

MONITORING REPORT ON THE WORK OF THE JUDICIAL COUNCIL OF THE
REPUBLIC OF MACEDONIA

1st Report

(reporting period: November 2016 – January 2017)

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Increased public oversight over the work of the Judicial Council of RM

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Introduction

A citizen's right to be judged by an independent and impartial judge represents the basic postulate of the judicial power. Independence and impartiality are values of the judicial power, as guaranteed by the Constitution of RM, the legislation, as well as by ratified international documents. The Judicial Council of RM is an autonomous and independent judicial authority, which is of special importance for enabling and safeguarding the autonomy and independence of the judicial authority by means of implementing its functions. In the justice administration system of RM of 2015, in addition to the Judicial Council, the Council for Determination of Facts and Initiation of Disciplinary Procedure for Judges (hereinafter: Facts Council) has been established, where citizens may lodge complaints on irregularities noted either in the work of judges or court presidents, or in the excessive adjournment of court proceedings.¹

The Institute for Human Rights has been implementing the Project *Increased public oversight over the work of the Judicial Council of RM* within the period September 2016 to March 2018, as supported by the British Embassy Skopje.²

This is the first Monitoring Report within the Project, covering the period November 2016 to January 2017. The Monitoring Report on transparency, accountability and efficiency of Judicial Council of RM and of the Council for Determination of Facts and Initiation of Disciplinary Procedure for Judges has been prepared based on a monitoring matrix with well established indicators.

The transparency of the Judicial Council of RM and of the Facts Council in the monitoring period, *i.e. 1 November 2016 to 31 January 2017*, was observed within the aspect of information dissemination using the website and the accountability ensured to the general

¹More information on the work of the Judicial Council and of the Facts Council, as well as more detailed explanation on their legal competencies are available in the *Baseline Analysis of the Functioning of the Judicial Council of RM*, available at: <http://ihr.org.mk/p.php?pid=124>.

²More information on the project activities are available on the website of the Institute for Human Rights - www.ihr.org.mk as well as through the mobile application *Monitoring of the Judicial Council*, available in Google Play and Apple Store.

public using various information dissemination manners, as well as ensured publicity of sessions.

The effectiveness of the operation of these two bodies was scrutinised by means of exercising competencies that these bodies have under the law, the information contained in this report and obtained through regular monitoring of all Judicial Council sessions, as well as the information available on the website, and as for the information on the Facts Council – those have been obtained using free access to public information.

TRANSPARENCY AND ACCOUNTABILITY IN THE OPERATION OF THE JUDICIAL COUNCIL OF RM

<p>√=accomplished x= not accomplished √ x= partly accomplished</p>

Information dissemination on the web location of the Judicial Council of RM and accountability ensured to general public

Information dissemination on the web location of the Judicial Council					
General features	Clear	Easy to navigate	Abundant relevant data	Systematised	Simple to browse
The website of the Judicial Council of RM is: www.ssrn.com.mk . Information are also published on the new website: www.sud.mk which is about to replace the old website and become an integrated platform of the judiciary.	√	√	√x	√ x	√ x
Acts to be published	Timeliness of publication	Available archive (easy to use and browse)	Update of data	Fullness of published acts/data	General remarks
Decisions	x	√	X	X	Decisions are not regularly published on the website
Minutes	x	X	X	X	Minutes of sessions are not published.
Announcements of scheduled sessions	√	√	√	√	Announcements of scheduled sessions are regularly published (2-3 days) before each session.
Public procurements, public	√x	x	x	x	On 06.12.2016, the

information					Judicial Council published a list of public procurements conducted in 2016. Nevertheless, this document was placed in the section for announcements and is not easily accessible.
Annual Report of the Judicial Council	√×	√	√	√	The Judicial Council adopted the 2015 Operation Report with delay.
Quarterly reports on the work of the courts in RM	×	×	×	×	The Judicial Council has been producing quarterly reports on regular basis – every three months. However, the reports are presently not placed on the website, although space has been reserved for that.

Accountability ensured to general public

Accountability ensured to general public			
	Does the JCRM have rules of public communication?		Is there any person tasked to provide answers to requests, under the free access to information?
	√		√
Proactive information-sharing with the public	Published on the website of the Judicial Council	Frequency of publications	General remarks
Press conferences	×	×	Within the reporting period, the Judicial Council has not held any press conferences.

Announcements	√	1-2 per week	Most frequently the announcements relate to sessions to be held.
Interviews	×	/	The President of the Judicial Council attended several TV debates and programmes.
Statements	×	1-2 per week	A new practice has been introduced: when sessions are attended by journalists, the JCRM President makes statements and answers questions posed by journalists.

