However, apart from positive practice in regards to the preparations of the sessions noted above, the monitoring of the Coalition noted that the Judicial council works upon relatively limited items for discussion. So, in the period from September 2020 until the end of July 2021, the Council had discussed only upon 6 discussion items, as follows:

- Complaints filed by citizens on grounds of the work of the judges
- Elections and ascertaining termination of offices for judges and judge-jurors
- Establishing commissions for determining liability and conducting the procedures for determining liability of judges

[30] For more information, see: Ledi Bianku, Nula Mol, Hannah Smith, Covid-19 and its impact on human rights- **An** overview of relevant jurisprudence of the European Court of Human Rights**,** AIRE Centre, September 2020

- Determining the amount of traveling expenses and amounts for renting an apartment for judges
- Annual reports on the work of the courts, as well as
- Methodologies for evaluation of judges and courts presidents

As per this, one can immediately notice the lack of items for discussion related to the increase of the judicial budget and reaching the legally anticipated minimum of 0,8% of the GDP, lack of any discussion regarding the improvement of the material-technical working conditions in the courts, as well as any other activities related to the capacity building of the judiciary or improvement of the conditions for exercising the judicial office. These activities are essential for surpassing many conditions that are detected through the monitoring of court proceedings by the Coalition, but at the same time, for numerous problems addressed by the judges themselves. It can be concluded that the Judicial council directs almost all of its resources towards everyday work, which results with omission of items for discussion regarding undertaking activities towards promotion of the independence and the professionalism of the judiciary as well as for decreasing the risks from corruption and improvement of the trust of the citizens in the judiciary. This condition leaves an impression of stagnation and passivity in handling the challenges faced by the judiciary, as well as the continuous loss of the trust of the citizens in the judiciary system, which requires improvement of the capacitates of the Judicial council for conducting additional activities apart from these related to the everyday work of this body, in order to achieve real, sustainable and long-term solutions for the promotion of the judicial profession. One positive example in this direction is the discussion and adoption of the Methodology for assessment of a judge on grounds of fulfillment of qualitative criteria and the Methodology for assessment of the presidents of courts, but even in this case, it is a discussion held during only one sessions, and not all of the Council members participated at the discussion. This can justifiably lead towards concerns about the comprehensiveness and dedication of the Council members during reaching decisions for such key issues which may have large effect in the practice and everyday work of the judges, and by that, to the level of justice received by the citizens which act as parties in the court proceedings.

What draws the attention even more is that prior to every session, a meeting between the Council members is conducted, which of course, is closed for the public. These meetings are significantly long, especially before sessions for election of judges, or election of judges in the higher courts, which, together with the lack of more detailed elaborations of the decisions of the Council, as well as with the inactivity during discussion of some Council members, may leave a concern with the public that these meetings are for reaching an agreement between the members behind closed doors for the issues that would be discussed during the session. This imposes a risk that the public accepts these meetings right before the Council sessions as the true sessions during which the members exchange their opinions and standings, while the session is only previously agreed formality. This leads to the conclusion that the Judicial council is still not completely used to complete publicity and transparency of its work, including these subtle or seemingly risk-free behaviors which could leave wrong impression with the public, and to lead towards additional decrease of the trust of the public in the judiciary.

❖ ***Work upon complaints regarding the work of the judges filed by the citizens***

The complaints filed by the citizens regarding the work of the judges or the presidents of the courts are a guaranteed mechanism for strengthening the public control over the work of the courts, and at the same time are a solid tool through which the Judicial council may be familiarized with the perception of the citizens about the work of the judges, the problems and difficulties faced by the judges during their work, and the obstacles for access to justice faced by the citizens. As per Law, the Judicial council is obliged to an at least monthly session for discussions for each complaint and petition filed by the citizens and legal entities regarding the work of the judges, presidents of courts and courts, as well as for postponing the court proceedings, and to decide for each separate complaint and petition, within 60 days upon their receipt at longest. What is interesting here, is that the Law on Judicial council of Republic of North Macedonia makes a distinction between the complaints against the work of the judges, which are examined as per the Law on Acting upon Complaints and Proposals, as well as upon the Requests for determining liability of a judge as per the Law on the Judicial council of the Republic of North Macedonia. In the procedures upon complaints filed by the citizens, the Judicial council appoints one member who shall act as a reporter and who shall examine the case, and if needed, shall require additional explanation and evidence, both from the submitter and from the official against which the complaint had been submitted, while in the procedures for determining liability of a judge, a commission of reporters is established, which shall gather evidence needed for determining the condition of the request. What differs these two procedures the most is that

the complaint does not need to be supported by evidence, and there is no need for it to be filled with specific data anticipated for the Request for determining liability of a judge, such as: Name and surname of the judge or president of the court, address and place of residence, court in which the judge exercises the judge office, description of the violation, legal title of the violation with stating provisions from the Law on Courts and proposed evidence which shall be examined during the trial[31]. What differs them additionally is the outcome from these procedures in case of determined violation of a right – in case of violation in cases of determining liability of a judge, it may result with disciplinary violation or dismissal, while in the procedures upon complaint, the body needs to undertake activities to remove the violation. However, the biggest difference between these two procedures is the provision from Article 10 from the Law on Acting upon Complaints and Proposals, under which, if there is another procedure for the same issue, it shall be solved in that procedure, for which, the submitter of the complaint will be informed, and the complaint will not be elaborated further except in case of proposed new facts or circumstances. The law does not leave any possibility for the Judicial council to conduct prequalification of the complaint to a request for determining liability, so in case when after the submission of the complaint it is determined that there are grounds for liability of the judge or president of the court, it remains unclear how would the Council react. Bering in mind that the violation may occur with a final court decision, it is unclear how would the Judicial council or the court that had reached the decision (as a body which through its actions violated someone's right) reimburse it upon the conducted procedure upon a complaint filed by a citizen. This even more states the need for introducing clear distinction between the complaints and request for determining liability of judges. This situation may confuse the citizens in relation to what they want to achieve with their addressing to the Judicial council, as well as how and under which conditions they can realize it.

In this manner, when complaints submitted by citizens about the work of the judges are examined, quite often during sessions, the Council member which had been appointed as a reporter just determines whether the complaints are grounded or ungrounded, without an explanation as to what is the complaint about, and without any explanation offered regarding the reasons that make that complaint grounded or ungrounded. This may be exceptionally problematic with the previously stated fact that the Council has a meeting before the sessions in mind, so the impression of the public regarding previous agreement between the members and holding the public sessions as a formality, may be even strengthened. After such referral, the Judicial council votes upon the proposal of the reporter and it is adopted without an exception and without a discussion. In this manner, the public cannot be familiarized with the main issues raised by the citizens in the procedures, nor to be familiarized with the reasons why the Council holds the opinion that they shall be rejected. As an example for such behavior of the Judicial council are several sessions where from 60 to 102 complaints were referred during each session, all of which were rejected as ungrounded, and none of the Council members required to speak regarding the complaints. This behavior of the Council may leave an impression of mechanical and formal action upon the complaints upon which there is no discussion amongst the members, nor is their content elaborated, and this may contribute towards additionally discourage the public to use these control mechanisms whenever they believe to have a problem with exercising their rights in the courts. On the other hand, the great number of complaints submitted to the Council, without even examining the grounds or justification of the complaints, shall be an indication for the perception of the public regarding the judiciary, due to which it is important for the Judicial Council to examine these complaints thoroughly as well as to initiate public discussions upon them in order to find the real reasons due to which the perception of the public is as it is, and with that, it can find appropriate activities for the promotion of the conditions in the judiciary.

As an example for such discussions of the council members regarding the complaints, a case had been reported upon which a complaint had been submitted in relation to a case which lasted for more than 16 years and in which the Appellate court had decided for 5 times, and the Supreme court had decided for 3 times. Although unfortunately even in this case the Judicial council stated that it could not act since the case had become final, it was stated that the Judicial council needs to check why the case was returned by the Appellate and Supreme courts for so many times, as well as what is the reason for the duration of the procedure. What is concerning, is that the Judicial council quite rarely manages to find space where it is needed to conduct additional supervision and checking of the work of certain judges or courts, such as the cases where a great number of complaints are

[31] Article 62, para. 1 from the Law on Judicial Council of Republic of North Macedonia, Official Gazette no. 102/2019

submitted by many citizens against one judge, regardless of the fact that the complaints have been rejected. Even in this case, where the Judicial council had recognized the need, it did not undertake any specific activity, nor it gave any direction, nor was the "check-up" of the case about which the Council members stated that needs to be done was included as an item for discussion during the sessions that followed.

In this context, it is interesting that during one session, from 88 complaints subject to discussion, only one was elaborated in a manner to be explained in its essence, and only for that complaint was initiated a discussion amongst the Council members. The complaint that had been discussed and elaborated was referring to the case which had great attention amongst the professional and general public, and was regarding a stated sanction for a perpetrator of a traffic accident with deathly consequences, and this example only shows the significance of the public interest for the work of the Judicial council and the positive effect it has on the work of the Judicial council, and by that the need of strengthening the civil supervision over the work of the Council.

During the monitoring, 3 complaints submitted by the citizens were accepted, but 2 of them were regarding judges which have already been dismissed because the Council had already decided upon the same issues upon a request for determining liability of a judge. This situation indicates exceptionally low percentage of accepted complaints of the citizens by the Judicial council, which at the same time corresponds to the statistics from the Annual reports of the work of the Judicial council[32], according to which, the percentage of accepted complaints annually is 0,5% on average. However, due to the lack of appropriate reporting and evaluation of the decisions for accepting or rejecting the complaints, the Coalition is unable to give its opinion regarding the reasons for such high percentage of rejected complaints submitted by the citizens.

The complaint that had been accepted was regarding a case which reached the statute of limitation due to failure of the judge to act, but even in this case there was no detailed elaboration by the Council why was this complaint accepted, nor what would be the next steps undertaken by the council upon its acceptance, in order to reimburse the damage, i.e. to remove the obstacles due to which the party failed to exercise its right.

In the situations were a brief summary is given on the reasons behind the rejection of the complaints, it had been noted that the main ground for rejection is Article 10 from the Law on acting upon Complaints and Proposals, and all of the complaints are rejected because they are referring to issues upon which an Appeal had been submitted to a higher court. In this manner, it is important to state that these limitations, i.e. grounds for rejection due to previously initiated other procedure do not exist in cases of the requests for determining liability of a judge, so in one case, a judge had been dismissed due to reached non-final decision, which at the same time with the procedure before the Judicial council had been sent for an Appeal to the higher court, which later amended the decision. This once again emphasizes the unpredictable and confusing nature of the two parallel procedures for determining liability of a judge and procedures upon complaints against the work of the judges.

