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## INTRODUCTION

### Mileva GJUROVSKA<sup>1</sup>

The National Convention on the European Union in the Republic of North Macedonia (the NCEU-MK) is a democratic forum for open and transparent dialogue on issues related to the European Union accession negotiations. The first cycle of workinggroup sessions started in October 2017 and ended in September 2019. In its very essence, the NCEU-MK is a platform that allows for a broad range of citizens who command a certain expertise to influence the content of changes (reforms), and thus shape them in line with general public interest.

The concept of the National Convention on the European Union has proven adequate in the process of convergence with the EU. In the Republic of Slovakia, where it was first implemented, it was tagged as “good practice for EU access”<sup>2</sup>. With this mobilising methodology, the process of adopting, accepting and implementing political decisions concerning EU membership becomes more democratic, since it involves a dialogue among representatives of the Government, the Assembly and other relevant actors, with civil society playing an important part. *“The EU integration structures cannot be adopted by mere decoration. The National Convention offers huge support due to three aspects: first, it allows for an inclusive public debate on EU integration, second, it institutionalises the public debate by initialising partnerships between different segments of society, and third, it unites decision makers at all levels of society”*.<sup>3</sup>

Regarding the vision and the mission of the NCEU-MK, it was very often pointed out that EU integration and accession should not be considered a goal by itself. Many speakers, including Ján Figel’,<sup>4</sup> stressed that accessing the EU means directing attention at the internal mechanisms of the candidate state, reviewing, rendering the decision-making process more democratic, fighting the misuse of institutions and dedicating oneself to the public interest. The key to the development of the Republic of North Macedonia does not lie in the hands of the European Union, but in the institutions and citizen initiatives for a state organisation based on European standards. The EU offers a concept for building a modern state, has developed appropriate instruments and offers support, but the capacity for development lies in the society itself.

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2 Apart from the Republic of Slovakia, where the concept was devised, the National Convention has been implemented in Albania, Moldova, Serbia, Montenegro, as well as other states.

3 Miroslav Lajčák, Minister of Foreign Affairs of the Republic of Slovakia, at the Second Plenary Conference of the the NCEU-MK on 19.06.2019

4 Ján Figel’, former Head of the negotiation team of the Republic of Slovakia, former EU Commissioner, Special EU Envoy for Promotion of Freedom of Religion outside the EU, in his speech at the Third Session of Working Group 2 on 15.11.2018

During its first cycle of working group sessions, the National Convention on the European Union in the Republic of North Macedonia worked on the following chapters:

- Chapter 11: Agriculture and rural development (Working group 1)
- Chapter 19: Social policy and employment (Working group 2)
- Chapter 23: Judiciary and fundamental rights (Working group 3)
- Chapter 24: Justice, freedom and security (Working group 4)

During the past two years, the NCEU-MK experienced several phases of development, while constantly strengthening its basic mission: to support the EU integration process in the Republic of North Macedonia. Although there has always been a consensus concerning the EU perspective of the country, and notwithstanding the high acceptance of EU membership by the citizens (over 80%), it is necessary to work on a more essential understanding of what this membership entails. The NCEU-MK's potential to motivate, to involve and to unite proved a unique feature as the EU integration process had to be taken further, from the political institutions to relevant experts and the broader public. The NCEU-MK succeeded in conveying the message that EU integration concerns citizens' organisations, enterprises, trade unions, universities, local authorities, farmers, as well as every single citizen. Thus, over 2000 experts from the four areas which the NCEU-MK is engaged in took part in the dialogue during the past two years.

The end of 2017 was a very favourable time for the launch of the National Convention on the European Union. EU integration was set high on the agenda of the new Government. The "3-6-9 Plan"<sup>5</sup>, and later, "Plan 18" were an expression of a strong political will to carry out reforms in the areas of priority for accession to the European Union<sup>6</sup>. In September 2018, then, the Screening process<sup>7</sup> began, heralding a fast start of the EU membership negotiations. During this period, the overall atmosphere could be described as "EUpHoric". Even after the Prespa Agreement was signed, thus setting the seal on the name change, this atmosphere prevailed. What's more, with the name change being connected to EU and NATO membership, citizens' expectations concerning the political elites in charge of the process rose, as well as the expectations towards the European Union to provide a date for the start of accession negotiations.

The NCEU-MK and the Secretariat for European Affairs (SAE) have established a stable cooperation and are continuously exchanging information on the progress on the different Chapters. SAE representatives regularly participated in the working meetings and working group sessions of the NCEU-MK, contributing to the discussions and taking part in adopting the recommendations. The NCEU-MK working groups were regularly informed about the Screening sessions, which provided the experts with the opportunity to gain insight into issues from their area of expertise currently negotiated.

The first four NCEU-MK working group sessions took place at the Assembly of the Republic of North Macedonia, which made it possible for Members of the Assembly to

5 <https://vlada.mk/sites/default/files/programa/2017-2020/Plan%203-6-9%20MKD.pdf>

6 Strategic Plan for the period 2019-2021, Government of the Republic of North Macedonia, Secretariat for European Affairs, [http://www.sep.gov.mk/data/file/Dokumenti/strateski\\_19\\_21.pdf](http://www.sep.gov.mk/data/file/Dokumenti/strateski_19_21.pdf)

7 Explanatory screening

participate and for the members of the working groups (experts, co-chairs and others) to get in touch with them. At several occasions, the participants pointed out that the NCEU-MK adds to the positive momentum of the EU integration process by publicising the negotiation process. During his welcome address at the very first working group session of the NCEU-MK, the President of the Assembly of the Republic of North Macedonia, Talat Xhaferi, expressed his support as well as his belief that the European Movement, which is implementing the National Convention, will succeed in mobilising the expert community to take part in the process of EU integration.<sup>8</sup>

The events in North Macedonia's society and politics during the last decade brought about the development of a competitive civil sector, whose staff are highly qualified in their field of activity. Anticipating the start of EU accession negotiations, many civil society organisations directed their activities at the EU integration process and offered different platforms for participation. In November 2017, the Government founded its own cooperation body, the *Council for Cooperation with and Development of the Civil Sector* within the *Department for Cooperation with Nongovernmental Organisations at the General Secretariat*. The activities undertaken for involving civil society organisations in the negotiation process were mainly focused on the question how to involve them and on the selection of the civil society representatives. We would like to mention that more than 100 active citizens' organisations were involved in NCEU-MK activities, which attests to its direct legitimacy from civil society.

The first systematic input from civil society for the negotiations Chapters 11, 19, 23 and 24 came from the NCEU-MK. This is particularly true for Chapter 11, Agriculture and rural development, and Chapter 19, Social policy and employment, since the systematisation of those negotiations chapters is still in its initial phase. As for Chapters 23, Judiciary and fundamental rights, and 24, Justice, freedom and security, a network of citizen organisations had already monitored the reforms in the field of judiciary and fundamental rights for several years, with a systematic approach and regular analyses.<sup>9</sup>

The NCEU-MK working groups have 20 to 25 regular members each, with additional participants joining them for each session, often renowned experts on the session's topic. On average, 50 participants took part in every working group session. Every session was prepared and organised by a *Programme Council*, consisting of the regular working group experts (two or three per working group), the co-chairs (one high official from the ministry in charge and one civil society representative per working group), the National NCEU-MK Coordinator and staff members. This composition allows for the conclusions and recommendations to circulate among the relevant stakeholders.

The NCEU-MK's activities are based on a standardised methodology for dialogue. Within this structured dialogue, the roles of the actors are defined, with one of the goals being to share experience and knowledge on a certain field and to harmonise the positions of the participants. During the very first working group sessions, it became clear that there is a considerable amount of information on the negotiation chapters, but, at the same

8 Welcome address of Talat Xhaferi, President of the Assembly, at the first session of Working Group 3 on 01.03.2018 (the NCEU-MK archive).

9 *Network23* is one of the major projects which unite various citizens' organisations, organised by the European Policy Institute Skopje and the Helsinki Committee for Human Rights, and financed by the EU.

time, a lack of information exchange among the stakeholders. It was stated that there is no actual system of information exchange among the state institutions themselves, much less between citizens' organisations and state institutions. Here, the NCEU-MK's impact makes a difference, taking into account that the recommendations that result from each working group session are a considerable input for the state's negotiation capacity. The involvement of different stakeholders in the working group sessions allows for different perspectives to be considered and to be taken into account. A further achievement of the NCEU-MK is the establishment of direct contact among state institutions, citizens' organisations and other stakeholders, thus lowering the barrier with regard to formal institutional authority. The added value brought about by the NCEU-MK is the group identity of the working group members, whose communication continues after the sessions. This makes the NCEU-MK a platform which strengthens the legitimacy of the institutions for future accession negotiations. The discussions have shown that there are facts and knowledge from the field which have so far been beyond the institutions' scope.

A total of about 2000 participants took part in the 24 working group sessions. More than 200 recommendations were drafted and discussed, 150 of which were adopted consensually by the members of the working groups.

Our general conclusions from the activities of the NCEU-MK are the following:

1. The NCEU-MK has developed into an institutional dialogue among relevant stakeholders, which can be seen from the continuity of activities, regular membership, as well as the commitment and regular cooperation by all stakeholders.
2. The NCEU-MK has been accepted as a platform which allows for different stakeholders to express their opinion. It obtains its legitimacy from the large number of participants, who have stated in public that the NCEU-MK offers them the possibility to discuss crucial issues from their areas of interest with state institution representatives.
3. The NCEU-MK offers the state institutions input for the negotiations.
4. The NCEU-MK motivates the working group members to thoroughly study the negotiation chapters and to become familiar with EU directives.
5. The NCEU-MK is utterly inclusive, especially concerning Chapters 11 and 19, where several civil society networks have united, and the eagerness to include further civil society organisations and stakeholders is especially distinct.
6. Within the NCEU-MK, a considerable base of information, conclusions and recommendations is being created, adding to the knowledge data base on the chapters to be used during the negotiations process.
7. The NCEU-MK has established an efficient exchange with the Slovak partners with regard to the implementation and adaption of the methodology in a complicated national environment impaired by political turbulences.
8. Once North Macedonia gets a date for the start of EU accession negotiations, this will add importance to the NCEU-MK, which will play an amplified role in contributing to the negotiation process.



**Chapter 23: Judiciary and fundamental rights.** Harmonising a state's legislation, regulations and procedures with the *acquis communautaire* is the most complex and lengthy part of the entire integration process. Chapters 23 and 24 are considered a challenge of their own, since it is through them that the legal order is shaped into that of an EU member state. It is the compliance with political criteria that is subject to negotiation here, and in our national context, frank political will and a strong commitment of the state leadership to the fight against corruption are indispensable. The latter is regarded the key issue to impact the further development of the negotiation process.<sup>10</sup>

The choice of topics for the Chapter 23 Working Group followed the very structure of the Chapter: reform of the judiciary, anti-corruption policies, fundamental rights, and rights of European citizens. The expert analyses and discussions of Working Group 3 showed that the legal system is under strong influence from the political parties. Without an independent and impartial judiciary, laws are only decorum, and the judiciary becomes an instrument of power. Thus, the question from the 18th century, when the liberal democracies were developing, still remains: how to put into practice the citizens' rights and freedoms? The answer of the then thinkers was that only independent judges can bring society closer to that idea. Politics does not have the right to intervene in the implementations of citizens' rights and freedoms, quite the contrary, law has to protect them against politics. Societies in which the legislative and executive powers do not participate in the appointment of judges and public prosecutors are closer to that ideal. Quality judiciary cannot be achieved by appointing new judges who are "politically suitable", but by providing greater autonomy to the legal system and by implementing the law. The political influence on the judiciary and the predominance of politics over the law became particularly visible during the discussions on the new law on prosecution, which, instead of initiating a public debate, became subject of negotiations between the political parties, with the aim of adapting it to certain political aspirations and careers.

Even though the general mood around Chapter 23 can be compared to a state of fermentation, this does not mean that the process of "boiling down" has to be considered negative. During the past three years, a vivid public discourse has been taking place, with many citizens' organisations developing a systematic approach to the situation of the legal system, which has resulted in various detailed surveys.<sup>11</sup> This means that the *status quo*, characteristic of the past two decades, is being overcome, and that in this new wave of analyses, critique and evidence, the main problems are being identified, as well as the ways to solve them. Apart from these signals, which stress the paramount importance of the rule of law, the Government is hardly disengaging itself of the inherited practices of party appropriation of legal institutions. Nevertheless, the overview of the judiciary reforms which we get from the dialogue among all relevant stakeholders within the NCEU-MK shows evident progress.<sup>12</sup> Minister of Justice Renata Deskoska stated in one of her introductory speeches that "the legal system is faced with two tasks: to fight corruption within other state bodies, but also to fight corruption within itself. Corruption does not only mean to accept money or gifts, it also refers to the absence of any kind of influence when

10 In the 2019 Progress Report on the Republic of North Macedonia, corruption in all sectors is described as an alarming issue <http://www.sep.gov.mk/data/file/Dokumenti/Izvestaj%202019-F.pdf>

11 We would like to point out the Helsinki Committee and the *Blueprint* group with their *Shadow Report on Chapter 23 for June 2018 to March 2019*

12 The adoption of the Law on Courts (2019), the Law on the Judicial Council, etc.

it comes to taking decisions.”<sup>13</sup>

With respect to the measures in the struggle against corruption, the recommendations of the Slovak experts who regularly took part in the sessions had a significant impact. According to Slovak experience, anti-corruption strategies always have to come from the very top of the hierarchy, that is, they have to be initiated and supported by the Prime Minister himself.<sup>14</sup> If corruption is a problem inherent to the system, then an **anti-corruption system** has to be created. In every ministry, the risks have to be evaluated, as well as the risky positions within the system. The fact that persons who are “suitable” from a party point of view are appointed to leading positions within the institutions has a considerable impact on the shift of individual responsibility: to the party instead of to the institution. In order to overcome corruption, prevention measures are more efficient than repressive ones, since cases of corruption among high officials are complex and require lengthy proceedings. An issues that recurred at almost every session of Working Group 3 was the measure *confiscation of property* in case of malversation. The tendency of the discussions was that, without this measure, it is possible to take corruption activities even further, as we see during the current “Extortion Affair”. Enormous amounts of resources which result from malversation become the target of new corruption activities. In the national judiciary practice, confiscation of property is very rarely resorted to.