The Judicial Council has been regularly feeding the website with publications and announcements of sessions to be held, with communications on the conclusions drawn at the sessions and with meetings held in the country and abroad.

The new website is easy to browse and contains information on regular activities of the President and of other Judicial Council members, as well as annual reports on the Judicial Council's operation.

However, the sections for quarterly reports on the operation of courts, on public procurements and on public information are empty; these information were not placed on the old website either.

The Judicial Council of RM does not publish work programmes, strategies, positions, opinions, studies and other documents alike.

The existence of **two parallel websites** causes confusion due to the unawareness of the public of the existence of a new website in one hand, and due to the fact that the old website has not been appropriately updated with legal amendments, on the other hand.

Ensured transparency and accountability by means of holding sessions

Ensured transparency and accountability by means of holding sessions			
Publicity of sessions	Number of sessions	Agenda topics that were subject to discussion	Cases when the public has been excluded

	held		
November	3	<p>Consideration of quarterly reports of the courts;</p> <p>Adoption of Book of Regulations for initiation and determination of permanent incapacity to perform judicial function, adoption of decisions on temporary reassignment of judges from one court to another.</p>	Extraordinary appraisal of candidates for presidents of the Supreme Court of RM, First Instance Court Skopje 1 Skopje, Court of Appeal Shtip and First Instance Court Tetovo.
December	3	<p>Election of acting presidents of the Supreme Court of RM and of the First Instance Court Skopje 1 Skopje;</p> <p>Adoption of the 2017 Work Schedule of the Judicial Council of the Republic of Macedonia;</p> <p>Adoption of Decision for Temporary Reassignment of Judges.</p>	Extraordinary appraisal of the work of judges, who are candidates for presidents for 2015 and 2016.
January	2	<p>Adoption of the 2017 Work Schedule of the Judicial Council of the Republic of Macedonia.</p> <p>Adoption of a Mediation Support Programme.</p>	<ul style="list-style-type: none"> - Consideration and decision-making on requests submitted for reappraisal of the work of the judges who are candidates for presidents for 2015 and 2016. - The Facts Council to assign reporters from among the Judicial Council members related to the requests submitted for determination of malpractice and misconduct in the exercise of judicial function.

In the period November 2016 to January 2017, the Judicial Council held total of 8 sessions.

This timeframe notes increased number of topics discussed, which were not publicly available.

The President of the Judicial Council had higher number of media statements within the reporting period, but as for the questions posed on the decisions adopted by the Judicial Council relating to the topics closed to the public, the answers did not satisfy the audience, causing media uphold negative position related to the JCRM work.

Given that the secrecy of sessions, according to the law, is solely envisaged for safeguarding integrity and reputation of the judge appraised, leaving the audience out in cases when the

judge himself demands publicity of procedure should be reconsidered, as by ensuring publicity, the Judicial Council would be protected from speculations, and the public would have witnessed the JCRM's professionalism.

Accountability to the Assembly of RM

Accountability to the Assembly of RM	
Annual reports	<p>Under the Law on Judicial Council of RM, the Judicial Council should prepare annual report on its operation. The Judicial Council should submit the report to the Assembly of RM for further consideration and adoption. The Judicial Council should share the report with all the courts in Macedonia.</p> <p>The report should be made public.</p>

The Judicial Council has submitted the 2015 Operation Report to the Assembly of the Republic of Macedonia. No substantive discussions have taken place. It was made public at: www.sud.mk.

The 2016 Report should be prepared by the Judicial Council by March 2017.

EFFECTIVENESS OF THE JCRM OPERATION

Implementation of the procedure for election of judges

The Judicial Council shall determine the number of vacant positions for judges of first instance courts in the Republic of Macedonia, by taking into account the total number of vacant positions for judges in first instance courts, as well as the projection of vacancies to be filled following the completion of the initial training.

The Council shall elect judge of first instance court from the list submitted by the Academy for Judges and Public Prosecutors, of candidates who have applied for the position.

Within the reporting period, no election of judges in first instance and higher courts has taken place.

