



BASELINE ANALYSIS OF THE FUNCTIONING OF **THE JUDICIAL COUNCIL** OF THE REPUBLIC OF MACEDONIA

Institute for Human Rights - IHR

Skopje, 2016

Publisher

Institute for Human Rights, Skopje

Authors

Margarita Caca Nikolovska

Vera Koco

Lubin Aleksijevski

Editors

Kristina Doda

Jelena Kadrikj

Proofreading

Tatjana Stojanovska

Translation

Blerina Starova Zlatku

Irena Kacarski Kimova

CONTENTS

Introduction.....	5
Organization and Importance of the Judiciary	7
Independence and Impartiality of the Judiciary.....	8
Judicial Council of the Republic of Macedonia	10
Council for Determination of Facts and Initiation of Disciplinary Procedure for Judges.....	13
Authority of the Judicial Council of the Republic of Macedonia and of the Council for Determination of Facts	14
Procedure for election of judges	16
Determining the number of judges needed for the courts of the Republic of Macedonia	16
Requirements for election of judges and presidents (general and special)	20
Initiation of disciplinary procedure against judges and procedure for the removal of judges.....	23
Reassignment of judges.....	27
Operation of the Judicial Council of the Republic of Macedonia and of the Council for Determination of Facts.....	30
Transparency in the operation of the Judicial Council of the Republic of Macedonia	31
Transparency in the operation of the Council for Determination of Facts	32
Accountability and liability of the Judicial Council of the Republic of Macedonia	32
Accountability and liability of the Council for Determination of Facts	34
Analysis of questionnaires sent to the expert public (lawyers)	35
Analysis of questionnaires sent to the general public.....	39
Focus Group	41



British Embassy
Skopje

British Embassy Skopje supported the preparation of this publication, within the project "Increased public oversight over the work of the Judicial Council of RM". The content of this publication does not necessarily reflect the position or the opinions of the British Embassy.

INTRODUCTION

This baseline analysis of the functioning of the Judicial Council of the Republic of Macedonia was developed under the “Increased Public Supervision of the Operation of the Judicial Council of the Republic of Macedonia” project implemented by the Institute for Human Rights with the support of the British Embassy in Skopje. It provides an overview of the current operation of the Judicial Council of the Republic of Macedonia (hereinafter: JCRM).

The right of any citizen to be tried by an independent and impartial judge is the fundamental postulate of the judiciary. Independence and impartiality of the judiciary are values guaranteed with the Constitution of the Republic of Macedonia, the legislation of the Republic of Macedonia and the international treaties ratified by the Republic of Macedonia.

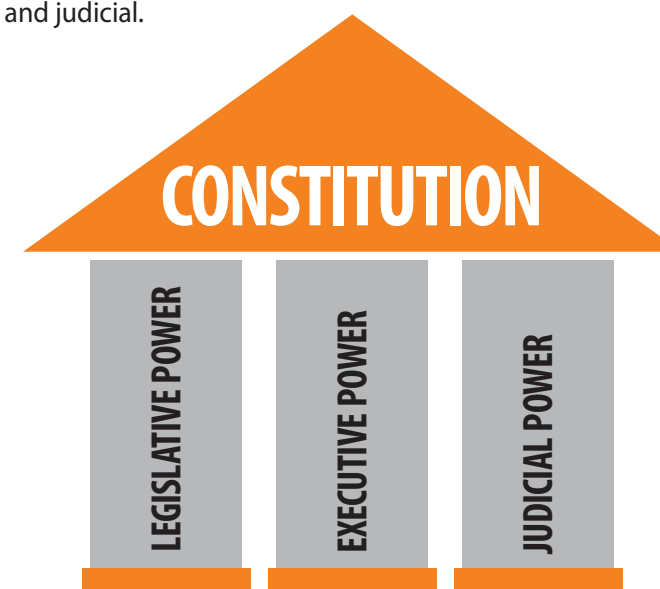
While this text describes JCRM operation in general, at the time it was written the Council for Determination of Facts and for Initiation of Disciplinary Procedure for Judges (hereinafter: Council for Determination of Facts)¹ was established and it became necessary to give also a brief overview of the powers and current state of play in the operation of this new body and give details about its interrelation with the Judicial Council of the Republic of Macedonia.

The analysis looks at the present state of these two bodies. It will later be used to define the IHR course of action, as well as to measure the changes that might take place. In order to assess the current situation, an analysis was made of the legislation governing the judiciary, the powers of the JCRM and the Council for Determination of Facts, the procedures, conditions and criteria for election of judges, removal of judges, reassignment of judges to other positions, including the transparent and efficient operation of the two bodies. Information on their actual operation in practice has been obtained through continuous monitoring of the JCRM sessions by the Institute for Human Rights.

Information on the public awareness about the existence and the operation of the JCRM and the Council for Determination of Facts has been obtained through public opinion surveys. In addition, an on-line survey was conducted among the expert public i.e lawyers. Lawyers’ responses about their opinion and the experience related to the work of the JCRM and the Council for Determination of Facts are presented in this analysis. For the purpose of determining the general public’s perception and understanding of the JCRM operation, a discussion was organized in the form of a focus group, the results of which are contained in this analysis. These responses serve to determine the current perception of these bodies by the general and the expert public, for the purpose of measuring possible changes in future.

ORGANIZATION AND IMPORTANCE OF THE JUDICIARY

Following the declaration of its independence and the adoption of the Constitution in 1991, the Republic of Macedonia was constituted as an independent, autonomous, sovereign, democratic, civil and social state. One of the fundamental values of the constitutional system is the separation of powers into legislative, executive and judicial.



Political pluralism and separation of powers are the basis for the separation of the state from the political parties, which is indispensable in ensuring the separation of the three branches of power of the state. This independence ought to be seen as a system of independent exercise of the functions of each respective branch of power, within the scope of its authority, including certain level of cooperation, but free of interferences.

The sovereignty of the Republic of Macedonia belongs to the citizens. While the sovereignty derives from the citizens, they exercise their power through democratically elected representatives obligated to fully respect and apply the fundamental values of rule of law, respect for human rights and building democratic institutions, which are enshrined as principles in the national and international documents.

¹ Law on the Council for Determination of Facts and for Initiation of Disciplinary Procedure for Judges, Official Gazette of R.M. No. 20/2015.

Besides the Constitution of the Republic of Macedonia, that governs the independence of the judiciary, there are laws the enforcement of which should ensure its independence. Such laws include the Law on Courts², the Law on the Judicial Council of the Republic of Macedonia³ and the Law on the Council for Determination of Facts and for Initiation of Disciplinary Procedure for Judges⁴. The secondary legislation, such as rules of procedure and implementing regulations for these bodies are additional tools that facilitate and ensure judiciary independence in practice.

INDEPENDENCE AND IMPARTIALITY OF THE JUDICIARY

Judiciary independence can be guaranteed if legislation, under which judges exercise their functions, provides sufficient safeguard mechanisms to preclude attempts to exert influence on judges. However, the guarantee that mechanisms ensuring judiciary independence will function and be autonomous is primarily dependent on the fulfilment of the obligation of the other branches of power to respect such independence in practice.

Pursuant to Article 98, judicial power is “exercised by courts which are autonomous and independent”. Articles 98, 99 and 100 of the Constitution, including amendments thereto, provide for safeguard mechanisms ensuring judges’ independence, such as permanent term of office (until retirement), termination of office under circumstances defined in the Constitution, removal of judges in the cases specified in the Constitution and under conditions defined by law, enjoyment of immunity and protection against reassignment contrary to the will of a judge.

The independence of the judiciary, which is an essential element of the judicial power, is primarily exercised through the process of election of judges to perform the judicial office. It is required that the election of judges be done through mechanisms guaranteeing such independence in practice.

2 Law on Courts. “Official Gazette of the Republic of Macedonia”, No. 58/06 35/08, D. No. 256/07, D.No.74/08,150/10,D.No.12/.

3 Law on the Judicial Council of the Republic of Macedonia. “Official Gazette of the Republic of Macedonia”, Nos. 60/06, 150/10, 100/11 and 15.

4 Law on the Council determining the facts and initiating procedure for liability of judges, Official Gazette of the Republic of Macedonia, No. 20/2015.

What does judicial independence mean?

While there is no single generally accepted definition, independence is primarily deemed to mean independence of the judge from the parties in legal proceedings and from the other two branches of power.

A guarantee of independence in this sense is the election of judges that meet the criteria of independence, **impartiality, integrity, equality, expertise, professionalism, diligence, responsibility, decency and trust inspiring behavior in the exercise of the judicial office, as well as the duration the mandate.**

Judicial independence is not established only by the pertinent legislation, it is also a result of the exercise of independence in practice. Independence of the judiciary is considered a basis for the rule of law. The Basic Principles of the Judiciary of the United Nations⁵ and the European Charter on the statute for judges⁶ emphasize the importance of the independence of the judiciary by resolute institution of the essential elements of an independent judiciary.

The degree of independence of the judiciary principally relies on two factors:

- the first is the manner in which judges are protected against influences from third natural or legal entities, and
- the second is the degree to which the judges deliberate, act and decide autonomously, based on facts and through consistent application of the law.

The European Convention on Human Rights assesses the independence of a court, among other, by means of assessment of the procedure for election and appointment of its members, i.e. the judges.

The Council of Europe Recommendation R 94/12 on the independence, efficiency and role of judges⁷ states the following:

5 Basic Principles on the Independence of the Judiciary, adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held in Milan from 26 August to 6 September 1985 and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985.

6 European Charter on the statute for judges, Strasbourg, 8 - 10 July 1998.

7 Rec (94)12 13/10/1994 on the independence, efficiency and role of judges, Committee of Ministers, Council of Europe.

„All decision concerning the professional career of judges should be based on objective criteria and the election and career of judges should be based on merit, having regard to qualifications, integrity, ability and efficiency. The authority taking the decision on the criteria and the election of judges should be independent of the government and the administration. In order to safeguard its independence, rules should ensure that, for instance, its members are selected by the judiciary and that the authority decides itself on its procedural rules.”

Opinion 10 of the Consultative Council of European Judges⁸ recommends judicial councils of mixed composition of judges and persons who are not judges, to represent the autonomous judicial power in a way enabling judges to perform their judicial office free of any control by the representatives of the executive or legislative powers who are members of the Council.

JUDICIAL COUNCIL OF THE REPUBLIC OF MACEDONIA

Pursuant to the Constitution of the Republic of Macedonia, the Judicial Council is an autonomous and independent body of the judiciary, one that provides and guarantees the autonomy and independence of the judicial branch through the exercise of its functions in compliance with the Constitution and the laws.