- ***Publicity of the sessions***

The sessions of the Council are mainly public, but during some sessions, in certain parts the public had been excluded as per the legal grounds stated in the Law on Judicial council of the Republic of Macedonia, while the reasons for exclusion of the public during the sessions attended by the Coalition team members were due to exposure of personal data and protection of the integrity of the judges. The Council practiced this exclusion of the public each time it had discussions about:

- Reports of the Commissions in the cases repeated due to final verdict of the European Court of Human Rights in Strasbourg,
- Notification from the Commission of reporters and upon reports of the Commissions for determining liability of a judge/court president and
- Establishing commissions of reporters upon filed request for initiating procedure for determining liability of a judge/court president
- Reaching a Decision upon filed request for exclusion of Judicial court members from acting upon a certain case.

[32] Available at http://sud.mk/wps/portal/ssrm/sud/izvestai

The fact that the Judicial council excludes the public from the sessions exceptionally rarely, and always in need for protection of the integrity of the judges is encouraging. But this procedure deprives the public from information about the manner in which the Judicial council decides upon liability of the judges, as well as about the argumentation given by it regarding the reached decision and the imposed sanction for the judges. A specific thing that needs to be stated in this context is that in the cases when the Council decided upon the liability of several judges in a procedure closed for public, the outcome of the procedure and the names of the dismissed judges were disclosed for public within just a few hours after the closure of the session. This not only leaves reasonable doubt that the Judicial council itself shares with the public information that as per the Law are secret, but also, with the information about the outcome of the procedure without an information about the reasoning behind such decision, it only goes into direction of disruption of the integrity of the judge who still is not dismissed with a final decision, and the integrity of the Judicial council. In this context, and as per the accepted system of professionalism and merits, the public should be much more entitled to the reasoning behind the decisions of the Judicial council upon dismissal of the judges than to the names of the dismissed judges, especially since the Law protects the personal data of the judge, but not the reasons for dismissal, or the argumentation and elaborations given by the Judicial council.

- ***Election of judges and presidents of courts, as well as election of judges in higher courts***

In the period during which the monitoring of the work of the Council was conducted, it had elected 15 presidents of courts, including a president of the Supreme court of Republic of Macedonia. When it comes to the election of presidents of courts, the impressions of the monitors are similar to those regarding deciding upon complaints, which is –that once again there is a lack of satisfying level of discussion amongst the members of the Judicial council. As per the Law on Judicial council of Republic of North Macedonia, i.e. Article 51, para. 3, every member is obliged to orally elaborate its decision, the members give brief explanation, but only if they have voted "pro" choice, and not if they voted "con". This is mostly due to the nomotechnical formulation of the legal text, as well as due to the restrictive interpretation of the provisions that the members are obliged to elaborate the decision for election, and they are not obliged to do so if the candidate was not elected, i.e. if they do not vote for the proposed candidate. In practice, this leads to situations where out of many applied candidates for president of a court, none shall be elected, and at the same time no elaboration would be offered as to why the Council had decided not to elect any of the proposed candidates. One specific example for this behavior can be seen from the public session held on 15.02.2020, where they were to decide upon election of a president of the Basic court Gostivar. Four candidates responded to the public call, but none of them was elected because none of them received the sufficient number of votes, but it is interesting that upon this issue, the members of the Council did not initiate any discussion, nor have they announced why no one is elected. In addition to this, on 05.07.2021 the Judicial council unanimously elected the acting president of the Basic court Gostivar, once again from amongst 4 applied candidates, but because now he was elected as a president of the court, each member of the Council was obliged to elaborate its decision, i.e. to elaborate why did he/she vote for this candidate. However, the elaborations offered by the Council were very abstract and generic, and basically all members gave the same argumentation, i.e. that this candidate had been acting president of the said court for a longer time, due to which he has more experience than the other candidates, as well as general assessments that the candidate performed his work well.

A similar situation has been detected regarding the election of a president of a court of the Basic court Vinica, where in three subsequent public calls, no one from the candidates applied for the position as a president of the court had been elected, but apart from the emphasize of several Council members that a president of the court needs to be elected very soon, no explanation was provided as to why the election had not been conducted until now, as well as why none of the applied candidates had not been elected. All this significantly increases the unpredictability of these procedures for election, clarity of the criteria for election of a judge and of a president of a court, as well as the needed competences, qualifications, professional and personal qualities of the candidates. All this, unfortunately, unavoidably leaves an impression of existence of other factors when it comes to electing judges and presidents of courts, as well as possible influences on the Judicial council due to the lack of public debate with clear argumentation of the decisions reached by the Council. In this context, there was an exceptionally specific situation during the session held on 12.04.2021, during which a discussion and election for acting president of the basic court in Debar was anticipated, in order to provide for its uninterrupted operating. The first candidate was proposed with an explanation that the judge acts upon civil cases, and in his department

there is only one other judge, while the criminal department has only one judge. At the same time, it was stated that the candidate had already been a president of that court, and is well familiar with the work that needs to be conducted. After that, another member of the Council proposed another candidate for president of the court, which initiated argument between several Council members regarding the ethnic background of the second candidate. The discussion did not tackle the professional or personal capabilities of any of the proposed candidates, and was ongoing exclusively on grounds of the ethnic background of the candidates. The session was interrupted, the item was removed from the agenda, and the Council members retreated to discuss at members meeting behind closed doors. This action of the Council leaves an impression of unprofessionalism and truly for attempts by the Council to hide from public eyes the real reasons for reaching certain decisions, and in the same time it decreases the significance and importance of the public sessions, which instead being the key manner to overcome the differences between the Council members, are used only when the members have shaped, more or less, unified opinion.

The situation is no different when it comes to election of judges, and in these cases the Council members provide no elaborations in cases of voting against a candidate. This may lead towards election of a candidate which at the prepared ranking list is ranked lower than the not elected candidates, in which cases an elaboration would be of exceptional significance, both regarding the election of these candidates and regarding the non-election of the other, higher-ranked candidates. This is even more relevant considering that as per the systematization produced by the Judicial council, there are 113 judges less than needed as per the assessment of the Council.

When it comes to election of judges and presidents of courts it is exceptionally significant to assess the quality of the elaborations offered by the Council members any time a candidate has been elected for a judge or president of a court. Since the Law anticipates compulsory oral elaboration of the votes for election of a judge, the members always stick to this rule, while in practice there were many abstract sentences used as an elaboration, summarized sentences or sentences which are repeated for each candidate, or exceptionally brief summaries given in one sentence. Some of the most common elaborations used by the Judicial council members are:

- many-years long experience of the judge
- successful at work
- previous conduction of the office – court president
- positive assessment for the work
- no scandals related to the conduction of the work
- good professional CV
- high moral integrity
- the candidates have completed the training at the Academy for Judges and Public Prosecutors and they shall be elected as judges.

Since these elaborations are repeating for more candidates, and are given by different Council members, accompanied by lack of elaborations in the written decisions on election of judges, lack of any elaboration for the candidates which did not receive votes as well as the exceptionally rare calling upon specific personal qualifications or experiences by the CVs of the candidates, all this in practice leaves an impression of quite unserious approach by the Council regarding the election of the new judges. The lack of appropriate elaboration of these decisions, seriously aggravates all of the other attempts for improvement of the accountability and transparency of the Judicial council, and with that the improvement of the impartiality of the judiciary, as well as the perception of the public regarding the work of the Judicial council.

Another thing that is noticeable in the decisions for election of judges and presidents of courts is that the used summaries are not in conformity with the given directions with the Rulebook on the manner of ranking the candidates from the Academy for Judges and Public Prosecutors, which contains needed and specific aspects which each candidate needs to possess in order to be elected as a judge, in relation to the ethical and moral standards, approach to justice, motivation for conducting the office, communication skills as well as the social competences of the candidates. The authors of this Analysis share the opinion that the elaborations given by the Judicial council members fail to appropriately address the reasons due to which the members consider that the candidate fulfills the specific and needed aspects to be elected as a judge, as well as the reasons due to which the candidate should have priority amongst other candidates.

❖ ***Determining termination of office***

As expected, the procedures where termination of office shall be determined are going smoothly, and since in these procedures the need for discussion is decreased to the minimum, it is also expected that the decisions are reached easily and quickly. An exception from this are the procedures for determination of liability of judge, but since they are conducted without public presence, the Coalition was unable to monitor and analyze the acting of the Council in these cases.

However, in practice, interesting situations are found regarding termination of office, including for judges who have been dismissed and who require repetition of the procedure. Former judges that had been convicted to jail, on grounds of which they were dismissed from office, filed a request to the Judicial council for repetition of the procedure for determining liability, since the verdict by which they had been convicted was later nullified. The request for repetition of the procedure is filed on grounds of the fact that the legal grounds for dismissal of a judge no longer exists, but the Judicial council with 9 opposite 2 votes decided that there is no legal possibility for repetition of the procedure for dismissal, except in case of a verdict of the European Court of Human Rights, and it decided to dismiss the requests for repetition of the procedure. With this, the Judicial council actually pointed out to two legal provisions imposing imbalanced approach, i.e. the decisions upon dismissal of the judges as per Article 72, para. 4 from the Law on the Judicial council of Republic of North Macedonia may be nullified upon appeal only in case of a grave violation of the procedure, and not in case of wrongful determination of the actual situation. In addition to this, as per Article 73 from the Law, the procedure for dismissal may be repeated only on grounds of a final verdict of the European Court of Human Rights. This effectively blocks the rights of the dismissed judges if it is further decided that they had been in a legal procedure but without any legal grounds for dismissal. Although this setting may be justified with the fact that the Judicial council is the sole body authorized to decide whether the legal conditions for dismissal have been met, while the Appeal Council of the Supreme Court may only decide upon the process aspects and the equity of the procedure, this situation leaves wide discretional freedom for reaching a decision by the Judicial council. Considering the fact that these procedures are conducted freed from public, this even more emphasizes the significance of the elaborations of the decisions given by the Judiciary council and their availability for all interested parties.

Another specific situation was noted in a case of determining termination of office of a judge-juror who had met the criteria for retirement. In this case, the president of the court contacted the Judicial council with a request for opinion whether it is necessary to start a procedure, i.e. to submit a proposal for termination of office for the juror. The president of the court did not submit any formal proposal for initiation of a procedure for determining termination of office, because this juror was acting in high-profile cases, and it could impose high costs and interruptions of the procedure, and all of that could affect the trust in the judiciary and the perceptions of the public. Even the Judicial council members were not clear as how to act, and they had unanimously stated that the president should not require opinion from the Judicial council in cases where the law is clear and that they should inform him to file formal proposal for initiation of the procedure for termination of office for the juror. This situation also showed another inconsistency of the Law on Courts, as per which a juror can be a person not older than 60 years of age as per Article 42 from the Law, for a term of 4 years as per Article 49, but the term of the juror shall be terminated in case of turning 60 years of age as per Article 80. This appoints towards possible need from intervention in this part of the law in order to avoid similar situations in future.

