Институт за човекови права

SUMMARY

1. This submission is submitted by the Institute for Human Rights (IHR) in advance of the fourth universal periodical review of Republic of North Macedonia. The submission will provide the Working Group with information regarding the judicial reforms, access to justice, discrimination, political participation of people with disabilities and providing free legal aid to marginalized and vulnerable groups of people. The submission will focus on the country's shortcomings and the progress in the aforementioned areas and IHR's recommendations on how the Working Group should encourage the government of North Macedonia to address these issues.

JUDICIARY

2. The *Strategy for Judicial Reform (2017-2022)*[1] is the key policy for phased overcoming of the mapped weaknesses in the judiciary. The implementation of the strategy made moderate progress in the judiciary by addressing the recommendations made by the Venice Commission and the Senior Experts' Group on systemic rule of law issues. The general conclusion is that the pace at which human resources strategies are being implemented in the judiciary and prosecution sectors requires acceleration.

3. *Independence and impartiality* - The Law on the Management of the Movement of Cases in Courts, adopted in 2020, provides for strengthened mechanisms for automatic distribution of cases in courts. A system for electronic distribution of cases in the Public Prosecutor's Office became operational in January 2023. However, the automation on the side of the prosecution should be further strengthened. The system allows for electronic filing and/or scanning of documents but it can be further developed. The implementation of the Law on the Judicial Budget in the part of ensuring the legally stipulated minimum of 0.8% still represents a serious problem that has direct consequences on the independence of the judiciary.[2]

4. Recommendations:

(a) Provide the necessary financial resources for the full implementation of digitization in the courts, but also provide conditions for the parties and other participants (the public prosecutor's office, the state attorney's office, citizens, lawyers, notaries, executors, mediators and others) to communicate electronically as part of the digitization of the courts.

(b) The system for electronic distribution of cases in the Public Prosecutor's Office should be further strengthened by adding features that would enable more systematic allocation of cases and the collection of quantitative information, such as the number of financial investigations carried out and the asset seized or confiscated.

(c) Increase the level of transparency and inclusiveness of the digitization process.

(d) Provide the legally stipulated amount of the state budget to the courts.

5. *Quality of justice* - With the new Law on Judicial Council[3], the measure for clear and justified decisions on the selection and promotion of judges has been fulfilled. The Judicial Council dedicated a lot of time to the preparatory activities for implementation of the evaluation of judges and court presidents. However, this had a negative impact on the promotion of judges who applied on the public calls announced more than a year ago, for which the procedure has started but has not yet been fully implemented.

6. The trend of the Council of Public Prosecutors not publishing the decisions on the selection and promotion of public prosecutors on its website continues. Regarding the process for selecting public prosecutors, the practice of choosing them solely through a vote of approval or disapproval persists, without any deliberative discussion.

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[1] Strategy for judicial reform (2017-2022), Ministry of Justice, available at https://www.pravda.gov.mk/upload/Documents/Strategija%20i%20akciski%20plan_ANG-web.pdf

[2] Analysis - Comprehensive assessment of the implementation of the Strategy of on judicial reform (2017-2022), Institute for Human Rights, available at https://ihr.org.mk/storage/app/media/%D0%9F%D1%80%D0%BE%D0%B5%D0%BA%D1%82%D0%B8/2022%20-%20%D0%91%D0%BB%D1%83%D0%BF%D1%80%D0%B8%D0%BD%D1%82/analysiscomprehensive-assessment-of-the-implementation-of-the-strategy-for-the-reform-of-the-justice-system-2017-2022.pdf

[3] Law on Judicial Council of Republic of North Macedonia (Official Gazette no.102/2019)

7. Regarding the Academy for Judges and Public Prosecutors (AJPP), there is a strong need to provide adequate spatial conditions. However, such premises are still not provided. As for staffing, it can be concluded that the number is still far from the full staffing needs of the AJPP. Since the adoption of the Strategy, no significant actions have been taken to improve the situation with human resources in the judiciary. In 2022, there was a drastic reduction of human resources in the judiciary. Namely, during the amendment of the Law on Labor Relations[4] there was a complete distortion of human resources because the amendment foresees mandatory retirement at the age of 64. This change led to the retirement of 60 judges in 2022, or 14% of the total number of judges in the country.