The definition thus stated proclaims that the Judicial Council has a status of an autonomous and independent body of the judiciary, or more precisely it is a body with complete integrity in the exercise of its functions. In the exercise of its functions and competences, the Council is autonomous and independent from the bodies of the legislative and executive branches of power, as well as from any other institution, organization or political and partisan influences.

The Judicial Council as an autonomous and independent body of the judiciary is not a body outside the constitutional and legal system and it is subject to the application of the principles of rule of law, protection of human rights and freedoms and the division of powers into legislative, executive and judicial. It is also a body that provides balance among the three branches of power in the society.

Therefore, the Judicial Council of the Republic of Macedonia is construed as an autonomous and independent body of the judiciary and among its members,

besides the representatives of the judicial power, there are also representatives of the other two branches of power – the legislative and the executive.

The Judicial Council is composed of 15 members:

- Ex officio members of the Council are the President of the Supreme Court of the Republic of Macedonia and the Minister of Justice;
- Eight members of the Council elect the judges from their ranks. Three of the elected members are members of non-majority communities in the Republic of Macedonia, thus ensuring that there is adequate and fair representation of the citizens who are members of all communities;
- Three members of the Council are elected by the Parliament of the Republic of Macedonia by a majority vote from the total number of members of the parliament, ensuring that there is a majority vote from the total number of members of the parliament representing the non-majority communities in the Republic of Macedonia;
- Two members of the Council are nominated by the President of the Republic of Macedonia and are elected by the Parliament of the Republic of Macedonia, and one of these two is member of the non-majority communities in the Republic of Macedonia.

If the Judicial Council as an autonomous and independent judicial body is to ensure and guarantee the autonomy and independence of the judicial power, its members - whether elected from the ranks of the judges or from the ranks of outstanding lawyers - must possess the essential trait of high professionalism and integrity.

⁸ Consultative Council of European Judges – CCEJ, Opinion No. 10 (2007) of the Consultative Council of European Judges (CCEJ) for the attention of the Committee of Ministers of the Council of Europe on the question of the Judicial Council in the service of society. This Opinion was adopted by the CCEJ at its 8th Meeting (Strasbourg, 21st to 23rd November 2007).

Legal requirements for election of members of the Judicial Council of the Republic of Macedonia:

REQUIREMENTS FOR ELECTION of a member from the ranks of the judges	REQUIREMENTS FOR ELECTION of a member from the ranks of distinguished lawyers (nominated by the Parliament and by the President of R.M.)
<ul style="list-style-type: none"> at least five years of working experience as a judge; to have received highest positive marks by the Council in the last three years of his/her work as a judge; to enjoy good reputation, to show integrity in exercising the function of a Council member and to possess social skills for exercising the judicial function, both to be confirmed in integrity and psychological testing. 	<ul style="list-style-type: none"> to be a citizen of the Republic of Macedonia; to be a lawyer with university degree and at least 15 years of professional experience in the legal profession, having passed the Bar exam, and one that has distinguished himself/herself in the legal profession with scholarly or professional works or with public activities; and to enjoy good reputation, to possess integrity in exercising the function of a Council member and to possess social skills for exercising the function of a Council member, both to be confirmed in integrity and psychological testing.

indicator of the judge's professional experience. For the other members from the ranks of distinguished lawyers, professional experience of 15 years is foreseen in addition to all the other conditions.⁹

The mandate of elected Council members is six years with the right to one re-election; however, the mandates of the President of the Supreme Court of the Republic of Macedonia and the Minister of Justice as members of this Council end with the termination of their terms of office.

⁹ Article 11 of the Law on the Judicial Council of R.M.

COUNCIL FOR DETERMINATION OF FACTS AND INITIATION OF DISCIPLINARY PROCEDURE FOR JUDGES

In the judicial system of the Republic of Macedonia, in addition to the Judicial Council, there is also the Council for Determination of Facts and Initiation of Disciplinary Procedure for Judges that was established following the enactment of the Law on the Council for Determination of Facts and Initiation of Disciplinary Procedure for Judges in 2015.¹⁰

The election of members of the Council for Determination of Facts includes election of:

- 3** members from the ranks of retired judges
 - with uninterrupted professional judicial service of at least 15 years
 - with notable results in their work
 - and such that had not been subject to disciplinary measures during their judicial service
- 3** members from the ranks of retired public prosecutors
 - with uninterrupted professional service as prosecutors of at least 15 years
 - with notable results in their work as prosecutors
 - and such that had not been subject to disciplinary measures during their service as prosecutors
- 2** members from the ranks of retired university professors from a Faculty of Law at one of the universities in the Republic of Macedonia
 - with uninterrupted professional service as university professors of at least 15 years
 - with notable results and published scholarly works during their work as professors
- 1** member from the ranks of retired lawyers
 - with uninterrupted professional service as a lawyer of at least 15 years, with notable results in his/her work and such that during his/her work as lawyer has not been subject to disciplinary measures

¹⁰ Law on the Council for Determination of Facts and Initiation of Disciplinary Procedure for Judges, Official Gazette of the Republic of Macedonia No.20 dated 12 February 2015.

Authority of the Judicial Council of the Republic of Macedonia and of the Council for Determination of Facts

It is within the authority of THE JUDICIAL COUNCIL OF R.M.:

- to elect and remove judges, court presidents, and lay judges;
- to determine termination of judicial office;
- to monitor and evaluate the work of judges;
- to decide on disciplinary accountability of judges;
- to ascertain incompetent practice and malpractice in the exercise of the judicial office and to decide on termination of judicial office due to permanent incapacity to perform judicial office;
- to decide on revocation of judge's immunity and to approve detention of a judge upon request;
- to nominate two judges to the Constitutional Court of the Republic of Macedonia from the ranks of the judges;
- to review the Supreme Court of the Republic of Macedonia's annual report on its principal positions and principal legal opinions on issues of relevance in ensuring uniform application of the laws;
- to decide on temporary disqualification of a judge from exercising his/her judicial office;
- to determine the number of judges needed per court;
- to review and evaluate quarterly and annual reports on the work of the courts;
- to uphold the good reputation of judges and the trust of the citizens in the judiciary;
- to submit reports on its own operation;
- to adopt Rules of Procedure and other general acts regulating matters under its authority;
- to determine a tentative number of cases per month to be solved by a judge, and
- to perform other duties provided for by law.

A voting member of the Judicial Council has the following rights, obligations and duties:

- participates in the Council work and decision making,
- gives initiatives, proposals and opinions on issues within the authority of the Council,
- takes part in the working bodies of the Councils to which he/she was elected,
- upon Council's conclusion, reviews the work of a particular judge and takes other actions, and reports the findings therefrom to the Council,
- shall be liable for violation of the Constitution and the laws in relation to exercising the office of Council member, and
- performs other duties as prescribed under the Law on the Judicial Council of the Republic of Macedonia.

It is within the authority of THE COUNCIL FOR DETERMINATION OF FACTS:

- to review initiatives (complaints and submissions) submitted by citizens, legal entities, presidents of courts, regarding the work of judges or delays in court proceedings, as well as regarding rumour or other information about the work of judges or presidents of courts;
- to obtain data and evidence related to the allegations in the initiatives;
- to obtain data and evidence in possession of a government body, a body of a local self-government unit, natural or legal entity entrusted with performance of public functions;
- to directly review judicial and other documents and files relative to the allegations in the initiative;
- to review the Judicial Council's reports on the work of the judges and the courts;
- to submit to the Judicial Council of R.M. a request to initiate a procedure for establishment of the liability of a judge or a court president and to present such request;
- to prepare annual reports on matters within its authority and the other responsibilities granted by law.

PROCEDURE FOR ELECTION OF JUDGES

Determining the number of judges needed for the courts of the Republic of Macedonia

The Judicial Council of the Republic of Macedonia determines the number of judges in each of the courts (upon established need) with a decision for which it obtains an opinion from the plenary session of the Supreme Court of the Republic of Macedonia,¹¹ as well as an opinion from the session of the judges in the court in question¹², thus demonstrating its active role and authority in the policy-making and determining the total number of seats for judges in the judiciary of the Republic of Macedonia.

In the procedure for election of judges for the first instance courts, the first step in the work of the Council is to bring a decision whereby the Council determines the number of vacancies for judges. In so doing, it takes into consideration the total number of vacant seats for judges in the courts of first instance, as well as the projected seats to be filled following the completion of the initial training at the Academy of Judges and Public Prosecutors. The Council submits this decision to the Academy not later than by 31 March of the current year.

The selection procedure begins with a decision of the Judicial Council to publish an announcement for election of a judge when a seat of a judge falls vacant or upon established need for such appointment. The decision defines also the necessary specialization in a given field (criminal, civil, business or other area within the court's scope of work), in accordance with the request previously submitted by the court to the Judicial Council asking that a seat be filled. The announcement is published in the Official Gazette of the Republic of Macedonia, as well as in two daily newspapers, one of which in a language other than Macedonian and spoken by at least 20% of the citizens of the Republic of Macedonia. The call expires within 15 days following the date of publication in the Official Gazette.¹³ The election of a judge for a first instance court is exclusively relying on the ranking list of candidates submitted by the Academy of Judges and Public Prosecutors. The Judicial Council is obligated to conduct the election according to the ranking list of achievements of the candidates who have submitted their applications for the competition. Thus, JCRM in effect appoints judges to the first instance courts, but is obliged to base the appointment on the results that the candidates have achieved at the Academy.

JCRM also **elects judges to higher courts** (Appellate, Administrative, Higher Administrative and the Supreme Court of the Republic of Macedonia) from the candidates who responded to the advertisement and meet the necessary statutory requirements, and who are ranked according to the specialization needed for the seat they applied for.

So as to properly implement the procedure for election of a judge to a court of higher instance, the Judicial Council establishes a three-member committee from among its members that will prepare the effective administration of the election.¹⁴ This committee is tasked with checking whether applications were submitted within the deadlines and whether applicants' documents are complete; preparing the list of candidates that meet the necessary requirements; notifying the candidates of the day and hour when the psychological and integrity testing will take place and instructing candidates on the payment of the testing fees. The next step is interviewing candidates from the list of candidates that have passed the psychological test and the integrity test, followed by finalising the ranking lists of candidates with the needed specialization and candidates without needed specialization.

When electing judges for a court of higher instance, the Judicial Council may, at its own discretion, conduct an extraordinary assessment of the candidate's work and bring a decision determining the time period covered with such extraordinary assessment. The extraordinary assessment is conducted by a committee of three Judicial Council members in line with the criteria and the procedure for regular assessment of the judge's work¹⁵.