The Working Group 3 experts fully agree that the national legislation is mostly in accordance with EU legislation. According to them, *not a single day passes without a law or strategy being adopted*,<sup>15</sup> creating an enormous normative framework, which is faced with serious problems when it comes to its implementation. Valuable resources are said to be invested in drafting strategies and action plans, but not in their implementation. Further problems that were identified result from the frequent amendment of laws after a short period of validity, adopted by accelerated procedure, by forced priority, and with a short period for public debate. Also due to the frequent interventions in laws, there is no systematic overview of the latest versions, so that the experts themselves are faced with problems when trying to find the latest draft amendments.

With regard to the level of functionality of the legal institutions, the working group participants pointed out that the Public Prosecutor’s Office was “phlegmatic” and that investigations were carried out at a very slow pace, especially in cases of corruption among high officials. In the sixth session it was emphasized that there are no working conditions for the Public Prosecutor’s Office under the new Criminal Procedure Code, which means lack of investigative centers, insufficient human resources and other necessary equipment. The experts also referred to the non-productive practice (or “tradition”) of establishing new parallel institutions (committees, bodies, agencies) in order to solve the accumulated problems instead of reorganising the existing institutions. Nevertheless, the establishment of the Special Public Prosecution (2017), the Council for Monitoring the Implementation of the Reform Strategy for the Judiciary (2017-2022), as well as the amendment of laws that are crucial for the legal system to function reflect the political will and the commitment

13 Renata Deskoska, Minister of Justice of the Republic of North Macedonia, in her introductory remarks at the second session of Working Group 3

14 Peter Kovařík, Corruption Prevention Department, Prime Minister’s Office, Government Office of the Slovak Republic

15 Nikola Tupančeski, Professor, Faculty of Law “Iustinianus Primus” – University “St. Cyril and Methodius”- Skopje, at the fifth session of Working Group 3 of the NCEU-MK, 05.06.2019

of the institutions in their attempt to strengthen the rule of law. The new Criminal Law, the Anti-corruption Law and the rest of the Anti-corruption Committee are proof of a significant effort in the fight against criminal offences. It can be concluded that instruments for fighting even severe crimes have been put into place, but that there is a lack of personal integrity and responsibility within the legal system. Slovak experience shows that changes in the judiciary have to start from the judges and public prosecutors themselves. They themselves have to struggle for their integrity. “The legal system is important, but the people are even more important. Returning to ethics can restore the dignity of the judges, as well as the citizens’ confidence in the legal system.” In Slovakia, an important turning point was a petition signed by 100 judges who defied the “atmosphere of fear” in the legal system by fighting for greater independence in their proceedings. Allowing the public to follow the meetings of the Judicial Council (live transmission) or making the reports publicly available are well-proven transparency measures.<sup>16</sup>

**Chapter 24: Justice, freedom and security.** Chapter 24 of the *acquis communautaire* comprises a massive corpus of very precise regulations which shape the security system of the EU candidate states. Facing severe problems such as terrorism, mass migration, a risen number of applications for asylum, human trafficking, organised crime and other security risks, the European Union has taken a new approach to the negotiation process, with the aim of consequent compliance with the criteria concerning judiciary and internal affairs. The NCEU-MK Working Group 4 mainly addressed issues of current relevance in the national context. Based on the input from the sessions, we can conclude that the Republic of North Macedonia has made huge progress with regard to Chapter 24.

Although the police reform is considered to be completed, the way in which the police proceed while on duty is still a problem. The establishment of an external control body for enhanced professionalism and integrity was already fiercely discussed during the campaign preceding the last parliamentary elections (November and December 2016). The experience from the previous period had shown that the external police control mechanism was neither in place nor in compliance with European standards or the recommendations of the European Court of Human Rights, because it jeopardised adequate exercise of citizens’ rights and freedoms. Reforms of the relevant legislation after the elections provided the conditions for redefining the institutions and establishing an institutional framework for investigations and for monitoring deviations from the standards.<sup>17</sup> Furthermore, by means of the changes in the new Draft Law on the Ombudsman, the citizen control mechanism will be legalised, with the aim to monitor the proceedings in case of transgressing competences, thus providing the public with information on such cases, the number of which is significant. The citizens’ control mechanism provides the possibility to involve the victims during the investigations, but without their direct participation.

*Asylum and migration.* Areas of conflict and massive migration flows towards the European Union led to a fast development of the Common European Asylum System. After the Macedonian Asylum Law had been adopted in 2003, a continued process of harmonisation with European directives had taken place. All amendments and additions

<sup>16</sup> Pavol Žilinčík, Member of the Judicial Council of the Slovak Republic, at the fifth session of Working Group 3

<sup>17</sup> The establishment of special departments within the Public Prosecution and the Basic Court No. 1 are part of the reforms which establish institutional mechanisms for investigations in case of police officials transgressing their competences.

resulted in the new Law on International and Temporary Protection<sup>18</sup>, which the Assembly voted for in 2018. However, the experts pointed out that the Asylum Department is not well equipped and that the actual enforcement of asylum procedures, as well as the approach to and communication with asylum seekers, need to be improved.

The successful management of the migration and refugee crisis in 2015-2016 showed that the Macedonian institutions are prepared for efficient interventions, while the EU itself was struggling to manage the process. The massive migration flow along the Balkan route resulted in a fortification of the security systems at the borders and contributed to the establishment of a regional security system. During the NCEU-MK Working Group discussions, it was pointed out that the absence of massive migration waves does not mean that the issue is concluded. The number of cases of illegal border crossing is growing,<sup>19</sup> which shows that reinforced control along the border lines is necessary, not only at official crossing points. It is also necessary to create a migration policy and establish better cooperation among the relevant institutions and citizens' organisations. This shows that migration flows are still at the core of serious security challenges, and a new migration wave cannot be excluded either. "We have made progress, but we have to keep on working in order to be prepared to cope with any possible scenario regarding migration."<sup>20</sup>

*Human trafficking.* The socio-economic situation not only in the Republic of Macedonia,<sup>21</sup> but in the entire Balkan region gives rise to the growth of a phenomenon designated by a term which conveys that it is some kind of profitable activity, where certain vulnerable groups of citizens become victims of trade by organised groups. This phenomenon is not new. Generally, the relevant institutions have developed an adequate methodology for prevention and combat (mobile teams of the Ministry of Interior), but it is still recommended to identify and define new forms of human trafficking (exploitation of labour, child labour, organ trafficking). The NCEU-MK experts stated that the prevention and combat against human trafficking should not be reduced to disclosing and punishing the offenders, but linked to a broader variety of policies in order to eliminate the causes, in cooperation with various stakeholders (civil society organisations, schools, customs services and others). During the discussions, it was pointed out that more educational activities for the general public are necessary in order to identify victims and disclose offenders faster.

*Vetting as a measure for improving the integrity of the institutions.* With regard to the low level of confidence of the citizens in the institutions, the conclusions from the discussions during the NEKU-MK working group sessions show that the institutional insufficiency results from the human factor and the poor professionalism of public officials, especially those who play key roles within the system. There is a lack of personal integrity. Thinking about possible solutions, one of the options discussed was *vetting*. The latter can actually be a solution for the examination of the personal integrity of public officials, as long as it is carried out according to well-defined rules and by persons of high integrity

18 Official Gazette of the R. M., No. 64 of 11.4.2018.

19 Statistical data shows that the number of illegal migration cases doubles every year.

20 Magdalena Nestorovska, State Secretary at the Ministry of the Interior, during the third session of Working Group 4 on 15.10.2018.

21 The main causes of human trafficking are considered to be a high unemployment rate, poverty, discrimination, and domestic violence.

themselves. Otherwise, vetting can be used as one more instrument of power in the hands of the political parties.

**Chapter 19: Social policy and employment.** This is a very complex area, which the European Union is currently showing a great interest in. The Community Charter of the Fundamental Social Rights of Workers (1989)<sup>22</sup> and the Maastricht Treaty (1993), which, for the first time, included a Social Chapter, represent the cornerstones of the new *European social model*. The aim of this model was to establish adequate conditions for employment rate growth, for better living and working, and for equal access to resources, by developing different anti-discrimination instruments. While creating active employment policies and incentives for economic activity, the EU held the laws of the free market fully legitimate. We can state that the active employment measures have been fully embraced and embedded in the current strategies and national action plans of the Republic of North Macedonia. There is a developed institutional system for the support of active measures, as well as instruments (funds) that provide incentives for entrepreneurship. However, the discussions at the NCEU-MK working group sessions showed that it is necessary to improve the system for registration of unemployed persons, to boost the performance of the labour market by organising vocational retraining in high-demand professions, and to promote new forms of entrepreneurship (such as social entrepreneurship).

*Active social policy measures.* At the NCEU-MK working group sessions, a discussion on new forms of employment was initiated. Examining the present situation led to the conclusion that there are new forms of employment on the Macedonian labour market which are not legally regulated, so that the employees cannot exercise their labour rights, especially with respect to social security. Flexible forms of employment as defined by the European Union were discussed, and the working group participants tried to identify equivalent forms in the Republic of North Macedonia.<sup>23</sup> They came to the conclusion that changes in the area of technologies and on the labour market have to be taken into account, and that social policies have to be adapted to new global conditions. After all, the European social model offers the member states the opportunity to develop their national systems of social welfare according to their respective traditions and their level of economic development. In the case of North Macedonia, alas, the latter is not favourable for a generous and sustainable welfare system. Harmonising social policy with economic policies and the Government incentives for entrepreneurship and investments, as well as a stabilisation of the social capital, seem to be indispensable. During the discussions, it was pointed out that the ministries do not have adequate means at their disposal in order to implement the adopted strategies and national action plans.

*Social dialogue.* In the European Union, an institutionalised system of social dialogue is in place at all levels. The highest level dialogue takes place at the *Economic and Social Committee*<sup>24</sup> where the positions of different stakeholders from the socio-economic sphere are synchronised. With regard to the social reforms in the Republic of North Macedonia, we have to state that insufficient attention is directed at social dialogue issues. During the NCEU-MK working group sessions, it was established that “social dialogue should not

22 Community Charter of the Fundamental Social Rights of Workers, 1989, <https://www.eesc.europa.eu/resources/docs/community-charter--en.pdf>

23 <https://www.eurofound.europa.eu/topic/new-forms-of-employment>

24 The European Economic and Social Committee (EESC) is the voice of organized civil society in Europe.

be reduced to political negotiations between the leaders of trade unions and employers' associations. A genuine social dialogue has to be led at the enterprises themselves."<sup>25</sup> In Macedonian reality, democratic decision-making is suppressed by prevailing politics, and this is true of the social sphere as well. Thus, the role and importance of social dialogue in defining and solving social issues are neglected, particularly concerning labour. North Macedonia has a relatively long-standing tradition of trade unions and their number is rather large, however, their negotiating power is insignificant. The experts assess the poor position of the trade unions to be due to the lack of institutionalised social dialogue, unlike in the EU and its member states.<sup>26</sup> The national Economic and Social Council (founded in 1996) is not functional, hence the experts stressed the need to reform it in order to reach greater autonomy from the Government, i.e. to establish it as a separate legal entity with a budget of its own, with a separate law to regulate its activities. In the Republic of Slovakia, the social dialogue is institutionalised. Their Economic and Social Council, which meets monthly, comprises representatives of the employers, the trade unions, and the Government. Companies with at least 100.000 employees can send members, as well as trade unions who represent at least the same number of employees. The Government is represented in the Council by seven ministers.<sup>27</sup>

*Anti-discrimination measures.* The *Law on Prevention and Protection against Discrimination*<sup>28</sup>, a *lex generalis* type of law, can be considered a major success within Chapter 19. Separate laws that cover different areas in more detail, in accordance with the citizens' rights and freedoms guaranteed by the Constitution, will follow. The Law provides prevention and equal access to mechanisms for protection against discrimination for all citizens. A novelty is the legalisation of sexual orientation and gender identity rights. The ratification of the *Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence*<sup>29</sup> in December 2017, the so-called Istanbul Convention, will also lead to amendments of various laws, i.e. the Law on Prevention, Combating and Protection against Domestic Violence; the Law on Equal Opportunities for Men and Women;<sup>30</sup> the Family Law; the Law on Protection of Children, as well as other laws. The experts fear that a consequent implementation of the Istanbul Convention will be hampered by financial problems.

*Deinstitutionalisation of social services.* The European Union supports the development of a unique social protection system, maybe the only one in the world, with the aim to retain the dignity of the individual and the integrity of the society. In order to approximate the Macedonian social sphere to the European model, crucial changes had to be initialised, resulting in the *National Deinstitutionalisation Strategy 2018-2027 "Timjanik"*, which is supposed to bring about some kind of privatisation of social services provided by state institution within ten years. Minister of Labour and Social Policy Mila Carovska stated that "this is a great moment for our state and all our citizens. The Assembly has voted

25 Expert Nano Ružin at the third session of Working Group 2 on 06.12.2018

26 Mare Ančeva, Secretary General of the Trade Union of Industry, Energy and Mining, at the third session of Working Group 2 on 06.12.2018

27 Slovak expert Miroslav Hajnoš at the third session of Working Group 2 on 06.12.2018

28 *Official Gazette of the Republic of Macedonia*, No. 101, 22.05.2019

29 Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, <http://www.jpacademy.gov.mk/upload/Materijali.pdf>

30 *Official Gazette of the Republic of Macedonia*, No. 166/2014

for a set of social reform laws, and with this reform, we will put up new standards of social protection.”<sup>31</sup> The minister is referring to a whole range of laws linked to the Social Protection Law (the Law on Protection of Children, the Family Law, etc.). The new legislation provides persons with disabilities with significantly higher social support as well as different forms of paid assistance, and establishes a direct link between social centres and Employment Agencies.<sup>32</sup> However, changes in the legislation merely bear the potential for reforms, while true reforms also require good organisation, trained and committed staff, as well as transparency and accountability of the authorities vis-à-vis the citizens who provide them with their finances. For the time being, neither productivity nor preparedness can be discerned, neither with regard to spending resources on documentation, nor to true changes for decreasing poverty and thus improving the quality of life and labour conditions.