DATA COLLECTED THROUGH INTERVIEWS WITH JUDGES

Bearing in mind that the Judicial council is an independent body of the judiciary which shall provide and protect the independence and autonomy of the judiciary, as well as that the majority of the members of the Judicial council are judges, and that majority are members elected by the judges themselves, the Judicial council has a great responsibility for improvement of the quality of justice in the courts, as well as for improvement of the trust of the citizens in the judiciary. Consequently, the perceptions of the judges for the work of the Council are exceptionally important and they can justifiably be compared with the perceptions of the citizens of the work of the Assembly. On the other hand, the inclusion of the judges in the work of the Council, as well as the possibility for them to monitor and evaluate the work of their representatives has a great role in creating a pressure for improvement of the work of the Judicial council as well as for strengthening the integrity, transparency and accountability of its members.

❖ ***Judges' perception of the publicity and inclusivity of the work of the Judicial council***

As previously stated, for this research, we used the methodological approach of half-structured interview, through which we should assess the judges' perceptions on the work of the Judicial council and the influence it has on establishing the Merit system, and with that on strengthening the quality of justice in the courts. So the first set of questions from the interviews aimed to assess how much were the judges familiar and included in the work of the Judicial council. This set of questions provided us with various responses by the judges, which was expected, if we take into consideration that a separate factor impacting this indicator is the shown interest of the judges for the work of the Judicial council. Three judges were not at all familiar with the current activities of the Judicial council, and they consider the lack of proactive engagement by the Council to inform the judges with its work and more intensive communication with the public as a reason for that, as well as the lack of personal motivation to visit the web-page of the Judicial council or to otherwise personally gain information about the work of the Council. The other judges gain information about the work of the Judicial council on their own initiative, through regular visits to the web-site, but they consider the information published there as only basic information necessary to provide some basic level of transparency of the Council. Three judges consider this as a demonstrated improvement for the Judicial council and they state that there is sufficient information about the work of the Council, including the ongoing activities, so that the judges could be informed in a timely manner, but they also think that the transparency can still be upgraded.

> *„The basic information is published at the web-site, which is good, but I think that there should be more notifications and more detailed announcements. As far as I know, the Council has employed a spokesman, so a more intensive and better communication can be established with the public, but also with us, the judges "*

With the significance and role of the Judicial council in the judiciary system in mind, it is essential that it has good communication with its constituents, i.e. the judges, as well as with the Association of Judges, which has been recognized with law as a professional civil society association of the judges. The consultations with their constituents, and also the familiarization of the Judicial council with the real needs and boundaries faced by the judges is the key in the process of providing appropriate working conditions, but also in the improvement of the independence and professionalism of the judges. In this manner, the judges had expressed their discontent from the level of communication between them and the Judicial council, and all of them, without any exception, stated that this communication is not at all on any satisfactory level. Even 9 of the judges stated that the communication and consultation processes of the Judicial council with the judges do not exist at all.

> *„The Judicial council consults us only if a complaint is filed against us, or if a procedure for determining liability is initiated. For anything else, no one has come to talk to us, we have not been consulted for any issue. "*

It is interesting that some of the judges consider the lack of communication of the Judicial council with the judges as an attempt to avoid giving impression for conflict of interest, especially considering that the Council is authorized to elect judges for the highest courts, as well as to impose disciplinary measures and to completely dismiss judges. This situation is supported by the fact that the members of the Council which are elected from the judges usually create different, more friendly relationship with the colleagues from the court in which they worked, so they often limit their contacts with their colleagues in order not to leave an impression that they are favoring them.

„We as judges keep our distance from the Judicial council members in order to eliminate any doubt about any influence at work, or to avoid creating an opinion that we would require a service or some ties from the colleagues."

This situation undoubtedly shows that there is a need for strategic and long-term systemic approach for creating various communication strategies as well as formal channels for consultation processes with the judges by the Judicial council. This would encourage the communication between the Council and its constituents; while at the same time would avoid the possibilities for sending unprofessional impression or inappropriate communication between the Council members and the judges. In this manner, the Association of Judges may act as a mediator for the communication, but the judges have assessed as unsatisfactory the communication between the Council and the Association, because it is almost identical as the communication between the Council and the judges. However, 5 of the interviewed judges stated that they were not sufficiently informed about the work of the Association of Judges, so they state that it may be that the communication between the Council and Association to be better than they thought. In this manner, it was stated that the communication between the Council and the Association cannot replace the communication with the judges themselves, since the Association is not a formal representative of the judges, and not all judges are members of the Association, so this could prevent them from effective participation in the consultation processes.

- ***Judges' perception of publicity, transparency and accountability of the Judicial council***

The impressions of the judges regarding the communication of the Judicial council with the public are not much different from the previously stated ones, but unlike the previous, this set of questions provided visible differences in the impressions of the judges. Two of the judges consider the publishing of the information at the website as a sign for good transparency of the Council as well as that the communication of the Council with the public is sufficient and satisfactory. They also think that there is constant improvement of the transparency of the Council and its communication with the public.

„ Unlike in the past, the communication with the public has improved, after each session there is a statement from the president of the Judicial council who informs the public."

One of the judges interviewed stated that he could not provide an assessment of the transparency of the Council and informing the public, because only the public can answer that one. However, the remaining 13 judges state that the transparency of the Judicial council is insufficient and it needs to be improve, and the communication of the Council with the public must be intensified.

„I think that (the Judicial council, a/n) is very passive in the communication with the public, they communicate only if journalists ask them certain questions. And if they communicated intensively with the public, then we (the judges, a/n) would not need to explain ourselves during TV programs and at social media. "

The improvement of the communication and the openness are especially important considering that the trust of the citizens in the judiciary can be increased through the improvement of the judiciary with the citizens, which the citizens often experience as distant and unknown just due to the lack of communication. This is expected, because both the legislative and the executive power is dependent on the will of the citizens, so they need more intensive communication with the citizens to secure their support. Due to this, the lack of direct influence of the citizens on the judicial power shall not be interpreted as prohibition from communication between these two parties, and the legal provisions that concern the public at work shall not be interpreted restrictively, but always in the context of the accepted good governance democratic standards.

One judge goes so further that he states that the weak communication of the Council with the public is used for neglectful and manipulative informing: "The information sent to the public are filtered, only statements for certain works are given and only in case if it is in favor of the Council in the specific situation". In addition to this, the judge has stated the cases for dismissal of several judges, whose names were disclosed to the media when the decisions for their dismissals were not yet final, although the law requires secrecy of the procedures due to protection of the integrity of the judges. This situation had been confirmed by the monitoring of the sessions by the Coalition, who detected that although during sessions for deciding upon dismissals of judges the public is excluded and at the sessions only Council members can participate, the media had managed to publish the outcome of the procedures, as well as the names of the dismissed judges just several minutes after the session was closed.

Since the judges have stated that their main source of information for the work of the Council is its web-site, the judges were asked to grade the content of the web-site, i.e. of the quality of the published information. The judges state that the web-page contains the basic information, such as the law and bylaws, information about the Council members and their CVs, information about holding public sessions as well as information about the conducted sessions, annual reports, decisions etc. However, the judges consider that the decisions of the Judicial council are not published and made available in due time. In this manner, only two judges considered that all of the decisions of the Council have been published and made available in due time, and two judges are not familiar with this. When crossing the data, we can notice that the two judges who are not familiar whether the Council decisions were published and made available in due time, are the same two judges who had previously stated that they are not very interested in following the work of the Council, while the judges who stated that all of the decisions were published in due time are the same judges who assessed the transparency of the Court and their level of communication with the public as satisfactory. In this context, once again the majority of the judges that were interviewed consider that the decisions are not published and made available in due time, and that some decisions are not published at the web-site of the Council at all, neither they are available in any other manner.

- ***Judges' standings on the application of the Merit system in the election of new judges and election of judges in higher court***

The following set of question concerns the perceptions of the judges of the manner in which the Council conducts the election of new judges, initially through an evaluation of the published decisions for election of new judges. The judges consider these decisions as published and made available in due time, but they stated that the decisions were insufficiently elaborated. As per the Law on Judicial Council of Republic of North Macedonia, apart from the ranking of the candidates by the Academy for Judges and Public Prosecutors, the Judicial council conducts an interview with the candidates, and it is not strictly obliged with the rank list delivered by the Academy. Due to this, the elaborations of the decisions for election of new judges are essential to upgrade the trust of the judges in the capabilities of their new colleagues, as well as the trust of the public in the professionalism and expertise of the new judges. However, the decisions of the Judicial council published on their website contain only the dispositive, i.e. only information about the manner of vote of the Council members, without the explanation on the reasons behind their vote.

> *„The decisions for election are not elaborated at all and we cannot see why this person had been elected by the Council as a judge. Also, the candidates that were not elected have not received any explanation behind such decision. "*

This situation is partially conditioned by the Law, i.e. Article 49 para.3 from the Law on Judicial council of Republic of North Macedonia, as per which each member of the Council having a voting right shall be obliged, at a session of the Council, to orally elaborate his decision regarding the election of a judge. However, these elaborations, as stated previously, are not transferred in the written decision, because of the strict obedience to the legal text and restrictive interpretation of its provisions. In this manner, although the Law explicitly states that the Council members are obliged to orally elaborate their decisions, it does not prohibit for their elaborations to be transferred to the written decisions on election of new judges. This is especially important if we take into

consideration the fact that there is no constant presence of the public at the Council sessions, and the public has limited possibilities to get familiar with the reasons for election of the new judges, and more important if taken into consideration the previously mentioned problem with providing generic and abstract elaborations of the Council meetings. In this manner, we state once again that the transparency is also consisted of the possibility for the public to get familiar with the reasons for reaching such a decision. At the same time, the Judicial council shall be a pioneer in improvement of the trust of the public in the judiciary, which mostly depends on the level of familiarity of the public with the work of the judicial bodies, as well as on the improvement of the perceptions of strengthened independence and integrity in the judiciary. Since the biggest risks from corruption in the judiciary are in the procedures for election of judges and promotion of judges in higher courts, the lack of written elaborations in the decisions of the Council don't contribute towards improvement of the perception of the public or of the judges.

