BENCHER

European Policy Institute. Skopje

SITTING ON THE BENCH AND MARKING – HOW EFFECTIVE?

BENCHMARKING IN MACEDONIA

European Fund for the Balkans

SITTING ON THE BENCH AND MARKING – HOW EFFECTIVE?

Coordinated by:
European Policy Institute (EPI) – Skopje

Publisher:
European Policy Institute (EPI) – Skopje

Editor-in-chief:
Simonida Kacarska, PhD

Authors:
Ardita Abazi Imeri, PhD
Aleksandra Ivanovska

Graphic design & print:
Relativ ltd - Skopje

Skopje, February 2018

We would like to express our sincere appreciation to Dr Malinka Ristevska Jordanova for her methodological support as well valuable and constructive suggestions during the planning and development of this analysis. Her willingness to give her time for inputs and comments so generously has been very much appreciated.

European Fund for the **Balkans**

This policy brief has been produced as part of the research within the 2017 Think and Link Regional Policy Programme and co-financed by OSF. The views presented in the policy brief are authors' views and do not necessarily reflect the position of the European Fund for the Balkans and Open Society Foundation.

CONTENT

INTRODUCTION

Within the new approach of the EU Enlargement Strategy "fundamentals first", the focus of the EU integration process of the Western Balkan countries has been on democracy and rule of law. In addition to the principle that Chapters 23 and 24 related to democracy and rule of law are opened first and closed last in accession negotiations, the new approach relies on an extensive system of benchmarking. As defined in official EU documents benchmarks are measurable tools that improve the quality of the negotiations by providing incentives for the candidate countries to undertake necessary reform at an early stage - they are measurable and linked to key elements of the *acquis* chapters.[1] Benchmarks are set for negotiation accessions for chapters of the acquis – opening and closing benchmarks. For Chapters 23 and 24, in addition to opening and closing benchmarks, interim benchmarks are defined.

The benchmarking mechanism has also been applied to countries that are not in the process of accession negotiations. In different forms and under different titles, benchmarking has been applied in Macedonia despite the fact that is not yet negotiating EU accession and benchmarks were set in the visa liberalisation process, Accession partnership, and High level accession dialogue. In effect, benchmarking has become the key mechanism of the EU conditionality policy that should ensure the consistency and credibility of the conditionality policy. What is more important, the benchmarks should provide encouragement for further reform.

This report, part of a regional project, studies the effectiveness of the EU's benchmarking system on selected policy issues within the Chapters 23 and 24 focusing on the case of Macedonia. The sample was selected following a mapping of benchmarks that are common or similar among the six Western Balkan aspirants for EU membership. This regional analysis represents a first major attempt to critically evaluate the degree to which the objectives are achieved and the extent to which targeted problems are solved in order to further advance in the EU accession process. The structure of this paper is the following: first, it provides a contextual overview of the benchmarking in Macedonia as a case study followed by a brief explanation of the methodology. The empirical section that follows provides an analysis of the evolution of each of the selected benchmarks since their introduction joined by an assessment of the current state of play. Last, the study reflects on the findings and provides recommendations.

THE LONG (HI)STORY OF BENCHMARKING IN MACEDONIA CONDENSED

The EU related reform process in Macedonia is a process as long as the transition. Its dynamics has been shaped by the EU influence since the establishment of diplomatic relations in 1995, followed by the Cooperation Agreement between the European Communities and the Republic of Macedonia in force since 1998, the regulatory framework of the EU regional approach toward the WB countries from 1995 and the 1999 Stabilization and Association Process.[2]

From the first country to sign the SAA in 2001, gaining candidate status in 2005, to a country commended for sufficient progress in meeting the what can be interpreted as the first formal benchmarks– the priorities set out in Accession partnership in 2008[3] and the visa liberalization roadmap,[4] Macedonia receives its first recommendation for opening of accession negotiations in 2009. Alas, 9 years since, the recommendation has been repeated, at times followed with concerns for slowed tempo of reforms, threats that "the recommendation is not set in stone"[5] and has been frozen during the last two years. This is only a prologue of seemingly never ending accession story, which pushed the EC to become ever inventive with its conditionality a policy though imposing conditions even for getting the recommendation for opening of accession negotiations.[6]

1 EUROPEAN COMMISION (2006). *Communication from the Commission to the European Parliament and the Council: Enlargement Strategy and Main Challenges 2006 – 2007, including annexed special report on the EU's capacity to integrate new members*. (EC: Brussels). Available at: https://www.sobranie.mk/WBStorage/Files/Enlargement_2006_-_2007%2008.11.06.PDF

2 EUROPEAN POLICY INSTITUTE (2012). *Analysis: Republic of Macedonia: Adoption of EU Norms - Inertia in Limb*. (EPI: Skopje). Available at: http://epi.org.mk/docs/npaa_analysis-_english_final_for_publication.pdf

3 EUROPEAN COUNCIL (2008). *Council Decision of 18 February 2008 on the principles, priorities and conditions contained in the Accession Partnership with the Republic of Macedonia and repealing Decision 2006/57/EC*

4 EUROPEAN COMMISION (2008). *Visa Liberalization with the Republic of Macedonia, Roadmap*: In the roadmap, 4 blocks of benchmarks are presented, targeting document security; illegal migration including readmission; Public order and security; and external relations and fundamental rights. Available at: http://www.esiweb.org/pdf/White%20List%20Project%20Paper%20-%20Roadmap%20Macedonia.pdf

5 EUROPEAN COMMISION (2012). *Commission Staff Working Document –Republic of Macedonia 2012 Progress Report accompanying the document 'Communication to the European Parliament and the Council'*. (EC: Brussels). Available at: https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key_documents/2012/package/mk_rapport_2012_en.pdf

6 The recommendation in EC reports 2015 and 2016 was conditioned with the implementation of the June / July political agreement (the Przino Agreement) and the immediate reform priorities prior to the April 2016 elections. The recommendation in 2016 EC report was also conditioned with holding of credible elections

From once being the only success story in the region, Macedonia's accession became a story of downfalls. The veto that Greece imposed on Macedonia's accession to NATO marks the turning point for slowed reforms but also decreased EU leverage. The inability of EU to start negations due to an issue, which is beyond the Copenhagen criteria, has damaged the image of EU and its credibility severely and in addition contributed to backsliding in core democratic standards at home.[7] Not even the new instruments, such as HLAD introduced in 2012,[8] intended to act as catalyst of reforms, ultimately did not bring the European agenda and the process back on the right track. Moreover, 2014 was marked by stagnation of euro integration process and shift of the attention from the "name issue" to the backsliding the sphere of internal politics, concretely in the political criteria.

Even though in the beginning of the introduction of the 'new phase"[9] of the Enlargement Strategy Macedonia still delivers on different points and benchmarks, there is still downfall with outright critical assessments by the EC ever since 2014 when the political crisis took its toll. Just recently, (June 2017), Macedonia managed to get out of one of the deepest political and legal crisis since 2001. All domestic, international and European reports point to serious shortcomings in the area of rule of law. The annual report of the European Commission (EC) states that there are findings of violations of fundamental rights, freedom of the media and elections, as well as interference in the independence of the judiciary, politicization and corruption in many fields. In the area of judiciary, it notes "backsliding" and selective justice, while the last report notes the existence of a "captured state" (Commission, 2016).

The question arises as to the outcome of these reforms, which the European Commission has continuously supported but assessed in the last three years very critically by noting high politicization, selective justice and state capture. This contradiction of parallel assesssments where on one hand, certain progress is noted and followed by a decade long repeated recommendation for opening negotiations, whilst on the other hand vigorous criticism is offered, shows that the current model of setting and accelerating reforms is followed by serious shortcomings.[10]

In light of the scandal of illegally intercepted communications which revealed mass violation of human rights, freedom of media and elections, interference with independence of judiciary, politicization and widespread corruption,[11] the Senior Experts' Group, commissioned by the EU[12] led to another set of recommendations/ benchmarks[13] in addition to those set in the country reports, to overcome the crisis. The implementation of the recommendations had been practically stalled for two years. However, the new government that took office in June 2017 has committed to free the institutions, regain the trust of the citizens and bring the country back to its Euro-Atlantic path. Using the prospect of European integration to put wind in its sails, it has to deal with the difficult issues of reforming the judiciary and the public administration, fighting corruption, media reforms and resolving the wiretapping scandal. The question remains, whether this is a lift that is too heavy for what is now a relatively weak enlargement process and the tainted record of the European Union in supporting democratisation of the region, especially in recent years.

7 EUROPEAN POLICY INSTITUTE (2012). *Same Recommendation, New Commendation: The 2012 EC Report on the Progress of the Republic of Macedonia*. (EPI: Skopje). Available at: http://epi.org.mk/docs/analiza_-_zakluchoci_-_ocenki_po_kriteriumi_i_poglavja_pr_2012_mk_commentary_en.pdf

8 Key points in HLAD 2012 are : 1. Freedom of the media; 2. Progress in the rule of law and a detailed analysis of the results achieved under Chapter 23 - Judiciary and fundamental rights and Chapter 24 - Justice, freedom and security; 3. Public administration reform; 4. Implementation of the OSCE / ODIHR recommendations on the electoral process The European Commission marked the local elections in 2013 as the final date for concrete action in this area; 5. Obtaining the status of a 'functioning market economy'.

9 EUROPEAN COMMISSION (2011). *Communication from the Commission to the European Parliament and the Council: Enlargement Strategy and Main Challenges 2011-2012*. (EC: Brussels) Available at: https://www.sobranie.mk/WBStorage/Files/strategy_paper_2011_en.pdf

10 EUROPEAN POLICY INSTITUTE (2014) *Overshadowed Recommendation: Analysis of the European Commission 2014 Progress Report on the Republic of Macedonia*. (EPI: Skopje)

11 EUROPEAN COMMISION (2015). *Commission Staff Working Document –Republic of Macedonia Report 2015 accompanying the document 'Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the regions'*. (EC: Brussels). Available at: https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key_documents/2015/20151110_report_the_former_yugoslav_republic_of_macedonia.pdf

12 In light of the large number of illegally intercepted communications, the EC, DG NEAR, recruited a group of independent senior rule of law experts to carry out a rapid analysis of the situation and provide recommendations to address these issues. Republic of Macedonia: Recommendations of the Senior Experts'Group on systemic Rule of Law issues relating to the communications interception revealed in Spring 2015, *8th of June 2015*

13 EUROPEAN COMMISSION (2015). *Urgent Reform Priorities for the Republic of Macedonia*. (EC: Brussels). Available at: https://eeas.europa.eu/sites/eeas/files/urgent_reform_priorities_en.pdf

METHODOLOGY

In order to **assess the effectiveness** of the benchmarking mechanism, this research process was based on sampling, comparison, monitoring of the implementation and assessment of the benchmarks. For the purpose of an in-depth analysis, the research is carried out on a sample of benchmarks from Chapter 23 and 24.

The **selection of the sample of benchmarks** was done according to the following steps: interim and opening benchmarks that have been laid out for Serbia and Montenegro in Chapter 23 and 24 were taken as basis and were categorized in a table, depending on the type of action required:

Adoption of a policy document (Pol); Adoption of legislation (Leg); Implementation: Setting up/strengthening a body (B); Training (T) Setting up ICT systems (ICT) Cooperation (Coop) Track-record (Trck) Other (O).

Next, the research team selected a sample of 8 benchmarks which will be analysed in depth. In this process the following factors were considered: the relevance and importance of the issue both from a national and regional perspective; common critical junctures and equal distribution of categories and actions as set by the benchmarks; availability of information pertinent to assess the effectiveness of the benchmarks. While Montenegro and Serbia have traced the benchmarks in their Screening reports and Common position papers as countries that have opened negotiations, the other countries have adequately traced the benchmarks in the enlargement documents (EC country reports; roadmaps; Enlargement strategy). Thus, the following benchmarks were selected:

Chapter 23	
•Merit-based career system for the judges	Track record
•Judicial academy reforms	Setting up / strengthening a body
•Merit-based career system for civil servants	Other / track record
•Track record for addressing media intimidation; attacks on journalists; media independence	Track record / strengthening a body
•Implementation of Law on protection against discrimination	Leg/Pol
Chapter 24	
•Law on Asylum aligned with EU acquis	Leg
•Specific anticorruption plans; providing adequate follow up of detected cases	Track record/Cooperation
•The role of intelligence services and the oversight mechanisms that are introduced; established initial track record of investigations in organised crime	Other/track record

The **data collection** for all countries was consisted of **desk analysis of and interviews with stakeholders**. First, the **key documents**[14] related to the EU accession process were analysed for the identification, sampling and analysis of the evolution benchmarks. In addition, for the assessment of the effectiveness of the benchmarking the study utilises the assessments of own reports of the research team engaged, but also reports of other international bodies that have monitored developments in the policy areas studied. These included Progress/Country Reports and strategic documents on enlargement by the European Commission SIGMA reports, OSCE reports, US Department State Reports, Reports of UN bodies, as well as Council of Europe Monitoring Mechanisms. Where available, the analysis of the state of play also includes a review of available quantitative indicators such as: the Freedom House Nations in Transit scores, Bertelsmann Transformation Index in combination with perception indicators through regional surveys. Second, in all countries **semi-structured interviews** were conducted with representatives of the EU delegation and/or EU Members States as well as representatives of national institutions in charge of EU accession and in the implementation of the selected benchmarks. The focus on the EU staff and the national civil servants is a result of the important role these individuals play in both crafting the benchmarks at the EU level as well as the respective national response(s). In the case of Macedonia, 14 interviews were conducted in the period 11.01.2018 – 02.02.2018 and included Secretariat for European Affairs, Ministry of Foreign Affairs, Judicial Council of Republic of Macedonia, Basic Court 2, Academy of Judges and Public Prosecutors, Commission for Protection of Discrimination, Equality law expert, Public Administration Reform expert, MYLA, The Migration, Asylum, Refugees Regional Initiative (MARRI), Association Zenith, School of Journalism and Public Relations, Dutch Embassy and EU delegation in Skopje.