**Chapter 11: Agriculture and rural development.** Chapter 11 of the pre-accession negotiations on EU membership deals with questions to find out to what extent the candidate state is prepared to apply the Common Agricultural Policy (CAP). Its cornerstones are reforms of the direct subsidies for farmers, the elimination of quota as a measure of guidance, a focus on rural development with the aim to initiate activities and to improve the quality of life in rural areas, and environmental protection (30% of the funds are provided for diversification of produce and conservation of meadows). The general aim is to increase the competitiveness of the agricultural sector, to promote sustainable agriculture and to create jobs in rural areas. From its very beginning, the European Union has been dedicated to agriculture. The European Agricultural Guidance and Guarantee Fund was founded as early as 1962. In 2018, out of the EU budget (160 bn Euro), 58 bn are earmarked for agriculture (14 bn for rural development, 3 bn for market measures, and 42 bn for payments to farmers).<sup>33</sup>

The new agricultural policy has several goals, but it is mainly targeted at farmers, supporting them to produce more food in Europe (according to European quality standards), while guaranteeing food safety and protecting farmers against extraordinary instability of prices and market crises. Particular focus is put on small family farms and their modernisation, a significant factor in the development of rural communities. Key concepts within the EU’s new agricultural policy are environmental protection and protection of biodiversity, with support for new ecological approaches at farming and a maximum utilisation of by-products for the generation of energy. A further aim of the new agricultural policy is for the farmers to produce according to market demand, instead of decisions made in Brussels, while taking into account basic environmental principles. Global food production will have to double by 2050 in order for the expected 9 billion inhabitants of planet Earth to be fed, which is not that simple, taking into account the consequences of climate change (global warming, loss of biodiversity, deterioration of the soil and water quality, etc.)

The topics for the sessions of Working Group1 of the NCEU-MK were chosen with

31 [http://www.mtsp.gov.mk/maj-2019-ns\\_article-carovska-sobranieto-gi-izglasa-paketot-na-zakoni-za-socijalnata-reforma-isplatata-na-zgolementa-pomo.nspx](http://www.mtsp.gov.mk/maj-2019-ns_article-carovska-sobranieto-gi-izglasa-paketot-na-zakoni-za-socijalnata-reforma-isplatata-na-zgolementa-pomo.nspx)

32 *Official Gazette of the Republic of North Macedonia*, No 104, 23.5.2019

33 [https://ec.europa.eu/info/food-farming-fisheries/key-policies/common-agricultural-policy/cap-glance\\_en#thecapafter2020](https://ec.europa.eu/info/food-farming-fisheries/key-policies/common-agricultural-policy/cap-glance_en#thecapafter2020)

the aim to define the main issues in the national context and compare them to the new tendencies of the CAP. Besides the consolidated and committed team of experts, the Ministry of Agriculture, Forestry and Water Economy (MAFWE), which had signed a cooperation memorandum with the NCEU-MK at the very beginning, significantly contributed to the quality of the working group sessions. The active involvement of Minister Ljupčo Nikolovski and his dedicated colleagues from the EU Department of the MAFWE had a huge share in the fruitful debates, offering different stakeholders the opportunity to discuss vital issues from their area of expertise.

*Pre-accession assistance instruments.* Being a EU candidate state, the Republic of North Macedonia can use the instrument for pre-accession assistance for rural development (IPARD 2). In accordance with the CAP, IPARD 2 provides financial support for the development of sustainable farming and rural development and allows beneficiaries to familiarise with the rules of the European Agriculture Fund for Rural Development. The members of NCEU-MK Working Group 1 pointed out important factors which are responsible for the unsatisfactory exploitation of IPARD 2 funds and defined the key problems: unresolved property law issues which make it impossible to apply for IPARD; complexity of applications and trouble collecting all the documents that have to be enclosed; lack of trained staff for farmers' logistics; redefinition of the methodology of the calls for application (open calls during the year); as well as application, implementation and monitoring deadlines. In 2018, 1648 applications were submitted.

*Crediting as a measure for sustainable rural development.* Data shows that only 3% of all business loans are granted to farmers, which has a negative impact on the use of agricultural grants, due to the need of co-financing. While there are different reasons for this, the NCEU-MK discussions showed that farmers are insufficiently informed about investment opportunities. They also lack the knowledge necessary for deciding on the profitability of investments, and they do not fulfil the conditions for taking mortgage loans because of the low land prices in rural areas and unresolved property law issues.

An analysis of the financial institutes' preparedness for agricultural crediting shows that they are not flexible enough with regard to the criteria, notwithstanding their eagerness to place their funds. Given that agriculture is an uncertain sector (due to climate factors) and that there is a risk regarding the repayments, these credits are very expensive, and they are not very attractive for farmers. During the last ten years, the conditions for financial support for agriculture have improved, due to the favourable loans from the Development Bank of North Macedonia (DBNM), with an interest rate of 2%, which can positively influence initiatives of agro-entrepreneurship.

*Agricultural cooperatives.* During the NCEU-MK working group discussions, agricultural cooperatives were clearly assessed as significantly risk-reducing, since they facilitate the development of agricultural market structures and provide better conditions for loans and investments. Cooperatives are a form of economic union in agriculture which has been practised in European states for quite some time and which allows for high productivity of agricultural labour. In North Macedonia, the development of cooperatives is at an early stage, and initiatives for their formation are few, due to a low association capacity in rural areas, the persistence of attitudes towards cooperatives from socialist



times, and many unresolved questions regarding the way they work today. Taking into account the conditions in the agricultural sector – small lots of land, lack of familiarity with financial and managerial aspects of agriculture, difficult access to the agricultural product and labour markets –, the formation of cooperatives should be treated as a priority goal of North Macedonia’s agricultural policy. Problems resulting from work tasks not being clearly assigned among the members of the cooperative and, hence, difficulties in decision making, as well as the complicated dissolution procedure, are the downsides of agricultural cooperatives which were discussed. It was suggested to revise and simplify the Law on Cooperatives, after an in-depth analysis of the difficulties of the 38 currently existing cooperatives.

*Significance and perspectives of family farming.* In North Macedonia, family farming is the predominant organisation form in agriculture (45% of the population lives in rural areas), but due to of persistent tradition and marginalisation of rural communities, serious efforts have to be undertaken to modernise and adapt it to European agricultural structures. This task is becoming even more difficult in view of massive economic emigration, which leads to the depopulation of rural areas, while the state’s support measures are slow and almost invisible. The presentation on Slovakia’s experience and the state measures for financing young farmers, which had a motivating impact on farmers up to 40 years, was an important contribution to this working group session, with special focus on the rural development measures, targeted at young people not to leave rural areas. Linking up farmers and market networks is of great importance. Minister Ljupčo Nikolovski stated that, with regard to family farming, the main aim of the agricultural policy is to support the 170.000 family farms with their 233.00 hectares of land.

*The role of local stakeholders for rural development.* For implementing the main pillars of the CAP, especially for reaching the goals of the second pillar (“rural development”), there is a specific methodology, the so-called LEADER approach.<sup>34</sup> The main task within this approach is to activate local communities to use their own resources for sustainable development, that is, for independently resolving economic, environmental and social issues. In North Macedonia, this approach is being implemented since 2010, when the Rural Development Network was founded in order to promote it and to initiate local organisation, which has led to the registration of 13 *Local Action Groups* (LAG).<sup>35</sup> But what can the LAGs do, considering scarce resources, without local action plans and in view of a dominant centralized political authority? The discussions showed that rural communities are experiencing a deep crisis and that urgent action is required in order to “save the villages”.<sup>36</sup>

According to the Slovak expert Anton Marcinčin, the Republic of North Macedonia first has to work on increasing the productivity of agricultural labour (23% of the work force are farmers, while agriculture makes up for 8,4% of the GDP). This is proof of a survival economy which, however, will not be competitive on the European markets.

Taking into account that there is little culture of association among the population, it

34 European Commission The European Network for Rural Development (ENRD)

35 [http://ruralnet.mk/wp-content/uploads/2019/01/LEADER\\_pristap\\_web.pdf](http://ruralnet.mk/wp-content/uploads/2019/01/LEADER_pristap_web.pdf)

36 Jorde Jakimovski, Professor at the Institute of Sociological, Political and Juridical Research, St. Cyril and Methodius University Skopje, at the fifth session of Working group 1, June, 2019

is necessary to build strategies for connecting the private, the public and the civil sector. That only few initiatives come from rural areas is due to a marginalisation of the local communities (a form of self-organisation of neighbourhoods or hamlets). With the 2002 Law on Local Self-Government, the local communities ceased to be considered as legal entities with a budget of their own.<sup>37</sup>

In 2019, the state's interest in financial support of LAGs has increased. A separate department within the MAFWE and a separate support fund were founded, with the aim of giving the LAGs the opportunity to become fully-fledged stakeholders of rural development.

*The impact of climate change on agriculture.* Although climate change already has tangible impacts on agriculture, this issue is not included in the relevant government policies. The very fruitful debate emphasized that climate change should be an integral part of the new Law on Rural Development. According to experts, "it is necessary to act preventively, and everything that will be taken as an activity, whether it is irrigation systems, safety platforms or something similar, can be a significant impetus for agricultures in dealing with climate changes."<sup>38</sup> Lessons learned from the practice show that the local farmers have the answers to key problems in their environment and the general measures could not be effective if they were created without prior consultations with the local farmers.

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37 Survey on the opportunities and analysis of improvement possibilities of the local self-government in the Republic of Macedonia, *Focus* Centre for Strategic Research and Documentation, 2016

38 Ordan Chukaliev, Professor, Faculty of Agricultural Sciences and Food, Institute of Agricultural Economics, University of "Ss. Cyril and Methodius – Skopje", sixth session of Workign group 1, 12 September 2019



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## **WORKING GROUP 1**

### **Agriculture and Rural Development (Chapter 11)**

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## INTRODUCTION

As part of the EU accession negotiations, the agricultural sector and rural development are covered in Chapter 11. This chapter is one of the most complex, but also the most important one, especially because of the importance this sector has in our economy. Firstly, it contributes about 50,000 million denars or about 8-10% to the total GDP (i.e. almost 14% if the related processing industry is added); but it is also an important sector in terms of employment, especially in rural areas. The agricultural sector, together with forestry and fishery, accounts for just under 20% of the total employment in the country. About 180,000 agricultural holdings deal with production, most of which are individual producers.

At EU level, the common agricultural policy (which includes measures to support farmers' income, various market measures and a rural development programme) has an annual budget of around 50 billion euros and serves around 22 million primary producers and employees, and an additional 44 million employees in manufacturing, sales and food-related services. The Common Agricultural Policy (CAP) is a key part of the European model, with its capacity to support farmers, stabilize markets and encourage the diversification of the rural economy. Within the Union, there is a consensus on a strong CAP, with a major commitment to a good standard of living of the farming population, sustainability and environmental protection.

The EU CAP is in some ways a “moving target”, meaning that this complex policy is constantly changing as the global agricultural markets change, the internal conditions in the Union, the ever-increasing awareness and increased efforts to tackle climate change and the continuing commitment to sustainable development so within the European Union itself, there are ongoing processes of modernizing and simplifying the policy in order to implement it more effectively.

A key priority is the preparation of the agricultural sector for EU membership. Adaptation of institutions (their proper set-up, functionality and continuous capacity building), legislation and policies in the agri-food sector to the EU CAP represent one of the biggest challenges in the negotiation process, both in terms of size and complexity of the sector. Chapter 11 covers a number of rules, procedures and obligations whose proper application and efficient implementation and control by the administration are essential to the functioning of the agricultural policy. Carrying out agricultural policy in accordance with the European Common Agricultural Policy requires efficient management and quality systems, and adequate capacity to implement the measures. It is all related to improving the competitiveness of the sector, in terms of improved productivity and efficiency of farms, better utilizing economies of scale through sector modernization, encouraging horizontal and vertical producer association, sustainable management of available resources, and paying particular attention to fostering the socio-economic development of rural areas and improving the rural economy.

The European perspective of Macedonian agriculture and rural development started in 2001 by signing the Stabilization and Association Agreement with the European Union (EU), which liberalized trade, among other things, and provided an asymmetric trade regime for certain agricultural products in favour of Macedonia. The Republic of North Macedonia formally became a candidate country for EU membership in 2005, and in 2009, the European Commission gave a positive assessment of the start of accession negotiations.

This provided access to various pre-accession mechanisms / EU funds, as well as, for rural development and development of the agricultural sector. The first Instrument for Pre-Accession Assistance for Rural Development (IPARD 2007-2013) started implementation by issuing the first public call in 2009 and ended with payments to end-users by 2017. Currently IPA 2014-2020 is being implemented, which provides 80million euros in support for the Agriculture and Rural Development Sector (IPARD2). These funds are intended for Macedonian farmers, the manufacturing sector and support for small businesses in rural areas.

Six important topics related to Chapter 11 were covered within the National Convention on the European Union in the Republic of North Macedonia in the past two years:

1. How to use the IPARD2 programme more efficiently
2. Lending to agriculture, agribusiness and rural areas
3. Agricultural cooperatives - opportunities and challenges
4. Family farming - a sustainable model for rural development
5. Local stakeholders in the function of rural development - LAG and LEADER
6. Climate change and its effect on agriculture

### **WS 1. How to use the IPARD2 programme more efficiently**

The overall objective of the IPARD programme is to provide financial support for sustainable agriculture and rural development in order to prepare candidate countries for implementation of the Common Agricultural Policy (CAP) and management of Union funds. It is a unique instrument targeted at the private sector and is therefore extremely important to the national economy and to the sector that supports it. It operates on the basis of partner co-financing, with 50% to 65% of the funds being public funds (75% of which are from the European Agricultural Fund for Rural Development - EAFRD and 25% from the Budget of the Republic of North Macedonia).