Tightly related with this are the criteria and manner in which the Judicial council ranks the candidates for election in higher courts, because these procedures are conducted in a relatively similar manner, as well as because the decisions on election of judges in the highest courts has the same influence on the perceptions of the judges and public for the correct application of the merit system and selection of best candidates. By this, the Judicial council again directly affects the trust of the public in the judiciary as well as to the improvement of the independence and professionalism of the judiciary. In this manner, the judges, although familiar with the legal provisions concerning their career improvement, still believe that they do not have sufficient information regarding the manner and criteria under which the ranking of the candidates for higher courts is conducted. They state that the candidates for election in higher courts do not even know how does the ranking list look like and under which criteria the ranking had been conducted.

> *„I think that the criteria are not predictable, there is a problem with circling around the assessment and the ranking list, and this often results with election of candidates which are not ranked at the first place, and we don't have information why it happened like that."*
>
> *„ For me it is not clear why certain criteria are valued more than other, nor how was it determined that these criteria should be taken as relevant during the creation of the methodology."*

This shows lack of consultative processes such as inclusion of the judges in the processes creating policies that directly influence their work, due to which they justifiably feel as being opposite parties to the Judicial council. As per this, it is significant that the Judicial council dedicated sufficient resources for regular communication with its constituents, in order to increase the trust of the judges in the Council, in relation to the constant improvement of the judicial office, as well as the partner relationship which the Council should have with the judges.

On another hand, due to all this, once again the importance of the summarized decisions for election of judges in higher courts is stated, especially in all these situations where a candidate is chosen which has weaker grades than other candidates. This would significantly strengthen the trust of the judges in the system and it shall have an effect on the improvement of the pledges of full implementation of the Merit system in the judiciary. Unfortunately, this time also the judges state that the decisions for election of judges in the higher court are not sufficiently and appropriately elaborated, which corresponds to the impression of the monitors of the Coalition which have monitored the sessions of the Council, and it also corresponds to the publicly available decisions for election, which lack the reasons due to which the Council had reached the specific decision for election.

„The candidates that were not elected receive only one notification about the decision, that they were not elected, without any explanation why."

❖ ***Judges' standings on the professionalism and credibility of the Judicial council***

In this context, we find exceptionally important the overall impressions of the judges for the Judicial council in relation to whether it has sufficient legitimacy, i.e. trust from the citizens, but also credibility expressed through knowledge and resources for assessment of the work of the judges. Unfortunately, in this context only two judges stated that they have impression for good legitimacy and credibility of the Judicial council, which impressions are gained through personal experiences and the familiarization with the work of the Council, i.e. the personal integrity and quality of the Council members. One judge is not sufficiently familiarized with the Judicial council members to give his/her opinion, but states that, when it comes to the assessment of judges, it was good that commissions are formed from judges.

„I don't know all of the members of the JC, I know only 2-3 from the judges, and I cannot have an exact statement about the legitimacy and credibility of all Council members, but I think that at least the commissions established for assessment of the work of the judges should be credible, since they are elected from the line of judges."

The other judges had completely opposite impressions regarding the sufficient legitimacy and credibility of the Council to assess the judges. Several of the judges stated their concern about the quality and knowledge possessed by the Judicial council, especially those elected from the line of the judges. The judges state that a good part of the JC members is less experienced than the judges whose work they are assessing, which is a paradox, and as an example for this, they call for the elaborations of the decisions.

„I think that they fail in all areas in which they should assess us. For example, the Judicial council shall assess us, among other things, on grounds of the elaboration and argumentation given in the decisions we have reached, and if you see their decisions, whether on election or dismissal, you will see that there is no elaboration of their decision at all. So, the groundedness of their assessment will be arguable."

It is necessary that here we once again emphasize the significance of the elaborations of the decisions of the Judicial council, especially with its position in the judicial system in mind, as an independent judiciary body which shall take care about the promotion of the independence and professionalism of the judicial profession. In such situation, the Council should be a leader of the good practices in action, especially those regarding public, transparent and accountable working, in order to improve the perception of the public, as well as the actual condition and criteria for execution of the judicial office. There is the concerning fact that the judges think that the quality of the human resources in the Judicial council is decreasing, which is an indicator for the lack of awareness and willingness primarily with the political elites for promotion of the condition in the judiciary. In any case, this perception demoralizes the judges and distances them from the Judicial council which should be their representative body that advocates for the same goal. As a separate problem in this aspect, the judges find the election of council members which do not come from the order of judges, due to the notorious definition of a prominent lawyer in Article 11 from the Law.

„Expert associates are elected which are later to be elected as judges in all instances, and especially in the Supreme court. Don't get me wrong, I do think that the expert associates are a key element in our work and that they are good lawyers, but if you have a prominent lawyer to be an expert associate instead of a professor, former judge or similar, then something is wrong with the system who puts a prominent lawyer at a position of an expert associate instead of a judge or a professor."

The judges consider that due to the inconsistent election of Judicial council members, as well as due to the passivity and inactivity in the actions of the Council, the public has even lesser trust in the Judicial council than in the courts, i.e. judges. In this manner, all of the interviewed judges consider it necessary for the law to be amended in order to appropriately define the persons which can be considered as prominent lawyers, how could they be elected in the Judicial council, in order to provide better trust of the judges in the credibility, expertise, integrity and independence of the Judicial council.

- ***Judges' standings on the regular and extraordinary assessment of the work of the judges***

Bearing in mind that the announced processes for clearing the judiciary, the long-time announced general re-election of judges, i.e. "vetting" and similar statements, have drawn the public attention and debate, which have finally resulted with the adoption of the Methodology for assessment of a judge on grounds of fulfillment of the qualitative criteria and Methodology for assessment of the presidents of the courts. In this manner, in order to provide a wider picture for the process of adopting these methodologies and the expected effect from them, the Coalition tried to receive information about the opinions of the judges regarding the Methodology for assessment of judges, as well as for the announced extraordinary methodology for clearing the judiciary which has not been adopted yet.

In this context, at the question "are you familiar with the criteria for regular assessment of the work of the judges by the Judicial council" the judges without an exception stated that they were well-informed about the criteria and manner of assessment of the work of the judges. However, all of them without any exception stated their skepticism as to whether these criteria could give the real standing regarding the manner of work of the judges. Especially problematic in the assessment of the judges is that it is mostly based on statistical quantitative data which in practice can quite often have an effect contrary to the desired one. As per this, the judges state the need for creating a special manner of evaluation through a methodology for analysis of the cases, instead of having an evaluation mostly based on the number of closed cases. The judges find that this evaluation may cause the judges to work speedily in order to just close the case and fulfill the given quota of cases instead of providing good-quality work.

„ I find the assessment criteria as set by default; the whole assessment is reduced to statistics which gives only numbers which do not give the real picture of our work."

As from the statements given in the interviews, the judges do not put much trust in the criteria and manners of assessment by the Judicial council and they consider that this type of assessment does not provide the best and desired results.

„ There must be better ways. I personally think that the quota of closed cases shall be orientation point, not a fixed criterion for assessment, even less a main criterion for assessment."

In this manner, some of the judges consider that they need a manner and methodology for ranking the complexity of the cases upon which the judges act, which could be treated as a factor during the assessment of

the work of the judges. This is a justified expectation, especially considering the fact that many court cases significantly differ from one another, and each of them contains various factors which could contribute towards longer time needed for solving the case, as well as factors which could contribute towards amending or nullifying a decision by the higher court. If we take into consideration that most of the judges that we interviewed came from the Basic criminal court Skopje, which has high workload, which at the same time raises the possibility for having the two extremes – complex cases and cases that are solved by admitting guilt, it is expected from the judges of this court to be dissatisfied by the manner of assessment, since in accordance to it, the judges from this court may receive drastically different grades consequently, just because of the external factors which may affect the completion of the cases.

> *„You could experience 20 cases closed with admitting guilt within a month, but you could also have 20 cases with around ten defendants, or complex cases requiring international cooperation or translators… and it can happen that you have 20 verdicts in one month and none in the next, which directly affects your grade."*

What adds complexity to this situation is that the cases with complex or new legal issues come with an increased probability of their first instance verdicts to be annulled or amended by the higher courts, something that is also a criterion for assessment of the work of the judges. However, the working specifics of the judges in the Basic criminal court Skopje can be seen from several other aspects, for example the fact that in several of the high-profile cases led before this court additional judges were appointed which attended the hearings as replacements and they attended the process of examining evidence, so that if one of the members of the judging council is unable to continue to attend the process, the replacement could replace that judge, and the procedure could continue without interruptions and re-openings. This practice had been acclaimed by the public, including the Coalition All for Fair Trials, since it provides shorter time for solving the cases of high interest for the public, and which could have huge effect on the overall perception of the public for handling organized crime and corruption. But on the other hand, this setting puts the replacement judges in a much unfavorable position than their colleagues when it comes to regular assessment of the work by the Judicial council.

> *„It is problematic when one judge participates in a case as additional judge; this judge is not assessed for this job, despite for him/her attending the hearings, and his/her work suffers, because the instead of working on his/her own cases, the judge attends as a replacement judge."*

Equally relevant to this is the familiarity of the judges with the internal plan of the Judicial council for extraordinary assessment. This plan has not yet been adopted by the Judicial council, but it has been announced for a long time, and its draft version is publicly available. However, when it comes to the extraordinary examination, only one of the interviewed judges has been informed about this plan, while the other judges know that such plan for extraordinary assessment exists, but none of them had seen the contents of the plan, i.e. the methodology and the planned manner of conduction of the extraordinary assessment. The reasons due to which most of the judges are not familiar with the plan for extraordinary assessment is their workload, due to which they are unable to pay attention to issues similar to this, while 2 of the judges are completely demoralized by the work of the Judicial council and they find it useless to make themselves familiar with the assessment methodologies, because they believe that there are other factors playing bigger role in the assessment of the work of the judges.

Bearing in mind that all of the judges responded that they were familiar with the methodology for regular assessment of judges, they were asked which the key weaknesses of this methodology were, according to them, As one of the biggest problems, again was stated the lack of any valorization of the various complexity of the cases upon which the judges acted, as well as the huge accent of the statistical indicators, especially the quantitative such as the quota on finished cases, meeting deadlines and especially the deadlines for statute of limitation. As per the judges, this gives much more significance to the quick actions, such as the quota for solved cases and met deadlines, instead of the quality of court decisions and the justice in the conducted procedures,

which, according to the judges, may have negative impact on the quality of the court decisions and manner of conducting the procedures, and with that to have even bigger impact on the level of justice in the courts instead of the quick actions.