Application of criteria for election of presidents of courts

Application of criteria for election of presidents of courts	
Election	Acting presidents of the Supreme Court of RM, of the First Instance Court Skopje 1 Skopje and of the First Instance Court Gevgelija
List of criteria	<ol style="list-style-type: none">1. President of Court shall be elected from among the judges of the Republic of Macedonia, under conditions, within a procedure and in a manner of election of a judge in the corresponding court.2. Evaluation of the work programme of the candidate running for president (<i>the candidate running for president of a court, along with the application form, shall enclose work programme conducted in the course of his/her mandate</i>).
General remarks	Following the expiration of the presidents' mandates in the Supreme Court of RM, in the First Instance Court Skopje 1 Skopje and in the First Instance Court Gevgelija, in late 2016, the Judicial Council commenced a procedure for election of new presidents. Due to the early parliamentary elections held on 11 December and following the recommendation of the State Commission for Prevention of Corruption not to conduct election of presidents in the pre-election period, only acting presidents were appointed for these courts.

	<p>The Judicial Council elected acting president of the Supreme Court who gained highest score, and who is in the capacity of a Supreme Court judge for two months only, and the appraisal has been conducted at a time when she was in the capacity of a judge in the Court of Appeal.</p> <p>When electing acting president for First Instance Court Skopje 1 Skopje, a judge shall be elected who has gained highest score during the last appraisal conducted in 2014.</p> <p>The Judicial Council conducted extraordinary assessment of candidates running for court presidents.</p> <p>The extraordinary appraisal is a legal opportunity for the Judicial Council and the sessions for appraisal of judges are secret.</p> <p>One of the candidates running for president of the First Instance Court Skopje 1 Skopje demanded the Judicial Council to reconsider the decision made for extraordinary appraisal of candidates running for court presidents. The Judicial Council rejected the demand, declared the judge's initiative as ungrounded and concluded that no reasons exist for reconsideration of the Decision for Extraordinary Appraisal of Candidates running for Presidents of the Supreme Court of the Republic of Macedonia, Court of Appeal Shtip, First Instance Court Skopje 1 Skopje and First Instance Court Tetovo (the agenda topic discussing this initiative was not open to public).</p>
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Removing and imposing disciplinary measures on judges and court presidents

Removing and imposing disciplinary measures on judges and court presidents	
	Number of procedures
November 2016 - January 2017	1
General remarks	<p>Given that the decision-making on the disciplinary accountability of a judge are, pursuant to the law, secret, the only data obtained are that the Judicial Council in the reporting period has adopted a decision to appoint reporters from among the members of the Judicial Council of RM, following the request submitted for determination of incompetent practice and malpractice in the exercise of the judicial function by the Council for Determination of Facts and Initiation of Procedure for Determination of Accountability of a Judge.</p>

Election of jurors

	Election of jurors
Number of announcements	Decision for election of jurors in the First Instance Court Veles, First Instance Court Strumica and First Instance Court Shtip, Decision for election of jurors in the First Instance Court Prilep, Decision for election of jurors in Basic Court Skopje 2 Skopje, Decision for election of jurors in the Basic Court Radovich.
Number of jurors	1173 jurors, pursuant to a JCRM Decision for determination of number of jurors in all courts for 2015
Number of candidates that applied for jurors in the reporting period (November 2016 to January 2017)	First Instance Court Strumica, 25 applicants, 5 selected First Instance Court Shtip, 17 applicants, 16 selected First Instance Court Prilep, 36 applicants, 24 selected First Instance Court Radovich, 3 applicants, 3 selected First Instance Court Skopje 2 Skopje, 18 applicants, 13 selected
General remarks	In the reporting period, the Judicial Court has for several times concluded selection and termination of a juror function in several courts countrywide. Main problem noted during each selection is the lack of jurors and the insufficient number of candidates applying to the announcements published for selection of jurors.

Requirements for selection of candidates for jurors are the following: **to be a holder of University degree**, to enjoy good **reputation** necessary for the performance of this function and **to be not older than 64** years of age. The juror for trials of underage children shall be selected from among persons having experience in upbringing and education of youngsters. Jurors shall enjoy the right to **allowance** for the performance of tasks of a juror, in the amount of 250 Macedonian denars daily. Juror shall be elected for a mandate of **four years** and may be re-elected.

The question is posed how stimulating is the allowance which is lower than a daily fee of a minimum salary, for people holding University degree to apply. It is therefore recommended that the Judicial Council plays a proactive role in resolving this problem.

Temporary reassignment of judges

Temporary reassignment of judges	
Number of temporary reassigned judges	Number of temporary reassignments of judges not longer than 1 year 10 judges have been temporarily reassigned within this period.
How many of temporary reassignments were contrary to the will of the judge	No information available on temporary reassignments contrary to the will of the judge submitted to the Judicial Council.
General remarks	Given the lack of judges for first instance courts, and following the vacant judge positions in several first instance courts, the Judicial Council, to fill the vacant judge positions and to enable dull functioning of first instance courts, should conduct reassignment of judges from one court to another, for performing judicial function.