Pursuant to the Rules of Procedure of the Judicial Council, in the course of the selection procedure the Judicial Council deliberates and decides in a session attended by at least three thirds of the voting Council members.

Deliberations on candidates follow the order in which candidates are listed in the final ranking list according to necessary specialization. The JCRM members are entitled to express their opinion on each candidate before voting. Should the candidate ranked as the first in the list not receive the necessary number of votes (two-thirds majority), the voting continues down the list for the other candidates on the ranking list. The candidate who receives two-thirds of the votes from the total number of voting Council members will be the elected judge. The decision on the election of the candidate is notified in writing. It is also published on the JCRM website and in the Official Gazette of the Republic of Macedonia.

¹¹ The plenary assembly of the Supreme Court of the Republic of Macedonia (SCRM) comprises all the judges of SCRM regardless of their specialization.

¹² Article 44 of the Law on Courts, "Official Gazette of the Republic of Macedonia", Nos.58/06, 35/08, S. No.256/07, D.No.74/08, 150/10, D.No.12/11.

¹³ Article 39 of the Law on the Judicial Council of the Republic of Macedonia.

¹⁴ Article 20 of the Rules of Procedure of JCRM.

¹⁵ Article 20 paragraphs 3, 4, and 5 of the Rules of Procedure of JCRM.

In 2016, a large number of judges were elected at the same time. 25 judges were elected in the courts of all instances on 5 September. The explication from the committee conducting the interviews emphasized that there were judges among the highest ranking candidates with identical total points. Furthermore, when electing 2 judges for the Higher Administrative Court, it was not the candidate with the highest score that was eventually elected (at present judge with the Administrative Court). Elected were the next 2 candidates on the list (at that time employees in government bodies and/or lacking judicial experience). In both cases none of the total of 12 members of JCRM took the floor to express their opinion on the candidacies, only the committee representative briefly described the previous work experience of the candidates (25 already judges now).¹

The procedure for **election of a president of a court** begins with an announcement published two months prior to the expiration of the current president's mandate. The election of a president from among the applicants must be completed not later than within two months following the date of the publication of the announcement.

The Judicial Council of the Republic of Macedonia began publishing its decisions on the election of judges and presidents of courts on its website in 2016. However, the decisions on the election of judges do not provide information on the applicants, nor any explanation regarding the qualification of the selected candidates.

Just as in the case of the election of a president, the candidate elected to be president is notified in writing, and the decision is published on the Council's website and in the Official Gazette of the Republic of Macedonia.

When electing a judge or a president of a First Instance Court and of an Appellate Court on the territory of a local self-government unit with 20% of citizens speaking an official language other than the Macedonian, as well as in the case of election of a judge or a president of the Supreme Court of the Republic of Macedonia, the Judicial Council must uphold the principle of fair and equal representation. In such cases JCRM deliberates and decides in a session attended by at least two-thirds of the voting members. The candidate winning two-thirds of the votes from the total

number of voting Council members shall be considered elected, provided that there is a majority of votes from the present members belonging to the non-majority communities in the Republic of Macedonia.¹⁶

Should, following completion of the procedure for election of a judge or president of a court, JCRM establish that none of the applicants who have responded to the announcement meets the prescribed requirements, or that none was elected to be judge or court president, JCRM shall take a decision to advertise these seats again (for judge or court president) in order to complete the election.¹⁷

The Judicial Council nominates two candidates from the ranks of the judges to be elected judges of the Constitutional Court of the Republic of Macedonia, after having assessed their overall professional results, as well as their input to the development of the theoretical thought and expertise and the legal system. The Judicial Council endorses this proposal with a two-thirds majority of votes from the total number of voting members.¹⁸

¹⁶ Article 24 of the Rules of Procedure of JCRM.

¹⁷ Article 25 of the Rules of Procedure of JCRM.

¹⁸ Article 132 of the Law on the Judicial Council of the Republic of Macedonia.

REQUIREMENTS FOR ELECTION OF JUDGES AND PRESIDENTS (GENERAL AND SPECIAL)

The Law on Courts¹⁹ provides the general conditions for the election of judges and presidents of courts, to serve as a basis for conducting the election.

GENERAL REQUIREMENTS: to be a citizen of the Republic of Macedonia, with an active command of Macedonian language, fit for work and in generally good health, holder of university degree in law with average achievement grade not lower than 8, has passed the Bar exam, possesses active knowledge of one of the official languages of the EU, English being mandatory, works with computers, enjoys good reputation, possesses integrity in performing the judicial office and possesses social skills needed for the job (subject to integrity and psychological testing).

SPECIAL REQUIREMENTS FOR SELECTION FOR THE

FIRST INSTANCE COURT	APPELLATE COURT	ADMINISTRATIVE COURT	HIGHER ADMINISTRATIVE COURT	THE SUPREME COURT OF RM
the candidate needs to have completed initial training at the Academy for Judges and Public Prosecutors.	the candidate needs to have work experience of at least four years of uninterrupted judicial office in the first instance court at the time of applying.	the candidate needs to have experience of at least four years uninterrupted judicial office in a first instance court or five years of work on legal issues in a government body.	the candidate needs to have experience of at least three years of uninterrupted judicial office in the Administrative Court or six years experience of work on legal issues in a government body.	the candidate needs to have at least six years of uninterrupted judicial office in the Appellate Court, whereas candidates from the Administrative Court and from the Higher Administrative Court need to have been assessed with the highest positive marks.

An **ADDITIONAL** requirement in the election of a judge for a higher court is that candidates have been assessed with the highest marks by the Judicial Council in the previous year, in comparison to the other applicants, and have the highest score of points in comparison with the other applicants, in agreement with law.

PRESIDENT OF COURT is elected from the ranks of the judges, following the requirements, the procedure and the manner of election of judges in the pertinent court. Elected for president shall be the judge assessed with the highest mark in the two previous years and one that has the highest score of points in comparison to the other applicants, in accordance with law. The candidate for president of a court shall accompany his/her application and other documents with a programme of activities planned for the duration of his/her mandate.

The criteria applied in the assessment of judges that are important for their further promotion, are unclear and partially defined and lead to uncertainty as to their appropriate use in practice. What is actually assessed is just the number of confirmed, annulled or altered decisions relative to the total number of cases solved, as well as the number of cases solved relative to the approximate number of cases to be solved by a judge in the course of one month. Such information can be obtained through the ACMS system, but without data about other parameters defining attitude towards work, including the grounds of the solved cases and other indicators of the gravity of a particular case.

One very important question in the process of election of judges and presidents of courts is undoubtedly that of determining appropriate legal criteria that will fully, and with an insight into a variety of aspects, enable making the best choice, such as high degree of expertise and professionalism confirmed through high quality practice over an adequate number of years that will indicate high quality work experience and certainly a high degree of manifested integrity of the judge as a person of high moral qualities.

At the same time, a question that must not be ignored is that of the proper and complete application of these criteria in conducting each and every election of judges and presidents of courts that will prevent voluntarism in the operation of the Judicial Council or any form of political influence by the legislative power or the executive power.

The Judicial Council conducts the election of judges for the First Instance Court in compliance with the criterion provided for in the Law on the Judicial Council²⁰, following the ranking of the scores for accomplishments in the final ranking list.²¹

There is no mention of specialization of candidates who have completed the initial training, even though specialization is required in first instance courts where they apply, as these courts take legal action in proceedings prescribed by law relating to: human rights, citizen rights, and legally protected interests; lawsuits between citizens and legal entities; criminal acts, misdemeanours and other matters under the jurisdiction of the court as determined by law.²¹

When electing judges for a higher court - Appellate Court, Administrative Court, Higher Administrative Court and the Supreme Court - the Judicial Council ranks the applicants according to the specialization required for the vacant judicial seat.

²⁰ Article 40 of the Law on Judicial Council of the Republic of Macedonia.

²¹ Article 4 of the Law on Courts, Official Gazette of the Republic of Macedonia, Nos. 58/06, 35/08, D.No.256/07, D.Nos.74/08,150/10, D.No.12/11.

¹⁹ Articles 45 and 45-a, Official Gazette of the Republic of Macedonia, Nos. 58/06,35/08, D.No.256/07, D.No.74/08,150/10, D.No.12/11.

Candidates for judges in higher courts obtain their specialization in the course of their work and exercise of judicial office in the first instance courts, which is fairly true as candidates who have completed their training at the Academy for Judges and Public Prosecutors demonstrate a specific interest and achieve success in specific areas of their initial training, which provides them with an advantage in that particular area. Such advantage should be recorded in some way by the institution making the ranking list, as it would facilitate the work of the Judicial Council in filling a concrete vacant judicial seat in a criminal, civil or other court.

When electing judges the Judicial Council must respect the criteria prescribed with the Law on Judicial Council and select the candidate possessing the highest expert and professional qualities, one that also enjoys a good reputation necessary for the performance of the judicial office. The purpose of the criteria provided for in the Law on the Judicial Council²² is to enable a more efficient selection and ranking of the candidates; their application ensures that in the process of election of a judge to a higher court the Judicial Council will be more effective.

With respect to expert and professional qualities criteria and the good reputation criteria:

- first is the criterion assessing expertise and specialization in the profession and continuous professional development;
- second is the work attitude, and includes abiding by statutory time limits for instituting proceedings; abiding by statutory time limits for preparing, bringing and publishing decisions; the relation between the number of confirmed, annulled and altered decisions and the total number of solved cases; the number of solved cases relative to the approximate number of cases to be solved by a judge per month, defined by the Judicial Council;
- third is the ability to resolve legal issues; this criterion refers to the achieved degree of accuracy and legality of the judicial decision-making and findings, primarily in proceedings with legal remedies;
- fourth is the safeguarding of the good reputation of the judge and the court, established from the manner of conducting the proceedings, the communication with the parties and other bodies, safeguarding the independence, the impartiality, the confidentiality, the status of the profession and the attitude towards the work and in general;

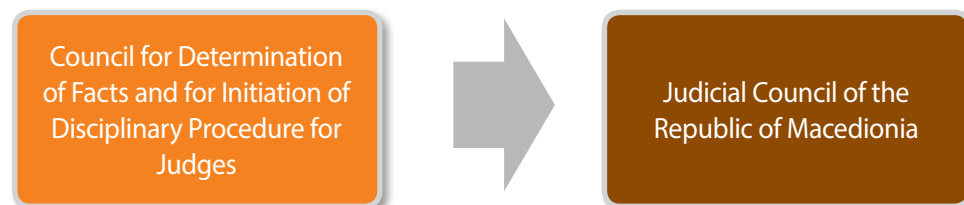
- fifth is the aptitude for oral and written expression, reflected in the written decisions and the professional actions taken by the judge;
- sixth is the additional workload taken upon oneself in resolving backlogged cases;
- seventh is additional workload involving mentorship, education activities and the like;
- ranked eighth are the relations with peers and court administration; and
- capacity to carry out managerial duties is the ninth criterion.

