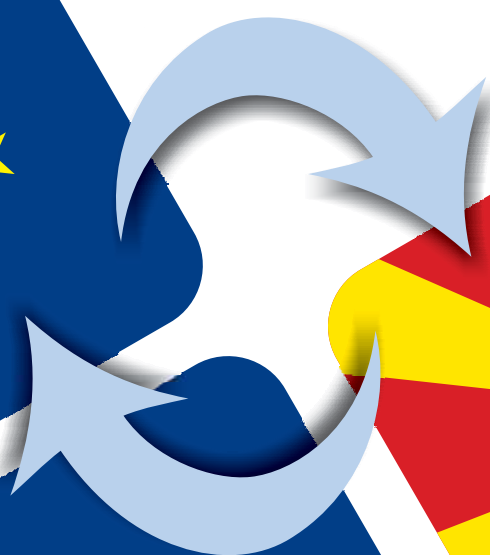


EU ANTI-CORRUPTION REQUIREMENTS:

MEASURING
PROGRESS
IN THE JUDICIARY,
PUBLIC ADMINISTRATION
AND LEGISLATURE
IN THE
REPUBLIC OF MACEDONIA



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Skopje, June 2011

Project: CIMAP Establishing Comparative Indicator-based Monitoring of Anti-corruption Progress in EU candidate, potential candidate countries and Kosovo

EU ANTI – CORRUPTION REQUIREMENTS:

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1. Introduction

This report is based on country findings produced by Transparency International Macedonia in cooperation with Transparency International Secretariat. This project was carried out by Transparency International Chapters in Macedonia, Albania, Kosovo and Turkey in 2010 and 2011 through the support of the European Union. The regional and the country reports are the result of the “Comparative Indicator-based Monitoring of the Anti-corruption Progress” project.

Pre successor to this regional project was the project “Permanent Anti-corruption Monitoring of the Key Priorities of the EU Pre-Accession Process” conducted in 2009 by Transparency International Macedonia. It was our pleasure that TI NC’s in Kosovo, Albania and Turkey as EU candidate and potential candidate countries, as well as the TI Secretariat in Berlin have recognized the presented methodology as a solid base for further development of a regional project relevant for all EU candidate countries.

Corruption cannot be seen and it cannot be thought of as an isolated phenomenon. Basically, it involves all aspects of the society. Fight against the corruption in a coherent and effective manner should take central and clear place on the road towards economic reforms, towards building a democracy that respects the rule of law and human rights, in a manner consistent with the criteria established with the Association and Stabilization Agreement (Copenhagen criteria). In order to provide comprehensiveness of the activities, the project consists of several phases, realized through several survey instruments, involving domestic and foreign experts, representatives of government and social segments, as well as representatives of judiciary and the parliament. In this manner multiplied and multi-layer validation of the opinions presented by different experts in relation with the separate indicators were provided. They are appropriately presented in this brochure. Our final goal was to differentiate and define indicators on the basis of which it would be possible to continuously monitor and evaluate the progress within the relevant sectors and it would be possible to compare the results during the entire process of EU-integration.

Of course, having regard to the mandate of the organization, the main characteristic of all analyses are the indicators, which are anticorruption by nature. One thing that is absolutely clear today, after 18 months of the implementation of the project is the understanding that the project activities should continue and extend until

the complete and precise identification of the anti-corruption indicators in other areas relevant for the EU integration process.

Today, after the conducted surveys there are large databases of indicators which should be analyzed additionally. Should our results so far contribute to permanent anti-corruption monitoring for the countries aspirants for EU membership within Transparency International, for us it would be an additional challenge and responsibility for further thorough and comprehensive engagement in the fulfillment of our professional determinations and wider TI 2011 -2015 strategy.

Skopje 6 June 2011

Prof. Slagjana Taseva PhD
President of Transparency International –Macedonia

2. Background information on the CIMAP Project

Without a common understanding on where a candidate country currently stands, it is impossible to determine if it is progressing to meet EU requirements for entry. To enter the European Union, candidate and potential candidate countries are to “make progress” on anti-corruption and broader levels of good governance. Yet there is no clear and standard baseline which is used to assess advances made by these countries, including Albania, Kosovo, Macedonia and Turkey. A baseline allows for the monitoring of country progress, or backsliding, on governance over time. It provides the means to substantiate whether gains are sustained and deepened. The current absence of such a baseline has meant that the goal of achieving EU membership often can remain a moving target.

The CIMAP project addresses this gap for EU- and potential-candidate countries. CIMAP, which stands for the “Comparative Indicator-based Monitoring of Anti-corruption Progress” initiative, assesses three institutions: the judiciary, the legislature and public administration. CIMAP uses standardised indicators that cover both anti-corruption laws and their implementation in practice. The indicators are based on the anti-corruption requirements set for EU accession. The initiative is designed to track and monitor changes in these institutions and countries over time.

For each institution, indicators are grouped around capacity and governance characteristics. For the judiciary and legislature, indicators also are included to scrutinise their effectiveness and efficiency. For public administration, specific indicators focus on government procurement processes.

The findings of CIMAP show that across all four countries, there are stark differences between country performance on enacting anti-corruption laws and their effective implementation. While the legal and regulatory framework is often in place, it frequently is not respected or used to sanction non-compliance. Low capacity and weak governance results recorded for the judiciary, legislature and public administration help to explain this gap between law and practice in each country.

The results of CIMAP signal specific areas of concern when it comes to capacity and governance:

- absent or unimplemented codes of conduct (governance);
- ineffective application of asset disclosure requirements (governance);
- low and inconsistent levels of access to information (governance);
- political interference in institutional responsibilities and operations (capacity); and
- poor working conditions for public servants (capacity).

When capacity and governance gaps exist, the ability of institutions to perform their anti-corruption functions effectively is undermined. The identified deficits are largely consistent for all three institutions assessed and are evident in all the countries, regardless of their different contexts. They also have compromised the institutional efficiency and effectiveness of the judiciary and legislature (e.g. the ability of these institutions to exercise their intended role) and have affected how public procurement processes are undertaken by governments.

The commonality of these problems signals the need for concerted efforts by the countries – and the European Union – to support and implement initiatives to ameliorate the identified gaps. The following report provides more details on each of these areas, both at the national and regional level, as well as suggestions for remedies to address current anti-corruption shortfalls.

3. Methodology

The objective of CIMAP is to have local stakeholders assess their country's progress on meeting anti-corruption requirements for EU accession. TI partner organizations in each country have gathered and analysed the findings based on the EU's criteria for accession. The institutions assessed are the country's judiciary, legislature and public administration. Current levels of institutional capacity, governance and effectiveness are looked at for each institution. When taken together, the results provide an overview of key areas of anti-corruption reform that should be pursued in the four countries assessed: Albania, Kosovo, Macedonia and Turkey.

The findings of the CIMAP study are based and scored using data gathered by TI partner organisations through the following channels:

- Legal analysis: an analysis of the pertinent laws, regulations and other official documents;
- A thorough desk review of existing studies and available information on the topics;
- Key interviews with experts in the relevant fields of public administration, the judiciary and legislature, as well as individuals who are working in relevant positions in the respective institutions.

Each team has used the same set of indicators and methodology to then score these institutions based on the relevant legal framework (i.e. laws and policies) and its implementation (i.e. practice).

Overall 150 indicators have been assessed for each country. All indicators are specific, replicable, actionable, and comparable across countries (for a specific institution).

Each indicator is based on anti-corruption requirements that are to be met by candidate countries. The indicators have been selected following a detailed review of the documentation regulating EU reforms and several informal interviews with EU Commission Officials. International best practice in each of the three areas (the judiciary, the legislature and public administration) has also been taken into account when developing the indicators.

The indicators are grouped around four characteristics: capacity, governance, overall effectiveness/efficiency and public procurement. ‘Capacity’ is sub-divided to assess institutional resources and independence. ‘Governance’ is also split into sub-categories to look at levels of accountability, integrity and transparency. The indicators for effectiveness/efficiency are used only to assess the judiciary and the legislature. Public procurement indicators are considered solely for public administration.

A scoring system was set up to assess the level of progress — both in law and practice — in a certain area and overall. Each indicator is initially scored by the researcher using a scale of 1-5 (from weakest to strongest performance). These scores are then aggregated into an overall score for each dimension (e.g. capacity; independence etc). This has been done by dividing the score received into the maximum score that could be assigned to a given dimension. This number is then converted into a percentage. Equal weighting was applied to each indicator

Scoring

The information gathered to answer the indicator questions was used to score each question. The score represents merely a ‘quantitative summary’ of the qualitative information assembled by the project coordinator and presented in the notes. In cases of insufficient information, no score is assigned.

For legal indicators, a 3-point scale was used, where:

- 1 = no
- 3 = partial
- 5 = yes

For practice indicators, a 5-point scale was used, where:

- 1 = to a very small extent
- 2 = to a small extent
- 3 = to a moderate extent
- 4 = to a large extent
- 5 = to a very large extent

The final indicator scores for each question were added up to reach a single score for each category, which was then transformed from its original 5-point scale to a 0-100 scale, and expressed as a percentage of the theoretically possible maximum score. An overall percentage score for each of the institutions – the judiciary, legislature and public administration – can then be calculated for any one of the categories by taking a simple average of the scores for each country. Also a simple average for a country’s performance in law and practice can be calculated for each institution. However, no further aggregation to find an overall country score can be made, since the assessment does not cover the entire anti-corruption system of each country. Overall country scores would reflect those of the three institutions assessed rather than the complete anti-corruption activities (laws and practice) of a country.

4. Project activities implemented by Transparency International Macedonia

4.1 The role of TI Macedonia as a regional partner in the CIMAP Project

Transparency International Macedonia, as a regional partner to the CIMAP Project, was included at all levels of the project's implementation. In particular, TI Macedonia contributed to the development of the methodology that was used for measuring corruption in the abovementioned countries. In the process of methodology implementation a detailed research on all indicator questions was conducted. Finally, a verification of the results was carried out by TI Macedonia.

4.2 National Baseline Report

With regard to the development of the methodology for measuring corruption within the CIMAP project, a detailed research on the previously methodology used for measuring corruption in Macedonia has been carried out. The research resulted in a National Baseline Report. The Report provided a comprehensive overview of corruption research and the relevant methodologies used in previous reports on corruption and anti- corruption measures in Macedonia. The reports contained in the Baseline study are products of different domestic governmental institutions and NGOs, as well as of international organisations that tackle the problem of corruption in the country. For the purpose of the study all corruption related assessments produced in the last 10 years were taken into consideration.

Emphases were placed on reports, assessments, surveys and studies that cover any aspect of the following three areas: Public Administration, Political Institutions and the Judiciary. The data used for the report was collected through comprehensive desk review of relevant reports in order to note down the methodology used for data collection. Each research project was briefly described in order to gain an idea about the methodological approach and the data collection tools, as well as the core research questions. Also, informal interviews with people that worked on certain projects were realised to gain more specific information especially regarding the problems and success stories.

This study is divided in three parts. The first part gives a review of existing corruption and anti- corruption research related to Public Administration, Political Parties and the Judiciary. The Public Administration section includes studies that assess corruption and anti- corruption measures in the public sector, especially in all of the bodies that deliver goods and services by and for the Government, such as education and healthcare sectors, as well as studies about public procurement processes. The following section assesses reports related to Political Institutions: political parties, legislature and elections. The final section of this part assesses the Judiciary by using reports that analyse the work of judges, judicial administration and other relevant bodies and institutions, such as PPs offices in the Republic of Macedonia.

The second part reviews other relevant corruption and anti-corruption research projects outside of the three subject areas that are relevant from a methodological point of view, which were also considered when creating the methodology for the CIMAP project.

Finally, the last part analyses the research process and the results from the study in order to outline the lessons learned from other projects that can be used within the CIMAP project.

4.3 Implementation of the agreed methodology

To implement the finalised methodology, the Project Coordinator conducted an in depth research using a combination of different methods. Methods included thorough desk research of primary and secondary data including an analysis of the legal framework of the Republic of Macedonia in relation to corruption; analysis of previous reports related to corruption and anti-corruption measures in Macedonia, as well as interviews with experts and practitioners in the respective fields of interest for the project.

Having in mind that the indicator questions are divided into two categories, *de jure* (legal regulation) and *de facto* (the situation in practice) indicators, the research activities included:

- **Legal analysis:** an analysis of the pertinent laws, regulations and other official documents. These analyses particularly contributed to answering *de jure* indicators, and they included different laws depending on the analysed field. For instance, the of the indicator questions on the Judiciary encompassed the Constitution of RM, the Law on Courts, the Law on Prevention of Corruption, the Law

on Judicial Budget, the Law on Remuneration of Judges, the Law on conflict of Interests, as well as other relevant regulations. In addition to these laws, the analysis of the situation within the Public Administration also used the Law on Public Servants, the Law on Civil Servants, The Law on Free Access to Public Information, the Law on Public Internal Financial Control, the Criminal Code and Law on Criminal Procedure, the Law on Public Procurement etc. Finally, the analysis of the Legislature additionally took into consideration the Law on the Assembly of RM as well as the Rules of Procedure for the Assembly of RM, the Rules for Internal Organization of the Staff of the Assembly of RM etc.

- Thorough **desk review** of existing studies and available information on the topics, including those detailed in the National Baseline Report as well as further studies which have since come to light.
- **Key informant interviews** with experts in the fields of interest in the public administration, judiciary and legislature, as well as with individuals who are working at relevant positions in the respective institutions. Interviews have included university professors in the relevant fields, judges and presidents of courts, employees in public administrative bodies, MPs etc.
- **Validation of results** with three validation committees (expert panels) comprised of experts and practitioners from the relevant topic. Each validation committee had between 5-7 members that discussed on the findings and scores given for the indicators questions in order to revise, confirm or amend the data and results.

5. Results from the research

5.1 General overview of the results

The findings of the CIMAP project regarding Macedonia have been grouped in a table by institution as well as by standards. The full results are available as a research notebook that provides an overview of all of the indicators, their scores and the quality assignments provided by the researcher.

The findings of the project help in pinpointing the main problems in the areas of research. Through analysing the situation with corruption in the legislature, the public administration and the judiciary in Macedonia observations and alerts on the country's legal and institutional weaknesses have been made. These findings should contribute to the fight against corruption in Macedonia as they identify flaws and limitations that could prevent or decrease the pace of European integration.

These findings shall also be considered as a baseline for further monitoring and measuring the progress in the respective anti-corruption areas.

Common finding for all areas of the research is that the corruption related legal framework has recently been strengthened and developed. In other words, laws on different aspects of corruption risks have been enacted. Still, it should not be concluded that all anti- corruption aspects have been covered with legal provisions and additional improvements in the legal framework as well as regulations on further corruption risks are also required. However, while results have shown advances in the establishment of the legal framework, the situation in practice is quite different. Findings show significant shortfalls in the implementation of the legal provisions. If we look at Tables 1, 2 and 3 and compare the extent to which standards are fulfilled in law with the fulfilment in practice the discrepancy is obvious.

Within the Judiciary “law” standards are fulfilled up to 87 per cent in comparison to “practice” standards which in average are fulfilled up to 63 per cent. For further details please see Table 1.

Table 1: Overview of findings on the Judiciary

Judiciary			
Category		Extent to which standard fulfilled - in law -	Extent to which standard fulfilled - in practice -
Capacity ¹	Resources	90%	65%
	Independence	89%	60%
Governance ²	Integrity	80%	60%
	Transparency	84%	68%
	Accountability	100%	80%
Total		87 %	63%

Judiciary		
Category	Extent to which standard fulfilled - in law -	Extent to which standard fulfilled - in practice -
Effectiveness/ Efficiency ³	100%	47%

¹ Capacity denotes availability of resources (human, infrastructural, financial) and ability of the institution to function independently (i.e. without undue external interference).

² Governance denotes the internal governance standards and practices in the institution, namely the transparency, accountability and integrity mechanisms in place and their implementation.

³ Efficiency/Effectiveness refers to the ability of the institution to exercise its role in preventing corruption.

Within the Public Administration “law” standards are fulfilled up to 86 per cent in comparison to “practice” standards which in average are fulfilled up to 41 per cent. For further details please see Table 2.

Table 2: Overview of findings on the Public Administration

Public Administration			
Category		Extent to which standard fulfilled - in law -	Extent to which standard fulfilled - in practice -
Capacity ⁴	Resources	87%	40%
	Independence	100%	47%
Governance ⁵	Integrity	70%	30%
	Transparency	87%	60%
	Accountability	90%	35%
Total		86 %	41 %

Public Administration		
Category	Extent to which standard fulfilled - in law -	Extent to which standard fulfilled - in practice -
Public Procurement ⁶	85%	38%

⁴ Capacity denotes availability of resources (human, infrastructural, financial) and ability of the institution to function independently (i.e. without undue external interference).

⁵ Governance denotes the internal governance standards and practices in the institution, namely the transparency, accountability and integrity mechanisms in place and their implementation.

⁶ As a key function of the public sector, public procurement regulations and practices are examined under this heading.

Within the legislature “law” standards are fulfilled up to 85 per cent in comparison to “practice” standards which in average are fulfilled up to 57 per cent. For further details please see Table 3.

Table 3: Overview of findings on the Legislature

Legislature			
Category		Extent to which standard fulfilled - <i>in law</i> -	Extent to which standard fulfilled - <i>in practice</i> -
Capacity ⁷	Resources	100%	40%
	Independence	100%	50%
Governance ⁸	Integrity	66%	46%
	Transparency	87%	93%
	Accountability	93%	60%
Total:		85%	57%

Legislature		
Category	Extent to which standard fulfilled - <i>in law</i> -	Extent to which standard fulfilled - <i>in practice</i> -
Effectiveness/ Efficiency ⁹	60%	47%

⁷ Capacity denotes availability of resources (human, infrastructural, financial) and ability of the institution to function independently (i.e. without undue external interference).

⁸ Governance denotes the internal governance standards and practices in the institution, namely the transparency, accountability and integrity mechanisms in place and their implementation.

⁹ Efficiency/Effectiveness refers to the ability of the institution to exercise its role in preventing corruption.

5.2 Judiciary - Detailed analysis of the findings

Capacity

Macedonian legislation contains comprehensive provisions that regulate various issues of importance to the capacity of the Judiciary. For example, there is adequate legal regulation of the appointment and removal of judges; security of their tenure; the amount of their salaries; trainings, etc. Therefore, Macedonian law fulfils the standard of capacity of the Judiciary up to 90% with regard to the resources allocated to the Judiciary, and up to remarkable 89% with regard to securing its independence.

On the other hand, Macedonia scores significantly lower regarding the extent to which this standard is fulfilled in practice, receiving 65% on resources and only 60% on Judiciary independence. It can be said that there are two main reasons for this situation. First, certain issues are still only partially regulated by law thus affecting the fulfillment of the standards in practice, and second, the implementation of existing legal regulations is limited in practice.

When it comes to the problems caused by partial legal regulations one should have in mind the following:

- **Partial legal competencies in budget management:** According to the Law on Judicial Budget¹, the Judiciary has legal competencies in the preparation and execution of its budget. However, the final proposal of the budget is submitted by the Government to the Assembly and in most cases the Assembly adopts this proposal with only few amendments. This means that the Judiciary manages a previously allocated budget that in practice is not sufficient for satisfying the basic needs of its functioning.
- **Partial independence of the Judicial Council:** The Judicial Council of the Republic of Macedonia has the authority of appointing and removing judges². According to Article 104 of the Constitution, the Minister of Justice represents an *ex officio* member of the Council³ that is, a member due to his/her function in the Government. Therefore, the Minister of Justice, as a representative of the executive power, is legally capable to influence the work and decision-making of the Council. In addition, this affects the Constitutional principle for separation of powers.

¹ Law on Judicial Budget, Official Gazette of RM, No.60/03

² Constitution of the Republic of Macedonia

³ Constitution of the Republic of Macedonia, Amendment XXVIII, Official Gazette of RM, No.107/2005

- **Legal gaps in the criminalisation of bribe:** The Criminal Code⁴ incriminates receiving (passive) bribes and offering (active) bribes to judges. However, Article 359 of the Criminal Code states that only the person receiving a reward or advantage in a ‘trading in influence’ transaction is to be punished with a fine or imprisonment. Therefore, there is a further need for legal provisions as only passive trading in influence (receiving) is being criminalised by the Criminal Code.⁵

As a result of this legal gap, at present there are no sanctions against persons seeking to influence judges and only judges are sanctioned for falling under influence.⁶

In summary, supplement of the regulations is required to criminalise active trading in influence (offering)⁷.

The main problems regarding the fulfillment of the standard of capacity in practice are related to limited implementation of legal provisions. The research revealed these issues as the most crucial problems in this segment:

- **Appointment and removal of judges:** As hinted above, the Judicial Council is only to a small extent independent in the appointment and removal of judges, and this institution is not considered to be free from influences. Objective criteria and achieved results are not the main determining factors in the process of selection and promotion of judges. Also, in certain cases there have been pressures upon members of the Council directly influencing the decision-making and review mechanism of removal of judges.

For instance, there have been implications of pressures appointed to the members of the Council in the cases of dismissal of the judges Duma, Džilvidziev and Mitrinovski⁸.

According to an OSCE research, judges themselves are on the opinion that the manner of dismissal of judges is subject to pressure (67% of the judges interviewed)⁹.

⁴ Criminal Code of RM, Official Gazette of RM, No. 37/ 96, Law for Amending and Supplementing the Criminal Code of RM, Official Gazette of RM, No. 114/ 09

⁵ p. 11, GRECO Third Evaluation Round, Evaluation Report on the Republic of Macedonia Incrimination (ETS 173 and 191, GPC 2) Theme I, 26 March, 2010 Strasbourg

⁶ Validation Committee, 23.03.2011

⁷ Validation Committee, 23.03.2011

⁸ <http://www.sitel.com.mk/dnevnik/makedonija/vrhoven-gi-razreshi-sudiite-violeta-duma-i-vlado-dzilvidziev>,
<http://www.utrinski.com.mk/?ItemID=24CA858FA088C3488C57ACD8DF1110A2>

⁹ p. 33, Legal Analysis: Independence of the Judiciary, OSCE (Organization for Security and Cooperation in Europe) Spillover Monitor Mission to Skopje, December, 2009

- **Influences on the decision-making:** In practice, there is influence upon judicial decision-making regardless of the legal regulations protecting Judiciary independence. This includes both external and internal influences. The strongest source of attempted external influence is the executive power, followed by the political parties¹⁰. Examples of external influence include untimely initiatives for removal of judges to produce pressure on the decision making process in specific cases¹¹.

In the court cases where the Government is a party or has an interest in the proceeding, judges feel pressures, especially the pressure of being held responsible for their decisions¹²

The internal influence is channelled through the authority of senior judges and higher rank judges¹³.

Governance

There are also vast discrepancies with regard to the extent of fulfilment of the standard of governance of the Judiciary in law and in practice. Specifically, Macedonian legal provisions secure the accountability of judges to a full 100%; their integrity up to 80%, and they enable transparency of the judicial work up to 84%. This situation means that, in general, Macedonian legislation provides comprehensive and up-to-date solutions to key issues in the area of Judiciary governance.

The lesser overall scores, however, of the fulfilment of the standards of integrity and transparency in law stem from certain ambiguities or omissions in current provisions regulating the judicial function. The main gaps in the legal regulation of judicial integrity are the following:

- **Gaps in the legal provisions on restrictions of post-office employment:** Articles 28 and 29 of the Law on Prevention of Corruption¹⁴ compel judges to inform the State Commission on Preventing Corruption if after the termination of their function they undertake certain commercial activities in the field they

¹⁰ p. 23, Legal Analysis: Independence of the Judiciary, OSCE (Organization for Security and Co-operation in Europe) Spillover Monitor Mission to Skopje, December, 2009

¹¹ Interview with professor Ljupco Arnaudovski, PhD, <http://antikorupcija.kirilica.com.mk/antik.asp?id=46194>

¹² Validation Committee, 23.03.2011

¹³ Interview with professor Ljupco Arnaudovski, PhD, p. 24, Legal Analysis: Independence of the Judiciary, OSCE (Organization for Security and Co-operation in Europe) Spillover Monitor Mission to Skopje, December, 2009

¹⁴ Official Gazette of RM, No. 28/2002, 46/ 2004, 10/ 2008, 161/ 2008, 145/ 2010, Decision of the Constitutional Court of RM 160/ 2006- 0- 0

used to be engaged in. However, there are neither provisions nor sanctions in place for judges that do not respect the obligation to inform the State Commission.

The existing regulations do not hold any particular post-employment restrictions for judges and they can be appointed to positions both in the public and in the private sector after the termination of their judicial function.¹⁵ This area is completely vague and needs to be regulated in further details.¹⁶

- **Ambiguities in the legal definition of misconduct:** The Chapter V of the Law on Courts¹⁷ regulates misconduct behaviour by a judge. However, the definition of what constitutes misconduct does not clearly distinguish the terms unprofessional and inadequate performance of the judicial function. This makes the definition unclear and confusing and, thus, imposes the need for clarification.

The main legal omission in ensuring full transparency of judicial work concerns the availability of court transcripts. Namely, Macedonian legislation does not require the transcripts of courtroom proceedings to be maintained. Instead of transcripts, minutes are completed throughout the course of the proceedings. Moreover, under the law, minutes are not available to the general public. This impedes public insight into all of the documents relevant for judicial decision-making.

As with capacity, the standard of governance is fulfilled to a considerably lesser extent in practice than in law. For instance, whilst the law provides 80% of the relevant mechanisms that ensure integrity of judges, these are implemented only to 60% in practice. The key areas where the law is under enforced are:

- **Gifts and hospitality disclosure:** There are substantial legal provisions in force that oblige judges to report gifts and hospitalities. In practice, however, these are not applied and judges do not generally report any gifts or hospitalities that they might have received. The problem is enhanced by the fact that there is no effective control system in place¹⁸.
- **Behaviour according to the Code of Ethics:** There is a written Code of Judicial Ethics, but it is not fully and effectively enforced in practice. There are cases in which the persons with a responsibility do not react when the Code of

¹⁵ Validation Committee, 23.03.2011

¹⁶ Validation Committee, 23.03.2011

¹⁷ Official Gazette of RM, No. 58/ 06

¹⁸ Global Integrity Report, Macedonia Scorecard, 2009
[http://report.globalintegrity.org/Macedonia%20\(FYROM\)/2009/scorecard](http://report.globalintegrity.org/Macedonia%20(FYROM)/2009/scorecard)

Judicial Ethics is not respected and enforced in practice¹⁹. In addition, citizens very often use their right to file complaints against the conduct of judges. These complaints need to be addressed and investigated, which promotes control over the implementation of such norms.²⁰

The standard of transparency is also fulfilled to a lesser degree in practice – worrying 68% than the 84% of fulfilment in law. This is due to the fact that the comprehensive mechanisms provided by the law are not implemented to an equal extent in practice. These are the most important issues resulting from the fractional implementation of the law:

- **Insufficient reasons for decision-making:** In practice, judges provide reasons for their decisions and correlate the reasons to specific articles from laws. However, judges do not always provide the sufficient amount of evidence that is necessary to deliver their decision, and do not always make a sufficient effort to clarify the ambiguous issues. This may lead to decisions that do not have strong reasons for their judgements.

Recently, insufficient reasoning behind judicial decisions was determined with the 2011 Judgment of the European Court of Human Rights on the Case of Vasilkoski and others against the Republic of Macedonia²¹. The complaint was filed by 38 defendants in the so called ‘anti-corruption case Zmisko Oko’ on the grounds of unlawful detention and ineffective review procedure. In the view of the European Court, Macedonian courts issued and subsequently extended collective detention orders constantly repeating the same summary formula using an identical form of words with little regard to the individual circumstances of the detainees. The Court emphasized that the domestic courts did not demonstrate the existence of any concrete fact in support of their conclusions.

- **Incomplete disclosure of assets:** Judges generally respect the obligation to disclose their assets.²² However, aside from the obligation to disclose their initial assets, judges are also compelled to inform the State Commission on Preventing Corruption in a timely manner on any changes in them. In practice, problems with assets disclosure are not as much connected to the submission of the initial asset declaration to the State Commission for Preventing

¹⁹ Interview with professor Ljupco Arnaudovski, PhD

²⁰ Validation Committee, 23.03.2011

²¹ <http://cmiskp.echr.coe.int/tkp197/view.asp?item=6&portal=hbkm&action=html&highlight=macedonia&sessionid=71410029&skin=hudoc-en> (accessed 25.05.2011)

²² Validation Committee, 23.03.2011

Corruption and to the Public Revenue Office, but to the subsequent obligation of updating the declarations with changes in the assets²³.

Judges' assets are disclosed on the website of the State Commission for Preventing Corruption. Still, at the moment there is no mechanism in place to accurately track the actual changes in judges' assets. This is due to the fact that the website does not publish the date on which the declaration of assets was submitted or subsequently amended.

Effectiveness/Efficiency

The issues that are relevant for the scope of effectiveness or efficiency of the Judiciary are also well regulated with present Macedonian legislation. This particularly refers to the issues of witness protection, regulated by the Law on Witness Protection²⁴, and of adequate time for completing court cases, ensured by the Law on Civil Proceeding²⁵ and the Law on Criminal Procedure²⁶. However, the score of 68% on the general fulfilment of the effectiveness /efficiency standard is shaped through the following deficiencies in practice:

- **Partial implementation of information technology systems:** In practice, the modernisation of the judiciary, particularly the implementation of modern technology systems in the courts is being successfully implemented. However, the judges and, in particular, the judicial administration lack staff that would enable complete implementation of the system. This is the case due to the fact that there are a high number of actions that reach the courts on a daily basis, and the system requires detailed data input for each of them. Therefore, it is difficult to completely implement the modern technology system with the current level of judicial administration²⁷.
- **Lack of witness protection:** Witness protection remains a considerably problematic area as the provisions in the Law on Witness Protection are not implemented in practice. Therefore, the extent to which this issue is fulfilled in practice received the fairly low score of two out of five. The few exceptions that exist in practice refer only to the cases where police officers appear as witnesses in judicial proceedings. They, for example, have been treated as protected persons under the provisions of this Law²⁸.

²³ Interview with president of a basic court, Interview with professor Ljupco Arnaudovski, PhD

²⁴ Official Gazette of RM, No. 38/05, 58/05

²⁵ Official Gazette of RM, No. 79/05, 110/08, 116/10

²⁶ Official Gazette of RM, No. 150/10

²⁷ Interview with President of a basic court

²⁸ Validation Committee, 23.03.2011

- **Excessive court proceedings:** The delays and excessive lengths of both the proceedings and the process of reaching judgements still represent one of the most pressing issues in the practical functioning of the Macedonian judiciary. This is also substantiated by the number of complaints on the excessive length of court cases that have been filed against the Republic of Macedonia in front of the European Court of Human Rights.

Out of total number of 65 complaints, 44 cases concern the breach of Article 6 of the ECHR regarding the right to a hearing within a ‘reasonable time’, and Macedonia has lost a staggering number of 40 cases. This implies that excessive lengths of judicial proceedings represent the most frequent basis for filing a successful case against the Republic of Macedonia, as well as the major procedural concern of Macedonian citizens.

The so called ‘anti-corruption cases’ provide an additional empirical example to this statement. In the majority of these cases, the suspects have been kept in detention for the maximum time provided by the Law on Criminal Procedure during the investigation, and then subsequently during the trial. However in a number of these cases the prosecution has failed to prove indictment which creates the ambient of insecurity in the judicial system and in the rule of law.²⁹

²⁹ European Court of Human Rights, Judgement; Application No. 28169/ 08; Case of Vasilkoski and Others v. Republic of Macedonia, Available at: <http://www.justice.gov.mk/txt/presudi/mak/ZO%20Presuda.pdf>

5.3 Public Administration - Detailed analysis of the findings

Macedonian legislation differentiates *civil* from *public* servant; different laws regulate their status¹, rights and obligations. According to the Law on Civil Servants², Article 3 (Paragraph 1), a civil servant shall be the person employed in the civil service who performs expert, normative-legal, executive, administrative, administrative-supervising, planning, material-financial, and accounting, IT and other activities within the competences of the body in accordance with the Constitution and law. Moreover, according to Paragraph 2 of the same article, Civil service, in terms of the Law on Civil Servants, shall be the bodies of the state and local authority and other state bodies, established in accordance with the Constitution and law.

According to the Law on Public Servants³, Article 3 (Paragraph 1) public servants are employees who perform public interest work in education, health, culture, science, labour and social affairs, social protection and child protection, institutions, funds, agencies, public enterprises established by the Republic of Macedonia, municipalities, municipalities in the city of Skopje, the city of Skopje, which are not included in the Law on Civil Servants. For the purposes of this research both civil and public administration are included and sublimated under the term “public administration”.

Capacity

The legal framework on capacity is comprehensive as it entails of legal provisions that regulate most of the capacity-related issues. When analyzing the results from Table 2 we can see the discrepancy between the established standards in law with the situation in practice. In regards to the category of resources the standards have 87% fulfilment in law where as in practice the standards are fulfilled up to 40%. The situation is slightly better when analysing the category of “independence”. The standards in this category are completely fulfilled in law, but in practice the fulfilments go only as high as 47%.

For example, general criteria for entry in the public administration, procedure for appointment and promotion, obligation for publication of information on all public administration vacancies, reasons for termination of employment etc. are established with legal provisions.

¹ There are two different laws regulating this area: the Law on Public Servants and the Law on Civil Servants

² Official Gfazette of RM, No. 59/ 2000, 112/ 2000, 34/ 2001, 103/ 2001, 43/ 2002, 98/ 2002, 17/ 2003, 40/ 2003, 85/ 2003, 17/ 2004, 19/ 2004, 69/ 2004, 81/ 2005, 61/ 2006, 36/ 2007, 161/ 2008, 6/ 2009, 114/ 2009, 35/ 2010, 167/ 2010

³ Official Gazette of RM, No. 52/ 2010

However, analyses have shown lack of implementation of the established legislation in practice.

The research revealed these issues as problematic in the field of public administration capacity:

- **Remuneration:** There are insufficient legal provisions regarding the remuneration system of public servants.

The Law on Public Servants only stipulates that public servants have the right of salary and remunerations under conditions and criteria established by law, collective agreement, and general act of the administrative body. However, no such acts have been enacted so far. Moreover, salaries do not follow the standard of living for public servants and do not correspond to the living conditions in the country⁴.

- **Lack of proper trainings:** Trainings of public servants are not institutionalised, nor systematised that points out the need for a strategy that will contribute towards surpassing these shortcomings and creating a system of proper trainings for public servants.⁵

Trainings are ad hoc, inconsistent, partial and are organized mostly due to received grants. In most cases, these trainings are attended by incompetent civil and public servants.⁶

The issue of training of public servants clearly illustrates the discrepancy between the standards in law and their implementation. Although basic legal provisions are in place, findings have shown a general strategy on training is implemented to a small extent in practice.