14 EU common positions on chapter 23 and 24 (for countries in accession negotiations); EC Country reports – staff working papers (analysing the areas in which the sample of EU benchmarks are mentioned); Enlargement Strategy – Communication of the Commission (analysing the areas in which the sample of EU benchmarks are mentioned); EU negotiating frameworks; EU screening reports; Roadmaps, conclusions of "high level dialogues" and other instruments setting conditions for further progress in the accession process; Documents through which the countries involved respond to the set benchmarks (National Plans); Action plans submitted by relevant authorities to the European Commission, Stabilisation and Assoictaion Council minutes, Subcommittees on Justice and Home affairs committes.

The analysis of the benchmarks was done through the insertion of the collected data and findings in a pre-determined template[15] which consisted of several steps. First, it traced the introduction and evolution of the benchmark at least in the last five years, or since the last critical juncture in the EU documents. Second, the researchers assessed current state of play through document review, including through available quantitative indicators findings in the specific policy area. Last, conclusions were drawn on the effectiveness of the benchmarking in the specific policy area thus far. The information from the templates was further used to develop the country analyses by each of the partners.

RISING THRESHOLDS OF EU ACCESSION

Looking back at the (hi)story of benchmarks in Macedonia, it represents a process that lasts too long and just when there seem to be prospects of reaching the epilogue the prologue starts over. Academic sources state that the main incentive for the EU reforms in candidate countries is membership. Reducing the incentive for EU membership slows down the reform process, and even reversible trends emerge. The credibility of the membership offer has a decisive influence on tempo of reforms which are intensified considerably with the start of negotiations. In the absence of such incentives, "the reforms are limited, unequal and slow"[16] as confirmed by the case of Macedonia.

"*When you implement a certain benchmark, especially from the political criteria, for such a long time, backsliding can occur at some point even in the most democratic country or even in Member state due to external factors. In a situation of opened negotiations the deficiencies in implementation of benchmarks are identified more easily and can be absolved fully. On the other hand, in a situation of absence of negotiations and progress or regress of the democratic culture of the country, the EC faces a problem of how to set benchmarks in the following period due to lack of formal recognition of what has been achieved, a possibility only in case of opened negotiations*".[17] Since the last big bang enlargement of the Union, the scope of reforms over time has only increased. The countries of the Western Balkans, including Macedonia, are implementing reforms that, compared with the countries of previous enlargements (Croatia, Bulgaria, Romania, and CEE countries), were implemented during the negotiations or after their accession to the Union. In the case of Bulgaria and Romania benchmarks have been established post membership, in the case of Croatia after the opening of negotiations, while for Macedonia a marathon of benchmarks have been set just for opening negotiations/receiving recommendation for opening the accession negotiations. Throughout 10 years, Macedonia has had benchmarks that required setting up institutions from scratch or adopting new legislation. These have been to a different extent met but the problem has arisen with the implementation which is lacking due to the changing democratic culture and also lack of EU prospects. Additionally the prolonged accession process has contributed to inability of the administration and even the government to see the fruits of their work and 'accession fatigue' has grown. To the contrary, Serbia and Montenegro have had a more favourable situation in which they have opened negotiations only two years upon the signature of the SAA.[18] Thus, the formulation of their benchmarks has been similar to some benchmarks that have been introduced for Macedonia as early as 2005 but in case of Macedonia the valorisation has been overshadowed by deteriorating EU agenda over the years. Macedonia is fulfilling, benchmarks that carry the weight of negotiation without actually having the benefit of accession negotiations. In a situation, when Macedonia actually opens negotiations the threshold of benchmarks will increase and evolve over those that Serbia and Montenegro implemented in this phase. However, this may also be an advantage because it may enhance the process as the 'opening benchmarks' will/may concentrate on the actual track record instead of "wasting time" on necessary legislative adaptations.

15 Annex 1

16 EUROPEAN POLICY INSTITUTE (2012). *Analysis: Republic of Macedonia: Adoption of EU Norms - Inertia in Limb.* (EPI: Skopje). Available at: http://epi.org.mk/docs/npaa_analysis-_english_final_for_publication.pdf

17 Interview, Secretariat for European Affairs, 18.01.2018

18 *As an example, the Academy for judges and prosecutors in Macedonia was mentioned as a key priority in the European Partnership in 2005" Launching of the Training Academy for Judges and Prosecutors", while in Montenegro this benchmark has been mentioned in 2012, while the Centre for Training in Judiciary and State Prosecution, has been established as an independent organization with the status of a legal entity, since the adoption of the new Law on the Centre for Training in Judiciary and State Prosecution Service, October 2015.*

ANALYSIS OF THE SELECTED BENCHMARKS

I. CHAPTER 23

1. MERIT-BASED CAREER SYSTEM FOR JUDGES (TRCK)

Introduction of benchmark:

→ Adopt the constitutional amendments needed to implement the reform of the judicial system, in line with the recommendations of the Venice Commission. Subsequently adopt and implement the measures needed to strengthen the independence of judges (notably by reforming the Judicial Council and their system of selection), strengthen the training system for judges and prosecutors, improve the case load management, and reduce the backlog[19] (EP 2005)

Latest:

→ ensure the functional independence and merit-based recruitment of regulatory, supervisory and oversight bodies so that they can fulfill their duties in a professional and proactive manner (an Urgent Reform Priority) (EC report 2016) [20]→ Entry to the judiciary and prosecution and subsequent appointments and promotions must be based on high standards and merit and not on political considerations (2017)[21]

The first time the merit based career system for judges was mentioned as a benchmark was way back in 2005 in the European Partnership and Analytical report for the opinion on the application from Macedonia[22] and still found its way in Urgent Reform Priorities 2015 and repeated in the EC country report 2016 and the Assessment and recommendations of the Senior Experts' Group on systemic Rule of Law issues 2017.

In general, the benchmark was being implemented through the legal framework and subsequent frequent amendments throughout the years. However, there are indications that the political influence was strong in the judiciary which questioned the independence of the judicial system. This concern has been raised by the civil society and the wider public on numerous accounts and was somehow confirmed with the wiretapping scandal. There are some omissions and remarks on its implementation, but the findings indicate that the merit system of the judges is developed in positive direction, even though there is a pressing need to introduce more qualitative criteria for the assessment of the judges and to raise the quality of judgments.

Timeline

The first Strategy and Action Plan on Judicial Reforms 2004-2007 identified set of measures which included changes in the selection and training of judges, allowing a professional and merit-based system of selection and career development. Major reforms were introduced towards the independence of the judiciary, through the constitutional amendments in 2005 – a process strongly encouraged by the perspective of EU candidacy status, which was granted in December 2005. The Parliament's role in selection and disciplinary procedures of the judges was abolished. Additionally, the criteria for selection of judges were further clarified with the enactment of the Law on Academy for Judges and Public Prosecutors. However, the EC country reports within the period 2006-2009 showed that the Republic of Macedonia has not introduced any significant novelty in the area. Nevertheless, in 2010 the Law on Courts and the Law on Judicial Council were further amended in order to introduce the career system among the other novelties stipulated with the amendments. Later in November 2011, the Minister of Justice's voting rights on the Judicial Council were removed making a step forward to the judicial power's independence from the executive power. However, despite of these changes, the actual implementation of the constitutional provisions were departed from.

In 2012, when appointing first instance judges, the Judicial Council continued to give preference to applicants who had not graduated from the Academy for Judges and Prosecutors (AJP).[23] Moreover, in 2013 provisions regarding the new professional conditions for the election of judges in the higher courts started to apply.[24] In 2015, the EC noted that there were no transparent means to assess whether the objective, merit-based criteria are in fact applied in decisions on judicial appointments and promotions, especially

19 European Partnership with the Republic of Macedonia, 2005 https://www.sobranie.mk/WBStorage/Files/Council%20Decision%2030.01.2006.PDF

20 EUROPEAN COMMISSION (2016). 2016 Communication on EU Enlargement Policy. Available at: https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20161109_strategy_paper_en.pdf

21 EUROPEAN COMMISSION (2017). *Republic of Macedonia: Assessment and recommendations of the Senior Experts' Group on systemic Rule of Law issues 2017*. (EC: Brussels) Available at: https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/2017.09.14_seg_report_on_systemic_rol_issues_for_publication.pdf

22 EUROPEAN COMMISSION (2005). *Analytical Report for the Opinion on the application from the Republic of Macedonia for EU membership*. (EC: Brussels). Available at: https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/archives/pdf/key_documents/2005/package/sec_1425_final_analytical_report_mk_en.pdf

23 Despite the legislative requirement that 50% of such appointments should be AJP graduates. At that time, it raised concerns about the credibility of the current recruitment provisions and the Judicial Council's commitment to merit-based recruitment. This practice continued in 2013.

24 In these regards, the legal requirement for higher court judges to have prior judicial experience was also circumvented by a number of appointments being made immediately before the amendment entered into force and even ignored in some appointments made after its entry into force. This continued to cast doubt on the commitment to merit-based recruitment.

when comparing multiple candidates. During this period a Judicial Reform Strategy 2016 – 2020 was adopted. However, with the change of government this strategy never saw the light of day. The new government has adopted a draft judicial reform strategy 2017-2022 in 2017 which has been drafted in cooperation with the CSOs. The last novelties in this area is the initiative for amendment of the Law on Judicial Council.

The Venice Commission expressed their opinion on the new draft Law on Judicial Council from 2017 in which it stated that "the increased transparency of the proceedings before the JC in the matters of appointment is, generally, a welcomed development".[25] However it also noted that it is *"important to clarify rules on the ranking of candidates and how this ranking is taken into account in the final decision on the appointment of the candidate".*[26]

State of play

If we take a look back, we can see that rather than de-politicizing the appointment and career advancement of judges, the history of appointments and decisions on timely referrals to perform a judicial function by the Judicial Council clearly indicate political bias.[27][28] In the period of 2015 – 2017 no changes occurred in the election of judges. The priorities regarding the de-politicization of the appointment and promotion of judges, assessment, disciplinary procedures and dismissal have not been implemented while the role of the Judicial Council and the Council of Public Prosecutors remained questionable in terms of ensuring the independence of the judiciary. In addition, the appointment of 60 public prosecutors, represent an exception to the established criteria, accompanied by the false certificates of candidates for public prosecutors which only confirm political engineering in the appointment of public prosecutors.[29]

The reports from the Senior Expert group[30] confirm that "the Judicial Council and the Council of Public Prosecutors has continued electing judges and prosecutors without any real changes in the selection process."[31] The selection and appointment of judges and presidents of courts, without fulfilling the conditions, contributes to the perception of increased politicization, as well as to further distrust towards this institution, both among the judges and the wider public. Currently the promotion of judges is based solely on quantitative criteria and which should be re-examined as well as the scoring system of cases, which, according to discussions with representatives of the judicial profession, does not ensure the equality of judges from different departments in the opportunities for advancement.[32]

These trends have had a direct influence on the rating of the Judicial independence of the country and according to **Freedom house – Nations in Transit**, the Judicial Framework and Independence rating declined last year mainly due to increased political influence over the judiciary as illustrated by the obstacles to the work of the Special Public Prosecutor's Office (4.25 in 2015 to 4.50 in 2016 to reach 4.75 in 2017). This is obvious as political interference with the judiciary worsened in Macedonia in 2016. The presidential pardons of individuals implicated in the wiretapping affair were made possible by a controversial decision of the Constitutional Court, which declared selected provisions in the Law on Pardons unconstitutional. This has also had an influence on the public opinion as portrayed by the **Balkan barometer 2017 which** showed that 36% of the population totally disagree that the judicial system in the country is independent of political influence. While as far as the perception ratings is concerned on the corruption of the judiciary, Macedonia scored 76, thus among the countries with lowest corruption scores. The **BTI index** rates Macedonia under defective democracies with not that satistactory scores on the rule of law (6.3. in 2016, 6.8 in 2014 and 6.8 in 2012) while the scoring for independent judiciary has remained unchanged (6).

Freedom house – Nations in Transit*
Judicial Framework and Independence score

4.25 in 2015	4.50 in 2016	4.75 in 2017

Balkan barometer 2017
Do you agree that the judicial system is independent of political influence?

36% disagree

BTI Index - Rule of Law*

6.3 in 2016	6.8 in 2014	6.8 in 2012

BTI Index - Independent Judiciary

6 in 2016	6 in 2014	6 in 2012

25 COUNCIL OF EUROPE (2017). *European Commission for Democracy through Law (Venice Commission). "The Republic of Macedonia", Opinion No. 905 / 2017 on the Draft Law on the Judicial Council.* (CoE: Strasbourg). Available at: http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2017)033-e

26 COUNCIL OF EUROPE (2017). European Commission for Democracy through Law (Venice Commission). *"The Republic of Macedonia", Opinion No. 905 / 2017 on the Draft Law on the Judicial Council.* (CoE: Strasbourg). Available at: http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2017)033-e

27 EUROPEAN POLICY INSTITUTE (2017). *Priebe Report – 2 years later: New Government and new opportunities to solve old issues.* (EPI: Skopje)

28 This has been confirmed once again in the report from the Senior Expert Group from 2017, which indicates that priorities concerning the de - politicisation of appointments and promotions, appraisal, disciplinary proceedings and dismissal of judges are not being implemented.

29 EUROPEAN POLICY INSTITUTE (2017*). Opinion on the Draft Judicial Sector Strategy Reform.* (EPI: Skopje). Available at: http://epi.org.mk/docs/EPI_StrategijaPravosudstvo_public.pdf

30 EUROPEAN COMMISSION (2017). *Republic of Macedonia: Assessment and recommendations of the Senior Experts' Group on systemic Rule of Law issues.* (EC: Brussels). Available at: https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/2017.09.14_seg_report_on_systemic_rol_issues_for_publication.pdf

31 In this period there were numerous temporary appointments to the Basic Court Skopje 1 and temporary appointment of seven judges to the Skopje Court of Appeal the Judicial Council which directly influenced the structure of the judges were supposed to decide in the high profile cases initiated by the Public Prosecution Office. The report claimed that "these practices make us question the basic working principles of the Council as an independent institution".