8. Recommendations:

(a) Improve the transparency and accountability of the Judicial Council and the Council of Public Prosecutors, not only towards the judges and prosecutors, but also towards the public.

(b) Provide adequate budget support for the work of the Academy for Judges and Public Prosecutors.

(c) Provide new premises and personnel, technical and infrastructural re-equipment of the Academy for Judges and Public Prosecutors.

(d) Revise the Human Resources Strategy adopted by the Judicial Council in order to develop a model through which the consequences caused by the Law on Amendments and Supplements to the Law on Labor Relations will be reduced.

(e) Facilitate the procedure for employment in the judicial service by reducing the dependence of the judiciary on the Ministry of Finance and the Ministry of Information Society and Administration.

9. *Responsibility* - Even though the Law on the Judicial Council provides the opportunity for judges to directly submit a request for initiation of a procedure for disciplinary responsibility against a member of the Judicial Council, so far, no request has been submitted for the initiation of such procedure[5]. The amendments to the Law on Courts redefined the grounds for dismissing a judge, specifying more specifically what is considered a more serious disciplinary violation, which makes them unfit to perform the judicial function, as well as unprofessional and negligent performance of the judicial function. As for the responsibility of the public prosecutors, it is necessary to note that when deciding on a specific disciplinary case, the Council of Public Prosecutors excludes the public from the discussion preceding the decision, as stipulated in the Law on the Council of Public Prosecutors.

10. Recommendations:

(a) Amend the Law on Judicial Council by adding deadlines for action for disciplinary responsibility of a member of the Judicial Council and to govern the procedure for determining the responsibility of the members and the president of the JCRNM.

(b) Changes in the legislation regulating disciplinary proceedings for public prosecutors are needed in order for this area to be clearly and precisely regulated.

(c) Conduct mandatory training on judicial ethics for all judges according to international standards.

(d) Amendments are needed to the Law on the Judicial Council of the Republic of North Macedonia to determine the minimum voter turnout needed for the election of JCRNM members and to determine the minimum number of votes needed to consider the candidate elected.

(e) Amendments to the Law on the Council of Public Prosecutors are necessary that will specify the census when electing a member of the Council of Public Prosecutors who is elected from among the ranks of public prosecutors.

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[4] Aamendment of the Law on Labor Relations[4] ("Official Gazette of RSM", no. 151/2021)

[5] More information about the work of the Judicial Council can be find in the monitoring report for the Judicial Council for the period January – July 2023, prepared by IHR https://ihr.org.mk/storage/app/media/%D0%9F%D1%80%D0%BE%D0%B5%D0%BA%D1%82%D0%B8/2023%20-%20%D0%9F%D0%A0%D0%98%D0%A1%D0%A2%D0%90%D0%9F%20%D0%94%D0%9E%20%D0%9F%D0%A0%D0%90%D0%92%D0%94%D0%90%20%D0%97%D0%90%20%D0%A1%D0%98%D0%A2%D0%95/Sudski%20sovet/EN_Izveshtaj_Sudski-Sovet_Jan-Juli-2023.pdf

11. *Efficiency* - The measure for monitoring the efficiency of the judiciary is directly related to the application of the Law on the Judicial Council, which stipulates that a Centre for Information-Communication Technology, Analytics and Statistics is established within the Judicial Council. This measure has not been implemented considering that the Council has not established a functional centre.

12. Recommendations:

(a) Establish a functional Centre for Information-Communication Technology, Analytics and Statistics within the Judicial Council.