In this manner, the judges also stated that when the assessment criteria were set in the methodology, other external factors which may affect the final grade of the judge were not taken into consideration. Apart from the already mentioned difficulties in grading which may arise due to the lack of criteria for assessment and valorization of the complexity of the cases, the judges state the action of the public prosecutors, i.e. duration of the previous procedure which are led by the public prosecutor's office. The actions of the investigative bodies directly affect the statute of limitation, so it is crucial that the investigative bodies to quickly learn that a crime has been conducted as well as to have the capacity to conduct the investigation as soon as possible in order to leave sufficient time for the court to complete the court procedure. Due to this, the Methodology for assessment must take into consideration all other factors, such as the actions of the investigative bodies in order to appropriately determine the level of liability of the judge for reaching the statute of limitation.

> *„When it comes to the judges, the statute of limitation for the cases is assessed, but they do not take into consideration how much time the case spent in investigation, and it is expected from the court to solve the case immediately, regardless of the circumstances. I cannot claim with certainty, but as far as I know, the assessment of the public prosecutors does not take into consideration the duration of the previous procedure."*

The judges have also stated their concerns that the regular work of the Judicial council could directly affect the grades of the judges, by stating examples of several dismissed judges from the Basic criminal court whose positions are still not fulfilled, due to which the Court works with decreased capacity, and which automatically increases the workload for the other judges. All of this undoubtedly could affect the fulfillment of the quota of cases that need to be solved monthly, or the deadlines which must be met in each separate case. As per this, it may happen in practice that the judges who were entitled with the cases of their colleagues that had been dismissed to receive lower grades due to the additional number of cases, which occurred as a direct consequence from the actions of the Judicial council.

Additional weakness stated by the judges regarding the Methodology, is the fact that it does not anticipate a solution for possible conflict of interest between the judge and the assessment commission, whether it is in favor or against the judge that is being assessed. Apart from this, the manner of selection of cases which shall be assessed i.e. the fact that they will be selected by random choice may lead to unclear situations, and by that, completely different application in practice. As an example, the judges state that this manner may lead to simple cases, such as cases closed by admitting guilt, cases with penalty order etc., and it is unclear how would the ranking be conducted in relation to the offered argumentation by the judge, then the reaching of process decisions, meeting deadlines, etc. In this manner, it is essential to anticipate appropriate solution in the methodology for assessment, as to how would such cases be graded.

In relation to the methodology for regular assessment, the judges consider it necessary to change the criteria which give much significance of the number of completed case, due to the lack of criteria for assessment of the complexity of the cases, as well as the real limitations for creating such criteria. The judges however find the existence of the quota of cases that need to be completed within certain timeframe is good to exist, but not to be mandatory criteria for assessment of the work of the judges, since in practice there are cases which are completed promptly, but also cases that could last unpredictably long, regardless of the actions of the judge. Some of the judges that were interviewed think that there should be an analysis conducted on the work of the judges exclusively in accordance with the complexity of the cases and the manner of solving the cases by the judge. Also, many of the judges found it necessary for a formula to be created which would consider the workload of the court, especially in correlation with the human resources at disposal and the number of judges in the court. As a special factor here, we have the material and technical equipment of the courts, which directly affects the quick actions in certain cases, and which significantly facilitates the everyday functioning of the courts. Here we need to state the significance of the access to expert literature and court practice which is necessary for the judges to do quality

work, which is another factor which directly affects the final grade of the judges, and which at the end depends on the appropriate financial assets allocated in the budget of the judiciary system.

The judges also think that in order to create such Methodology for assessment, it is necessary to establish communication and inclusion with the stakeholders, as well as to put an effort to create a methodology for continuous monitoring and assessment of the efficiency and efficacy of the methodologies for assessment of the work of the judges. This way, they could consider the proposals of the judges and at the same time, they could be modified in order to show the real picture of the work of the judges, and to create true filtration of the human resources in the judiciary on grounds of the Merit system.

When it comes to the extraordinary methodology for clearing which had been announced by the executive power, the judges believe that it would not give the desired result. The majority of the judges are certain that the regular assessment may lead towards strengthening the judicial independence and professionalism, while the extraordinary assessment is seen more as a populist move. In this manner, some of the judges state that the Judicial council had been conducting insights in cases until now, and in addition to it -the manner of conduction of the extraordinary assessment is almost identical as the regular, so there is no special reason for the existence of parallel assessment procedures.

> *„We must have assessment of the judges, because I believe that there are cases of unprofessional conduct, but the assessment cannot be at any price and below any criteria just to be able to say that the judges are being assessed and controlled."*

The effect from such setting of the criteria and methods of assessment of the judges may have different impact on the work of the judges, and there are different perceptions by the judges regarding the manner it would affect their work. Three judges think that this assessment will have positive impact on the work of the judges, because they would be aware that they are being supervised and will be motivated to show themselves in the best light possible. Unlike them, two judges think that the assessment will have no special effect on the work of the judges, because the assessment of the work of the judges has been conducted since ever, but the perceptions of the public for the work of the courts and the corruption in the judiciary is even worse, so they think that it is necessary to apply different approach, which would be oriented towards improvement of the conditions for execution of the judicial office. The remaining 11 judges think that the assessment of the judges will have negative impact on their work, and apart from the previously stated criticisms regarding the methodology for assessment, such as too much accent on the statistical quantitative data, two of the judges as a special risk have stated the possibility for corruption and conflict of interest through abuse of the procedure for assessment for putting pressure on the judges.

- ***Perceptions on the procedures for disciplinary liabilities and dissolution of judges***

The interviews had also a goal to see the perceptions of the judges regarding the manner of conduct of the Judicial council in the procedures for determining liability of the judges, as well as imposing disciplinary measures or complete dismissal of the judges from office. In this manner, the judges have once again stated their concerns regarding the legitimacy and credibility enjoyed by the Judicial council. The judges consider that the Judicial council has wide discretional authority of determine whether there are legal grounds for dismissal of the judges, due to which it is essential for it to enjoy trust from the public and from amongst the judges, in order for its decisions for dismissal or disciplinary liability to be accepted. Special concern here the judges showed for the fact that within a very short time several judges from the same court have been dismissed, although the Judicial council until now had dismissed an exceptionally low number of judges. In addition to this, the judges have stated that in the last few cases on dismissal of a judge, the Council has directly used the most severe measure, without previously imposing or at least discuss less severe disciplinary measure. Such treatment, as per some of the judges, may lead towards lack of planned and strategic action by the Council when it comes to harmonization of the practice for determining liability of the judges and imposing disciplinary measures or termination of office.

However, the judges stated that the decisions of the Judicial council for determining disciplinary liability or dismissal of a judge are not easily accessible, and are insufficiently elaborated. Most of them or 9 judges have not seen a decision from the Judicial council on dismissal of a judge or on imposing disciplinary measure at all, while the remaining 7 judges stated that the decisions they have seen contain insufficient and unclear elaborations. Some of the judges found it exceptionally problematic that the cases for determining liability of the judges are conducted around the action of the judge in only one case where a possible violation or misconduct happened, but the overall work of the judge is not seen at all, which prevents from appropriate measurement and imposed the most applicable sanction if liability is determined.

Since such decisions of the Judicial council are not easily accessible and only 5 judges who have managed to reach to such decisions through personal contacts have examined them, it remains difficult to assess the perceptions of the judges as to whether these decisions are based on sufficient amount of evidence. However, the judges that had managed to get hold of these decisions, state that they are not based on sufficient amount of evidence, which according to them, is the main reason as to why these decisions lack more elaborated summaries and argumentations for the imposed measure.

As per the above stated, it is truly difficult to determine whether the criteria for determining disciplinary liability or dismissal of a judge are sufficiently standardized, as well as whether the procedures for determining liability are sufficiently predictable. This unavoidably affects the legal safety enjoyed by the judges which are subjected to these procedures, which mostly for them is source of concern. The judges recognize as a as a bigger problem the fact that several judges were dismissed in a relatively short period, although the Judicial council had not undertaken such similar steps or activities for a longer period. This leads them to considering that the Judicial council does not use clear methodology, and especially does not use clear criteria for gradation of the gravity of the imposed measure, so in several different cases, the Judicial council decided to directly dismiss the judges, without prior application of some other disciplinary measure.

> *„The criteria are standardized, but are not applied as they should. The Judicial council must have clear picture for the overall work of the judge. It is necessary to initially conduct a detailed analysis and see why the omission had been done by the judge, and afterwards the judge can be dismissed if it is determined that the goal cannot be achieved with any other lighter measure.“*

This atmosphere unavoidably imposes fear and uncertainty amongst the judges, which think that the criteria for dismissal of judges must be elaborated in more detail in order for the liability of the judge can be clearly located, but also to receive explanation about the selection of these criteria as significant. The loose definition for unprofessional and neglectful work is a risk factor for misuse of the provision, and by that, misuse of the procedures for determining liability of the judges. In this part, the judges once again state the previously discussed question regarding the possibility for appeal against the decisions for imposing disciplinary measures, as well as for dismissal of the judges. As previously stated, the right to an appeal of the judges against the decision of the Judicial council may be effectively realized only if in the procedure for determination of a liability a grave violation of the rules of the procedure had been made, and consequently, to the equity of the latter, but not in case of a need to appeal against the amount of the stated sanction or the existence or non-existence of the legal grounds for dismissal or imposing disciplinary measure.

> *„It is strange that the Supreme court always confirms these decisions, which opens a dilemma as to the effectiveness of these procedures. As far as I know, there are judges that have been punished and have not appealed their decisions just because they did not believe they could change something in the second-instance procedure.“*

This once again emphasizes the need for implementation of activities directed towards improvement of the reputation of the Judicial council mostly in regards to the perceptions of the judges about the efficacy of the Council as well as on fulfillment of the legal rights and duties of the Council for improvement of the judicial

independence and professionalism, as well as the conditions for executing the judicial office, and by that, the improvement of the trust the judiciary enjoys with the citizens. Since most of the judges stated that, they do not have complete trust in the Judicial council and they do not consider it is an autonomous body of the judiciary that protects the side of the judges; instead, they feel it as a distinct and isolated body which has a sole authority to elect and dismiss judges. Additional problem in this manner is that the judges do not have trust in the decisions reached by the Council, regardless whether they are related to election or dismissal of judges, so due to this there is a need for creating special activities for improvement of the mutual trust between the judges and the Council, as well as mutual familiarization with the real needs and expectations they have from one another.