32 EUROPEAN POLICY INSTITUTE (2017*). Opinion on the Draft Judicial Sector Strategy Reform.* (EPI: Skopje). Available at: http://epi.org.mk/docs/EPI_StrategijaPravosudstvo_public.pdf

*The ratings are based on a scale of 1 to 7, with 1 representing the highest and 7 the lowest level of democratic progress.
*1 - being the lowest 10 being the highest

"A major problem is the election and appraisal criteria for judges which at present are based exclusively upon quantitative criteria of efficiency.[33][34] There are also different criteria along different laws, one law determines exclusively quantitative criteria and the other law sets ethical criteria, which create space for manipulation.[35] Another problem is the lack of accountability of the Judicial Council and the clientelistic approach.[36] According to some opinions, the present system of promotion of judges does not put in the forefront their expertise and integrity. The interventions in the system of appraisal, promotion and appointment of judges within the span of the past years, resulted in an "open door" for political influences over the judiciary". [37] On the other hand, members of the Judicial Council of RM have repeatedly highlighted the advantages of the system, which allows the judges with best results to "automatically" come to the forefront, even though improvements are still more than welcomed.

The latest debate related to the Law on Courts and the Law on Judicial Council highlighted the need for de - professionalization of the Judicial Council. The discussion revolved around two directions. Firstly that the members from the judiciary are not professionals in the Judicial Council, but still do their duty as judges and secondly, that members outside of judiciary are selected under clear criteria. Moreover, further clarification to the term "prominent lawyer" is needed for the members that are elected by the Assembly.[38] The Strategy for judiciary 2017 – 2022, also foresees de - professionalization of the members of the Judiciary Council. The envisaged amendments (as of 2018) have omitted to tackle the criteria for selection and promotion of judges. There is a need for different criteria for the grading of the judges including incorporation of the 'weighting' of the cases when defining the qualitative criteria for the grading. Moreover, the need for a change in the Constitution is also brought up, especially when it comes to the criteria of 'prominent lawyers' which is needed for a member of the Judicial Council. The recommendations fluctuate – e.g. that the grading does not go in direction of penalties for the judges, or that the grading of the 'norm' for cases that the judges are fulfilling, also needs to be deleted from the legal provisions.[39] However, with the change of Government (as of June 2017), a slight change can be noted in direction of respecting merit based principles in the procedure for selection of presidents of the courts and higher courts judges. In November 2017 the Judicial Council for the first time selected the candidates on a basic of the criteria for promotion of judges stipulated in article 41 in Law on Judicial Council and selected the candidates that were not first on the list, according to the automated grading results, but also took into account other, supposingly qualitative criteria. This change did not occur as a result of legislative changes, but by the mere change of political climate and actual decrease of political pressure when the Government changed. However, the Association of judges called[40] on transparency of the work of Judicial Council through respecting the law and the established principles for selection and promotion of judges and in addition through providing explanations for the decisions.

"The assessment is that the benchmark is too broad and needs to be specified since there is clearly misunderstanding what does it entail.[41] The current understanding of the principle is in the following order: promotion, first instance court judge, second instance court judge, supreme court judge and this is done though measuring the results which can be objective or subjective which represents a problem.[42] However, even through the merit system exists and is developed to a certain extent in line with the benchmarks as set by the EC, there are still remarks for political influence on the judiciary in general. The interviews with the judges show that they perceive the development of career system in a positive manner, but also stress that the current solutions leave room for personal and political influences over the appointment and promotion of judges. The authorities still find way to circumvent the laws and influence the appointment and promotion of the judges. The EC should engage more and clearly name the deficiencies. To this, it should offer concrete steps that need to be undertaken to overcome the detected deficiencies".

33 Interview Basic Court 2,, 15.01.2018; Interview, Judicial Council of Macedonia. 17.01.2018.

34 One interesting finding from the interviews is that the backlogs have not been an issue for several years straight. This is related to the merit system of the judges due to the fact that the judges are being assessed on quantitative basis i.e. one of the criteria that the judges get most points from is the number of completed cases. This creates a tendency that the judges are striving to get the most assessment points in order to be promoted to a higher instance court. However, this creates another issue and that is the fact that in these conditions, the quality of judgments dropped (Interview, Judicial Council of Macedonia. 17.01.2018).

35 Interview , Basic Court 2, 15.01.2018

36 Interview, Basic Court 2, 15.01.2018

37 Ibid

38 Debate, Ministry of Justice, Judicial community, CSOs active in reform of judiciary, 02.02.2018.

39 Ibid.

40 http://www.akademik.mk/uo-na-zdruzhenieto-na-sudii-sudskiot-sovet-da-gi-pochituva-zakonskite-normi-pri-izborot-i-unapreduvaneto-na-sudiite/

41 Interview , Basic Court 2, 15.01.2018

42 Interview, Judicial Council of R. Macedonia. 17.01.208

2. JUDICIAL ACADEMY REFORMS – SETTING UP THE BODY (B)

Introduction of the benchmark:

→Adoption of the Law on Academy for Training Judges and Prosecutors; Constitution of the bodies of the Academy; Adoption of the acts of the Academy (EP 2005)

Latest:

→ Ensure the functional independence and merit-based recruitment of regulatory, supervisory and oversight bodies so that they can fulfill their duties in a professional and proactive manner (an Urgent Reform Priority);

Adoption of the Law on Academy for Training Judges and Prosecutors; - Constitution of the bodies of the Academy; - Adoption of the acts of the Academy; Law amending the Law on Court Budget: Promotion of the financial independence of the judiciary in the administration of the court budget and setting up criteria for financing the judiciary (institutionalisation of the Training Academy) (URP 2015);[43]

Timeline

The setting up of this institution was one of the first benchmarks that were introduced in the area of the judiciary back in 2005 in the European partnership.[44] Macedonia started tackling the implementation of this benchmark with the first Strategy and Action Plan on Judicial Reforms 2004-2007 which set the foundation of the reforms to come. As the new Law on Academy for Judges and Public Prosecutors was adopted, the Academy as an institution was established in 2006 paving the way for the professional and non-political selection of judges. Additionally, the criteria for selection of judges were further clarified with the enactment of the Law on Academy for Judges and Public Prosecutors. However, the implementation of the Law and the actual appointment of the candidates for judges from the Academy was procrastinated so that in a period of several years the door was opened for appointments of candidates from outside of the judiciary that circumvented the system. Consequently, GREKO *recommended "the authorities of Republic Macedonia to ensure that the legal criteria and rules for the appointment of judges of first instance courts are effectively implemented in practice, in particular as regards the requirement that all new judges be graduates of the Academy for Training of Judges and Public Prosecutors".* [45] Only in 2013, with the amendments of the Law on Courts, it was stipulated that judges in the basic courts are elected only from the ranks of the candidates-graduates of the Academy for Judges and Public Prosecutors.

The changes of the laws that were praised by the Government as improvements largely related to technical details such as the Law Amending the Law on Judges and Prosecutors in December 2015, which introduced electronic protection when conducting examinations, tighter control over examinations, and sanctions for any violation of these provisions.

One significant remark that the EC noted in their country reports is that with the amendment of the Law on the Academy in December 2015, the merit requirements for candidate prosecutors were reduced without good reason, which raised concerns about political motivation. The amendment lowered the criteria for enrolment of candidate public prosecutors and shortened their training cycle from 24 months to only 9 months. This potentially affects not only the quality of training, but also creates an imbalance between future judges and prosecutors' level of and access to training.

However, when it comes to the legislative set up, the amendments on appointment of new director and members of the Management Board at the Academy for Judges and Public Prosecutors (AJPP) are still needed as well as amendment and promotion of criteria at AJPP for admission of inception training students and for selection of trainers.[46]

43 EUROPEAN COMMISSION (2015). Republic of Macedonia: Recommendations of the Senior Experts' Group on systemic Rule of Law issues relating to the communications interception revealed in Spring 2015, Brussels, 8th of June 2015. (EC: Brussels). Available at: https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/news_corner/news/news-files/20150619_recommendations_of_the_senior_experts_group.pdf

44 European Partnership with the Republic of Macedonia, 2005 https://www.sobranie.mk/WBStorage/Files/Council%20Decision%2030.01.2006.PDF

45 COUNCIL OF EUROPE (2013). Fourth Evaluation Round – Corruption prevention in respect of members of parliament, judges and prosecutors. Evaluation report: "Republic of Macedonia" – Adopted by GRECO at its 62nd plenary meeting. (CoE: Strasbourg) Available at: https://rm.coe.int/16806c9ab5

46 MACEDONIAN CSOs (2017). ***Blueprint developed by CSOs for Urgent Democratic Reforms***. (Skopje). Available at: http://www.epi.org.mk/docs/BLUEPRINT%20DEVELOPED%20BY%20CSOs%20FOR%20URGENT%20DEMOCRATIC%20REFORMS.pdf

State of play

According to the report from the Senior Expert group there are some positive changes in the last two years. Namely, the Academy for Judges and Prosecutors introduced changes in the curriculum, and the 2016 budget has been increased in comparison to the previous two years. Moreover, there is also progress in the implementation of the trainings. However, several pertaining issues remain - as a first the role of the Academy in the secondment of new candidates for judges and public prosecutors is problematic. This is evident from the late start of the introductory training for the 6th generation of students at the Academy for Judges and Prosecutors, after which appeal procedures had to be carried out and the Administrative Court adopted its decisions. Additionally, troublesome is the case of the appointment of public prosecutors which were suspected of submitting forged certificates confirming their knowledge of a foreign language.[47]

Representatives of the Academy underline that there are positive changes from the establishment of the academy up to its latest changes. However, *"with every passing year the Academy is indebted more. In these terms, the Academy lacks personnel, administration, technical equipment and infrastructural conditions"*. [48]

From the analysis, it can be concluded that overall the benchmark has been effectively implemented by the national authorities, as regards the formal establishment of the institution and its functioning. However, the Government should allocate more resources into development of the Academy to ensure its financial stability, hire more employees and provide better infrastructural conditions. However, if we analyse the accomplishment of the main goal of the establishment of the Academy – to contribute to the merit-based recruitment and professionalism of judges, we cannot conclude that the Academy was a major factor, as its role was actually circumvented and other factors prevailed, leading to the predominantly politically biased appointment and judges.

3. MERIT–BASED CAREER FOR CIVIL SERVANTS (TRCK)

Introduction of the benchmark:

→Implement fully the Law on Civil Servants, depoliticise the recruitment and career advancement of civil servants and other public agents and introduce a merit-based career system (EP 2005)[49]

Latest:

→Address serious concerns about politicisation of the public service; → ensure full implementation of the principles of accountability, transparency and merit (as provided for in the 'Urgent Reform Priorities' as well as the law); suspend and review the implementation of the law on transformation of temporary positions into permanent contracts until the principle of merit is fully observed (as per the 'Urgent Reform Priorities'); →Implement rigorously the new legal framework, Law on Administrative Servants and Law on Public Employees, fully observing the principles of transparency, merit and equitable representation. Employment policies need to follow the principles of transparency, merit and equitable representation in the public service through open procedures. There should be no further employments not respecting the rules. (EC Report 2016)[50]

This benchmark was firstly introduced in the European Partnership in 2005, while the need for depoliticization of the public administration has been at the core of the requests introduced through various key documents by the EC. Thus, the implementation of this benchmark is very low, the public administration is extremely politicized and used as one of the main pillars for political party clientelism. Frequent changes of the legal framework, accompanied by its selective enforcement and lack of transparency have created insecurity both within the administration, and in terms of service provision to citizens. The ten-year long process of non-objective recruitment and promotion has contributed to the capture of institutions.[51]

47 EUROPEAN POLICY INSTITUTE (2017) *Urgent Reform Priorities: status as of 30 May 2017*. (EPI: Skopje). Available at: http://epi.org.mk/docs/2.%20Status_Urgent%20reform%20priorities_ENG.pdf

48 Interview, Academy of Judges and Public Prosecutors, 11.01.2018

49 SECRETARIAT OF EUROPEAN AFFAIRS (2006). *European Partnership Action Plan 2005*. (SEP: Skopje). Available at: https://www.sobranie.mk/WBStorage/Files/European_Partnership_Action_Plan_2005%2008.02.2006.PDF; European Partnership with the Republic of Macedonia, 2005 https://www.sobranie.mk/WBStorage/Files/Council%20Decision%2030.01.2006.PDF

50 EUROPEAN COMMISION (2016). *Commission Staff Working Document –Republic of Macedonia 2016 Progress Report accompanying the document 'Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions*. (EC: Brussels). Available at: https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key_documents/2016/20161109_report_the_former_yugoslav_republic_of_macedonia.pdf

51 MACEDONIAN CSOs (2017). *Blueprint developed by CSOs for Urgent Democratic Reforms*. (Skopje). Available at: http://www.epi.org.mk/docs/BLUEPRINT%20DEVELOPED%20BY%20CSOs%20FOR%20URGENT%20DEMOCRATIC%20REFORMS.pdf

Timeline

"Since 2000 the legislation for public employment was regulated through a single Law on Civil Servants and even since it incorporated sufficiently the mechanism for guaranteeing merit based recruitment". [52] *However the p*ublic employment legislation has been subject to numerous amendments; in fact, the CSL had 26 amendments during the 14-year period since its adoption in 2000. *"All changes in the law have always relied on the rationale that it is aimed at improving the merit system. My feeling is that the system was actually downgraded due toother reverse processes and that this affected the entire system of civil service to went of.*[53] These changes have undermined the stability of the legal environment". [54] The main developments are the approval (February 2014) and enforcement (February 2015) of the new laws LPSE and the LAS[55] aimed to reduce to fragmentation of public employment.[56] *However, for the sake of truth their implementation in practice has still not begun.*[57] In 2017, the new Government initiated amendments to the LAS, and many of the solutions are deemed as *"repairing the mistakes of the past". [58]*