In addition to the application of the above described criteria for a proper election of a judge to a higher court, JCRM is obligated to obtain an opinion from the court. This opinion is submitted by the President of the Court following a judges' session and a conducted anonymous survey among the employees of the court where the candidate performs the judicial office. Where a candidate for a judge in the Administrative or in the Supreme Court is not from the ranks of judges, the Judicial Council obtains an opinion from the government body where the candidate works.

With regard to the anonymous survey, the Law on the Judicial Council specifies that the manner in which it should be conducted is regulated by the JCRM. However, the JCRM Rules of Procedure that define the course of action to be taken by the Judicial Council in the election of judges and presidents of courts do not contain provisions regarding the manner in which the anonymous survey of court employees is to be conducted. Hence, we have no way of knowing whether such a survey is being conducted and whether the results thereof are being taken into account when deciding on the election.

²² Article 41 paragraph 2 of the Law on the Judicial Council.

INITIATION OF DISCIPLINARY PROCEDURE AGAINST JUDGES AND PROCEDURE FOR THE REMOVAL OF JUDGES



The Council for Determination of Facts and for Initiation of Disciplinary Procedure for Judges files a request with the Judicial Council together with the evidence supporting it.

The Judicial Council discusses the submitted request for disciplinary procedure (hereinafter: the request) only to establish whether the request is duly filed, complete and admissible. Should the Judicial Council find that the request is belated, incomplete or inadmissible, it will bring a decision to reject the request. Where the Judicial Council has accepted the request, it establishes a Disciplinary Committee from among its members, consisting of a chair and four members (hereinafter: Committee). The Judicial Council appoints, from its ranks, one deputy to the Committee chair and one deputy to Committee members. The Committee members' deputy may replace only one member during the meetings and the deliberations.

The Committee delivers the request and the evidence into the hands of the judge against whom the request has been filed. The judge may respond to the allegations in the request in writing, or may make an oral statement for the record, within eight days from the receipt of the request. The judge against whom the request is filed is entitled to an attorney whom the judge contacts and ensures his presence at the hearing. The judge submits the response to the request together with all the evidence supporting his response to the request, or which he uses to refute the allegations and the evidence in the request. The Committee requests and obtains information and evidence of interest in establishing the circumstances related to the ascertaining of the disciplinary accountability of the judge.

Within 30 days, based on the obtained information and evidence, the Committee submits to the Judicial Council a report containing proposal for the grounds of the request.

The Judicial Council deliberates on sessions about the request and the proposal of the Committee and either decides to initiate a disciplinary procedure or to discontinue the disciplinary procedure. The decision of the Judicial Council is made by majority vote from the total number of Council members within 30 days from the receipt of the report.

Should the judge against whom a disciplinary procedure was initiated submit a request for termination of his/her judicial office, the Judicial Council will state in the decision for termination of his/her judicial office upon his/her request for termination of the judicial office, that such decision was made at a time when a disciplinary procedure was conducted against the judge. In such a case the disciplinary procedure is discontinued.

A judge is removed from judicial office for reasons of malpractice or unprofessional practicing of the judicial office.

The Judicial Council removes a judge or a president of a court under the conditions and in a procedure provided by law. ***This procedure is initiated upon request from the Council for Determination of Facts within one year from the day when the violation was discovered.*** The disciplinary procedure is urgent and of confidential character. It is conducted without presence of the public and with respect for the reputation and dignity of the judge, taking into consideration the protection of the judge's personal data, but if so requested by the judge the Council may decide to conduct the procedure in the presence of the public.²³

The procedure for determining malpractice or unprofessional practicing of judicial function shall in no case be initiated if more than five years have passed from the day the violation was committed. Exception to this rule are the cases where the European Court of Human Rights has ruled violation of Article 6 of the European Convention on Human Rights or where the Supreme Court of the Republic of Macedonia has brought a decision regarding the right to a trial within a reasonable time period, as a result of the conduct of the judge against whom a procedure for determining malpractice or unprofessional practicing of the judicial function was initiated (Article 78, paragraph 4 of the Law on the Judicial Council of the Republic of Macedonia).

Following the completion of the procedure, the Council for Determination of Facts brings a decision for removal of the judge with two-thirds majority of votes from the total number of voting members. The Council for Determination of Facts

²³ Article 39 of the Law on the Council for Determination of Facts and for Initiation of Disciplinary Procedure for Judges, Official Gazette of R.M No. 20, dated 12 February 2015.

may temporarily suspend the judge from exercising his/her judicial function when a procedure for his/her removal or disciplinary procedure is already underway.

Based on the report and the deliberations at its session, the Council for Determination of Facts brings a decision to file a request with the Judicial Council of the Republic of Macedonia to initiate a procedure for determining the disciplinary accountability of the judge or the president of a court. The Council for Determination of Facts shall refuse the initiative if it is found ungrounded due to lack of evidence that the judge has committed the violation, in compliance with law.

The judge or the president of a court is entitled to appeal the decision for his/her removal from office or the imposed disciplinary measure before the Appeals Council deciding on appeals of the Judicial Council, established by the Supreme Court of the Republic of Macedonia, within eight days.

The Judicial Council decides in a session to revoke the immunity of a judge in cases prescribed by law and with a majority vote from the total number of voting members. The Judicial Council also decides in a session upon a request for approval of detention of a judge, i.e. upon notification that a judge has been detained.

In this procedure, the Judicial Council may decide, upon receiving notification on detention of a judge who has not invoked immunity, to invoke immunity on the judge, if it decides that this is necessary for performing the judicial function.

Resorting to this option within its authority leaves it to the discretion of the Judicial Council to decide what is necessary for the exercise of the judicial function without stating relevant specific needs, which may result in selectivity in the application of this option.

In July 2016, the Judicial Council deliberated on the request to initiate a disciplinary procedure for determining liability for malpractice or unprofessional practicing of the judicial function against a judge, based on a decision brought by the Council for Determination of Facts. It decided to reject the request for determining the liability of the judge for malpractice or unprofessional practicing of the judicial function filed by the Council for Determination of Facts and for Initiation of Disciplinary Procedure for Judges.

Sessions where the Judicial Council of the Republic of Macedonia deliberates on imposing a disciplinary measure or removal of a judge are not open to the public. JCRM is supposed to publish its decisions on imposing disciplinary measures or removal of a judge on its website, mentioning only the initials of the judge and the court where he/she serves. In the past few years, however, JCRM has not published any of its decisions from disciplinary procedures against judges or for removal of judges.

REASSIGNMENT OF JUDGES

Judges are assigned cases in accordance with the annual work schedule defined by the president of the court upon a previously obtained opinion from the session of judges, (in any court with the exception of the Supreme Court of the Republic of Macedonia), or an opinion from the plenary session of the Supreme Court of the Republic of Macedonia, taking into consideration the judge's specialization in criminal, civil, commercial, administrative or another legal area.²⁴

The assignment of presidents of specialized departments and division takes into account the experience in judicial office and the results from the judge's work. In addition, while a judge may not be transferred from one court division to another against his/her will, he/she is entitled to ask for such a transfer.

As an exception, the judge may be transferred to another court division against his/her will by a decision explained in writing and brought by the president of the court, upon previously obtained opinion from the plenary session of the Supreme Court of the Republic of Macedonia, when so imposed by the increased workload and the subject matter of the cases processed in the court, but not for longer than one year. As an exception, judges of a court of appeal and of a first instance court may temporarily, and at the most for a period of one year, be transferred to another court of the same or of lower instance or from one to another specialized division, when the day-to-day operation of the court comes into question due to inability or recusal of a judge, significantly increased workload, reduced efficiency or due to the complexity of the cases. The temporary transfer of a judge is made by the Judicial Council of the Republic of Macedonia, whereby the Council immediately notifies the president of the court from which the judge is transferred and the president of the court to which the judge is temporary transferred.

Judges may file an appeal against the decision on their assignment, made by the president of the court, with the plenary session of the Supreme Court of the Republic of Macedonia, which is obligated to decide on the appeal within seven days.

Judges may, within three days, file an objection with the Judicial Council of the Republic of Macedonia against the decisions of the Judicial Council of the Republic of Macedonia for their temporary transfer. The decision of the Judicial Council of the Republic of Macedonia is final. Thus, in this case, according to law, one and the same body decides in two instances.

²⁴ Article 39 of the Law on Courts, Official Gazette of the Republic of Macedonia Nos. 58/06, 35/08, D.No. 256/07, D.Nos 74/08, 150/10, D.No.12/11.

Nonetheless, reassignment of judges takes place also without consultation with the judges. Just last year, the President of the First Instance Court Skopje 1 Skopje decided to reassign judges without consultation, invoking the annual action plan.

In a press release, the First Instance Court Skopje 1 explains the reassignments of the judges as being, according to this statement, part of the organizational changes in the annual schedule for the judges in this court, adopted by the president of the court.²⁵

The Law on Courts governs the annual schedule for the work of the judges.²⁶ The annual work schedule is defined by the president of the court upon previously obtained opinion from the session of the judges. When determining the schedule the determination of the judge to specialize in a particular area should certainly be taken into consideration.

Assignment of a judge to a mismatched work on cases in which the judge has not specialized and does not possess the required knowledge of the subject matter, may affect the work of the judge and the quality as well as the quantity of the decisions made, which may eventually result in initiation of a disciplinary procedure for malpractice and unprofessional conduct.

In addition, there is a concern that taking a case from one judge and assigning the same case to another judge may be taken as a kind of threat to the independence. In order to avoid cases like this, it is necessary to uphold respect for the annual work schedule and for the Law on Courts which provides that:

“Cases arriving in the court shall be distributed among the judges according to the time of receipt of such cases in the court, excluding all influence on the manner of distribution by the president of the court, the judge or the court administration.”²⁷

²⁵ Announcement from First Instance Court Skopje 1 Skopje, published on: <http://www.osskopje1.mk/>. (Reviewed on 17 October 2016).

²⁶ Article 39 paragraph 4, Law on Courts, Official Gazette of the Republic of Macedonia Nos. 58/06, 35/08, D.No. 256/07, D.Nos 74/08, 150/10, D.No.12/11.