13. Access to justice - In May 2019, the Law on Free Legal Aid (LFLA) was adopted. During 2021, the application of the law was intensified, which made it possible to identify certain problems and challenges in its implementation. The authorized officials in the Ministry's regional offices for free legal aid have difficulties in determining the justification of the legal issue, giving legal advice is time-consuming and requires good knowledge and training on legislation in several areas, especially regarding social and child protection, family and gender-based violence and justice for children. The free legal aid procedure in asylum procedures is not fully functional. The law is restrictive in terms of access to legal aid regarding the exemption from costs in procedures before a notary and executor, so citizens in need remain outside the system of legal aid for a significant part of the legal problems. There is also a problem with the ex officio collection of data, such as communication between authorized officials from regional departments and other institutions that own this data in terms of material, financial and property status, as well as social status. The law does not provide free legal aid for certain issues faced by poor people, including compensation for non-material damage, except in cases of victims of crimes, as well as in the case of death or severe disability; issues related to public and utility services; as well as protection of property rights. The new system for financing NGOs and legal clinics through a public competition for allocating funds to reimburse the costs of provided primary legal assistance is not yet functioning. Hence, the funds set aside for this purpose are not expedient with the intention of the law in terms of the regional distribution of free legal aid.

14. Recommendations:

(a) Authorized officials should be properly trained to apply the principles established by the ECtHR in the application of the provisions of the Law on Free Legal Aid in the decision-making processes regarding requests for free legal aid.

(b) Enable the possibility for secondary legal aid for issues that affect disproportionately poor citizens, related to public and communal services (electricity, heat supply, water, telecommunications, etc.), compensation for non-material damage, property issues in administrative proceedings and especially for the procedures before a notary and executor.

(c) Establish sustainable programs for legal empowerment of citizens about how to solve their legal problems.

DISCRIMINATION

15. The Law on Prevention and Protection against Discrimination was adopted in October 2020[6]. This law regulates the prevention and protection against discrimination, the forms and types of discrimination, the procedures for protection against discrimination, as well as the composition and work of the Commission for Prevention and Protection against Discrimination. According to this law, persons who believe that they have been discriminated against can submit a complaint to the Commission. Furthermore, this Law provides judicial protection against discrimination. Persons who initiate court proceedings for protection against discrimination are exempt from paying court fees.

16. *Perception of discrimination* - In December 2022, IHR conducted a survey on a representative sample regarding citizens' perception of access to justice. One section of the survey research focused on citizens' perceptions and attitudes regarding discrimination, as well as personal experiences with discrimination. Most of the respondents think that discrimination is present (27.6%) or very present (35.4%) in society. Regarding the discriminatory grounds, citizens put political affiliation/conviction at the top of the list of reasons for discrimination (3.79%). Other grounds, such as disability or sexual orientation, are considered less significant reasons for discrimination by the average citizen. Most of the

[6] Law on prevention and protection against discrimination (Official Gazette no. 258/2020)

respondents answered that they do not know at all (12.7%) or they do not know (24.1%) the protective mechanisms for protection against discrimination.

17. Recommendations:

(a) Enhance the preventive and informative function of the Commission for Prevention and Protection against Discrimination to raise awareness of anti-discrimination and protective mechanisms from discrimination.

(b) Conduct more informative campaigns on administrative access to justice for protection against discrimination.

18. *Discrimination in secondary schools* – In March 2022, IHR published an Analysis of a survey conducted among students and teachers from secondary schools in the city of Skopje on discrimination, bullying and hate speech[7]. The survey was conducted among 995 students from 3rd and 4th year of secondary school and 225 teachers from secondary schools. One part of the analysis is focused on the students' perception of discrimination. About 1/3 of the students believe that discrimination is either not present at all (17.2%) or is very little present (17.4%). On the opposite side of the scale, slightly more than 1/3 of students believe that discrimination is present (25.4%) or very present (12.3%). Half of the students (50.5%) believe that less than 30% of their classmates were exposed to discrimination at school in the past 1 year. However, 39.5% of respondents said that between 30-70% of their classmates were exposed to discrimination. A very small part of the respondents (10%) believe that discrimination is widespread in the school, between 71-100%. Many teachers believe that discrimination is either not present at all (25.7%) or that it is very little present (31.4%). On the other side of the scale, 16.4% of teachers consider it present and then only 1.3% of teachers consider it very present. Most teachers believe that the exposure of students to discrimination from other classmates in their schools is a rare phenomenon. Finally, according to the teachers, the most common grounds for discrimination are ethnicity or religion (25.4%), gender (24.6%), economic status (22.4%), sexual orientation (6%), the place of residence (3%) and 11.2% of the teachers said something else.

19. Recommendations:

(a) Introduce improved national educational mechanism to monitor and approve the content in curricula and textbooks to guarantee the principles of equality and protection against discrimination.

