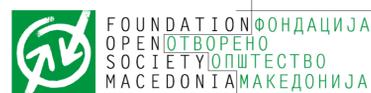


# OPEN JUSTICE - FOR ENHANCED TRUST OF CITIZENS IN THE JUSTICE SYSTEM



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This set of policy briefs is developed to help civil society organizations and citizens at large to engage in an informed debate and to obtain access to expert knowledge, views and opinions on topics that are important for the country's EU integration. Areas in which the Republic of North Macedonia will lead its accession negotiations are both complex and diverse, and reforms that need to be implemented will open numerous dilemmas that necessitate expert debates. All content created by the project "CSO Dialogue - Platform for Structural Participation in EU Integrations" is available on the web-platform: [www.dijalogkoneu.mk](http://www.dijalogkoneu.mk).

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## INTRODUCTION

The overall ambiance in the justice system of the Republic of North Macedonia has been changing over the last years and should enhance the citizens' trust in the legal state. However, judging from public opinion surveys, public trust in the judiciary continues to be exceptionally low. Although steps have been taken to ensure more frequent direct broadcast of closing statements by lawsuit parties in the media and on the social networks and publication of court judgements in the cases related to organized crime and corruption, occasional organization of briefings for the journalists, formation of the Judicial Media Council – the citizens' trust in the judiciary is not improved.

In spite of the relatively good legal framework in place and formal transparency, there are still cases which confirm that further work on improvement is needed. This is valid at several levels. One of these levels are legal provisions that open space for different legal interpretations, which are often detrimental to the judicial system's transparency.

They include, for example, strict legal interpretations of pre-trial detention proceedings in criminal cases that take place without the public's presence, although it is a matter of adversarial procedure in which the lawsuit parties include the prosecutor, defendant and his/her attorney. In the past and in many court cases, the public had witnessed different legal practices in respect to pre-trial detention orders issued for former and current public officials.

This is also valid in the case of court hearings held for draft settlements, including nonuniformed practice for distribution of enforceable orders on detention and other pre-trial measures to the media.

Based on all this, it is evident that some provisions on publicity of court hearings under domestic laws need to be revised. A model for such revision could be good practices from more liberal systems that operate according to the concept of "open justice", which means that all documents published by the courts become a public document from the moment of their publication.[1]

This policy brief addresses the weakest links within the Macedonian justice system in respect to the judiciary's transparency.

The issue of transparency is plagued with problems and challenges. For example, representatives from the Helsinki Committee[1] were not allowed to attend public hearings at the Basic Court in Kumanovo, which amounts to violation of the principle of publicity of court trials. According to the Helsinki Committee, they have presented the President of the Kumanovo Court and the Judicial Council with relevant complaints on this matter.

An identical example about the issue of transparency is found in a media report from 2019 wherein it was said that during the official pronouncement of the judgement taken by the Court of Appeals in Skopje,[3] the judges delivering justice in the name of the citizens have refused to identify themselves, i.e. have refused to state their names and surnames.

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[1] With the exception of confidential documents, such as special investigation measures.

[2] Absurdities of the Court: A Remote Device that Excluded the Public from the Courtroom, available at: <https://mhc.org.mk/news/sudski-apsurdi-dalechinskiot-ured-shto-ja-iskluchi-javnosta-od-sudnica/>

[3] THE COURT OF APPEALS DENIES LIBEL LAWSUITS AGAINST SLOBODAN BOGOEVSKI; PLAINTIFFS ALI AHMETI AND MUSA DZAFERI ARE NOT ENTITLED TO REDRESS, available at: <https://sdk.mk/index.php/makedonija/apelatsija-gj-odbi-tuzhbite-za-kleveta-protiv-slobodan-bogoevski-ali-ahmeti-i-musa-dhaferi-nemaat-pravo-ni-na-otshteta/>

As regards publicity and transparency of criminal proceedings, the public prosecution has an undisputed role in that respect and has been subject of public denunciations and criticism. Hence, in the aftermath of the fire at the modular hospital for treatment of COVID-19 patients in Tetovo, the prosecution service did not hold a thematic press-conference, but rather addressed the public with press releases which, in turn, contributed to continued speculations in the public.

On the other hand, performance of administrative bodies within the judicial system that are not directly involved in delivery of justice, but are equally important, i.e. the Judicial Council and the Council of Public Prosecutors, often raises questions about insufficient transparency in their work. An example thereof was the instance when a journalist from *TV24*[1] was not allowed to attend the session held by the Council of Public Prosecutors under the justification that she had been denied access on the account of “compliance with coronavirus protection protocols”. Moreover, minutes from the council’s sessions which, according to legal provisions in effect, should be published on its official website, are subject of heavy editing (removal of speaker names) before their publication.

Members of the Judicial Council and the Council of Public Prosecutors take decisions on appointment and promotion of judges/public prosecutors at so-called college meetings that are organized before their public sessions, thereby denying the public’s right to insight into authentic and argument-based deliberations on prospective candidates. Only information that is made publicly available concerns the vote count and final outcome.