- **Illegality in the employment procedure:** Appointments of civil and public servants are often based on political considerations. Every government coming to power employs members of its party whose abilities are not evaluated according to professional criteria, but by party membership criteria⁷. Employment on the basis of party membership is considered a “normal” practice in the country. People expect “their” political party to obtain political power so

⁴ Validation Committee, 24.03.2011

⁵ Validation Committee, 24.03.2011

⁶ See Annex 2, p. 3

⁷ Global Integrity Report, Macedonia Scorecard 2009

that they can obtain employment in the public sector⁸. The criteria for selection do not always correspond to the advertised position⁹. Therefore, there should be an emphasis on strengthening the implementation of the criteria for employment.¹⁰ In practice, certain employees are not dismissed for misconduct despite the existence of reasons to do so, whereas unfavourable employees are being dismissed without valid reasons.

For example, in order to secure permanent employment of party members employed on temporary basis vacancies for transformation of these temporary employments are published and everyone can apply. However, in most cases, the persons that have already been placed as temporary staff maintain their positions, gained through party membership in the first place¹¹. This is in a direct conflict with the criteria of qualifications and competency in the employment of civil servants.

Governance

Within the “governance” category the standards of integrity, transparency and accountability were analysed. The lowest score on the percentage scale for the “in law” standards, 70%, was calculated for the “integrity” standards. This is mainly due to the lack of post-employment restrictions for public sector employees. The “transparency” standards scored with 87% as legal regulations on assets disclosure, information on public administration activities and publication of information are mainly in place. “Accountability” standards received the total of 90% out of 100% mainly as a result of the existing provisions on internal audit and the procedures for dealing with citizens’ complaints against public servants and institution.

However, the research has shown very limited implementation of these regulations in practice. The “integrity” standards are implemented up to 30 % in practice, the “transparency” standards are implemented up to 60% in practice, where as the “accountability” standards are implemented up to 35% in practice.

Further strengthening of the legal framework and improved implementation in practice are required in the area of governance.

⁸ <http://www.makdenes.org/content/article/2191627.html>

⁹ <http://www.utrinski.com.mk/default.asp?ItemID=D434E216567994458D70AD1948AB8FDF>

¹⁰ CIMAP Project Validation Committee, 23.03.2011

¹¹ <http://www.vreme.com.mk/DesktopDefault.aspx?tabindex=3&tabid=1&EditionID=2101&ArticleID=146940>, <http://www.time.mk/read/bc45fd83c1/0becb65bed/index.html>

The main issues in this area concern:

- **Uneven practices towards providing information:** Access to public information differs from institution to institution and it largely depends on the openness of the head official in a specific body, as the administration staff acts in accordance with the directions of head officials¹². Regulations are not enough clear and precise and leave space for arbitrary decisions regarding the information that will be made available to the public. The publishing of information on activities depends on the decision of the director or head official of the sector or body.

On one hand, there are websites of institutions and bodies that can be used as very good examples on proactive publishing and maintenance of website, while, on the other there are institutions and bodies that do not provide sufficient information and do not publish and update information on their websites.

In addition, there are still institutions and bodies without a website.

- **Problems in conducting audit:** Every user of budgetary assets should have an internal auditor for the usage of budgetary assets. Although, this obligation is mandatory according to the Law on Public Internal Financial Control, in practice it is not implemented as intended.¹³ It should be noted that certain bodies and institutions are making efforts to form offices for internal revisions¹⁴.

State audits are being conducted by state auditor. However, state audits just provide conclusions, publish them on their webpage and report their findings to the Assembly of RM, without having authorizations to initiate further proceedings.

- **Conflict of interest problems:** Provisions on conflict of interest are present both in the Law on Prevention of Corruption¹⁵ and in the Law on Conflict of Interest¹⁶, creating collusion and confusion on what constitutes conflict of interest, and which Law regulates conflicts of interest. The State Commission for Preventing Corruption more or less follows the statements on conflicts of interest submitted by elected and named officials, as they are published in the

¹² Interview with an employee in the Public Administration of RM

¹³ Interview with professor Borce Davitkovski, PhD, Dean of the Faculty of Law, Iustinianus Primus, Ss. Cyril and Methodius, Skopje

¹⁴ <http://www.posta.com.mk/macedonian/Novost.aspx?n=215>,
<http://www.ads.gov.mk/default.asp?ItemID=B819E3ECB46D8C439D4469812FC3E908>

¹⁵ Chapter 4

¹⁶ Article 3

Official Gazette of RM, but due to a lack of capacity does not follow the statements by public servants.¹⁷

The inability of the State Commission for Preventing Corruption can be illustrated by noting that many officials, members of the ruling party, who had dual functions, have not resigned from their posts as a result of the authority of the Commission, but have resigned only after the party has recommended for them to do so¹⁸.

- **Breaches of the Codes of Ethics:** The values of the Codes of Ethics are often threatened by directions given by the ruling parties, as those directions are considered to be more important than the Code of Ethics in order to obtain employment and to be promoted in the public services.¹⁹

When public servants start working in public administrative bodies they are not presented with their rights and obligations, and are not even familiarized with the existence of a Code of Ethics that they need to follow.²⁰

- **Gifts and hospitality disclosure:** The implementation of the regulations governing gifts and hospitality in practice remains a serious problem in the anti-corruption system in Macedonia, as it is difficult to prove that a gift or hospitality has been offered and/or received²¹.
- **Post-office employment restrictions:** Further legal regulations on post-office employment restrictions for public servants are needed, as no one follows the obligation to report cases of breaches of post-employment restrictions to the State Commission for Preventing Corruption. This happens due to the lack of sanctions in case the obligation is not respected.

This area is completely vague and needs to be regulated in further details.

- **Lack of action upon citizens' complaints:** The effectiveness of the procedures for complaints by citizens is seriously threatened, as even when the Ombudsman reports violations, the citizens do not benefit and their rights remain unprotected. The same applies to other investigative bodies, as citizens submit complaints against public bodies and institutions, but no one acts upon their complaints.

¹⁷ CIMAP Project Validation Committee, 24.03.2011

¹⁸ <http://www.al.com.mk/vesti/default.aspx?VestID=126318>

¹⁹ CIMAP Project Validation Committee, 24.03.2011

²⁰ Validation Committee, 24.03.2011

²¹ Interview with professor Borce Davitkovski, PhD, Dean of the Faculty of Law, Iustinianus Primus, Ss. Cyril and Methodius, Skopje

Most breaches were related to delays of procedures regarding citizens' rights, in particular administrative proceedings. In other words, in over 90% of the cases authorities didn't respect deadlines for answering citizens' demands and have abused the rule "silence of the administration".²²

- **Whistleblowers** lack protection both *de jure* and *de facto*.

There is still no separate and comprehensive law on protection of whistleblowers in Macedonia, and thus the protection of public servants who report suspicions of corruption or misconduct (whistleblowers) to senior management or to law enforcement bodies is partial for the time being.

Public Procurement

There are legal provisions on public procurement in place. The implementation of these provisions is, however, applied to a small extent in practice. According to the findings presented in Table 2, these standards are fulfilled in law up to 85%; where as fulfilment in practice is very low- up to 38%. The main issues in the area of public procurement can be summarised around the following:

- **Lack of transparency:** Although there are objective criteria on public procurement, the Law on public procurement²³ might not be fully implemented in practice. This is the case even with the electronic system of public procurement, as the Law does not provide an answer to the question of what will happen if not all public procurements are conducted electronically²⁴, meaning that there are no sanctions for not following these legal provisions.

In 2010, 865 concessions have been awarded. That is 22.9 million Euros spent in negotiated procedure without prior publication of a notice²⁵. However, problems cannot be mainly related to the type of procedures used for awarding public contracts, but to the relevancy of the criteria established for awarding specific public contracts²⁶.

- **Ambiguities in the criteria for awarding a contract:** Criteria for granting public procurement contracts leave space for manipulation, as the criterion of "most advantageous tender" is not clearly defined, and can be interpreted as seen fit.

²² Annual Report of the Ombudsman of RM, 2009 http://www.ombudsman.mk/comp_includes/webdata/documents/Godisen%20izvestaj-2009.pdf

²³ Official Gazette of RM No.136/07, 130/08, 97/10

²⁴ Interview with Prof. Borce Davidkovski, PhD, Dean of the Faculty of Law, Iustinianus Primus, Ss. Cyril and Methodius University, Skopje, Macedonia

²⁵ SIGMA Assessment Republic of Macedonia, 2010 <http://www.sigmaweb.org/dataoecd/28/40/46401959.pdf>

²⁶ Interview with expert on Public Procurement

Also, there are no legal provisions clearly defining what constitutes “quality”, thus leaving the possibility for further manipulations, and highlighting the need for legal regulations in this sphere.²⁷

As a result, criteria that do not correspond to the purpose of the public contract are being adjusted to fit the profiles of certain companies²⁸.

- **Abuse of the non-binding disclosure of documents that precede or follow the contract awarding procedure:** According to the Law on Public Procurement²⁹, procurement plans do not have to be publicly available and most irregularities determined by the State Audit Office concern actions that precede or follow the completion of the procedure on awarding a contract for public procurement i.e., the stage of procurement planning and realisation³⁰.

The annexes to public contracts are rarely disclosed in practice, and most of the corruption related problems concern the disclosure of these annexes.³¹

- **Problems in the enforcement of sanctions:** The Public Procurement Bureau informs the contracting bodies, and if necessary, the authorities concerned upon detected irregularities from the received notices³². Still, the Bureau does not have the authority to apply sanctions when it has detected misconduct and there is no other separate independent regulatory and oversight body to perform these actions.. Furthermore, the initiation of an administrative dispute over the decision of the State Appeals Commission on Public Procurement does not suspend the previous decision. This means that if a different decision is delivered in the administrative procedure, and if the procurement has already taken place, there are no provisions regulating further actions in such cases. In consequence, the decisions of the Administrative Court cannot always be implemented in practice. Finally, no one has so far been held responsible or has been sanctioned for corrupt activities in procurements.

In many cases, tenders have been announced, but then withdrawn in order to change criteria, so that they would fit the profile of the company favoured to obtain the award. Yet no one has been held responsible for such actions³³.

²⁷ CIMAP Project Validation Committee, 24.03.2011

²⁸ Interview with expert on Public Procurement

²⁹ Article 26

³⁰ CCC, Annual Report on Monitoring the Implementation of Public Procurements, 2009
<http://soros.org.mk/dokumenti/ang-za-web-izvestaj-2009.pdf>

³¹ Validation Committee, 24.03.2011

³² Article 14, Law on Public Procurement

³³ Interview with professor Borce Davitkovski, PhD, Dean of the Faculty of Law, Iustinianus Primus, Ss. Cyril and Methodius, Skopje

5.4 Legislature - Detailed analysis of the findings

Capacity

The research revealed that out of the three institutions that were subjected to analysis, the Legislature or the Assembly is the public body that fulfils the standard of capacity in law to the maximum extent of 100%. Namely, the Law on the Assembly¹ and the Rules and Procedures of the Assembly of the Republic of Macedonia² provide comprehensive regulation of the availability of resources (human, infrastructural, financial) and the ability of the Assembly to function independently.

Discouraging, however, is the extent to which these provisions are fulfilled in practice. The significantly lower score of only 40% implementation of the standard of adequate resources available to the Assembly emerges from the following shortcoming:

- **Inadequate budget of the Assembly:** The findings show that, in practice, there is a high level of domination of the executive power over the Assembly in the creation of the Budget. The Assembly has a very limited say and influence on the preparation and dissemination of the budgetary assets as the Government determines the assets that will be allocated to the Assembly.³

The allocated Assembly Budget cannot fulfil the needs of the MPs. Consequently, MPs do not have adequate support for successfully carrying out their activities, and lack secretarial staff and offices.⁴

The high level of influence of the Government on the creation and distribution of budgetary assets is also one of the factors that shape the low score of 50% fulfilment of the standard of independence of the Assembly in practice. The other pertinent factors are:

- **Undue influences on staff selection:** Even though the findings are slightly more encouraging with regard to the ability of the Assembly to employ, control and retain a professional staff, it has to be underlined that the merit system is not fully implemented in these procedures⁵. Namely, the Staff of the Assembly

¹ Official Gazette of RM, No. 104/ 2009

² Rules and Procedures of the Assembly of RM 91/ 2008, 119/ 2010

³ Validation Committee, 22.03.2011

⁴ Interview with Stojan Andov, MP

⁵ Validation Committee, 22.03.2011

is an administrative body and is supposed to be independently selected. However, political parties influence the selection of the staff and political criteria are utilised to a moderate extent in the selection of the employees⁶.

- **Small control over the agenda:** Most of the Laws that are put on the Assembly's agenda are proposed by the Government. Therefore the Assembly mostly debates and votes on the draft laws by the Government⁷ as amendments of drafts laws that are placed on the agenda by the Assembly are very few. Nonetheless, when it comes to other points on the agenda aside from the draft laws, it can be said that the legislature controls its own agenda to a large extent⁸.

It has to be emphasised, however, that the level of control of the Assembly over its agenda results from the type of organisation of the political system in the country⁹, according to which the Government has large competencies in proposing draft laws

Governance

The most important problems in the area of governance of the Legislature are the following:

- **Lack of Code of Ethics:** The legal framework in the area of governance of the Legislative still does not include a written Code of Ethics for MPs, as well as an obligation for MPs to disclose contacts with lobbyists. In practice, MPs speak and act irrespectively of the session of the Assembly and they do not respect the rules for communication in the Assembly. There has also been a case of insults and unidentified armed persons entering the Parliament that provoked shoving among MPs from the opposition and the security.¹⁰
- **Post- employment restrictions:** The existing regulations do not hold any post- employment restrictions and officials can be appointed to other positions (both in the public or private sector) after the termination of their function.¹¹
- **Little control over receiving gifts:** Although there are regulations on receiving gifts, the control over their implementation is very weak in practice.

⁶ Interview with Professor Zoran Shapuric, PhD, Interview with Stojan Andov, MP

⁷ Interview with Stojan Andov, MP, Interview with Professor Zoran Shapuric, PhD

⁸ Interview with Professor Zoran Shapuric, PhD

⁹ Validation Committee, 22.03.2011

¹⁰ This case has not been evaluated by an independent committee due to lack of interest from the leading political party.

¹¹ Validation Committee, 23.03.2011

- **Gaps in the regulation and implementation of provisions on lobbying:** The provisions that regulate lobbying need to be supplemented, accompanied by an enhancement of their implementation in practice.

The Law on Lobbying regulates lobbying within the legislature and executive at the central and the local level¹². According to the Law, the lobbyist has an obligation to prepare a written report on an annual basis¹³ that will contain information on his/her lobbying activities, including information on the officials whom s/he has lobbied¹⁴. S/he has also the obligation to present all meetings with officials from the legislature, executive and local authorities¹⁵. Therefore, there is an obligation for disclosing lobbying, but the lobbyists are obliged to disclose these contacts and not the officials.

Lobbyists are supposed to prepare reports and to submit them to the State Commission for Preventing Corruption, but there is only one registered lobbyist in practice, and no such reports have been submitted so far.

- **Little consultation with the public:** Regarding the accountability of the Assembly, legal provisions are in place, with few exemptions that are mainly related to consultations with the public on relevant issues.

The Assembly, following a general debate, may decide to carry out a public debate on a law proposal of broader public interest.

However, this is only a possibility and not an obligation, for a public debate regarding a relevant law proposal.

In relation to this, debates, platforms or other forms of public debate regarding relevant draft laws are rarely organised.¹⁶ Certain laws have been enacted by using the urgent procedure for passing laws, but without proper justification and reasons for choosing this procedure.¹⁷

Effectiveness/Efficiency

The Law on Assembly together with the Rules and Procedures of the Assembly of RM provide legal provisions that regulate the effectiveness and efficiency of the Assembly to a certain extent. However, there is a need for strengthening both the

¹² Article 1, Law on Lobbying, Official Gazette of RM, No. 106/ 2008

¹³ Article 21

¹⁴ Article 22

¹⁵ Article 16

¹⁶ Interview with Zoran Zhapuric, PhD

¹⁷ Validation Committee, 22.03.2011

legal framework and its implementation in practice. According to the analysis, standards are fulfilled in law up to 60%, and up to 47% in practice. The reasons are mainly related to the following:

- **No control over internal audits:** The Law on Public Internal Financial Control does not provide an obligation for internal audits of government agencies to be received and scrutinized by the Assembly of RM.
- **Appointing the posts relevant for fighting corruption:** In practice, the Assembly appoints the members of the State Commission for Preventing Corruption. It has to be noted, though, that there are no clear criteria to be applied in the procedure for selection to these posts,¹⁸ and, in practice, there is political influence upon their appointment¹⁹.

In the latest selection of the new seven members of the State Commission for the Prevention of Corruption conducted on 6 April 2011²⁰, the Parliament did not even apply the formal criteria published in the announcement for the vacancies.

¹⁸ Interview with Professor Zoran Shapuric, PhD

¹⁹ Interview with Stojan Andov, MP

²⁰ Amendments on the Law for the Prevention of Corruption (Official Gazette of RM, No. 145/2010) provided professional (employment) mandate for the new members.

6. Recommendations

6.1 General recommendations

Having in mind the findings of the CIMAP project we can conclude that Macedonia still faces serious problems with creating and implementing anti- corruption policies. These problems affect the country's progress, as well as are crucial for EU accession of the Republic of Macedonia. Therefore, creating environment of understanding and acceptance of the problem of corruption and willingness to improve transparency, accountability and integrity is of utmost importance. For achieving these goals it is necessary to target the different groups of the society through the well-planned strategy and organized activities. The application of the anti-corruption efforts should unavoidably involve the Government, local authorities, civil society and the international community.

Macedonia still lacks legal provisions in certain areas in relation to the fight against corruption. Also, the research has shown serious problems with the implementation of existing legislation.

Therefore the following general recommendation should be considered:

- Implementation of existing legislation;
- Strengthening inter- institutional cooperation;
- Amendments on the existing legislation in the area of fight against corruption.

6.2 Recommendations in regard to the Judiciary

- Further amendments to legislation;
- Such as amending the Criminal Code to incriminate active trading in influence (offering); enacting legal provisions that would establish accountability of the Judicial Council for its actions; introducing post- employment restrictions for judges etc.

- Allowing the judiciary to prepare and propose its own budget and elaborate and defend the proposed budget in front of the Assembly of RM as the judiciary itself has the ultimate awareness of its own needs.
- Developing a precise merit- based system for the selection and promotion of judges.

6.3 Recommendations in regard to the Public Administration

- Whistleblowers' protection;
- Systematic and institutional protection of persons that are willing to report cases of corruption based on separate law.
- Introduction of merit based system for employing and promoting public servants;
- Improving the quality of training for public and state administration employees.

6.4 Recommendations in regard to the Legislature

- Further amendments to legislation in order to
- Strengthen the role of the Assembly regarding audit findings; increase accountability of MPs; increase involvement of the public in the decision-making processes, etc.
- Review of decision making model within the system of parliamentary democracy;
- Introduction of Code of Ethics for MPs.

ANNEX 1

Institution: Judiciary

Institution: Judiciary**Category:** Capacity**Standard:** Judiciary must have sufficient means to operate effectively + Adequate human resources to support judges in menial functions¹**Indicator Question:** 1.1 To what extent are changes in the overall judicial budget commensurate with the changes in budgets of similar national institutions?**Score (highlight as appropriate):**

To a very small extent	1
To a small extent	2
To a moderate extent	3
To a large extent	4
To a very large extent	5

Notes:

The judicial budget² is projected to be in the amount of 0.8% of the GDP; this amount is to be progressively achieved by 2015. In a case of a budget rebalance, the financial assets for the judiciary cannot be decreased³.

At present, if we compare the amount of assets allocated to the Judicial budget to the amount of assets allocated to other national institutions, such as the Public Prosecution, it can be noted that the Judicial budget has decreased; whereas the budget of the Public Prosecution has increased after the rebalance of the overall Budget for 2010. On the other hand, when the Judicial budget is compared to the budget of the Parliament, it can be noted that, after the Budget rebalance, the Judicial budget has been decreased for a lower percentage than the Parliamentary budget. The same notion applies when the Judicial budget is compared to the budget of the Government.

It is complicated to give an overall assessment of what this means in comparative terms for the judiciary. Namely, the budget of the Judiciary should be measured in terms whether it has sufficient assets for satisfying its needs, and not to compare it to budgets of other institutions. Regardless of these comparisons, the budget of the Judiciary is not sufficient for satisfying its basic needs for proper functioning⁴. For example, for the year 2010, the need for rebalancing the budget

¹ Accession Partnerships of Croatia, Macedonia, Turkey

² The Budget of the Constitutional Court is not part of the Judicial Budget

³ Article 4, Law on Amending and Supplementing the Law on Judicial Budget, Official gazette of RM, No. 145/ 2010

⁴ Validation Committee, 23.03.2011

of the Judiciary was obvious as early as in May, as it is very difficult to predict the number and type of court proceedings, which require expensive expertises. In addition, courts have debts from previous years.⁵

It is complicated to give an overall assessment of what this means in comparative terms for the Judiciary. Namely, the budget of the Judiciary should be measured in terms whether it has sufficient assets for satisfying its needs, and not to compare it to budgets of other institutions. The Validation Committee was unable to answer this indicator.⁶

⁵ Validation Committee, 23.03.2011

⁶ Validation Committee, 23.03.2011

Institution: Judiciary**Category:** Capacity**Standard:** Judiciary must have sufficient means to operate effectively + Adequate human resources to support judges in menial functions⁷**Indicator Question:** 1.2 To what extent does each judge have the basic tools necessary to do his or her job, e.g. sufficient office space, adequate support staff, IT equipment, a law library?**Score (highlight as appropriate):**

To a very small extent	1
To a small extent	2
To a moderate extent	3
To a large extent	4
To a very large extent	5

Notes:

In Macedonia judges do not have all the basic tools necessary for doing their job. There are still judges without computers, and often judges have to share the same computers with court reporters. This causes workloads as most of the work of both judges and court reporters is dependent on computers.⁸ Almost no one has internet access that would allow easy access to the Official Gazette of RM. Most courts do not have libraries, documents, literature etc, and judges often share office space with administrative staff⁹.

As a result of the ongoing implementation of a judicial reform in Macedonia a significant improvement can be noticed in the IT infrastructure and the methods for case administration. For instance, there is a fully installed Automated Court Case Management Information System that provides standardized and unified oversight of cases¹⁰. However, courts lack trainings and administrative staff that would provide proper implementation of this system¹¹.

⁷ Accession Partnerships of Croatia, Macedonia, Turkey

⁸ Interview with a president of a Basic Court in the Republic of Macedonia, P. 19, Analysis of the Potential for Good Governance in Macedonia, 2009, Foundation Open society Institute, Macedonia, Propoint: Skopje

⁹ Interview with professor Ljupco Arnaudovski, PhD, P. 19, Analysis of the Potential for Good Governance in Macedonia, 2009, Foundation Open society Institute, Macedonia, Propoint: Skopje

¹⁰ Assessment of the Implementation of the Strategy for Judicial Reform, Report and Assessment, May, 2010 <http://www.justice.gov.mk/documents/Procenka%20na%20Strategija%20za%20reformi%20vo%20pravosudstvo.pdf>

¹¹ Interview with a president of a basic court in the Republic of Macedonia

On the other hand, according to an OCSE's analysis¹², the opinions of the surveyed judges were split with regard to the technical equipment. Almost half of the judges were satisfied with the available technical resources, such as computers, telephone, email, compared to 44% of the surveyed judges that were not satisfied with the technical equipment¹³.

Finally, one should have in mind that judges' accessibility to basic tools necessary to do their job largely depends on the court in which the judge works. Certain courts have these basic tools to a large extent, where as other courts only have accessibility to basic tools to a small extent; thus the joint score "to a moderate extent" is applied for the situation in general.

¹² Legal Analysis: Independence of the Judiciary, OSCE (Organization for Security and Co-operation in Europe) Spillover Monitor Mission to Skopje, December, 2009

¹³ P. 38, Legal Analysis: Independence of the Judiciary, OSCE (Organization for Security and Co-operation in Europe) Spillover Monitor Mission to Skopje, December, 2009

Institution: Judiciary**Category:** Capacity**Standard:** Adequate guaranteed salary for judicial personnel + Structured career progression in the judiciary¹⁴**Indicator Question:** 1.3 Is the level of remuneration of judges established in law?**Score (highlight as appropriate):**

No	1
Partially	3
Yes	5

Notes:

The remuneration of judges is established in the Law on Judges' Salaries¹⁵. The Law regulates the system of wages, remunerations, compensations on wages, and other receipts by judges¹⁶.

Article 2 Paragraph 2 of the Law, ascertains that the remuneration of judges established in the Law on Judges' Salaries cannot be decreased by any other law or decision of a state body. Judicial salaries can only be reduced in cases of disciplinary liability of a judge determined by the Judicial Council of the Republic of Macedonia where "salary reduction" is an imposed disciplinary measure (Article 2, Paragraph 3).

The remuneration of judges is provided from the Judicial Budget of the Republic of Macedonia¹⁷.

¹⁴ European Partnerships of Potential Candidates

¹⁵ Official Gazette of RM No. 110/ 2007

¹⁶ These regulations do not refer to the remuneration of Judges in the Constitutional Court, as their wages are regulated with the Law on Remunerations of Elected and Appointed Persons in the Republic of Macedonia, Official Gazette of RM, No. 36/90, 38/91, 23/97, 37/2005, 84/2005, 121/2007, 161/2008, 92/2009, 42/10, 97/10, 161/ 2010

¹⁷ The remuneration of Judges in the Constitutional Court is provided by the budget of the Constitutional Court and the Judges in the Constitutional Court have the same basis for salary when compared to the judiciary.

Institution: Judiciary**Category:** Capacity**Standard:** Adequate guaranteed salary for judicial personnel + Structured career progression in the judiciary¹⁸**Indicator Question:** 1.4 Are there legal regulations in place to ensure that judicial salaries are adequate (e.g. comparable to those of high-level public sector employees/adjusted in line with inflation)?**Score (highlight as appropriate):**

No	1
Partially	3
Yes	5

Notes:

Article 2 of the Law on Judges' Salaries¹⁹ establishes the right to salary in accordance with the judicial function, the complexity of tasks, and the level of responsibility of the judge. The salaries are calculated by multiplication of a base for salary with a coefficient for salary determination. The base salary for judges is in line with the salary of elected and named officials. There are increments based on the type of court in which a judge works, on the complexity of tasks and authorisations, as well as on the number of years of experience of a judge²⁰. Also, judges are entitled to benefits and reimbursements, e.g. for annual leaves, sick leaves, for professional travel, severance pay etc.

When compared to salaries of other named and elected officials in RM there are adequate legal provisions regulating judges' salaries. For instance, judges and other named and elected officials have the same basis for salary calculation. Moreover, the 3.7% coefficient²¹ for salary determination of MPs²² corresponds with the highest coefficient for calculation of judges' salaries. Judges also enjoy the same coefficients on work experience as do MPs²³. Finally, according to the legal framework, both judges and MPs have a legal possibility of salary increases.

It is also worth noting that the basis for salary calculations for elected and named officials has been decreased due to the economic crisis²⁴, whereas the basis for judges has remained the same²⁵ in order to protect the independence of the judiciary.

¹⁸ European Partnerships of Potential Candidates

¹⁹ Official Gazette of RM No. 110/ 2007

²⁰ Article 1, Official Gazette of RM, No.67/2010, Article 7, 10 Official Gazette of RM No.110/ 2007

²¹ Official Gazette of RM, No. 23/097

²² Members of Parliament

²³ Article 10, Official Gazette of RM No. 110/ 2007 and Article 5 Official Gazette of RM No. 36/ 90

²⁴ Law for Amending and Supplementing the Law on Salaries and Remunerations of Elected and Appointed Officials in the Republic of Macedonia, Official Gazette of RM, 97/ 2010

²⁵ Law for Amending and Supplementing the Law on Judges' Salaries, Official Gazette of RM, No. 67/ 2010

Institution: Judiciary**Category:** Capacity**Standard:** Adequate guaranteed salary for judicial personnel + Structured career progression in the judiciary²⁶**Indicator Question:** 1.5 To what extent are judicial salaries adequate in practice (e.g. comparable to those of high-level public sector employees / adjusted in line with inflation)?**Score (highlight as appropriate):**

To a very small extent	1
To a small extent	2
To a moderate extent	3
To a large extent	4
To a very large extent	5

Notes:

Having in mind the general economic and financial situation in the Republic of Macedonia, judges have adequate salaries in practice²⁷. In addition, if compared to other public sector employees, *de facto* judges have adequate salaries²⁸. As previously mentioned, the basis for salary calculation of judges has not been reduced, regardless of the reductions for other public officials. Thus, currently judges both legally enjoy and receive in practice higher salaries than other public officials.

On the other hand, public sector employees have a wide scope of privileges and better work conditions when compared to judges, where as the salaries for both judges and public sector employees are similar; for example, public sector employees are remunerated for trainings and education, where as this is not always the cases with judges.²⁹ For these reasons, there is still room for improvements, and the score “to a large extent” is provided.

²⁶ European Partnerships of Potential Candidates

²⁷ Interview with a President of a Basic Court in the Republic of Macedonia

²⁸ Interview with Professor Ljupco Arnaudovski, PhD

²⁹ Validation Committee 23.03.2011

Institution: Judiciary**Category:** Capacity**Standard:** Systematic training provided through independent body³⁰**Indicator Question:** 1.6 Are there legal provisions to ensure that judges are systematically and regularly trained in new judicial practices and procedures and new and/or changing laws?**Score (highlight as appropriate):**

No	1
Partially	3
Yes	5

Notes:

Training of judges³¹ is regulated by the Law on the Academy for Training of Judges and Public Prosecutors³². Article 1, amongst other, emphasises the Academy as the public institution responsible for continuous training and improvement of judges and public prosecutors³³. Article 68 of the Law defines the term “continuous training”, the goals of such training, and the types of training. Judges, public prosecutors and presidents of courts are required to attend obligatory trainings. On the other hand, employees in courts and public prosecution offices are provided with continuous trainings that can be attended on voluntary basis. These voluntary trainings can also be attended by judges, presidents of courts and public prosecutors.

According to Article 69, the aim of these continuous trainings is to improve and broaden the knowledge and efficiency of judges and public prosecutors, as well as to strengthen their independence and integrity. This is a prerequisite for the rule of law, protection of human rights and freedoms, as well as for the creation of transparent, impartial and efficient judiciary based on international standards for fair and rightful trials. More precisely, the trainings for professional improvements aim at developing the ability of judges and public prosecutors to implement their tasks and authorizations.

³⁰ Accession Partnerships of Croatia, Macedonia, Turkey

³¹ Training of judges does not refer to Judges in the Constitutional Court of RM

³² Official Gazette of RM, No. 88/ 2010

³³ The Academy does not provide trainings to judges of the Constitutional Court

Institution: Judiciary**Category:** Capacity**Standard:** Systematic training provided through independent body³⁴**Indicator Question:** 1.7 In practice to what extent are judges systematically and regularly trained and given access to new judicial practices and procedures and new and/or changing laws?**Score (highlight as appropriate):**

To a very small extent	1
To a small extent	2
To a moderate extent	3
To a large extent	4
To a very large extent	5

Notes:

Judges are systematically and regularly trained and planned trainings on different topics of interests are available to judges³⁵.

The Academy provides trainings of judges through implementation of the annual programs for continuous trainings. The Program for 2010 aims at providing trainings for all judges and the trainings are planned in accordance with the current needs for trainings and education in the judiciary. The trainings differ in their topics and target groups, and include different members of the judiciary that focus on different legal segments.

According to the Academy, in the period between 01.01.2009 and 15.07.2010 244 trainings have taken place with around 7000 participants included³⁶.

The Academy focuses on providing trainings that would contribute to the harmonization of Macedonian legislation with the *acquis communautaire* of the EU and international law, as well as trainings on specific articles from the European Convention on Human rights³⁷. When it comes to newly selected judges, there are specialised intensive programs with modules on criminal, civil and similar topics, as well as special trainings for presidents of courts, judges in higher courts³⁸ etc.

³⁴ Accession Partnerships of Croatia, Macedonia, Turkey

³⁵ Interview with professor Ljupco Arnaudovski, PhD

³⁶ p. 5, Iustitia, November, 2010, Academy for Judges and Public Prosecutors of Macedonia, Vinsent Grafika: Skopje

³⁷ Interview with professor Ljupco Arnaudovski, PhD, p. 5, Iustitia, November, 2010, Academy for Judges and Public Prosecutors of Macedonia, Vinsent Grafika: Skopje

³⁸ p. 5, Iustitia, November, 2010, Academy for Judges and Public Prosecutors of Macedonia, Vinsent Grafika: Skopje

The Academy provides information regarding the dates of planned trainings to the judges well in advance in order to provide enough time for them to plan their court proceedings in accordance to the trainings³⁹.

In quantity, large number of judges is trained. Still, having a certain quantum of trainings does not by default provide the required quality in order for judges to gain the necessary competences for implementation of laws. In practice numerous cases are reviewed by appeal courts. Also, the Human Rights Court has started proceedings for more than 300 cases. Quality of trainings needs to be extended in order to achieve higher standards in the proceedings and judgements.

³⁹ Interview with president of a basic court in the Republic of Macedonia

Institution: Judiciary**Category:** Capacity**Standard:** Independent judicial budget (optional)**Indicator Question:** 1.8 Is the judiciary legally entitled to propose, allocate and manage its own budget?**Score (highlight as appropriate):**

No	1
<i>Partially</i>	3
Yes	5

Notes:

The Law on Judicial Budget⁴⁰ regulates the procedure for preparation and execution of the judicial budget, as well as the procedure for the establishment and operation of the Judicial Budgetary Council⁴¹ which has the overall responsibility for the judicial budget⁴².

Among other, Article 9 of the Law, gives authority to the Judicial Budgetary Council to establish the criteria and methodology for preparation of the judicial budget, to distribute assets from the judicial budget to courts and to the Academy for Training of Judges and Public Prosecutors; to undertake measures for timely execution of the judicial budget; to approve assets for new employments in the courts and in the Academy; to redistribute assets, as well as to prepare annual reports for execution of the judicial budget.

The Judicial Budgetary Council prepares a budget proposal accompanied by a rationalization for the amount of the budget prepared on the basis of financial plans submitted by the courts (Articles 14, 15).

Before dispatching the proposal of the Budget of the Republic of Macedonia to the Government, the Minister of Finance is obliged to adjust the part of the budget for the judiciary together with the President of the Judicial Budgetary Council. If an agreement cannot be reached the Ministry of Finance prepares a report that is submitted to the Government of RM (Article 15, Paragraph 2).

However, the final proposal is submitted by the Government to the Assembly and in most cases the Assembly adopts this proposal with only few amendments.

⁴⁰ Official Gazette of RM, No. 60/ 03

⁴¹ The Judicial Budgetary Council consists of a president (the President of the Judicial Council is the President of the Judicial Budgetary Council) and 10 members (the Minister for Justice, the President of the Supreme Court, the President of the Administrative Court, the Presidents of the Courts of Appeals, and two Presidents from basic courts)

⁴² The budget of the Constitutional Court is a separate budget, and is not part of the Judicial Budget

A solution for this problem would be allowing the judiciary to prepare and propose its own budget and elaborate and defend the proposed budget in front of the Assembly of RM⁴³. The justification for this solution is the fact that the judiciary itself has the ultimate awareness of its own needs.

⁴³ Interview with professor Ljupco Arnaudovski, PhD

*Optional indicator – where relevant to the country context

Institution: Judiciary

Category: Capacity

Standard: Independent judicial budget

Indicator Question: 1.9 In practice does the judiciary propose, allocate and manage its own budget?