²⁷ Article 7, Law on Courts, Official Gazette of the Republic of Macedonia Nos. 58/06, 35/08, D.No. 256/07, D.Nos 74/08, 150/10, D.No.12/11.

OPERATION OF THE JUDICIAL COUNCIL OF THE REPUBLIC OF MACEDONIA AND OF THE COUNCIL FOR DETERMINATION OF FACTS

The Judicial Council deliberates and decides on subject matters within its jurisdiction in sessions open to the public. The public may be excluded only with a decision by the Judicial Council, for reasons of protecting the reputation and the integrity of the judge or the candidate for a judge. The Judicial Council decides on the exclusion of public from the sessions with two-thirds majority of votes from the total number of voting members of this Council. Minutes are taken of the session work as well as shorthand notes.²⁸

The Judicial Council adopts Rules of Procedure that lay down the procedure and manner of operation of the Judicial Council, and regulate other matters under its authority. The session is convened and it is presided by the President of the Judicial Council. The president is also obliged to convene a session upon a proposal accompanied by prepared materials put forward by at least one third of the total number of Council members. The session may be held when the majority of the total number of members are present, unless otherwise provided by the Law on the Judicial Council of the Republic of Macedonia or the Rules of Procedure. The proposed agenda is adopted by majority votes from the present members.

The invitation to the session with a proposed agenda and the materials is delivered to Council members at least 7 days prior to the session. In case of urgent or pressing matters, Council session may be convened and held within a shorter period of time.

The Council adopts its decisions by voting. Members of the Council vote for or against (they may not abstain).

Members of the Council have the following rights, obligations and responsibilities: to participate in the Council's work and decision-making; to put forward initiatives, suggestions, proposals and to express opinions on matters within the competence jurisdiction of the Council; to take part in the work of the working bodies of the Council to which they are chosen; to review the work of a particular judge and take other actions and report on the work done to the Council, when so concluded by the Council; they are liable for violations of the Constitution and the law while performing their function in the Council; and they perform other work as prescribed by the Law on the Judicial Council of the Republic of Macedonia.

The Council determines with a decision the necessary number of judges for each of the courts. At a session the Council brings a decision for the establishment of three-member committees to determine the necessary number of judges. Such

²⁸ Law on the Judicial Council, Article 33.

committees are made of JCRM members. Based on information obtained from the ACMIS system for the two previous years, these committees conduct an analysis of each of the courts. Such analysis relies on data about the total number of judges in a given court, the total number of cases being processed by the court, the total number of unsolved cases, the inflow of new cases, the approximate monthly norm, the management of the backlog of unsolved cases by the court, and about other circumstances relevant for determining the number of judges.

Committees prepare reports with the findings from the analysis and submit them to the President of the Council. The President of the Council then convenes a session at which the Council discusses the reports submitted by the Committees and reviews the reports and the opinions obtained from the Plenary Session of the Supreme Court of the Republic of Macedonia and from the sessions of the judges of the pertinent courts, following which it brings a decision determining the number of judges for each of the courts. The Council conducts analyses at least once a year so as to determine the need for decreasing or increasing the number of judges.

Transparency in the operation of the Judicial Council of the Republic of Macedonia

The Judicial Council of the Republic of Macedonia posts regularly on its website announcements of convened sessions with agendas, and publishes the matters that were adopted or decided at the previous sessions.

Press releases on the activities of the JCRM are also regularly published. Other most frequent documents published by the Judicial Council are announcements for elections of judges and presidents of courts, annual work programmes, reports of JCRM members' study visits etc. However, a systematic approach is lacking. Hence, the latest information in "announcements", "decisions" or "documents" tabs was posted in 2010. Additionally, the complete decisions and minutes of the sessions are only very rarely published.

A new portal was launched for the purpose of gathering in one place all websites of the courts in the Republic of Macedonia, including the site of the Judicial Council. The portal is called Judicial Portal of the Republic of Macedonia²⁹ and is meant to replace the existing websites as it will collect and present the information at a single location and will improve the visibility of the information.

The sessions of the Judicial Council are open to public, except when circumstances impose exclusion of the public. An important factor in ensuring transparency of

JCRM sessions is the quality of the discussions and the openness of the institution in practice.

Transparency in the operation of the Council for Determination of Facts

The Law on the Council for Determination of Facts was adopted in February 2015. Even though the sessions of this Council are public by law, the public may be excluded, as in the case of the Judicial Council, with a decision of this body, for the reason of protecting the reputation and the dignity of the judge or the candidate for a judicial seat. Hence, this body is actually not visible to the wider public.

The Council for Determination of Facts does not have its own website, nor does it publish its announcements in any other medium. The Rules of Procedure of this body and the implementing regulations are not available to the public even though this body was charged with the responsibility to deliberate on each particular complaint and submission filed by citizens and legal entities; complaints by presidents of courts about the work of the judges and presidents of courts; complaints about postponement of court proceedings; and rumour or other received information about the work of judges and presidents of courts.

²⁹ Available at <http://sud.mk/>.

ACCOUNTABILITY AND LIABILITY OF THE JUDICIAL COUNCIL OF THE REPUBLIC OF MACEDONIA

The Council submits an annual report on its work to the Parliament of the Republic of Macedonia. The report is published publicly and contains information on the number of elected and removed judges and lay judges, the number of initiated and completed disciplinary procedures, the staffing situation in the judiciary, the material and financial state of the judiciary, an assessment of the cooperation and the relations of courts with other bodies of the judiciary and with the bodies of the legislative and executive branches, an assessment of the current state in the judiciary regarding the protection of human rights and fundamental freedoms, as well as information on actions taken upon complaints and proposals by citizens and institutions concerning the work of the courts and judges.

The report presents also an assessment of the dynamics of the work of the judges in the Republic of Macedonia and other issues concerning the achievement of independence and autonomy of the judiciary.

The Judicial Council adopts this report at a session with a two-thirds majority of votes from the total number of voting members, and then submits it to the Parliament of the Republic of Macedonia for review and adoption. Once the report is adopted, the Council delivers it to all courts in the Republic of Macedonia.

Should the Parliament of the Republic of Macedonia fail to adopt the report, this will serve as grounds for initiation of a discussion before the bodies that have elected the members of the Judicial Council, in order to assess their work.³⁰

Practice to date regarding the adoption of the report from the Judicial Council has not resulted in any serious discussion before the parliament, nor has there been any case of failure to adopt it, which would offer an opportunity to re-examine the work of the Council members in the bodies that have elected them. Owing to this passive attitude towards the report on the work of the Judicial Council, it is not possible to form an assessment of the effectiveness of its work.

³⁰ Article 135 paragraph 7 of the Law on the Judicial Council of the Republic of Macedonia.

It can therefore be said that the act of submitting the report on its operation to all courts, upon its adoption, shows transparency in their work. Still, if the courts paid due attention to it and discussed it in more detail it could actually have greater significance. As is the courts are missing a good opportunity to express their opinions on the operation of at least the members they have elected from their ranks.

The report should elaborate a number of important issues and assess the state of affairs in the judiciary in terms of staffing as well as in terms of the material and financial situation, it should depict the relations with other judiciary bodies and with the institutions of the legislative and the executive branches of power. The report does provide assessments of the work of the judges in the Republic of Macedonia, and addresses other issues related to the achievement of independence and autonomy of the judiciary.

An elaboration of these serious issues in the report, and suggestions for possible solutions to the problems, would be of interest to the expert as well as to the wider public. Hence, its publication would be a step forward in the direction of transparent and accountable work of the Judicial Council of the Republic of Macedonia.

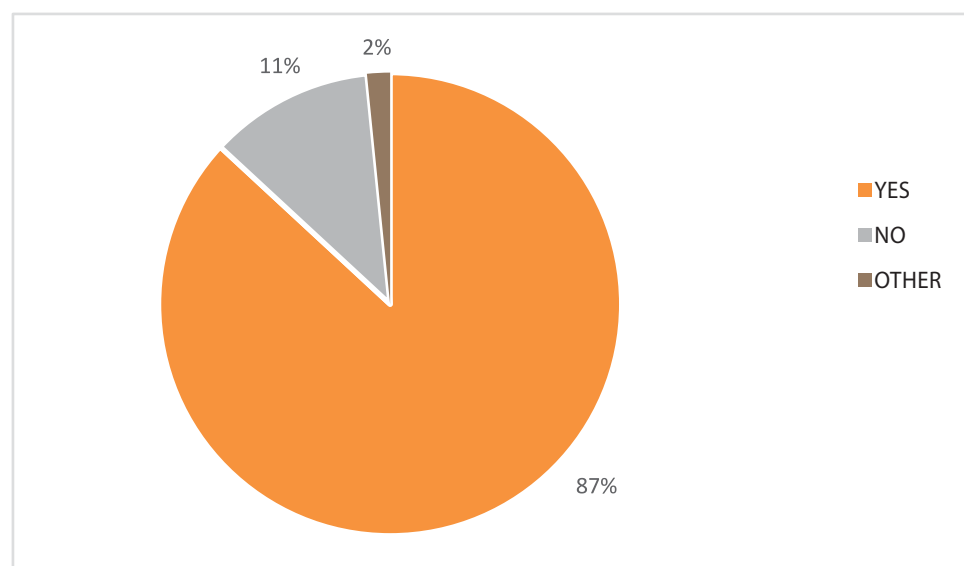
ACCOUNTABILITY AND LIABILITY OF THE COUNCIL FOR DETERMINATION OF FACTS

The work of the Council for Determination of Facts remains unknown because the Law does not provide for any kind of accountability and liability of its members. According to Article 32, paragraph 8 of the Law, the only responsibility of this body is to prepare annual reports on the work done within its jurisdiction, which it then publishes them on its website not later than by 1 February of the current year for the previous year. On the other hand, there are no provisions governing the transparency or accountability in the operation of this body, even though it cannot exist separately from the Judicial Council, considering its duty to initiate procedures for determination of liability of judges or presidents of courts before the Judicial Council.