Here it should be noted that the media[4] have reported the names of prosecutors to be appointed at the Public Prosecution Office for Organized Crime and Corruption and the Higher Prosecution Office in Skopje one day before the session held by the Council of Public Prosecutors for that purpose. Such practice implies the risk of influences and lobbying before the actual appointment and is indicative of non-transparency.

On the other hand, public opinion surveys conducted in the last years, including by the International Republic Institute (IRI) and Eurothink – Center for European Strategies, provide further evidence on the citizen’s low trust in the judiciary.

This policy document offers recommendations for creation of policies that will increase the citizens’ trust in one of the most important segments in the society.

Целта на овој документ за јавни политики е да понуди препораки за креирање јавни политики што би ја зголемиле довербата на граѓаните во еден од најважните сегменти во општеството.

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[4] The Council of Public Prosecutors did not allow journalists to attend the session held today. Available at:

<https://www.24.mk/details/sovetot-na-javni-obviniteli-ne-dozvoli-novinari-da-prisustvuvaat-na-deneshnata-sednica>

[5] Former prosecutors from the Special Prosecution Office are being “accommodated” to new public offices. Available at:

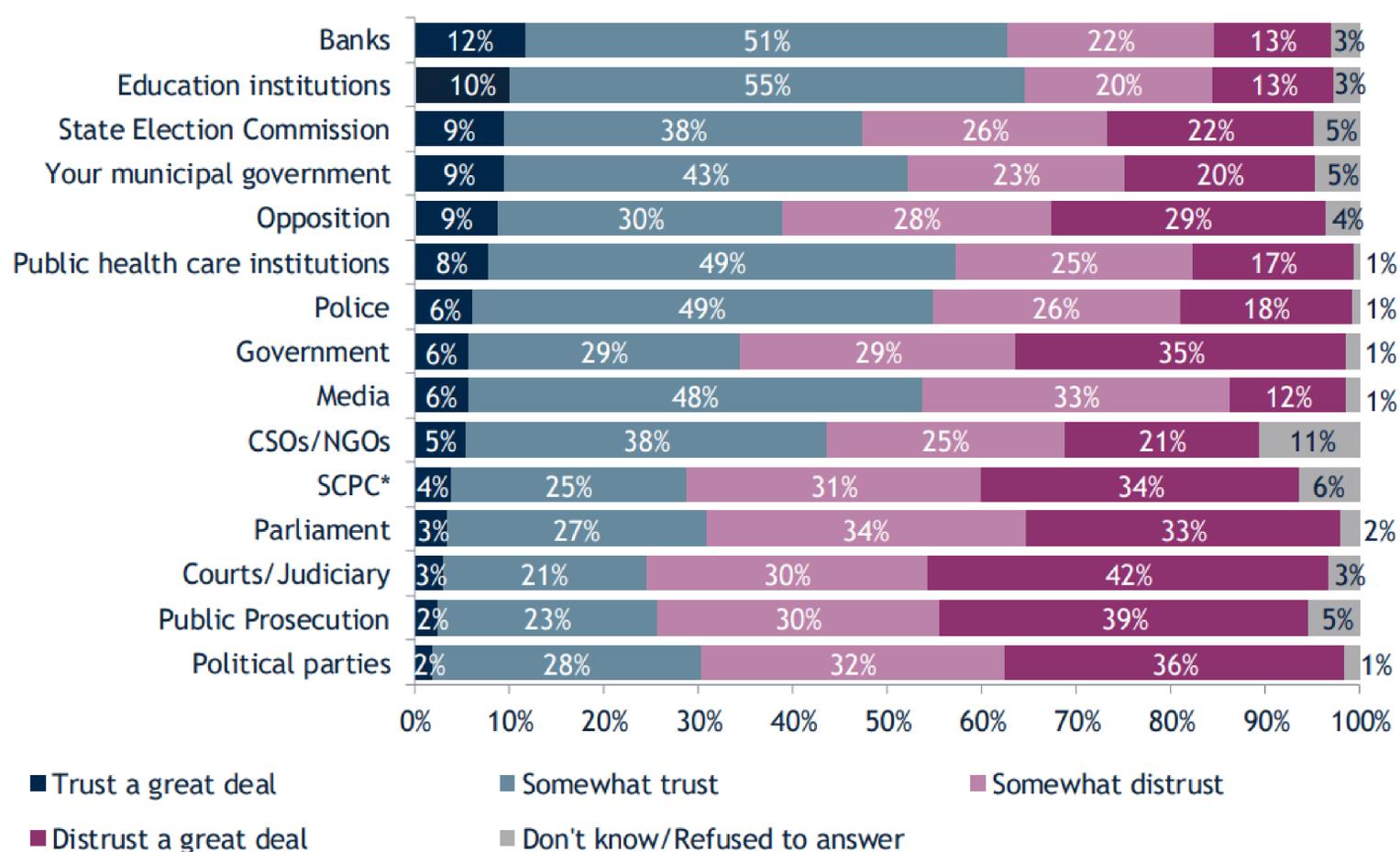
<https://alsat.mk/mk/poraneshni-obviniteli-od-sjo-se-uhlebuvaat-vo-novi-drzhavni-fotelji/>

## LOW TRUST IN THE COURTS AND PROSECUTION SERVICES

Data from the public opinion survey[6] conducted by the International Republican Institute (IRI) in the period November-December 2021 shows that only 3% of respondents have indicated complete trust in the judiciary and only 2% of them fully trust the prosecution services.