The main long-term priorities of IPARD2 are to improve the sustainability and competitiveness of agricultural holdings and all types of agriculture and primary food processing, while gradually aligning with European Union standards; restoring, preserving and improving ecosystems dependent on agriculture and forestry; promoting equitable territorial development in rural areas; transfer of knowledge and strengthening the capacity of the public administration in the implementation of rural development programmes. Implementation of IPARD is done through the institutional set up of IPA established as a result of the decentralization process and indirect management of EU assistance, which as joint institutions have the following: National Authorizing Officer, National Fund, National IPA Coordinator, Programme Authorizing Officers and IPA Audit Authority. Key institutions to implement IPARD are the IPARD Management Body within the Ministry of Agriculture, Forestry and Water Economy and the Agency for Financial Support of Agriculture and Rural Development.

The sector faces a number of challenges related to the potential for exploiting the current IPARD2 Programme discussed at the working session: structural conditions, the absence of detailed urban plans which is an obstacle to investment in facilities and often unresolved property and legal issues; preparation of the necessary technical documentation



as one of the biggest problems for potential beneficiaries of the IPARD2 funds; the manner in which public calls are organized and their timeframe; inclusion of new measures in the programme (until now the programme includes the following measures: (1) investments in physical assets of agricultural holdings, (3) investments in physical assets related to the processing and marketing of agricultural and fishery products, (4) investments in rural public infrastructure, (7) farm diversification and business development, (9) technical assistance); the continuous strengthening of institutions, given that the specific workload requires adequate capacity, staffing and expertise of the institutions involved; and of course the awareness of all stakeholders and communication.

### **RECOMMENDATIONS FROM THE FIRST SESSION OF WORKING GROUP 1**

#### **“How to make a better use of IPARD2”<sup>4</sup>**

1. Improvement of structural conditions for better utilization of funds under the IPARD2 program:

- the creation of structural conditions for the implementation of investments in fixed assets (construction facilities) to be set as a top-level priority,
- the process of adopting detailed urban plans in the municipalities to be accelerated and completed as soon as possible,
- the documentation for projects involving construction activities and those legalization requirements that are intended for the use of IPARD should have priority over other requirements,
- all relevant institutional registries related to IPARD to be completed and linked with each other,
- the amendments to the Law on Consolidation of Agricultural Land to be adopted since it is one of the pre-conditions for overcoming the issues of property and legal rights.

2. Facilitating the conditions for providing technical documentation:

- the procedures for procurement of the necessary documentation to be simplified and the possibilities to procure some of the documents ex officio from AFSARD to be considered (some examples indicated by the concerned parties: a lease agreement on state land, evidence of ownership structure, documents on the impact of the investment on the environment, a certificate from the Public Revenue Office, etc.),
- the possibilities for facilitating requests for offers and documents from abroad to be considered (for example, accepting pro-invoices from foreign firms sent by e-mail and facilitating the requirement for proof of ownership of the tenderer's ownership structure),

<sup>4</sup> First session of Working group 1 was held on 20.03.2018

- To clearly determine what the documents issued by the competent institutions (municipalities, ministries, other state institutions) should contain.

### 3. More efficient organization of public calls:

- various options for publishing calls to be considered (for example, one possible option is an open public call during the whole year with determined decision periods for application assessment; another
- possible option is the public call to be released in phases by specific measures, which will not coincide with the release period of public calls for the national program),
- a time frame with specified deadlines to be set for all stages of the process (the call, the approval of the application, the implementation, the monitoring and control), and this timeframe to be in line with the agricultural activities,
- a more efficient procedure to be introduced when assessing the applications

### 4. Introduction and accreditation of new measures in the program:

- the accreditation process of the new IPARD2 measures to be accelerated so to contribute to a better and a more successful utilization of the program (for example, the measure concerning investments in rural public infrastructure),
- to create conditions for introduction and accreditation of new measures as soon as possible (measures concerning advisory services and local development strategies – LEADER approach),
- to additionally increase the co-financing where possible (for example, for women farmers),
- the process of programming, inclusion and accreditation of measures for the next programming period to start in a timely manner so that the use of the funds can be initiated on time,
- in the next IPARD programming period, more attention and funds should be directed towards the measures for development of rural areas (investments in rural public infrastructure, diversification, LEADER, etc.) and towards measures intended for forestry (through prior introduction of pilot measures in the national program).

### 5. Improvement of the capacity of the institutions:

- to strengthen the capacity of the institutions related to the implementation of IPARD (in particular the IPARD Management Authority – Ministry of Agriculture, Forestry and Water Economy, the Agency for Financial Support of Agriculture and Rural Development and the National Extension Agency):
- to increase the number of employees, with expert and professional staff; to improve the knowledge and skills of the employees with trainings;

- to introduce financial incentives for employees who have increased engagement and scope of work related to IPARD;
- to improve working conditions (office conditions and office materials).

6. Better information and communication regarding the program:

- To raise the awareness among the users about the opportunities offered by IPARD2, especially in direction of undertaking new development investments, innovations, value added, and not just procurement of mechanization,
- To improve the information to the end users with a more efficient system of promotional activities and timely communication, more frequent information sessions and educational debates: the events to be held in the villages in a period suitable for farmers (when they have no obligations; in the evening hours);
- to organize thematic events (for only one target group, or appropriate selection of a specific production region so to offer information on the possibilities for that subsector); the main but also the more detailed information to be transferred in a simple and understandable language (for example, to offer a visual guide including what to expect users before, during and after the application and approval of the project; to present successful examples from the country and abroad, etc.), • To introduce a regular information and training for public and private advisors regarding the program, the preparation of applications, and the development of the business plans,
- To introduce a regular media information about the program, as well as a specialized training for journalists,
- To improve the communication between institutions in the area of continuous information exchange (for example, between NEA and AFSARD, between NGOs and institutions, etc.),
- To complement the work of the IPARD Monitoring Committee: with more frequent meetings so to monitor the utilization of the program more transparently and effectively, and with regular participation of the non-governmental organizations (agricultural associations, chambers of commerce, processors and agricultural cooperatives that have met the conditions for socio-economic partners of MAFWE in accordance with the Law on Agriculture and Rural Development).

## WS 2. Agricultural lending

Access to finance in agriculture has remained one of the weaker segments of the country's development although there are various formal institutions offering financial services. These include commercial banks, microfinance institutions (savings houses), insurance companies, leasing companies, factors, etc. However, many have not expanded their portfolio of financial services to agriculture.

Financing in agriculture is still traditional and mainly agricultural producers take out mortgage loans. In order to improve the credit absorption by the agricultural sector, the state has established support mechanisms. These include the establishment of a state development bank (Macedonian Bank for Development Promotion), the establishment of an agricultural credit fund (Agricultural Credit Discount Fund), and the introduction of a subsidized interest rate to support pre-financing of investments co-financed by the IPARD programme. In addition, many foreign donors are trying to narrow the gap between supply and demand for financial services in agriculture. USAID is particularly active in supporting various project activities, such as: establishing a guarantee scheme in partnership with commercial banks and savings houses in order to provide credit guarantees to agricultural producers; establishing a separate credit line for agriculture in partnership with the largest commercial bank in the country; establishing an association of microfinance organizations, establishing different modes of financing through the agricultural value chain, where strong financial institutions provide available capital for agricultural producers; improvement of factoring services, etc.

However, the capital market in agriculture is still not efficient enough. Formal financial institutions and support mechanisms are still lacking, such as agricultural credit unions, non-governmental financial organizations, mortgage institutions, national credit guarantee funds, etc. In their absence, there are various informal financial transactions in agriculture, such as trade credit (deferred payment to raw materials suppliers from farmers), growing liabilities (deferred payment to their employees, electricity suppliers, water suppliers, etc. from farmers), loans from friends and relatives, as well as, from local individuals.

During the session, financial institutions outlined several key challenges that need to be addressed. The first challenge is related to insufficient information from potential clients in this sector. The second challenge is the need to train potential users in this sector on how to choose an investment that would contribute to the development and sustainability of their branch and business, but also the need for training in financial literacy in order to better understand the credit conditions so they can make the right decision in choosing a loan, tailored to their needs, but also to their capabilities. There is a need for innovative and development projects, which would be supported by financial institutions.

Despite this offer, many farmers have limited access to external capital and face high costs for available financial services. Farmers are dissatisfied with the current financial services offer and the flow of relevant information. In addition, other factors hamper the flow of capital into agriculture, such as the high dispersion of agricultural households across the country, especially the high risk of natural disasters, the lack of knowledge of new technologies and innovations in agriculture and insufficient financial education. Agricultural property and agricultural land are either under-valued or not accepted as collateral by financial institutions. Part of this problem is unresolved property relations

that limit the ability of farmers to obtain credit. There are additional barriers to access to finance, especially for the vulnerable categories of the rural population, namely youth and women. Traditional barriers are an obstacle for young people and women to be the bearers of the business and to make decisions about its development.

The expert from Slovakia, Mariana Certikova <sup>5</sup>, presented the experience of financing farmers in Slovakia with European funds, which, besides EU funds, also receive government support. Strict procedures and formalities do not allow farmers to devote themselves fully to production and cannot immediately benefit from EU assistance, for which the government allows pre-crediting farmers at symbolic interest rates. At the beginning of Slovakia's transition, loans were with high interest rates, and agriculture was considered risky for lending. With the accession to EU, investment and credit in agriculture has increased, and today it is considered one of the most stable economic activities.

In order for farmers to adapt to the future requirements of the European Union's Common Agricultural Policy (CAP), they need to have access to available capital, but, also need to increase their financial literacy. In farmers' adaptation to at least four of the nine future CAP objectives (such as ensuring equitable income for farmers, increasing competitiveness, supporting generational renewal and mobility in rural areas), access to finance is the key. Lending is one of the key drivers of agricultural and rural development so it deserves urgent government attention and should be prioritized in framing of national policy.

### **RECOMMENDATIONS FROM THE SECOND SESSION OF WORKING GROUP 1**

#### **“Crediting in agriculture, agribusiness and rural areas”<sup>6</sup>**

1. Efficient information and communication system among the stakeholders for better access to credit in agriculture, agribusiness and rural areas:

- to improve the information about the available offer of financial services from the private and public sector, as well as the demand for agricultural credits;
- to develop communication by building mutual trust and partner relations;
- to involve more actively all actors in joint activities (agricultural producers, agribusiness, agricultural cooperatives, rural population, banking and microfinance institutions, directly or through their associations, providers of advisory services, state institutions).

2. Knowledge and skills of key stakeholders:

- to conduct continuous trainings for: (1) potential beneficiaries of financial services in agriculture, agribusiness and rural areas (financial literacy, knowledge and skills for implementing development and sustainable projects, farm accounting and record keeping); (2) providers of advisory services (selection of appropriate

<sup>5</sup> Agri-Client Specialist at CSOB Bank in Bratislava

<sup>6</sup> Second session of Working group 1 was held on 12.06.2018

investment, preparation of business plans, funding opportunities, support in the process of farm accounting and record keeping and applying for a credit); (3) financial institutions (specifics of agriculture, agribusiness and rural areas, in order to adjust credit conditions, collateral and payment plan).

### 3. State support for crediting:

- to maintain and supplement the Agricultural Credit Discount Fund (ACDF);
- to complement the mechanisms for easier access to credit in agriculture, agribusiness and rural areas, such as subsidized interest rates (not only for IPARD projects), favorable commercial credit through the Macedonian Bank for Development Promotion (MBDP), support of insurance and similar measures;
- to more actively support young people and women, as well as agricultural cooperatives, with additional credit benefits.

### 4. Guarantee Fund:

- to establish a sustainable model of a state fund for guaranteeing part of the collateral of credit beneficiaries in agriculture and agribusiness.

### 5. Structure of agricultural land:

- to introduce models for supporting the consolidation of agricultural land by the state (providing state guarantees for mortgages and credits for consolidation and reimbursement, treatment of uncultivated land).

### 6. Contract farming and regular and timely collection of receivables:

- to consistently implement the provisions of the Law on Agriculture and Rural Development and the Law on Financial Discipline.

### 7. Other financial services related to agriculture, agribusiness and rural areas:

- to provide legal and other conditions for functioning of other financial services (eg. factoring, value chain financing, insurance of receivables, schemes for guaranteeing collateral, etc.);
- to improve the information on alternative ways of financing.

## WS3. Agricultural cooperatives

Organizing agricultural producers and working together in agricultural cooperatives is undoubtedly one of the most effective ways to better access inputs, finances, information and markets. Agricultural cooperatives enable producers to make economic benefits that they would otherwise not be able to achieve on their own. Groups of agricultural producers improve their bargaining power, reduce costs by pooling capital and resources, and provide better access to some services, such as marketing, that are less accessible to individuals. Farmers can achieve more efficient economies of scale by reducing the unit costs of inputs

and services through the cooperatives. Agricultural cooperatives provide solutions to common problems, develop new market opportunities or expand existing markets.

The co-operative sector in the country is still underdeveloped. There is a small number of functional agricultural cooperatives out of a total of 38 registered in 2018 (MAFWE, 2018). For the most part, agricultural cooperatives are small despite the large number of small farms facing problems with production efficiency, inability to achieve economies of scale, high transaction costs, low bargaining power and impact on purchase prices, quantities of products produced, etc.

Many agricultural producers are not yet ready to enter into a co-operative relationship. The low rate of membership of agricultural producers in agricultural cooperatives is one of the first indicators of the level of social capital in rural areas. Creating a cooperative is a great challenge, but also a very rewarding activity. It requires a great deal of confidence in the model of co-operation, a lot of knowledge, research, planning, patience and dedication. The benefits of joining a co-op are in providing greater financial, as well as, social benefits. Therefore, there is a need to change the attitudes of agricultural producers towards cooperation.