Score (highlight as appropriate):

To a very small extent	1
To a small extent	2
To a moderate extent	3
To a large extent	4
To a very large extent	5

Notes:

The judiciary manages a previously allocated budget. There is a Judicial Budgetary Council that manages the assets but does not have influence in the forming of the judicial budget⁴⁴. The Judiciary does not elaborate and defend its budgetary proposal in front of the Assembly.

The Ministry of Finance sends a standard form to the courts which is filled and sent back to the Ministry. The courts do not have a real possibility to present their needs and plans for development. Also, the judiciary does not explain and defend their proposed budget in front of the Assembly. Thus, it does not have influence in the creation and promulgation of the budget⁴⁵.

Moreover, the judicial budget does not correspond with the real needs of the judiciary, as it is necessary to first define and construct the needs of the judiciary and determine the budget on the basis of their needs⁴⁶.

However, after the budget money is allocated, the judiciary has a complete control and management over these assets. Moreover, the Judicial Budgetary Council has the possibility to transfer unspent money from one court to another court.⁴⁷

⁴⁴ Interview with professor Ljupco Arnaudovski, PhD

⁴⁵ Interview with professor Ljupco Arnaudovski, PhD

⁴⁶ Interview with professor Ljupco Arnaudovski, PhD

⁴⁷ Validation Committee, 23.03.2011

Institution: Judiciary**Category:** Capacity**Standard:** Sufficient power and authority of the courts**Indicator Question:** 1.10 Does the judiciary have the power to determine the ultimate constitutionality of legislation and official acts, and to ensure that its decisions are enforced?**Score (highlight as appropriate):**

No	1
Partially	3
Yes	5

Notes:

According to the Constitution⁴⁸, the Constitutional Court of the Republic of Macedonia is an independent body⁴⁹ that protects constitutionality and legality of legislation and official acts (Article 108). The Constitutional Court has the following authorities: to make decisions regarding constitutionality of laws with the Constitution, and decisions regarding constitutionality and legality of other acts and collective agreements with the Constitution and the laws. According to Article 112, the Constitutional Court will abolish or annul a law if it determines that the law in question contradicts the Constitution. These decisions of the Constitutional Court are final and executive, thus making the Court the ultimate body that determines constitutionality and legality of acts.

With regard to the execution of the decisions of the Constitutional Court, the body that has promulgated the law, or the legal act or action that has been abolished or annulled, has the obligation to execute the Court's decision (Article 86)⁵⁰. According to Article 87 of the Rules of Procedure, the Constitutional Court monitors the execution of its decisions, and when necessary, demands from the Government of the Republic of Macedonia to ensure the execution of its decisions.

⁴⁸ Official Gazette of RM, No. 52/ 1992;

⁴⁹ The Constitutional Court, according to the Constitution, is a unique body, a constitutional institution, with rights and obligations deriving directly from the Constitution. Thus, the Constitutional Court is not a part of the judiciary, nor it is part of the legislature, or of the executive power in the country. For the purpose of this research it was decided that the Constitutional Courts will be considered as part of the Judiciary.

⁵⁰ Rules of Procedure of the Constitutional Court of the Republic of Macedonia, Official Gazette of RM, No. 70/ 1992;

Institution: Judiciary**Category:** Capacity**Standard:** Sufficient power and authority of the courts**Indicator Question:** 1.11 Does the judiciary have the power to review administrative acts and to compel the government to act where a legal duty to act exists?**Score (highlight as appropriate):**

No	1
Partially	3
Yes	5

Notes:

Article 5 from the Law on Courts⁵¹ guarantees citizens and legal entities judicial protection regarding the legality of specific legal acts of state administration bodies, and other bodies that have public authorizations. The Administrative Court, as part of the judiciary in Macedonia, has been established with the Law on Courts and is regulated in details with the Law on Administrative Disputes⁵². Also, the Supreme Court makes decisions in administrative procedures regarding extraordinary legal remedies.

The main aim of the Court is to provide judicial protection regarding rights and legal interests of citizens and legal entities, as well as to provide legality of specific administrative acts of administrative bodies, the Government and other state bodies, municipalities and the city of Skopje, as well as other organizations and legal entities with public authorisations, when their decisions involve concrete rights and obligations in administrative matters, as well as for acts resulting from misdemeanours (Article 1⁵³). The right to initiate an administrative dispute is given to any individual or legal person who considers that a right or legal interest of theirs has been violated.

The Law on Administrative Disputes dedicates an entire chapter on the compulsory character of decisions of the court⁵⁴. If the administrative body whose act has been annulled in an administrative dispute does not deliver a new act within 30 days from the day of annulment, the concerned party can demand the delivery of such act from the court that has annulled the administrative act (Article 52, 53⁵⁵).

⁵¹ Official Gazette of RM, No. 58/ 06

⁵² Official Gazette of RM, No. 62/ 06

⁵³ Law on Administrative Disputes Official Gazette No.62/2006, 150/2010

⁵⁴ Articles 52, 53, 54, Law on Administrative Disputes

⁵⁵ Law on Administrative Disputes

However, the Administrative Court is a recent institution and further legal provisions regulating this area are required. Generally, administrative disputes at the Administrative Court do not suspend the execution of legal acts of state administration bodies. This leads to possible problems in the implementation of decisions amended by the Administrative Court.⁵⁶

⁵⁶ Validation Committee, 24.03.2011

Institution: Judiciary**Category:** Capacity**Standard:** Sufficient power and authority of the courts**Indicator Question:** 1.12 Does the judiciary have exclusive, ultimate jurisdiction over all cases concerning civil rights and liberties?**Score (highlight as appropriate):**

No	1
Partially	3
Yes	5

Notes:

The judiciary has the exclusive and ultimate jurisdiction over cases concerning human rights and liberties. According to Article 4 from the Law on Courts⁵⁷, courts are authorised by law with a jurisdiction on human rights and legal interests. However, certain human rights and liberties are protected by the Constitutional Court, thus are excluded from the protection of the judiciary. Article 5⁵⁸ quotes that courts protect citizens' and legal persons' rights and liberties in all cases, except in cases when the Constitution has given jurisdiction for protection of human rights and liberties to the Constitutional Court. The Constitutional Court protects human rights and liberties related to freedom of belief, conscience, thought and public expression of thought; gathering for political purposes, as well as prohibition of discrimination on the basis of gender, race, religion, nationality, and social and political appertains⁵⁹. However, the exclusion of certain human rights is made for the purpose of providing additional protection of those rights by the Constitutional Court which for the purpose of this research is considered as part of the Judiciary. Thus the maximum score is given to this question.

⁵⁷ Official Gazette of RM, No. 58/ 06;

⁵⁸ Law on Courts, Official Gazette of RM, No. 58/ 06;

⁵⁹ Article 110, paragraph 1, subsection 3

Institution: Judiciary**Category:** Capacity

Standard: Independent regulatory and supervisory agency⁶⁰ + No discrimination in appointment procedure of judges + Objective, merit-based appointment and career development of judges, guaranteed by an independent appointing body which is independent of government and parliament ⁶¹ + Independent regulatory and supervisory agency⁶²

Indicator Question: 1.13 Is there an independent Judicial Council/ Supreme Council of Magistrates, or similar body with constitutional protection and responsibility for the appointment and removal of judges?

Score (highlight as appropriate):

No	1
<i>Partially</i>	3
Yes	5

Notes:

The Judicial Council of the Republic of Macedonia is an autonomous body of the judiciary, responsible for the independence and impartiality of the judicial power⁶³. The Judicial Council has been established with the Constitution and has the authority regarding appointment and removal of judges. According to the Amendment XXIX of the Constitution of the Republic of Macedonia, the Judicial Council is responsible for the election and acquittal of judges, members of jury and presidents of courts; it ascertains termination of judicial function, monitors and assesses the performance of judges; it determines existence of disciplinary liability of judges, recommends two judges for members of the Constitutional Court of RM etc.

The Judicial Council is not properly composed and in the appointment of its members there are influences by all of the three powers in the country; for instance, members of the Judicial Council are elected partly by the Assembly and the judges, two members are proposed by the President of RM, and the Minister of Justice is a member of the Council by default ⁶⁴.

⁶⁰ Accession Partnerships of Croatia, Macedonia, Turkey

⁶¹ Accession Partnerships of Croatia, Macedonia, Turkey

⁶² Accession Partnerships of Croatia, Macedonia, Turkey

⁶³ Article 104, Constitution of the Republic of Macedonia, Official Gazette of RM, No. 52/ 1992, Amendments of the constitution of the Republic of Macedonia, XX, XXI, XXII, XXIII, XXIV, XXV, XXVI, XXVII, XXVIII, XXIX, XXX, Official Gazette of RM, No. 107/ 2005

⁶⁴ Interview with professor Ljupco Arnaudovski, PhD

There are provisions for the number and composition of the members of the Judicial Council, and these regulations assume the President of the Supreme Court of Republic of Macedonia and the Minister of Justice *to be Ex officio* members of the Council. According to Amendment XXVIII⁶⁵, the Minister of Justice is a Member of the Judicial Council and enjoys all rights and responsibilities, as do the other members of the Council. Therefore, as a member of the Judicial Council, the Minister of Justice is able to influence the work and decision-making of the Council. As a result of this, it can be concluded that the Minister, as part of the executive power of the country, is being given the power to influence the decision making within the Council.

⁶⁵ Article 104, Constitution of the Republic of Macedonia

Institution: Judiciary**Category:** Capacity

Standard: Independent regulatory and supervisory agency⁶⁶ + No discrimination in appointment procedure of judges + Objective, merit-based appointment and career development of judges, guaranteed by an independent appointing body which is independent of government and parliament ⁶⁷ + Independent regulatory and supervisory agency⁶⁸

Indicator Question: 1.14 To what extent does an independent Judicial Council or similar body effectively oversee the appointment and removal of judges in practice?

Score (highlight as appropriate):

To a very small extent	1
To a small extent	2
To a moderate extent	3
To a large extent	4
To a very large extent	5

Notes:

As the appointment of members of the Judicial Council is not objectively conducted, the independence of the appointment and the removal of judges are jeopardized in practice⁶⁹.

In practice, even one member can have very strong influence in the selection procedure as there are members of the Council that are inactive⁷⁰.

Moreover, judges might lack certain qualities for selection, and nepotism and political influence in the selection of judges is still present in practice⁷¹. In addition, two thirds of the judges doubt that the Judicial Council is in fact independent and free from influences⁷².

The abovementioned leads to the conclusion that the Judicial Council is only to a small extent independent in the appointment and removal of judges.

⁶⁶ Accession Partnerships of Croatia, Macedonia, Turkey

⁶⁷ Accession Partnerships of Croatia, Macedonia, Turkey

⁶⁸ Accession Partnerships of Croatia, Macedonia, Turkey

⁶⁹ Interview with professor Ljupco Arnaudovski, PhD

⁷⁰ Validation Committee, 23.03.2011

⁷¹ Global Integrity Report, Macedonia Scorecard, 2009, [http://report.globalintegrity.org/Macedonia%20\(FYROM\)/2009/scorecard](http://report.globalintegrity.org/Macedonia%20(FYROM)/2009/scorecard)

⁷² p. 29, Legal Analysis: Independence of the Judiciary, OSCE (Organization for Security and Cooperation in Europe) Spillover Monitor Mission to Skopje, December, 2009

Institution: Judiciary**Category:** Capacity

Standard: Independent regulatory and supervisory agency⁷³ + No discrimination in appointment procedure of judges + Objective, merit-based appointment and career development of judges, guaranteed by an independent appointing body which is independent of government and parliament⁷⁴ + Independent regulatory and supervisory agency⁷⁵

Indicator Question: 1.15 Are there legal provisions in place requiring that the selection, appointment and promotion of judges be based on merit and transparent criteria?

Score (highlight as appropriate):

No	1
Partially	3
Yes	5

Notes:

Judges and lay judges are elected by the Judicial Council of the Republic of Macedonia in a special procedure imposed by the law⁷⁶. The procedure for the selection of judges differs with respect to first instance court judges and judges of higher courts.

The Judicial Council establishes the number of positions for judges that will be opened in the next two years and informs the Academy for Training of Judges and Public Prosecutors. After the decision, vacancy announcements are published in accordance with current needs, and the selection is made from the candidates that have completed the initial training by the Academy and have applied to the vacancy announcement.⁷⁷

Different rules apply for the election of judges in higher courts. Namely, the judge does not have to have undergone the training at the Academy, and there are specific conditions and criteria set in the Law on Courts and the Law on Judicial Council. The candidate that has the highest professional qualities and reputation from the candidates that have applied will be selected for the judicial function. These professional merits include: education, diligence, scope of work, ability to resolve legal issues etc, as well as a relevant degree of professional experience depending on the judicial position for which the candidate is applying⁷⁸.

⁷³ Accession Partnerships of Croatia, Macedonia, Turkey

⁷⁴ Accession Partnerships of Croatia, Macedonia, Turkey

⁷⁵ Accession Partnerships of Croatia, Macedonia, Turkey

⁷⁶ Article 105 from the Constitution of RM, Article 41 and Article 42 from the Law on Courts, Official Gazette of RM, No. 58/ 06

⁷⁷ Articles 39, 40, Law on Judicial Council, Official Gazette of RM, No. 60/ 2006

⁷⁸ Article 46, Law on Courts Gazette of RM, No. 58/ 06, and Article 41, Law on Judicial Council, Official Gazette of RM, No. 60/ 2006

Institution: Judiciary

Category: Capacity

Standard: Independent regulatory and supervisory agency⁷⁹ + No discrimination in appointment procedure of judges + Objective, merit-based appointment and career development of judges, guaranteed by an independent appointing body which is independent of government and parliament⁸⁰ + Independent regulatory and supervisory agency⁸¹

Indicator Question: 1.16 In practice to what extent are the selection, appointment and promotion of judges based on merit and transparent criteria?

Score (highlight as appropriate):

To a very small extent	1
To a small extent	2
To a moderate extent	3
To a large extent	4
To a very large extent	5

Notes:

Nepotism and political influence are present in the process of selection of judges⁸². Objective criteria and achieved results are not crucial in the selection and promotion of judges, and political influences have been known to affect the selection processes of judges.⁸³

Accordingly to the validation Committee in practice, candidates for judges try to acquire a member of the Judicial Council to propose their candidature, as well as four other members that will support their candidature. As a result, only candidates that will acquire this support will be considered, where as the rest of the candidates are disregarded at the initial stage without reviewing of their competences.⁸⁴

Moreover, there is still influence and pressures regarding the selection and admission of candidates for enrolling in the Academy for Judges and Public Prosecutors⁸⁵.

⁷⁹ Accession Partnerships of Croatia, Macedonia, Turkey

⁸⁰ Accession Partnerships of Croatia, Macedonia, Turkey

⁸¹ Accession Partnerships of Croatia, Macedonia, Turkey

⁸² Interview with professor Ljupco Arnaudovski, PhD, Global Integrity Report, Macedonia Scorecard

⁸³ Validation Committee, 23.03.2011

⁸⁴ Validation Committee, 23.03.2011

⁸⁵ Interview with Professor Ljupco Arnaudovski, PhD

According to an OSCE analysis, two thirds of the judges surveyed doubt that the Judicial Council is independent and free from influences; 67% think that the manner of election and dismissal of judges is subject to pressure, and about the same percentage does not believe that measurable and objective criteria for promotion of judges currently exist⁸⁶.

In conclusion, objective criteria and personal achievements are not the main determining factors in the processes of selection and promotion of judges.⁸⁷

⁸⁶ Legal Analysis: Independence of the Judiciary, OSCE (Organization for Security and Co-operation in Europe) Spillover Monitor Mission to Skopje, December, 2009

⁸⁷ Validation Committee, 23.03.2011

Institution: Judiciary**Category:** Capacity

Standard: Decision-making of Judiciary free from influence of Executive or Legislature + Judges must act impartially + Independence of courts from higher court institutions, such as Supreme Court.⁸⁸

Indicator Question: 1.17 In practice to what extent are judicial proceedings and decisions free of bias or improper influence by senior judges, members of the executive, the legislature, other public officials or private interests?

NOTE: Evidence of attempt to influence is not sufficient to indicate interference (look for evidence of actual influence having taken place).

Score (highlight as appropriate):

To a very small extent	1
To a small extent	2
To a moderate extent	3
To a large extent	4
To a very large extent	5

Notes:

In practice, there is influence upon judicial decision-making process in Macedonia regardless of the legal regulations on protection of the independence of the judiciary. According to the OSCE survey⁸⁹, almost half of the judges participating in the survey are of the opinion that judges are facing external influences and pressures. The strongest source of attempted influence is the executive power, followed by the political parties⁹⁰.

There are examples of cases where judges have been pressured regarding their decisions from external influence⁹¹. Examples include untimely initiatives for removal of judges in order to produce pressure in the decision making process in certain cases⁹².

What is more, internal influence within the judiciary is still present. Bearing in mind that in Macedonia a high number of the judges are young professionals, the authority of senior judges and higher rank judges is important within the

⁸⁸ Interview with European Commission, May 2010.

⁸⁹ p. 23, Legal Analysis: Independence of the Judiciary, OSCE (Organization for Security and Co-operation in Europe) Spillover Monitor Mission to Skopje, December, 2009

⁹⁰ p. 23, Legal Analysis: Independence of the Judiciary, OSCE (Organization for Security and Co-operation in Europe) Spillover Monitor Mission to Skopje, December, 2009

⁹¹ Interview with professor Ljupco Arnaudovski, PhD

⁹² Interview with professor Ljupco Arnaudovski, PhD,
<http://antikorupcija.kirilica.com.mk/antik.asp?id=46194>

judiciary⁹³. Besides the fact that the OSCE survey focuses on the attempts to influence judges, according to the survey almost one quarter of the judges are on the opinion that judges in their court do not adjudicate independently - meaning that every fourth judge in the country does not believe in the independence of the judiciary⁹⁴.

According to the Validation Committee in those cases where the Government has an interest or is a party in the proceeding, judges feel pressures, especially the pressure of being held responsible for their decisions in such cases. Influence exists only where the executive power is affected or included.⁹⁵

⁹³ Interview with professor Ljupco Arnaudovski, PhD, p. 24, Legal Analysis: Independence of the Judiciary, OSCE (Organization for Security and Co-operation in Europe) Spillover Monitor Mission to Skopje, December, 2009

⁹⁴ p. 25, Legal Analysis: Independence of the Judiciary, OSCE (Organization for Security and Co-operation in Europe) Spillover Monitor Mission to Skopje, December, 2009

⁹⁵ Validation Committee, 23.03.2011

Institution: Judiciary**Category:** Capacity**Standard:** Decision-making of Judiciary free from influence of Executive or Legislature + Judges must act impartially + Independence of courts from higher court institutions, such as Supreme Court.⁹⁶**Indicator Question:** 1.18 Does the law provide for sanctions against persons seeking to influence judges (e.g. trading in influence and/or bribery) in any such manner?**Score (highlight as appropriate):**

No	1
<i>Partially</i>	3
Yes	5

Notes:

The Criminal Code incriminates receiving (passive) bribes and offering (active) bribes to public officials. According to Article 358⁹⁷, there are the following two forms of active bribes: “bribery to induce an official to perform an act s/he should not perform or omit to perform an act s/he should perform within the bounds of his/ her official authorisation, and a bribery to induce an official to perform an act s/he should not perform or to omit to perform an act s/he is not authorised in any case to perform”⁹⁸.

According to Article 122 from the Criminal Code, an elected or appointed officer in the courts who performs certain professional, administrative or other matters within the framework of the rights and duties of the Republic of Macedonia is considered to be an official person. Therefore, judges are official persons and consequently the provisions on bribery include judges.

However, Article 359 of the Criminal Code states that only the person receiving a reward or advantage in a ‘trading in influence’ transaction is to be punished with a fine or imprisonment. Therefore there is a further need for legal provisions in this respect as only passive trading in influence (receiving) is being criminalised by the Criminal Code, leaving the need for criminalization of active trading in influence (offering).⁹⁹ In addition, pressures from the Ministry of Internal Affairs and the Police are not covered with the legal framework which requires supplementing the regulations¹⁰⁰.

⁹⁶ Interview with European Commission, May 2010.

⁹⁷ Criminal Code of RM, Official Gazette of RM, No. 37/ 96, Law for Amending and Supplementing the Criminal Code of RM, Official Gazette of RM, No. 114/ 09

⁹⁸ p. 3, GRECO Third Evaluation Round, Evaluation Report on the Republic of Macedonia Incrimination (ETS 173 and 191, GPC 2) Theme I, 26 March, 2010 Strasbourg

⁹⁹ p. 11, GRECO Third Evaluation Round, Evaluation Report on the Republic of Macedonia Incrimination (ETS 173 and 191, GPC 2) Theme I, 26 March, 2010 Strasbourg

¹⁰⁰ Validation Committee, 23.03.2011

Institution: Judiciary**Category:** Capacity**Standard:** Decision-making of Judiciary free from influence of Executive or Legislature + Judges must act impartially + Independence of courts from higher court institutions, such as Supreme Court.¹⁰¹**Indicator Question:** 1.19 To what extent are sanctions against persons seeking to influence judges applied in practice?**Score (highlight as appropriate):**

<i>To a very small extent</i>	<i>1</i>
To a small extent	2
To a moderate extent	3
To a large extent	4
To a very large extent	5

Notes:

At present there are no sanctions against persons seeking to influence judges.¹⁰² In addition, in Macedonia there is no proper methodology in place that would provide information on the ways, forms and means of influencing judges in practice¹⁰³ which makes it very difficult to gain evidence against persons seeking to influence judges in practice.

So far, there have been no records of sanctions against persons seeking to influence judges applied in practice, and only judges are being sanctioned for falling under influence¹⁰⁴.

¹⁰¹ Interview with European Commission, May 2010.

¹⁰² Validation Committee, 23.03.2011

¹⁰³ Interview with professor Ljupco Arnaudovski, PhD

¹⁰⁴ Interview with professor Ljupco Arnaudovski, PhD, Validation Committee, 23.03.2011

Institution: Judiciary**Category:** Capacity

Standard: Conditions of tenure of judges must be established by law + Grounds for disciplinary action against of judges limited and defined in law + Disciplining and dismissal of judges overseen by an independent judicial body, without political interference¹⁰⁵ + Clear definition of behaviour constituting misconduct, existence of an appeal procedure for dismissed officials¹⁰⁶ + Sufficient independence of judges from political influence, perhaps with independent judicial council responsible for appointments, elected in transparent fashion¹⁰⁷ + Criminal liability

Indicator Question: 1.20 Are there legal provisions which provide for security of tenure (to prevent judges from being threatened with arbitrary termination of their contract)?

Score (highlight as appropriate):

No	1
Partially	3
Yes	5

Notes:

The bases for termination of the judicial function are laid down in the Constitution of RM and are also part of the Law on Judicial Council¹⁰⁸. According to Article 99¹⁰⁹, a judge is elected without restriction on his/her term of office. Also, a judge cannot be transferred against his/her will. Furthermore, the Constitution strictly enumerates the grounds for terminating a judicial function: upon the judge's request; if s/he permanently loses his/her capability for executing the judicial function, which shall be determined by the Judicial Council of the Republic of Macedonia; if s/he fulfils the terms for retirement; if s/he has been sentenced with a final judgment for a criminal offence committed with premeditation to unconditional sentence of imprisonment of at least 6 months; and if s/he is elected or appointed to another public function, except when the judicial function is temporary suspended under conditions determined by law.

¹⁰⁵ Current EU Accession Partnerships of Croatia, Macedonia, Turkey

¹⁰⁶ Interview with European Commission, May 2010.

¹⁰⁷ Interview with European Commission, May 2010.

¹⁰⁸ Official Gazette of RM, No. 06/ 2006;

¹⁰⁹ Constitution of RM, Official Gazette of RM, No. 52/ 92, Amendments of the Constitution of RM, Official Gazette of RM, No. 107/ 2005

A judge is dismissed because of a disciplinary breach that makes him/her unfit to serve as a judge as stipulated by law; and because of incompetent and unethical execution of judicial office under conditions set out by law¹¹⁰.

¹¹⁰ Constitution of RM, Official Gazette of RM, No. 52/ 92, Amendments of the Constitution of RM, Official Gazette of RM, No. 107/ 2005;

Institution: Judiciary

Category: Capacity

Standard: Conditions of tenure of judges must be established by law + Grounds for disciplinary action against of judges limited and defined in law + Disciplining and dismissal of judges overseen by an independent judicial body, without political interference¹¹¹ + Clear definition of behaviour constituting misconduct, existence of an appeal procedure for dismissed officials¹¹² + Sufficient independence of judges from political influence, perhaps with independent judicial council responsible for appointments, elected in transparent fashion¹¹³ + Criminal liability

Indicator Question: 1.21 In practice to what extent are judges not removed from office for anything other than misconduct or incapacity to carry out judicial functions?

Score (highlight as appropriate):

To a very small extent	1
To a small extent	2
To a moderate extent	3
To a large extent	4
To a very large extent	5

Notes:

According to the Report of the Judicial Council of RM for 2009, out of a total number of 23 working cases for dismissal of judges due to malpractice there are 13 cases in which final decisions have been made. Out of those, in 10 cases judges have been dismissed for malpractice; in two cases no legal grounds for malpractice have been found, and in one case the judge has resigned from the judicial function¹¹⁴. Also, 19 decisions for termination of the judicial function on other grounds have been carried out. The reasons for these decisions have been presented and they include: conditions for pension of judges, death of judges, and election of a judge for another position.¹¹⁵

¹¹¹ Current EU Accession Partnerships of Croatia, Macedonia, Turkey

¹¹² Interview with European Commission, May 2010.

¹¹³ Interview with European Commission, May 2010.

¹¹⁴ p. 12, Report for the work of the Judicial Council of the Republic of Macedonia for 2009, Available from: www.ssrn.org

¹¹⁵ p. 12, Report for the work of the Judicial Council of the Republic of Macedonia for 2009, Available from: www.ssrn.org

On the other hand, judges are on the opinion that the manner of dismissal of judges is subject to pressure (67% of the judges)¹¹⁶. Still, there are not many examples where judges have been removed from office without presenting any reasons for removal from their functions (misconduct or incapacity to carry out judicial functions).¹¹⁷ However, in the cases of dismissal of the judges Duma and Džilvidziev there have been implications in the media of pressures appointed to the members of the Council¹¹⁸.

Bearing in mind the abovementioned, as well as the previous notions that the Judicial Council is not completely independent and that its members are influenced upon their decisions, it can be stated that the non-removal of judges for other reasons than misconduct or incapacity to carry out judicial function is to a moderate extent present in practice.

¹¹⁶ p. 33, Legal Analysis: Independence of the Judiciary, OSCE (Organization for Security and Co-operation in Europe) Spillover Monitor Mission to Skopje, December, 2009

¹¹⁷ Validation Committee, 23.03.2011

¹¹⁸ <http://www.sitel.com.mk/dnevnik/makedonija/vrhoven-gi-razreshi-sudiite-violeta-duma-i-vlado-dzilvidziev>,
<http://www.utrinski.com.mk/?ItemID=24CA858FA088C3488C57ACD8DF1110A2>

Institution: Judiciary**Category:** Capacity

Standard: Conditions of tenure of judges must be established by law + Grounds for disciplinary action against of judges limited and defined in law + Disciplining and dismissal of judges overseen by an independent judicial body, without political interference¹¹⁹ + Clear definition of behaviour constituting misconduct, existence of an appeal procedure for dismissed officials¹²⁰ + Sufficient independence of judges from political influence, perhaps with independent judicial council responsible for appointments, elected in transparent fashion¹²¹ + Criminal liability

Indicator Question: 1.22 Are decisions in disciplinary, suspension and removal proceedings within the judiciary subject to an independent review?

Score (highlight as appropriate):

No	1
Partially	3
Yes	5

Notes:

The decision-making regarding disciplinary and removal proceedings in the judiciary are regulated in the Law on Judicial Council. The disciplinary proceeding is lead by a Disciplinary Commission that is formed within the Council for this reason, and in which five members of the Judicial Council participate (Article 55¹²²). When a proceeding for assessing the professionalism of a judge is being initiated, the Council forms a Commission consisted of five members to establish the unprofessional and in bad faith exercise of the judicial office. However, the same members cannot be a part of both Commissions (Article 58¹²³).

The judge has the right to appeal the Decision of the Council and the appeal is submitted to the Council for Decisions on Appeals of the Judicial Council against dismissal orders or instituted disciplinary measures established by the Supreme Court of RM. It is worth noting that the President of the Supreme Court is not allowed to be within the members of this Council which contributes to the independence of this Council. Namely, the President of the Supreme Court is also a member of the Judicial Council, so being able to be part of the Appeals Council would have undermined its independence.

¹¹⁹ Current EU Accession Partnerships of Croatia, Macedonia, Turkey

¹²⁰ Interview with European Commission, May 2010.

¹²¹ Interview with European Commission, May 2010.

¹²² Law on Judicial Council of RM

¹²³ Law on Judicial Council of RM

Institution: Judiciary**Category:** Capacity

Standard: Conditions of tenure of judges must be established by law + Grounds for disciplinary action against of judges limited and defined in law + Disciplining and dismissal of judges overseen by an independent judicial body, without political interference¹²⁴ + Clear definition of behaviour constituting misconduct, existence of an appeal procedure for dismissed officials¹²⁵ + Sufficient independence of judges from political influence, perhaps with independent judicial council responsible for appointments, elected in transparent fashion¹²⁶ + Criminal liability

Indicator Question: 1.23 To what extent is the independent mechanism effective in reviewing disciplinary, suspension and removal proceedings?

NOTE: Focus on cases where independent review mechanism was seen as ineffective and infer from this the extent of its effectiveness.

Score (highlight as appropriate):

<i>To a very small extent</i>	<i>1</i>
To a small extent	2
To a moderate extent	3
To a large extent	4
To a very large extent	5

Notes:

As a state body, the Judicial Council does not have any responsibility to answer for its actions and it is still not clear what will happen if a decision on removing a judge was rejected by the Supreme Council of RM.¹²⁷ The procedure, as envisaged in the law, is formally respected, but in practice only one appeal on the procedure for assessing the professionalism of a judge has been returned by the Supreme Court to the Judicial Council. In specific cases there have been pressures on members of the Council, therefore directly influencing the decision-making and the review mechanism.¹²⁸ For instance, in the abovementioned cases of dismissal of the judges Duma and Dzilvidziev there have been implications in the media for pressures appointed to the members of the Council¹²⁹.

¹²⁴ Current EU Accession Partnerships of Croatia, Macedonia, Turkey

¹²⁵ Interview with European Commission, May 2010.

¹²⁶ Interview with European Commission, May 2010.

¹²⁷ Validation Committee, 23.03.2011

¹²⁸ Validation Committee, 23.03.2011

¹²⁹ <http://www.sitel.com.mk/dnevnik/makedonija/vrhoven-gi-razreshi-sudiite-violeta-duma-i-vlado-dzilvidziev>,
<http://www.utrinski.com.mk/?ItemID=24CA858FA088C3488C57ACD8DF1110A2>

Institution: Judiciary**Category:** Capacity

Standard: Conditions of tenure of judges must be established by law + Grounds for disciplinary action against of judges limited and defined in law + Disciplining and dismissal of judges overseen by an independent judicial body, without political interference¹³⁰ + Clear definition of behaviour constituting misconduct, existence of an appeal procedure for dismissed officials¹³¹ + Sufficient independence of judges from political influence, perhaps with independent judicial council responsible for appointments, elected in transparent fashion¹³² + Criminal liability

Indicator Question: 1.24 Does the law ensure judges have personal immunity from civil suits for acts or omissions in the exercise of their judicial functions?

Score (highlight as appropriate):

No	1
Partially	3
Yes	5

Notes:

The Law on Courts¹³³ protects judges from civil suits for acts or omissions in the exercise of their judicial functions. According to Article 69, a procedure for compensation of damages or another procedure by a party dissatisfied with the decision of a judge may not be instituted against the judge or the lay judge. Furthermore, according to Article 70 Paragraph 1, the Republic of Macedonia shall be liable for the damage that a judge or a lay judge has caused to citizens or legal entities by unlawful work in the exercise of their function. Only when the damage mentioned in Paragraph (1) of the Article in question is caused by a serious and inexcusable violation of the law, for which a dismissal procedure is instigated, the Republic of Macedonia may claim from the judge a refund of the amount paid to cover the damages of Paragraph (1) through pressing charges in line with the principle of equity.

¹³⁰ Current EU Accession Partnerships of Croatia, Macedonia, Turkey

¹³¹ Interview with European Commission, May 2010.

¹³² Interview with European Commission, May 2010.

¹³³ Official Gazette of RM, No. 58/ 06.

Institution: Judiciary**Category:** Capacity

Standard: Conditions of tenure of judges must be established by law + Grounds for disciplinary action against of judges limited and defined in law + Disciplining and dismissal of judges overseen by an independent judicial body, without political interference¹³⁴ + Clear definition of behaviour constituting misconduct, existence of an appeal procedure for dismissed officials¹³⁵ + Sufficient independence of judges from political influence, perhaps with independent judicial council responsible for appointments, elected in transparent fashion¹³⁶ + Criminal liability

Indicator Question: 1.25 To what extent do judges have personal immunity from civil suits for acts or omissions in the exercise of their judicial functions in practice?

Score (highlight as appropriate):

To a very small extent	1
To a small extent	2
To a moderate extent	3
To a large extent	4
To a very large extent	5

Notes:

In practice, judges have personal immunity from civil suits for acts or omissions in the exercise of their judicial function¹³⁷. More precisely, there are no cases in which judges have been subjects to civil suits for acts or omissions in the exercise of their judicial functions.

¹³⁴ Current EU Accession Partnerships of Croatia, Macedonia, Turkey

¹³⁵ Interview with European Commission, May 2010.

¹³⁶ Interview with European Commission, May 2010.

¹³⁷ Interview with professor Ljupco Arnaudovski, PhD, interview with a president of basic court

Institution: Judiciary**Category:** Capacity**Standard:** Immunity**Indicator Question:** 1.26 Are the legal provisions on the lifting the immunity of judges clearly and narrowly defined?**Score (highlight as appropriate):**

No	1
Partially	3
Yes	5

Notes:

The immunity of judges is defined in Article 100 of the Constitution of the Republic of Macedonia. The immunity of judges is regulated in further details in an entire chapter within the Law on Courts named “Rights, Obligations and Immunity”.

According to Article 100, judges are granted immunity and a judge shall not be held criminally accountable for his/her expressed opinion and decision in the adoption of a judicial decision. Furthermore, a judge shall not be held criminally responsible for his/her expressed opinions and judgements when making judicial decisions.¹³⁸ Also, a judge shall not be detained without approval of the Judicial Council of the Republic of Macedonia, except if s/he has been caught *in flagranti* in a criminal offence for which imprisonment in duration of at least 5 years is determined.