Some level of trust in the courts was indicated by 21% of respondents, while this share accounts for 23% in the case of public prosecution services. As many as 42% of surveyed citizens reported no trust in the judiciary, and 39% of them indicated such answers in respect to the prosecution services.

### To what extent do you trust or distrust each of the following:



Reasons behind the public’s extremely low trust in the justice system are various and range from dissatisfaction with particular judgments (losing party of any lawsuit is always dissatisfied), through selective enforcement of the law, to non-transparent proceedings.

The European Commission’s 2020 Country Report for the Republic of North Macedonia[7] notes that “the commitment to full respect of the principle of independence of the judiciary, as well as enhanced transparency, notably in the work of the Council of Public Prosecutors, needs to continue”.

[6] Public opinion survey among the citizens of the Republic of North Macedonia, March 2022, IRI. Available at:

<https://www.iri.org/resources/public-opinion-poll-residents-of-north-macedonia/>

[7] European Commission’s 2021 Country Report for North Macedonia, Secretariat for European Affairs, Government of RNM. Available at:

<https://www.sep.gov.mk/data/file/Pregovori/North-Macedonia-Report-2021-%D0%9C%D0%9A2.pdf>



In almost all judgments, ECtHR notes the principle of “public scrutiny” as being of essential importance, by referring to the fact that “the public character of court trials, as given in Article 6 (1), protects the litigants against administration of justice in secret without the public’s presence”.

In its broadest form and according to the definition provided in the Encyclopaedia Britannica,[11] the rule of law is “the mechanism, process, institution, practice or norm that supports the equality of all citizens before the law, secures a nonarbitrary form of government and, more generally, prevents the arbitrary abuse of power”.

Transparency of the judiciary primarily concerns openness of judicial authorities as the third branch of government and ensuring publicity in the delivery of justice, except in the cases where the public is excluded, in compliance with the laws. That is why when judges decide to exclude the public, they must provide a justification for such action, i.e. take formal decision on the public’s exemption.

The principle of publicity arises from and is guaranteed under Article 102 of the Constitution of the Republic of North Macedonia,[12] which stipulates that court hearings shall be public[13] and court proceedings shall be regulated in detail by means of the Court Rules of Procedure.[14]

Ensuring the public character of court trials, as well as monitoring of court proceedings by the media and civil society organizations are quintessential for citizens to trust the judiciary.

Transparency of the judiciary is pursued at several levels: ensuring the public character of court trials, which is one of the principles guaranteed by the constitution and regulated under process laws; publication of court judgments and decisions; publication of the annual schedule of court trials per judge; organization of media briefings and press conferences, especially for the cases that are of high interest for the public...

“In general, opinions of the Consultative Council of European Judges affirm the principle of the rule of law and confirm that, in any democratic society, it is of outmost importance for the courts to inspire trust in the public and that the public character of proceedings is one of the crucial means to maintain confidence in the courts”.[15]

The Guide on Transparent Judiciary, titled “Manual for Judges and Journalists” and published by the Association of Judges of RNM, enlists the key documents of the Council of Europe, i.e. CoE Recommendation Rec (2003) 1325 on the provision of information through the media in relation to criminal proceedings and CCEJ Opinion No.7 on justice and society (2005) 26.

[11] Definition of the rule of law according to the Encyclopaedia Britannica. Available at: <https://www.britannica.com/topic/rule-of-law>

[12] Constitution of the Republic of North Macedonia, official website of the Assembly of RNM. Available at:

<https://www.sobranie.mk/content/Odluki%20USTAV/UstavSRSM.pdf>

[13] Court hearings and public announcement of judgements are public. The public can be excluded only in the cases established by law.

[14] Court Rules of Procedure, official website of the Supreme Court of RNM. Available at:

[http://www.sud.mk/wps/wcm/connect/central/022a5a53-8449-45dd-8953-b2fb44561d58/Sudski-delovnik-09-05-2013.pdf?MOD=AJPERES&CACHEID=ROOTWORKSPACE.Z18\\_L8CC1J41L088F0A1K8MT8K00U4-022a5a53-8449-45dd-8953-b2fb44561d58-mAmG2Gf](http://www.sud.mk/wps/wcm/connect/central/022a5a53-8449-45dd-8953-b2fb44561d58/Sudski-delovnik-09-05-2013.pdf?MOD=AJPERES&CACHEID=ROOTWORKSPACE.Z18_L8CC1J41L088F0A1K8MT8K00U4-022a5a53-8449-45dd-8953-b2fb44561d58-mAmG2Gf)

[15] Guide on Transparent Judiciary. Judicial Media Council at the Association of Judges of the Republic of North Macedonia. Available at:

<https://sudskomediumski.mk/assets/pub/%D0%9F%D1%80%D0%B8%D1%80%D0%B0%D1%87%D0%BD%D0%B8%D0%BA%20%D0%B7%D0%B0%20%D1%81%D1%83%D0%B4%D1%81%D0%BA%D0%B0%20%D1%82%D1%80%D0%B0%D0%BD%D1%81%D0%BF%D0%B0%D1%80%D0%B5%D0%BD%D1%82%D0%BD%D0%BE%D1%81%D1%82.pdf>

On 10 July 2003, the Council of Europe's Committee of Ministers adopted the key Recommendation REC (2003) 13 that concerns provision of information through the media in relation to criminal proceedings where it is said that journalists have the right to comment criminal law cases with due respect for the presumption of innocence and accurate reporting of the information.