State of play

In its baseline study, SIGMA assessed the new public service legislation from 2015 as an improvement in that it ensures the recruitment of expert-level public servants based on merit and equal treatment, however it still noted that allows the use of non-objective criteria in the recruitment and termination of senior public servants. The non-competitive process of granting status of civil servants to persons holding senior managerial positions since they have to be appointed from among managerial level civil servants, has been assessed as contrary to the principle of merit.[59]

The enforcement of the LPSE and the LAS through widening the horizontal scope of the public service has led to an increased number of administrative bodies covered by the new legislation and the number of administrative servants due to conversion from civil and public servants to administrative servant. This practice is in contradiction to the merit principle.[60] The number of employees in the public sector remains among the most disputed and still unknown, finding its way in URP and in many reactions of CSOs. The new Government has taken up a process of revising the registry and come to real number of employees. In addition, the principle has been circumvented by the Law on Transformation into Permanent Contracts, by enabling conversion of thousands of temporary contract staff into permanent civil servants or public employees without open competition. *"The key problem that contributed to devaluing the legislation is politicization. Politicization has been inherent since the independence and has been more pronounced especially in the last 10 years. A major issue is non-implementation of legislation as it is written". [61]*

In the part referring to the recruitment procedure, EPIs research has shown that the principles of merit and integrity are completely ignored in the recruitment and promotion procedures. They are undermined by the recruitment of political parties where party loyalty is the main criterion for employment. The recruitment process is described as corrupt. Only those who "need" to get employed get maximum points in the testing. "As one of the respondents explained, it is enough that the candidate who "should be hired" only physically appear on the test". The administrator in charge of overseeing candidates completes his or her test.[62]

"We cannot brag for dramatic achievements. We have a great discrepancy between what is on paper and the practice. On paper, even the legislation from 2010, in my opinion almost perfectly suited to the then demands

52 Interview, Public Administration Reform Expert, 16.01.2018
53 Interview, Public Administration Reform Expert, 16.01.2018
54 SIGMA (2015), *Baseline Measurement Report: The principles of public administration – The Republic of Macedonia*. (SIGMA: Paris). Available at: http://www.sigmaweb.org/publications/Baseline-Measurement-2015-fYRMacedonia.pdf
55 SIGMA (2015), *Baseline Measurement Report: The principles of public administration – The Republic of Macedonia*. (SIGMA: Paris). Available at: http://www.sigmaweb.org/publications/Baseline-Measurement-2015-fYRMacedonia.pdf
56 *"The Law continues to fully exclude the Ministry of Interior (MoI), including its civilian staff, leaving in place a privileged system"* -SIGMA: The principles of public administration – The Republic of Macedonia, 2017
57 Interview, Public Administration Reform Expert, 16.01.2018
58 Interview, Public Administration Reform Expert, 16.01.2018; The key segment of the new law is the facilitation of the strong certification requirements. The state should not expose citizens to additional costs for obtaining such certificates. The state should be provided with that certificate if it is necessary for the work but it is not needed in the selection phase. Unfortunately, these things were thrown out by the changes in 2015. The cheapest certificate for English knowledge certificate is 50 euros, for integrity is 50 euros, and for application is also 50 euros. With the new changes, the integrity exam is abolished. This exam is unnecessary because no one has taken it into consideration during the selection because the its required upon employment. The exam for English was cancelled but in its current form. Foreign language checks are not completely removed. It is retained in the legislation but will not require a foreign certificate like TOEFL but when passing an exam for employment, there will be a separate module that will be English. I'm not sure about computer exams, but I'm sure that they will need to be inserted into a test module in some way. This is not a step back, but correcting some mistakes from past legislation
59 SIGMA (2015), *Baseline Measurement Report: The principles of public administration – The Republic of Macedonia*. (SIGMA: Paris). Available at: http://www.sigmaweb.org/publications/Baseline-Measurement-2015-fYRMacedonia.pdf
60 SIGMA (2015), *Baseline Measurement Report: The principles of public administration – The Republic of Macedonia*. (SIGMA: Paris). Available at: http://www.sigmaweb.org/publications/Baseline-Measurement-2015-fYRMacedonia.pdf
61 *Interview, Public Administration Reform Expert, 16.01.2018*
62 EUROPEAN POLICY INSTITUTE (2016). Life *and Numbers" – Equitable ethnic representation and integration in workplace*. (EPI: Skopje). Available at:. http://www.epi.org.mk/docs/Life%20and%20Numbers_MK_Final%20version.pdf

of the European Union. At that time, there were no principles for public administration reforms and assessments were done on ad hoc basis. Then this new framework was adopted which does not change anything dramatically but complicates the lives of candidates for public employment". [63]

The government acted on the contrary to the Priebe's urgent priorities on de-politicizing the public administration[64]. The concerns regarding the implementation of the merit system have been especially present during the pre-electoral/electoral period since the beginning of 2016 and throughout the first half of 2017.[65] *"In a situation where the old Government employed a large number of servants without meeting the criteria and with dubious qualifications, the new Government decided to accept the situation and continue the implementation of LAS and in parallel propose amendments. However, there are still no evidence of recruitments based on merit even after the new Government acquired power. The councillors are employed based on Labour law."* [66] There is no significant change on SIGMA assessment for the implementation of merit principle between 2015 and 2017 apart from worse assessment on prevention of political influence over recruitments in 2017 (1) vs. 2015(2)[67]. On the other side, according to **Balkan Barometer** 2017, Macedonia is among the countries with lowest perception ratings on public officials/civil servants affected by corruption (64).

Balkan barometer –
To what extent do you agree or not agree that the following categories in your economy are affected by corruption?

64%

SIGMA baseline study 2015 vs SIGMA report 2017:

Extent to which the recruitment of public servants is based on the merit principle in all its phases – 2015 (3) and 2017 (3);

Extent to which the termination of employment of public servants is based on merit: 2015 (3) and 2017 (3);

Extent to which political influence on the recruitment and dismissal of senior managerial positions in the public service is prevented: 2015 (2) and 2017 (1)

The current legal framework on civil servants is good but until now, there was a lack of political will on the side of the Government to be implemented accordingly. Additionally, the benchmark is perceived as not being able to capture the domestic context of the country i.e. the EC should have insight of cultural differences between the developed countries from the EU and the Republic of Macedonia. Formal implementation has been completed, with the primary and secondary legislation in force. However the problem of politicisation remains pertinent and de-partisation remains a challenge. Nevertheless we can see that the new government has published a draft PAR strategy that recognizes de - politicization as one of its main priorities and states that an expert and professional administration free from political influence is its goal and has set specific objectives to set this goal.[68]

4. TRACK RECORD FOR ADDRESSING MEDIA INTIMIDATION; ATTACKS ON JOURNALISTS; MEDIA INDEPENDENCE (TRCK)

› › › *Introduction of the benchmark:*

→ Imprisonment was abolished as punishment for defamation in 2006. However the issue of strengthening the mechanisms necessary to ensure the economic and financial independence of the media remains to be addressed

→ Rigorous implementation of the new Law on Broadcasting is needed to secure the funding of the regulatory body (Council of Electronic Media) and of the public service broadcaster, to depoliticise the procedure for selecting the members of the regulatory body, to establish the legal procedure that will ensure the political independence of the public broadcasting system and to introduce a more competitive licensing system which will diminish any political influence

› › › *Latest:*

→ Show tangible results of ongoing reforms within the Public Broadcaster, aiming at addressing lack of political independence and lack of balanced reporting ('Urgent Reform Priorities'); ensure full transparency on government advertising, not only on the spending of public finances but also on its recipients and contents ('Urgent Reform Priorities'); Chapter 23: ensure freedom of expression and adopt and implement credible measures to support pluralism in the media; EC Progress Report 2016

63 Interview, Public Administration Reform Expert, , 16.01.2018
64 EUROPEAN POLICY INSTITUTE (2017) *Urgent Reform Priorities: status as of 30 May 2017*. (EPI: Skopje). Available at: http://epi.org.mk/docs/2.%20Status_Urgent%20reform%20priorities_ENG.pdf
65 EUROPEAN POLICY INSTITUTE (2016). *Monitoring and Evaluation of the Rule of Law in the Republic of Macedonia (MERLIN WB)*. (EPI: Skopje). Available at: http://www.epi.org.mk/docs/MERLIN_Macedonia%20national%20study_en.pdf
66 Interview, Public Administration Reform Expert, 16.01.2018
67 Assessments of .SIGMA baseline study 2015 vs SIGMA report 2017: Extent to which the recruitment of public servants is based on the merit principle in all its phases – 2015 (3) and 2017 (3); Extent to which the termination of employment of public servants is based on merit: 2015 (3) and 2017 (3); Extent to which political influence on the recruitment and dismissal of senior managerial positions in the public service is prevented: 2015 (2) and 2017 (1)
68 Ministry of Information Society and Administration (2017) Public Administration Reform Strategy 2018 – 2022 http://www.mio.gov.mk/files/pdf/dokumenti/Draft_PAR_STRATEGY201-2022_16122017_final_en.pdf

→ Investigations of attacks against any journalist should be prioritised and concluded speedily; →Adequate resources immediately to strengthen its independence further and ensure effective operations and management. Legislative amendments or policies must ensure that MRT is fully transparent and accountable to all its stakeholders; engages with all relevant stakeholders actively and ensures that all citizens despite political opinion, sex, age, disability, etc, believe that MRT is their public broadcaster and not an instrument for political parties or others. The funding situation of the Agency for Audio and Audio-visual Media Services must be clarified and the independence of the Agency, including its Council must be fully guaranteed.[69]

Over the years freedom of media marks downwards trends as noted in the EC reports, OSCE/ODIHR reports, Reporters without borders, Freedom House – where freedom of the press index fell from partly free to not free ((48/100) in 2008, (62/100) in 2016 report and (64/100) in 2017), and Nations in Transit where Macedonia scores (4.43/7) in 2017 while media independence has declined over the last three years (5 in 2015; 5.25 in 2016 and 5.25 in 2017). In addition the CSOs have evaluated that the media pluralism in Macedonia does not reflect the pluralism of information's presented in the public.[70] However, noticeable changes and lack of pressure on the media are becoming visible with the new Government in power since June 2017. Firstly, this can be noted by more balanced reporting of media post Government formation.[71] *"I would not think that now, some politician in power is calling a TV editor and saying what needs to be said in the news".*[72] The number of defamation charges against journalists has fallen, as it is no longer used to intimidate journalists[73] however the attacks on journalists evident up to first half of 2017 remain to be thoroughly investigated. The public broadcaster is yet to be reformed.

Freedom house – Nations in Transit
Independent Media

5 in 2015	5.25 in 2016	5.25 in 2017

Freedom house - Freedom of the Press Scores
Total Score; Legal Political and Economic Environment

48/100 in 2008	62/100 in 2016	64/100 in 2017

Timeline

The recommendations for improving media landscape can be traced back to 2006 when EC noted that legal guarantees for freedom of expression were further strengthened with the abolition of imprisonment as a possible punishment for defamation and recommended economic and financial independence of the public service and Broadcasting Council. Unbiased reporting in media campaigns and Government favouritism have been reported in election reports[74] since 2008 when also the EC noted that media ownership was non-transparent and with political links[75] and has worsened ever since. Moreover, freedom of media and professional standards was among the 5 targets included in HLAD.[76] The Government continued to be the biggest advertiser in the media[77] enabling political influence over media. The necessity to improve the working conditions triggered the establishment of Independent Union of Journalists and Media Workers[78] while in 2013 and 2014 several legislative amendments of media laws took place,[79] without dialogue, in non-inclusive manner which faced numerous critics by the CSOs. The situation remained the same until 2015 and media reforms found its way on URP and June/July agreement as main documents addressing the crucial reforms for resolution of the one of most difficult political crisis of Macedonia ever since 2001.[80] In 2017, according to the Plan 3-6-9, the Government will not be advertising in the media, but the Local Self-Government Units are excluded, as they are independent.

69 EUROPEAN COMMISSION (2017). *Republic of Macedonia: Assessment and recommendations of the Senior Experts' Group on systemic Rule of Law issues*. (EC: Brussels). Available at: https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/2017.09.14_seg_report_on_systemic_rol_issues_for_publication.pdf

70 EUROPEAN POLICY INSTITUTE AND NETWORK 23 (2015). *Analysis: Judiciary and Fundamental Rights in the Republic of Macedonia*. (EPI: Skopje). Available at: http://epi.org.mk/docs/Analiza_Mreza.pdf

71 EUROPEAN POLICY INSTITUTE AND NETWORK 23 (2017). *The Priebe report two years later: new government and new opportunities for resolving old problems*. (EPI: Skopje). Available at: http://epi.org.mk/docs/1.%20The%20Priebe%20report%20two%20years%20later_ENG.pdf

72 Interview, School of Journalism and Public Relations, 16.01.2018

73 EUROPEAN POLICY INSTITUTE (2017) *Status on the Implementation of the Urgent Reform Priorities*. (EPI: Skopje). Available at: http://www.merc.org.mk/en/status-on-the-implementation-of-the-urgent-reform-priorities

74 In 2008, 2009, 2011, 2013, 2014 election reports express concern over government favoritism and unbiased reporting in media campaigns.