¹³⁸ Amendment XXVII of the Constitution of RM, Official Gazette of RM, No. 107/ 2005

Institution: Judiciary**Category:** Capacity**Standard:** Immunity**Indicator Question:** 1.27 To what extent is a clear and narrow definition of immunity applied in practice?**Score (highlight as appropriate):**

To a very small extent	1
To a small extent	2
To a moderate extent	3
To a large extent	4
<i>To a very large extent</i>	5

Notes:

The clear and narrow definition of immunity of judges in the Macedonian legal system is also applied to a very large extent in practice. In 2009, the Judicial Council received requests for revoking the immunity and allowing detention of two judges. The Judicial Council in an urgent procedure decided to revoke the immunity of the judges, but has refused the request for detention of the judges¹³⁹.

¹³⁹ p. 12, Report for the Work of the Judicial Council of the Republic of Macedonia, 2009

Institution: Judiciary**Category:** Capacity**Standard:** Allocation of cases on basis of objective criteria, perhaps by random assignment.¹⁴⁰**Indicator Question:** 1.28 Are there regulations regarding the assignment of cases to judges by an objective method, e.g. random or computerised selection, administered by the judiciary?**Score (highlight as appropriate):**

No	1
Partially	3
Yes	5

Notes:

According to Article 7 of the Law on Courts, the cases that arrive in the court shall be distributed among the judges according to the time of receipt in the court. This excludes influences by court presidents, the judges or courts administration.

Article 352 of the Judicial Rules & Procedures¹⁴¹ regulates that the assignment of cases to judges is done electronically.

¹⁴⁰ Accession Partnerships of Croatia, Macedonia, Turkey

¹⁴¹ Official Gazette of RM, No. 71/ 2007

Institution: Judiciary**Category:** Capacity**Standard:** Allocation of cases on basis of objective criteria, perhaps by random assignment.¹⁴²**Indicator Question:** 1.29 In practice are judges assigned to cases by an objective method, in a process administered by the judiciary?**Score (highlight as appropriate):**

To a very small extent	1
To a small extent	2
To a moderate extent	3
To a large extent	4
To a very large extent	5

Notes:

In practice, the assignment of cases is administered by the judiciary. The Automated Court Case Management Information System that provides standardized and unified oversight of cases is fully installed, and an authorised assignation of cases among judges in the courts is provided electronically.¹⁴³

For example, it may happen that one judge will be assigned with three cases in a row, or there will be distribution among three different judges of three cases; this depends solely on the system for distribution and it cannot be controlled by anyone in the courts¹⁴⁴. Manual distribution of cases is only possible if there is a request for exemption of a judge from a specific case. However, even in these rare cases the assignation is made on the basis of a decision by the president of the court in question¹⁴⁵.

¹⁴² Accession Partnerships of Croatia, Macedonia, Turkey

¹⁴³ Interview with president of a basic court

¹⁴⁴ Interview with president of a basic court

¹⁴⁵ Interview with president of a basic court

Institution: Judiciary**Category:** Governance (Transparency, accountability, integrity)**Standard:** High ethical standards to be respected by judges**Indicator Question:** 2.1 Are judges governed by a comprehensive written code of ethics?**Score (highlight as appropriate):**

No	1
Partially	3
Yes	5

Notes:

A code of ethics for the judiciary has been adopted by the Macedonian Judges Association on 20.06.2006. According to Article 1, the Code of Judicial Ethics is a collection of ethical principles and rules of conduct that are to be respected by every member of the Macedonian Judges Association during the execution of their function. However, it should be noted that the Macedonian Judges Association is a non-governmental organization in which active and retired judges in the Republic of Macedonia, as well as judges from the Republic of Macedonia appointed to international courts can become members on a voluntary basis¹⁴⁶. On the other hand, Article 74 of the Law on Courts regulates the breaches of the rules of the Judicial Codex that infringe the respect to the judicial function as a malpractice of the judicial function. Having in mind that if there are legal grounds for sanctions in cases of breach of the Code of Judicial Ethics such breach leads to a dismissal from the judicial function, it can be concluded that these rules are wide reaching and binding.

¹⁴⁶ <http://www.mja.org.mk/index%20ang.htm>

Institution: Judiciary**Category:** Governance (Transparency, accountability, integrity)**Standard:** High ethical standards to be respected by judges**Indicator Question:** 2.2 To what extent is the code of ethics effectively enforced in practice?

NOTE: Evidence includes statistics on the number of judges who have been convicted for corruption and dismissed or otherwise punished for non-compliance with the integrity rules and codes of ethics. Otherwise use interviews with judicial experts.

Score (highlight as appropriate):

To a very small extent	1
To a small extent	2
To a moderate extent	3
To a large extent	4
To a very large extent	5

Notes:

The Code of Judicial Ethics exists, but is not fully and effectively enforced in practice. There are cases in which the persons with a responsibility do not react when the Code of Judicial Ethics is not respected and enforced in practice¹⁴⁷.

On the other hand, one should bare in mind the number of dismissals of judges. From a total number of 15 procedures eight have been closed, out of which in two cases judges have been dismissed, and in six cases the proceeding was stopped. There are still seven pending proceedings.¹⁴⁸ According to the results from the last report of the Judicial Council on the grading of judges for the year 2010¹⁴⁹, 98.4 % of the judges received positive grades. The criteria for grading the performance of the judges have been established with the Law on Amending and Supplementing the Law on Judicial Council in order to avoid eventual subjectivity in the assessments.¹⁵⁰

¹⁴⁷ Interview with professor Ljupco Arnaudovski, PhD

¹⁴⁸ <http://ssrm.mk/docs/formulari/nestrucnost%20i%20nesovesnost.pdf>,
<http://ssrm.mk/docs/formulari/IZVESTAJ%20ZA%20RABOTATA%20NA%20SSRM%202010.pdf>

¹⁴⁹ <http://ssrm.mk/docs/formulari/IZVESTAJ%20ZA%20RABOTATA%20NA%20SSRM%202010.pdf>

¹⁵⁰ P. 12, Report for the Work of the Judicial Council of the Republic of Macedonia for the Year 2010

In addition, citizens very often use their right to file complaints against the conduct of judges. These complaints need to be addressed and investigated, which promotes control over the implementation of such norms.¹⁵¹

From the abovementioned, it can be concluded that there is room for improvements of the implementation in practice, as judges implement the Code of Judicial Ethics in the performance of their judicial function to a moderate extent.

¹⁵¹ Validation Committee, 23.03.2011

Institution: Judiciary**Category:** Governance (Transparency, accountability, integrity)**Standard:** High ethical standards to be respected by judges**Indicator Question:** 2.3 Are there comprehensive legal regulations governing conflicts of interest for the judiciary?**Score (highlight as appropriate)**

No	1
Partially	3
Yes	5

Notes:

Conflict of interests of officials, including judges, is regulated by the Law on Prevention of Conflict of Interests¹⁵² and by the Law on Prevention of Corruption. Article 3 from the Law on Prevention of Corruption defines the scope of conflict of interest as a situation where the private interest of an official person is contrary to the public interest, or where private interests influence or may influence his/her impartiality in conducting the duties of public interest. The Law on Prevention of Corruption has a Chapter dedicated to prevention of conflict of interests, which includes regulations of principle obligations in the exercise of official duty; obligations to act according to the public interest when a conflict between a private and public interest occurs, as well as provisions on exclusion.

On the other hand, the Law on Criminal Procedure¹⁵³ and the Law on Civil Procedure¹⁵⁴, both contain entire chapters dedicated to the exclusion of judges from the judicial procedure where the conflict of interest of judges is included in the reasons for the exclusion of a judge. More precisely, amongst other, a judge or a lay judge must not exercise his/ her obligation if he is related (through a marital, a blood relation, or through adoption¹⁵⁵) with a party or the accused, or with other participants in the procedure. Also, both Laws include “circumstances which provoke suspicion on a judge’s impartiality” as a reason for exclusion.

¹⁵² Official Gazette of RM, No. 70/ 2007

¹⁵³ Official Gazette of RM, No. 15/ 1997, 15/ 2005

¹⁵⁴ Official Gazette of RM, No. 79/ 05, 110/ 08, 116/ 10

¹⁵⁵ For the exact and complete list on the relations that lead to exclusion please refer to Chapter III from the Law on Criminal Procedure, and Chapter III from the Law on Civil Procedures of the Republic of Macedonia

Institution: Judiciary

Category: Governance (Transparency, accountability, integrity)

Standard: High ethical standards to be respected by judges

Indicator Question: 2.4 To what extent are regulations governing conflicts of interest for the judiciary adhered to in practice?

Score (highlight as appropriate)

To a very small extent	1
To a small extent	2
To a moderate extent	3
To a large extent	4
To a very large extent	5

Notes:

Regulations governing conflict of interest for the judiciary are adhered to in practice to a large extent. Judges request an exemption in the cases where there is a legal obligation for the judge to be exempted¹⁵⁶. As exemption is one of the reasons for abrogating a verdict, judges pay a lot of attention to these provisions and in most cases respect the rules for exemption, and even request exemption themselves.¹⁵⁷

On the other hand, although all judges have the legal obligation to submit a statement of interest to the State Commission for Preventing Corruption, until the 7th of March 2010, 26 judges out of approximately 600 judges have failed to submit their statements¹⁵⁸.

¹⁵⁶ Interview with president of a basic court

¹⁵⁷ Validation Committee, 23.03.2011

¹⁵⁸ http://www.dksk.org.mk/index.php?option=com_content&task=view&id=199&Itemid=33

Institution: Judiciary**Category:** Governance (Transparency, accountability, integrity)**Standard:** High ethical standards to be respected by judges**Indicator Question:** 2.5 Are there comprehensive regulations governing gifts and hospitality offered to members of the judiciary?**Score (highlight as appropriate):**

No	1
Partially	3
Yes	5

Notes:

Article 31 of the Law on Prevention of Corruption prohibits officials¹⁵⁹ to receive gifts or any promise of a gift, except appropriate gifts such as books, souvenirs and similar goods whose value is determined by Law. According to Article 77 of the Law on Usage and Management of Assets Used and Managed by Government Bodies¹⁶⁰, officials can receive personal gifts up to the value of 200 Euros, provided the giver is a foreign country, body, institution or international organization.

According to Article 58 of the Law on Courts, a judge may not receive gifts or use any other benefits and incentives related to exercising their judicial office. Article 77 of the Law on Courts regulates the receiving of gifts and other benefits related to the judicial office as a disciplinary violation.

¹⁵⁹ According to Article 122 from the Criminal Code judges are considered to be officials

¹⁶⁰ Official Gazette of RM, No. 8/ 2005

Institution: Judiciary**Category:** Governance (Transparency, accountability, integrity)**Standard:** High ethical standards to be respected by judges**Indicator Question:** 2.6 In practice, to what extent are the regulations governing gifts and hospitality offered to members of the judiciary effective?**Score (highlight as appropriate):**

To a very small extent	1
To a small extent	2
To a moderate extent	3
To a large extent	4
To a very large extent	5

Notes:

According to the Global Integrity Report in practice, the regulations governing gifts and hospitalities are generally applied though there are exceptions as there is no effective control system¹⁶¹. Yet, it is very difficult to obtain data that would help answering this question. According to Professor Ljupco Arnaudovski, the problem is caused primarily by the parties in the proceedings, meaning that interested parties are trying to influence judges, not that judges are asking gifts and hospitalities by parties¹⁶².

However, the provisions that oblige judges to report gifts and hospitalities are not applied in practice and judges overall do not report any gifts or hospitalities that they might have received.¹⁶³

¹⁶¹ Global Integrity Report, Macedonia Scorecard, 2009

¹⁶² Interview with professor Ljupco Arnaudovski, PhD

¹⁶³ Validation Committee, 23.03.2011

Institution: Judiciary**Category:** Governance (Transparency, accountability, integrity)**Standard:** High ethical standards to be respected by judges**Indicator Question:** 2.7 Are there post-employment restrictions on judges entering the private or public sector after leaving the judiciary?**Score (highlight as appropriate):**

No	1
Partially	3
Yes	5

Notes:

According to Article 28 of the Law on Prevention of Corruption, an elected or appointed functionary, as well as other official or responsible persons in public enterprise, institution or other legal entity disposing with state capital, who within three years from the date of termination of his/ her function i.e. official duty, shall found a commercial company or shall engage in a profitable activity in the same field in which he/she has worked, has an obligation within 30 days to inform the State Commission for Preventing Corruption¹⁶⁴.

Also, Article 29 from the same Law, regulates that an elected or appointed functionary, official and responsible person in a public enterprise, public institution or in other legal entity disposing with state capital may not, during the term of his/her mandate or official duty as well as within three years after its termination, acquire on any ground and in any manner rights on stocks in the legal entity over which, he/she or the body in which he/she works or has worked conducts or has conducted supervision, except when such rights have been acquired by means of inheritance.

Still, there are no sanctions for officials that do not respect Articles 28 and 29 from the Law on Prevention of Corruption.

What is more, the existing regulations do not hold any post- employment restrictions and ex- judges can work as lawyers or can be appointed to other positions (both in the public or private sector) after the termination of their judicial function.¹⁶⁵ This area is completely vague and needs to be regulated in further details.¹⁶⁶

¹⁶⁴ Judges are considered to be officials, thus these regulations are obligatory for them

¹⁶⁵ Validation Committee, 23.03.2011

¹⁶⁶ Validation Committee, 23.03.2011

Institution: Judiciary**Category:** Governance (Transparency, accountability, integrity)**Standard:** High ethical standards to be respected by judges**Indicator Question:** 2.8 To what extent are post-employment restrictions effective in practice?**Score (highlight as appropriate):**

<i>To a very small extent</i>	<i>1</i>
To a small extent	2
To a moderate extent	3
To a large extent	4
To a very large extent	5

Notes:

As previously mentioned there is lack of legal regulations on post-employment restrictions.

In certain cases, judges are known to regularly take jobs in the private sector that entail direct lobbying or seeking to influence their former colleagues while sometimes ignoring the legally binding periods¹⁶⁷. Moreover, judges that have been dismissed from their judicial function have worked as lawyers after their dismissal¹⁶⁸.

¹⁶⁷ Global Integrity Report, Macedonia Scorecard, 2009

¹⁶⁸ Interview with professor Ljupco Arnaudovski, PhD, Validation Committee, 23.03.2011

Institution: Judiciary**Category:** Governance (Transparency, accountability, integrity)**Standard:** Clear definition of behaviour constituting misconduct, existence of an appeal procedure for dismissed officials¹⁶⁹**Indicator Question:** 2.9 Is there a clear and well-balanced definition of behaviour constituting misconduct by a judge?**Score (highlight as appropriate):**

No	1
Partially	3
Yes	5

Notes:

The Law on Courts, Chapter V, regulates misconduct behaviour by a judge. Actions that will be undertaken are related to the gravity of the misconduct of the judge; a judge can be dismissed from the judicial function due to serious disciplinary breaches that makes him/her unfit to exercise the judicial function, or due to unprofessional exercise of the judicial function and conduct in bad faith, under conditions determined by Law¹⁷⁰. Also, a disciplinary measure¹⁷¹ may be imposed to a judge in a case of an identified disciplinary infringement by a judge¹⁷².

The Law on Courts defines all of the grounds under which the abovementioned measures can be imposed. For instance, unprofessional, untimely and inattentive exercise of the judicial office in conducting court proceedings on specific cases; unauthorized issuing of classified information; misuse of office or exceeding the official authority etc are just few of the grounds for dismissal due to unprofessional exercise of the judicial function¹⁷³. In addition, article 76¹⁷⁴ lists severe violations of the public peace and order, of the rights of the parties and of other participants in the procedure that harms their reputation and the reputation of the court, as well as violation of the non-discrimination rule, as serious disciplinary injuries. Finally, Article 77¹⁷⁵, enumerates the disciplinary violations for imposing disciplinary measures, which include failure to wear the judicial robe, re-

¹⁶⁹ Interview with European Commission, May 2010.

¹⁷⁰ Article 74, Law on Courts

¹⁷¹ According to Article 78, Law on Courts the Judicial Council may pronounce one of the following disciplinary measures: written notice, public reprimand and reduction of salary.

¹⁷² Article 78, Law on Courts

¹⁷³ For the complete list please refer to Article 75, Law on Courts.

¹⁷⁴ Law on Courts

¹⁷⁵ Law on Courts

ception of gifts and other benefits, severe violations of the right of absence from work et al.

However, according to the Valication Committee the definition does not clearly distinguish the terms unprofessional and inadequate performance of the judicial function, which makes the definition unclear and confusing. These two terms have very different meanings, but they have been sublimated in the same definition. There is a need for separation and clarification of these terms Therefore, the selection of the score is “partially”.¹⁷⁶

¹⁷⁶ Validation Committee, 23.03.2011

Institution: Judiciary**Category:** Governance (Transparency, accountability, integrity)**Standard:** Clear definition of behaviour constituting misconduct, existence of an appeal procedure for dismissed officials¹⁷⁷**Indicator Question:** 2.10 Are there legal provisions ensuring that decisions in disciplinary, suspension or removal proceedings are subject to an appeals process?**Score (highlight as appropriate):**

No	1
Partially	3
Yes	5

Notes:

The Law on the Judicial Council guarantees the right to an appeal against decisions of the Council against dismissal orders or disciplinary measures¹⁷⁸. Judges can appeal the decisions of the Judicial Council at the Council for Decisions on Appeals of the Judicial Council (Council on Appeals) established by the Supreme Court of the Republic of Macedonia and composed of nine members.

It is worth noting that the President of the Supreme Court cannot be a member of the Council on Appeals. This provision reaffirms the independence of the Council on Appeals; the President of the Supreme Court is a member of the Judicial Council and by prohibiting the President of the Supreme Court to take part in the appeal procedure, the two-stage decision-making (the right of appeal) is secured.

¹⁷⁷ Interview with European Commission, May 2010.

¹⁷⁸ Article 60, Law on Judicial Council

Institution: Judiciary**Category:** Governance (Transparency, accountability, integrity)**Standard:** Clear definition of behaviour constituting misconduct, existence of an appeal procedure for dismissed officials¹⁷⁹**Indicator Question:** 2.11 To what extent are disciplinary, suspicion and removal proceedings subject to an appeals process in practice?**Score (highlight as appropriate):**

To a very small extent	1
To a small extent	2
To a moderate extent	3
To a large extent	4
<i>To a very large extent</i>	5

Notes:

In practice judges use the appeals process and appeal the decisions on disciplinary liability and removal¹⁸⁰. More precisely, judges know their right of appeal and they use it in practice¹⁸¹.

¹⁷⁹ Interview with European Commission, May 2010.

¹⁸⁰ Interview with professor Ljupco Arnaudovski, PhD

¹⁸¹ Interview with president of a basic court

Institution: Judiciary**Category:** Governance (Transparency, accountability, integrity)**Standard:** Transparent courtroom proceedings**Indicator Question:** 2.12 Are courtroom proceedings required by law to be open to the public and to the media?**Score (highlight as appropriate):**

No	1
Partially	3
Yes	5

Notes:

According to the Constitution of the Republic of Macedonia, court hearings and passing of verdicts are public. However, the public can be excluded in cases determined by law¹⁸².

The cases in which the public can be excluded are determined in procedural laws, such as the Law on Criminal Procedure, the Law on Civil Procedure, and the Law on Non-contentious Procedure¹⁸³. For instance, the public can be excluded from the trial (from the beginning until the end of the trial) or from a part of it if it is necessary to keep a secret, to maintain the public order, to protect morality, the personal and private life of the accused, the witness or the damaged person, as well as to protect the interests of a minor¹⁸⁴.

Although there are regulations providing that the public is to be excluded from trials in certain cases, these exceptions are regulated in the respective laws, and are exceptions from the general rule of “publicity of hearings”.

¹⁸² Article 102, Constitution of RM

¹⁸³ Official Gazette of RM, No. 9/ 2008

¹⁸⁴ Article 304, Law on Criminal Procedure, Official Gazette of RM, No. 15/ 97, 44, 2002, 74/ 2004, 83/ 2008, 67/ 2009

Institution: Judiciary

Category: Governance (Transparency, accountability, integrity)

Standard: Transparent and argued judicial decisions + Requirement to give reasoning¹⁸⁵

Indicator Question: 2.13 Are courtrooms generally open to, and can accommodate, the public and the media?

Score (highlight as appropriate):

To a very small extent	1
To a small extent	2
To a moderate extent	3
To a large extent	4
To a very large extent	5

Notes:

Courtrooms are generally open to, and can accommodate, the public and the media to a large extent. Judges normally allow for the public to be present during the proceeding, except when it is strictly indicated in the laws that the public should be excluded. With regard to the media, the same rule applies, with the exception that to record the proceeding an approval has to be obtained from the President of the Court¹⁸⁶.

However, further improvements of the technical conditions of courtrooms are still needed in order to acquire full implementation of this standard since in the cases with a lot of public interest it is not possible to accommodate all interested in the courtroom. Yet, we have to bear in mind that these are occasional situations and not daily occurrences.

¹⁸⁵ Council of Europe (CoE) Committee of Ministers Recommendation no. R (94) 12 on Independence, Efficiency and the Role of Judges

¹⁸⁶ Interview with a President of a Basic Court

Institution: Judiciary**Category:** Governance (Transparency, accountability, integrity)**Standard:** Transparent and argued judicial decisions + Requirement to give reasoning¹⁸⁷**Indicator Question:** 2.14 Does the law require that judicial decisions be published and open to public scrutiny?**Score (highlight as appropriate):**

No	1
Partially	3
Yes	5

Notes:

Article 102 of the Constitution requires public passing of verdicts. Thus, even in the proceedings where the public has been excluded from the trial, the pronouncement of the verdict has to be public.

For instance, according to Article³⁷⁰ from the Law on Criminal Procedure of Republic of Macedonia, if the public was excluded from the trial, the pronouncement of the verdict will still be read at a public session. The judge/council will decide whether and to what extent will the public be excluded during the announcement of the reasons for the verdict¹⁸⁸.

Moreover, the latest amendments to the Law on Courts¹⁸⁹ have established that the judicial decisions are to be published on the court's website within two days after the decision has been prepared and signed.

¹⁸⁷ Council of Europe (CoE) Committee of Ministers Recommendation no. R (94) 12 on Independence, Efficiency and the Role of Judges

¹⁸⁸ Similar provisions are contained in Article 235, Law on Civil Procedure

¹⁸⁹ Article 36, Law for Amending and Supplementing the Law on Courts, Official Gazette of RM, No. 150/ 2010

Institution: Judiciary**Category:** Governance (Transparency, accountability, integrity)**Standard:** Transparent and argued judicial decisions + Requirement to give reasoning¹⁹⁰**Indicator Question:** 2.15 To what extent are judicial decisions published in practice?**Score (highlight as appropriate):**

To a very small extent	1
To a small extent	2
To a moderate extent	3
To a large extent	4
To a very large extent	5

Notes:

Bearing in mind that not all courts have internet access on a regular basis and that this is relatively new obligation to the courts, it can be said that the legal obligation for publishing judicial decisions on the website of the court is just starting to get implemented¹⁹¹.

However, the decisions of the Supreme Court are regularly published on its website. If browsing the websites of the courts it can be seen that they have published at least part of their decisions.¹⁹²

It is worth noting that the names of the parties are deleted from the published decisions, and only initials of the parties in the proceedings are provided. Still, the names of the judge/s in the proceedings are fully published with the decisions.

¹⁹⁰ Council of Europe (CoE) Committee of Ministers Recommendation no. R (94) 12 on Independence, Efficiency and the Role of Judges

¹⁹¹ Interview with Professor Ljupco Arnaudovski, PhD

¹⁹² <http://oskavadarci.mk/>, <http://www.osskopje1.mk/>, <http://osstip.mk/>

Institution: Judiciary**Category:** Governance (Transparency, accountability, integrity)**Standard:** Transparent and argued judicial decisions + Requirement to give reasoning¹⁹³**Indicator Question:** 2.16 Does the law require that a transcript of courtroom proceedings be maintained and made available to the public?**Score (highlight as appropriate):**

No	1
Partially	3
Yes	5

Notes:

The Macedonian legislation does not require for transcripts of courtroom proceedings to be maintained. Instead of transcripts, minutes are taken throughout the course of the courtroom proceedings. Moreover, under Macedonian legislation minutes are not available to the general public.

More precisely, the Rules & Procedures on Courts¹⁹⁴, as well as the respective procedural laws, such as the Law on Criminal Procedure¹⁹⁵ and the Law on Civil Procedure¹⁹⁶, have provisions that require minutes to be taken on the courtroom proceeding. The crucial issues of the course of the courtroom procedure must be inserted in the minutes.

However, according to Article 64 from the Rules & Procedures on Courts, only parties that participate in the judicial procedure have the right to examine, and make transcripts and copies of the procedure's case file.

Others can be allowed to examine, make transcripts and copies of case file documents, if they have legal interest to do so. For these persons to be allowed to examine the case documents, permission has to be granted by a judge, by the President of the council or by the President of the court¹⁹⁷.

Therefore, the public, that is the public that does not have any legal interest in the procedure whose case file documents wants to examine, does not have access to case file documents.

¹⁹³ Council of Europe (CoE) Committee of Ministers Recommendation no. R (94) 12 on Independence, Efficiency and the Role of Judges

¹⁹⁴ Article 142- 146, official Gazette of RM, No. 71/ 2007, 157/ 2009

¹⁹⁵ Articles 300- 303

¹⁹⁶ Articles 115- 120

¹⁹⁷ Article 64, Rules & Procedures on Courts, Official Gazette of RM, No. 71/ 2007, 157/ 2009

Institution: Judiciary

Category: Governance (Transparency, accountability, integrity)

Standard: Transparent and argued judicial decisions + Requirement to give reasoning¹⁹⁸

Indicator Question: 2.17 To what extent is a transcript or some other reliable record of courtroom proceedings maintained and available to the public?

Score (highlight as appropriate):

<i>To a very small extent</i>	<i>1</i>
To a small extent	2
To a moderate extent	3
To a large extent	4
To a very large extent	5

Notes:

Bearing in mind the explanation of the legal framework regarding the keeping of transcripts, and the unavailability of transcripts or similar records to the public, the lowest score is given to this question.

¹⁹⁸ Council of Europe (CoE) Committee of Ministers Recommendation no. R (94) 12 on Independence, Efficiency and the Role of Judges

Institution: Judiciary**Category:** Governance (Transparency, accountability, integrity)**Standard:** Transparent and argued judicial decisions + Requirement to give reasoning¹⁹⁹**Indicator Question:** 2.18 Are judges required by law to give reasons for their decisions?**Score (highlight as appropriate):**

No	1
Partially	3
Yes	5

Notes:

Judges are required by law to give reasons for their decisions. More precisely, every judicial decision must have an introduction, pronouncement and an elaboration. This is stipulated in the laws that regulate different judicial procedures in RM, such as the Law on Criminal Procedure²⁰⁰, the Law on Civil Procedure, the Law on Non-contentious Procedure, the Law on Misdemeanours²⁰¹, and the Law on Administrative Disputes²⁰².

¹⁹⁹ Council of Europe (CoE) Committee of Ministers Recommendation no. R (94) 12 on Independence, Efficiency and the Role of Judges

²⁰⁰ Article 374

²⁰¹ Article 64, Official Gazette of RM, No. 62/ 2006

²⁰² Article 42, Official Gazette of RM, No. 62/ 2006, 150/ 2010, decision of the Constitutional Court of RM 75/ 2007-0-0, decision of the Constitutional Court of RM 321/ 2008-0-1

Institution: Judiciary**Category:** Governance (Transparency, accountability, integrity)**Standard:** Transparent and argued judicial decisions + Requirement to give reasoning²⁰³**Indicator Question:** 2.19 In practice to what extent do judges provide reasons for their decisions?**Score (highlight as appropriate):**

To a very small extent	1
To a small extent	2
To a moderate extent	3
To a large extent	4
To a very large extent	5

Notes:

In practice, judges provide reasons for their decisions and correlate the reasons to specific articles from laws.

However, judges do not always provide sufficient supported explanations necessary for delivering their decision, and do not always make a sufficient effort to clarify the ambiguous issues. This may lead to decisions that do not have strong reasons for their judgements.

Moreover, due to case overloads, judges are often under pressure to finish as many cases as possible. This results into scheduling more than 10-15 proceedings per day. This makes it very difficult for the judge to be properly and timely prepared, and to be aware of all of the circumstances for all scheduled cases which could impact the judge's decision²⁰⁴.

Nevertheless, the judgements have reasons explaining the ruling in question, and judicial decisions contain reasons on the basis of which the decision has been reached.²⁰⁵

²⁰³ Council of Europe (CoE) Committee of Ministers Recommendation no. R (94) 12 on Independence, Efficiency and the Role of Judges

²⁰⁴ Interview with professor Ljupco Arnaudovski, PhD

²⁰⁵ Validation Committee, 23.03.2011

Institution: Judiciary**Category:** Governance (Transparency, accountability, integrity)**Standard:** Asset disclosure**Indicator Question:** 2.20 Are judges required by law to disclose their assets and make information on them available to an independent body?**Score (highlight as appropriate):**

No	1
Partially	3
Yes	5

Notes:

The Law on Prevention of Corruption stipulates the obligation on reporting property. Namely, according to Article 33²⁰⁶, an elected or appointed functionary²⁰⁷ has to fill in a property declaration with detailed inventory of his/her real estate; movable property of greater value; securities; claims and debts, as well as of any other assets in his/her ownership or in the ownership of the members of his/her family. Also, a property declaration has to be filled after the termination of function or employment. Moreover, these persons are obligated to deposit a statement certified by notary public for revoking protection of banking secrecy with regard to all domestic and foreign bank accounts.

These declarations are submitted to the State Commission for Preventing Corruption and to the Public Revenue Office. Also, every increase in the property (regardless whether the change refers to the person or to a member of his/her family) also has to be reported to the State Commission for Preventing Corruption and to the Public Revenue Office²⁰⁸.

In addition, according to Article 36²⁰⁹, a procedure for examination of property status may be initiated against the functionary if s/he has failed to provide data or to report changes in the property; has provided incorrect data or in cases of disproportionate increase of property.

²⁰⁶ Official Gazette of RM, No. 28/2002, 46/ 2004, 10/ 2008, 161/ 2008, 145/ 2010, Decision of the Constitutional Court of RM 160/ 2006- 0- 0

²⁰⁷ Which includes judges

²⁰⁸ Article 34, Law on Prevention of Corruption

²⁰⁹ Law on Prevention of Corruption

Institution: Judiciary**Category:** Governance (Transparency, accountability, integrity)**Standard:** Asset disclosure**Indicator Question:** 2.21 To what extent do judges disclose their assets in practice?**Score (highlight as appropriate):**

To a very small extent	1
To a small extent	2
To a moderate extent	3
To a large extent	4
To a very large extent	5

Notes:

Judges have the obligation not only to disclose their assets, but also to inform on any changes in their assets in a timely manner. In practice, problems with assets disclosure are connected to updating the assets declarations by the judges, and not so much with the submitting of the initial asset declaration to the State Commission for Preventing Corruption and to the Public Revenue Office²¹⁰. Judges' assets are disclosed on the website of the State Commission for Preventing Corruption. Still, at the moment there is no mechanism in place to accurately track the actual changes in judges' assets. This is due to the fact that the website does not publish the date on which the declaration of assets was submitted or subsequently amended.

However, judges generally respect the obligation to disclose their assets, thus these regulations are implemented to a large extent.²¹¹

²¹⁰ Interview with president of a basic court, Interview with professor Ljupco Arnaudovski, PhD

²¹¹ Validation Committee, 23.03.2011

Institution: Judiciary**Category:** Governance (Transparency, accountability, integrity)**Standard:** Effective complaints mechanism + Sanctions against disciplinary offences**Indicator Question:** 2.22 Is there a formal independent body in place to deal with complaints against judges?**Score (highlight as appropriate):**

No	1
Partially	3
Yes	5

Notes:

The Judicial Council of the RM is responsible for dealing with complaints against judges and courts by citizens and legal entities²¹².

The Secretary General of the Judicial Council receives complaints addressed to the Judicial Council and informs the parties on the procedures and actions undertaken by the Council regarding their petitions and complaints on the work of courts and judges²¹³.

²¹² Article 31, Law on Judicial Council of RM

²¹³ Article 53, Rules & Procedures on the Judicial Council of RM

Institution: Judiciary**Category:** Governance (Transparency, accountability, integrity)**Standard:** Effective complaints mechanism + Sanctions against disciplinary offences**Indicator Question:** 2.23 To what extent is this body effective in investigating complaints against judges and imposing sanctions?**Score (highlight as appropriate):**

To a very small extent	1
To a small extent	2
To a moderate extent	3
To a large extent	4
To a very large extent	5

Notes:

After receiving complaints from citizens, the Judicial Council communicates with the court and the judge in question. Then, the judge against whom the complaint was submitted provides explanations regarding the allegations²¹⁴. The reply is sent by the court to the Council in order to make a decision regarding the complaint.

However, it is worth noting that the number of these complaints is high, as the party that is unsatisfied with the outcome of the court case very often submits complaints to the Judicial Council²¹⁵. Namely, during 2009 the number of complaints was 1657, out of which 194 were transferred from 2008. Out of these, the Council has reached decision on 1467 complaints, and 190 are still in progress²¹⁶. The Judicial Council has appointed coordinators for following the work of different courts. In the cases where the claims were suggesting possible illegalities in the performance of the judge, further investigations and meetings with the court in question were conducted²¹⁷.

Having this in mind, it can be concluded that the Judicial Council effectively investigates the complaints to a large extent, and when needed it conducts further actions for investigating the liability of judges in order to impose legal sanctions.

²¹⁴ Interview with president of a basic court

²¹⁵ Interview with president of a basic court

²¹⁶ p. 26, Report on the Work of the Judicial Council of the Republic of Macedonia, Judicial council of RM 2009, Available fro: www.ssrn.mk

²¹⁷ p. 29, Report on the Work of the Judicial Council of the Republic of Macedonia, Judicial council of RM 2009, Available fro: www.ssrn.mk

Institution: Judiciary**Category:** Effectiveness/Efficiency**Standard:** Introduction of modern information technology systems²¹⁸**Indicator Question:** 3.1 To what extent do modern information technology systems exist in the judicial system?**Score (highlight as appropriate):**

To a very small extent	1
To a small extent	2
To a moderate extent	3
To a large extent	4
To a very large extent	5

Notes:

In practice, the modernization of the judiciary, particularly the implementation of the modern technology systems in the courts is being successfully implemented. However, regardless the existence of the system, the employees in the judiciary, particularly the judicial administration, lacks staff that would provide complete implementation of the information technology system.

The system requires detailed data input for each case. Having in mind the high number of actions that reach courts on a daily basis, it is difficult with the current judicial administration to completely implement the modern technology system²¹⁹.

²¹⁸ Accession Partnerships of Croatia, Macedonia, Turkey

²¹⁹ Interview with President of a basic court

Institution: Judiciary**Category:** Effectiveness/Efficiency**Standard:** Adequate legislation and resources in place for witness protection, adequate enforcement²²⁰**Indicator Question:** 3.2 Is there legislation in place to ensure adequate protection of a threatened witness, before, during and after a trial?**Score (highlight as appropriate):**

No	1
Partially	3
Yes	5

Notes:

The Law on Witness Protection²²¹ regulates the procedure and the conditions for providing protection and assistance to witnesses; defines the measures for protection and establishes the Council for Witness Protection and the Unit for Witness Protection²²². The Law also includes protection of victims, collaborators, as well as relatives and other persons close to the witnesses.