Accordingly, publicity of court proceedings is crucial for ensuring the citizens' trust. Indisputably, the judges make their opinion known in the public by means of their decisions, but they need to build and maintain professional relations with media representatives, without endangering the interest of the justice in the specific case.

In order to improve transparency and enliven cooperation, in 2018, journalists and judges – following the example of the Court in Massachusetts, United States – formed the Judicial Media Council<sup>[16]</sup> within the Association of Judges of the Republic of North Macedonia.

An imperative for media outlets that cover court trials is to respect the presumption of innocence in regard to suspects and defendants until an enforceable judgment proves otherwise.

In that context, due diligence in media reporting, inter alia, implies the so-called prejudicial publicity which, according to the Recommendation REC (2003) 13<sup>[17]</sup> of the Council of Europe's Committee of Ministers, means that defendants are entitled to legal protection when they can demonstrate high likelihood that provision of information will result or has resulted in breach of their right to a fair trial.

It is important for any analysis of transparency to distinguish between transparency of the court as an institution and transparency of judges as “administrators of justice”. The same is valid in the case of public prosecution services, i.e. public prosecutors.

Sometimes, equating the court and the individual judges could lead to generalizations and erroneous conclusions on insufficient transparency, i.e. individual judges could work in the spirit of transparency, but are assessed as being non-transparent on the account of their institution.

Понекогаш поистоветувањето на судот како институција и самите судии може да доведе до генерализација и погрешен заклучок за недоволна транспарентност, односно поединечни судии да работат во духот на транспарентноста, а да бидат оценети дека не се транспарентни поради самата институција.

This distinction is important because the court, as institution, is obliged to be transparent and ensure publicity of its work, while transparency of individual judges sometimes depends on their definition and understanding of this principle.

[16] Judicial Media Council. Available at: <https://sudskomediumski.mk/>

[17] Recommendation Rec (2003) 13 of the Committee of Ministers to member states on the provision of information through the media in relation to criminal proceedings. Available at: [https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectId=09000016805df617](https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016805df617)

## INVESTIGATIONS ARE NEITHER PUBLIC NOR SECRET

The public prosecution services have an equally important role in maintaining public trust in the justice system. Publicity of their work is regulated under the Law on the Public Prosecution Office<sup>[18]</sup> and relevant secondary legislation.

In recent years, and especially with proceedings initiated by the Special Prosecution Office, the Public Prosecution Office for Organized Crime and Corruption and the Public Prosecution Office in Skopje, it became evident that performance and openness of these institutions is of particular importance for the citizens and their (dis)trust in the judicial system.

While the titles of these institutions refer to the public character of their work, due to the nature of their work there is a more closed system for communication with the public. Nevertheless, this only concerns pre-investigation proceedings which, according to the Law on Criminal Proceedings, are secret.

As part of their public appearances, some public prosecutors reiterate the fact that investigations are secret, but the Law on Criminal Proceedings does not include such decisive provision, except in the case of pre-investigation proceedings. Quite the opposite, investigations are in general adversarial procedure because court hearings on issuing different pre-trial measures imply participation of two opposing parties. To avoid any doubts in their decision-making, it is useful for the public to hear arguments put forward by both parties. In that vein, publicity cannot be afforded to specific investigative actions, but that is not the case with investigations as such.

The public prosecution's obligation to inform the public is regulated under Article 8 of the Law on the Public Prosecution Office. Here, transparency concerns the obligation on provision of quality, timely and accurate information on the course of investigation proceedings and actions, disclosure of indictment acts with due care for personal data protection, organization of media briefings and press conference on regular basis and when needed...

An additional argument in this regard is the provision under Article 8 (3) which stipulates that the Chief Public Prosecutor of the Republic of North Macedonia or a person authorized by him/her can allow insight into already archived intake notes and docket files at the prosecution service.

According to current practices, public prosecutors independently decide whether to issue press statements after the court hearing. A relatively small number of public prosecutors believe it is incumbent on them to address the public after court hearings, while others refer to the justifiable argument of having presented their views in the courtroom. That is why, media reports on organized crime and high corruption cases often feature statements by attorneys, i.e. legal councillors for defendants, and rarely cover the public prosecution's perspective. This is partially due to the system of hierarchy and subordination within the prosecution services, which means that public prosecutors need to obtain permission from their superior to make any public statements.