75 EUROPEAN COMMISION (2008). *Commission Staff Working Document –Republic of Macedonia 2008 Progress Report accompanying the document 'Communication from the Commission to the European Parliament and the Council*. (EC: Brussels). Available at: https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/press_corner/key-documents/reports_nov_2008/the_former_yugoslav_republic_of_macedonia_progress_report_en.pdf

76 Targets on media in HLAD: 1) Target: Amend defamation legislation, improve court practice and strengthen professional standards 2) Improve enforcement by the Broadcasting Council of media ownership rules and amendments to the legislation

77 First noted in EUROPEAN COMMISION (2010). *Commission Staff Working Document –Republic of Macedonia 2010 Progress Report accompanying the document 'Communication from the Commission to the European Parliament and the Council*. (EC: Brussels). Available at: https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key_documents/2010/package/mk_rapport_2010_en.pdf

78 Established in 2010.

79 In 2013, new Law on Media and new Law on Audio and Audio-Visual media services were voted. In 2013, Council of Media Ethics in Macedonia, a self-regulatory body was established.

80 A moratorium was put on government advertising in 2015. The wiretapping scandal the same year, revealed that politicians had close ties with media owners, and even media editors, journalists were subject to extensive and unlawful surveillance for years and resulted in recommendations for reforms enshrined in URP and June/July political agreement in 2015. The media reform was facilitated by the internationally brokered mediator P.Vannhaute. In 2016, the Electoral Code was amended, banning the media from financing the political campaigns of the parties. Also, the Law included the establishment of a body within the AAVMS

On another note, the number of defamation charges by politicians against individual journalists,[81] remained high until the end of 2015. Verbal attacks and threats against journalists were present on daily basis.[82] In the same year, there were reports of intimidation and harassments of journalists, two reports of property damage and two death threats against journalists. In 2016 there are 10 new cases of intimidation of journalists and 8 court proceedings involving journalists. In addition, there are multiple instances of physical attacks on journalists. One happened on 12 April 2016, the protests against the President's abolition, where police attempted to stop journalists from recording the police's use of force against demonstrators.[83] No legal action was taken over past physical altercations involving journalists, including a physical attack by a senior politician. In 2017, several journalist were attacked during the April 27 storming of the Parliament.

State of play

In the last 5 years of the VMRO-DUI coalition, media were under tremendous pressure. *"Media was presenting an image of things that were nowhere near reality".* Regarding media independence, reports show that a large portion of media outlet's support was 'bought' through government funding of advertising.[84] The support was two-level, one at the level of owner of the media, two at the level of editorial policy. There is clear indication that the editorial policy of those media was controlled from one centre, thus, different media outlets used same sources, same context, same schedule of news, and identical framing of the news.[8586] This convergence of editorial policies seems to be broken since the start of the new government.

The government advertising has led to anomalies in the media market. Many new media outlets were formed to serve the parties in power then. That lead to: (a) creation of untrustworthy news sources for TV stations to build their story (as the portal Kurir stated..), (b) saturation of the internet space with fake articles, after which persons couldn't distinguish what is true or not.[8788] Also, investigations of SPP point that the former government has turned a blind eye on the tax evasion of some businesses that media editors close to them were running, although there is currently no judgment on that. This points out that even though government advertising was banned, political control over media outlets continued since 2015.[8990]

In 2017, according to the Plan 3-6-9, the Government will not be advertising in the media, but the Local Self-Government Units are excluded, as they are independent. The landscape for media freedom is slowly changing with the change of government. *"On the other hand, media freedom comes with economic logic – if the media can't survive on the market, then they will be more fragile to pressure and practice auto-censorship. This is especially true for journalists, as conditions and wages are still tough, making them prone to auto-censorship".*[91]

The AAVMS failed to be politically independent in the past years while the financial independence is not yet guaranteed. The Priebe report in 2017 and Blueprint for Urgent Democratic Reforms[92] propose professionalization of the Agency, and members of the Council to be renowned professionals in the draft amendments of the Law on AAVMS.

The public broadcaster is still not reformed, as per EC and URP recommendations. The financial independence has not been obtained, and there is still political appointment on the editorial board. Also, it does not serve the purpose of a diverse and plural platform. The government currently proposes amendments to the Law for AAVMS, also targeting the public broadcaster.[93] *"The process is open and inclusive, but the government needs to take ownership of the reforms, as they are going to be the ones implementing it, not the CSOs".*[94] Amongst

81 The abolition of imprisonment for defamation charges was done in 2006. However they continued to be used against journalist as first reported in the 2010 EC progress report and brought amendments to the Law on Civil Liability for Insult and Defamation in 2012. However changes in defamation legislation as stated in URP in 2015 have not been completed.

82 They were often coming from supporters of the political parties, which were responsible for creating an atmosphere where critical journalists (and opposition in widest terms) were portrayed as traitors of the country. SOUTHEAST EUROPEAN MEDIA OBSERVATORY (2015). ***Macedonian journalists under attacks during the peak of the political crisis***. Available at: http://mediaobservatory.net/radar/macedonian-journalists-under-attacks-during-peak-political-crisis

83 EUROPEAN COMMISSION (2016). ***Communication from the Commission to the EP, the Council, the European Economic and Social Committee and the Committee of the regions on EU Enlargement Policy***. (EC: Brussels) Available at: https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key_documents/2016/20161109_report_the_former_yugoslav_republic_of_macedonia.pdf

84 SOUTHEAST EUROPEAN MEDIA OBSERVATORY (2014). ***Hijacked Journalism.*** Available at: http://mediaobservatory.net/radar/hijacked-journalism

85 INSTITUTE OF COMMUNICATION STUDIES (2016) ***Assessment of the state of the media sector in Macedonia in relation to the Recommendations of the Senior Experts' Group on systemic Rule of Law issues relating to the communications interception revealed in spring 2015***. Available at: http://www.merc.org.mk/Files/Write/Documents/04596/en/Policy-Brief-ASSESSMENT-of-the-state-of-the-media-sector-in-Macedonia.pdf

86 SOUTHEAST EUROPEAN MEDIA OBSERVATORY (2016). ***The Control Room: Political interference in the news production of Macedonia.*** Available at: http://mediaobservatory.net/investigative-journalism/control-room-political-interference-news-production-macedonia

87 Interview, School of Journalism and Public Relations, 16.01.2018

88 RESPUBLIKA (2017). ***Monitoring report on television news.*** Available at: http://respublica.edu.mk/modem-izvestai

89 Interview, School of Journalism and Public Relations, 16.01.2018

90 RESPUBLIKA (2017). ***Monitoring report on television news.*** Available at: http://respublica.edu.mk/modem-izvestai

91 Interview, School of Journalism and Public Relations, 16.01.2018

92 MACEDONIAN CSOs (2017). ***Blueprint developed by CSOs for Urgent Democratic Reforms***. (Skopje). Available at: http://www.epi.org.mk/docs/BLUEPRINT%20DEVELOPED%20BY%20CSOs%20FOR%20URGENT%20DEMOCRATIC%20REFORMS.pdf

93 GOVERNMENT OF THE REPUBLIC OF MACEDONIA (2017). ***Draft Law amending the Law on Audio and Audiovisual Media Services.*** (Skopje). Available at: http://www.mio.gov.mk/files/pdf/dokumenti/zakoni/ID_zakonZa_AAVMU.pdf

94 Interview, School of Journalism and Public Relations, 16.01.2018

other things, the Law proposes financing the public broadcaster of 0.7% from the country's budget. Although fee collection is still a problem, this solution seems to be controversial to some.[95]

5. IMPLEMENTATION OF THE LAW ON PREVENTION AND PROTECTION AGAINST DICRIMINATION (LEG/POL)

Introduction of the benchmark:

→ Harmonisation of the national legislation with the acquis in the field of protection against discrimination and equal opportunities (EP 2005)

Latest:

→ The law on protecton against discrimination is still not aligned with the acquis and its implementation mechanisms were not strengthened. In the coming year, the country should in particular: → On non-discrimination, alignment with the acquis is incomplete, notably lacking the prohibition of discrimination on the grounds of sexual orientation → The legal and policy frameworks are insufficiently implemented and persons with disabilities continue to experience direct and indirect discrimination. (EC report 2016)

Since the introduction of the benchmark, as early as 2005, the country has been working on developing a comprehensive legal framework for protection against discrimination in line with the EU equality acquis. *"This process can be said to have been successful because such a law was adopted, but unsuccessful because 'any' text was accepted just to 'tick the box' and not enough efforts for amending it were made".*[96] The respondents assess the benchmark as ineffective, vaguely formulated and impossible to create a real impact due to the lack of elaboration and set strategic targets. *"The reports over the years and the benchmark itself largely focused on 'putting out fire' rather than on related conceptual and structural problems".*[97]

Timeline

The first steps for drafting the Law on Prevention and Protection against Discrimination (the LPPAD) were in 2008 when a wide participative working started drafting the text of the proposal for the LPPAD. Abruptly, in 2010, the Ministry of Labour and Social Policy undid this process by proposing to the Parliament a different text than the one the working group was working on for two years. Soon after, the text was adopted with few amendments. Majority of the civil society organisations (CSOs) objected the proposed text and some withdrew their support altogether. The LPPAD foresaw establishing of a new multi-ground equality body - the Commission for Protection against Discrimination (the Commission) which started operating in 2011. The Commission entered into formal cooperation with other national institutions, worked on awareness raising on equality and non-discrimination, and networked internationally (it became a member of Equinet - the European Network of Equality Bodies). Later in 2014, the Ministry of Labour and Social Policy conducted an ex post-evaluation of the law, concluding that there is need to amend the LPPAD. As of 2016, a working body composed of executive and legislative government representatives, representatives from the NHRIs and CSOs was established with the aim of drafting amendments to the LPPAD. Since the amendments were to change over one third of the text, as per the national nomothetic regulation, the working group moved on to prepare a text for a proposal of a new Law. This text was discussed in a public working meeting in autumn 2017. At the time of writing of this report, no further progress was reported.

State of play

Since the adoption of the LPPAD, the EC has been stating that the alignment with the EU equality acquis is incomplete because of the omission of 'sexual orientation' as an explicitly protected ground of discrimination from the LPPAD. Yet, a (former) Commissioner assess the *"law as good even though not ideal since despite the fact that it did not include discrimination on the grounds of sexual orientation directly, the provision was circumvented in a positive manner by putting this category on "other grounds of discrimination".*[98]

Serious concerns persist about impartiality and independence of the Commission. According to CSOs structured monitoring, the election of the seven members of the Commission in 2016 clearly exposes a tendency towards

95 EUROPEAN COMMISSION (2017). *Republic of Macedonia: Assessment and recommendations of the Senior Experts' Group on systemic Rule of Law issues*. (EC: Brussels). Available at: https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/2017.09.14_seg_report_on_systemic_rol_issues_for_publication.pdf

96 Interview, Equality Law Researcher, 23.01.2018

97 Interview, Equality Law Researcher, 23.01.2018

98 Interview, Equality Law Researcher, 23.01.2018

even more pronounced partisanship of the Commission than it was the case with the first composition which was they also disputed. In both appointed compositions, most of the appointed Commissioners had or have no relevant previous experience and some had or have clear ties or were public supporters of with the (then) ruling coalition.[99]

In 2016, the Commission still had limited financial, material and human resources. Its offices remain in a physically inaccessible location. Additionally, the number of complaints filed with the Commission have decreased significantly, while the number of cases where discrimination was found in 2015 is insignificant (three out of 66).[100] The former is a result of CSOs brining less cases to the Commission because of the further worsening of its independence and competence, as well as because of backlog in case law because of which a group of CSOs raised a case against the Commission in front of the Ombudsperson and won.[101] Still, a (former) Commissioner focuses on the positive aspects of the establishment of the body, underscoring the establishment of the Commission as *"a serious step forward mostly due to its accessibility to a particular category of citizens and free services since the court is an abstract term for marginalized groups".*[102] He also notes the need for a clear separation of competences among the national Human Rights institutions, especially between the Ombudsperson and the Commission because of previous instances of overlapping work on the same cases.[103]

Although eight years have passed since the adoption of the LPPAD and seven since the establishment of the Commission, effective protection against discrimination, is still lacking. Access to justice by victims of discrimination, as well as the inclusion of sexual orientation and gender identity as a basis for discrimination, are intact.[104][105] The key challenges for the Commission remain lack of resources, visibility, transparency, and mechanisms for coordination with the Ombudsperson. The new law will resolve some of the greatest problems with the current framework such as explicit prohibition of discrimination on grounds of sexual orientation and strengthening of the legal guarantees for independence of the equality body, but the sanctions will remain below the EU prescribed standard of dissuasive, effective or proportionate.[106]

99 Ibid.

100 EUROPEAN COMMISSION (2016). ***Communication from the Commission to the EP, the Council, the European Economic and Social Committee and the Committee of the regions on EU Enlargement Policy***. (EC: Brussels) Available at: https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key_documents/2016/20161109_report_the_former_yugoslav_republic_of_macedonia.pdf

101 BILJANA KOTEVSKA (2017). ***Country Report on Non-discrimination – Macedonia (EC: Brussels)***. Available at: http://www.equalitylaw.eu/downloads/4460-fyr-macedonia-country-report-non-discrimination-2017-pdf-1-79-mb

102 Interview, former Commissioner, 12.01.2018.

103 Ibid.

104 EUROPEAN POLICY INSTITUTE AND HELSINKI COMMITTEE (2016). Shadow Report on Chapter 23 – May 2016 (EPI and HC: Skopje). Available at: http://epi.org.mk/docs/Shadow%20report%20-%20web.pdf

105 The inclusion of sexual orientation as ground for discrimination followed by impunity of hate crime and hate speech, especially with regards to sexual orientation and lack of independence of the equality body which, under its present positioning and operation, cannot be seen to be in line with the directives have also been identified among the key issues by the European network of legal experts for gender equality and non-discrimination. Source: BILJANA KOTEVSKA (2017). ***Country Report on Non-discrimination – Macedonia*** (European Commission: Brussels). Available at: http://www.equalitylaw.eu/downloads/4460-fyr-macedonia-country-report-non-discrimination-2017-pdf-1-79-mb and MIRJANA NAJCHEVSKA (2017) ***Country Report on Gender Equality – Macedonia*** (European Commission: Brussels). Available at: <http://www.equalitylaw.eu/downloads/4287-fyr-macedonia-country-report-gender-equality-2017-pdf-1-32-kb>.