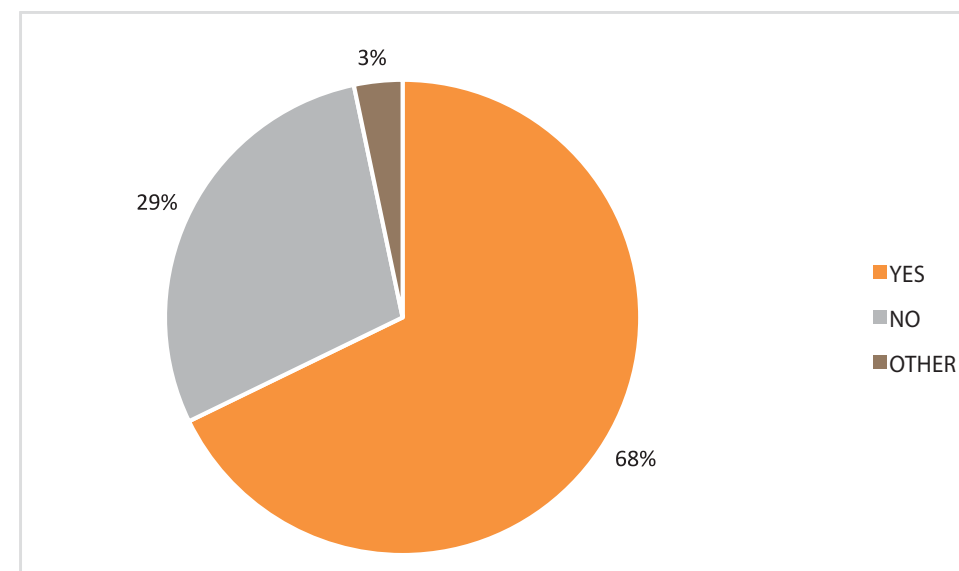
ANALYSIS OF QUESTIONNAIRES SENT TO THE EXPERT PUBLIC (LAWYERS)

The Institute for Human Rights prepared questionnaires to determine the current perception and knowledge of the general and expert public of the work of the Judicial Council and the Council for Determination of Facts. The questionnaires for the expert public were sent out in October 2016, to 2000 lawyers, and we received responses from 137 lawyers. The responses to the questions are presented in the explanations given below.

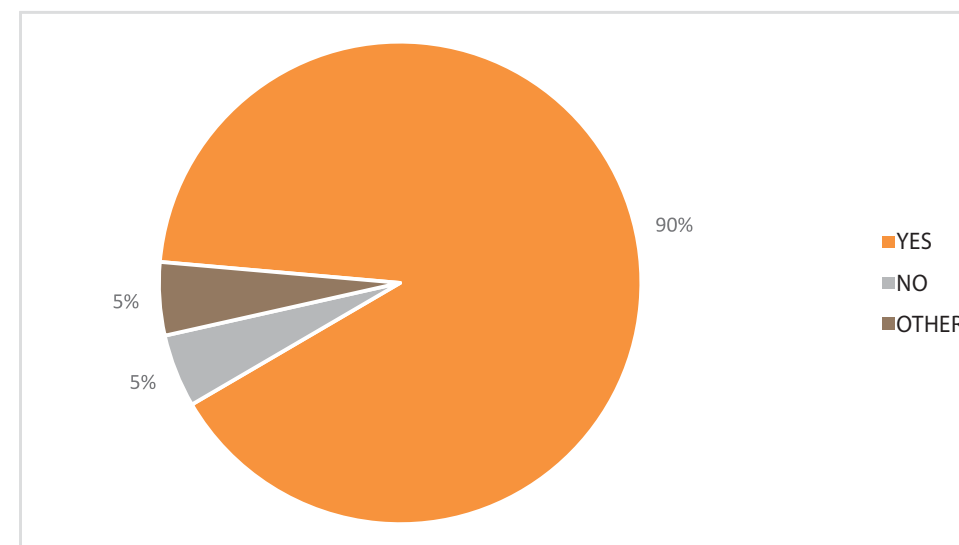
1. To the question "Are you informed about the work of the Judicial Council of the Republic of Macedonia?" most of the respondents (86.8%) gave an affirmative response that they were informed, whereas 11.5 % responded that they were not informed about the work of JCRM.



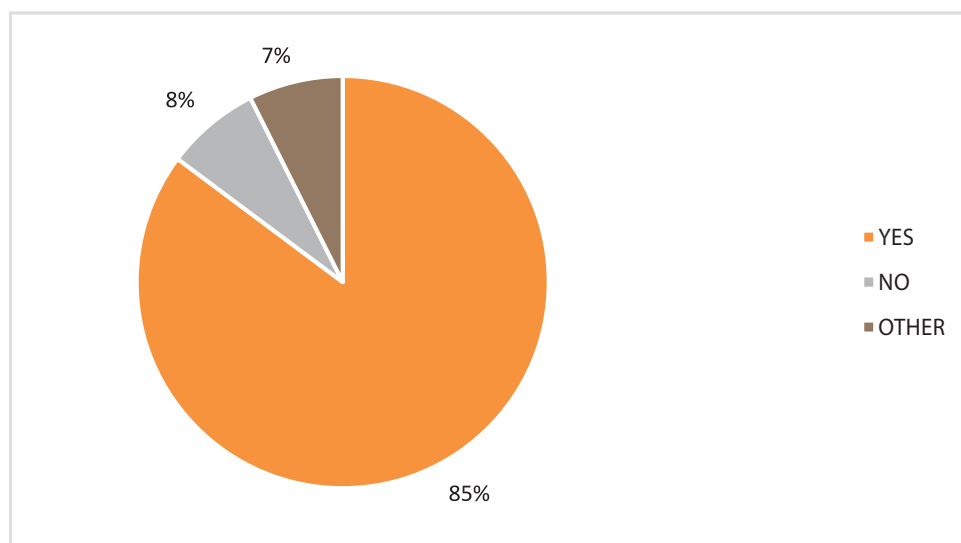
2. To the second question asking whether they were "familiar with the operation of the Council for Determination of Facts and for Initiation of Disciplinary Procedure for Judges", 67.8% replied YES and 28.9% replied NO, whereas 3.3% gave other responses.



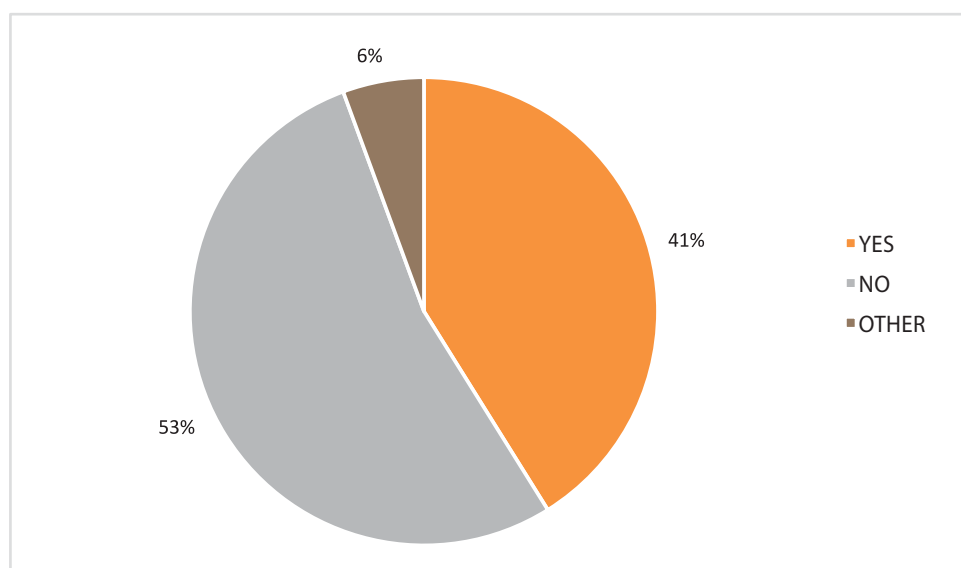
3. To the question "Is the Judicial Council of the Republic of Macedonia autonomous and independent body?" 90.2% of the lawyers responded NO, whereas 4.9% responded YES, and the remaining 4.9% gave other responses.



4. To the question "Is the independence of the Judicial Council of R.M respected by the other bodies, institutions and organizations? 85.2% of the lawyers responded that the independence of the Council is not respected, and 7.4% responded that it is respected. The remaining 7.4% gave other responses.



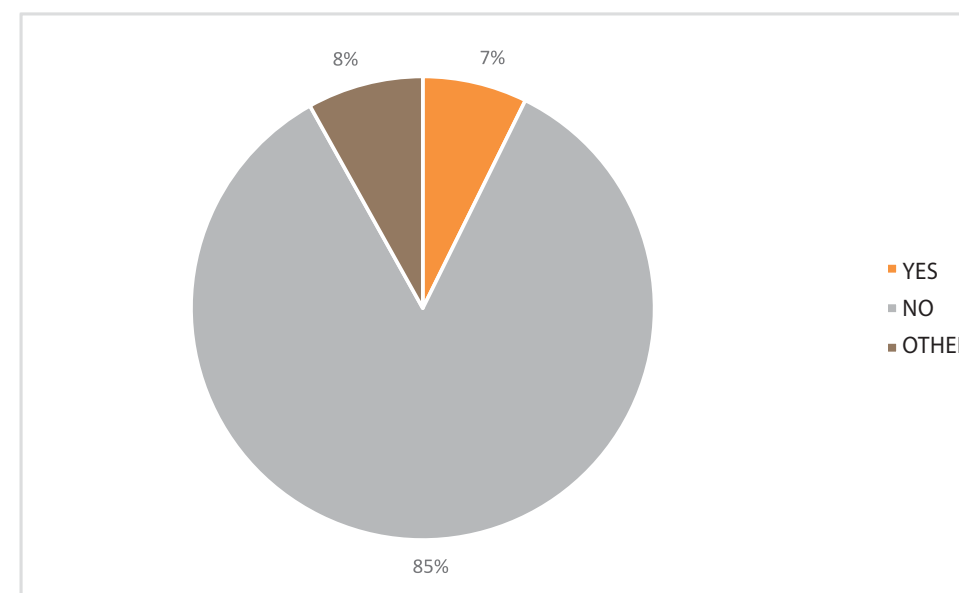
5. In answer to the question "Have you ever filed a request for recusal of a judge?", one half of the lawyers responded that they have submitted requests for recusal of a judge.