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[18] Law on the Public Prosecution Office, official website of the Public Prosecution Office of RNM. Available at: <https://jorm.gov.mk/wp-content/uploads/2020/02/sluzhben-vesnik-na-rsm-br.-42-od-16.2.2020-godina-1.pdf>

In addition to press statements, the public prosecution needs to regulate communication of enforceable indictment acts to the media in the cases of high public interest by means of an internal rulebook. This positive practice was first introduced by the Special Prosecution Office, which published anonymized indictment acts on its official website for the cases represented by its prosecutors.

## DIFFERENT INTERPRETATIONS ABOUT THE PUBLIC'S PRESENCE

Imprecise legal provisions often allow space for different legal interpretations, which can sometimes be detrimental to transparency.

For example, there are different court practices concerning the public's presence at hearings held for indictment review. Article 332 of the Law on Criminal Proceedings regulates this matter and stipulates that "the public prosecutor, defendant and his/her attorney shall be summoned at the [indictment review] hearing". This provision is not decisive whether such hearings can be attended by the public, i.e. the media. In the past, imprecise formulation under this legal provision has prompted the courts to take different decisions on allowing the public at these hearings, whereby the public's presence was allowed in one high-profile case, but denied access in another case under the auspices that "public" means only the parties involved in the case.

Identical situation is observed with court hearings held for pre-trial detention, which are also adversarial procedure. The public, however, is denied access to such hearings although the Law on Criminal Proceedings does not prohibit that.

Based on current practices, court hearings held for draft settlements proposed by the public prosecution are not public in spite of the fact that the public's presence is not prohibited.

According to legal provisions in effect, i.e. Article 374 (6) of the Law on Criminal Proceedings, audio and audio-visual recordings must not be published, broadcasted or used for purposes and goals not related to the criminal proceedings. This is in collision with the underlying spirit of Article 360 of the Law on Criminal Proceedings that allows recording, especially due to the fact that audio and visual recording is allowed during court sessions on judgment reading and these materials are made publicly available, which gives rise to the need to regulate provisions under the Law on Criminal Proceedings in greater details.

The Law on Criminal Proceedings does not allow movie and television recording in the courtrooms. An exemption from this provision is allowed upon previously obtained approval from the President of the Supreme Court, whereby journalist teams can be allowed to record proceedings.

According to the 2011 Justice, Society and the Media Report of the European Network of Judicial Councils,[19] countries in Europe have different models for audio and visual recording of trials in criminal cases. In particular, the report notes that Belgium, Denmark, Portugal, Poland, Hungary and Norway do not allow audio-visual recording, but judges may grant an exemption in the cases of high public interest. In England and Wales, supreme courts record and broadcast hearings on their channel.

[19] Justice, Society and the Media Report 2011-2012. Available at:  
[https://www.encj.eu/images/stories/pdf/GA/Dublin/encj\\_report\\_justice\\_society\\_media\\_def.pdf](https://www.encj.eu/images/stories/pdf/GA/Dublin/encj_report_justice_society_media_def.pdf)

Having in mind that there are different practices in European countries, efforts are needed to find the most adequate model that could be applied by the courts in the Republic of North Macedonia. The open question here is whether the current model is good or should be revised, given that it is not fully and precisely defined.

In that vein, the media had reacted to non-compliance with approvals for recording issued by the President of the Supreme Court.[20] According to media reporting, sitting judges have taken upon themselves to decide whether to allow recording in their courtroom even in the case when the President of the Supreme Court had already approved such recording by means of relevant decision. In some instances, sitting judges had not made any decision about recording approvals issued by the Supreme Court.

Analysis of relevant legal provisions inevitably leads to the conclusion that revisions are needed also in respect to civil litigation, i.e. Article 293 (2) which regulates exemption of the public when order in the courtroom cannot be maintained. This provision opens the door to malpractices and denied right of the public to be informed about the case.

The admissibility requirement for this possibility needs to be revised, having in mind that it is imperceivable for the courts not to be able to maintain order in their courtrooms, in which case the court hearing should be re-scheduled and should resume when relevant conditions for public trial are secured.

In the context of ensuring greater transparency, provisions on public work of second instance courts and the supreme court should be revised in terms of the possibility for recording court hearings, obtaining timely information and the like.

## ACCESS TO DOCKET FILES

European countries have different approach to allowing public access to docket files, i.e. to third parties who are formally not lawsuit parties in the criminal justice case. It varies from country to country. For example, courts in the Netherlands have a similar model to the Macedonian one and allow access to docket files only for lawsuit parties, but court hearings are recorded. There are several exemptions for civil litigation where journalists are allowed insight in docket files, i.e. lawsuit motion and response thereto.[21]

When it comes to access to docket files by the public which is not a lawsuit party, civil proceedings before the courts in England have one of the more liberal approaches in Europe.

The general rule is the principle of “open justice” for civil lawsuits whereby all judgments or court orders published are considered public document and automatically become available to the public. According to legal provisions in effect,[22] i.e. Section 5.4C, documents can be disclosed to a third party that is not involved in the lawsuit.