106 Interview, Equality Law Researcher, 23.01.2018

ANALYSIS OF THE SELECTED BENCHMARKS

II. CHAPTER 24

6. LAW ON ASYLUM ALIGNED WITH EU ACQUIS (LEG)

Introduction of the benchmark:

→ Cooperation will focus in particular in the area of asylum, on the development and implementation of national legislation to meet the standards of the 1951 Geneva Convention and thereby to ensure that the principle of non-refoulement is respected[107] *(SAA Agreement)*

Latest:

→The legislation should ensure that an individual case-by-case assessment is still guaranteed for the assessment of the merits of an application, as required by the acquis and in line with the principle of non-refoulement; The amendments also provided that the principle of family reunification may only be exercised three years after obtaining refugee status, which is incompatible with the Family Reunification Directive; The country still needs to conclude readmission agreements with a number of countries of origin of irregular migration while upholding the non-refoulement policy towards asylum seekers. Negotiations to conclude a readmission agreement with Turkey have been under way since 2010 (EC country report 2016)

In general the country since 2003 has had a modern harmonized Law on asylum. At the moment the country has a solid legislative solution, especially taking into account the impact of the refugee crisis. Its current weaknesses are based on some restrictive procedures, but overall the alignment with the acquis is solid, while the implementation remains an issue.

Timeline

This benchmark is actually established by the SAA agreement. Already in the first information of the Subcommittee on Justice and internal affairs we can see that there is a reference to the successful adoption of EU directives, by stating that the 'legislative solutions have incorporated the new EU acquis,[108] but there is still a need to align the legislation. In addition, the Mannual for the implementation of the Law on asylum and temporary protection should be adopted by 15.11.2005. In 2006, we can see it is already included in the National Action Plan for the Adoption of the Acquis (NPAA).[109]

The NPAA since 2006 has included and repeated the intentions for further harmonisation of the Law with acquis.[110][111] On the other side, the EC 2006 report underlined that the implementing legislation on the Law on asylum and temporary protection is missing and has repeated this assessment in subsequent reports.[112] However in 2009 the situation is more positive as the EC progress report states that the new Law has brought the national standards 'even closer to the European ones' even though 'the law is still not fully aligned with the EU acquis'.[113] A positive trend has been noticed in 2010 as the transition from humanitarian to subsidiary protection has been completed.[114] An omission of the implementation of the law has been reported in the country report of 2015

107 EUROPEAN UNION (2004). *Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and Republic of Macedonia, of the other part.* (Official Journal of the EU: Brussels). Available at: https://www.sobranie.mk/WBStorage/Files/Stabilisation%20and%20association%2020.03.2004.pdf

108 Second meeting Subcommittee JHA minutes: Council Directive on minimum standards on procedures in Member States for granting and withdrawing refugee status – which is in process of and the Council Directive 2004/83 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted –for which transposing was stated to take place on 10.10.2006

109 GOVERNMENT OF THE REPUBLIC OF MACEDONIA (2006). *Draft National Programme for Adoption of the Acquis Communautaire.* (GOV: 2006). Available at: https://www.sobranie.mk/WBStorage/Files/NPAA_2006%2030.03.2006.pdf

110 National Programme for Adoption of the Acquis Communautaire 2006: It shall be approached to the adequate changing of the Law on Asylum and Temporary Protection in the direction of approximation of the Directive 32003L009 of 27 January 2003 laying down the Minimum standards for the reception of asylum seekers and Directive 32003L086 of 22 September 2003 on the Right to Family Reunification

111 NPAA 2006 states that hte Law has been harmonised with a number of EU measures and with a series of international instruments ratified by the Republic of Macedonia. This law provided for the adoption of the single binding by-law – Rulebook on the Application Form for Recognition of the Right to Asylum, the Manner of Fingerprinting and Photographing Asylum Seekers, the Form and the Procedure for Issuance and Replacement of the Documents of the Asylum Seekers and Persons with Recognised Right of Asylum or Temporary Protection in the Republic of Macedonia and on the Manner of Keeping Records.'

112 EUROPEAN COMMISSION (2006). *Commission Staff Working Document –Republic of Macedonia 2006 Progress Report.* (EC: Brussels). Available at: https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key_documents/2006/nov/fyrom_sec_1387_en.pdf

113 EUROPEAN COMMISSION (2009). *Commission Staff Working Document –Republic of Macedonia 2009 Progress Report accompanying the Communication from the Commission to the European Parliament and the Council.* (EC: Brussels). Available at: https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key_documents/2009/mk_rapport_2009_en.pdf

114 The report of 2011 does not mentioned alignment with the acquis, but it does underline that the first year implementation of the law on legal aid has improved access to justice but it is also underlined that free legal aid is still not available to asylum seekers. This practice has changed in 2012 and the law has been amended to include asylum seekers. In 2013 the report again states that the Law was amended with a view to further alignment with the acquis laying down minimum standards for reception conditions for asylum seekers and on procedures for granting and withdrawing refugee status and that the amendments extending the Law on Free Legal Assistance and the Law on Health Insurance Guarantees to asylum seekers entered into force. The report in 2014 focuses on slightly different matters, notably more on the norms in the area of migration and states that the Law on Foreigners has been further aligned with the EU acquis. Moreover it is also underlined that while both recognised refugees and persons granted subsidiary protection, used the right to free healthcare granted under the amended Law on Health Insurance, no asylum-seekers have yet been granted legal aid under the amended Law on Free Legal Assistance.

stating that 'it is important that the existing asylum legislation be fully implemented by ensuring that access to and information about asylum procedures are readily available. Mixed-migration flows increased dramatically, creating a substantial burden on the country's asylum and migration framework'[115]. Just as our interviewee[116] mentioned, most of the asylum seekers are only passing through the country without having the wish to remain. Out of these reasons there is a need for the country to have an appropriation of the legislation to this situation. This situation is also portrayed in the EC report 'Over 178 900 people - mainly Syrians, Afghans and Iraqis – registered their intention to apply for asylum after new legislation was adopted in June' while 'Only a fraction of them effectively applied for asylum.'

The amendments to the law from April 2016 referring to considering as unfounded the asylum applications by a safe third country nationals were found to be incompatible with the Asylum Procedures Directive and encountered many critics. Moreover the amendments also provided that the principle of family reunification may only be exercised three years after obtaining refugee status, which is incompatible with the Family Reunification Directive.

State of play

The sensibility of processing and delivering decisions on asylum claims are often followed by a certain discretion on providing explanations for the reasons for rejecting a claim. *"The first instance body with discretionary power over the decision on a rejecting asylum claims lies within the Asylum sector in the MoI and in these situations the Administrative court just takes the assessment made by the first instance without going into details of the evaluation."* This can also be seen from the comparison between the number of asylum claims with the number of decisions upon asylum claims – namely the procedure lasts very long especially since 2015 onwards. In this period, due to the refugee crisis and the importance of Macedonia in handling the Balkan route, legal solutions that address the needs of the asylum seekers that are just 'passers' was also enacted. Thus, there was a need of norms that will not irritate the international agreements and conventions, but that will also spare the country from any problems. At the end, the real asylum seekers that want to stay in the country remained the most harmed.[117] This shows attempts of EU to balance between better, more rational mechanisms that will both respect human rights, but that will also give advantage to the interests of the countries that are dealing with the refugee crisis. Thus, this is a 'living', ever evolving matter, to which the EU is dedicating special attention, especially now, since the Dublin protocol demonstrated it is not up to its task during the crisis and needs a significant update. Therefore while the EU itself is 'confused' on how to deal with this question, its confusion is replicated on the aspiring member countries.[118]

The country is following the directives and the EU trends. "*There is a new law for international protection which is still in its working version and which offers several solutions to avoid contradictions and backlogs. It is advanced in terms of defining a third safe country and it is also addressing the administrative barriers that existed till now and the civil society has a positive opinion about it*".[119] Nevertheless, there are some draft articles that are criticized, '*especially those that concern keeping some of the asylum seekers in institutions of closed character. This is a novelty that we have not yet had in our legislation and it is a suggestion that comes from EU directives'*. However, "*our advantage is that we are heading towards the path of EU integration, we have adopted the legislation up to this point and we do not have the capacity to think of new policies of our own".*[120]

Overall, the assessment is that the benchmark is implemented and the country regularly follows the trend of aligning the legislation of the country with the EU acquis. Nevertheless, the challenge comes with the proper implementation of the law. The legislation is in place, but the structure for its implementation is not. Moreover, as the *"EU itself does not have a clear plan and solution for the proper regulation and implementation of the asylum acquis, the countries just replicate the confusing behaviour of EU and the situation is fluctuating from month to month and from year to year".* [121]

115 EUROPEAN COMMISSION (2015). *Commission Staff Working Document –Republic of Macedonia 2015 Progress Report accompanying the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the regions.* (EC: Brussels). Available at: https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key_documents/2015/20151110_report_the_former_yugoslav_republic_of_macedonia.pdf

116 Interview, professor, Ex director of MARRI S, 23.01.2018, Skopje

117 Interview, professor, Ex director of MARRI S, 23.01.2018, Skopje

118 Interview, professor, Ex director of MARRI S, 23.01.2018, Skopje

119 Interview, professor, Ex director of MARRI S, 23.01.2018, Skopje

120 Interview, professor, Ex director of MARRI S, 23.01.2018, Skopje

121 Interview, professor, Ex director of MARRI S, 23.01.2018, Skopje

7. SPECIFIC ANTICORRUPTION PLANS; PROVIDING ADEQUATE FOLLOW UP OF DETECTED CASES (LEG; TRCK)

Introduction of the benchmark:

→Establish anti-corruption training & ethical codes for officials (passports, visas); Establish anti-corruption training & ethical codes for officials (border management); Implement legislation on preventing & fighting corruption, improve effectiveness of State Anticorruption Commission (Roadmap visa free travel for Macedonia, 2008) [122]

Since the introduction of the visa liberalization roadmap, the EC has not introduced this benchmark as such in Macedonia. Different requirements that are related to the strengthening of the capacities of the border police are introduced as well as anticorruption policies that target all institutions. *"The border police that has integrity and has been placed there by merit, has a problem by fitting into and keeping that integrity throughout time".* [123] However, the core of the problem still remains the placement of police officers at borders without merit but based on political party membership.

Timeline

The necessity to strengthen the capacities of the border police and the need for anticorruption plans that tackle the situation on the borders has been mentioned since 2004. Namely, during the first meeting of the Subcommittee of justice and internal affairs in 2004, the EC has criticised the transfer of personnel from MoI to border police without prior training and proper merit system. Three years later in the EC report of 2007 there was a remark that an overall strategy on human resources for the border police is lacking and that an in depth analysis of the staffing situation is lacking. Formal change is noted in 2008 when a human resources management strategy is adopted but refrains from 'dealing with the needs of the border police'.[124]

The first time this benchmark is formally mentioned goes back to 2008 with its inclusion in the roadmap for visa liberalization with Macedonia.[125] The visa liberalization negotiations were concluded with the Council granting Macedonia visa free travel on the 30th of November 2009 which indicates fulfilment of the benchmarks. Since then, explicit mention of this benchmark has not been made throughout the years.

State of play

Unlike in other countries, since the introduction of the visa liberalization roadmap, the EC has not introduced this benchmark as such in Macedonia. Different requirements that are related to the strengthening of the capacities of the border police are introduced as well as anticorruption policies that target all of the countries institutions. Therefore even though there are requirements and benchmarks in this area they are not explicitly stated and bits and pieces of it are shattered throughout different chapters and documents.

Nevertheless, it is important to note that when these benchmark actions were introduced back in 2008, Macedonia had the best 'scores' and most progress in the Commissions assessment. Namely, in its assessment from the 18th of November 2009, the Commission has assessed that Macedonia, across all four blocks of the roadmap the Commission, meets or generally meets the benchmarks.[126]

122 EUROPEAN COMMISION (2008). *Visa Liberalization with the Republic of Macedonia, Roadmap*. (EC: Brussels). Available at: http://www.esiweb.org/pdf/White%20List%20Project%20Paper%20-%20Roadmap%20Macedonia.pdf

123 Interview, professor, Ex director of MARRI S, 23.01.2018, Skopje

124 As portrayed by the EUROPEAN COMMISION (2008). *Commission Staff Working Document –Republic of Macedonia 2008 Progress Report accompanying the document 'Communication from the Commission to the European Parliament and the Council.* (EC: Brussels). Available at: https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/press_corner/key-documents/reports_nov_2008/the_former_yugoslav_republic_of_macedonia_progress_report_en.pdf

125 http://www.esiweb.org/pdf/White%20List%20Project%20Paper%20-%20Roadmap%20Macedonia.pdf
The actions required have been laid out throughout the document and more specifically for this benchmark 3 actions have been set. Namely, as part of Block 1 – Document security the roadmap defines the need to establish training programmes and adopt ethical codes on anti-corruption targeting the officials of any public authority that deal with visas or passports. As part of BLOCK 2 Illegal migration, including readmission – Border management another benchmark is set which requires the establishment of training programs and the adoption of ethical codes on anti-corruption targeting border guards, customs and other officials involved in border management. Moreover, under Block 3 Public order and security another benchmark is set: implement legislation on preventing and fighting corruption and improve effectiveness of the State Anti-Corruption Commission

126 http://www.esiweb.org/pdf/schengen_white_list_project%20-%20detailed%20analysis%20-%20Macedonia%208%20July%202009.pdf
More specifically, this assessment finds that Legal and organisation measures have been strengthened to effectively fight corruption and that Regarding training programmes targeting officials dealing with visas and passports, since 2006 the Ministry of Interior is implementing the anti-corruption programme, which has been revised in 2008 together with an action plan. Information about the substance of the anti-corruption training (two levels of control); in addition information was provided on cases of criminal investigation including officials at the border. Moreover, it was assessed that Two official documents that deal with the issue of corruption in the Ministry of the Interior have been brought and that 'they reflect the degree of willingness of the political and administrative authorities

Certain references to the need to have a proper human resource management strategy and the need to have trainings and to address organized crime can be found throughout different chapters across the EC reports but the need for 'anticorruption plans on the border and the need to manage a track record for anticorruption of officials on the borders' have not been set as benchmarks.