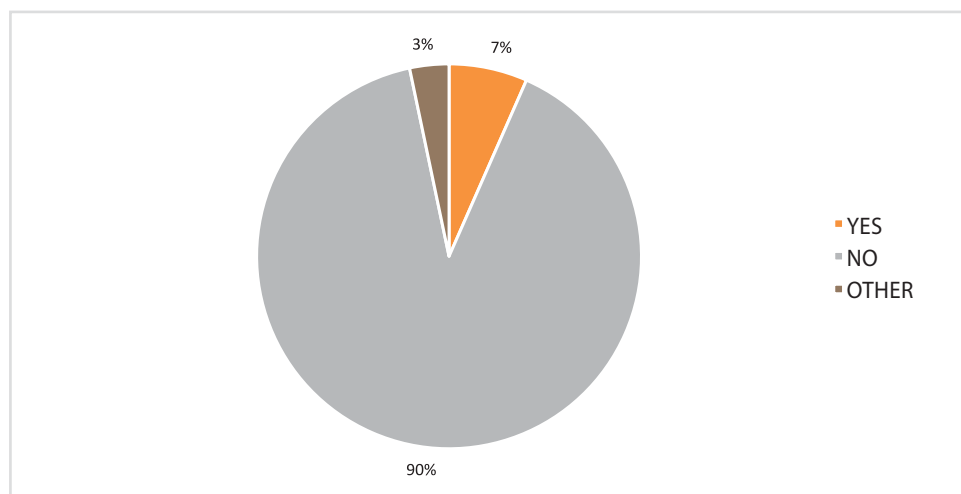
6. To the question "How many times to present have you filed a request for recusal of a judge and on what grounds?" Responses, in terms of quantity, said between 2 and 10 filed requests, and the grounds stated in most of the cases were "... biased trial and friendly connections, unprofessional approach, disrespect of the proceedings, postponing of the court proceedings, etc."

7. The responses to the question "How many of those requests were approved by the president of the court" show that most of the lawyers that filed requests for recusal replied that their requests were not approved.

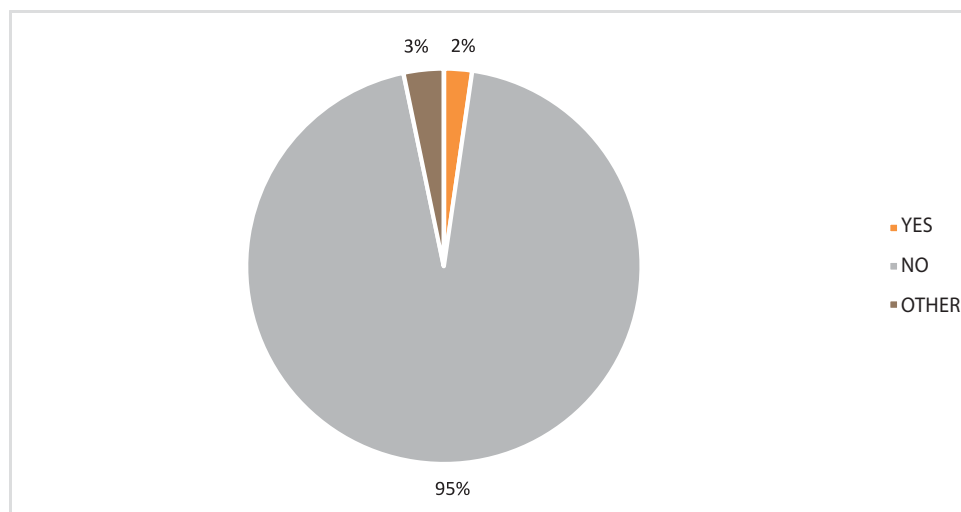
8. Only 7.3% responded that they assess the work of the JCRM as efficient, whereas as many as 84.6 % consider the work of JCRM inefficient, and 8.1% of the respondents gave a neutral response.



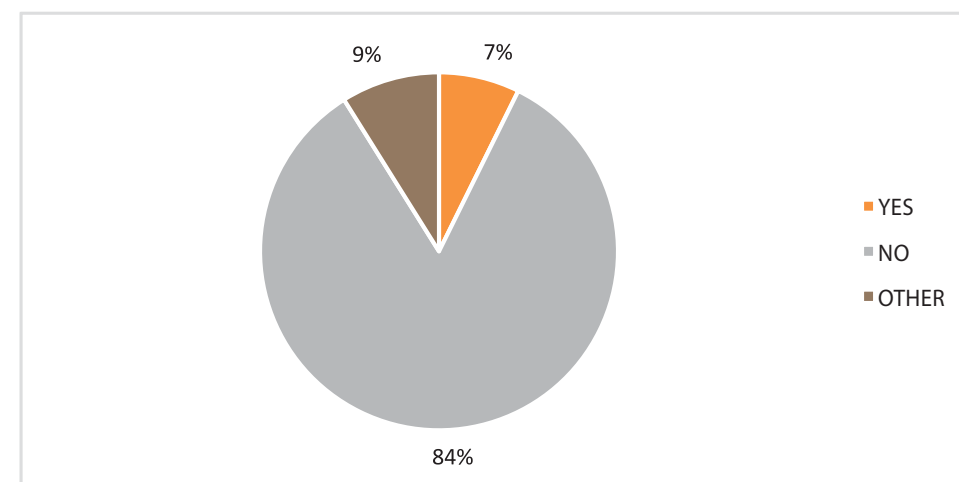
9. To the question "Do you think that the work of JCRM is transparent and open?" an extremely high percent of 90.2 of the lawyers responded that the work of JCRM is not transparent and open, and only 6.6% still think that the Council works in a transparent and open manner. 3.3% of the lawyers offered other responses.



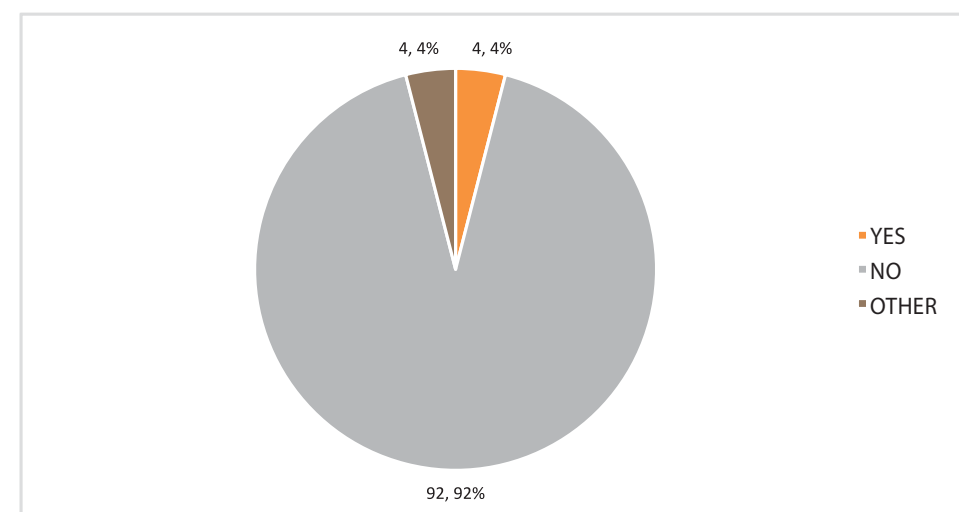
10. To the question "Is the Judicial Council, in your opinion, ensuring and guaranteeing the autonomy and independence of the judicial power in the real sense of the term?" 94.3% of the respondents answered NO, 2.4% stated YES and 3.3% offered other responses.



11. In addition, a high 84% of the respondents stated that the manner and the criteria of election of JCRM members DO NOT guarantee the impartiality and professionalism of the elected members, whereas 7% believe that the manner and criteria of election guarantee impartiality and professionalism of the elected members. 9% of the respondents offered other responses.



12. The response to the question "Do you believe the procedure for election of judges by JCRM to be completely objective and ensuring election of high-quality judges?" was NO by 92%, 4% responded YES and 4% offered other responses.



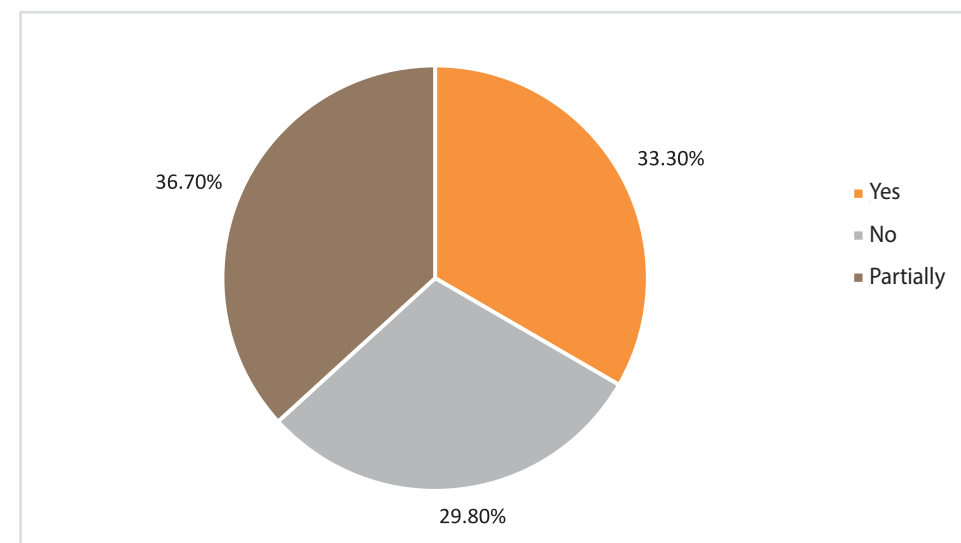
13. The question was “What do you consider to be of importance to the advancement of the independence, expertise and transparency of the Judicial Council of the Republic of Macedonia?”

All responses were implying that the election of the members of the Judicial Council of the Republic of Macedonia should ensure that they are experts and impartial and that there is no interference by political parties in the election of the members of the Judicial Council. “It is necessary to ensure complete financial independence and autonomy from the other bodies of the government.” Many of the respondents stated that JCRM members should be solely judges and that care should be taken that they be judges of long standing who have, over the years, proved themselves as judges with integrity and independence.