[20] TV24 *YouTube* channel. Available at: [https://www.youtube.com/watch?v=L-KPm\\_FGP\\_g](https://www.youtube.com/watch?v=L-KPm_FGP_g)

[21] Press Guidelines de Rechtspraak. 2013. Netherlands Council for the Judiciary Communications Department. Available at: <https://www.rechtspraak.nl/SiteCollectionDocuments/Press-Guidelines.pdf>

[22] Procedure Rules, court documents. Ministry of Justice of the United Kingdom. Available at: <https://www.justice.gov.uk/courts/procedure-rules/civil/rules/part05>

Domestic legislation on criminal proceedings and civil litigation includes provisions that regulate this issue, but only partially.

The Law on Criminal Proceedings[23] is decisive that access to minutes from public hearings is granted to parties in the lawsuit. Article 374 (7) of LCP stipulates the following norm: “After the main hearing, the lawsuit parties and defence attorneys shall have the right to obtain copy of audio and audio-visual recording or transcript of shorthand notes, in hardcopy or electronic form”.

In the case of *Cape Intermediate Holdings LTD vs Dring*, the United Kingdom’s Supreme Court underlined that the principle of open justice should be balanced against the interests of others and the risk of damages.

“There may be very good reasons for denying access. The most obvious ones are national security, protection of the interests of children or mentally disabled adults, protection of privacy interests more generally, and protection of trade secrets and commercial confidentiality”.

In the case of court decisions, i.e. judgments, throughout the years, the courts had different practices in respect to \*\*attaching orders for pre-trial detention or other temporary measures for securing the defendant’s presence at trial. Some of them published these decisions on official court websites, others did not.

In the past and in the context of access to docket files, the question was raised on demonstrating legal interest in order to obtain insight into docket files for specific court cases.

For example, in its response to the question “How is insight obtained for court judgment from 2012?”, the Supreme Court of RNM indicated that: “[you] need to submit an application to the court’s reception desk requesting insight into docket files for the relevant judgment and indicating the legal interest behind such request”. [24]

Except for demonstration of legal interest, the courts should also take into consideration the public interest, which is primarily advocated by journalists, and allow insight into legally enforceable cases that are of public interest.

Adoption of the Law on Movement and Management of Cases at the Courts[25] in 2020 addressed some of these issues. Before that, only judgments taken in first and second instance were published, and after these legal changes entered into effect, the courts are obliged to publish on their websites all enforceable judgments. The Supreme Court keeps the database of enforceable and non-enforceable court judgments with integral texts, i.e. without anonymized personal data of lawsuit parties and other participants in court proceedings. Access to this database is given to judges and the Judicial Council, upon submitted request to the President of the Supreme Court.

[23] Law on Criminal Proceedings, official website of the Public Prosecution Office of RNM. Available at: [https://jorm.gov.mk/wp-content/uploads/2016/03/Zakon\\_za\\_Krivicna\\_postapka\\_150\\_18112010-2.pdf](https://jorm.gov.mk/wp-content/uploads/2016/03/Zakon_za_Krivicna_postapka_150_18112010-2.pdf)

[24] Frequently Asked Questions, official website of the Supreme Court of RNM. Available at: [http://sud.mk/wps/portal/osbitola/sud/bl/faq/najcesto%20postavuvani%20prasanja/!ut/p/z0/hY1LDoJAEESvgguWpluDyBaNIVGJC2OCsyENIjbgzADD-Dm9eAFdVurVKxCQgJBkuSTDSIz5rPwUz\\_yPAx2uMfTcYHhZoUBLg-zyPNhC-I3MBq4alsRgsiVNMXTQKKHrOE8vdCu9sPFxax7s9OwrJVLfYVvedEb5WjVG7KDJcmO7qgnWdGf-ns37-J1XILQZG5TllcFye-NrkX2eoSTD6abRp0!/](http://sud.mk/wps/portal/osbitola/sud/bl/faq/najcesto%20postavuvani%20prasanja/!ut/p/z0/hY1LDoJAEESvgguWpluDyBaNIVGJC2OCsyENIjbgzADD-Dm9eAFdVurVKxCQgJBkuSTDSIz5rPwUz_yPAx2uMfTcYHhZoUBLg-zyPNhC-I3MBq4alsRgsiVNMXTQKKHrOE8vdCu9sPFxax7s9OwrJVLfYVvedEb5WjVG7KDJcmO7qgnWdGf-ns37-J1XILQZG5TllcFye-NrkX2eoSTD6abRp0!/)

[25] Law on Movement and Management of Cases at the Courts, web-platform *Pravdiko*. Available at: <https://www.pravdiko.mk/wp-content/uploads/2020/03/Zakon-za-upravuvane-so-dvizheneto-na-predmetite-vo-sudovite-16-02-2020.pdf>

Article 10 (3) stipulates that other persons may also present the President of the Supreme Court with a request for access to this database provided they are able to demonstrate that access to such information is needed for scientific and research goals

To present, the courts have applied a nonuniformed practice in respect to decisions taken at court hearings for pre-trial detention, which are not open to the public and are led before pre-trial judge. In line with the Council of Europe's Recommendation (2003) 13 on publicity of criminal proceedings, the Manual for Judges and Journalists published by the Association of Judges of RNM enlists that pre-trial detention hearings must be open to the public. It is a matter of adversarial procedure and the public is entitled to hear the arguments presented by both parties.