The Law has a separate chapter on the measures for protection, that include keeping the identity of the witness secret, securing personal protection, change of location, change of identity.²²³

Finally, the law also has a separate chapter on international cooperation and financial assets; the international cooperation is regulated on the basis of international agreements or on the principle of reciprocity, and the financial assets are acquired from the Budget of the RM²²⁴.

²²⁰ European Partnerships (potential candidate countries, links below)

²²¹ Official Gazette of RM, No. 38/ 05, 58/ 05

²²² Article 1

²²³ Chapter VI

²²⁴ Chapter VIII

Institution: Judiciary**Category:** Effectiveness/Efficiency**Standard:** Adequate legislation and resources in place for witness protection, adequate enforcement²²⁵**Indicator Question:** 3.3 To what extent is witness protection effective in practice?**Score (highlight as appropriate):**

To a very small extent	1
To a small extent	2
To a moderate extent	3
To a large extent	4
To a very large extent	5

Notes:

Regulations of witness protection are implemented to a small extent. Few exceptions exist, in cases where police officers appear as witnesses in judicial proceedings and they are treated as protected persons in such proceedings.²²⁶

²²⁵ European Partnerships (potential candidate countries, links below)

²²⁶ Validation Committee, 23.03.2011

Institution: Judiciary**Category:** Effectiveness/Efficiency**Standard:** Average time for completing the case in all instances**Indicator Question:** 3.4 Are there procedural rules in place to discourage excessive adjournments (e.g. ensure that judges have adequate time to hear cases and to ensure proportionate dissemination of the cases among the judges in one court)?**Score (highlight as appropriate):**

No	1
Partially	3
Yes	5

Notes:

According to the Law of Civil Procedure, courts have an obligation to conduct the proceedings without any delays and in a reasonable time. Similar provision is contained in the Law on Criminal Procedure: According to Article 6²²⁷ every individual charged with a criminal offence shall have the right to a court hearing within a reasonable time and without unjustified delays.

²²⁷ Law on Criminal Procedure, Official Gazette of RM, No. 150/2010

Institution: Judiciary**Category:** Effectiveness/Efficiency**Standard:** Average time for completing the case in all instances**Indicator Question:** 3.5 In practice are cases heard in a reasonable time and judgments handed down without lengthy delays and excessive adjournments?

NOTE: Useful data for this indicator include the number of cases, and particularly the number of cases lost by the state, regarding excessive length of proceedings before the Court for Human Rights.

Score (highlight as appropriate):

To a very small extent	1
To a small extent	2
To a moderate extent	3
To a large extent	4
To a very large extent	5

Notes:

The length of a case duration largely depends on the complexity of the case, and the circumstances related to the specific case. Thus, it is very difficult to obtain objective answer regarding excessive length of proceedings and reaching judgments. In certain highly complicated cases there have been breaches of the deadlines for handing down judgements by the judges, but these breaches were related to the complexity of explaining the reasons for the decision²²⁸.

Analysing the number of judgements submitted against the Republic of Macedonia in front of the European Court of Human Rights, a total number of 65 cases have been filed against the Republic of Macedonia. Out of this number, 44 cases concern the breach of Article 6 of the ECHR regarding the right to a hearing within a 'reasonable time', and Macedonia has lost a staggering number of 40 cases. This implies that excessive lengths of judicial proceedings represent the most frequent basis for filing a successful case against the Republic of Macedonia, as well as the major procedural concern of Macedonian citizens.

Having in mind the above mentioned it can be said that there are still delays and excessive lengths in judicial proceedings and in the process of reaching judgments.

²²⁸ Interview with a President of a basic court

ANNEX 2

Institution: Public Administration

Institution: Public Administration**Category:** Capacity

Standard: Equipment of ministry or department with adequate resources to coordinate public administration reform¹ + Adequate administrative capacity² + Adequate administrative capacity to programme and manage IPA funds³ + Structure with adequate resources and authority for civil service management⁴

Indicator Question: 1.1 Are there legal provisions to ensure that wages in the public administration are competitive enough to sustain an appropriate standard of living for public servants, in accordance with the country's economic situation?

Score (highlight as appropriate):

No	1
Partially	3
Yes	5

Notes:

Macedonian legislation differentiates *civil*⁵ from *public*⁶ servant; different laws regulate their status, rights and obligations. The Law on Civil Servants⁷ dedicates Chapter IV to the system of salaries and remunerations of civil servants. The salary of public servants consists of a general component, consisting of basic salary, position supplement and career supplement, and exceptional component consisting of demanding job supplement and non-regular supplement (overtime work). On the basis of these components each public servant is calculated a total number of points, whereas the value of the 'point' is determined by a decision of

¹ Accession Partnerships of Croatia, Macedonia, Turkey

² Accession Partnerships of Croatia, Macedonia, Turkey

³ Accession Partnerships of Croatia, Macedonia, Turkey

⁴ Interview with European Commission, May 2010.

⁵ According to the Law on Civil Servants, Article 3 (Paragraph 1), a civil servant shall be the person employed in the civil service who performs expert, normative-legal, executive, administrative, administrative-supervising, planning, material-financial, accounting, IT and other activities within the competences of the body in accordance with the Constitution and law. Moreover, according to Paragraph 2 of the same article, Civil service, in terms of the Law on Civil Servants, shall be the bodies of the state and local authority and other state bodies, established in accordance with the Constitution and law.

⁶ According to the Law on Public Servants, Article 3 (Paragraph 1) public servants are employees who perform public interest work in education, health, culture, science, labour and social affairs, social protection and child protection, institutions, funds, agencies, public enterprises established by the Republic of Macedonia, municipalities, municipalities in the city of Skopje, the city of Skopje, which are not included in the Law on Civil Servants.

⁷ Official Gazette of RM, No. 59/ 2000, 112/ 2000, 34/ 2001, 103/ 2001, 43/ 2002, 98/ 2002, 17/ 2003, 40/ 2003, 85/ 2003, 17/ 2004, 19/ 2004, 69/ 2004, 81/ 2005, 61/ 2006, 36/ 2007, 161/ 2008, 6/ 2009, 114/ 2009, 35/ 2010, 167/ 2010)

the Government of the Republic of Macedonia, within 15 days after the Budget of RM has entered into force, and on the basis of the total number of civil servants according to positions for the current year.

On the other hand, the Law on Public Servants⁸ only stipulates that public servants have the right of salary and remunerations under conditions and criteria established by law, collective agreement, and general act of the administrative body. However, no such acts have been enacted so far. Moreover, salaries do not follow the standard of living for public servants and do not correspond to the living conditions in the country⁹.

⁸ Official Gazette of RM, No. 52/ 2010

⁹ Validation Committee, 24.03.2011

Institution: Public Administration**Category:** Capacity

Standard: Equipment of ministry or department with adequate resources to coordinate public administration reform¹⁰ + Adequate administrative capacity, at central and local levels¹¹ + Adequate administrative capacity to programme and manage IPA funds¹² + Structure with adequate resources and authority for civil service management¹³

Indicator Question: 1.2 To what extent are wages in the public administration competitive enough to sustain an appropriate standard of living for public servants, in accordance with the country's economic situation?

NOTE: Look to data such as consumer shopping basket etc

Score (highlight as appropriate):

To a very small extent	1
To a small extent	2
To a moderate extent	3
To a large extent	4
To a very large extent	5

Notes:

Salaries in public and civil administration are very different, and a general answer for both categories is very difficult to give. Salaries of civil servants are in accordance with the approximate standard of living in the country, whereas the same claim cannot be made for salaries of public servants¹⁴.

The implementation of the Law on Civil Servants was delayed for 7 years, and it started in 2007, even though the law was enacted in 2000. Also, regardless of its enactment, the Law on Public Servants is just a formality, and lacks a separate Law on salaries of Public Servants.

When wages of civil administration are compared to other sectors and state bodies, it can be said that wages of civil servants are not sufficient¹⁵. The business sector promptly follows the changes and demands on the market, attracting more and more public employees to transfer. In addition, the policy of freezing

¹⁰ Accession Partnerships of Croatia, Macedonia, Turkey

¹¹ Accession Partnerships of Croatia, Macedonia, Turkey

¹² Accession Partnerships of Croatia, Macedonia, Turkey

¹³ Interview with European Commission, May 2010.

¹⁴ Interview with an employee in the Public Administration of RM

¹⁵ Interview with professor Borce Davitkovski, PhD, Dean of the Faculty of Law, Iustinianus Primus, Ss. Cyril and Methodius, Skopje

the salaries of public servants continues, contributing to the lack of competitiveness of public salaries, when compared to the business sector salaries.¹⁶

On the other hand, the consumer basket in Macedonia for November 2010 was 12, 212, 00 denars, whereas the net salary for November 2010 was 20, 633, 00 denars. The poverty percentage for 2009 was 31, 1%. With some exceptions, the public administration receives this salary.

However, the high unemployment rate and the lack of other possibilities are the main reasons for attracting and maintaining public servants. Salaries should be more competitive and should try to follow the pace of the economy.¹⁷

¹⁶ Validation Committee, 24.03.2011

¹⁷ Validation Committee, 24.03.2011

Institution: Public Administration**Category:** Capacity**Standard:** Development and implementation of general strategy on training for civil servants¹⁸**Indicator Question:** 1.3 Are there legal provisions to ensure that public servants are regularly trained to improve their technical and managerial competences?**Score (highlight as appropriate):**

No	1
Partially	3
Yes	5

Notes:

Civil servants have the right and obligation on professional trainings and improvement in accordance with the needs and requirements of the body in which they are employed. The Minister for Information Society and Administration determines the system for coordination of vocational trainings and improvement of civil servants, which is implemented on the basis of annual programs laid down by civil service bodies¹⁹. Implementing bodies are obliged to provide midyear reports for the realized civil servants' trainings²⁰.

¹⁸ Accession Partnerships of Croatia, Macedonia, Turkey

¹⁹ Civil service bodies according to the Law on Civil Servants are state bodies and local government, as well as other state bodies established in accordance with the Constitution and laws of RM.

²⁰ Article 24, Law on Civil Servants

Institution: Public Administration**Category:** Capacity**Standard:** Development and implementation of general strategy on training for civil servants²¹**Indicator Question:** 1.4 In practice to what extent are public servants regularly trained to improve their technical and managerial competence?**Score (highlight as appropriate):**

To a very small extent	1
To a small extent	2
To a moderate extent	3
To a large extent	4
To a very large extent	5

Notes:

Trainings of public servants are an immense problem in the Republic of Macedonia. There is no Academy or any similar body for training of public servants. Trainings are ad hoc, inconsistent, partial and are organized mostly due to received grants.²² In most cases, these trainings are attended by incompetent civil and public servants. For instance, four credits from the World Bank in an approximate amount of over 60.000.000, 00 \$ have been spent in the health sector in order to achieve reforms that were specifically focusing on trainings, but the effect from these trainings equals to zero²³.

When it comes to middle-rank managers, within the last 8 years they have received high quality, regular trainings from different donors, but this does not apply to public servants.²⁴

Regardless of the existence of trainings, their quality is poor and trainings do not achieve the purpose of providing new knowledge and experiences to attendees. Trainings are neither institutionalized nor systematized. This points out to the need of a strategy that will contribute to overcoming these shortcomings and will create a system for providing proper trainings for public servants.²⁵

²¹ Accession Partnerships of Croatia, Macedonia, Turkey

²² Interview with professor Borce Davitkovski, PhD, Dean of the Faculty of Law, Iustinianus Primus, Ss. Cyril and Methodius, Skopje

²³ Interview with professor Borce Davitkovski, PhD, Dean of the Faculty of Law, Iustinianus Primus, Ss. Cyril and Methodius, Skopje

²⁴ Interview with an employee in the Public Administration of RM

²⁵ Validation Committee, 24.03.2011

Institution: Public Administration**Category:** Capacity**Standard:** Objective, merit-based selection criteria and career system for civil servants²⁶**Indicator Question:** 1.5 Are there legal provisions in place establishing general criteria for entry into the public administration, including equal right of all citizens to apply?**Score (highlight as appropriate):**

No	1
Partially	3
Yes	5

Notes:

The Law on Public Servants and the Law on Civil Servants have legal provisions that establish general criteria for entry into the public administration. According to the Law on Public Servants, employment of public servants is conducted in a transparent proceeding based on the criteria of qualifications and competency, and through implementing the provision of fair and rightful representation of minorities²⁷. Only a person that fulfils certain general (citizenship, age, has no restrictions for performing certain professions etc) and specific criteria (appropriate education, relevant experience etc), enumerated in Article 15 of the Law on Public Servants can be employed in public administration.

When it comes to civil servants, the employment procedure must also be conducted in a transparent proceeding based on the criteria of qualifications and competency, and through implementing the provision of fair and rightful representation of minorities²⁸. The same general and specific criteria for employment, as for public servants, are enumerated for civil servants too²⁹.

²⁶ Accession Partnerships of Croatia, Macedonia, Turkey

²⁷ Article 13

²⁸ Article 12, Consolidated Text, Law on Civil Servants, Official Gazette of RM, No. 76/ 2010

²⁹ Article 13, Consolidated Text, Law on Civil Servants, Official Gazette of RM, No. 76/ 2010

Institution: Public Administration

Category: Capacity

Standard: Objective, merit-based selection criteria and career system for civil servants³⁰

Indicator Question: 1.6 To what extent is entry into the public administration based on merit in practice?

NOTE: Look for counterfactual evidence

Score (highlight as appropriate):

<i>To a very small extent</i>	<i>1</i>
To a small extent	2
To a moderate extent	3
To a large extent	4
To a very large extent	5

Notes:

The implementation of merit criteria on civil servants has so far shown negative experiences, especially regarding the model of entrance of the merit system. The merit system is relinquished within two aspects: the first aspect is the framework agreements where there is no merit system, and the second aspect are political employments that are conducted on the basis of political party's membership, and not on the basis of qualifications and competency³¹. Appointments of civil and public servants are often based on political considerations, and every government coming to power employs members of their party whose abilities are not evaluated by professional criteria, but by party membership criteria³². Also, there have been employments that were based solely on the criterion of being a minority³³ without taking the merit criteria into consideration³⁴. Furthermore, there have been many articles and statements in the media criticizing employments in the public administration and relating employment in the public administration to political influences³⁵.

³⁰ Accession Partnerships of Croatia, Macedonia, Turkey

³¹ Interview with professor Borce Davitkovski, PhD, Dean of the Faculty of Law, Iustinianus Primus, Ss. Cyril and Methodius, Skopje

³² Global Integrity Report, Macedonia Scorecard 2009, [http://report.globalintegrity.org/Macedonia%20\(FYROM\)/2009/scorecard](http://report.globalintegrity.org/Macedonia%20(FYROM)/2009/scorecard)

³³ Jose-Luis Herrero, Ambassador of OSCE, <http://www.a1.com.mk/vesti/default.aspx?VestID=126379>

³⁴ <http://www.a1.com.mk/vesti/default.aspx?VestID=129886>

³⁵ <http://www.a1.com.mk/vesti/default.aspx?VestID=128987>, <http://www.vreme.com.mk/DesktopDefault.aspx?tabindex=3&tabid=1&EditionID=2101&ArticleID=146940>, <http://www.makdenes.org/content/article/2288993.html>

In the public administration this is implemented to a small extent as there are no merit criteria for public servants, whereas in the civil administration there are attempts, at least on legal basis, to regulate the merit system. Experiences so far have shown that the selected candidates, even when fulfilling the criteria on paper, have not proven to be the best choice for the posts selected.³⁶

³⁶ Interview with an employee in the Public Administration of RM

Institution: Public Administration

Category: Capacity

Standard: Objective, merit-based selection criteria and career system for civil servants³⁷

Indicator Question: 1.7 Are there regulations in place to prevent undue political interference in the appointment and promotion of public servants?

NOTE: Examine configuration of selection committees

Score (highlight as appropriate):

No	1
Partially	3
Yes	5

Notes:

Legal regulations preventing undue political interference in the appointment and promotion of public servants are prescribed with the Law on Civil Servants.

Civil Servants are selected in a procedure conducted by a Selection Commission that is formed by the Agency for Administration of RM. The Selection Commission consists of a president and two members, all civil servants. The president and one of the members of the Commission are employees in the respective body where the civil servant will be employed, and the second member is employed in the Agency for Administration of RM³⁸. The Selection Commission prepares a ranking list of the top three candidates on the basis of the criteria laid down in the Law³⁹, and from that list, the head official or the Secretary General (as it is the case with the Assembly) has to select the candidate for employment⁴⁰.

When it comes to public servants, according to Article 17 of the Law on Public Servants, the head official of the institution forms a commission for selection of public servants that will implement the procedure for selection of the candidates⁴¹.

The Selection Commission prepares a ranking list, and from that list, the head official has to select the candidate for employment⁴².

³⁷ Accession Partnerships of Croatia, Macedonia, Turkey

³⁸ Article 15, Law on Civil Servants

³⁹ Article 16, Law on Civil Servants

⁴⁰ Article 17-a, Law on Civil Servants

⁴¹ Official Gazette of RM, No. 52/ 2010

⁴² Article 18, Law on Public Servants

Institution: Public Administration**Category:** Capacity**Standard:** Objective, merit-based selection criteria and career system for civil servants⁴³**Indicator Question:** 1.8 To what extent are recruitment and promotion regulations effective in preventing political interference (eg. selection committees are able to work without political interference)?**Score (highlight as appropriate):**

To a very small extent	1
To a small extent	2
To a moderate extent	3
To a large extent	4
To a very large extent	5

Notes:

When it comes to the state administration, no tools have been implemented in order to prevent political interference, and the system of work positions in the state administration has been misused continuously. By amending the Rules for Organization and Systematization, members of political parties have been employed on managerial positions in state administrative bodies. In this way, and in relation to election cycles, the number of places for employment in the administration is being increased and inappropriate criteria for entrance are being prescribed⁴⁴.

Employment on the basis of political membership is considered a “normal” practice in the country. People expect “their” political party to obtain political power so that they can obtain employment in the public sector⁴⁵. For example, party members are employed on a temporary basis. In order to secure their permanent employment, vacancies for transformation of these temporary employments are published and everyone can apply. However, in most cases, the persons that have already been placed as temporary staff maintain their positions, gained through party membership in the first place⁴⁶. This is in direct conflict with the criteria of qualifications and competency in the employment of civil servants.

⁴³ Accession Partnerships of Croatia, Macedonia, Turkey

⁴⁴ Interview with professor Borce Davitkovski, PhD, Dean of the Faculty of Law, Iustinianus Primus, Ss. Cyril and Methodius, Skopje

⁴⁵ <http://www.makdenes.org/content/article/2191627.html>

⁴⁶ <http://www.vreme.com.mk/DesktopDefault.aspx?tabindex=3&tabid=1&EditionID=2101&ArticleID=146940>, <http://www.time.mk/read/bc45fd83c1/0becb65bed/index.html>

Moreover, in some cases employments are made on the basis of previously prepared lists of members of the ruling political parties without taking into consideration the qualifications and competency of the candidates. Although, these posts formally fulfil the criteria prescribed in the law, there have been cases where the education of the selected candidate is not appropriate to the needs of the position for which the candidate is selected⁴⁷. The system itself leaves space for arbitrary decisions, as the final selection is made by someone that did not contribute to the selection procedure and the preparation of ranking lists of candidates⁴⁸. Regarding the public servants, the implementation of the Law is about to commence in April, 2011⁴⁹.

Still, there have been positive examples where exceptional students have been employed in public bodies immediately after their graduation, and those students are still employed in the public administration. As there are also some examples of employment based on quality of the candidates, the answer “to a small extent” should be given.⁵⁰

⁴⁷ Interview with professor Borce Davitkovski, PhD, Dean of the Faculty of Law, Iustinianus Primus, Ss. Cyril and Methodius, Skopje

⁴⁸ Interview with an employee in the Public Administration of RM

⁴⁹ Interview with professor Borce Davitkovski, PhD, Dean of the Faculty of Law, Iustinianus Primus, Ss. Cyril and Methodius, Skopje

⁵⁰ Validation Committee, 24.03.2011

Institution: Public Administration**Category:** Capacity**Standard:** Objective, merit-based selection criteria and career system for civil servants⁵¹**Indicator Question:** 1.9 Are there legal provisions in place requiring publication of information on all public administration vacancies and selection criteria?**Score (highlight as appropriate):**

No	1
Partially	3
Yes	5

Notes:

Public announcements for employment are published on the web site of the Agency for employment and in at least two daily newspapers, one of which is published in Macedonian language and in at least one that is published in the language spoken by at least 20% of the citizens of RM⁵².

When it comes to public servants, public announcements are published in at least two daily newspapers, where at least one should be a daily newspaper published in Macedonian and at least one should be a daily newspaper published in the language spoken by at least 20% of the citizens that speak an official language other than Macedonian⁵³.

⁵¹ Accession Partnerships of Croatia, Macedonia, Turkey

⁵² Article 14, Law on Civil Servants, Consolidated Text

⁵³ Article 16, Law on Public Servants

Institution: Public Administration

Category: Capacity

Standard: Objective, merit-based selection criteria and career system for civil servants⁵⁴

Indicator Question: 1.10 To what extent is information on all public administration vacancies and the selection criteria for them published in practice?

Score (highlight as appropriate):

To a very small extent	1
To a small extent	2
<i>To a moderate extent</i>	3
To a large extent	4
To a very large extent	5

Notes:

Although in the selection of candidates the selection criteria are not properly implemented and political interference is present, the vacancies are published in practice⁵⁵ to a moderate extent. When it comes to civil servants, the vacancies are published on the webpage of the Agency for Administration, and in daily newspapers, thus the regulations are respected. However, this is not the case with the public administration employments, as some vacancies have been published in not so visible parts of not so popular daily papers, and have not been always published on line⁵⁶. Still, these types of examples are mostly related to public and not to civil administration employments.

On the other hand, criteria for selection do not always correspond with the position advertised⁵⁷, therefore strengthening implementation of criteria for employment should be emphasised.⁵⁸

⁵⁴ Accession Partnerships of Croatia, Macedonia, Turkey

⁵⁵ Interview with professor Borce Davitkovski, PhD, Dean of the Faculty of Law, Iustinianus Primus, Ss. Cyril and Methodius, Skopje

⁵⁶ Interview with an employee in the Public Administration of RM

⁵⁷ <http://www.utrinski.com.mk/default.asp?ItemID=D434E216567994458D70AD1948AB8FDF>

⁵⁸ Validation Committee, 23.03.2011

Institution: Public Administration**Category:** Capacity**Standard:** Objective, merit-based selection criteria and career system for civil servants⁵⁹**Indicator Question:** 1.11 Are there legal regulations protecting public servants against arbitrary dismissal?**Score (highlight as appropriate):**

No	1
Partially	3
Yes	5

Notes:

The termination of employment of civil servants is regulated in a separate Chapter of the Law on Civil Servants. According to Article 81, the civil servant's employment shall terminate by an agreement; at his/her request; by force of law and in other cases defined by the Law on Civil Servants⁶⁰. In addition, the abovementioned conditions for termination of employment are regulated in further details.

The Law on Public Servants enumerates the reasons for termination of employment of public servants in Articles 67-68.

Also, the civil servant whose civil service employment right has been violated by a first-instance decision has the right to file an appeal with the Agency within 15 days from the day of the receipt of the decision⁶¹. According to Article 71 from the Law on Public Servants the same rule applies for public servants, too.

⁵⁹ Accession Partnerships of Croatia, Macedonia, Turkey

⁶⁰ Consolidated text

⁶¹ Article 82a, Law on Civil Servants, Consolidated text, Official Gazette of RM, No. 76/ 2010

Institution: Public Administration

Category: Capacity

Standard: Objective, merit-based selection criteria and career system for civil servants⁶²

Indicator Question: 1.12 In practice to what extent are public servants only dismissed for misconduct or incapacity to carry out their functions?

NOTE: Look for evidence of cases where there were dismissals for other reasons

Score (highlight as appropriate):

To a very small extent	1
To a small extent	2
To a moderate extent	3
To a large extent	4
To a very large extent	5

Notes:

The problems regarding arbitrary dismissals in practice are again to be connected to amendments in the systematizations of work positions in the public and state administration. With amending the respective systematizations, public and civil servants are transferred or dismissed, and their places are fulfilled by members of political parties that have won the elections without considering the qualification and competency of the existing employees⁶³.

With regard to the different groups of civil and public servants, the ones with managerial functions have 4-6 years of experience, whereas, experts and professionals have approximately 20 years of experience. This illustrates the turbulences in the administration, and the switches from one to the other type of group, as the highest group lacks the experience, especially in comparisons to the other groups of civil servants⁶⁴.

As the criteria for entrance are not thoroughly developed they provide the possibility for arbitrary dismissals. Furthermore, as the selection criteria, especially

⁶² Accession Partnerships of Croatia, Macedonia, Turkey

⁶³ Interview with professor Borce Davitkovski, PhD, Dean of the Faculty of Law, Iustinianus Primus, Ss. Cyril and Methodius, Skopje, Interview with an employee in the Public Administration of RM

⁶⁴ These conclusions are a summary of a professional research conducted by professor Borce Davitkovski, PhD, Dean of the Faculty of Law, Iustinianus Primus, Ss. Cyril and Methodius, Skopje, and were cited during the interview

regarding the public administration, are not fully developed, legal provisions do not always protect from arbitrary dismissals⁶⁵.

What is more, in practice, certain employees are not dismissed for misconducts, although reasons to do so exist, whereas other employees are dismissed without valid reasons. For example, such employees are transferred to a department that does not function, and few days after the transfer the department in question is being abolished leaving that public servant without employment.⁶⁶

⁶⁵ Interview with an employee in the Public Administration of RM

⁶⁶ Validation Committee, 24.03.2011

Institution: Public Administration

Category: Governance (Transparency, accountability, integrity)

Standard: Effective implementation of legislation on declaration of assets⁶⁷

Indicator Question: 2.1 Are there legal requirements for the disclosure/declaration of personal assets, income and financial interests for high-level public servants (including a verification mechanism)?

NOTE: Suggest score 0 for none, 1 for yes (but no verification mechanism) and 2 for yes + verification.

Score (highlight as appropriate):

No	1
Partially	3
Yes	5

Notes:

The Law on Prevention of Corruption stipulates the obligation on reporting assets. Namely, according to Article 33⁶⁸, an elected or appointed functionary⁶⁹ has to fill in an assets declaration with detailed inventory of his/ her real estate, movable property of greater value, securities, claims and debts, as well as of any other assets in his/her ownership or in ownership of members of his/her family. Assets declaration also has to be filled after the termination of function or employment. Moreover, these persons are obligated to deposit a statement certified by notary public for revoking protection of banking secrecy in regard to all domestic and foreign bank accounts.

These declarations are submitted to the State Commission for Preventing Corruption and to the Public Revenue Office. Also, every increase in the assets (regardless if the change refers to the person or to a member of his/her family) also has to be reported to the State Commission for Preventing Corruption and to the Public Revenue Office⁷⁰.

In addition, a procedure for examination of assets may be initiated against the functionary if s/he has failed to provide data or to report changes in the assets, has provided incorrect data or in cases of disproportionate increase of assets.⁷¹

⁶⁷ Interview with European Commission, May 2010.

⁶⁸ Official Gazette of RM, No. 28/2002, 46/ 2004, 10/ 2008, 161/ 2008, 145/ 2010, Decision of the Constitutional Court of RM 160/ 2006- 0- 0

⁶⁹ Which includes civil and public servants

⁷⁰ Article 34, Law on Prevention of Corruption

⁷¹ Law on Prevention of Corruption

Institution: Public Administration**Category:** Governance (Transparency, accountability, integrity)**Standard:** Effective implementation of legislation on declaration of assets⁷²**Indicator Question:** 2.2 To what extent do high-level public servants disclose their personal assets, income and financial interests, and are they verified in practice?**Score (highlight as appropriate):**

To a very small extent	1
To a small extent	2
To a moderate extent	3
To a large extent	4
To a very large extent	5

Notes:

In practice, assets are generally disclosed, and information is provided on the webpage of the State Commission for Preventing Corruption.

However, verification of asset disclosures is random⁷³ and not regularly conducted in practice,. Verification of assets mostly occurs when a respective procedure in front of the State Commission for Preventing Corruption has been initiated⁷⁴. Also, audits on civil service asset disclosures are somewhat limited and mostly disclosures of assets belonging to higher officials are verified.⁷⁵

⁷² Interview with European Commission, May 2010.

⁷³ Validation Committee, 24.03.2011

⁷⁴ Interview with an employee in the Public Administration of RM

⁷⁵ Global Integrity Report, Macedonia Scorecard, 2009

Institution: Public Administration

Category: Governance (Transparency, accountability, integrity)

Standard: Effective implementation of legislation on access to information⁷⁶ + E-government initiatives to enhance transparency and public access to information⁷⁷

Indicator Question: 2.3 Are public administration departments required by law to provide citizens with information on public administration activities and with the records that the public administration keeps on them?

NOTE: Best practice shows that legislation should be wide in scope, with manageable requesting procedures, and limited procedures for exceptions and refusals and sanctions for non-complying institutions.

Score (highlight as appropriate):

No	1
Partially	3
Yes	5

Notes:

The Law on Free Access to Public Information regulates the requirements, the manner and the procedure for exercising the right to free access to public information that the bodies of the state administration and other bodies have at their disposal⁷⁸. The Law has the aim to ensure transparency and openness in the performance of the holders of information, and enables the natural persons and legal entities to exercise their right to free access to public information⁷⁹. According to the Law, the holders of information are obliged to inform the public regarding their work.

Exceptions on providing free access to public information are regulated in the Law and are related to classified information with a certain degree of secrecy, confidential information, information regarding procedures whose release can have harmful consequences etc.⁸⁰

⁷⁶ European Partnerships of Potential Candidates

⁷⁷ Interview with European Commission, May 2010.

⁷⁸ Article 1, Official Gazette of RM, No.13/2006, 86/2008, 6/2010

⁷⁹ Article 2

⁸⁰ Articles 6-7

Institution: Public Administration**Category:** Governance (Transparency, accountability, integrity)**Standard:** Effective implementation of legislation on access to information⁸¹ + E-government initiatives to enhance transparency and public access to information⁸²**Indicator Question:** 2.4 In practice, to what extent do citizens have reasonable access to information on public administration activities and the records that public administration departments keep on them?**Score (highlight as appropriate):**

To a very small extent	1
To a small extent	2
To a moderate extent	3
To a large extent	4
To a very large extent	5

Notes:

The Law on free Access to Public Information provides for the functioning of the Constitutional right of citizens to free access to public information. However, the Law had to be amended with regard to the procedure for providing the access to public information as, in practice, the Government, the Ministry of Interior and other bodies and institutions do not provide information under the excuse that the information requested is secret information that should not be available for public access.⁸³

The Commission that decides in the second instance should also have repressive functions, more precisely it should be able to pronounce sanctions for misdemeanours against responsible officials, as at this time the implementation is only formal and the Administrative Court does not have an established practice that would provide sanctioning of those that withhold public information⁸⁴.

Moreover, access to public information differs from institution to institution and at large depends on the openness of the head-official in a specific body, as the administration staff acts in accordance with the directions on the head officials.⁸⁵

⁸¹ European Partnerships of Potential Candidates

⁸² Interview with European Commission, May 2010.

⁸³ Interview with a university professor

⁸⁴ Interview with professor Borce Davitkovski, PhD, Dean of the Faculty of Law, Iustinianus Primus, Ss. Cyril and Methodius, Skopje

⁸⁵ Interview with an employee in the Public Administration of RM

Institution: Public Administration

Category: Governance (Transparency, accountability, integrity)

Standard: Effective implementation of legislation on access to information⁸⁶ + E-government initiatives to enhance transparency and public access to information⁸⁷

Indicator Question: 2.5 Is proactive publication of information by public administration bodies required by law?

Score (highlight as appropriate):

No	1
<i>Partially</i>	3
Yes	5

Notes:

According to the Law on Free Access to Public Information, the holders of information are obliged to inform the public regarding their work.

The holder of information is obliged to inform the public about the basic contact information of the holder of information, the manner of submission of a request for access to information, the regulations referring to the competence of the holder of information, the organization and the operational expenses, as well as giving services to the citizens in the administrative procedure and about their activities, the issuing of information bulletins and other forms of informing, internet site used for publishing decisions, acts and measures affecting the life and work of the citizens, and other information arising from the competence and the work of the holder of information⁸⁸.

In addition, the holders of information as a way of informing the public about their activity, have to publish laws and by-laws at the official internet site of the institution, to issue public announcements for the activities undertaken by them in accordance with legal competences, to publish statistical data in respect to their activity, to publish the reports regarding their activity submitted to the bodies competent for control and inspection, and to make all information of public interest available in any other manner anticipated by law⁸⁹.

However, regulations are not clear and precise enough and leave space for arbitrary decisions regarding the information that will be available to the public. For instance, there is no strict obligation for the Government to make publicly

⁸⁶ European Partnerships of Potential Candidates

⁸⁷ Interview with European Commission, May 2010.

⁸⁸ Article 10, Paragraph 1, Law on Free Access to Public Information

⁸⁹ Article 10, Paragraph 3, Law on Free Access to Public Information

available the conclusions from its sessions, or to provide information regarding planned proposals of laws. Also, there are no sanctions for state bodies that do not fulfill their obligations on publishing information.⁹⁰

⁹⁰ Validation Committee, 24.03.2011

Institution: Public Administration

Category: Governance (Transparency, accountability, integrity)

Standard: Effective implementation of legislation on access to information⁹¹ + E-government initiatives to enhance transparency and public access to information⁹²

Indicator Question: 2.6 To what extent is the public administration proactive in publishing information on its activities in practice (e.g. maintenance of an up-to-date website)?

Score (highlight as appropriate):

To a very small extent	1
To a small extent	2
To a moderate extent	3
To a large extent	4
To a very large extent	5

Notes:

The publishing of information on activities depends of the decision of the director or head official of the sector or body. As regards public administration, for instance, the universities publish information regarding their activities on their websites⁹³. In practice, there are websites of institutions and bodies that can be used as very good examples on proactive publishing and maintenance of website⁹⁴, while, at the same time there are examples of institutions' and bodies' websites that do not provide sufficient information and do not publish and update information on their websites, and there are even institutions and bodies without websites⁹⁵.

⁹¹ European Partnerships of Potential Candidates

⁹² Interview with European Commission, May 2010.

⁹³ Interview with professor Borce Davitkovski, PhD, Dean of the Faculty of Law, Iustinianus Primus, Ss. Cyril and Methodius, Skopje

⁹⁴ Such as, www.ukim.edu.mk, <http://www.customs.gov.mk>

⁹⁵ Interview with an employee in the Public Administration of RM

Institution: Public Administration**Category:** Governance (Transparency, accountability, integrity)**Standard:** Financial management, internal control and internal audit systems at central and local levels⁹⁶**Indicator Question:** 2.7 Are there legal provisions which provide for regular internal audit of public administration departments?**Score (highlight as appropriate):**

No	1
Partially	3
Yes	5

Notes:

Internal audit is regulated with the Law on Public Internal Financial Control, in a separate chapter⁹⁷. According to Article 24, Law on Public Internal Financial Control, the role of internal audit is to provide support of head officials in the public sector for realization of the goals of the public sector bodies.