- ***Perceptions and standings on the risks from corruption and activities for prevention against corruption and conflict of interests***

The public mostly finds the judiciary as corrupted, which results with it having very low level of trust amongst the citizens. Bearing in mind the happenings related to the illegal eavesdropped phone conversations, so called "bombs" which have revealed scandals of serious influences from the executive power, as well as from the political and business elites on the judiciary, which indicated towards corruption even in the Judicial council, undertaking steps for decrease of the risks from corruption and conflict of interest would be of great significance, and would also lead towards improvement of the trust of the citizens in the judiciary. In this manner, the Coalition wanted to see the perceptions of the judges regarding the level of protection from corruption and conflict of interest in the judiciary that is offered by the Judicial council. All of the interviewed judges stated that they were not informed whether there are any activities conducted by the Council to strengthen the integrity of the judges and to improve the public opinion about the judicial sector. Consequently, the judges reckon that the Judicial council does not undertake sufficient activities for strengthening the integrity of the judges, as well as of the members of the Council.

> *„The judicial council undertakes measures only for election and dismissal of judges, until now it had never protected the judges or the interests of the judges, and I think that it shall be changed as soon as possible. The Judicial council shall provide clear and unambiguous support to the judges for strengthening their capacity and independence "*

The judges, however, have divided opinions as to whether the Judicial council has sufficient legitimacy and credibility (knowledge and resources) for conducting activities for preventing against corruption and conflict of interests, so some of them reckon that the Judicial council enjoys trust, both from the citizens and the judges, and at the same time it possesses sufficient knowledge and resources to undertake activities for prevention against corruption. However, these judges state that, apart from this, there is a lack of any advocacy by the Council in this direction.

> *„The Judicial council is authorized for uninterrupted functioning of the judiciary and is a body elected by the judges themselves, and due to this, it shall have legitimacy as well as knowledge for such activities. Unfortunately, I think that they lack will to conduct such activities."*

Most of the judges, however, reckon that the Judicial council has neither legitimacy nor credibility to undertake activities on prevention against corruption, because they think that the biggest problems with conflict of interest and corruption are within the Council itself. In this manner, the judges state that biggest risks of corruption and conflict of interests are seen in the procedures for election and dismissal of judges, where there are still serious political influences.

„There are many political influences, some judges protect themselves, and some are at the list for dismissal. Conversations are circling around regarding complaints against corrupted judges against which nothing is being undertaken, it seems as if the previous notebook for election and dismissal of judges had just been replaced with a new one."

This situation with the perceptions of the judges for corruption and conflict of interests in the Judicial council is concerning and indicates towards the necessity of conducting various activities for improvement of the reputation of the Judicial council amongst the judges and general population, as well as for improvement of the perception of the citizens regarding the corruption in the judiciary. In this manner, as biggest risks from corruption in the Judicial Council, the judges enlist the political influence, especially for the election of judges and election of judges in higher courts, conflict of interest due to family or other personal close ties amongst Judicial council members and candidates for election for judge or judge in higher court, risks of corruption through offering bribe or services by the candidates so that they could be elected, connecting to the Government or political or business elites in order to misuse the office for illegal benefit etc.

„I think that there has always been political influence on the Council, since changes in the behaviors of colleagues are noticed after they have been elected as Judicial council members, which can be indication for corruption or other pressures on them after they enter the Council."

In accordance with this, the judges reckon that the biggest and most common risk from corruption lays within the political influence and interference of the executive power in the judiciary through the Judicial council. As per the judges, this is most obvious in the procedures and decisions for election ad dismissal of judges, as well as he decisions for election in higher court, and as an example they state the lack of elaboration of the decisions, as well as lack of elaborations given to the elected judges. In order for such situations to be overcome, the judges reckon that is significant to have political will and consent for improvement of the condition in the judiciary, as well as to decrease the political pressures and influences. The judges consider this as one of the key obstacles that need to be overcome to achieve real effects of improvement of the work of the judges in practice. One additional obstacle that needs to be overcome is provision of appropriate budget for the judiciary. The judges state that their salaries, as well as the salaries of their expert associates, administrative and other staff must be accordingly anticipated and sufficiently high in order to decrease the risk from corruption in the court procedures.

„We have heard the case with the delivery person which failed to deliver verdicts so that they could not be executed. But if you pay him 15.000,00 denars, and he works with objects of such value, it is very easy to bribe him into not delivering the verdict, so that it could not be executed. It is much easier than to bribe the judge or the judge in higher courts to decide in your favor."

The increase of the budget of the judiciary will provide bigger allocation of assets for improvement of the technical conditions and equipment with human resources of the courts, which would have positive effect on the practical work of the courts, and with that, on the perceptions of the public regarding the independence and professionalism of the judiciary. In this manner, it shall be worked on interoperability of the courts and the Judicial council with the other institutions, in order for them to be functional and efficient in their everyday work. Of course, this means increase of the transparency and inclusivity in the policy and reform making processes in the judiciary, so that they could have long-term and sustainable effect. The judges also state as necessary to use the comparative experiences from the states in which the judiciary enjoys high level of trust by the citizens in order to exchange experiences and to apply appropriate measures here in order to return the trust in the institutions. Of course, these experiences need to be accordingly adapted to the needs as per the domestic context, which means that various researches are needed to detect all the obstacles faced by the judiciary in order for them to be surpassed.

THE ROLE OF THE ACADEMY FOR JUDGES AND PUBLIC PROSECUTORS IN PROVIDING PROFESSIONALISM AND QUALITY IN THE JUDICIARY

The Academy for Judges and Public Prosecutors has been introduced in the Law in 2006, as an exceptionally important addition to the domestic system and selection process and continuous education for judges and public prosecutors. The legal framework was amended with the adoption of a new Law on the Academy for Judges and Public Prosecutors in 2010 and later in 2015, while exceptionally important are the amendments to the Law on Courts. The Academy has been established on grounds of international experiences and Council of Europe recommendations, with an aim to maintain and even improve the justice quality and the activities of these stakeholders in the court procedures. With such positioning of the Academy, one can easily recognize the significance of the Academy for improvement of the capacities of the judicial system, decreasing the risks of corruption, professionalism and independence of the judges, their integrity and legal knowledge, by which the Academy plays a great role in providing just court procedure and in strengthening the trust of the citizens in the judiciary. This is even more obvious if we take into consideration the Strategy for the reform of the judiciary sector and the remaining documentation, activities and pledges, which, almost without an exception, are dedicated towards the improvement of the independence and professionalism of the judges, justice quality and decrease of the risks of corruption and conflict of interests.

Consequently, the Academy is a public institution for reception and vocational training of the candidates for judges and public prosecutors, continuous training and improvement of the expertness of the judges and public prosecutors, continuous training of the court and public prosecutors' offices service departments, trainings of the subject participating in enforcing the laws in the field of judiciary, conducting analytical activities in the field of judiciary theory and practice, and management and financing bodies of the Academy.[33]

The initial training is organized for gaining practical and theoretical skills and knowledge, in order to create highly-trained, professional and effective candidates for judges and public prosecutors in the basic courts and basic prosecutor's offices, as a precondition for respect of the rule of law principle, protection of human rights and freedoms and creating good-quality justice in the interest of the citizens of Republic of Macedonia. The manner and criteria for enrolling the initial training, the manner of conduction of the initial training as well as continuous compulsory and voluntary training are prescribed with the Law on Academy for Judges and Public Prosecutors, i.e. with articles starting with Article 54 and ending with 113. These provisions are supported and elaborated in detail with the Rulebook on taking the entry exam at the Academy for Judges and Public Prosecutors, the Rulebook on initial training – initial education as well as the Rulebook on Initial training – Theoretical education. These rulebooks define in detail the manner of conducting the education, the time and place for the practical and theoretical education, training methodology, methods and techniques used, knowledge and qualification that shall be transferred to the candidates, appointment of mentors, as well as conducting special trainings for mentors and lecturers at the Academy.

The continuous training is a permanent vocational upgrading of the theoretical and practical skills and knowledge due to professional and efficient conduction of the judicial and the public prosecutor's office, as well as of the professional court and public prosecution services. The continuous training may be compulsory and voluntarily, and it is compulsory for the judges, public prosecutors, presidents of courts and public prosecutor's offices, while the voluntary training is intended for the court and public prosecutor's office services. The Academy may organize these types of trainings either individually or in cooperation with domestic and foreign experts and other collaborators. The provisions for continuous training are set in only 5 articles in the Law – Articles 114 to 118, which prescribe only the main goals, principles and rules for attendance at the compulsory continuous trainings, as well as the manner of organization for the voluntary training. These provisions are elaborated in detail with the Rulebook on continuous training which anticipates the goals and manner of conducting the voluntary training, methods and techniques used, procedure for evaluation of the training and assessment of the gained

[33] Article 1, Law on the Academy for Judges and Public Prosecutors, Official Gazette no: 20/2015; 192/2015; 231/2015; 163/2018;

knowledge by the students, rights and duties of the persons attending the continuous training as well as record of the persons attending, and persons who have completed the training.

The lecturers conducting the initial and the continuous training are elected from amongst domestic and foreign experts (judges, public prosecutors, attorneys at law and university professors), and in order for the domestic experts to be able to be lecturers at the Academy, they need to fulfill an additional criterion – to have at least 8 years of experience as judges or public prosecutors. The Academy also organizes training for the lecturers, which is oriented towards improvement of the methods and techniques for transferring knowledge, so that they could transfer their knowledge fully.

ASSESSMENT OF THE CONDITIONS FOR PRACTICAL APPLICATION OF THE LEGAL PROVISIONS

For the purposes of this research, we conducted an interview with the director of the Academy for judges and public prosecutors – Ms. Natasha Gaber Damjanovska. The Coalition wanted to learn the practical boundaries and good practices faced by the Academy during its everyday operations, regarding possibilities and the level of quality for conducting the ground tasks of the Academy – continuous training of the existing human resources, as well as training of the new judges and their ranking.

So, it was determined that in the process of continuous training there constantly are formal and informal meetings during which the Academy is consulting with the judges and public prosecutors regarding their practical needs, i.e. in which area they have need for training and knowledge and capacity building, which is a good and inclusive approach, which not only facilitates the functioning and conduction of the activities of the Academy, it also allows addressing the most essential needs of the judges and public prosecutors. For these needs, the program for continuous and initial training is determined by the Program council of the Academy, which shall later be approved by the Management board. According to the director, the most important thing from this process is the feedback received by the judges and public prosecutors about their needs for further improvement, as well as about the manner in which the training is being conducted. This has proven to increase the interest of the judges and court and public prosecutors' office services to attend the trainings, but also increases the practical effect of the trainings – they address the issues, subjects and areas from the work of the court for which biggest need for improvement has been detected.

Apart from this, in the training creation process, consultations are made with foreign experts, and every time when there are amendments to the laws or new laws, they are included in the trainings in order for the novelties to be discussed and for the judges and public prosecutors to be prepared for practical application of the new legal provisions. In this manner it is interesting that as per the records of the Academy, the judges and public prosecutors have least knowledge of European Union Law, as well as the practice of the European Court of Human Rights, due to which the Academy intends to organize more intensive trainings, as well as to conduct other activities in order to improve the condition with understanding these areas from the law, which are exceptionally significant, especially during the intensified EU accession process.