(b) Establish a mandatory system of education and career development of teachers in advancing their competencies on equality and non-discrimination through teacher training programs.

(c) Improve the collaboration of the Commission for Prevention and Protection against Discrimination and the Ministry of education and science for raising awareness among students in elementary and secondary schools regarding discrimination.

POLITICAL PARTICIPATION OF PEOPLE WITH DISABILITIES

20. In March 2022, IHR published Analysis on ethics and integrity of the election process for people with disabilities. The results of the analysis give a general impression that people with disabilities are underrepresented as voters, candidates, in elected positions during elections, in political parties, in the election administration and as observers of the elections.

21. *Representation in the electoral bodies* – The announcement of the election and the submission of the application for election to the electoral bodies are not in formats that are accessible to persons with different types of disabilities.

[7] Analysis of a survey conducted among students and teachers from secondary schools in the city of Skopje on discrimination, bullying and hate speech, Institute for Human Rights, March 2022, available at: https://www.ihr.org.mk/storage/app/media/%D0%9F%D1%80%D0%BE%D0%B5%D0%BA%D1%82%D0%B8/2021%20-%20%D0%97%D0%90%D0%A8%D0%A2%D0%98%D0%A2%D0%90%20%D0%9E%D0%94%20%D0%94%D0%98%D0%A1%D0%9A%D0%A0%D0%98%D0%9C%D0%98%D0%9D%D0%90%D0%A6%D0%98%D0%88%D0%90%20%D0%91%D0%A3%D0%9B%D0%98%D0%9D%D0%93%20%D0%98%20%D0%93%D0%9E%D0%92%D0%9E%D0%A0%20%D0%9D%D0%90%20%D0%9E%D0%9C%D0%A0%D0%90%D0%97%D0%90/03.12%20izveshtaj%20iHR.pdf

22. Recommendations:

(a) Enhance the representation of persons with disabilities in the electoral bodies in accordance with the principle of adequate and fair representation from the Electoral Code.

(b) Provide adapted technical, spatial, and other working conditions of the electoral bodies to encourage participation of people with disabilities in these bodies.

(c) The State Election Commission should undertake activities to ensure that their website is accessible to persons with disabilities.

23. *Voter's list* - The voter's list is a public document in which citizens with the right to vote are registered. The laws and by-laws do not provide the availability of data on voters with a disability or the type of disability.

24. Recommendation:

(a) Electoral authorities should collect information on the type of accommodation required by voters, and thereby obtain information on the type of disability.

25. *Submission of list of candidates* - The legal framework does not envisage positive provisions for encouraging persons with disabilities to run for office, nor obligations for political parties to propose persons with disabilities on the lists of candidates. The Law on the financing of political parties does not provide funds for the campaigning of candidates with disabilities.

26. Recommendation:

(a) Allocate funds for campaigning of candidates with disabilities within the Law on the Financing of Political Parties.

(b) Political parties should ensure the accessibility of their political offices, campaigns, websites and political programs.

(c) The public broadcasting service and commercial broadcasters should cover the elections in a format suitable for persons with disabilities.

27. *Election Day* - Voting with a Braille template for blind people is enabled on the election day. If the blind person does not know the Braille alphabet, he is allowed to have the support of another person. To the voter who is a person with a disability and who cannot enter the polling station and vote, the electoral board is obliged to enable him to enter or approach the polling station, following specific instructions.

28. Recommendations:

(a) Provide information on the accessibility of facilities where voting takes place, to enable the inclusion of persons with various types of disabilities to participate in the elections

(b) Accommodate the polling stations to provide secret and independent voting for persons with disabilities.

29. *Possibility of submitting objections to the electoral authorities for the exercise of the right to vote and the possibility of submitting objections for electoral irregularities* - There is lack of information about the possibility of submitting objections in an accessible format, which is an obstacle to exercising this right.

30. Recommendations:

(a) Introduce adequate and suitable format for submitting lawsuits and objections for violations committed in the electoral process for people with disabilities.

(b) Provide sufficient information regarding the protection of rights resulting from the electoral process in an accessible and adapted manner for people with disabilities.