The institutional and legal preparedness of the state is not enough. Firstly, the Law on Agricultural Cooperatives is non-functional and there is a lack of harmonization with other laws so the problems that arise when taxing cooperatives are evident. Furthermore, there is no functional system for the flow of information between different stakeholders in the agricultural association. For example, if they become members or founders of a co-operative, farmers lose the right to use social packages, although there is no legal basis for this. Also, current agricultural support programmes have not prioritized agricultural cooperatives, and those that do, have not been designed properly.

During the session, the Minister of Agriculture, Forestry and Water Economy, Ljupco Nikolovski, emphasized that the association of agricultural producers provides numerous economic and social benefits and that through the association, farmers can more easily apply for financial support. Furthermore, he emphasized that the Measure 131 Economic Association of Agricultural Enterprises for Joint Practice of Agriculture within the National Rural Development Programme for 2018 is being implemented, and this measure includes several sub-measures and types of support, which will further encourage the establishment of cooperatives and their functioning.

In their discussion and the paper “Overview of the concept of agricultural cooperatives” Jovan Azhderski <sup>7</sup> and Emelj Tuna <sup>8</sup> highlighted the different forms of voluntary association (general, specialized, credit, agricultural and other cooperatives), as well as the phases of development of cooperatives in the country. It was emphasized that agricultural cooperatives are of particular importance in conditions of high risk, incompletely developed loan market, insufficient insurance of agricultural products, etc. It was indicated that cooperatives have a significant market share in agricultural production in developed countries - 83% in the Netherlands, 79% in Finland, 55% in Italy and 50% in France.

The foreign expert, Tomislav Klaric <sup>9</sup>, shared experiences from Croatia, emphasizing that cooperatives are the generator of the entire economy that mobilizes all available resources. There are 904 cooperatives in Croatia in various fields, mainly

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in agriculture, processing industry and fishery. However, he noted that in Croatia, as in Macedonia, cooperatives are far from world trends. Every seventh inhabitant of the world is a member of cooperatives; in the EU it is every 5th, while in Croatia it is every 200th.

In recent years, it is evident that the state has made great efforts and resources to revive the agricultural partnership. It is an undeniable fact that agricultural cooperatives are undoubtedly one of the key forms of overcoming numerous problems in Macedonian agriculture. This is particularly important for farmers to adapt to the requirements of the European Union. Therefore, there will be more challenges in future, which require greater commitment by the state and its institutions, but also by all stakeholders, including farmers.

### RECOMMENDATIONS FROM THE THIRD SESSION OF WORKING GROUP 1

#### “Agricultural cooperatives – opportunities and challenges”<sup>10</sup>

##### 1. Increasing awareness regarding cooperatives:

- To increase and raise awareness among agricultural producers about the importance and benefits of joining (for example, using positive examples here and abroad for the successful functioning of agricultural cooperatives, info sessions, expert meetings, field trips etc.).
- Provide continuous advisory services to support joining into cooperatives.
- Ensure continued training and education of the members and managers of cooperatives, especially in terms of governance, entrepreneurship, negotiations, marketing, business planning, production technologies, etc., and to pay particular attention to the inclusion of young people and women in membership and the management of cooperatives.
- Ensure proper interpretation and information on various issues that create confusion and distrust (e.g. tax policy, differences between cooperatives and other legal entities, etc.). The Employment Agency and its local centres should inform the cooperatives that there are no legal barriers to the founders and members of agricultural cooperatives for loss of the right to use social packages.

##### 2. Adjustment of the legal framework in terms of requirements and conditions:

- To revise and adjust the current legal framework (for existing cooperatives and for establishing new cooperatives).
- The cooperatives to be actively involved and to have a key role in the process of formulation of new legislation.
- To harmonize the various legal acts, which apply to agricultural cooperatives.

<sup>10</sup> The third session of Working group 1 was held on 20.11.2018



- To legally protect the cooperative property, as inseparable and non-transferable, to remain in the ownership of the cooperative.
- To revise the criteria for a minimum number of agricultural producers that may establish an agricultural cooperative.
- Agricultural cooperatives should be adequately covered in the new Law on Agriculture and Rural Development, as well as in the new National Strategy for Agriculture and Rural Development.

3. Improving the institutional framework and governance of agricultural cooperatives:

- Introduce special government measures to support agricultural cooperatives for their development, application of new technologies in production, as well as their technical support, but also to give priority and / or additional scoring to cooperatives in assessing their applications for certain support measures.
- To give priority to cooperatives for the use of state land.
- To improve communication and information flow among institutions regarding the functioning of agricultural cooperatives (e.g. between ministries, various agencies and other relevant institutions).
- To increase and strengthen the communication between agricultural cooperatives and institutions (e.g. more active involvement and participation of representatives of agricultural cooperatives in the working groups of the Ministry of Agriculture, Forestry and Water Economy, etc.).
- To improve the economic and social relations between the cooperative members and the cooperative (e.g. clearly defined and structured goals of the cooperative, introduction of internal mechanisms for following the Statute of the cooperative and cooperative principles, especially regarding the delivery of the agreed quantities of products).
- Establish favourable mechanisms for financing agricultural cooperatives.
- Encourage investment in cooperatives, linked to post-harvest activities, thus adding value to production and partially addressing the problem of agricultural products buyout.

**WS4. Family farming**

The concept of family farming encompasses various elements. From a sociological perspective, family farming is related to family values such as solidarity, continuity and commitment, and in economic terms, family farming is identified with specific entrepreneurial skills, ownership and business management, choice and risk behaviour,

resilience and individuality. Family farming is much more than a professional occupation because it reflects a lifestyle based on beliefs and traditions of living and working.

Family farms are the most widespread form of Macedonian agriculture, especially in rural areas, which are passed from generation to generation. But more and more villages are being abandoned, and many family farms are disappearing. Although it is currently estimated that around 45% of the Macedonian population lives in rural areas, one should bear in mind that the population in these areas is steadily decreasing. The main reason is the mass migration of the population due to the low income from agriculture, its unattractiveness among the young generation, but also due to the poor infrastructure in rural areas.

As an introduction to the session, in order to stimulate discussion, Vasko Hadzievski<sup>11</sup>, co-chairman of the group, emphasized the socio-economic conditions in which family farming takes place from the perspective of family members' involvement, family business inheritance, the share of family income of such management, and the need for continued research on this issue.

Vaska Mojsovska<sup>12</sup> highlighted the necessity to preserve domestic agricultural production, pointing out that the rural environment can survive if we have small family farm businesses in which the whole family is involved. She emphasizes her example where all her family members are involved in her family farm and her children plan to continue their family business.

In order to restore the attractiveness of life in rural areas and thus encourage young people to farm, the state needs to make great efforts. These include updating family farming statistics as a basis for guiding policies towards sustainable family farming, as well as encouraging additional activity and diversification of agricultural and non-agricultural activities.

In Europe, family farming is the most common operating model of agriculture, so it is of great importance to the EU. The Common Agricultural Policy is therefore particularly aimed at enabling proactive rural areas through generational transfer and encouraging young people from rural areas to become actively involved in the agricultural sector. This was, also, highlighted by the Slovak expert Zolt Cerge<sup>13</sup>. He pointed out that the Slovak government is implementing measures to identify and support young farmers. The measures are aimed at farmers who are under the age of 40 and have agricultural education. The government provides grants of 50,000 euros, as well as, grants of 15,000 euros for small farms and businesses. The Expert further noted that the funds from the European Agricultural Guarantee Fund were used under a specific scheme. In addition, ecological agricultural production is especially stimulated. Moreover, in the Slovak Rural Development Programme for the period 2014-2020, priority is given to measures for innovative technologies, promoting the association of small farmers and their connection to trade networks, preserving ecosystems, social inclusion and poverty reduction. He noted that 75% of agricultural land in Slovakia is privately owned and 25% remains state-owned. Slovakia's domestic food production meets 40% of its domestic market needs, due to cheaper import products that are often of questionable quality.

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12 President of the National Federation of Farmers

13 President of the Association of Young Farmers in Slovakia

**RECOMMENDATIONS FROM THE FOURTH SESSION OF WORKING GROUP 1**

**“Family farming - a sustainable model for the development of the rural areas”<sup>14</sup>**

**1. Supplementing the statistics on family farming**

- Improve the links among competent institutions with regard to statistics (administrative sources from the registries and databases of the Ministry of Agriculture, Forestry and Water Economy and the Agency for Financial Support of Agriculture and Rural Development, should be available in the form and content useful for statistical surveys of the State Statistical Office).
- Follow the recommendation in the European Commission Progress Report (2018), where the need for improvement of the process of harmonization of the Farm Accountancy Data Network (FADN) is emphasized.
- Include the aspects of family farming in the statistics (e.g. in the next Agricultural Census and statistical surveys of the State Statistical Office, to harmonize with European standards, such as participation of the family workforce in the total workforce of the holdings; in the registers, to take into account that both individual holdings and business entities can be family farms).
- Encourage the holders of agricultural holdings to register regularly at the databases of the Ministry of Agriculture, Forestry, and Water Economy.

**2. Directing policies towards sustainable development of family farming**

- Recognize the concept of family farming (FAO, 2014) in policy-making context and give it proper attention (e.g. in the next Strategy for Agriculture and Rural Development, as well as in the Law on Agriculture and Rural Development, to appropriately include family farms and the strategic directions for their development);
- Coordinate and integrate cross-sectoral government policies and strategies that will have economic, social and developmental components to ensure an overall better quality of life in rural areas, with particular emphasis on young people and women in rural areas (for instance, in context of Article 5 of the EU Regulation No. 1305/2013)
- Revise the classification of family farms by income (as in Article 15a of the Law on Agriculture and Rural Development).
- Encourage more intensive land consolidation applying the Law on agricultural land consolidation (to understand the land consolidation as basis for family farms and competitiveness in the pre-accession period);
- Pay timely attention and planning of the inter-generational transfer in family farms and farm inheritance (e.g. Article 68 of the Law on Agriculture and Rural Development on regulating the transfer of ownership of the agricultural holding from one entity to another).

<sup>14</sup> Fourth session of Working group 1 was held on 26.02.2019

### 3. Encourage ancillary or secondary business activity and diversification of agricultural and non-agricultural activities (linked to Articles 14, 15, 27, and 28 of EU Regulation 1305/2013)

- Raise the awareness of all stakeholders about the possibilities for ancillary or secondary business activity in context of the family agricultural holdings (Article 82 of the Law on Agriculture and Rural Development), especially for women and young people in the family agricultural holdings;
- Investing in formal and vocational education, especially for young farm members and agricultural education to be an important criteria for using the measures for new and young farmers;
- Improve access to information, knowledge, and innovation to supplement and diversify the family agricultural business.
- Include procurement of protective nets and foils, anti-freeze systems and other necessary mechanisms for mitigating climate change in the Program for Financial Support for Rural Development.
- Follow the recommendation in the European Commission Progress Report (2018) to preserve domestic products with geographical origin and encourage more efficient implementation of the protection (family farming is one of the mechanisms for protecting traditional products).
- Introduce European practice for direct sale of agricultural products from family farms, through regulation of production and sales of these products (harmonization of certain Rulebooks with the Law on Agriculture and Rural Development and the legislation on taxation; regulation of the direct sale of home-produced wine and grape products from individual farmers and direct producers through the Law on Wine, etc.).

#### WS5. Local stakeholders in the function of rural development - LAG and LEADER

Rural development is key to keeping the population in rural areas. Agriculture is the main activity and employer in the rural areas of the country, however there is a greater need for greater diversification of rural activities on and off agricultural holdings to provide more and better employment opportunities. The quality of life in rural areas is often hampered by a lack of basic infrastructure (physical - water supply, sewage, roads, transport, but also the availability and quality of health services, childcare and care for the elderly, social life, culture, recreation, etc).

The EU CAP recognizes the key role of maintaining rural areas and animating local stakeholders. The second pillar of the CAP, the EU Rural Development Policy, is designed to support the Union's rural areas and tackle a wide range of economic, environmental and social challenges. The Rural Development Regulation (1305/2013) sets out a bottom-up approach for local development, followed by local stakeholders (LEADER approach). The national legal framework for this issue is contained in the Law on Agriculture and

Rural Development (Art. 87, 88 and 89)<sup>15</sup>, the Rulebook on the detailed conditions for registration in LAG registers, the Rulebook on the content and methodology for preparation of local Rural Development Strategies, as well as other relevant laws, such as the Law on Local Self-Government and the Law on Balanced regional development. It is a solid legal structure with emphasis on capacity building for small-scale pilot projects.

The co-chairwoman of the group, and representative of the ministry, Maja Lazareska Joveska<sup>16</sup>, at the meeting informed that the Ministry of Agriculture, Forestry and Water Economy in the Republic of North Macedonia started to support Local Action Groups (LAGs) and the first call for annual financial aid of 13,000 euros was issued in 2019. Functional Local Action Groups (LAGs) and their local development strategies are key to the LEADER approach as a basis for further implementation. The creation of (pre) LAGs began in 2012, but they were registered as CSOs. Initially, 16 LAGs were established and with their re-registration in the Ministry, there are now 13 organizations that meet the prescribed eligibility criteria for using the funds through the National Rural Development Programme. These registered Local Action Groups cover about 70% of the national territory. It is important to note that 4 new regional initiatives have been launched. However, it should be emphasized that LAGs are still developing organizations, and their success requires good preparation and high citizen involvement. As organizations, they encourage the pooling of the public, civil and private sectors, as well as the creation of innovative sustainable local strategies. The approach should be bottom-up, i.e. initiated by real local needs.

The LEADER approach is planned to be introduced as one of the new measures under the IPARD2 programme. Expectations are high, but there is also a necessity for a better understanding and capacity building of LAGs and the development of the potential for exploiting the LEADER approach at both strategic and operational levels.

In his introductory address, Petar Georgievski<sup>17</sup>, noted that LEADER<sup>18</sup> (fr. *Liaison entreactions de développement del'économie rurale*, LEADER, which represents a link between development activities in the rural economy) has been a model for two decades in the EU and has a multi-sectoral approach. It is one of the most successful achievements of the EU, which has gone through four phases, and since 2007 it has been an instrument of the EU's common policy and strategy, integrated into national and local agricultural development programmes by Member States. This approach encourages rural communities to use their resources to ensure sustainable development, with an emphasis on social, economic and environmental challenges. Basically, it is a philosophical concept that affects the change in mentality of all relevant stakeholders in rural areas.