> *„A very few judges and public prosecutors know the decisions of the European Court of Justice, which, unlike ECtHR, which is generally working on human rights, regulate issues in the fields of freedom of the market, economy, competition, transfer of capital and labor force and other areas which are very little familiar for the judges and public prosecutors, and it is a matter of time when they will be obliged to implement them in their everyday work."*

The trainings are mandatory for the judges and public prosecutors, and the number of trainings that they need to be registered for during one calendar year depends initially of the years of experience of the judge, i.e. the public prosecutor. This approach gives a possibility for the new and inexperienced judges and public prosecutors to gain in time all the necessary skills and knowledge already possessed by their colleagues through experience. However, if we take into consideration that the law is variable category within which new areas are constantly arising, new issues, international documents, as well as amendments to the domestic legal framework,

such setting may prevent the more experienced judges and public prosecutors from receiving the necessary support through continuous training in some of these cases.

The Academy creates two catalogues with trainings in various areas, and each judge, i.e. public prosecutor, depending on the area of work and of interest, admits itself to the training he finds most needed at the moment. As per the Academy bylaws, the aim of this is that the judge or public prosecutor fulfills the quota of minimal number of obligatory trainings per year as per their years of working experience. The judges and public prosecutors are not limited to the maximum number of trainings which they need to attend, so if there is a need, willingness and interest by the judge or public prosecutor, they can admit themselves to more trainings than determined with their quota set in accordance with their working experience. So, the Academy keeps a record regarding the attendance of the judges at each training, as well as on the subject and area of the trainings attended by this person. This is exceptionally significant since this statistic is sent to the Judicial council and to the Council of Public Prosecutor's Office, and these records on the training attendances directly affects the evaluation of the judges and public prosecutors by the Councils. At the same time, if a judge failed to attend all the trainings set as mandatory for him, the Academy will notify the president of the court which employs the judge.

The Academy also undertook steps regarding the new Law on Academy for Judges and Public Prosecutors, where efforts were made for introduction of special summary trainings for the expert associates in the courts and public prosecutor's offices, so that their practical work in the court before being accepted as attendees of the initial training for judges and public prosecutors could be valorized. As per the proposed solution, the expert associates would attend a training which would be shortened in the part of practical training, because the expert associates have been working for a longer period of time in the courts and public prosecutor's offices, and the classic practical training could not have positive effect on them. Certainly, the director admits that this solution may be contrary to the opinions received by the Council of Europe, according to which the Academy must be the sole filter and sole method for selection of judges and public prosecutors, within which, all of the attendants must conduct the same mandatory initial training. Due to this, it is still unknown whether this solution would be included in the new law, or it would keep the current principle of working and regulating of the mandatory initial training.

When it comes to the material resources of the Academy, they are significantly decreased, especially during the last period filled with the COVID-19 pandemics, due to which the Academy is facing a need of requiring support from foreign donors, initially from the Council of Europe and OSCE. In such situation, the support from foreign donors significantly contributes towards maintaining the everyday work for the Academy, especially since it is obliged to provide and pay the attendants of the initial training for judges and public prosecutors until they are elected for judges and public prosecutors. The cooperation with foreign donors is especially significant for conducting the additional activities for improvement of the professionalism and expertise of the judges, apart from the conduction of initial trainings, so the Academy is in process of applying for a grant which would help designing an online platform which will contain all the court decisions reached in this country, or at least those which are a key for certain issues. Through this platform, the judges and public prosecutors could have access to relevant laws, court practice as well as could do key word research of the decisions of the ECtHR and the European court of Justice.

In this context, the capacities of the Academy are inappropriate bearing in mind that it is settled in an inappropriate and adapted object, and consequently the premises are very small and cannot accommodate bigger number of attendants. This effectively limits the number of candidates which may be accepted for initial training, and this affect the final number of candidates for judges, which is exceptionally relevant if taking into consideration that as per the work post systematization, the country lacks more than 130 judges. Due to this, the Academy is in negotiation process and it is expected to be transferred to a new building with appropriately adapted premises and wider space which would include conference halls, amphitheaters, bigger premises, including space for a library and lobby, and the Academy would rise to be a professional` club, where lawyers could come and hang around, debate and discuss, as well as share experiences. The director of the Academy considers that this would strengthen the legal culture in the country, especially amongst lawyers, and would support the cooperation between the lawyers, interconnections and expectations.

CONCLUSIONS AND RECOMMENDATIONS

When it comes to publicity, there is a progress with the Judicial council and the communication level it has with the audience, and it shall be appreciated. In this direction, we greet the fact that the Council has published the key information about its authorizations, composition and manner of work as well as that it regularly publishes information about public sessions, adopted decisions, annual reports and brief information for the held sessions. In addition to this, increased participation of the Council members is noted in public activities such as public debates, tribunes and round tables organized by third parties, such as civil society organizations and universities, but also, the cooperation of the Council with the media has been improved.

The communication and interaction with the judges still needs improvements, taking into consideration that they are familiarized with the work of the Council only if they make an effort to be informed. This shows a lack of engagement, as well as lack of appropriate communication channels between the Council and its constituents, i.e. the Council fails to make additional efforts to inform the judges other than publishing information on its website. So, the judges have the website and their personal contacts with Council members as a sole source for full information about the work of the Council. Since the main source of information in this situation is the Council`s website, which, despite from possessing the general information, needs to be upgraded with more substantive parts, primarily with regular publishing of the decisions adopted by the Council, as well as of the minutes from the discussions during public sessions.

In this manner, the capacities of the Council for communication with the public and with its constituents – primarily the judges, need to be increased, so that they can be informed in more detail with the work and working plans of the Council. It is significant that the Court makes efforts for conducting consultative meetings with its constituents, as well as with other professional institutions, bodies and organizations in order to create policies and working plans which would most appropriately address the real problems faced by the judiciary in practice. To this end, it is necessary to allocate appropriate resources for creating special-purpose evidence-based researches and analyses, on which correct diagnosis on the reasons behind the identified problems could be set, which would lead to setting the grounds for finding the most appropriate solution.

Activities for more intensive communication and cooperation between the Judicial council and the judges are needed, as well as bottom-up supervisory mechanisms, i.e. evaluation of the work of the Council by the judges, in order to see whether it acts in the true direction. In this manner, it is recommended that the Council prepares researches and consultations on the judges' perceptions for their own work, the work of the Council as well as on the needs and difficulties faced by the judges at work. A long-term strategic communication plan, including directions for communication with the public, but also manuals for communication and behavior of the judges in public, especially when using social media is needed. Attention shall be paid to avoid a situation similar to the one where the Public prosecutors were forbidden to criticize.

Despite the noted improvement in the public and transparent work, both the transparency and the accountability of the Council shall be improved when it comes to the quality of the public session discussions, especially regarding argumentation and elaboration of the standings of the Council members. This is especially important in cases when they vote on election and dismissal of judges, as well as in every other case for deciding upon exceptionally important issues related to judiciary, such as adoption of action and strategic plans, assessment methodologies etc. The first step may be public provision of the minutes from the public sessions, which will provide the public with possibility to be informed about the exact standings, arguments and discussions in the Council before it reached a certain Decision, including the standings against such decision. This will not only contribute towards avoiding the need of the interested parties to be physically present at the Council sessions in order to get familiar with the arguments and discussion happening there, but will also raise the level of public and transparent working, which consequently will improve the accountability of the Council as well as the trust of the citizens, and the trust of the judges in independent and professional work of the Council.

Holding Council member meetings behind closed doors right before the sessions is one especially inappropriate practice which produces wrong impression for the public. Furthermore, some sessions are being interrupted due to disagreements of the Council, which are later solved during such meetings behind closed doors, before continuing the public session work of the Council. This leaves an impression that the public sessions are

only formal choreography for the public which has previously been created during such members meetings without the presence of the public. Since this is a barrier that is exceptionally easy to overcome, the Coalition calls for the Judicial council to terminate this practice of holding members meetings, and to solve the disagreements between Council members through debates during the public sessions. This will significantly improve the reputation of the Judicial Council, it will increase the level of public control over its work, will motivate the Council members to participate more actively during meetings, and will also require from the members to improve their personal capacities for oral and written expression and argumentation. All this leads towards the universally accepted democratic values, as well as the good governance principles, and consequently towards guaranteeing correct application of the Merit system in the judiciary.

The relatively limited number of items for discussions during sessions is also noted, as well as lack of discussion for activities towards improvement of the situation in the judiciary, apart from activities directed towards assessment, election or dismissal of judges. Having activities for improvement of the public perception, decreasing risks of corruption and improvement of independence, professionalism and reputation of the court authorities is essential. In this manner, the Judicial Council shall undertake intensive activities for increasing the budget of the court authority, as a factor that directly impacts the quality of the work of the judges. The conscience of the Council members for undertaking additional activities outside their regular operations shall be improved, such as election and dismissal of judges, deciding upon applications of the citizens, deciding upon traveling costs and annual reports of the courts. Bearing in mind that the judiciary is in unfavorable position, since it had been hit by a series of scandals which led towards the existence of serious influences on the court authority and the judges in general, it is necessary to undertake all and every possible activity in order to promote the court authority and the perception of the public for it. It is wrong to expect that the changes in the judiciary can arrive as an instant solution, i.e. that the Council can continue to work in the same manner and concept as until now, and that there is only one ingredient lacking to improve the situation. A long-term plan and vision are necessary, and they shall include other stakeholders from the society, as well as continuous promotion of the work of the Council – not only control over the work of the judges, since the quality of performance of the worker depends on the working conditions provided by the employer. In other words, if the Council only conducts control over the work of the judges, without undertaking activities for promotion of the conditions for their work, without undertaking activities for improvement of their own work, activities directed towards decreasing the risks of corruption, as well as activities for making the Council closer to the citizens, especially to its constituents, it may provoke contra-effect and revolt with the judges.

Consequently, there is a need for creating specific activities for improving the reputation of the Judicial council, even for improving of the manner of conduction of the regular activities of the Council, so that they can be conducted thoroughly and in detail, in order to avoid leaving impression of a pattern, formal and mechanical conduction, without paying attention to the essence and effects of the work, especially in a long term. The capacities of the Council for organizing public tribunes, discussions and researches need to be improved, as well as the individual capacities of the members of the Council for creating, planning and implementing activities which would be an additional value for the everyday work of the Council. We would once again state that there is a need for strengthening the awareness of the Judicial council members about the significance of their office and the effects their work might have, both negative and positive. In this direction, it is recommended that the Council organizes activities such as trainings and experience sharing events for its members, so that they could apply the best good governance standards, as well as the best standards for promotion of the judiciary.