2011 Guidelines on Publishing and Browsing Decisions on Court Websites[26] whereby the names of state administration bodies and public institutions should be anonymized needs to be revised and changed as well.

## INSUFFICIENT TRANSPARENCY OF ADMINISTRATIVE BODIES

The Judicial Council and the Council of Public Prosecutors, as administrative bodies within the justice system, have an important role to play in increasing the public trust and improving transparency. Relevant provisions on publicity are given in the Law on the Judicial Council[1] and the Law on the Council of Public Prosecutors.[27]

Transparency of these bodies is a *conditio sine qua non*. The Judicial Council should proactively publish its decisions, edicts and minutes on the council's official website, ensure public access to its sessions for appointment and promotion of judges, and hold regular briefings and press conferences. But that is not all. This body has a supervisory role that implies public reaction whenever the principle of publicity in court proceedings has been violated and continuous efforts to ensure greater transparency of the courts – a mechanism that is almost never used by this council.

The media often report that decisions of this body are taken *in camera* (i.e. behind closed doors), and judge appointments are put on session/meeting agendas only after council members are fully aligned on such appointments. This is contrary to the principle of transparency. The public needs to see argument-based and open deliberations on professional portfolios of candidates for judges and/or judges who have applied for promotion to higher instance courts.

On the other hand, press releases published on the council's website after its sessions are scarce in information. For example, minutes from the 410th session[29] held on 21.07.2022 refer to one agenda item with the following sentence: "Notification from the Appeal Court Skopje was reconsidered", without any description of the subject matter covered by said notification.

[26] Guidelines on Publishing and Browsing Decisions on Court Websites, 2011. Published in the "Official Gazette of the Republic of Macedonia" no. 44/2011 from 05.04.2011

[27] Law on the Judicial Council, official website of the Judicial Council of RNM. Available at: [link](#)

[28] Law on the Council of Public Prosecutors, official website of the Public Prosecution Office of RNM. Available at: <https://jorm.gov.mk/wp-content/uploads/2020/02/sluzhben-vesnik-na-rsm-br.-42-od-16.2.2020-godina.pdf>

[29] 410th session of the Judicial Council held on 21.07.2022. Available at: [link](#)

In 2020, the Judicial Council adopted its Plan on Strategic Communications,[30] but its implementation is marked by a poor track-record.

Transparency in operation of the Council of Public Prosecutors, in an identical manner to the Judicial Council, implies creation of relevant conditions for publicity of its sessions, access to full minutes from council sessions/meetings, organization of press conferences and media briefings.

Current practices show that, in spite of new legal changes that include decisive provisions on publicity of work performed by this body, council sessions on alignment of views on future public prosecutors and public prosecutors applying for posts at higher prosecution services are held without the public's presence. After council members have aligned their position, this item is put on the agenda. Sometimes, this could last for months. Media reports often refer to the lack of sustained justification for appointment of candidates, while in the case of formal justification, the council immediately moves to voting. This is in collision with legal provisions on publicity of this body's work.

Although provisions from the Law on the Council of Public Prosecutors stipulates that its sessions are public and that minutes taken are published on the official website, the practice shows that minutes had been edited before their publication, excluding speaker names, which is not regulated under the law. Such behaviour on the part of the Council of Public Prosecutors is directly reflected on publicity of their work, especially when the media or citizens wish to be informed from direct sources, i.e. minutes from council sessions.

The Council of Public Prosecutors has its own communication strategy for the period 2018-2021,[31] but contrary to what is regulated therein, i.e. the council "must demonstrate commitment in performance of coordinated and consistent communication of its messages related to the importance of their work for the public", visibility and public communications are only slightly improved.

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[30] PLAN ON STRATEGIC COMMUNICATIONS OF THE JUDICIAL COUNCIL OF THE REPUBLIC OF NORTH MACEDONIA. Available at: [http://www.osvinica.mk/wps/wcm/connect/ssrm/cda0f3cf-fa35-47d7-be6f-3f72c3faf0e5/%D0%9F%D0%BB%D0%B0%D0%BD+%D0%B7%D0%B0+%D1%81%D1%82%D1%80%D0%B0%D1%82%D0%B5%D1%88%D0%BA%D0%B0+%D0%BA%D0%BE%D0%BC%D1%83%D0%BD%D0%B8%D0%BA%D0%B0%D1%86%D0%B8%D1%98%D0%B0+%D0%BD%D0%B0+%D0%A1%D0%A1%D0%A0%D0%A1%D0%9C.pdf?MOD=AJPERES&CACHEID=ROOTWORKSPACE.Z18\\_L8CC1J41L0B520APQFKICD0CR4-cda0f3cf-fa35-47d7-be6f-3f72c3faf0e5-kZ5emCU](http://www.osvinica.mk/wps/wcm/connect/ssrm/cda0f3cf-fa35-47d7-be6f-3f72c3faf0e5/%D0%9F%D0%BB%D0%B0%D0%BD+%D0%B7%D0%B0+%D1%81%D1%82%D1%80%D0%B0%D1%82%D0%B5%D1%88%D0%BA%D0%B0+%D0%BA%D0%BE%D0%BC%D1%83%D0%BD%D0%B8%D0%BA%D0%B0%D1%86%D0%B8%D1%98%D0%B0+%D0%BD%D0%B0+%D0%A1%D0%A1%D0%A0%D0%A1%D0%9C.pdf?MOD=AJPERES&CACHEID=ROOTWORKSPACE.Z18_L8CC1J41L0B520APQFKICD0CR4-cda0f3cf-fa35-47d7-be6f-3f72c3faf0e5-kZ5emCU)