It was emphasized at the meeting that the development of dialogue between the rural population and the local authorities through the local community was particularly important for dealing with problems with poor rural infrastructure, lack or poor quality of services (educational, health, social) and rural poverty. The problem of rural poverty

15 Official Gazette of RM No. 49/2010, 53/2011, 126/2012, 15/2013, 69/2013, 106/2013, 177/2014, 25/2015, 73/2015, 83/2015, 154/2015, 11/2016, 53/2016, 120/2016 и 163/2016 <http://zpis.gov.mk>

16 Head of EU Sector, Ministry of Agriculture, Forestry and Water Economy

17 President of the Rural Development Network

18 It comes from the French word - Liaison entre actions de développement de l'économie rurale, LEADER which signifies the link between development activities in the rural economy

must not remain invisible, as rural areas account for about 87% of the total territory of the country. Biljana Petrovska - Mitrevska emphasized that rural poverty must be part of the state's new strategy for tackling poverty. She emphasized that the local communities can be a significant local factor and need to be reorganized.

The Slovak expert Anton Marcincin<sup>19</sup> presented a comparative analysis of the socio-economic sequence of several countries in the region at the meeting. Regarding our country, as farmers represent about 20% of the total labour force in the country, he emphasized that this was an important sector (while their share of the total GDP in 2018 was 8.4%). This situation must be changed and improved. LAGs should be part of the regional and national development. The economy and the civil sector, the local development decisions and strategies cannot succeed without partnership with local authorities.

## RECOMMENDATIONS FROM THE FIFTH SESSION OF WORKING GROUP 1

### “Local stakeholders in the function of development of rural areas”<sup>20</sup>

#### 1. Encourage the development of rural areas

- Establishment of Inter-sectoral body Rural Development and the National Rural Network (Articles 25 and 26-a, Law on Agriculture and Rural Development) as soon as possible
- Preparation of comprehensive analysis of the real situation in the rural areas (in accordance with the recommendation to the Government in the audit report of the State Audit Office, 2016) in order to prioritize the access of the rural population to health, educational, cultural and other goods and services, to ensure balanced regional development and reduce social exclusion and migration
- To activate and financially support the local communities in the rural areas (with continuous support and monitoring by the Ministry of Local Self-Government, ZELS and municipalities)
- The Ministry of Local Self-Government and ZELS to monitor the functioning of the Commissions for Equal Opportunities in the Municipalities (envisaged in the Law on Equal Opportunities, 2012) as an important segment for improving the communication and cooperation of the municipalities with the population from the rural areas

#### 2. Strengthen the Local Action Groups (LAGs) and the possibilities of the LEADER approach

- To animate the local population for the LAG and the possibilities of the LEADER approach
- To unify and introduce clear rules for the establishment and management of LAG, as well as to find a legal solution for enabling the establishment of a LAG in case there is only one municipality

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<sup>20</sup> The fifth session of Working group 1 was held on 18.06.2019

- To train LAG to perform fully independent administrative and financial operations
- To conduct LAG training on local project administration and how to work with local users and the community in an open, inclusive and transparent manner
- To conduct LAG training for the preparation of Local Rural Development Strategies
- Support the implementation of pilot projects from the Local Development Strategies
- Develop transparent LAG procedures (systems for communication and decision-making)
- Exchange information and transfer of good practices from European LAGs
- Strengthen the cooperation and networking of the LAG, to better represent the interests in front of government institutions

**3. Improve the institutional setup and capacities of the LEADER program** (to strengthen the human resources in the responsible sectors and departments of the MAFWE and AFSARD, to ensure continuity in the positions and training of the responsible persons, and to establish coordination between the respective institutions)

## WS 6. Agriculture and climate change

Climate change and agriculture are interrelated processes. Climate change affects agriculture in many ways (through changes in average temperatures, precipitation, heat waves, periods of drought or flood, changes in pests, diseases, etc.), but agriculture also contributes to climate change (for example, through greenhouse gas emissions: carbon dioxide and methane).

In the period between 2015-2018, natural disasters (such as ice, floods, heavy rains accompanied by strong winds) caused major damage to agriculture, especially in the most intensive agricultural regions, and affected many rural (agricultural) households by reducing their income. Climate change should be one of the priorities of national agricultural policy as it relates to the sustainability of agriculture, rural areas and their development. Communications and a Climate Change Strategy have been developed, but still it is necessary to develop comprehensive climate policies in line with the EU's 2030 Framework. In addition to mitigation, efforts should be made to adapt agriculture to climate change and vice versa. Besides that, manufacturers need to adapt to the upcoming challenges posed by climate change, but also work to reduce greenhouse gas emissions. New technologies, knowledge and increased awareness among farmers of mitigation and adaptive measures to climate change need to be transferred to them. It is necessary for government institutions to be actively involved and coordinated, as well as to encourage the scientific research and advisory sector.

Appropriate policies can reduce the risk of negative impact of climate change on agriculture and greenhouse gas emissions from the agricultural sector. In this regard, the future EU CAP will particularly focus on a sustainable agricultural sector with an emphasis on climate change, environmental care and living standards in rural areas,

while ensuring safe and high-quality food. Three of the nine future goals of CAP relate to intensifying climate change activities and ambitions: 1) climate change mitigation and adaptation, as well as sustainable energy; 2) support for sustainable development and efficient management of natural resources, such as water, soil and air, and 3) protection of biodiversity and preservation of ecosystems and the rural landscape. Each Member State will be responsible for adapting the design and financing of environmental and climate schemes through enhanced conditionality and income support eco-schemes, as well as, agri-environmental climate measures, in accordance with local needs and conditions (e.g. soil, climate and production conditions, land use, crop rotation, agricultural practices and structure of agricultural holdings).

## RECOMMENDATIONS FROM THE SIXTH SESSION OF WORKING GROUP 1

### “Challenges in Agriculture in the face of climate change”<sup>21</sup>

#### 1. Building capacity for climate change mitigation and adaptation in agriculture:

- To provide conditions for scientific and applied climate change related research — to have access to quality and accessible databases (eg USMR, FADN), in order to conduct research and apply for appropriate funding;
- To introduce information-based decision-making tools (at both the policy and producer level);
- To work towards raising awareness of climate change among producers and enable efficient transfer of new technologies, innovations and knowledge through formal and non-formal education (training, good practices, educational centres, etc.). There is a need for active advisory involvement as part of their regular services for the successful planning and realisation of agricultural production.

#### 2. Targeting and prioritising climate change mitigation and adaptation policies:

- The new Agriculture and Rural Development Strategy should address climate change and adapt and support practices compatible with the effects of climate change while contributing to the conservation of natural resources and sustainable development;
- To intervene in the regulation (Law on Agriculture and Rural Development), ie to provide a legal basis for the implementation of measures to tackle climate change (eg in Article 62, paragraph 2, to add paragraph 4 which would concern contributing to climate change mitigation and adaptation);
- Adaptive measures (eg procurement of safety nets, anti-frost systems, installation of fans, protective foil, etc.), to be complementary to the rural development fi-

<sup>21</sup> The sixth session of Working group 1 was held on 12.09.2019



- nancial support program and to increase support for such measures;
- To improve the functionality of irrigation systems and adapt to the needs of producers;
- To develop a comprehensive policy and strategy to address the adverse effects of climate change in line with the EU Framework 2030.

### 3. Institutional Aspects:

- To improve the linkage and communication of relevant institutions with regard to climate change mitigation and adaptation;
- To strengthen the capacities of the MAFWE in relation to climate change.

## CONCLUSIONS

The main focus of Chapter 11 Agriculture and Rural Development of the accession negotiations with the European Union in will be on the conditions and timing of the adoption, implementation and use of *acquis communautaire* (the comprehensive framework of EU laws and policies). Each candidate country must accept the rights and obligations arising from full EU membership, and they are, actually, not subject to negotiation. The negotiations refer to procedures for future direct payments and other measures to support the sector, support rural development or the necessity for transitional measures to facilitate the EU integration, considering the circumstances and specifics of the sector in the candidate country.

A key priority is the preparation of the institutions involved in the sector (above all, the ministry with all its bodies and the paying agency) regarding the set-up, functionality and strengthening of institutional capacities, in particular, regarding the programming and analysis of policies and measures, as well as, meeting European standards in payment processing and execution. On the other hand, it is necessary to work on improving the absorption capacity of policy users - agricultural producers and the whole sector, as well as to invest in terms of increasing competitiveness, and, economic, social and environmental sustainability. In this respect, the stability and consistency of policies, multi-year planning, and better use of structural and rural development policies are important.

Continuous development and greater inclusion of scientific research capacities, analysis and promotion of policies based on scientific research, as well as adequate producers' support from advisory services are of major importance to the sector.

NATIONAL CONVENTION ON THE EUROPEAN UNION IN THE REPUBLIC  
OF NORTH MACEDONIA

WORKING GROUP 1 – AGRICULTURE AND RURAL DEVELOPMENT  
(CHAPTER 11)

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## **WORKING GROUP 2**

# **SOCIAL POLICY AND EMPLOYMENT (CHAPTER 19)**

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The European Union interest in social policy began as early as 1957 with the Treaty of Rome. The European Union social policy agenda represents a transformation from an approach based on minimizing the negative social risks resulting from structural change, to an approach that focuses on quality of life and aims at modernizing the social system and investing in people.

European social legislation is defined in Article 4, paragraph 2 of the TFEU as a component of international labor legislation, which incorporates the regulations of the Council of Europe and EU institutions. The following are the most important documents related to social legislation: the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950); European Social Charter (Turin, 18 October 1961); European Code of Social Security (16 April 1964); European Convention on the Social Protection of Farmers (6 May 1974); European Convention on the Legal Status of Migrant Workers (24 November 1977), the Single European Act (February 1986); the Community Charter on the Fundamental Social Rights of Workers (December 1989); and the Maastricht Treaty (February 1992); the Lisbon Agenda (24 March 2000); the Charter of Fundamental Rights of the European Union adopted by the European Council (7 December 2000); the Europe 2020 Strategy (3 March 2010); and the *European Pillar of Social Rights* (17 November 2017).

European Union social legislation implies minimum standards regarding labor law, equal opportunities, health and safety at work, employment policies and non-discrimination. Also, European labor legislation advocates social dialogue at EU level. An important place in the European Union' Enlargement Corps is Chapter 19 on social policy and employment, covering:

- Labor law;
- Occupational health and safety;
- Equal employment opportunities for women and men at workplace and social security;
- Employment policy;
- Social dialogue;
- Specific mandatory rules regarding the prohibition of discrimination on the grounds of racial and ethnic origin, belief and religion, disability, age and sexual orientation.

European legislation in the field of social policy and employment is aimed at creating equal opportunities, prohibiting discrimination on any grounds and enhancing social dialogue. European social policy aims to promote employment, improve living and working conditions, provide adequate social protection and fight discrimination and social exclusion. The 2017 the *European Pillar of Social Rights* offers new momentum to European-level initiatives. The *European Pillar of Social Rights* is built on 20 key principles, structured in three chapters: equal opportunities and access to the labor market (1. training and lifelong learning, 2. gender equality, equal opportunities, 3. active employment support); fair

working conditions (4.safe and adaptable employment, 5. salaries, 6. information on terms of employment and 7. protection in the event of dismissal, 8. social dialogue and employee involvement, 9. work-life balance, 10. health, safety and well-adjusted work environment and protection of data); and social protection and inclusion (11.child protection and support, 12. social protection, 13. unemployment benefits, 14. minimum income, 15. old-age income and pensions, 16. health care, 17. inclusion of people with disabilities, 18. long-term care, 19. housing and assistance for the homeless, and 20. access to basic services).

European labor law regulates employment contracts, protects workers' rights in the event of discrimination, collective employee redundancies, employer insolvency, relocation of company headquarters, workers in context of their rights to be informed and consulted on matters relating to their work, specific forms of employment, including part-time contracts, temporary job contracts, and job through work agencies. The European Workers Protection Act regulates health and safety at work, maternity protection, parental leave, protection of young people at work and working time. The Law on Collective Bargaining supports social dialogue between representatives of employers' organizations and labor unions, as well as the conclusion of collective agreements arising out of social dialogue. In their function, collective bargaining and collective agreements are important in EU labor law.

The global economic crisis has highlighted the structural weaknesses of the European economy. Long-term challenges related to globalization, pressure from natural resource depletion and population aging have prompted the adoption of the Sustainable Development Strategy - *Europe 2020*. The strategy was aimed at enabling a more successful response to the short-term crisis-related challenges, as well as guidelines for structural reforms aimed at boosting the European economy. The strategy defines five ambitious goals in the areas of employment, innovation, education, social inclusion and climate / energy that should be achieved by 2020. More specifically, these are the goals:

1. employment of 75% of the population aged 20-64;
2. investments of 3% of EU GDP in research and development;
3. limiting greenhouse gas emissions by 20% or even 30% compared to 1990 levels, using renewable sources by 20% of energy needs and increasing energy efficiency by 20%;
4. reducing the drop-out rate to below 10% and increasing the proportion of people aged 30-34 with a college education to 40%;
5. reducing the number of people exposed to poverty or social exclusion by 20 million.