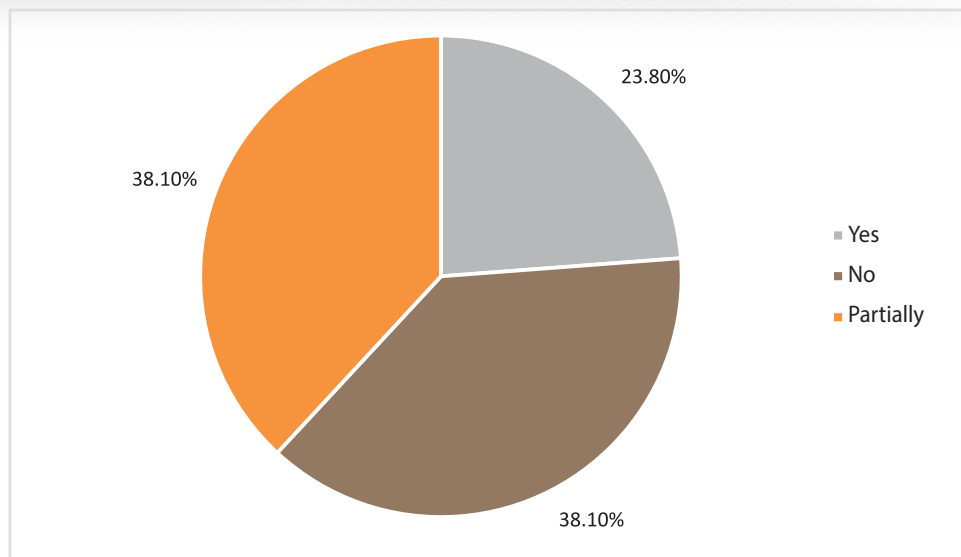
ANALYSIS OF QUESTIONNAIRES SENT TO THE GENERAL PUBLIC

The Institute for Human Rights prepared questionnaires for the general public too, in order to determine the current perception and knowledge on the part of the wider public about the work of the Judicial Council and the Council for Determination of Facts. The questionnaires for the general public were posted on the social networks and sent by e-mail and we received responses from 184 citizens. The responses to the questions are presented in the explanations given below.

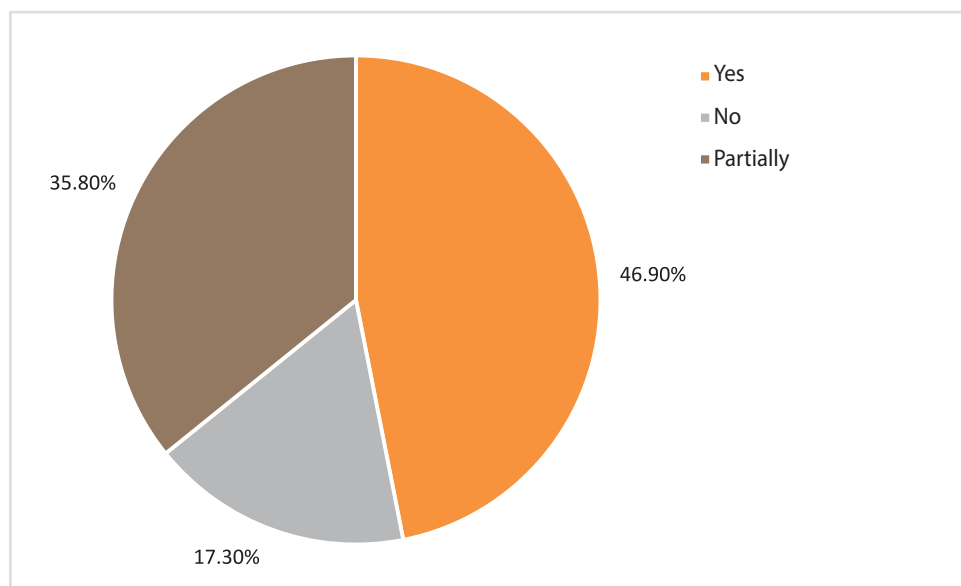
1. To present, have you had any knowledge of the JCRM operation?



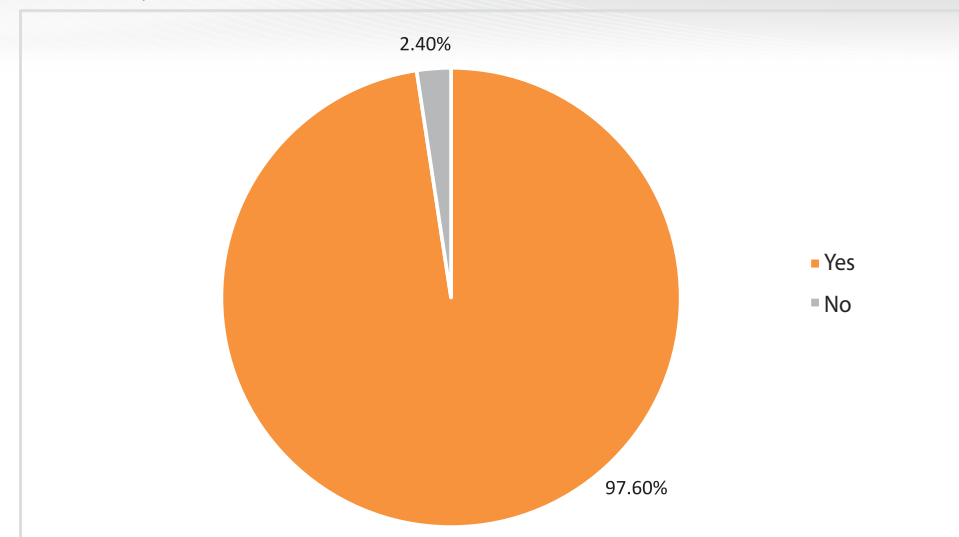
2. Are you familiar with the authority of JCRM provided by law?



3. Do you think that this body influences the overall quality of the functioning of the judiciary?



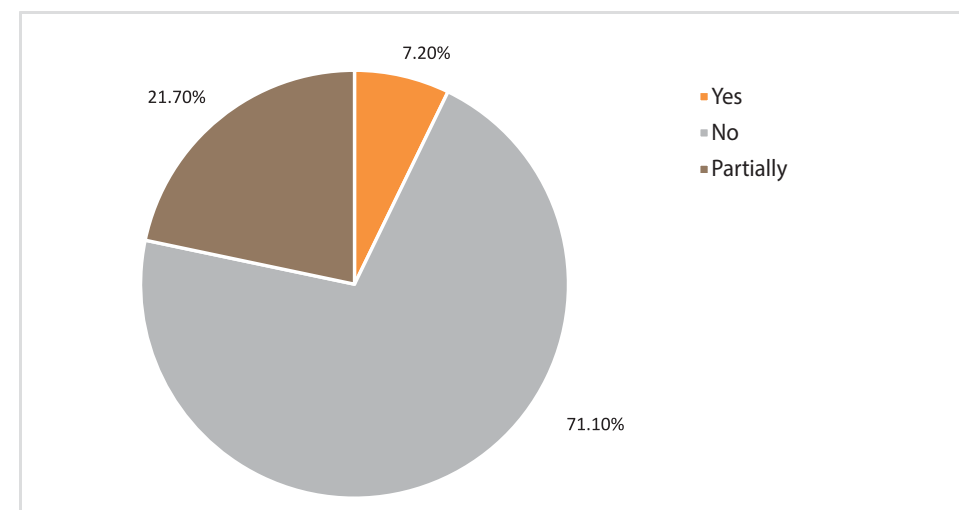
4. Have you ever attended an open session of JCRM?



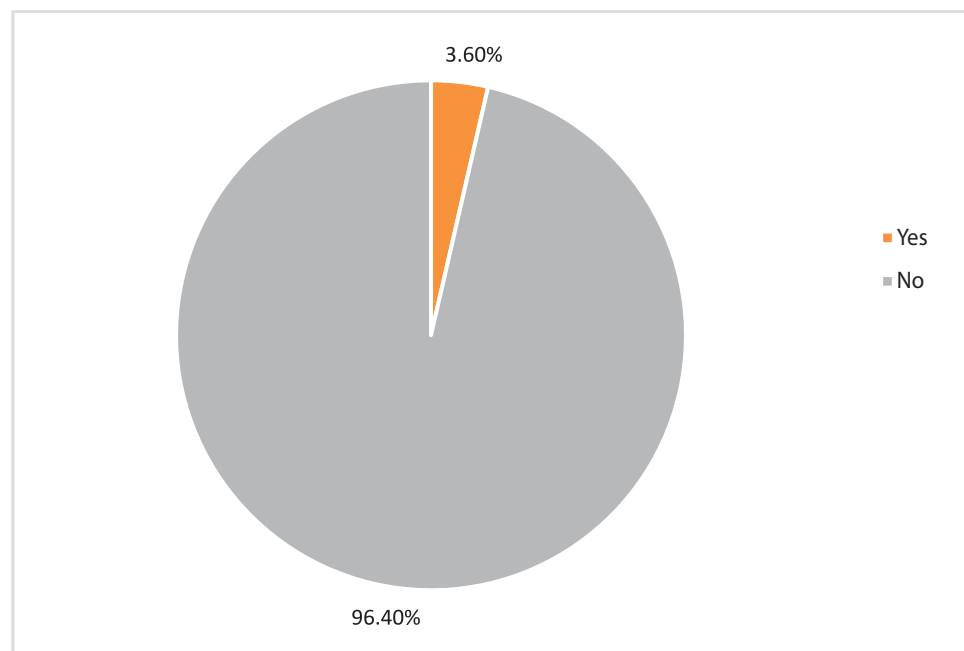
4.1. If yes, what is your opinion of the openness of the debates and the transparency of the members of JCRM?

Only four responded that they had attended an open session of the Judicial Council, and all of them stated that there was no open and transparent debate at those sessions.

5. Are you familiar with the work of the rather newly established body named "Council for Determination of Facts and for Initiation of Disciplinary Procedure for Judges"?



5. Have you ever filed a complaint with the Judicial Council or with the Council for Determination of Facts since it has started operation?



5.1. If yes, were you satisfied with the work done by JCRM or the work done by the Council for Determination of Facts?

All the responses were "not in the least"; respondents are not satisfied with the work of the JCRM or the Council for Determination of Facts.

FOCUS GROUP

For the purposes of this project and in addition to the survey questionnaires intended for the lawyers and for the general public, the Institute for Human Rights organized a discussion in the form of a focus group to enable the opinions of the citizens on key issues relating to the judicial system in the Republic to be heard directly. When selecting the participants care was taken that citizens of various degrees of education be represented, that they are not legal practitioners by profession and that they belong to different ethnic groups.

The participants were first asked if they had confidence in the judicial system. All of them responded that they did not have confidence, and when stating the reasons for their distrust they said that it was so because of the decisions brought by the judges. The participants were also asked if they were familiar with the work of the Judicial Council and the work of the Council for Determination of Facts. From their responses it was concluded that they had heard about the Judicial Council, but had never heard of the Council for Determination of Facts or what its function might be.

Asked if they can comprehend the language of the judges, the participants agreed that judges do not express themselves in a language comprehensible to the wider public, and that the announcements issued by the members of the judiciary are equally incomprehensible.

The work with the focus group demonstrated that the operation of the Judicial Council is all but invisible, and that the participants had no idea about the function of the Council for Determination of Facts. The only perception reported by the participants was that they had no trust in the judiciary and believe it to be politicized.

The results from the focus group discussion confirm that the citizens know very little about the functions of the Judicial Council and the possibilities open to them (to file complaints and grievances).