"The main problem that exists on the borders is the corruption of the border police. Namely, this is a problem that has existed for a very long time and the border police are one of the most corrupted".[127] According to one of the interviewees *"there are different kinds of corruption, from low level corruption in the form of 'gifts' to corruption that leads to organized crime of much larger proportions".* [128]

"The border police that has integrity and has been placed there by merit, has a problem by fitting into and keeping that integrity throughout time".[129] *"However, the core of the problem still remains the placement of police officers at borders without merit but based on political party membership since the party in power and the highest positions in the hierarchy do not always possess integrity.*[130] Moreover, another problem arises in cases of detected corruption. *Namely, internal control does deal with cases of corruption detected amongst the border police, but not with cases that are 'close to the political parties'. These cases are transferred to the Public Prosecutor office and in the past, very often, they have been dismissed".* [131]

8. THE ROLE OF INTELLIGENCE SERVICES AND THE OVERSIGHT MECHANISMS THAT ARE INTRODUCED; ESTABLISHED INITIAL TRACK RECORD OF INVESTIGATIONS (LEG, TRCK)

› › › *Introduction of the benchmark:*

→ *Functioning judicial and parliamentary oversight of interception of communications (URP 2015).*[132]

› › › *Latest:*

→ *Implementation of all recommendations, including the outstanding recommendations from 2015, is necessary to address systemic issues with regard to law enforcement and prosecution (2017)* [133]

The major achievement is the establishment and operation of the Special Public Prosecutor. Apart this, no visible steps have been made to counter high-profile political corruption. The use of special investigative measures is quite common in organised crime cases, but criminal investigations still need to be separated from interception for security purposes.[134] The cases of interception of communications raised by the Special Prosecutor found

to fight corruption: The Code of Police Ethics (Dec. 2003) - determines globally the standards of behaviour and the action of the police in complying with the basic principles of the European Code of Police Ethics of the Council of Europe (12/19/2001). In December 2008, the Code was strengthened with a specific anti-corruption programme, which - affirms as a strategic priority of the MOI the fight against corruption and corrupt behaviour, with zero tolerance, among the police and all employees.' When it comes to track record, it is determined that in the period from 2003 till 2008 the problem of corruption has been treated very strictly. Nevertheless there is criticism addressed to the fact that there is no anti-corruption training programs for officials involved in the personalization of travel documents which is one of the most crucial parts.

127 Interview, professor, Ex director of MARRI S, 23.01.2018, Skopje

128 Interview, professor, Ex director of MARRI S, 23.01.2018, Skopje

129 Interview, professor, Ex director of MARRI S, 23.01.2018, Skopje

130 Interview, professor, Ex director of MARRI S, 23.01.2018, Skopje

131 Interview, professor, Ex director of MARRI S, 23.01.2018, Skopje

132 EUROPEAN COMMISION (2005). *Urgent Reform Priorities for the Republic of Macedonia. (EC: Brussels). Available at:* https://eeas.europa.eu/sites/eeas/files/urgent_reform_priorities_en.pdf

Ensure clearer separation of the mandates and regulations concerning interception of communications for criminal investigation, on the one hand, and for security purposes on the other; Remove the UBK's intermediary function as "gatekeeper" for interception activities of the law enforcement agencies (police, customs, financial police); Remove the UBK's direct access to technical equipment allowing the mirroring of the telecoms providers' communication signal (ie. complete removal of the UBK's practical and technical capability to capture communications directly); Cn law and in practice that telecoms providers activate and divert signals to the competent law enforcement agencies (Police, Customs Administration and Financial Police) or the security agencies (the Security and Counterintelligence Service (UBK), the Intelligence Agency, and the Ministry of Defence's military security and intelligence service) only upon prior receipt of the relevant court order, and only for the purposes of lawful interceptions; Introduce risk management tools to guide and lead all intelligence operations, as well as reinforced data security and storage; Ensure appropriate training of staff on data protection, fundamental rights, professional ethics and integrity; Ensure immediate and regular convening of the relevant Parliamentary Committees on interception of communications and on security and counterintelligence, and their smooth operation; Ensure these Committee's compliance with their statutory reporting duties as well as their ability to obtain without hindrance the necessary data, testimonies, technical assistance and access, necessary to produce those reports.

133 *Assessment and recommendations of the Senior Experts' Group on systemic Rule of Law issues 2017*
https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/2017.09.14_seg_report_on_systemic_rol_issues_for_publication.pdf

134 EUROPEAN COMMISION (2016). *Commission Staff Working Document –Republic of Macedonia 2016 Progress Report accompanying the document 'Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions*. (EC: Brussels). *Available at:* https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key_documents/2016/20161109_report_the_former_yugoslav_republic_of_macedonia.pdf

firm and organised resistance by Government agencies and the judiciary. The reform initiated by the new Government, might suggest only change in form but not in substance since it does not offer the necessary safeguards. Oversight mechanisms and internal control measures do not guarantee elimination of any risk of illegal wiretapping. Overall, the benchmark captures and it is formulated according to the domestic context. The URP recommendations in this area are the most concrete recommendations ever which is very unusual for the EC, but driven from the necessity and wiretapping scandal. The reform of intelligence service is also mentioned among the priorities (along of the reform of judiciary and public administration) for recommendation for opening the negotiations with the EU. However the implementation of reforms does not mean just proposing laws for purposes of ticking boxes. *Firstly, the EU does not have a proactive attitude to monitor the achievement of these benchmarks and signal in time that a model that does not comply with their guidelines cannot be selected. Thus, at the moment this benchmarks is not perceived as effective. Perhaps with greater EU proactivity in the detailed verification on what is being done, and public signalling, they would have a greater effect.*[135]

Timeline

Since early 2004 the Republic of Macedonia took certain steps towards tackling organized crime and regulating intelligence service.[136] The Republic of Macedonia undertook the duty to set up a national cooperation center to collect, analyze and exchange criminal information, enabling the connection with the intelligence systems of the different law enforcement agencies. In addition to the previously mentioned duties a further requirment was the need to set up an National Intelligence Database (NID).[137] To date, the capacity to fight organised crime remains hampered by the fact that neither the National Coordination Centre for the Fight against Organised Crime nor the National Intelligence Database has yet become operational.[138]

The Law on interception of communication was first adopted in 2006.[139] It was followed with concerns on external control over the use of special investigative measures, with particular reference to the Assembly of the Republic of Macedonia.[140] The Constitutional Court in 2010 abolished the direct access of the UBK to all telecommunications of citizens, while these provisions were brought back in 2012 bypassing the order. The amendment in 2012 enabled "misuse" by the former government[141] while 2015 witnessed the release of illegal recordings of communications of government Ministers, senior officials, members of parliament, the judiciary, opposition, civil service and the media. The wiretapping scandal resulted in the first report of the Group of Senior Rule of Law Experts in 2015 and Urgent Reform Priorities with priorities to reform the intelligence service. As result Special Public Prosecutor was established in 2015 to investigate crimes resulting from the wiretapping scandal.

In 2016, the authorities launched the so called "Intelligentia Project", with support from the Geneva Centre for the Democratic Control of Armed Forces (DCAF). They identified four different models for management, implementation and oversight of interceptions. Considering the new context in 2017 and the new elected Government, the priorities for reform were included in Government reform Plan 3-6-9. Even though Intelligentia Project proposed different models for achieving this as part of the wider reform the new government has opted with the model of establishing OTA and retain direct access to technical equipment, and thus has prepared and passed in Government procedure package laws concerned with the reform of the system of intelligence services in November and December 2017.

The oversight of interception remained largely ineffective.[142] Parliamentary committees were formed in 2015. Following unsuccessful attempts for oversight in June and July 2016, the Directorate for Personal Data Protection succeeded in performing four inspections in August, September, October and November 2016, under the new UBK director. The Directorate for Personal Data Protection launched a control inspection at the UBK on 24 July 2017.[143]

135 Interview, Asspcoation Zenith 17.01.2018, Skopje
136 In 2004 the Government adopted the document "Measures directed towards concrete activity against the organized crime in the Republic of Macedonia".
137 Under Priority No.6 "Central criminal intelligence unit" of the above mentioned document
138 EUROPEAN COMMISION (2014). *2014 Progress Report on the Republic of Macedonia.* (EC: Brussels) Available at: https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key_documents/2014/20141008-the-former-yugoslav-republic-of-macedonia-progress-report_en.pdf and
EUROPEAN COMMISION (2016). *Commission Staff Working Document –Republic of Macedonia 2016 Progress Report accompanying the document 'Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions.* (EC: Brussels). Available at: https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key_documents/2016/20161109_report_the_former_yugoslav_republic_of_macedonia.pdf
139 SAC 2008 Agreed minutes; SFSF 2010 Agreed minutes The remarks of the EC during the JHA subcommittees and SAC were on the steps considered to remove the involvement of the Minister of Interior in the supervision chain of execution of interception orders and on the time frame when full independence of the equipment for interception from Directorate of security and counterintelligence will be achieved. This was to be achieved with the Law on criminal procedure which would eventually evoke amendments to the Law on interception of communications regarding this issue
140 SJFS 2009; 2010 ; SJHA 2013,
141 Interview, Association Zenith, 17.01.2018.
142 A parliamentary inquiry committee was created in 2015 to establish the political accountability of the wiretaps. (EC report 2016). The two oversight committees chaired by the opposition (one on security and counterintelligence and one on interception of communications) began their work in September 2015.
143 EUROPEAN COMMISSION (2017*). Republic of Macedonia: Assessment and recommendations of the Senior Experts' Group on systemic Rule of Law issues.* (EC: Brussels). Available at:
https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/2017.09.14_seg_report_on_systemic_rol_issues_for_publication.pdf

State of play

To date the capacity to fight organised crime remains troubled by the fact that neither the National Coordination Centre for the Fight against Organised Crime nor the National Intelligence Database has yet become operational.[144] No visible steps have been made to counter high-profile corruption. - The use of special investigative measures is quite common in organised crime cases, but criminal investigations need to be separated from interception for security purposes.[145] The Reports of the PPO to the parliament for the use of special investigative measures for the last three years (2014, 2015, 2016) only in one place state that there have been 7 cases of judgments based on special investigative measures. It is not stated whether these judgments are effective or whether they are convicted. If we have only seven convictions in 3 years it means that the measure does not give the expected results for prosecuting the crime.[146] According to EC report 2015 over 220 criminal proceedings have been launched in the past six years and over 30 high-level cases in the past 12 years. However, these data refer mostly to track record on fight against corruption and organised crime, as well as abuse of office by low to medium level officials. The track record remains weak on high-level political corruption with indications on "selective passivity" of the police, the Public Prosecutor's Office and the State Commission for the Prevention of Corruption (SCPC) on tackling serious allegations against senior government officials which has yet to be investigated. The cases of interception of communications raised by the Special Prosecutor found firm and organised resistance by Government agencies and the judiciary.

Public prosecutor report	EC report 2015
7 in 2014, 2015, 2016	220 criminal proceedings in past 6 years
Judgments using SIM	30 high level cases in past 12 years

The reform of intelligence service has been initiated by the new government but the findings and recommendations of the Priebe Report and the URP have not been implemented. *"The new legislative solutions do not create the necessary preconditions for effective control, and the executive power still retains excessive amount of power which could again be potentially misused in the future.*[147] *Furthermore the new legislative solutions will become effective after one year, during which all old solutions can/will be used".*[148] *"These solutions are presented as key instruments for restoration of citizen's trust but its refrains from reforming whole UBK."* [149]Moreover, last minute substantial changes have been made to the law and quite amended version from the one presented to the public has been sent to the Parliament, while also disregarding majority of comments form CSOs. In addition the Agency for Intelligence has not been included in the reform process. The laws are not aligned with the EU acquis and judgments of the ECHR.[150] They have intorduced in non-transparent manner technology for interception of communication that bypasses the telecom providers and the OTA[151]

The existence of wide range of authorizations for interception of communications related to *"protection of the country's interests in defense and security"* is not justified as such crimes are already covered with the articles for interception of communication as a special investigative measure, including in instances of serious crimes against the state order, terrorism, etc.[152] The new legal solutions expand massive geo-tracking of all citizens and the scope for intercepting communications of third persons and also introduces unrea-

144 EUROPEAN COMMISION (2014). *2014 Progress Report on the Republic of Macedonia.* (EC: Brussels) Available at: https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key_documents/2014/20141008-the-former-yugoslav-republic-of-macedonia-progress-report_en.pdf and
EUROPEAN COMMISION (2016). *Commission Staff Working Document –Republic of Macedonia 2016 Progress Report accompanying the document 'Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions.* (EC: Brussels). Available at: https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key_documents/2016/20161109_report_the_former_yugoslav_republic_of_macedonia.pdf

145 EUROPEAN COMMISION (2016). *Commission Staff Working Document –Republic of Macedonia 2016 Progress Report accompanying the document 'Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions.* (EC: Brussels). Available at:
https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key_documents/2016/20161109_report_the_former_yugoslav_republic_of_macedonia.pdf

146 Interview, Association Zenith, 17.01.2018.

147 Miodrag Labovik,University of Bitola Committee on Security and Deference Public hearing on Proposal Law on interception of Communications and Law on establishing the Operational Technical Agency , Parliament of Macedonia, 02.02.2018.

148 Interview, Association Zenith, 17.01.2018.

149 Magdalena Lembovska, Analitika, Committee on Security and Deference Public hearing on Proposal Law on interception of Communications and Law on establishing the Operational Technical Agency , Parliament of Macedonia, 02.02.2018.