The goals of this strategy are used as an indicator for candidate countries and potential candidates for EU membership in streamlining their reform processes. The process of accession to the EU today is much more rigorous and comprehensive and is based on a strict conditionality for progress and fulfillment of the set criteria. A more specific approach to social reform is outlined in the EU Enlargement Strategy 2013-2014 which highlights employment and social policy as priorities. Within this framework, in 2015, the preparation of the important strategic document, the so-called **Employment and Social Reform Program 2020**, started as well. **The document was prepared by an interdepartmental group comprised of representatives of social partners, representatives of civil society,**



representatives of relevant international organizations, together with relevant professors and experts. This Program was **adopted by the Government of the Republic of North Macedonia in August 2017<sup>2</sup>. After this Program, there followed the creation of multiple programs for economic reforms (Economic Reform Program - ERP2018-2020)<sup>3</sup> for achieving competitiveness and growth.**

### Status of Chapter 19, Social Policy and Employment

Following the European Council decision of June 2018 and providing a clear perspective for the start of accession negotiations in June 2019, on 27 September 2018, the Republic of North Macedonia started the explanatory meetings as part of the first phase of the screening. Namely, the screening consists of four phases: explanatory meetings at which representatives of the Commission present EU law in detail; bilateral meetings with each state; preparation of a report by the Commission; presentation of screening before the Council. Following the screening, the Council decides to open negotiations, upon the recommendation of the Commission. For Chapter 19, the explanatory meetings were held at the European Commission headquarters in Brussels (Belgium) from 3 April to 5 April 2019.<sup>4</sup> During the three working days, representatives of the European Commission Directorates introduced the participants to the relevant directives on the topic of the meeting, as well as their practical application. The screening covered issues related to labor relations, health and safety at work, social inclusion and social protection, gender equality, persons with disabilities and other issues covered by Chapter 19. Representatives from both sides discussed European directives in order to clarify the novelties to be applied in national legislation. The level of legislative alignment with EU law will be discussed at bilateral screening, which is the next step in the country's negotiations with the EU. The exploratory screening was opened for monitoring through a direct internet connection at the Secretariat for European Affairs conference hall in Skopje.

The European Commission reports on the country progress with regard to Chapter 19, Social Policy and Employment, note that the country is moderately prepared in this area.<sup>5</sup> The conclusions are aimed at integrating young people into the labor market, as well as including long-term and inactive unemployed persons. Poverty remains a serious problem, but the situation is expected to improve with the new *Law on Social Protection*; changing the welfare system and continued social assistance to at-risk groups is expected. Emphasis is also placed on developing a body of policies aimed at avoiding the poverty risk of low-income employees. The NCEU-MK paid special attention to the need for changes in the records of the unemployed and activation of unregistered persons (women from rural areas, unskilled persons, persons with disabilities, Roma persons). The issue of the capacity of the State Labor Inspectorate - an institution that should play an extremely important role in the implementation of legislation and in the administration of social justice - has

2 [http://www.mtsp.gov.mk/content/word/esrp\\_dokumenti/ESRP%20Macedonia%20-%20final%20\(ENG\).pdf](http://www.mtsp.gov.mk/content/word/esrp_dokumenti/ESRP%20Macedonia%20-%20final%20(ENG).pdf)

3 [https://www.finance.gov.mk/files/ERP\\_MKD\\_2019\\_EN.pdf](https://www.finance.gov.mk/files/ERP_MKD_2019_EN.pdf)

4 The meeting was attended by representatives from the Ministry of Labor and Social Policy, the Ministry of Health, the Ministry of Transport and Communications, the State Statistical Office, the Ombudsman Office, and other national institutions and bodies.

5 2018 European Commission Annual Report on Chapter 19, retrieved on 25 August 2019 (<https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20190529-north-macedonia-report.pdf>)

been emphasized on several occasions. It was concluded that there was a small number of Inspectorate staff members the *European Pillar of Social Rights* and unsatisfactory professional performance, while the number of inspectors was constantly decreasing due to retirement.

Regarding collective bargaining between employers and workers, it can be said that it is rather insignificant in practice as such. It was concluded that there is anemic social dialogue between the social partners that is considerably exposed to political influences and fully subjected to political developments. Progress has been made with the involvement of the social partners in drafting the new *Law on Labor Relations*, which includes rules and principles on freedom of association, collective bargaining, and strikes. Further development of local economic and social councils that will establish social dialogue at local level is recommended.

According to the EC Progress Report in the area of labor law, there is partial alignment with European legislation. Amendments to the Law on Labor Relations will be adopted by the Assembly of the Republic of North Macedonia, which will significantly correct the situation in the field of labor. Similarly, a new *Law on Private Employment Agencies* was adopted; this newly enacted law is harmonized with the relevant ILO Convention (C 181, 1997), as well as regulations arising from this law. Amendments to the *Minimum Wage Law* enable increase of the minimum wage by 30% from the previous set amount. One of the reasons for the slow implementation of the relevant legislation in this area is the poor coordination among the relevant institutions. There are no major problems with child labor in the country.

In the area of occupational health and safety, efforts have been made to improve accountability and co-operation between employers and employees. These efforts remain incomplete due to the lack of capacity of the State Labor Inspectorate responsible for overseeing the application of laws and other regulations in the field of labor relations, employment, occupational health and safety. The report concludes that implementation of the 2017-2020 Strategy on occupational health and safety is inadequate. Various awareness raising activities and campaigns were organized under the 2017-2020 Strategy on occupational health and safety and its related Action plan. According to the State Labor Inspectorate data, in 2018, the largest number of fatal accidents occurred in the construction sector. According to data provided by relevant CSOs, in 2018, 92 workplace injuries were reported, 22 of which were fatal.

In the field of *Employment policy*, the labor market indicators improved, i.e., the employment rate increased, while the unemployment rate decreased (from 22.4% to 20.7%). The first mid-term Strategy and Action plan to formalize the informal economy (2018-2022) have been adopted. The share of women labor force in the labor market has increased and is 52.2% (relating to women aged 15-64 years, in 2018). Piloting Youth Guarantee targeted at unemployed youth and their inclusion in the labor market throughout the country is given priority in Chapter 19.

An extremely significant change in the social sphere in the Republic of North Macedonia has been achieved by the new National Strategy on Deinstitutionalization 2018-2027. De-institutionalization measures have been developed and alternative community services have been established at the same time.

Considerable attention has been paid to the fight against discrimination and consequential success has been achieved as well. After a long discussion at the Assembly of the Republic of North Macedonia and in public, *the new Law on Prevention and Protection against Discrimination* was adopted by the Assembly in March 2019. Currently the 2018-2020 National Action Plan on Gender Equality, adopted by the Government in 2018, is implemented. The Ministry of Labor and Social Policy has begun developing a national gender equality index together with the State Statistical Office. According to the 2018 statistics, the employment rate for persons aged 15-64 was: 41.7% for women and 61.4% for men. 39.2% of women employed in the private sector earn lower wages than men do. In the public sector, there is no gender pay gap between men and women. The Government has established a National Coordination Body responsible for promoting and monitoring non-discrimination and equal opportunity in all spheres of social life. The 2018 Ombudsman's annual report reveals 25 cases of discrimination, 16 of which are employment discrimination complaints. In 2018, the Ombudsman Office received 77 complaints concerning discrimination, but it only established discrimination in 25 cases as such.<sup>6</sup>

### **Conclusions from the work of NCEU-MK Working Group 2, Social Policy and Employment**

The work of Working Group 2 (Chapter 19) - Social Policy and Employment, involved a variety of stakeholders active in the area. Particular emphasis should be given to the interest to participate shown by labor unions, employers' associations, and civil associations active in this field. The Ministry of Labor and Social Policy, which regularly participated in the preparatory meetings and in the sessions themselves, also showed a special interest in participating in the NCEU-MK. Particularly important was the exchange of information and the sharing of experiences among the participants.

The Working Group 2 held 6 working sessions on topics specific to Chapter 19. It is an extremely complex and extensive area, but in this first cycle of NCEU-MK the focus was on the following topics:

1. Social inclusion of vulnerable groups of unemployed in the labor market of the Republic of North Macedonia
2. Regulation of new (flexible) forms of work in the labor relations reforms in the Republic of North Macedonia
3. Social dialogue in the Republic of North Macedonia: Between the new concept and the old practices
4. Non-discrimination and equal opportunities: European legislation in national policies and practices
5. Work-life balance: better living conditions
6. Occupational safety and health at workplace: National conditions and European perspectives

<sup>6</sup> See: Chapter 23 - Judiciary and fundamental rights, Foreign Policy Committee of the European Parliament 29, in May 2019. (<https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20190529-north-macedonia-report.pdf>) is indicated in the report on North Macedonia)

Regarding the first session held at the Assembly of the Republic of North Macedonia, it can be said to have been a pilot session to form Working Group 2. The number of participants was considerable, as was the number of MPs among them. Introductory remarks, including those by the Chair of the Committee on Labor and Social Policy of the Assembly of the Republic of North Macedonia, suggested that it was necessary to find ways to implement the numerous strategies in this area, among which the 2020 Strategy for South-Eastern Europe was highlighted while noting the *European Pillar of Social Rights* as particularly important one. It was concluded that the state has an adequate legal framework regarding the social inclusion of vulnerable groups of unemployed persons in the labor market.<sup>7</sup>

### RECOMMENDATIONS FROM THE FIRST SESSION OF WORKING GROUP 2

#### “Social inclusion of vulnerable groups of unemployed persons on the labor market in Republic of Macedonia”<sup>8</sup>

1. Redefining the category of unemployed person from the aspect of determining real situation in the domain of the labor market and creating adequate employment policies. The existing regulations discriminate against active jobseekers who, due to irregular reporting, are deleted from the state and government records by denying their right to participate in active measures. To the detriment of this, passive jobseekers may at any time change their status and use the active labor measures at their own request.
2. Greater adaptability of the active labor measures towards the needs of the local economy, taking into account the following activities: trainings for deficient occupations at the local level; introducing internships in deficient occupations with a monetary compensation of 80% of the minimum net monthly salary; establishment of a system of control for regular attendance and adoption of the working contents in implementation of the internship.
3. Continuous activation in the labor market of persons at risk of social exclusion, especially beneficiaries of welfare. Changes in the exercise of the rights stemming from social protection should be aimed at greater activation of the beneficiaries through their very participation in the active employment measures (formal trainings for greater competitiveness in the labor market, trainings for acquiring new skills, retraining and further training).
4. Increased role of Local Employment Centers in creating action plans for employment at local / regional level. Creation of Action Plans at the level of the eight planning regions in the Republic of Macedonia and their financing from the

<sup>7</sup> Speakers at the session were: Daniel Skobla - Expert (Institute for Labor and Family Research, Bratislava); Vlatko Gjorcev, Chair of the Parliamentary Committee on Labor and Social Policy; and as co-chair Marija Ristevska (CRPM - Executive Director), and Darko Dachinski (Ministry of Labor and Social Policy). The session was moderated by Mileva Gjurovska - National Coordinator of NCEU-MK.

<sup>8</sup> The first session of Working group 2 was held on 12.04.2018

budget of the Employment Service Agency of the Republic of Macedonia.

5. Liberalization in the advertisement of vacancies, providing an opportunity for the employer to state in the advertisement whether it is a formalization of the employment relationship or the need for a new worker as such. The Employment Service Agency of the Republic of Macedonia should register employment with advance labor contracts between the employee and the employer in order to establish the actual number of vacancies.

6. Increasing the cooperation between the Employment Centers and the Centers for Social Work at local level for more effective employment of vulnerable groups. Introduction of mentoring for social inclusion, managed by experts at local Employment Centers and local Centers for Social Work.

7. Transformation of informal into formal jobs, including informal collectors of recyclables, through subsidized employment. Implementation of the criteria for recognized licenses / diplomas acquired through continuing education in the process of systematizing jobs.

9. Encourage partnerships between local authorities, civic associations, enterprises, and other stakeholders for confirmation and development of social entrepreneurship.

10. Encouraging the creation of a network for cooperation of social enterprises in the Republic of Macedonia, as well as the establishment of a Center for Support of Social Entrepreneurship (mapping key actors in this domain, providing consulting services for the establishment of a social enterprise).

11. Providing support for social enterprises by local communities (office space and other logistics). Ensuring the accessibility by social enterprises to the financial resources of the Fund for Innovation and Technological Development, which is currently only used by the Ministry of Labor and Social Policy.

12. Directing the socially vulnerable categories of unemployed persons towards activity in social enterprises. Directing a part of the social economy towards an economy of care.

13. Development of an effective and functional social dialogue to protect labor rights.

14. Redefining the composition and the model of functioning of the Economic and Social Council at the national and local level, as well as its alignment with the work of the EU Economic and Social Council, which includes civil society organizations representing different categories of socially vulnerable groups.

15. Adoption of a Law on Social Entrepreneurship that will enable the establishment of a system for support of social entrepreneurship, which will then provide an institutional and financial opportunity for the operation of social enterprises as such.

The second session of the Working Group - 2 was held on 26 June 2018, at the MPs Club in Skopje. The focus of this session was the amendments to *the Law on Labor Relations*, while debate participants pointed to the need to regulate new flexible forms of employment: “Not only because they are fiercely debated within the European Union, but more importantly because they become increasingly inevitable in Macedonian reality”, as it was pointed out in the introductory addresses of the session<sup>9</sup>. It has been suggested that mobile jobs should be viewed positively as they will allow adaptation to the conditions created by the rapid development of new technologies that generate new types of jobs. Referring to the details of the Law on Labor Relations, Jovana Trenchevska, State Secretary at the Ministry of Labor and Social Policy, stated that the new the Law on Labor Relations has been prepared for a long time and various stakeholders are involved in its revision to ensure better implementation of labor rights. Various world experiences were shared which show the expansion of new forms of employment and the need to incorporate (regulate) them into national legislation.<sup>10</sup> The court cases involving labor disputes stemming from new forms of employment were also presented: “Without the law, the rights of many workers active in the international labor market may not be protected.”<sup>11</sup> It was concluded that: “Fixed-term employment contracts should be given priority, while employment contracts for indefinite period of time should be minimized; greater legitimacy needs to be given to new forms of employment.”<sup>12</sup> Participants in the session, including representatives from the academic community, civil society, relevant international associations and other experts, agreed that new trends in the labor market require new flexible and mobile forms of employment to be regulated in labor reforms in the Republic of North Macedonia.

## RECOMMENDATIONS FROM THE SECOND SESSION OF WORKING GROUP 2

### “Regulation of New Forms of Employment in Reform of Labor Relations in The Republic of Macedonia”<sup>13</sup>

1. Clear legal definition and regulation of new forms of work (e.g., labor relationship through a digital platform).
2. The emergence of new heterogeneous forms of employment imposes the need for an analysis of the labor market trends in the Republic of Macedonia.
3. It is necessary to open a debate on the sensitization of public opinion and institutions related to issues on the protection of the labor rights and the social protection of workers.
4. Introducing flexibility and reform of the social security system in order to provide forms of protection for workers.