[31] Council of Public Prosecutors: Proposed Communication Strategy (2018-2021). Available at: <http://sjorm.gov.mk/wp-content/uploads/2018/12/%D0%9F%D1%80%D0%B5%D0%B4%D0%BB%D0%BE%D0%B3-%D0%BA%D0%BE%D0%BC%D1%83%D0%BD%D0%B8%D0%BA%D0%B0%D1%86%D0%B8%D1%81%D0%BA%D0%B0-%D1%81%D1%82%D1%80%D0%B0%D1%82%D0%B5%D0%B3%D0%B8%D1%98%D0%B0-%D0%A1%D0%88%D0%9E%D0%A0%D0%9C.pdf>

## CONCLUDING OBSERVATIONS

Based on the above presented, it could be concluded that the justice system in the Republic of North Macedonia is still affected by open issues on transparency and publicity of court proceedings. Some of them concern primary and secondary legislation, while others are related to preparedness on the part of the courts, prosecution services and administrative bodies to take proactive stance on transparency in their respective decision-making processes and their understanding of the concept of open justice.

Due diligence in this matter includes respect for the presumption of innocence as an imperative and ensuring the right to fair and just trial, but that must not exclude the public, especially in the cases that involve public officials.

Key aspects that need to be improved in terms of ensuring greater transparency of the courts concern communication of enforceable decisions taken in pre-trial proceedings, in line with the rule whereby any decision taken by the court in the name of the citizens is public document and must be made available to the public.

In this regard, legal provisions under the Law on Criminal Proceedings need to be revised to ensure communication of enforceable decisions taken in pre-trial proceedings and concerning detention orders, orders prohibiting property and asset sales, etc. The same is valid in respect to court hearings on proposed settlements.

European and world experiences need to be examined in respect to the public's presence at pre-trial detention hearings, thereby allowing the public to hear the arguments presented by both parties in the lawsuit.

In the case of prosecution services, efforts are needed to ensure proactive transparency and information dissemination to the public on cases in which competent prosecutors have taken action. In line with transparency efforts, the media need to be given access to enforceable indictment acts. Media briefings and press conferences should be held when needed, but especially for the cases in which there are indications for criminal liability of greater scope. If publicity is not allowed, it creates space for speculation and misinformation.

Administrative bodies in the judicial system, i.e. the Judicial Council and the Council of Public Prosecutors, must hold their sessions on appointment and promotion of judges and public prosecutors without previous meetings behind closed doors for alignment of views among council members, but in an argument-based process which is open for the public. Judges and public prosecutors are among the most important professional chains that ensure the rule of law, and therefore the citizens need to know professional portfolios of those appointed. The public must be timely informed about activities of these bodies, including through press releases that are not scarce in information and formal in tone, but meaningful and argument-based.

An important role in the overall process for improving transparency is assigned to the Academy for Judges and Public Prosecutors whose curricula should put greater emphasis on modules related to publicity and public communications.

# RECOMMENDATIONS

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01 The courts and prosecution services need to ensure proactive transparency for procedures that are of public interest.

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02 The administrative bodies, i.e. the Judicial Council and the Council of Public Prosecutors, need to ensure that procedures for appointment and promotion of judges/prosecutors are public and that appointment decisions are supported with arguments and elaborated reasons.

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03 Press releases and information issued by the Judicial Council and the Council of Public Prosecutors concerning sessions held and decisions taken need to be improved both in qualitative and quantitative terms.

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04 Legal provisions under the Law on Criminal Proceedings that govern publicity should be re-examined in the light of positive examples from Europe and should regulate the possibility for the public's presence at pre-trial detention hearings and settlement hearings.

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05 Legal provisions on disclosure/publication of enforceable decisions taken for so-called pre-trial measures, such as detention, prohibition for property and asset sales, etc., should be revised with due care for personal data protection.

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06 Due consideration should be made for the Law on Civil Proceedings to include the possibility for the public, i.e. the media, to obtain a copy of the lawsuit motion and responses thereto by litigant parties upon formal request and approval by the court.

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07 The Guidelines on Publishing and Browsing Judgments on Court Websites should be revised.

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08 Appointment and promotion of judges/public prosecutors should be based on the merit system, with mandatory presence of the public at such deliberations.

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09 The current model for audio-visual recording by the media in the courtrooms should be re-examined in line with European experiences, and this procedure should be regulated in greater details as part of the Court Rules of Procedure, especially in respect to whether and how should court trial in criminal cases be recorded by the media.

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