Strengthening the transparency and accountability of the Council through presenting applications and elaborating the reasons behind their acceptance or dismissal is essential. As stated above, more than 99% from the complaints of the citizens about the work of the judges are not accepted, but the complete lack of discussion about the complaints and the lack of any elaborations regarding the grounds and reasons for their dismissal is even more worrisome. Such treatment is unacceptable since it may leave the public with an impression that the complaints are dismissed by the Council by default, and the only accepted complaints are filed from persons with ties, or that the complaints are accepted only because of the public pressure and exposure of the circumstances under which the complaint had been submitted. Due to this, it is essential for the Council to increase its transparency and to provide extensive elaboration of decisions upon complaints. It is significant to strengthen the perceptions that the work of the Council is public and that all standings of the Council and its members are public and of public interest.

When it comes to the complaints, an appropriate legal distinction of the procedures upon complaints and the procedures for determining liability of a judge is needed. As discussed previously, these procedures are conducted under different laws, so the goal of the complaint is to remove an obstacle which prevents the realization of a certain right, while the procedures for determining liability of a judge aim towards examination whether the judge acted accordingly, professionally and diligently, so that the judges which had misused their office or lack good qualities for performing as a judge professionally, can be sanctioned. In this manner, the dualism of these procedures may result with lack of information for the citizens as to whcih procedure should they initiate to require certain outcome, due to which many citizens file complaints to the Council when they should file request for determining liability of a judge. This is especially important when the statements of the complaint are identical to the statements stated in the Appeal against the decision reached by the judge which is the ground for filing the complaint, and the complaint will be rejected only on grounds that there is an ongoing procedure for the same issue. On the other hand, in cases upon request for determining liability of a judge there are no limitations in relation to whether there was another procedure initiated against that decision. We have already witnessed in practice that a judge had been dismissed for a non-final decision, in a procedure which was led parallelly to the procedure upon Appeal against the decision. In this situation, if the person who filed the request, filed a complaint against the work of the judge instead, it would have been rejected only on this circumstance – the statements in the Decision were identical to the statements in the complaint, i.e. the request for determining liability. Due to this, it is highly significant to specify when can one file a complaint, so that the citizens can enjoy their rights even when they do not distinguish the two procedure since they are unskilled parties; it will also prevent from tolerating any inappropriate action by the judges only due to formality. In addition to this, examination of alternative solutions might deem as necessary, so that a complaint filed against a judge could result with a procedure for determining liability, i.e. so that the Judicial council could prequalify the procedure if it decides that a disciplinary measure shall be imposed on the judge against whom a procedure had been initiated.

In this manner, the Judicial council needs to have a Methodology, but also willingness to check over the work of the judges and courts subjected to several complaints filed by different persons, as well as keeping records for the most common grounds for filing complaints by the citizens. This is important, because the complains reporting judge has stated for several times during the public sessions that one judge has received several complaints filed by different people and this has been happening for a longer period. Bearing in mind that most of the complaints are dismissed on grounds of technicalities (appeal statements and an ongoing procedure against the issue), a question raises itself about the level of liability with which the Judicial council treats the complaints and the situations addressed in them by the citizens. Due to this, the Judicial council needs to provide statistical database on the number of filed complaints against each judge, grounds on which they had been filed, as well as the outcome of the procedures upon these complaints. This would provide appropriate control over the work of the judges and treatment of citizens, i.e. parties in the procedure as partners to the Judicial council in the monitoring and evaluation of the work of the judges, but it would also provide appropriate monitoring on the work of the Judicial council in these cases, which could be used for determining trends of working, and with that, various boundaries, problems, difficulties, but also good practices.

One main recommendation for the Judicial council sessions is that discussions regarding the decisions on election of new judges and judges in higher courts must be initiated. It has been noted that these decisions lack argumentation, and the arguments the judges give during the public sessions are very brief and abstract. Due to this, the summaries of the decisions for election of judges and election of judges in higher courts need to be freed from repeating, stereotyping and abstract sentences. It is also necessary to initiate discussion regarding election of candidates, their biographies, and professional experiences, results achieved during interviews, testing, and other factors which may have an effect on their election. The Coalition is sorry to state that the only discussion between Council members has been on the ethnical background of two candidates, while their professional competences and personal qualities were not even mentioned at the session. Such attitude really leaves an impression that the Court fails to act with due diligence when it comes to election of judges as per the Merit system on merits and office professionalism while conducting office. In this manner, a practice of argumentation of the votes against election of a candidate needs to be introduced, as well as appropriate transfer of all of these elaborations and argumentations of the Council into the written decisions. In this manner, a practice of argumentation of the votes against election of a candidate need to be introduced, as well as appropriate transfer of all of these elaborations and argumentations of the Council into the written decisions. Since the Council also

evaluates the argumentation of the judges in their decisions, as well as their capability for clear and precise written expression, it is inappropriate for the Council to put itself in a paradox situation, where the Council itself is unable to fulfill the criteria upon which it evaluates the judges.

When it comes to election of judges, an amendment to the legal provisions and manner of conduction of the integrity test is necessary, especially in the Rulebook on the manner and form of conducting the psychological test and integrity test. Specifically, as per this Rulebook, the Judicial council has unlimited authority to elect the legal entity which would conduct the testing, while this entity is completely free to create and conduct the test, but also to determine the costs for the examination, which shall be paid by the candidate. In this manner, it is necessary to amend this framework and the rules for conducting the test, in order to prevent possible abuse and conflict of interest, both during the election process for the legal entity and determining the amount of the fee for taking the exam, and regarding the removal of the risks from corruption during the examination and evaluation and ranking the candidates which took the tests.

Additional efforts for informing the public are needed, as well as efforts for informing the judges about the evaluation criteria and their inclusion in the processes for creating the methodologies for evaluation of the judges. In this manner, appropriate evaluation indicators need to be chosen in order for the Merit system to be truly applicable. This would mean limited application of statistical and quantitative indicators as well as need for qualitative criteria for evaluation of the work of the judges. Furthermore, these methodologies and criteria may be strengthened through additional factors which would take into consideration the specific circumstances under which the judicial function is conducted, such as appropriate technical and asset equipment, the impact of other factors in leading the cases, such as the actions of the public prosecutors, delivery services and administrative and vocational departments of the courts, the workload of the court, type of cases that shall be conducted, as well as other factors which might have direct impact on the work of the judges. At the same time, the stated gaps and inconsistencies in the Evaluation Methodology, especially when it comes to the manner of evaluation of the argumentation, the process solutions and respected deadlines in the cases that would be closed by admitting guilt, if by method of random choice such cases are selected. Finally, in this aspect, it shall be taken into consideration that the judges working on easier cases, or those working in smaller courts with lighter workload, as per these criteria, would have higher grades than their colleagues working on complex cases in courts with heavier workload.

The methodologies for assessment of judges shall be continuously monitored and evaluated, including the standings and opinions of the judges regarding the manner of evaluation. The judges have stated several good points in this direction, such as that there are various types of cases (such as procedures upon penalty warrant) where some of the evaluation criteria are inapplicable, as well as different complexity of different cases, which makes it impossible to make a simple comparison between acting in easier cases (such as those closing with admitting guilt) and cases with extensive evidence or several defendants. The assessment methodologies need to contain explanation as to why some criteria are taken as relevant, in order to avoid the impression that the criteria have been abstractly selected, and to also provide a chance for conducting selection of the most appropriate evaluation criteria which would give the real assessment on the work of the judges. In this manner, it is necessary to have both the criteria and explanations for the set norms of cases which the judges are obliged to close in certain month, especially if we take into consideration that not all courts have the same workload, as well as that not all courts have the appropriate number of judges according to the Systematization of work posts.

Working on strengthening the Judicial council capacities is recommended, especially in order to improve the impression about the professionalism and objectivity of the Council during the procedures for evaluation of judges. This would help to avoid the public perception that there are influences on the Council during evaluation process, since they consider the Council members less experiences than most of the judges when it comes to practical application of the laws.

When it comes to the extraordinary assessment, it requires careful approach and serious examination and discussion about the possible positive and unwanted effect from such type of examination. An analysis on the needs for regular and extraordinary evaluation is needed, as well as an analysis on the issue whether the same or similar effect could be achieved by the already existing mechanisms. So, the Coalition once again points out to the significance of acting in due diligence upon complaints filed by the citizens regarding the work of the judges, as well as to the possibility for these procedures to initiate procedure for determining liability of a judge. At the same time, the thorough conduction of these procedures, with multidimensional approach in examination of the

complaints may serve as grounds for extraordinary evaluation of the work of the judges which have been subject to many complaints by different persons throughout a longer period. Special care must be involved not to misuse the extraordinary examination as a tool for punishing persons with different opinions, as well as to conduct an analysis on the effects that such evaluation could have on the work of the judges, in the context of the already discussed issue with increased case workload for the judges in the courts from which judges have been dismissed, and for which new judges have not yet been elected.

When it comes to dismissal of judges, the practice for announcing the names of the dismissed judges instead of summaries from the decisions for dismissal must be changed. From the point of public control over the work of the judiciary, for the professional and general public it is much more important to get the information about the reasons for dismissal of a certain judge, and the argumentation to it offered by the Council for their decision. This even more important if we take into consideration that the Law protects the personal data of the judge, as well as his integrity, due to which the name and other personal data of the judge shall not be published; on the other hand, no such prohibition stands for the argumentations to the decision for dismissal or disciplinary measure. The fact that the Judicial council shares such data with the media and public, leaves an impression of sensational and populist act of the Council, at the account of the professional acting as per the set criteria and standards of the Merit system in the judiciary. Due to this, such practice of the Judicial council must stop and must be replaced with regular publishing of thorough and exhaustive argumentations to their decisions.

Introducing possibilities for repeating the procedures if it can be proven that the grounds for dismissal did not exist shall be considered. At the moment, this is only possible through a verdict of the ECtHR. Since the procedures for determining liabilities are not public, and that the decisions from these procedures are not publicly available, and also that they can be appealed only due to breach of the procedure, a control mechanism is needed to prevent against abuse of the discretional right of the Judicial council to decide upon existence of the legal grounds for dismissal, i.e. to determine the actual condition. This is especially important, bearing into consideration the low level of trust by the judges regarding these procedures, as well as the perceptions of the public on existence of political influences on the work of the Council, especially in election and dismissal of judges, which also hold the highest risk of corruption and conflict of interest, due to the nature of these procedures and the discretional authorizations of the Council for deciding.