Recommendations for transparency, accountability and effectiveness of the Judicial Council:

We hereby propose quicker update of the new website and easier access to all relevant information on their operation.

The Judicial Council of RM should in the future have more proactive role in ensuring independence of the judiciary, instead of obeying to the laws, but it should also be rendered a higher role in the policymaking for functional, independent and impartial judiciary.

TRANSPARENCY AND ACCOUNTABILITY OF THE COUNCIL FOR DETERMINATION OF FACTS AND DETERMINATION OF LIABILITY OF JUDGES

Information dissemination on the web location of the Facts Council and ensured accountability to the general public

Information dissemination on the web location of the Facts Council

The Facts Council **has not its own website**, because the Judicial Budget Council has never conducted a proper procurement for this matter. Also, the Facts Council has not been publishing its announcements through any other media. The Rulebook for the work of this body and other secondary legislation are not made available to the public although this body has been granted a role to discuss separately each complaint and grievance lodged by citizens, legal entities, court presidents, relating to the work of the judges or court presidents, as well as relating to the delay of court proceedings, as well as after a talk heard or other knowledge obtained on the work of judges or court presidents.

Ensuring accountability to the wider public

Ensuring accountability to the wider public		
General characteristics on the openness of the institution	Are there any rules in place for public communication?	Is there any person tasked to respond to requests under the free access to information
	√	√
Proactive public information	Fullness of published acts/data	General remarks
Press conferences	×	In the reporting period, the Facts Council has not called a press conference on public information
Announcements	√×	The Facts Council has sent out public announcements through

		media, which were not conveyed to the fullest.
Interviews and media statements	√	The President of the Facts Council made media statements related to the latest developments following initiatives raised by judges and court presidents.

EFFECTIVENESS IN THE OPERATION OF THE FACTS COUNCIL

Consideration of submitted initiatives

Consideration of submitted initiatives

Even though pursuant to the law, the sessions of the Facts Council are open to public, the public may be excluded only under a decision adopted by the Council, in favour of safeguarding the reputation and the integrity of the judge or of the candidate for judge, still, in practice **the sessions are secret**, as, according to the Rulebook, the procedure for initiation of liability of a judge is not public.

In the reporting period only **one public session** was held upon the request of the judge against whom the initiative has been raised to start a procedure for determination of his liability.

Procedures on initiatives submitted to the Facts Council relating to the liability of a judge

Procedures on initiatives submitted to the Facts Council relating to the liability of a judge			
	November	December	January
Number of complaints lodged by citizens, legal entities on monthly basis	41	32	14
Sessions held of the Facts Council to consider the complaints lodged	8	7	6
Requests for initiation of liability determination of a judge or of a president of a court, submitted to the Judicial Council of RM	One request has been submitted to the Facts Council for initiation of a procedure for determination of liability of a judge or of a president of a court. The Facts Council has no information yet whether the Judicial Council has accepted the request.		
	November	December	January
Activity following a talk heard	The Facts Council based on a talk heard has formed a		

	case		
	Case 1	Case 2	Case 3
Requests for initiation of liability determination as per findings from a talk heard	For one of the formed cases as per a talk heard, the Facts Council has submitted a request to the Judicial Council of RM for initiation of a procedure for liability determination of a judge or president of a court.		
General remarks			

The Facts Council has no information yet whether the Judicial Council shall proceed as per the submitted request for initiation of a procedure for determination of liability of a judge or of a president of a court.

As the Facts Council has not its own website, neither are its documents and activities published through any other media, the Institute for Human Rights submitted a request for free access to public information on the number of submitted complaints-initiatives lodged by citizens and legal entities for the period November 2016 to December 2017. As a response, we received the information on time, which are presented in the table above.

Recommendations on transparency, accountability and effectiveness of the Facts Council:

It is necessary that the Facts Council has its own website where it shall be able to publish its activities. It is useful that the Facts Council is included in the new joint platform of the judiciary www.sud.mk, which is expected to replace the existing websites of the Judicial Council and all courts in the country. At the moment, the Facts Council, being an important body ensuring judiciary independence, initiating procedures for determination of liability of a judge or a court president, should not be excluded from this web platform.

Of special importance is the proactive role of this body to acquaint citizens with their existence and their competency to receive initiatives raised by citizens and legal entities.