150 Reaction of Network 23 on the proposed laws for interception of communication and establishment of OTA 07.02.2018. The law on interception of communication is not aligned with Directive 2016/680 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA и General data regulation 2016/679. In addition, the reform is not in compliance with the judgment of the ECHR joined case C-293/12 and C-594/12 from2014.

151 Interview, Association Zenith, 17.01.2018., Articles 17 and 34 of the draft Law on Interception of Communications introduce special technology for interception of communications bypassing the system of the newly proposed Operational-Technical Agency (OTA) and the telecom providers. The draft does not specify the exact technology covered with this article, though it may, among other things, refer to IMSI catchers. these articles may enable authorities to bypass the safeguards against illegitimate surveillance.

152 Rection of group of CSOs on the proposed Law on interception of Communication and Law on establishment of OTA, 08.02.2018

sonable time-limits for storage of intercepted communications.[153] The most advanced solution have been made with regard to oversight by the Parliament and civil society, *"however it remains highly problematic the oversight over the use of PIM with special technical devices and equipment and types of measures for interception of communication since they represent measures for which operators and OTA won't act as intermediary and the Parliament will be legally deprived from oversight".*[154] *It is especially concerning that the draft versions sent to Parlimanet* remove the right of the Parliamentary oversight committee to hold accountable officials of the competent authorities for interception of communications.[155]

Regarding the proposed solutions for the establishment of the Operational-Technical Agency, the representatives of the non-governmental sector and the expert public share the opinion that it does not guarantee a new service with integrity.[156] *"From a kilometre you can see that OTA is a UBK baby".*[157] The key challenges are the power to be transferred from UBK to OTA and especially use of Metadata without court order. In addition there are statements that OTA will nonetheless record the intercepted communications.[158] Such arrangement does not address the requirements set out in the Urgent Reform Priorities. In addition the transfer of staff from UBK to OTA, while no charges and convictions on UBK staff involved in the scandal has taken place, undermines credibility of the new institutions.[159] The Parliament does not acquire more substantial role, withholding itself from proactive engagement in legislative proposal formulation phase despite its inclusion in WG and the SPP still faces impediments during its work.

Committees still have no permanent technical experts to assist them and have not yet started collecting of statistical data to crosscheck the number of court orders issued against the number of intercepts based on system logs. No annual report has been published. The Parliamentary Committees, due to boycotting opposition, are being bypassed and proposals laws are discussed in other (not of the subject) Committees. No inspections of telecommunication providers have been carried out. No criminal charges have been raised against employees of UBK involved in illegal interception of communications.

153 Ibid.
154 Magdalena Lembovska, Analitika, Committee on Security and Deference Public hearing on Proposal Law on interception of Communications and Law on establishing the Operational Technical Agency , Parliament of Macedonia, 02.02.2018.
155 Ibid.
156 Reaction from Group of organizations on the proposed Law to be accessed at https://ener.gov.mk/default.aspx?item=pub_regulation&subitem=view_reg_detail&itemid=i4NEcXjzfxRh84pAboS+8w==
157 Gordan Kalajdziev, Debate "Towards greater protection from illegal interception", 10.01.2018
158 Statement by a representative from the Ministry of Interior on a meeting with civil society organizations held on 22.12.2017
159 Interview, Association Zenith, 17.01.2018; The transfer of staff from UBK to OTA is problematic since UBK will retain the final say on their employment in OTA due to the simple fact that it will perform their security clearance checks.

CONCLUSIONS AND RECOMMENDATIONS

One of the main findings is that a benchmarking mechanism as such does not exist in Macedonia even though it can be found under "different names" throughout a palette of documents and reform priorities. A strict, precise document that incorporates deadlines, but also enables valorisation, is lacking. Thus, benchmarks are introduced for Macedonia, but without actually having the benefits that come with accession negotiations.

Many of the interlocutors criticise the vagueness of some benchmarks, which in their opinion creates opportunities for circumventing them, leaving space for broad interpretation as to what they entail and do not capture the substance of changes. Consequently, they are suggesting more specific benchmarking, laying down steps and targets within specific period of time. As to the content of the benchmarks and the level of specificity, we can argue that further specification of the benchmarks as to concrete steps that should be taken would be problematic. It would further nurture the culture of expecting and accepting "ready-made" solutions from "foreigners", further contributing to the erosion of domestic capacity to coneptualise and implement reform. Therefore, benchmarks should essentially relate to the objectives to be achieved, rather than to how they should be achieved. They should clearly refer to basic democracy norms and international standards as key benchmarks for EU accession, while avoiding the traps of over-technicisation.

Once the national authorities determine the actions, their implementation should be objectively measured as to the objectives they achieved, not whether the single actions were realised.

As to the system of monitoring the benchmarks - as Macedonia is not in the mode of "accession dynamics" (six-month reporting on benchmarks), the implementation of the benchmarks can be procrastinated without any major effect on the progress in the accession process.

In the case of Macedonia - the URP represent an example of rather specific/tailored recommendations/benchmarks, which were formulated in order to contribute to reducing or eliminating party constraints of institutions. In reality, a divergent process took place - the process of state capture.[160] Actions were taken to demonstrate the Government's commitment to the EU agenda, while in practice the implementation of benchmarks was purely technicised and manipulated for short-term political gains. Another negative effect was that state resources were spared on actions that were formally aimed to achieve the benchmarks – and the EU agenda, but actually went contrary to it.

This unwanted result can certainly not be attributed to the content of the benchmarks themselves, but rather of the consequences of non-implemented benchmarks. In the case of Macedonia, the reluctance to use the stick, mainly due to security concerns and party alliances solidarity compromised the conditionality policy – and implicitly the benchmarking system. The blockage by Greece of any progress in the country's Euro-Atlantic integration path was also a key-damaging factor.

The Macedonian case is yet another evidence that reasons for the non-functioning of the mechanisms of the Europeanization process in the Western Balkans range from the argument that without a credible membership perspective, conditionality is not working to the argument that democratic concerns have been overshadowed by turning a blind eye for sake of "higher sensitive issues", which are beyond an often contrary to the Copenhagen criteria. The benchmarking system cannot be functional, if its results are overseen or overshadowed by "higher concerns" issues.

Most of the interviewees both from the civil society and from the national institutions and the embassies have pointed out that a method similar to the one of the visa free roadmap is needed. The research shows, the long experience and (hi)story of delivery of "benchmarks" is most fruitful and significant when there are specific benchmarks in combination with clear perspective of getting the carrot. The Visa Liberalization is a very good example and even more since it was accompanied by great political will, which enabled smooth fulfilment. Especially when there is political will in combination with clear prospect, the actions meet expectations.

The civil society can play a pivotal role in this endeavour, as it will strive, based on evidence, to capture the political context on the ground and extract the main concerns of citizens related to democratic standards as opposed to the overly technicised EU benchmarking system and reporting mechanism. The focus should not be on legislation and strategies, but on essential implementation of democratic standards in practice. As seen from the level of implementation of selected benchmarks, there is high-level legislative alignment, but on real progress on the ground is missing.

Normally, the responsibility is located at home despite the EC mistakes with trade-offs to sacrifice one area for the sake of progress in other area. However, this does not exempt fully the European Union as an exponent of responsibility to a certain degree or level, depending on whether it has taken or has not undertaken a particular work or action.

160 EUROPEAN POLICY INSTITUTE (2016). *Implementation of Urgent Reform Priorities slower then the restoration of anti-reformist practices*. (EPI: Skopje). Available at: http://epi.org.mk/docs/Realizacija%20na%20Itnite%20reformski%20prioriteti.pdf

ANNEX 1

Benchmark [xxx]

[Country]

Date created:	[dd.mm.yyyy]
By:	[Organisation]

	0. Benchmark basics
Method of introduction *[E.g. laid out in document...]*	
Year introduced	
Content of the benchmark and actions required *[Please list actions required as bullets as per EC last report/specific document]*	
Type of benchmark and actions required *[E.g. Adoption of a policy document (Pol); Adoption of legislation (Leg); Implementation; etc.]*	
	1. Data analysis/methodology
Documents subject to analysis *[Desk research e.g. EC reports; OSCE reports; own monitoring reports - **please include hyperlink next to each document**]*	
Interviews *[Number of interviews and type of respondents]*	
Focus groups *(if applicable)*	

Quantitative indicator findings *[Here inserted you have the indicators for each of the benchmarks – since we will fill out a separate template for each benchmark, please delete the rows of the benchmark you are not filling in and appropriately copy paste the rows for each of the benchmarks in their separate adequate template – you should at the end have 8 identical templates in which the sole difference is this section. In these regards note that we have taken the same indicators for the two benchmarks in the area of judiciary.)*	**Merit-based career system for the judges** **Judicial academy reforms**	**Freedom house – Nations in Transit** Judicial Framework and Independence score *(insert the score for your country for the last 3 years)*
		Balkan barometer – Figure 86: Do you agree that the following institutions are independent of political influence? (by economies) (NEW QUESTION) *(fill in the score for your country for this year for judiciary)* Table 16: To what extent do you agree or not agree that the following categories in your economy are affected by corruption? (by economies)(NEW QUESTION) *(fill in the score for your country for this year for judiciary)*
		BTI – Rule of Law – Independent Judiciary *(insert the score for your country for the last 3 years)*
	Merit-based career system for civil servants	**Balkan barometer –** Table 16: To what extent do you agree or not agree that the following categories in your economy are affected by corruption? (by economies)(NEW QUESTION) *(fill in the score for your country for this year)*
	Track record for addressing media intimidation; attacks on journalists; media independence	**Freedom house – Nations in Transit** Independent Media - *(insert the score for your country for the last 3 years)* **Freedom house - Freedom of the Press Scores** Total Score; Legal Political and Economic Environment - *(insert the score for your country for the last 3 years)*
	Implementation of Law on prohibition of discrimination	**European Equality Law Network –** *(Source for Macedonia, Montenegro and Serbia. The rest of the countries: Kosovo; BiH and Albania please insert relevant grey literature reference.)*
	Law on Asylum aligned with EU acquis	**Findings from interviews and EC country report from the last 3 years**
	Specific anticorruption plans; providing adequate follow up of detected cases; cooperation on borders	**Findings from interviews; FOI request for track records and EC country report**
	The role of intelligence services and the oversight mechanisms that are introduced; established initial track record of investigations in organised crime	**Findings from interviews and EC country report from the last 3 years**

2. Overview of findings

Timeline/evolution of the benchmark over time *[Please add as many rows as needed in the table]*	Event/document/juncture | Year |
Narrative timeline of the benchmark *[Please briefly explain the evolution of the benchmark over time guided by the info that you have inserted in the table]*	
Key findings on the implementation and monitoring of the benchmark *[Please provide a critical evaluation and incorporate your findings from the interviews/desk research/organization expertise – please reference in this process]*	
Key findings on the effectiveness of the benchmarks *[Please provide findings from interviews and findings from quantitative indicators accompanied with a critical evaluation – please reference in this process]*	
Key challenges for the implementation/effectiveness of the benchmark *[Briefly state in bullets]*	
Observed trends *[Briefly state in two sentences]*	

3. Recommendations

Recommendations for strengthening the monitoring mechanism/the effectiveness of the benchmark *[Please list in bullets; add rows if needed.]*	To the government/specific institutions	
	To the European Commission	

4. Conclusions

[Please mention briefly the conclusion of your findings related to the specific benchmark.]

BIBLIOGRAPHY:

1. EUROPEAN COMMISION (2006). Communication from the Commission to the European Parliament and the Council: Enlargement Strategy and Main Challenges 2006 – 2007, including annexed special report on the EU's capacity to integrate new members. (EC: Brussels).

2. EUROPEAN POLICY INSTITUTE (2012). Analysis: Republic of Macedonia: Adoption of EU Norms - Inertia in Limb. (EPI: Skopje).

3. EUROPEAN COUNCIL (2008). Council Decision of 18 February 2008 on the principles, priorities and conditions contained in the Accession Partnership with the Republic of Macedonia and repealing Decision 2006/57/EC

4. EUROPEAN COMMISION (2008). Visa Liberalization with the Republic of Macedonia, Roadmap: In the roadmap, 4 blocks of benchmarks are presented, targeting document security; illegal migration including re-admission; Public order and security; and external relations and fundamental rights.

5. EUROPEAN COMMISION (2012). Commission Staff Working Document –Republic of Macedonia 2012 Progress Report accompanying the document 'Communication to the European Parliament and the Council'. (EC: Brussels).

6. EUROPEAN POLICY INSTITUTE (2012), Same Recommendation, New Commendation: The 2012 EC Report on the Progress of the Republic of Macedonia. (EPI: Skopje).

7. EUROPEAN COMMISSION (2011). Communication from the Commission to the European Parliament and the Council: Enlargement Strategy and Main Challenges 2011-2012. (EC: Brussels)

8. EUROPEAN POLICY INSTITUTE (2014) Overshadowed Recommendation: Analysis of the European Commission 2014 Progress Report on the Republic of Macedonia. (EPI: Skopje)

9. EUROPEAN COMMISION (2015). Commission Staff Working Document –Republic of Macedonia Report 2015 accompanying the document 'Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the regions'. (EC: Brussels).

10. EUROPEAN COMMISSION (2015). Urgent Reform Priorities for the Republic of Macedonia. (EC: Brussels).

11. SECRETARIAT OF EUROPEAN AFFAIRS (2006). European Partnership Action Plan 2005. (SEP: Skopje).

12. EUROPEAN COMMISSION (2016). 2016 Communication on EU Enlargement Policy. (EC: Brussels)

13. EUROPEAN COMMISSION (2017). Republic of Macedonia: Assessment and recommendations of the Senior Experts' Group on systemic Rule of Law issues 2017. (EC: Brussels)

14. EUROPEAN COMMISSION (2005). Analytical Report for the Opinion on the application from the Republic of Macedonia for EU membership. (EC: Brussels).