Different types of internal audit include financial audits, audits of adjustment, audits of internal control systems, success performance audits and IT audits⁹⁸. Internal audits are conducted on regular basis in accordance with strategy plans for three years, annual plans and plans on separate audits⁹⁹.

⁹⁶ Interview with European Commission, May 2010.

⁹⁷ Official Gazette of RM, No. 90/ 09

⁹⁸ Article 28, Law on Public Internal Financial Control

⁹⁹ Article 40, Law on Public Internal Financial Control

Institution: Public Administration

Category: Governance (Transparency, accountability, integrity)

Standard: Financial management, internal control and internal audit systems at central and local levels¹⁰⁰

Indicator Question: 2.8 In practice to what extent do internal audits take place regularly?

Score (highlight as appropriate):

To a very small extent	1
To a small extent	2
To a moderate extent	3
To a large extent	4
To a very large extent	5

Notes:

Every user of budgetary assets should have an internal auditor on the usage of budgetary assets. Although this obligation is mandatory according to the Law on Public Internal Financial Control, it is not implemented as intended in practice.¹⁰¹ This is a relatively new Law, and the implementation in practice is still limited to a moderate extent¹⁰². It should be noted that certain bodies and institutions are making efforts to form offices for internal revisions¹⁰³.

Progress has been made in establishing and staffing internal audit units, but no evidence is available regarding the quality of internal audit reports and their acceptance by managers¹⁰⁴.

The website of the Ministry of Finance shows that there are currently 64 units for internal revision on the central level, and 111 auditors. The number of reports on internal audits for 2009 has been 252, and the number of reports for 2010 have still been published yet¹⁰⁵. In 2010, 1672 recommendations have been given, out of which 54 have been implemented so far¹⁰⁶.

¹⁰⁰ Interview with European Commission, May 2010.

¹⁰¹ Interview with professor Borce Davitkovski, PhD, Dean of the Faculty of Law, Iustinianus Primus, Ss. Cyril and Methodius, Skopje

¹⁰² Interview with an employee in the Public Administration of RM

¹⁰³ <http://www.posta.com.mk/macedonian/Novost.aspx?n=215>,
<http://www.ads.gov.mk/default.asp?ItemID=B819E3ECB46D8C439D4469812FC3E908>

¹⁰⁴ SIGMA, Support for Improvement in Governance and Management, Assesment of the Republic of Macedonia, 2010

¹⁰⁵ See: <http://finance.gov.mk/node/564>, Accessed on: 01.03.2011

¹⁰⁶ See: <http://finance.gov.mk/node/564>, Accessed on: 01.03.2011

Institution: Public Administration**Category:** Governance (Transparency, accountability, integrity)**Standard:** Financial management, internal control and internal audit systems at central and local levels¹⁰⁷**Indicator Question:** 2.9 Are authorities required by law to take appropriate and timely action on audit findings?**Score (highlight as appropriate):**

No	1
Partially	3
Yes	5

Notes:

If it is suspected that irregularities or possible corruption or fraud has occurred in a public sector body, the person responsible for irregularities in that body has the obligation to report it to the Public Prosecution of RM, the Ministry of Finance- Financial police and financial inspection in the public sector.¹⁰⁸ The Public Prosecution of RM can press criminal charges in accordance to the Criminal Code and Law on Criminal Procedure, whereas, the Ministry of Finance has the authority to conduct inspection and supervision on the public finances in regards to reported subsections and complaints for fraud or corruption¹⁰⁹.

¹⁰⁷ Interview with European Commission, May 2010.

¹⁰⁸ Article 50, Law on Public Internal Financial Control

¹⁰⁹ Article 51, Law on Public Internal Financial Control

Institution: Public Administration

Category: Governance (Transparency, accountability, integrity)

Standard: Financial management, internal control and internal audit systems at central and local levels¹¹⁰

Indicator Question: 2.10 To what extent is appropriate and timely action taken on audit findings in practice?

Score (highlight as appropriate):

To a very small extent	1
To a small extent	2
To a moderate extent	3
To a large extent	4
To a very large extent	5

Notes:

Audits, in practice, are being conducted by state auditor. However, state audits just provide conclusions, publish them on their webpage and report their findings to the Assembly of RM, without having authorizations to initiate further proceedings. Thus, there is an anomaly in the legal system, as neither the State Audit Office nor the State Commission for Preventing Corruption have investigative powers regarding audit reports.¹¹¹

¹¹⁰ Interview with European Commission, May 2010.

¹¹¹ Interview with professor Borce Davitkovski, PhD, Dean of the Faculty of Law, Iustinianus Primus, Ss. Cyril and Methodius, Skopje

Institution: Public Administration**Category:** Governance (Transparency, accountability, integrity)**Standard:** Effective implementation of legislation on protection of whistleblowers¹¹²**Indicator Question:** 2.11 Is there legal protection for public servants who report suspicions of corruption or misconduct (whistleblowers) to senior management or to law enforcement bodies?**Score (highlight as appropriate):**

No	1
Partially	3
Yes	5

Notes:

According to the Law on Preventing Corruption, a person that has discovered data that suggest existence of corruption cannot be criminally prosecuted or held liable in any manner. In addition, a person that has given a statement or testimony in a procedure for an act of corruption shall be given protection in accordance with law. The person shall have the right to compensation of damage he/she or other member of his/her family may suffer due to the given statement or testimony.¹¹³

Still, there is not a separate and comprehensive law on protection of whistleblowers in Macedonia, and thus the protection of public servants who report suspicions of corruption or misconduct (whistleblowers) to senior management or to law enforcement bodies is partial for the time being.

¹¹² Interview with European Commission, May 2010.

¹¹³ Article 20, Law on Preventing Corruption

Institution: Public Administration

Category: Governance (Transparency, accountability, integrity)

Standard: Effective implementation of legislation on protection of whistleblowers¹¹⁴

Indicator Question: 2.12 To what extent are whistleblowers in the public administration protected in practice?

NOTE: Look for evidence (interview data; media) of cases where whistleblowers were not protected

Score (highlight as appropriate):

<i>To a very small extent</i>	<i>1</i>
To a small extent	2
To a moderate extent	3
To a large extent	4
To a very large extent	5

Notes:

In general people are frightened to report corruption, and the lack of provisions further de- motivates public servants in reporting corruption¹¹⁵. There are many cases in which public-sector whistleblowers are able to come forward without negative consequences, but in most cases, whistleblowers are punished by unofficial means¹¹⁶. As people are not protected in practice, they are reluctant to report corruption. There has been a case where a manager in Telecom has pointed to the existence of corruption in the company.¹¹⁷ Due to the fact that he pointed to the existence of corruption, no criminal procedure can be initiated against him nor can he be held responsible on other grounds, as he is a person that has revealed data leading to corruption. However, this was not the case and the manager was sued for slander by Telecom.¹¹⁸

Also, nobody reports corruption in the public administration, due to the mutual interest of the persons that ask and give corruption. Although, there are many debates pointing towards corruption in different sectors of the public administration, cases where corruption has been reported are exceptionally rare.¹¹⁹

¹¹⁴ Interview with European Commission, May 2010.

¹¹⁵ Interview with an employee in the Public Administration of RM

¹¹⁶ Global integrity Report, Macedonia Scorecard 2009

¹¹⁷ http://www.transparency.org.mk/en/index.php?option=com_content&task=view&id=404&Itemid=30

¹¹⁸ http://www.transparency.org.mk/index.php?option=com_content&task=view&id=653&Itemid=57

¹¹⁹ Interview with Professor Borce Davitkovski, PhD, Dean of the Faculty of Law, Iustinianus Primus, Ss. Cyril and Methodius, Skopje

Institution: Public Administration**Category:** Governance (Transparency, accountability, integrity)**Standard:** Ethics rules and codes of conduct for civil servants; effective implementation¹²⁰**Indicator Question:** 2.13 Is there a general code of conduct/code of ethics in place for public servants?**Score (highlight as appropriate):**

No	1
Partially	3
Yes	5

Notes:

A Code of Ethics for Civil Servants has been brought into force¹²¹. Also, the Law on Public Servants in Article 24 obliges the Minister of Justice to carry out a Code of Ethics for Public Servants. Thus, a Code of Ethics for Public Servants has been enacted by the Minister of Justice. The Code regulates the performance and conduct of public servants, and imposes disciplinary liability for public servants that disrespect the Code.¹²²

¹²⁰ Accession Partnerships of Croatia, Macedonia, Turkey

¹²¹ Official Gazette of RM, No. 96/01, 16/2004, 48/2007

¹²² Article 1, Code of Ethic for Public Servants, No. 07-2492/3, 30.02.2010

Institution: Public Administration

Category: Governance (Transparency, accountability, integrity)

Standard: Ethics rules and codes of conduct for civil servants; effective implementation¹²³

Indicator Question: 2.14 To what extent is this code of conduct enforced in practice?

Score (highlight as appropriate):

To a very small extent	1
To a small extent	2
To a moderate extent	3
To a large extent	4
To a very large extent	5

Notes:

Having in mind that the code of Ethics for Civil Servants has been brought into force in 2001, whereas the Code of Ethics for Public Servants has been brought into force in 2010; it is very difficult to give a joint opinion on the implementation of these Codes in practice¹²⁴. The Code of Ethics for Civil Servants is mainly enforced in practice by implementing sanctions, and not through being respected by civil servants and the implementation of the Code of Ethics for Public Servants is yet to be seen¹²⁵.

The Code for Civil Servants provides the initiation of disciplinary proceedings, but as long as the Codes of Conducts are being formulated as guidelines, implementation in practice will be very difficult to achieve¹²⁶.

According to the Validation Committee half of the public servants are not familiarized with the Codes of Conducts, and those that actually are do not respect the provisions. Moreover, the values of the Codes of Ethics are often threatened by the rules imposed by ruling parties, as those rules have priority over the Code of ethics in order to obtain employment and to be promoted in public services.¹²⁷

¹²³ Accession Partnerships of Croatia, Macedonia, Turkey

¹²⁴ Interview with an employee in the Public Administration of RM

¹²⁵ Interview with an employee in the Public Administration of RM

¹²⁶ Interview with professor Borce Davitkovski, PhD, Dean of the Faculty of Law, Iustinianus Primus, Ss. Cyril and Methodius, Skopje

¹²⁷ Validation Committee, 24.03.2011

Institution: Public Administration**Category:** Governance (Transparency, accountability, integrity)**Standard:** Regulations re: professional impartiality of civil servants**Indicator Question:** 2.15 Are there clear and precise legal provisions on what constitutes conflict of interest for public servants?**Score (highlight as appropriate):**

No	1
<i>Partially</i>	3
Yes	5

Notes:

According to the Law on Conflict of Interest¹²⁸, conflict of interests “means a conflict between the public authorizations and duties with the private interests of the official, where the official has a private interest which impacts or can impact on the performance of his/her public authorizations and duties.”

When an official finds out about the circumstances indicating to the existence of conflict of interests, he/she shall be obliged to immediately request to be exempted and to cease his/her actions¹²⁹.

However, provisions on conflict of interest are also present in the Law on Prevention of Corruption¹³⁰ creating confusion on what constitutes conflict of interest, and which Law regulates conflict of interests.

¹²⁸ Article 3

¹²⁹ Article 12, Law on Prevention of Conflict of Interests

¹³⁰ Chapter 4

Institution: Public Administration

Category: Governance (Transparency, accountability, integrity)

Standard: Regulations re: professional impartiality of civil servants

Indicator Question: 2.16 To what extent are conflict of interest provisions effective in practice?

Score (highlight as appropriate):

<i>To a very small extent</i>	<i>1</i>
To a small extent	2
To a moderate extent	3
To a large extent	4
To a very large extent	5

Notes:

Although, officials are obliged to provide statement on conflict of interests, conflicts of interests are not sanctioned in practice¹³¹. Even though, there have been cases when ministers, MPs, directors of state institutions and bodies have been involved in private business, have been owners or managers of media while in function, but no sanctions have been implemented against such actions¹³². Examples of such cases are commonly present in the media¹³³ and the inability of the State Commission for Preventing Corruption can be illustrated by noting that many officials, members of the ruling party, who had dual functions, have not resigned from their posts as a result of the authority of the Commission, but have resigned only after the party has recommended for them to do so¹³⁴. The former president of the State Commission for Preventing Corruption during her mandate as a President of the Commission was also appointed to the position of a Director of MTV (organizational unit of the public enterprise Macedonian Radio and Television) a situation that by different media was pointed as possible conflict of interests¹³⁵.

¹³¹ Interview with professor Borce Davitkovski, PhD, Dean of the Faculty of Law, Iustinianus Primus, Ss. Cyril and Methodius, Skopje

¹³² Interview with professor Borce Davitkovski, PhD, Dean of the Faculty of Law, Iustinianus Primus, Ss. Cyril and Methodius, Skopje

¹³³ <http://www.novamakedonija.com.mk/NewsDetal.asp?vest=12791013376&id=9&setIzdanie=21856>, <http://www.a1.com.mk/vesti/default.aspx?VestID=124819>, <http://www.a1.com.mk/vesti/default.aspx?VestID=125096>, <http://www.time.mk/read/223d2368a6/6ced142082/index.html>, <http://www.time.mk/read/223d2368a6/6ced142082/index.html>

¹³⁴ <http://www.a1.com.mk/vesti/default.aspx?VestID=126318>

¹³⁵ <http://www.novamakedonija.com.mk/NewsDetal.asp?vest=12791013376&id=9&setIzdanie=21856>, <http://www.utrinski.com.mk/?ItemID=5BDA6F358444AB49A3571380B3060173>, <http://www.utrinski.com.mk/?ItemID=EF4E40D541743D4CA10FA5AAEA438231>

On the other hand, the unit within the State Commission for Preventing Corruption does not have the capacity to initiate individual investigations, and focuses and investigates mostly the cases pointed by the media.¹³⁶ The State Commission for Preventing Corruption more or less follows the statements for elected and named officials, as they are published in the Official Gazette of RM, but due to the lack of capacity does not follow the statements for public servants.¹³⁷

¹³⁶ Validation Committee, 24.03.2011

¹³⁷ Validation Committee, 24.03.2011

Institution: Public Administration

Category: Governance (Transparency, accountability, integrity)

Standard: Ethics rules and codes of conduct for civil servants; effective implementation¹³⁸

Indicator Question: 2.17 Are there regulations in place on accepting gifts by public servants, e.g. prohibition to accept gifts above a certain threshold?

Score (highlight as appropriate):

No	1
Partially	3
Yes	5

Notes:

Article 31 of the Law on Prevention of Corruption, prohibits officials from receiving gifts or any promise of a gift, except appropriate gifts such as books, souvenirs and similar goods whose value is determined by law. According to Article 77, Law on Usage and Management of Assets Used and Managed by Government Bodies¹³⁹, officials can receive personal gifts up to the value of 200 Euros, provided the giver is a foreign country, body, institution or international organization.

In addition, according to Article 68, Law on Civil Servants, receiving gifts by civil servants is considered a disciplinary offence. According to Article 44, of the Law on Public Servants receiving gifts by civil servants is considered a disciplinary offence.

¹³⁸ Accession Partnerships of Croatia, Macedonia, Turkey

¹³⁹ Official Gazette of RM, No. 8/ 2005

Institution: Public Administration**Category:** Governance (Transparency, accountability, integrity)**Standard:** Ethics rules and codes of conduct for civil servants; effective implementation¹⁴⁰**Indicator Question:** 2.18 To what extent are the regulations governing gifts and hospitality offered to public servants effective in practice?**Score (highlight as appropriate):**

To a very small extent	1
To a small extent	2
To a moderate extent	3
To a large extent	4
To a very large extent	5

Notes:

This is a very serious problem in the anti-corruption system in Macedonia, as it is very difficult to prove that a gift or hospitality has been offered and/ or received¹⁴¹. The regulations governing gifts and hospitality to civil servants are to a certain extent applied, although exceptions exist because some civil servants accept greater amounts of gifts or gifts they are not supposed to keep for private use. However, there is no mechanism for proof.¹⁴²

Moreover, when public servants start working in public administrative bodies they are not presented with their rights and obligations, and are not even familiarized with the existence of a Code of Ethics that they need to follow.¹⁴³ Also, in public institutions, for instance hospitals, we can see people arriving with gift bags and presents, and in most occasions these are not reported.¹⁴⁴

¹⁴⁰ Accession Partnerships of Croatia, Macedonia, Turkey

¹⁴¹ Interview with professor Borce Davitkovski, PhD, Dean of the Faculty of Law, Iustinianus Primus, Ss. Cyril and Methodius, Skopje

¹⁴² Global Integrity Report, Macedonia Scorecard, 2009

¹⁴³ Validation Committee, 24.03.2011

¹⁴⁴ Validation Committee, 24.03.2011

Institution: Public Administration

Category: Governance (Transparency, accountability, integrity)

Standard: Ethics rules and codes of conduct for civil servants; effective implementation¹⁴⁵

Indicator Question: 2.19 Are there restrictions on post-office employment for public servants, e.g. temporary ban to be employed by firms which were supervised by the official when in office?

Score (highlight as appropriate):

No	1
Partially	3
Yes	5

Notes:

According to article 28, Law on Prevention of Corruption, an elected or appointed functionary, as well as other official or responsible person in public enterprise, institution or other legal entity disposing with state capital, who within three years from the date of termination of his/ her function i.e. official duty, shall found a commercial company or shall engage in a profitable activity in the same field in which he/ she has worked, has an obligation within 30 days to inform the State Commission for Preventing Corruption.

Also, article 29 from the same Law, regulates that an elected or appointed functionary, official and responsible person in public enterprise, public institution or in other legal entity disposing with state capital may not, during the term of his/ her mandate or official duty as well as within three years after its termination, acquire on any ground and in any manner rights on stocks in the legal entity over which, he/ she or the body in which he/ she works or has worked, conducts or has conducted supervision, except when such rights have been acquired by means of inheritance.

Still, there are no sanctions in the cases of not abiding by these regulations and there is the need of further legal provisions in order to provide complete regulation of this area.¹⁴⁶ This area is completely vague and needs to be regulated in further details.¹⁴⁷

¹⁴⁵ Accession Partnerships of Croatia, Macedonia, Turkey

¹⁴⁶ Validation Committee, 24.03.2011

¹⁴⁷ Validation Committee, 23.03.2011

Institution: Public Administration**Category:** Governance (Transparency, accountability, integrity)**Standard:** Ethics rules and codes of conduct for civil servants; effective implementation¹⁴⁸**Indicator Question:** 2.20 To what extent are post-employment restrictions effectively enforced in practice?**Score (highlight as appropriate):**

<i>To a very small extent</i>	<i>1</i>
To a small extent	2
To a moderate extent	3
To a large extent	4
To a very large extent	5

Notes:

Post-employment restrictions are not taken into consideration in practice in the Republic of Macedonia. Although, the legal provisions provide employment restrictions, these restrictions are not always effectively implemented in practice.¹⁴⁹ Bearing in mind that Macedonia is a small country, and that a very large number of the population is employed in public bodies, it is very difficult to respect these provisions in practice¹⁵⁰.

These rules are not applied in practice, as no one follows the regulations on reporting the cases on post-employment restrictions to the State Commission for Preventing Corruption.¹⁵¹

¹⁴⁸ Accession Partnerships of Croatia, Macedonia, Turkey

¹⁴⁹ Interview with professor Borce Davitkovski, PhD, Dean of the Faculty of Law, Iustinianus Primus, Ss. Cyril and Methodius, Skopje

¹⁵⁰ Interview with an employee in the Public Administration of RM

¹⁵¹ Validation Committee, 24.03.2011

Institution: Public Administration

Category: Governance (Transparency, accountability, integrity)

Standard: Mechanisms to achieve adoption and implementation of legislation on administrative procedures and legal redress, and relations with citizens

Indicator Question: 2.21 Is there a formal procedure in place to deal with citizens' complaints against public servants and institutions (e.g. ombudsman, internal complaint, web-based mechanism)?

Score (highlight as appropriate):

No	1
Partially	3
Yes	5

Notes:

According to the Law on Processing Petitions and Proposals ¹⁵² any person or legal entity can submit a petition or a proposal to state bodies¹⁵³. The body at which the petition or proposal is addressed has the obligation to receive the petition or the proposal, and to act upon the petition/ proposal in accordance with the law¹⁵⁴. The body that acts upon the petitions and proposals has an obligation to provide an answer to the person or legal entity that has made the submission, including information regarding the justification and the results of the proceeding within 15 days of the date of receipt, or within 30 days from the date of receipt¹⁵⁵.

On the other hand, all bodies responsible for processing petitions and proposals have the obligation to specify an authorised person/s or to form an internal organizational unit in accordance with their act for organization and systematization that will be responsible for processing of petitions and proposals¹⁵⁶.

Finally, if the submitter does not receive an answer on the complaint, that is, the proposal, he/she can address the Ombudsman of the Republic of Macedonia and request protection.¹⁵⁷

¹⁵² Official Gazette of RM, No. 82/ 08

¹⁵³ Article 1 and Article 3, Law on Processing Petitions and Proposals

¹⁵⁴ Article 5, Law on Processing Petitions and Proposals

¹⁵⁵ Article 9, Law on Processing Petitions and Proposals

¹⁵⁶ Article 7, Law on Processing petitions and Proposals

¹⁵⁷ Article 18, Law on Processing Petitions and Proposals

Institution: Public Administration**Category:** Governance (Transparency, accountability, integrity)**Standard:** Mechanisms to achieve adoption and implementation of legislation on administrative procedures and legal redress, and relations with citizens**Indicator Question:** 2.22 To what extent is the complaints procedure effective in investigating complaints against public servants and institutions and imposing sanctions?**Score (highlight as appropriate):**

<i>To a very small extent</i>	<i>1</i>
To a small extent	2
To a moderate extent	3
To a large extent	4
To a very large extent	5

Notes:

The Law on Processing Petitions and Proposals and the institute “Ombudsman” are at the citizens’ disposal, but citizens only react in situations when their personal rights are being affected, especially their personal rights in certain administrative procedures. Having in mind the scope of authorizations of the Ombudsman and the slow manner of performance of the respective institutions, small numbers of sanctions have been imposed and the implementation of these provisions is effective to a small extent¹⁵⁸.

More precisely, if the Ombudsman concludes that a breach has been made regarding citizens’ petitions, he gives suggestions, recommendations and intervenes with other means at his disposal in order to remedy the breaches. However, the Second Instance Commissions of the Government of RM, the Ministry of Finance, the Ministry of Interior etc, are the institutions that in most cases do not act upon the suggestions, recommendations and interventions given by the Ombudsman. Moreover, most breaches were related to delays of procedures regarding citizens’ rights, in particular administrative proceedings. In other words, in over 90% of the cases authorities didn’t respect deadlines for answering citizens’ demands and have abused the rule “silence of the administration”.¹⁵⁹

¹⁵⁸ Interview with professor Borce Davitkovski, PhD, Dean of the Faculty of Law, Iustinianus Primus, Ss. Cyril and Methodius, Skopje, Interview with an employee in the Public Administration of RM

¹⁵⁹ Annual Report of the Ombudsman of RM, 2009
http://www.ombudsman.mk/comp_includes/webdata/documents/Godisen%20izvestaj-2009.pdf

In other words, the effectiveness of the procedures is seriously threatened, as even when the Ombudsman reports violations, the citizens do not benefit and their rights remain unprotected. The same applies to other investigative bodies, as citizens submit complaints against public bodies and institutions, but no one acts upon citizens' complaints.¹⁶⁰

This situation very often causes highly negative consequences on citizens pointing to a completely ineffective system.¹⁶¹

¹⁶⁰ Validation Committee, 24.03.2011

¹⁶¹ Validation Committee, 24.03.2011

Institution: Public Administration**Category:** Public Procurement

Standard: General standards: Implementation of acquis Chapter 5 concerning Public Procurement¹⁶² (award of public contracts, and remedies)¹⁶³ + Public Procurement legislation and strategy, with adequate articulation with the public financial management system, sufficient financial control and parliamentary oversight; as well as sufficient enforcement mechanisms.¹⁶⁴

Indicator Question: 3.1 Do public procurement regulations exist requiring open competitive bidding as a general rule with exceptions regulated in the law and kept to a minimum?

Score (highlight as appropriate):

No	1
Partially	3
Yes	5

Notes:

According to Article 40 from the Law on Public Procurement any economic operator has the right to participate in the contract award procedure, individually or as a member in a group of economic operators¹⁶⁵. The Law also regulates the exceptions of such procedures. Exceptions, for instance, are allowed in a negotiated procedure without prior publication of a contract notice.¹⁶⁶

¹⁶² Contents of Acquis, Chapter 5 Public Procurement, Screening Report on Croatia: http://ec.europa.eu/enlargement/pdf/croatia/screening_reports/screening_report_05_hr_inter_en.pdf

¹⁶³ For comprehensive list of Directives relating to Public Procurement, see: http://ec.europa.eu/internal_market/publicprocurement/legislation_en.htm.

¹⁶⁴ Accession Partnerships of Croatia, Macedonia, Turkey

¹⁶⁵ Official Gazette of RM, No. 136/ 07,130/ 08, 97/ 2010

¹⁶⁶ Article 99, Law on Public Procurement

Institution: Public Administration

Category: Public Procurement

Standard: General standards: Implementation of acquis Chapter 5 concerning Public Procurement¹⁶⁷ (award of public contracts, and remedies)¹⁶⁸ + Public Procurement legislation and strategy, with adequate articulation with the public financial management system, sufficient financial control and parliamentary oversight; as well as sufficient enforcement mechanisms.¹⁶⁹

Indicator Question: 3.2 In practice to what extent is open bidding the general rule for public contracts, with exceptions only where permitted by the law and kept to a minimum?

Note: Seek figures of % of tenders open to public bidding (SIGMA reports)

Score (highlight as appropriate):

To a very small extent	1
To a small extent	2
To a moderate extent	3
To a large extent	4
To a very large extent	5

Notes:

In practice, there are still tenders that have been awarded without an open bidding. In 2010, 865 concessions have been awarded. That is 22.9 million Euros spent in negotiated procedure without prior publication of a notice¹⁷⁰. However, problems cannot be mainly related to the type of procedures used for awarding public contracts, but to the relevancy of the criteria established for awarding specific public contracts¹⁷¹.

In addition, although there are objective criteria on public procurement, the Law in practice cannot be fully implemented, even within the electronic system of public procurement, as the Law does not provide an answer to the question on what will happen if not all public procurements are conducted electronically.¹⁷²

¹⁶⁷ Contents of Acquis, Chapter 5 Public Procurement, Screening Report on Croatia: http://ec.europa.eu/enlargement/pdf/croatia/screening_reports/screening_report_05_hr_internet_en.pdf

¹⁶⁸ For comprehensive list of Directives relating to Public Procurement, see: http://ec.europa.eu/internal_market/publicprocurement/legislation_en.htm.

¹⁶⁹ Accession Partnerships of Croatia, Macedonia, Turkey

¹⁷⁰ SIGMA Assessment Republic of Macedonia, 2010
<http://www.sigmaweb.org/dataoecd/28/40/46401959.pdf>

¹⁷¹ Interview with expert on Public Procurement

¹⁷² Interview with professor Borce Davitkovski, PhD, Dean of the Faculty of Law, Iustinianus Primus, Ss. Cyril and Methodius, Skopje

Also, electronic public procurements can be subject to irregularities, and can lack transparency, and there have been numerous complaints on electronic biddings, such as for the awarding of international drivers licences and the dissemination of housing benefit flats.¹⁷³

¹⁷³ Validation Committee, 24.03.2011

Institution: Public Administration

Category: Public Procurement

Standard: General standards: Implementation of acquis Chapter 5 concerning Public Procurement¹⁷⁴ (award of public contracts, and remedies)¹⁷⁵ + Public Procurement legislation and strategy, with adequate articulation with the public financial management system, sufficient financial control and parliamentary oversight; as well as sufficient enforcement mechanisms.¹⁷⁶

Indicator Question: 3.3 Are there detailed formal rules (weighting evaluation criteria, use of price lists, certified quality standards, awards set by committees) to ensure objectivity in the selection process?

Score (highlight as appropriate):

No	1
<i>Partially</i>	3
Yes	5

Notes:

The Law on Public Procurement in Section IV, provides the rules for preparation of tender documentation. It also has a separate subsection on evaluation of tenders according to which, tenders shall be evaluated only by applying the criteria set in the tender documentation and published in the open invitation¹⁷⁷.

In addition, the Law enumerates the selection criteria for the economic operators to be personal situation, ability to perform professional activity, economic and financial standing, technical or professional ability, quality assurance standards and environmental management standards¹⁷⁸. Furthermore, all the selection criteria are regulated in the Law in separate subsections, and the contracting body has an obligation to publish the criteria for awarding the public contract, which, cannot be amended later on¹⁷⁹.

Still, criteria for granting public procurement contract can be the economically most advantageous tender or the lowest price.¹⁸⁰ This provision leaves space for manipulation. According to the Validation Committee the criterion on “most

¹⁷⁴ Contents of Acquis, Chapter 5 Public Procurement, Screening Report on Croatia: http://ec.europa.eu/enlargement/pdf/croatia/screening_reports/screening_report_05_hr_inter_en.pdf

¹⁷⁵ For comprehensive list of Directives relating to Public Procurement, see: http://ec.europa.eu/internal_market/publicprocurement/legislation_en.htm.

¹⁷⁶ Accession Partnerships of Croatia, Macedonia, Turkey

¹⁷⁷ Article 140

¹⁷⁸ Article 143

¹⁷⁹ Article 159, Law on Public Procurement

¹⁸⁰ Article 160, Law on Public Procurement

advantageous tender” is not clearly defined, and can be interpreted as seen fit. Also, there are not legal provisions clearly defining what constitutes “quality”, thus leaving the possibility for further manipulations, and the need for legal regulations in this sphere.¹⁸¹

¹⁸¹ Validation Committee, 24.03.2011

Institution: Public Administration

Category: Public Procurement

Standard: General standards: Implementation of acquis Chapter 5 concerning Public Procurement¹⁸² (award of public contracts, and remedies)¹⁸³ + Public Procurement legislation and strategy, with adequate articulation with the public financial management system, sufficient financial control and parliamentary oversight; as well as sufficient enforcement mechanisms.¹⁸⁴

Indicator Question: 3.4 To what extent are awards of public contracts based on objective criteria in practice?

Score (highlight as appropriate):

To a very small extent	1
To a small extent	2
To a moderate extent	3
To a large extent	4
To a very large extent	5

Notes:

The system of public procurement produces very serious problems in the Republic of Macedonia, as very high amount of the Budget of RM is being spent on fulfilling the needs of the state; this is done through the system of public procurements. Within the system of public procurement, the connection between political parties and their supporters can be clearly spotted; political parties do not provide information regarding their assets used for election campaigns (more precisely, how much money and from which sources this money has been received). After the elections, political parties that have won the elections, in practice cooperate with several companies during their entire mandate, thus providing benefits for the investors in their campaigns¹⁸⁵.

Also, broad discretionary rights of contracting authorities are applied in the selection of criteria setting up inadequate and manipulation-prone criteria. Thus, allocation of disproportionately high number of points leaves space for possible

¹⁸² Contents of Acquis, Chapter 5 Public Procurement, Screening Report on Croatia: http://ec.europa.eu/enlargement/pdf/croatia/screening_reports/screening_report_05_hr_inter_en.pdf

¹⁸³ For comprehensive list of Directives relating to Public Procurement, see: http://ec.europa.eu/internal_market/publicprocurement/legislation_en.htm.

¹⁸⁴ Accession Partnerships of Croatia, Macedonia, Turkey

¹⁸⁵ Interview with professor Borce Davitkovski, PhD, Dean of the Faculty of Law, Iustinianus Primus, Ss. Cyril and Methodius, Skopje

subjective assessment and malpractice.¹⁸⁶ In other words, in order for both legal requirements to be respected, and companies that cooperate with political parties to be selected for awards, the criteria are formulated in accordance with the abilities of these companies. Thus, criteria that do not correspond to the purpose of the public contract are being adjusted to fit the profiles of certain companies.¹⁸⁷

¹⁸⁶ CCC, Annual Report on Monitoring the Implementation of Public Procurements, 2009
<http://soros.org.mk/dokumenti/ang-za-web-izvestaj-2009.pdf>

¹⁸⁷ Interview with expert on Public Procurement

Institution: Public Administration

Category: Public Procurement

Standard: Regulation and monitoring by an efficient independent public procurement oversight body

Indicator Question: 3.5 Is there an independent regulatory & oversight body in place to monitor public procurement as well as to detect misconduct and apply sanctions accordingly?

Score (highlight as appropriate):

No	1
<i>Partially</i>	3
Yes	5

Notes:

The tasks related to the development of the public procurement system, as well as the provision of rationality, efficiency and transparency in the procurement processes is being carried out by the Public Procurement Bureau as a public administration body within the Ministry of Finance. The Bureau has the capacity of a legal entity.¹⁸⁸

The Bureau monitors and analyzes the enforcement of the laws and other public procurement regulations, the functioning of the public procurement system, and initiates modifications for improving the public procurement system¹⁸⁹. It also informs the contracting bodies, and if necessary, the competent authorities concerned upon detecting irregularities from the received notices¹⁹⁰.

Still, the Bureau does not have the authority to apply sanctions, thus the partially score with regard to this indicator question.

¹⁸⁸ Article 12

¹⁸⁹ Article 14, Law on Public Procurement

¹⁹⁰ Article 14, Law on Public Procurement

Institution: Public Administration**Category:** Public Procurement**Standard:** Regulation and monitoring by an efficient independent public procurement oversight body**Indicator Question:** 3.6 To what extent is this regulatory & oversight body effective in monitoring procurement processes, investigating complaints and imposing sanctions?**Score (highlight as appropriate):**

<i>To a very small extent</i>	<i>1</i>
To a small extent	2
To a moderate extent	3
To a large extent	4
To a very large extent	5

Notes:

As mentioned above, the Public Procurement Bureau does not have the authority to investigate complaints and impose sanctions, and there is no other separate regulatory & oversight body responsible for performing these actions.

Institution: Public Administration**Category:** Public Procurement**Standard:** Effective appeals mechanism**Indicator Question:** 3.7 Does the law provide for a procedure to request a review of and appeal against a procurement decision?**Score (highlight as appropriate):**

No	1
Partially	3
Yes	5

Notes:

Any economic operator having legal interest in the procedure for granting public procurement contract, and which has suffered or could suffer damage by an alleged infringement of the provisions of this Law, can initiate legal protection against the decisions, actions and failures to undertake actions by the contracting body during the procedure for granting public procurement contract¹⁹¹. The ombudsman can also initiate legal protection, when he/she protects the interests of the Republic of Macedonia or the public interest¹⁹².

The State Appeals Commission on Public Procurement is an independent legal entity competent to resolve appeals in the procedure for granting public procurement contracts prescribed by the Law on Public Procurement. The State Commission decides on the legality of procedures, actions and failures to undertake actions, as well as the formal decisions made in the procedures for granting public procurement contracts¹⁹³.

The issue of judicial protection regarding the procurement decisions that is the initiation of an administrative dispute on the decision of the State Appeals Commission on Public Procurement has been raised within the Validation Committee. It was noted that this action does not suspend the previous decision, which means that if a different decision is reached in the administrative procedure, and if the procurement has already taken place, there are no provisions regulating further actions in such cases.

¹⁹¹ Article 207, Law on Public Procurement

¹⁹² Article 207, Law on Public Procurement

¹⁹³ Articles 200-201, Law on Public Procurement

Institution: Public Administration**Category:** Public Procurement**Standard:** Effective appeals mechanism**Indicator Question:** 3.8 To what extent are these review and appeal mechanisms effective in practice?**Score (highlight as appropriate):**

To a very small extent	1
To a small extent	2
To a moderate extent	3
To a large extent	4
To a very large extent	5

Notes:

De jure there is a separate, independent body, but de facto political influences are present and affect the effectiveness of the body.¹⁹⁴

With the last amendments on the Law on Public Procurements a State Appeals Commission on Public Procurements has been established. Besides the fact that the Commission is being formed by the Assembly, the members of the Commission are members of ruling political parties¹⁹⁵. Therefore, the Commission enables successful complaints mostly in the cases where companies related to the ruling party have not been selected for a specific open bidding. For instance, there has been a case of a public procurement of great value where two companies competed for the award, the Second Instance Commission decided that one of the companies does not fulfil the criteria of the bidding, thus indirectly selecting the second company, which suggests political involvement in the public procurement system.¹⁹⁶

On the other hand, the State Appeals Commission (SAC) in 2009 received 1,044 cases (960 appeals, 34 requests for continuation of the procedures, 34 requests for cancelation), of which 960 were resolved¹⁹⁷. In this sense, the Commission acts upon the complaints, and resolves cases. However, acting upon these complaints does not by default mean that the mechanism is effective, as in practice most of the appeals are being refused by the State Appeals Commission on Public

¹⁹⁴ Interview with professor Borce Davitkovski, PhD, Dean of the Faculty of Law, Iustinianus Primus, Ss. Cyril and Methodius, Skopje

¹⁹⁵ Interview with an expert on Public Procurement

¹⁹⁶ Interview with professor Borce Davitkovski, PhD, Dean of the Faculty of Law, Iustinianus Primus, Ss. Cyril and Methodius, Skopje

¹⁹⁷ SIGMA Assessment Republic of Macedonia, 2010
<http://www.sigmaxweb.org/dataoecd/28/40/46401959.pdf>

Procurement; therefore the implementation of this mechanism is not effective in practice.¹⁹⁸

Also, there is lack of data regarding the number of administrative proceedings against decisions of the State Appeals Commission submitted at the Administrative Court of RM, as well as data on the decisions regarding these proceedings. What is more the decisions of the Administrative Court cannot be always implemented in practice.¹⁹⁹

Finally, the implementation of sanctions is not applied in practice. The rules for compensation of damage are not functioning and even though there is criminal responsibility for the person that has not properly implemented a public procurement, these provisions are not executed in practice.²⁰⁰

¹⁹⁸ Validation Committee, 24.03.2011

¹⁹⁹ Validation Committee, 24.03.2011

²⁰⁰ Validation Committee, 24.03.2011

Institution: Public Administration**Category:** Public Procurement**Standard:** Access to information & civil society oversight**Indicator Question:** 3.9 Are procurement plans and notices required to be publicly advertised and made available by law?**Score (highlight as appropriate):**

No	1
<i>Partially</i>	3
Yes	5

Notes:

The contracting body shall provide transparency when granting public procurement contracts, organizing open conceptual solution contest by publishing prior indicative notice, announcements for granting public procurement contract, and/or notice on annulment of the procedure for granting public procurement contract in accordance with the Law on Public Procurement²⁰¹.

The invitation for open procedure, restricted procedure, competitive dialogue, negotiated procedure with prior publication of an open invitation and conceptual solution contest shall be simultaneously sent for posting on the website of the Bureau and for publication in the “Official Gazette of the Republic of Macedonia”. In case the open invitation is not to be sent at the same time, time periods start running from the day the open invitation was sent to the “Official Gazette of the Republic of Macedonia”.

Procurement plans, on the other hand, according to the Law on Public Procurement²⁰², do not have to be publicly available; therefore the score “partially” has been selected.

²⁰¹ Article 51, Law on Public Procurement

²⁰² Article 26

Institution: Public Administration

Category: Public Procurement

Standard: Access to information & civil society oversight

Indicator Question: 3.10 To what extent are procurement plans and notices made publicly available in practice?

Score (highlight as appropriate):

To a very small extent	1
To a small extent	2
To a moderate extent	3
To a large extent	4
To a very large extent	5

Notes:

Notices are published in the Official Gazette of RM, whereas procurement plans are not published, as there is no legal obligation to do so.²⁰³

According to professor Davitkovski, when it comes to public procurement, the planning of procurements is one of the most important phases. In the planning procedure, state bodies already predict and locate potential economic operators and pin point the main conditions for awarding the tender. Thus, detailed planning is essential in preventing undue influences in the public procurement system. , According to the law, procurement plan and notices have to be delivered to the Public Procurement Bureau, and the Bureau publishes plans and notices on its webpage²⁰⁴. However, most irregularities determined by the State Audit Office concern actions that precede or follow the competition of the procedure on public procurement contract awarding i.e., the state of procurement planning and realization.²⁰⁵

²⁰³ Interview with on expert on Public Procurement

²⁰⁴ Interview with professor Borce Davitkovski, PhD, Dean of the Faculty of Law, Iustinianus Primus, Ss. Cyril and Methodius, Skopje

²⁰⁵ Center for Civil Communications, Annual Report on Monitoring the Implementation of Public Procurements, 2009 <http://soros.org.mk/dokumenti/ang-za-web-izvestaj-2009.pdf>

Institution: Public Administration**Category:** Public Procurement**Standard:** Access to information & civil society oversight**Indicator Question:** 3.11 Are procurement award results (including reasons that substantiate them) required to be published by law?**Note: Score of 3 for awards must be made public; score of 5 awards plus reasons must be made public.****Score (highlight as appropriate):**

No	1
Partially	3
Yes	5

Notes:

In an open procedure, restricted procedure, negotiated procedure and competitive dialogue, the commission draws up written procedure outcome report. Depending on the procedure, outcome reports contain in particular the name and address of the contracting body, subject-matter and estimated value of the public procurement contract or the framework agreement, the names of selected candidates or tenderers and the reasons for their selection, the names of candidates or tenderers whose requests to participate or tenders are rejected and the reasons for their rejection, the reasons for the rejection of tenders with unusual low price and the name of the tenderer or the tenderers with the winning tender and the reasons and the manner of selection²⁰⁶.

Also, the contracting body submits a note for granted contract to the Bureau for posting on its website.²⁰⁷

²⁰⁶ Article 142, Law on Public Procurement

²⁰⁷ Article 55, Law on Public Procurement

Institution: Public Administration

Category: Public Procurement

Standard: Access to information & civil society oversight

Indicator Question: 3.12 To what extent are procurement award results (including reasons that substantiate them) published in practice?

Note: Score of 3 for awards made public; score of 5 awards plus reasons made public.

Score (highlight as appropriate):

To a very small extent	1
To a small extent	2
To a moderate extent	3
To a large extent	4
To a very large extent	5

Notes:

Formally, the Law is respected and procurement award results are being published in practice since if a formal mistake is made it is very likely that the award will be appealed. However, the core of the problem lies in the preparation and content of the plans and in the formulation of the criteria in the first place.²⁰⁸ The reasons substantiating the procurement award are not given in details and in most cases only a short note that the economically most advantageous tender has been chosen is being provided.²⁰⁹

In addition, according to the Validation committee, the annexes of public contracts are rarely announced in practice, and most of the corruption related problems are related to these annexes. In certain cases annexes are trice the value of the initial public procurement contract. This is the case with the project “Skopje 2014” where annexes have been used for unpredicted work on the project.²¹⁰

²⁰⁸ Interview with professor Borce Davitkovski, PhD, Dean of the Faculty of Law, Iustinianus Primus, Ss. Cyril and Methodius, Skopje

²⁰⁹ Interview with an expert on Public Procurement

²¹⁰ Validation Committee, 24.03.2011

Institution: Public Administration**Category:** Public Procurement**Standard:** Adequate investigation and criminal prosecution of procurement-related offences²¹¹ + Sufficient follow-up to irregularities**Indicator Question:** 3.13 Are there special measures/sanctions for corruption in public procurement, e.g. blacklisting and debarment of companies with a corrupt record?**Score (highlight as appropriate):**

No	1
Partially	3
Yes	5

Notes:

The contracting body shall exclude any economic operator from the procedure for granting public procurement contract, if it has any information that the economic operator was announced, in the last five years, of participating in criminal organization, corruption, fraud or money laundering.²¹² Also, according to Article 147²¹³, the economic operator should, among other, submit a statement that it has not been announced, in the last 5 years, for participation in criminal organization, corruption, fraud or money laundering for the purpose of proving its personal situation.

²¹¹ European Partnerships (potential candidate countries)

²¹² Article 146, Law on Public Procurement

²¹³ Law on Public Procurement

Institution: Public Administration

Category: Public Procurement

Standard: Adequate investigation and criminal prosecution of procurement-related offences²¹⁴ + Sufficient follow-up to irregularities

Indicator Question: 3.14 To what extent are these sanctions against companies enforced in practice?

Score (highlight as appropriate):

<i>To a very small extent</i>	<i>1</i>
To a small extent	2
To a moderate extent	3
To a large extent	4
To a very large extent	5

Notes:

According to Prof. Davidkovski, so far, no one has been held responsible or has been sanctioned for corrupt activities in procurements. In many cases, tenders have been announced, but then they have been withdrawn in order to change criteria, so they would fit the profile of the company that is favoured to obtain the awards. No one has been held responsible for such actions²¹⁵.

However, when it comes to presenting the abovementioned statement²¹⁶, there are no exceptions, and economic operators need to provide such statements in order to be considered for the award of public contract.²¹⁷ Still, this does not actually prove that sanctions are being implemented, and as sanctions are not present in practice, these provisions are not implemented at all.²¹⁸ If we examine statistics it can be seen that there are no companies with corruptive records registered in the Central Register of RM. Nevertheless, problems with corruption, public procurements, frauds, and other manipulations persist without being punished.

²¹⁴ European Partnerships (potential candidate countries, links below)

²¹⁵ Interview with professor Borce Davitkovski, PhD, Dean of the Faculty of Law, Iustinianus Primus, Ss. Cyril and Methodius, Skopje

²¹⁶ Article 146, 147, Law on Public Procurement

²¹⁷ Interview with an expert on Public Procurement

²¹⁸ Validation Committee, 24.03.2011

Institution: Public Administration**Category:** Public Procurement**Standard:** Adequate investigation and criminal prosecution of procurement-related offences²¹⁹ + Sufficient follow-up to irregularities**Indicator Question:** 3.15 Are there administrative sanctions (e.g. prohibition from holding public office) for criminal offences by public servants in connection with public procurement?**Score (highlight as appropriate):**

No	1
Partially	3
Yes	5

Notes:

An official person, who by using his official position or authorization, by exceeding the limits of his official authorization, or by not performing his official duty, acquires for himself or for another some kind of benefit, or causes damage to another, shall be punished with imprisonment of six months to three years²²⁰.

If the crime committed is related to public procurements, or damages the Budget of RM, or other public assets the perpetrator will be punished with imprisonment of at least four years.²²¹

²¹⁹ European Partnerships (potential candidate countries, links below)

²²⁰ Article 353 (1), Criminal Code

²²¹ Article 353 (5), Criminal Code

Institution: Public Administration

Category: Public Procurement

Standard: Adequate investigation and criminal prosecution of procurement-related offences²²² + Sufficient follow-up to irregularities

Indicator Question: 3.16 To what extent are these sanctions against officials enforced in practice?

Score (highlight as appropriate):

<i>To a very small extent</i>	<i>1</i>
To a small extent	2
To a moderate extent	3
To a large extent	4
To a very large extent	5

Notes:

There are no available statistical data in order to score the indicator question. According to the Criminal Code officials can be held responsible and there are sanctions at disposal, but the implementation of these provisions and the execution of sanctions in practice are very difficult. Public servants work under the instruction of higher level officials, thus practice there are no procedures or sanctions that have been executed regarding their actions of procurements. This aspect of public procurement is completely vague²²³.

²²² European Partnerships (potential candidate countries, links below)

²²³ Interview with professor Borce Davitkovski, PhD, Dean of the Faculty of Law, Iustinianus Primus, Ss. Cyril and Methodius, Skopje

ANNEX 3

Institution: Legislature

Institution: Legislature**Category:** Capacity**Standard:** Provision of adequate resources to parliament to function effectively¹**Indicator Question:** L1.1 Are there legal provisions in place that provide the legislature with adequate resources (research information and other facilities) to effectively carry out its duties?

NOTE: Adequate = no major gaps

Score (highlight as appropriate):

No	1
Partially	3
Yes	5

Notes:

According to Article 9 from the Law on Assembly of RM² the Staff of the Assembly shall provide expert, administrative, technical and other services to the MPs for performing their parliamentary function. According to Article 10 from this Law, MPs shall have at their disposal information and documentation materials, as well as communication links at the Assembly during their parliamentary function.

According to Article 34 from the Rules of Procedure for the Assembly of RM, all official publications of the Assembly and the information and documentary materials submitted to the Assembly shall be delivered to the Members of the Assembly in a written or electronic format, with a view to providing them with thorough information. Also, a Member of the Assembly shall be entitled to request and receive information from the Secretary General of the Assembly on issues that are important for the exercise of his/her office, and shall be entitled to request and receive information and expert assistance from the Staff of the Assembly on issues related to the work of the Assembly and its working bodies.

MPs are entitled to use the library and the documentation of the Assembly in order to perform their rights and obligations.

Finally, MPs have the right to use the offices in the Assembly which are at their disposal for work and meetings in accordance with the Act on Internal Order of the Assembly.³

¹ Accession Partnerships of Croatia, Macedonia, Turkey

² Official Gazette of RM, No. 104/ 2009

³ Article 13, Law on the Assembly of RM and Article 35, Rules of Procedures of the Assembly of RM 91/ 2008, 119/ 2010)

Institution: Legislature

Category: Capacity

Standard: Provision of adequate resources to parliament to function effectively⁴

Indicator Question: L1.2 In practice, to what extent is the legislature's budget considered adequate to carry out its activities?

Score (highlight as appropriate):

To a very small extent	1
To a small extent	2
To a moderate extent	3
To a large extent	4
To a very large extent	5

Notes:

In practice, there is a high level of domination of the executive power over the Assembly in the creation of the Budget. The executive power determines and disposes the financial assets⁵. At present, the Assembly does not have or it has a very limited saying and influence in the preparation and dissemination of the Budget assets, and the Government determines the financial assets that are to be allocated to the Assembly.⁶ The Budget of the Assembly cannot fulfil the needs of the MPs. More precisely, the Budget is not sufficient in providing the MPs with appropriate conditions for successful performance of their tasks, such as initiation of legislative initiatives or sufficient information for making independent decisions. Currently, MPs do not have adequate support for carrying out their activities, and lack secretarial staff and offices for performing their functions.⁷

⁴ Accession Partnerships of Croatia, Macedonia, Turkey

⁵ Interview with Professor Zoran Shapuric, PhD

⁶ Validation Committee, 22.03.2011

⁷ Interview with Stojan Andov, MP

Institution: Legislature**Category:** Capacity**Standard:** Legislature's control of budget, agenda, staff**Indicator Question:** L 1.3 Is the legislature entitled by law to propose, allocate and manage its own budget?**Score (highlight as appropriate):**

No	1
Partially	3
Yes	5

Notes:

There is a Budgetary Council of the Assembly of RM within the Assembly with competences to determine the strategic priorities of the Assembly for the following year and to include these priorities in the Budget of RM through proposing special programmes and sub-programmes, as well as to provide guidelines and directions for the preparation of a draft budgetary request and guidelines for the needs for the performance of the Assembly⁸. The Budgetary Council, in cooperation with the Ministry of Finance, also proposes to the Government of the Republic of Macedonia the maximum amount of finances for the Assembly for the following three fiscal years; monitors the financial expenditures of the Assembly within the National Budget, and proposes reallocations of the funds within the finances approved by the Budget of the Republic of Macedonia.⁹

Also, the Budgetary Council conducts regular consultations and adjustments for the preparation of the Budget of RM regarding the financial projection of the necessary funds for the Assembly with the Ministry of Finance and the Government of RM, and takes into consideration the financial needs of the Assembly.¹⁰

Finally, the Assembly disposes of and procures assets that are essential for fulfilling its competencies. This is regulated by the Budgetary Council of the Assembly.¹¹

⁸ Article 27, Law on the Assembly of RM

⁹ Article 27, Law on the Assembly of RM

¹⁰ Article 28, Law on the Assembly of RM

¹¹ Article 25, Law on the Assembly of RM

Institution: Legislature

Category: Capacity

Standard: Legislature's control of budget, agenda, staff

Indicator Question: L 1.4 In practice does the legislature propose, allocate and manage its own budget?

Score (highlight as appropriate):

<i>To a very small extent</i>	1
To a small extent	2
To a moderate extent	3
To a large extent	4
To a very large extent	5

Notes:

The Assembly prepares a budgetary proposal and submits it to the Ministry of Finance. Following this, the Ministry plans and prepares the proposal of the Budget. The needs of the Assembly are not considered in these preparations, and the final proposal differs largely from the initial proposal of the Assembly, as the main decision lies within the Minister.¹² The circular of the Budget for the next year is prepared in June by the Government and the Ministry of Finance. On most of the Budget points the planning finishes here. The Assembly might add few amendments, which are insignificant in the total planning of the Budget. Thus, the Assembly is not involved in the Budget planning phases and is put into a *fait accompli* situation of no choice.¹³

With regard to the management of the Budget, the Assembly is able to manage its budget to a moderate extent due to the frequent budget rebalances initiated by the Government, and not by the Assembly.¹⁴

¹² Interview with Stojan Andov, MP

¹³ Interview with Professor Zoran Shapuric, PhD

¹⁴ Interview with Professor Zoran Shapuric, PhD

Institution: Legislature**Category:** Capacity**Standard:** Legislature's control of budget, agenda, staff**Indicator Question:** L 1.5 Are there legal provisions which allow the legislature to recruit and retain professional staff?**Score (highlight as appropriate):**

No	1
Partially	3
Yes	5

Notes:

The Staff of the Assembly performs expert and other affairs for the needs of the Assembly, for the working bodies and for the MPs¹⁵. The Staff of the Assembly is managed by the Secretary General who is elected by the Assembly¹⁶.

On the other hand, according to Article 3 of the Law on Civil Servants¹⁷, employees in state services that perform professional, normative-legal, executive, administrative, and supervisory functions, as well as planning, financial, accounting, IT tasks and other activities within the working scope of the state service are considered to be civil servants; whereas the central and local bodies, as well as other state bodies established in accordance with the Constitution and laws are considered as state services¹⁸.

Civil Servants are selected in a procedure conducted by a Selection Commission formed by the Agency for Administration of RM. The Selection Commission consists of a president and two members, all civil servants. The president and one of the members of the Commission are employees in the respective body in which the civil servant will be employed, and the second member is employed in the Agency for Administration of RM¹⁹. The Selection Commission prepares a rank list of the top three candidates on the basis of the criteria laid down in the Law²⁰, and from that list, the head official or the Secretary General (as it is the case with the Assembly) has to select the candidate for employment.²¹

¹⁵ Article 40, Law on the Assembly of RM

¹⁶ Article 41, Law on the Assembly of RM

¹⁷ Official Gazette of RM, No. 59/ 2000, 112/ 2000, 34/ 2001, 103/ 2001, 43/ 2002, 98/ 2002, 17/ 2003, 40/ 2003, 85/ 2003, 17/ 2004, 19/ 2004, 69/ 2004, 81/ 2005, 61/ 2006, 36/ 2007, 161/ 2008, 6/ 2009, 114/ 2009, 35/ 2010, 167/ 2010

¹⁸ Article 3, Law on Civil Servants

¹⁹ Article 15, Law on Civil Servants

²⁰ Article 16, Law on Civil Servants

²¹ Article 17-a, Law on Civil Servants

Institution: Legislature

Category: Capacity

Standard: Legislature's control of budget, agenda, staff

Indicator Question: L 1.6 To what extent is the legislature able in practice to recruit and retain professional staff?

Score (highlight as appropriate):

To a very small extent	1
To a small extent	2
<i>To a moderate extent</i>	3
To a large extent	4
To a very large extent	5

Notes:

The Staff of the Assembly is an administrative body and is supposed to be independently selected. However, political parties influence the selection of the staff and political criteria are present in the selection of the employees in the Staff of the Assembly to a moderate extent²². The merit system is not implemented when employing staff in the Assembly and there have been examples where employed personnel have not fulfilled the criteria for employment.²³

²² Interview with Professor Zoran Shapuric, PhD, Interview with Stojan Andov, MP

²³ Validation Committee, 22.03.2011

Institution: Legislature**Category:** Capacity**Standard:** Legislature's control of budget, agenda, staff**Indicator Question:** L 1.7 Are there legal provisions which allow the legislature to control its own agenda?**Score (highlight as appropriate):**

No	1
Partially	3
Yes	5

Notes:

The Agenda of the Assembly is regulated by Chapter V of the Rules of Procedure of the Assembly - named Assembly Sessions.

According to Article 69²⁴, the President of the Assembly proposes the Agenda for the sessions, and the Assembly decides thereon at the beginning of the session. The decision for convening a parliamentary session, together with the draft Agenda and the documents on the issues in the draft-Agenda are delivered to the Members of the Assembly no later than ten days prior to the parliamentary session²⁵.

A Member of the Assembly or the Government, in cases of urgent and pressing matters, may propose inclusion of items in the Agenda until the decision is made on the Agenda for the session. A Member of the Assembly and the Government may propose postponement or withdrawal of items in the agenda and give explanations²⁶ after the convening of the session.

Before the adoption of the agenda, the President of the Assembly shall inform the Members of the Assembly on any proposals for inclusion, postponement or withdrawal of items in the Agenda²⁷ and the Assembly shall decide without a debate on every proposal for changes or supplements to the draft agenda and on the overall draft agenda for the session.²⁸

²⁴ Rules of Procedures of the Assembly of RM

²⁵ Article 68, Rules of Procedures of the Assembly of RM

²⁶ Article 70, Rules of Procedures of the Assembly of RM

²⁷ Article 76, Rules of Procedures of the Assembly of RM

²⁸ Article 77, Rules of Procedures of the Assembly of RM

Institution: Legislature**Category:** Capacity**Standard:** Legislature's control of budget, agenda, staff**Indicator Question:** L 1.8 To what extent does the legislature control its own agenda in practice?**Score (highlight as appropriate):**

To a very small extent	1
To a small extent	2
To a moderate extent	3
To a large extent	4
To a very large extent	5

Notes:

The highest percentage of the Laws that are put on the Assembly's agenda are proposed by the Government. This makes the agenda of the Assembly to be composed in the most of the cases by Governmental proposals, and therefore the Assembly debates and votes on draft laws proposed by the Government²⁹. Amendments of drafts laws, placed on the agenda by the Assembly, are very few and most of the Government's proposals are adopted by the Assembly in practice. However, when it comes to other points on the agenda, aside from the draft laws, it can be said that the legislature controls its own agenda to a large extent³⁰.

On the other hand, it has to be emphasised that the level of the legislature's control of its agenda results from the organization of the political system in the country. Therefore, not having control over the agenda does not necessarily indicate negative consequences for the Assembly's capacity.³¹

²⁹ Interview with Stojan Andov, MP, Interview with Professor Zoran Shapuric, PhD

³⁰ Interview with Professor Zoran Shapuric, PhD

³¹ Validation Committee, 22.03.2011

Optional Indicator : NCs to check whether this is an important issue to cover

Institution: Legislature

Category: Capacity

Standard: Legislature's control of budget, agenda, staff

Indicator Question: L 1.9 Are there legal provisions which ensure that the legislature's professional staff report only to the legislature?

Score (highlight as appropriate):

No	1
Partially	3
Yes	5

Notes:

As mentioned above, the Secretary General that manages the Staff of the Assembly has the right and duty to provide unified functioning of the Staff; establishment and termination of employment, as well realization of the rights, obligations and responsibilities of employment of Staff employees³².

According to the Rules of Procedure of the Assembly of RM, the Secretary General organizes and coordinates the work of the Staff of the Assembly and adopts guidelines, instructions and other acts that regulate the work of the Staff³³. The Secretary General and his/her Deputy are responsible to the Assembly for the work of the Staff of the Assembly³⁴.

According to the Rules for Internal Organization of the Staff of the Assembly, the Secretary General has the right and duty to provide unified functioning of the Staff; the establishment and termination of employment, as well in the realization of the rights, obligations and responsibilities of employment of Staff employees³⁵. Moreover, when employing staff in the Staff of the Assembly, the Secretary General ensures equitable and fair representation at all levels, as well as ensures respect of the criteria of professionalism and competence.³⁶

³² Article 26 and Article 29, Rules for Internal Organization of the Staff of the Assembly of RM, No. 01_2160/2_14.05.2010

³³ Article 64

³⁴ Article 66, Rules of Procedure of the Assembly of RM

³⁵ Article 29, Rules for Internal Organization of the Staff of the Assembly of RM, 14.05.2010

³⁶ Article 41, Law on the Assembly of RM

Optional Indicator

Institution: Legislature

Category: Capacity**Standard:** Legislature's control of budget, agenda, staff**Indicator Question:** L 1.10 To what extent do the legislature's professional staff report to the legislature only in practice?**Score (highlight as appropriate):**

To a very small extent	1
To a small extent	2
To a moderate extent	3
To a large extent	4
To a very large extent	5

Notes:

The professional staff of the Assembly reports only to the legislature to a large extent and there is no significant influence in the report mechanism by other powers.³⁷

³⁷ Interview with Professor Zoran Shapuric, PhD, Interview with Stojan Andov, MP

Institution: Legislature**Category:** Governance (Transparency, Accountability, Integrity)**Standard:** Public access to work of legislature**Indicator Question:** L 2.1 Are legislative sessions required by law to be open to the public and to the media?**Score (highlight as appropriate):**

No	1
Partially	3
Yes	5

Notes:

According to the Constitution of RM, the meetings of the Assembly are open to the public. However, the Assembly may decide to work without the presence of the public by a two-thirds majority vote of the total number of Representatives.³⁸

³⁸ Article 70, Constitution of RM, Official Gazette of RM, No. 52/ 1992, Article 2, Rules and Procedures of the Assembly of RM

Institution: Legislature**Category:** Governance (Transparency, Accountability, Integrity)**Standard:** Public access to work of legislature**Indicator Question:** L 2.2 To what extent are legislative sessions generally open to, and can accommodate, the public and the media?**Score (highlight as appropriate):**

To a very small extent	1
To a small extent	2
To a moderate extent	3
To a large extent	4
<i>To a very large extent</i>	5

Notes:

In practice, legislative sessions are generally open to, and can accommodate, the public and the media to a very large extent. Decisions of the Assembly to work without the presence of the public and the media are a very rare occurrence. So far, there has been only one case when it has been decided that the Assembly should have a session without the presence of the public.³⁹ Also, the galleries in the Assembly have the capacity to accommodate the public and the media.⁴⁰

³⁹ Interview with Stojan Andov, MP

⁴⁰ Interview with Professor Zoran Shapuric, PhD

Institution: Legislature**Category:** Governance (Transparency, Accountability, Integrity)**Standard:** Public access to work of legislature**Indicator Question:** L2.3 Are committee meetings required by law to be open to the public and to the media?**Score (highlight as appropriate):**

No	1
Partially	3
Yes	5

Notes:

The Assembly establishes permanent and temporary working bodies⁴¹. The Rules and Procedures of the Assembly dedicate Chapter XIV to the Publicity of the Work of the Assembly. The Chapter contains provisions that allow citizens and representatives of the media to attend the sessions of the working bodies of the Assembly in accordance with the internal order of the Assembly.⁴²

Moreover, media representatives shall have at their disposal the acts discussed and adopted by the Assembly; the information and documents regarding the issues debated at the sessions of the Assembly and the working bodies, and reports on the activities of the working bodies and minutes from the sessions, unless the Assembly i.e. a working body decides to examine a particular issue without the presence of media representatives⁴³.

⁴¹ Article 117, Rules and Procedures of the Assembly

⁴² Article 226- 227, Rules and Procedures of the Assembly

⁴³ Article 228, Rules and Procedures of the Assembly

Institution: Legislature

Category: Governance (Transparency, Accountability, Integrity)

Standard: Public access to work of legislature

Indicator Question: L 2.4 To what extent are committee meetings generally open to, and can accommodate, the public and the media?

Score (highlight as appropriate):

To a very small extent	1
To a small extent	2
To a moderate extent	3
To a large extent	4
<i>To a very large extent</i>	5

Notes:

In practice, committee meetings are generally open to, and can accommodate, the public and the media to a very large extent. The public and the media can be accommodated in the galleries of the Assembly if interested in attending the meetings of committees.⁴⁴

⁴⁴ Interview with Professor Zoran Shapuric, PhD, Interview with Stojan Andov, MP

Institution: Legislature**Category:** Governance (Transparency, Accountability, Integrity)**Standard:** Public access to work of legislature**Indicator Question:** L 2.5 Is the legislature required to publish reports about its activities, including draft bills?**Score (highlight as appropriate):**

No	1
<i>Partially</i>	3
Yes	5

Notes:

In the Law on the Assembly there is an entire chapter on the Parliamentary TV Channel⁴⁵ with the aim to inform and educate the citizens about the political life through parliamentary, educational and civic programmes. The Assembly has a responsibility to broadcast the programme service intended for broadcasting the activities of the Assembly⁴⁶.

Moreover, the Assembly and the competent working bodies may decide that a law proposal or proposal of another general act debated in the Assembly that is of special interest to the public, should be published in the press or in a special edition⁴⁷. Furthermore, the Assembly has its own Web site that contains general information on the Assembly, its working bodies, the President of the Assembly, Members, parliamentary groups, delegations of the Assembly, adopted laws, sessions and other activities of the Assembly, the Staff of the Assembly and other data related to the organisation and work of the Assembly.⁴⁸ In addition, according to Article 234⁴⁹, the Assembly is obliged to issue a bulletin and other publications that are required to be uploaded on the Web site of the Assembly of RM for the purpose of providing information on its work,

However, it has to be noted that Article 230 of the Rules and Procedures of the Assembly, does not, as a general rule, require for draft laws to be published and it only gives the possibility for the Assembly to decide if a certain draft law is to be published based on the special public interest of the respective draft law. Therefore, bearing in mind the non- compulsory character of Article 230, it can be concluded that this issue is only partially regulated with legal provisions.

⁴⁵ Chapter IX, Parliamentary TV Channel

⁴⁶ Article 32, Law on Assembly

⁴⁷ Article 230, Rules and Procedures of the Assembly of RM

⁴⁸ Article 233, Rules and Procedures of the Assembly of RM

⁴⁹ Rules and Procedures of the Assembly of RM

Institution: Legislature**Category:** Governance (Transparency, Accountability, Integrity)**Standard:** Public access to work of legislature**Indicator Question:** L 2.6 To what extent does the legislature publish reports about its activities, including draft bills in practice?**Score (highlight as appropriate):**

To a very small extent	1
To a small extent	2
To a moderate extent	3
To a large extent	4
To a very large extent	5

Notes:

The Assembly has its own website on which it publishes its reports and activities.⁵⁰ The publishing of the activities and reports is not completely systematized and it would be even better if certain reports and activities are published by other means as well. However, in general, reports about its activities are published to a large extent in practice⁵¹. Draft bills are reported in a separate section on the website of the Assembly in a timely fashion and they are available for download.⁵²

⁵⁰ Interview with Stojan Andov, MP

⁵¹ Interview with Professor Zoran Shapuric, PhD

⁵² <http://sobranie.mk/ext/materials.aspx>

Institution: Legislature**Category:** Governance (Transparency, Accountability, Integrity)**Standard:** Public consultation provisions for relevant activities of legislature**Indicator Question:** L 2.7 Are there legal provisions which require the legislature to consult with the public on relevant issues to them?

NOTE: This refers mainly to consultations with relevant stakeholders/interest groups.

Score (highlight as appropriate):

No	1
Partially	3
Yes	5

Notes:

According to Article 145 of the Rules and Procedures of the Assembly of RM, the Assembly, following a general debate, may decide to carry out a public debate on a law proposal of broader public interest and determine a relevant working body to organise the public debate.

In the cases where the Assembly decides to carry out a public debate, the law proposal put for public debate shall be published in a daily newspaper determined by the relevant working body. An appeal for presenting opinions and suggestions, as well as the timeframe for their submission shall be announced together with the law proposal⁵³.

In addition, on the basis of the opinions and proposals presented in the public debate, the relevant working body shall prepare a report and submit it to the Assembly together with the law proposal for second reading⁵⁴.

However, it has to be noted that the abovementioned provisions provide only the possibility, but not the obligation, for a public debate regarding a relevant law proposal. Thus it can be concluded that this issue is only partially regulated.

⁵³ Article 147, Rules and Procedures of the Assembly of RM

⁵⁴ Article 148, Rules and Procedures of the Assembly of RM

Institution: Legislature**Category:** Governance (Transparency, Accountability, Integrity)**Standard:** Public consultation provisions for relevant activities of legislature**Indicator Question:** L 2.8 To what extent does the legislature consult with the public on relevant issues in practice?**Score (highlight as appropriate):**

<i>To a very small extent</i>	<i>1</i>
To a small extent	2
To a moderate extent	3
To a large extent	4
To a very large extent	5

Notes:

In practice, the legislature consults with the public on relevant issues to a very small extent. Debates, platforms or other forms of discussions regarding relevant draft laws are very rarely organised, and international meetings for explaining and debating on certain laws have hardly ever occurred in practice⁵⁵. Consultations are held only when the Constitution needs amending, and consultations on other issues are very rare⁵⁶.

Moreover, laws have been enacted by using the urgent procedure for passing laws, but without proper justification and reasons for choosing such procedure.⁵⁷

⁵⁵ Interview with Professor Zoran Shapuric, PhD.

⁵⁶ Interview with Stojan Andov, MP

⁵⁷ Verification Committee, 22.03.2011

Institution: Legislature**Category:** Governance (Transparency, Accountability, Integrity)**Standard:** Executive accountability (judicial review, citizen complaints, accountability mechanisms, audit)**Indicator Question:** L 2.9 Are there legal provisions which allow for judicial review⁵⁸ of legislation?**Score (highlight as appropriate):**

No	1
Partially	3
Yes	5

Notes:

According to Article 110 of the Constitution of RM, the Constitutional Court of the Republic of Macedonia decides on the conformity of laws with the Constitution, as well as decides on the conformity of collective agreements and other regulations with the Constitution and the laws.

More precisely, according to Article 112⁵⁹, the Constitutional Court shall repeal or invalidate a law if it determines that the law does not conform to the Constitution and shall repeal or invalidate a collective agreement, other regulation or enactment, statute or programme of a political party or association, if it determines that it does not conform to the Constitution or a law.

The decisions of the Constitutional Court are final and executive.⁶⁰

⁵⁸ In the legal system of the Republic of Macedonia, the Constitutional Court is not part of the judiciary. However, for the purpose of the research in the CIMAP workshop in Istanbul it was decided that the Constitutional Court should be considered as part of the judiciary. For this reason, in the national context of Macedonia, this indicator will look at the Constitutional Court's review over the judiciary

⁵⁹ Constitution of RM

⁶⁰ Article 112, Constitution of RM

Institution: Legislature**Category:** Governance (Transparency, Accountability, Integrity)**Standard:** Executive accountability (judicial review, citizen complaints, accountability mechanisms, audit)**Indicator Question:** L 2.10 To what extent does judicial review⁶¹ function effectively in practice?**Score (highlight as appropriate):**

To a very small extent	1
To a small extent	2
To a moderate extent	3
To a large extent	4
To a very large extent	5

Notes:

Judicial review is implemented to a large extent in practice. The Constitutional Court, as the main body responsible for the judicial review of legislation decides on the conformity of laws with the Constitution, as well as decides on the conformity of collective agreements and other regulations with the Constitution and laws. The Constitutional Court has on many occasions impugned legal provisions passed in the Assembly⁶².

Also, there are increasing numbers of initiations of judicial reviews of passed laws, as well as increasing numbers of invalid or nullified provisions of laws⁶³. Therefore, the Constitutional Court generally uses its power to annul and abrogate laws and other regulations and exercises these powers in practice.

⁶¹ In the legal system of the Republic of Macedonia, the Constitutional Court is not part of the judiciary. For this reason, in the national context of Macedonia, this indicator will look at the Constitutional Court's review over the judiciary

⁶² Interview with Professor Zoran Shapuric, PhD, Interview with Stojan Andov, MP

⁶³ Global Integrity Report, Macedonia Scorecard, 2009, [http://report.globalintegrity.org/Macedonia%20\(FYROM\)/2009/scorecard](http://report.globalintegrity.org/Macedonia%20(FYROM)/2009/scorecard)

Institution: Legislature**Category:** Governance (Transparency, Accountability, Integrity)**Standard:** Executive accountability (judicial review, citizen complaints, accountability mechanisms, audit)**Indicator Question:** L 2.11 Are there legal provisions which allow citizens to register complaints against the activities of the legislature or individual MPs (e.g. citizens complaints commission)?**Score (highlight as appropriate):**

No	1
Partially	3
Yes	5

Notes:

According to the Law on Processing Petitions and Proposals⁶⁴ any person or legal entity can submit a petition or a proposal to state bodies, including the Assembly of RM⁶⁵. The body to which the petition or proposal is addressed has the obligation to receive the petition or the proposal, and to act upon the petition/proposal in accordance with the law⁶⁶. The body that acts upon the petitions and proposals has an obligation to provide an answer to the person or legal entity that has made the submission, including information regarding the justification and the results of the proceeding within 15 days of the date of receipt, or within 30 days of the date of receipt⁶⁷.

On the other hand, all bodies responsible for processing petitions and proposals have the obligation to specify an authorised person/s or to form an internal organizational unit in accordance with their act for organization and systematization that will be responsible for processing of petitions and proposals⁶⁸. In this direction, the Assembly of RM, in its Regulation for Systematization of Staff Positions in the Assembly of RM⁶⁹ has given the authority to the Head of the Unit for Professional and Analytical Affairs to receive parties, to proceed regarding petitions addressed to the President of the Assembly, as well as to lead the correspondence of the President with the parties⁷⁰. These tasks are assisted by a

⁶⁴ Official Gazette of RM, No. 82/ 08

⁶⁵ Article 1 and Article 3, Law on Processing Petitions and Proposals

⁶⁶ Article 5, Law on Processing Petitions and Proposals

⁶⁷ Article 9, Law on Processing Petitions and Proposals

⁶⁸ Article 7, Law on Processing petitions and Proposals

⁶⁹ Secretary General of the Assembly of RM, 14.05.2010

⁷⁰ P. 18, Regulation for Systematization of Staff Positions in the Assembly of RM, Secretary General of the Assembly of RM, 14.05.2010

Councillor for professional and analytical affairs⁷¹, and by a Junior Associate for Inter Ethical Affairs.⁷²

⁷¹ P.18-19, Regulation for Systematization of Staff Positions in the Assembly of RM, Secretary General of the Assembly of RM, 14.05.2010

⁷² P. 19, Regulation for Systematization of Staff Positions in the Assembly of RM, Secretary General of the Assembly of RM, 14.05.2010

Institution: Legislature**Category:** Governance (Transparency, Accountability, Integrity)**Standard:** Executive accountability (judicial review, citizen complaints, accountability mechanisms, audit)**Indicator Question:** L 2.12 To what extent is this complaints mechanism (e.g. citizens complaints commission) effective in dealing with citizens' complaints?**Score (highlight as appropriate):**

To a very small extent	1
To a small extent	2
To a moderate extent	3
To a large extent	4
To a very large extent	5

Notes:

For the purpose of communication with citizens there is a section that deals with citizens' proposals on the website of the Assembly. In this section citizens can submit proposals, read proposals submitted by other citizens, and can ask questions to the MPs⁷³. On the other hand, there are also offices for contacts with citizens on the entire territory of RM. There, MPs can communicate with citizens from their election unit regarding various issues. Every Friday of the week has been designated as the day when citizens can contact MPs. As a general rule, the Assembly does not schedule sessions on Fridays, except in urgent situations⁷⁴. At the offices for communication with citizens, citizens can present their complaints, notes, suggestions, problems, ideas, and opinions on their meeting with the MP from their election unit. Moreover, if a citizen is on the opinion that a suggestion, complaint or petition should be addressed to the President of the Assembly of RM he/she can schedule a meeting with the President every second and fourth Friday of the month.⁷⁵

However, there is no separate body to deal with citizens' complaints; complaints are sent to the President of the Assembly, and the President appoints employees that will deal with specific complaints.⁷⁶

⁷³ <http://www.sobranie.mk/default-mk.asp?ItemID=50CD5A2C04E0F04AB65B10062A32694A>

⁷⁴ <http://www.sobranie.mk/WBStorage/Files/MP8.pdf>

⁷⁵ <http://www.sobranie.mk/default.asp?ItemID=E13D1E1D1D6EF248A5E8F145A0258658>

⁷⁶ Interview with Stojan Andov, MP

Institution: Legislature**Category:** Governance (Transparency, Accountability, Integrity)**Standard:** Accountability of the legislature (judicial review, citizen complaints, audit, immunity)**Indicator Question:** L 2.13 Is there a legal requirement for an independent audit of the legislature's budget and spending to be conducted on a regular basis?**Score (highlight as appropriate):**

No	1
Partially	3
Yes	5

Notes:

According to the Article 22 of the State Audit Law⁷⁷, state audit is being conducted to the Assembly of RM, among other bodies. The State Audit Law does not impose a time-frame with the number of revisions that need to be conducted, and delegates this obligation to the State Audit Office. The State Audit Office needs to lay down the deadlines for conducting revision to the respective state bodies in its annual program for work.⁷⁸

According to the Annual Program of the State Audit Office for the year 2011, the Assembly of the Republic of Macedonia is part of the planned audits for the year 2011⁷⁹. The State Audit Office has the right to decide at which bodies and institutions will conduct state audits in its annual programs. In order to consider that audits are regular it does not have to be assumed that they should be conducted on an annual basis, therefore it can be concluded that the law presumes regular audit over the work of the Assembly.⁸⁰

⁷⁷ Official Gazette of RM, No. 66/ 2010, 145/ 2010

⁷⁸ Article 23, Law on State Audit

⁷⁹ http://www.dzr.gov.mk/Uploads/2011_Godisna_programa_DZR_KOMPLET.pdf

⁸⁰ Validation Committee, 22.03.2011

Institution: Legislature**Category:** Governance (Transparency, Accountability, Integrity)**Standard:** Accountability of the legislature (judicial review, citizen complaints, audit, immunity)**Indicator Question:** L 2.14 To what extent is a regular independent audit of the legislature's finances conducted in practice?**Score (highlight as appropriate):**

To a very small extent	1
To a small extent	2
To a moderate extent	3
To a large extent	4
To a very large extent	5

Notes:

In practice, regular independent audit of the legislature's finances is conducted to a moderate extent. State audit over the Assembly of RM is selective and is not conducted on annual basis⁸¹. In this sense, state audit of the finances of the Assembly is planned for 2011, but has not been realised in the previous year of 2010. For the year 2009, state audit of the finances of the Assembly was conducted, but no such audit was realised for the year 2008⁸².

Thus, it can be noted that the state audit over the work of the Assembly is completely based on the decision of the State Audit Office.

⁸¹ Interview with Professor Zoran Shapuric, PhD

⁸² <http://www.dzr.gov.mk/DesktopDefault.aspx?tabindex=0&tabid=366>

Institution: Legislature**Category:** Governance (Transparency, Accountability, Integrity)**Standard:** Accountability of the legislature (judicial review, citizen complaints, audit, immunity)**Indicator Question:** L 2.15 Are authorities required by law to take appropriate and timely action on audit findings?**Score (highlight as appropriate):**

No	1
Partially	3
Yes	5

Notes:

In accordance with the Article 35 from the State Audit Law, if the authorised state auditor concludes that the subject of revision has committed a criminal offence or a misdemeanour, he has the obligation to report the findings to the relevant authorities. The State Audit Law also contains provisions and sanctions for misdemeanours, which are subject to judicial proceedings⁸³. Criminal offences will be dealt with in accordance with the Criminal Code, Law on Criminal Procedure and other respective laws.

⁸³ Articles 39- 41

Institution: Legislature**Category:** Governance (Transparency, Accountability, Integrity)**Standard:** Accountability of the legislature (judicial review, citizen complaints, audit, immunity)**Indicator Question:** L 2.16 To what extent is appropriate and timely action taken on audit findings in practice?**Score (highlight as appropriate):**

To a very small extent	1
To a small extent	2
To a moderate extent	3
To a large extent	4
To a very large extent	5

Notes:

The public prosecutor has never acted on reports by the agency, and there have been many deficiencies found in the work of many public institutions, but just a few of them were resolved.⁸⁴ However, according to the Verification Committee, the findings of state audits are treated very seriously and the Assembly acts on the recommendations in the reports of State Auditors by forming working groups for acting upon auditor's findings.⁸⁵

⁸⁴ Global Integrity Report, Macedonia Scorecard, 2009

⁸⁵ Validation Committee, 22.03.2011

Institution: Legislature**Category:** Governance (Transparency, Accountability, Integrity)**Standard:** Absence of excessive immunities for MPs and other officials⁸⁶**Indicator Question:** L 2.17 Are the legal provisions on the immunity of MPs clearly and narrowly defined?

NOTE: Immunity should be only related to their activities as legislators in parliament

Score (highlight as appropriate):

No	1
Partially	3
Yes	5

Notes:

The immunity of MPs is regulated with the Constitution of RM. According to Article 64⁸⁷, Representatives enjoy immunity and a representative cannot be held to have committed a criminal offence or be detained owing to views he/she has expressed or to the way he/she has voted in the Assembly.

Moreover, a Representative cannot be detained without the approval of the Assembly unless found committing a criminal offence for which a prison sentence of at least five years is prescribed.

The Assembly can decide to invoke immunity for a Representative without his/her request, should it be necessary for the performance of the Representative's office.

Representatives may not be called up for duties in the Armed Forces during the course of their term of office.

⁸⁶ Interview with European Commission, May 2010.

⁸⁷ Constitution of RM

Institution: Legislature**Category:** Governance (Transparency, Accountability, Integrity)**Standard:** Absence of excessive immunities for MPs and other officials⁸⁸**Indicator Question:** L 2.18 To what extent are the legal provisions on the immunity of MPs effectively enforced in practice?**Score (highlight as appropriate):**

To a very small extent	1
To a small extent	2
To a moderate extent	3
To a large extent	4
To a very large extent	5

Notes:

Legal provisions regulating immunity of MPs are applied to a large extent in practice with few exemptions.⁸⁹

There have been attempts through Assembly Commissions to revoke the immunity of MPs in particular cases, but these attempts have not been successful.⁹⁰

So far, the immunity of MPs has been revoked in two cases,⁹¹ once in 2005⁹², and once in 2007.⁹³

⁸⁸ Interview with European Commission, May 2010.

⁸⁹ Interview with Professor Zoran Shapuric, PhD

⁹⁰ Interview with Stojan Andov, MP

⁹¹ Validation Committee, 22.03.2011

⁹² <http://www.a1.com.mk/vesti/default.aspx?VestID=46121>

⁹³ <http://www.a1.com.mk/vesti/default.aspx?VestID=82841>,

Institution: Legislature**Category:** Governance (Transparency, Accountability, Integrity)**Standard:** Ethics rules and codes of conduct for politicians⁹⁴**Indicator Question:** L 2.19 Is there a comprehensive written Code of Conduct for MPs?**Score (highlight as appropriate):**

No	1
Partially	3
Yes	5

Notes:

At this point there is no written Code of Conduct for MPs.

⁹⁴ Accession Partnerships of Croatia, Macedonia, Turkey

Institution: Legislature**Category:** Governance (Transparency, Accountability, Integrity)**Standard:** Ethics rules and codes of conduct for politicians⁹⁵**Indicator Question:** L 2.20 To what extent is the Code of Conduct enforced in practice?

NOTE: Include cases and whether or not there is sanctioning of violations

Score (highlight as appropriate):

<i>To a very small extent</i>	<i>1</i>
To a small extent	2
To a moderate extent	3
To a large extent	4
To a very large extent	5

Notes:

There is no Code of Conduct to be implemented in practice.⁹⁶

MPs do not respect the provisions contained in the Rules and Procedures of the Assembly related to conduct on Assembly sessions. For example, MPs speak and act irrespectively of the session and do not respect the rules for communicating in the Assembly. Moreover, in July 2010, there has also been a case of insults and unidentified armed persons entering the Parliament that provoked shoving among MPs from the opposition and the security.⁹⁷

⁹⁵ Accession Partnerships of Croatia, Macedonia, Turkey

⁹⁶ Interview with Stojan Andov, MP

⁹⁷ <http://www.dnevnik.com.mk/?itemID=2DBC4D4F1892E142A26E9A264CD249FD&arc=1>

Institution: Legislature**Category:** Governance (Transparency, Accountability, Integrity)**Standard:** Ethics rules and codes of conduct for politicians⁹⁸**Indicator Question:** L 2.21 Are there legal provisions which comprehensively regulate the acceptance of gifts and hospitality for legislators?**Score (highlight as appropriate):**

No	1
Partially	3
Yes	5

Notes:

Article 31 of the Law on Prevention of Corruption⁹⁹, prohibits officials¹⁰⁰ from receiving gifts or any promise of a gift, except appropriate gifts such as books, souvenirs and similar goods whose value is determined by law. According to Article 77 of the Law on Usage and Management of Assets Used and Managed by Government Bodies¹⁰¹, officials can receive personal gifts up to the value of 200 Euros, provided that the giver is a foreign country, body, institution or international organization.

⁹⁸ Accession Partnerships of Croatia, Macedonia, Turkey

⁹⁹ Official Gazette of RM, No. 83/ 2004

¹⁰⁰ According to Article 122 from the Criminal Code MPs are considered to be officials

¹⁰¹ Official Gazette of RM, No. 8/ 2005

Institution: Legislature**Category:** Governance (Transparency, Accountability, Integrity)**Standard:** Ethics rules and codes of conduct for politicians¹⁰²**Indicator Question:** L 2.22 To what extent are the legal provisions for acceptance of gifts and hospitality effective in practice?**Score (highlight as appropriate):**

To a very small extent	1
<i>To a small extent</i>	2
To a moderate extent	3
To a large extent	4
To a very large extent	5

Notes:

It is very difficult to answer this question, as there is no sufficient information on gifts and hospitalities being accepted in practice, especially having in mind that this action is punishable by law. Still, there have been changes in the property of some MPs after being elected for this function,¹⁰³ which might indirectly point to receiving higher amount of gifts, not reported as obliged by the law.

Cases where MPs have received gifts are occasional, and in most cases gifts and hospitalities do not breach the legal limit¹⁰⁴. However, control over the implementation of these regulations is very weak¹⁰⁵. Regardless of the general application of these restrictions, exceptions exist and legislators have been known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than allowed¹⁰⁶. What is more, no legislator has ever taken responsibility for receiving a gift of a greater value.¹⁰⁷

¹⁰² Accession Partnerships of Croatia, Macedonia, Turkey

¹⁰³ Interview with Stojan Andov, MP

¹⁰⁴ Interview with Professor Zoran Shapuric, PhD

¹⁰⁵ Validation Committee, 22.03.2011

¹⁰⁶ Global Integrity Report, Macedonia Scorecard, 2009

¹⁰⁷ Global Integrity Report, Macedonia Scorecard, 2009

Institution: Legislature**Category:** Governance (Transparency, Accountability, Integrity)**Standard:** Ethics rules and codes of conduct for politicians¹⁰⁸**Indicator Question:** L 2.23 Are there legal provisions which require legislators to record and disclose contact with lobbyists?**Score (highlight as appropriate):**

No	1
Partially	3
Yes	5

Notes:

The Law on Lobbying regulates lobbying within the legislature and executive at the central level, and the local level¹⁰⁹. According to the Law, the lobbyist has an obligation to prepare a written report on an annual basis¹¹⁰ that will contain information on his/her lobbying activities, including information on the officials whom s/he has lobbied¹¹¹. S/he has also the obligation to present all meetings with officials from the legislature, executive and local authorities¹¹².

Therefore, there is an obligation for disclosing lobbying, but the lobbyists are obliged to disclose these contacts and not the officials. Thus, the negative score to this indicator question.

¹⁰⁸ Accession Partnerships of Croatia, Macedonia, Turkey

¹⁰⁹ Article 1, Law on Lobbying, Official Gazette of RM, No. 106/ 2008

¹¹⁰ Article 21

¹¹¹ Article 22

¹¹² Article 16

Institution: Legislature**Category:** Governance (Transparency, Accountability, Integrity)**Standard:** Ethics rules and codes of conduct for politicians¹¹³**Indicator Question:** L 2.24 To what extent are these regulations adhered to in practice?**Score (highlight as appropriate):**

<i>To a very small extent</i>	<i>1</i>
To a small extent	2
To a moderate extent	3
To a large extent	4
To a very large extent	5

Notes:

As there are no applicable regulations, the question cannot be answered. Lobbyists are supposed to prepare reports and to submit them to the State Commission for Preventing Corruption, but there is only one registered lobbyist in practice, and no such reports have been submitted so far.¹¹⁴

¹¹³ Accession Partnerships of Croatia, Macedonia, Turkey

¹¹⁴ Validation Committee, 2203.2011

Institution: Legislature**Category:** Governance (Transparency, Accountability, Integrity)**Standard:** Ethics rules and codes of conduct for politicians¹¹⁵**Indicator Question:** L 2.25 Are there legal provisions which restrict legislators employment after their tenure to avoid that the legislator or others derive an unfair advantage?**Score (highlight as appropriate):**

No	1
Partially	3
Yes	5

Notes:

According to the Article 28 of the Law on Prevention of Corruption, an elected or appointed functionary, as well as other official or responsible person in public enterprise, institution or other legal entity disposing with state capital, who within three years from the date of termination of his/her function i.e. official duty, shall found a commercial company or shall engage in a profitable activity in the same field in which he/she has worked, has an obligation to inform the State Commission for Preventing Corruption within 30 days.

Also, the Article 29 from the same Law, regulates that an elected or appointed functionary, official and responsible person in public enterprise, public institution or in other legal entity disposing with state capital may not, during the term of his/ her mandate or official duty as well as within three years after its termination, acquire on any ground and in any manner rights on stocks in the legal entity over which, he/she or the body in which he/she works or has worked, conducts or has conducted supervision, except when such rights have been acquired by means of inheritance.

Also, according to the Law on Prevention of Conflict of Interests, an official cannot be employed in a trade company where he/she performed supervision or had established a contractual relationship during the performance of the public authorizations or duties, , within a time period of three years after the termination of the performance of the public authorizations or duties. Also, s/he cannot by any means, acquire shares or stocks in the legal entity where he/she worked that performed the supervision.¹¹⁶

Still, there are no provisions or sanctions for officials that do not respect Article 29 from the Law on Prevention of Corruption. What is more, the existing regulations

¹¹⁵ Accession Partnerships of Croatia, Macedonia, Turkey

¹¹⁶ Article 17

do not hold any post- employment restrictions and officials can be appointed to other positions (both in the public or private sector) after the termination of their function.¹¹⁷ This area is completely vague and needs to be regulated in further details.¹¹⁸

¹¹⁷ Validation Committee, 23.03.2011

¹¹⁸ Validation Committee, 23.03.2011

Institution: Legislature**Category:** Governance (Transparency, Accountability, Integrity)**Standard:** Ethics rules and codes of conduct for politicians¹¹⁹**Indicator Question:** L 2.26 To what extent are these post-employment restrictions effective in practice?**Score (highlight as appropriate):**

<i>To a very small extent</i>	<i>1</i>
To a small extent	2
To a moderate extent	3
To a large extent	4
To a very large extent	5

Notes:

This issue is not a priority at the time being, and having in mind the lack of regulations on this matter, it can be concluded that this is to a very small extent implemented in practice.¹²⁰

¹¹⁹ Accession Partnerships of Croatia, Macedonia, Turkey

¹²⁰ Validation Committee, 22.03.2011

Institution: Legislature**Category:** Governance (Transparency, Accountability, Integrity)**Standard:** Effective implementation of a law on Conflict of Interest, ensuring officials make asset declarations; assessment of asset declarations by an independent body; follow up on suspicious declarations.¹²¹**Indicator Question:** L 2.27 Are there legal provisions which regulate conflict of interest situations of legislators?**Score (highlight as appropriate):**

No	1
Partially	3
Yes	5

Notes:

According to the Law on Prevention of Conflict of Interest¹²², conflict of interests” means a conflict between the public authorizations and duties with the private interests of the official, where the official has a private interest which impacts or can impact on the performance of his/her public authorizations and duties”.

According to the same Law, representatives of the Assembly are considered as officials, thus the respective provisions apply to them too.¹²³

According to the Law, the official must not perform any activity that can influence the impartial performance of the public authorizations and duties while performing his/her public authorizations and duties¹²⁴.

When an official finds out about the circumstances indicating the existence of conflict of interests, he/she shall be obliged to immediately request to be exempted and to cease his/her actions.¹²⁵

Also, the representatives in the Assembly, as well as other bodies of the central and local authority determined by law are obliged when assuming the public authorizations and duties to submit a statement about the existence or non-existence of conflict of interests to the State Commission within 30 days.¹²⁶

¹²¹ Accession Partnerships of Croatia, Macedonia, Turkey

¹²² Article 3

¹²³ Article 3

¹²⁴ Article 8

¹²⁵ Article 12

¹²⁶ Article 20-a, Law on Prevention of Conflict of Interests

Institution: Legislature

Category: Governance (Transparency, Accountability, Integrity)

Standard: Effective implementation of a law on Conflict of Interest, ensuring officials make asset declarations; assessment of asset declarations by an independent body; follow up on suspicious declarations.¹²⁷

Indicator Question: L 2.28 To what extent are the conflict of interest regulations enforced effectively in practice?

Score (highlight as appropriate):

To a very small extent	1
To a small extent	2
To a moderate extent	3
To a large extent	4
To a very large extent	5

Notes:

Regulations on conflict of interests are to a moderate extent enforced in practice. There have been arbitrary decisions by the majority of MPs whether conflicts of interest exist in certain cases, as well as cases where MPs have maintained more than one position that might be causing conflict of interests.¹²⁸

Out of the total number of 120 MPs in the Assembly of RM, only one MP has failed to submit a statement about existence or non-existence of conflict of interests to the State Commission.¹²⁹

On the other hand, conflict of interests does not only refer to MPs, but also to interest of other persons related to MPs. Interest of such persons are still insufficiently checked by the State Commission for Preventing Corruption.¹³⁰

¹²⁷ Accession Partnerships of Croatia, Macedonia, Turkey

¹²⁸ Interview with Stojan Andov, MP,
<http://www.vest.com.mk/?ItemID=2134044DD649374CA98E6644EC198275&arc=1>,
<http://www.vest.com.mk/?ItemID=718AA7AF4D7E334F86A178D6ABB6CB23>

¹²⁹ <http://antikorupcija.kirilica.com.mk/antik.asp?id=51181>

¹³⁰ Validation Committee, 22.03.2011

Institution: Legislature**Category:** Governance (Transparency, Accountability, Integrity)**Standard:** Effective implementation of a law on Conflict of Interest, ensuring officials make asset declarations; assessment of asset declarations by an independent body; follow up on suspicious declarations.¹³¹**Indicator Question:** L 2.29 Are there legal provisions which require legislators to disclose their assets?**Score (highlight as appropriate):**

No	1
Partially	3
Yes	5

Notes:

The Law on Prevention of Corruption stipulates the obligation on reporting assets. Namely, according to Article 33¹³², an elected or appointed functionary has to fill in an assets declaration with detailed inventory of his/her real estate, movable property of greater value, securities, claims and debts, as well as of any other assets in his/ her ownership or in ownership of members of his/ her family. Assets declaration also has to be filled after the termination of function or employment. Moreover, these persons are obliged to deposit a statement certified by notary public for revoking protection of banking secrecy in regard to all domestic and foreign bank accounts.

These declarations are submitted to the State Commission for Preventing Corruption and to the Public Revenue Office. Also, every increase in the assets (regardless if the change refers to the person or to a member of his/her family) also has to be reported to the State Commission for Preventing Corruption and to the Public Revenue Office.¹³³

In addition, according to Article 36¹³⁴, a procedure for examination of assets may be initiated against the functionary if s/he has failed to provide data or to report changes in the assets; has provided incorrect data or in cases of disproportionate increase of assets.

¹³¹ Accession Partnerships of Croatia, Macedonia, Turkey

¹³² Official Gazette of RM, No. 28/2002, 46/ 2004, 10/ 2008, 161/ 2008, 145/ 2010, Decision of the Constitutional Court of RM 160/ 2006- 0- 0

¹³³ Article 34, Law on Prevention of Corruption

¹³⁴ Law on Prevention of Corruption

Institution: Legislature

Category: Governance (Transparency, Accountability, Integrity)

Standard: Effective implementation of a law on Conflict of Interest, ensuring officials make asset declarations; assessment of asset declarations by an independent body; follow up on suspicious declarations.¹³⁵

Indicator Question: L 2.30 To what extent do legislators disclose their assets in practice?

Score (highlight as appropriate):

To a very small extent	1
To a small extent	2
To a moderate extent	3
To a large extent	4
To a very large extent	5

Notes:

In practice, legislators disclose their assets to a large extent. MPs provide assets disclosure statements and they are publicly available.¹³⁶ Legislative asset-disclosure records are available online at www.dksk.org.mk. If a person asks for a specific legislative asset disclosure, it will take 30-40 days to acquire it.¹³⁷

¹³⁵ Accession Partnerships of Croatia, Macedonia, Turkey

¹³⁶ Interview with Stojan Andov, MP

¹³⁷ Global Integrity Report, Macedonia Scorecard, 2009

Institution: Legislature**Category:** Governance (Transparency, Accountability, Integrity)**Standard:** Effective implementation of a law on Conflict of Interest, ensuring officials make asset declarations; assessment of asset declarations by an independent body; follow up on suspicious declarations.¹³⁸**Indicator Question:** L 2.31 Are there legal provisions which require the asset declarations of legislators to be assessed by an independent body and followed-up in case of suspicious declarations?**Score (highlight as appropriate):**

No	1
Partially	3
Yes	5

Notes:

A procedure for examination of assets may be initiated against the functionary if s/he has failed to provide data or to report changes in the assets; has provided incorrect data or in cases of disproportionate increase of assets¹³⁹. The procedure shall be brought against the person if it is established that his/her assets or the assets of a member of his/her family have been increased in disproportion to his/her regular revenues in the form of salaries, dividends or other income derived from performance of an activity or property during his/her term of office, that is execution of duty or during the employment.

The Public Revenue Office and the State Commission for Preventing Corruption can file a motion to initiate the procedure.

¹³⁸ Accession Partnerships of Croatia, Macedonia, Turkey

¹³⁹ Article 36, Law on Prevention of Corruption

Institution: Legislature

Category: Governance (Transparency, Accountability, Integrity)

Standard: Effective implementation of a law on Conflict of Interest, ensuring officials make asset declarations; assessment of asset declarations by an independent body; follow up on suspicious declarations.¹⁴⁰

Indicator Question: L 2.32 To what extent are the asset declarations of legislators assessed by an independent body and followed-up in case of suspicious declarations in practice?

Score (highlight as appropriate):

To a very small extent	1
To a small extent	2
To a moderate extent	3
To a large extent	4
To a very large extent	5

Notes:

In practice, asset declarations are not being assessed and validated¹⁴¹, but the procedure for investigating the origin of suspicious assets has been conducted so far in cases where doubts on suspicious declarations existed¹⁴². In other words, the responsible bodies do not necessarily check all asset declarations of public post holders, but if there are suspicious assets a procedure is initiated for validating the asset declaration in that particular case.

¹⁴⁰ Accession Partnerships of Croatia, Macedonia, Turkey

¹⁴¹ Interview with Stojan Andov, MP

¹⁴² http://www.dksk.org.mk/index.php?option=com_content&task=view&id=187&Itemid=33,
<http://www.a1.com.mk/vesti/default.aspx?VestID=122879>

Institution: Legislature**Category:** Effectiveness/Efficiency**Standard:** Legislative powers for exercising oversight (extent of influence on the appointment of heads of agencies acting as arms in oversight of the executive (e.g. auditor general, judiciary, ombudsman)).**Indicator Question:** L 3.1 Is the legislature entitled by law to scrutinize appointments to executive posts which are relevant for fighting corruption, such as the ombudsman, head of supreme audit institution and electoral management body?**Score (highlight as appropriate):**

No	1
Partially	3
Yes	5

Notes:

According to the Constitution of RM, the Assembly of RM elects the Ombudsman by a majority vote of the total number of Representatives¹⁴³. Also, the Assembly of RM elects and dismisses the General State Auditor and the Deputy General State Auditor¹⁴⁴. The Assembly of RM also elects the President, Deputy and the members of the State Election Commission by two thirds majority of the total number of Representatives¹⁴⁵. Finally, the members of the State Commission for Preventing Corruption are named and dismissed by the Assembly of RM.¹⁴⁶

¹⁴³ Article 77

¹⁴⁴ Article 4, State Audit Law

¹⁴⁵ Article 27, Electoral Code, official Gazette of RM, No. 40/ 2006, 127/ 2006, 1356/ 2008

¹⁴⁶ Law on Preventing Corruption

Institution: Legislature**Category:** Effectiveness/Efficiency**Standard:** Legislative powers for exercising oversight (extent of influence on the appointment of heads of agencies acting as arms in oversight of the executive (e.g. auditor general, judiciary, ombudsman).**Indicator Question:** L 3.2 To what extent does the legislature scrutinize appointments to executive posts which are relevant for fighting corruption, such as the ombudsman, head of supreme audit institution and electoral management body in practice?**Score (highlight as appropriate):**

To a very small extent	1
To a small extent	2
To a moderate extent	3
To a large extent	4
To a very large extent	5

Notes:

In practice, the Assembly, appoints the abovementioned posts relevant for fighting corruption.¹⁴⁷ However, it has to be noted that there are no clear criteria that can be applied on the selection procedure of these executive posts,¹⁴⁸ and political influence in the appointment of these posts is present in practice.¹⁴⁹

However, regardless of the notion that political influence could be present in the selection of these posts, the Assembly appoints the posts relevant for fighting corruption, as it is the Assembly that votes for the selection of these posts. Thus, the Assembly has consent for the selection of these posts.¹⁵⁰

¹⁴⁷ Interview with Stojan Andov, MP

¹⁴⁸ Interview with Professor Zoran Shapuric, PhD

¹⁴⁹ Interview with Stojan Andov, MP

¹⁵⁰ Validation Committee, 22.03.2011

Institution: Legislature**Category:** Effectiveness/Efficiency**Standard:** Legislative powers for exercising oversight (extent of influence on the appointment of heads of agencies acting as arms in oversight of the executive (e.g. auditor general, judiciary, ombudsman)).**Indicator Question:** L 3.3 Does the legislature have the legal power to influence and scrutinize the national budget through all its stages?**Score (highlight as appropriate):**

No	1
<i>Partially</i>	3
Yes	5

Notes:

According to the Law on Budgets, the Assembly does not have the power to influence the Budget in all of its phases, and the Budget proposal is submitted to the Assembly after being prepared by the Government. The Draft Budget of the Republic of Macedonia shall be submitted by the Government, along with the documents necessary pursuant to law.¹⁵¹ A debate is held on the Draft Budget of the Republic of Macedonia with a compulsory general debate as for law proposals in the second reading.¹⁵²

¹⁵¹ Article 179, Rules and Procedures of the Assembly

¹⁵² Article 180, Rules and Procedures of the Assembly

Institution: Legislature

Category: Effectiveness/Efficiency

Standard: Legislative powers for exercising oversight (extent of influence on the appointment of heads of agencies acting as arms in oversight of the executive (e.g. auditor general, judiciary, ombudsman).

Indicator Question: L 3.4 To what extent is the legislature able to influence and scrutinize the national budget through all its stages in practice?

Score (highlight as appropriate):

To a very small extent	1
To a small extent	2
To a moderate extent	3
To a large extent	4
To a very large extent	5

Notes:

The influence in practice is small, as it is very difficult to influence the budget proposal if there is no information on the budget submitted to the Assembly in due time before the enactment of this document. MPs do not have information regarding the content of the Budget proposal, and they cannot influence the budget proposal while being prepared by the Government.¹⁵³

¹⁵³ Interview with Stojan Andov, MP

Institution: Legislature**Category:** Effectiveness/Efficiency**Standard:** Legislative powers for exercising oversight (extent of influence on the appointment of heads of agencies acting as arms in oversight of the executive (e.g. auditor general, judiciary, ombudsman)).**Indicator Question:** L 3.5 Are there legal provisions which allow the legislature to receive and scrutinize internal audits of government agencies?**Score (highlight as appropriate):**

No	1
Partially	3
Yes	5

Notes:

The Law on Public Internal Financial Control does not provide an obligation for internal audits of government agencies to be received and scrutinized by the Assembly of RM. Instead, head officials of budgetary units have the responsibility to submit an Annual financial Report to the Central Unit for Harmonization¹⁵⁴. The Central Unit for Harmonization prepares annual report on the functioning of the system of public internal financial control on the basis of the above mentioned Annual Financial Reports that is being submitted to the Government of the Republic of Macedonia.¹⁵⁵

¹⁵⁴ Article 47, Law on Public Internal Financial Control

¹⁵⁵ Article 48, Law on Public Internal Financial Control

Institution: Legislature

Category: Effectiveness/Efficiency

Standard: Legislative powers for exercising oversight (extent of influence on the appointment of heads of agencies acting as arms in oversight of the executive (e.g. auditor general, judiciary, ombudsman).

Indicator Question: L 3.6 To what extent does the legislature receive and scrutinize internal audits of government agencies in practice?

Score (highlight as appropriate):

<i>To a very small extent</i>	<i>1</i>
To a small extent	2
To a moderate extent	3
To a large extent	4
To a very large extent	5

Notes:

There is no legal requirement regarding this indicator question. In practice the Assembly does not scrutinize and inspect internal audits of government agencies.¹⁵⁶

¹⁵⁶ Interview with Stojan Andov, MP

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