9 Mileva Gjurovska, NCEU-MK Coordinator, Opening of the Second NCEU-MK Session, NCEU-MK Archives;

10 Svetlana Trbojevikj - Permanent Expert at NCEU-MK, Professor - UKIM

11 Hilda Meshkova, Judge, Basic Court Skopje 2.

12 Angel Dimitrov, President of the Organization of Employers of Macedonia (OEM),

13 The second session of Working group 2 was held on 26.06.2018

5. Inserting new forms of employment into active employment policies of the Government.
6. Providing Government subsidies for the formalization of new forms of labor and conducting an active public awareness campaign on the benefits of this measure.
7. Participation of labor unions, employers' associations, and state authorities in defining and regulating new forms of employment as such.
8. The need to determine the difference between what may be legally considered an employment as such from what represents an economic exchange between independent contracting parties as such (defining the labor status in context of a contract of service – *locatio conductio operis*).
9. Further capacity building of the professional staff in the inspection bodies for the consistent implementation of the legal provisions on labor relations.
10. Defining clear legal criteria on regulating work from home, to avoid the implementation of a subjective approach in the adoption of measures to ban work from home.
11. Harmonization of the systemic laws and bylaws related to employment, wages, insurance, forms of organization of economic entities, taxation, education, and entrepreneurship (Law on Labor Relations, Salary Law, Law on Trade Companies, Law on Entrepreneurship, Personal Income Tax Law, Law on Education, Social Security Law, Law on Local Self-government).
12. Specifying the competencies in context of settling labor disputes (Second Instance State Commission on decision-making in administrative procedure and labor procedure, as well as the Courts that process labor disputes).
13. Introduction of an employment review procedure (third-instance procedure).
14. The state should introduce and support co-working premises for consultative meetings between people who offer or seek new forms of employment.
15. New forms of labor contracts are needed that will regulate the legal status of the party exercising his or her labor rights.

The third session of Working Group 2 (held on 6 December 2018, at the MPs Club in Skopje) involved 40 participants, mostly permanent members of this Working group. Even during the introduction addresses, it was emphasized that, in our country, small attention is paid to social dialogue as such. The representatives of the Ministry of Labor and Social Policy pointed out that: “Social dialogue is a key tool for the development of social rights of workers”.<sup>14</sup> In the introductory remarks, the experts pointed to the distancing of Macedonian practice from European standards, noting the presence of corruption in this segment of the social sphere.<sup>15</sup> The need to institutionalize social dialogue was also

14 Jovana Trenchevska, State Secretary - Ministry of Labor and Social Policy

15 Nano Ruzhin, NCEU-MK Expert, Professor - FON University

highlighted<sup>16</sup> as well as the need for a proactive role by the Ministry of Labor and Social Policy in establishing a quality social dialogue. In the current moment, “social dialogue in the Republic of North Macedonia is like a social monologue because the Government is making all the moves.”<sup>17</sup> Practices of social dialogue within the EU were presented by a Slovak expert who pointed to the important role of the Economic and Social Council and the problems associated with the level of human resource development of the social partners.<sup>18</sup>

### RECOMMENDATIONS FROM THE THIRD SESSION OF WORKING GROUP 2

“Social Dialogue in the Republic of Macedonia: New Concept-Old Practices”<sup>19</sup>

1. To increase the participation (interest) of the Government, in particular the relevant minister, in the functioning and development of social dialogue at the national level;
2. Support by the Government in the development of negotiating capacities of trade unions, but also on the other actors in the social dialogue, through the initiation of continuous joint activities;
3. Depoliticization of representative trade unions as a basis for their greater functionality and maintaining the necessary critical attitude in social dialogue;
4. There should be greater involvement (motivation) of the Organization of Employers of Macedonia (OEM) as a key actor in the social dialogue;
5. Valorization and greater support for bipartite social dialogues at enterprise level;
6. There is a real need for greater informing of the employees about their labor rights for which it is recommended to build regular communication channels (internal news, consultations in work teams, organization of public debates in local environments);
7. Drafting a code of ethical behavior for employers and employees in which, among other things, it is recommended: practicing social dialogue, developed tools for combating all types of discrimination (in the field of wages, jobs, gender equality, etc.);
8. Increasing the degree of legal protection of trade unions (as well as of individual members of the union) from the employer’s arbitrariness;
9. Special trainings for the adoption of a culture of compromise and negotiation for actors in social dialogue;
10. Trainings on the adoption of positive practices on the mechanisms of arbitration and peaceful resolution of labor disputes;

16 Mare Ancheva, Secretary General of the Trade Union of Industry, Energy, and Mining (SIER).

17 Andon Maihoshev, Professor, State University “Goce Delchev”- Shtip, and former trade union leader

18 Miroslav Hainos, Slovak expert

19 The third session of Working group 2 was held on 06.12.2018



11. Reducing the percentage (census) of representativeness of trade unions and employers' associations (at all levels) as well as liberalizing other criteria for representativeness as such;
12. Greater openness of the Economic and Social Council (ESC) with the possibility to engage in thematic discussions (task forces) and other consultative activities involving: representatives of civic associations and existing civic forums (NCEU-MK and other relevant platforms), experts, representatives of non-representative trade unions and associations of employers and other relevant stakeholders;
13. Strengthening the organizational position of the Economic and Social Council and its greater organizational autonomy (functional secretariat) and independent budget;
14. To achieve greater visibility of ESC activities by systematic updating of pieces of information, their public presentation (a separate WEB page and other communication media);
15. To ensure continuity in the harmonization of domestic labor legislation and the creation of laws that regulate vital areas (organizing trade unions, salaries) and the implementation of existing ones according to the recommendations of the ILO and the European Union;
16. Creating conditions and showing a greater interest by the relevant actors (the state) in the signing of collective agreements, especially in the public sector.

The fourth session of Working Group 2 (held on 19 February 2019) was attended by 50 members such as representatives of different stakeholders (representatives of the Ministry of Labor and Social Policy, citizens' associations, entrepreneurs, professors and experts) from the country and abroad. Jovana Trenchevska, State Secretary at the Ministry of Labor and Social Policy, pointed out that non-discrimination and equal opportunities are a priority for the present Government. In context of fighting discrimination, the relevant national legislation has already been completed and measures have been taken to implement legislation in social practices. Problems in the implementation of action plans and tasks arise from many factors, but lack of adequate budgeting by the competent Ministries is considered to be a particularly important inhibiting factor. An important tool for implementation of gender equality is the implementation of the concept of responsible gender budgeting. The signing of the Istanbul Convention (2018) and its ratification by the country is a significant step forward in the promotion of the fight against gender-based violence and other forms of discrimination. The view was shared that "the concept of equality is a socio-economic topic, while the first discrimination is of a social nature. The labor market is insensitive and creates differences among people on various grounds, imposing the need to improve the social status of the individual as such."<sup>20</sup> The participants were introduced to the Slovak challenges related to the adoption of the Istanbul Convention, as well as to the non-discrimination and equal opportunities in terms of Roma integration policies in Slovakia.

20 Nano Ruzhin, NCEU-MK Expert, Professor - FON University

## RECOMMENDATIONS FROM THE FOURTH SESSION OF WORKING GROUP 2

### “Non-Discrimination and Equal Opportunities: European legislation in national policies and practices”<sup>21</sup>

#### First group of recommendations: General perspective

1. Urgent adoption of the new Law on Prevention and Protection against Discrimination;
2. Establishment of a professional and responsible mechanism for protection against discrimination (Commission for Protection against Discrimination) with greater competencies and capacity for acting with executive powers;
3. To ensure the protection of fundamental human rights and freedoms, it is necessary to urgently harmonize all relevant laws (in the field of substantive and procedural law) with the Law on Prevention and Protection against Discrimination;
4. Establishment of the Secretariat for Equal Opportunities (SEO) in the Government of Republic of Macedonia with precisely determined legal competencies and powers;
5. Providing funds (financial resources) by the Government and other relevant stakeholders (European Union and other international organizations) for the implementation of the principles enshrined in the Istanbul Convention;
6. To impose (as a legal obligation) to natural and legal persons to prepare documents (plan, strategy or policy for equal opportunities) that will contribute to the implementation of European, or national strategic documents.
7. Organizing mandatory training for public office holders (at all levels) for familiarization and application of the basic non-discrimination instruments;
8. In order to achieve greater efficiency in the fight against prejudice and for the implementation of the principles of non-discrimination, it is necessary to organize compulsory trainings for the persons working in the field of providing social services (social workers, civic associations, local self-government units).
9. Within the local self-government, to establish a professional Department for Equal Opportunities, which, among other things, will provide free legal assistance and legal counseling for risk groups (women, unemployed youth, political minorities, ethnic groups, persons belonging to various sexual orientations, victims of violence).
10. Inclusion of the principle of equality and non-discrimination in the process of collective bargaining, especially in the agendas of trade union activities;
11. In order to reduce the impact of stereotypes and prejudices in the whole society, it is recommended that curricula (in formal and non-formal education) should

<sup>21</sup> The fourth session of Working group 2 was held on 19.02.2019

contain the principles of equality and non-discrimination (formed in a didactic manner according to the level of education);

12. By organizing various public platforms (discussions, civic forums, expert debates) it is necessary to promote the principle of non-discrimination and equal opportunities in the labor market with full respect for all concerned groups (women, young unemployed, young unskilled employees who had left prematurely school, adult workers, and other risk groups);
13. To eliminate the inconsistency in the work of the various inspection offices in the domain of the labor market for effective implementation of labor law and the Law on Protection and Combating Discrimination;
14. Work on building a national policy against segregation of students according to their ethnic affiliation.
15. Encouraging greater cooperation between the Ministry of Labor and Social Policy and civic platforms that work in the domain of promotion and implementation of the principles of non-discrimination and equal opportunities.

**Second group of recommendations: Preventing and combating gender-based discrimination**

1. Adoption of the new Law on Gender-Based Violence and regulation of effective measures for prevention and protection from gender-based violence;
2. Creating a Glossary for gender-related terms and concepts and encouraging greater efforts to use gender-sensitive language in public discourse, especially in the public sector;
3. Introducing mechanisms for greater involvement of women in decision-making processes at all levels;
4. Introduction of gender-responsive principles of selection, employment, and promotion in the public administration in order to prevent gender-based division in the labor market;
5. Practical application of the principles of gender-sensitive budgeting;
6. In order to reduce the gender-based wage and salary gap, effective control mechanisms for the harmonization of the obligation for equal pay for work of equal value (gender-based analysis of the points and complexity of the jobs) should be adopted;
7. Continue the tendency of increasing the minimum wage and salary, especially in labor-intensive industries.

The fifth session (27 June 2019) took place at the Faculty of Law of the “Goce Delchev University” in the town of Shtip. The focus of this session was on the need to harmonize the Macedonian legislation with the European one. The session emphasized the need to implement the EU Work-life Balance Directive (2019) by introducing various forms of work, such as: flexible working hours, part-time work, work from home, as well as other forms. For the implementation of the Directive, “a clear dialogue and its harmonization with our local conditions are necessary.”<sup>22</sup> Most of the participants in the session focused on the implementation of the concept of flexible working time, which is expected to contribute to greater inclusion and empowerment of women in the labor market.<sup>23</sup> There were also evident differences in attitudes among the social partners regarding the concept of flexible working hours, with labor unions having either a negative attitude or a lack of any attitude about this concept.<sup>24</sup> The Slovak expert introduced the participants to the European social model, its key values and goals, as well as normative principles based on the close link between the economy and the specific social policy of the EU. The European Pillar of Social Rights (2017) was presented, where EU members have defined 20 basic principles according to which all reforms in the field of social and employment policies should be implemented.<sup>25</sup> The priority need to regulate overtime work, in order to be reflected in greater benefits for pension and health insurance, was emphasized as such. The discussion also focused on the importance of implementing the relevant legislation and the need for greater involvement of the labor courts in the adoption of new laws and bylaws governing this matter.<sup>26</sup> It was concluded that “*better working conditions bring benefits not only to workers but also to employers... analyses show that productivity is greater if workers are satisfied, even during a shorter working day, because in that case they like to give their maximum*”.<sup>27</sup> At the end of the session it was concluded that dialogue was the only way to solve the current problems, while the National Convention is the right place for such dialogue.

## RECOMMENDATIONS FROM THE FIFTH SESSION OF WORKING GROUP 2

### “Work life balance: Better working conditions for a better quality of life”<sup>28</sup>

1. The draft amendments to the Labour Relations Law should take into consideration the different forms of flexibility by which the new forms of labour that actually exist on our labour market would be regulated.
2. Social partners should initiate signing of branch collective agreements in order to create organisational conditions for the implementation of measures for greater

22 Angel Dimitrov, President of the Organization of Employers

23 Jovan Ananiev, Dean of the Faculty of Law “Goce Delchev”, Shtip

24 Andon Maihoshev, Professor, State University “Goce Delchev”- Shtip

25 Daniel Gerber, Slovak expert

26 Hilda Meshkova, Judge, Basic Court Skopje 2

27 Mileva Gjurovska, NCEU-MK Coordinator, Opening of the Second NCEU-MK Session, NCEU-MK Archives;

28 The fifth session of Working group 2 was held on 27.06.2019

flexibility that would enable harmonisation of the needs of the employees with the professional obligations respecting the specifics of the branch.

3. For faster and more efficient harmonisation of the national labour legislation with the European standards, the draft amendments to the Labour Relations Law should take into consideration the possibility of redefining of the category “part-time work”, adapting to the new conditions and needs for greater flexibility. Flexibility would mean that part-time work has no limitations in terms of the number of working hours.
4. To open a debate between social partners about the possibility for the law to regulate the working hours in the retail sector so that Sundays would be non-working days. This would contribute to a greater interest in employment in this sector and to improving the quality of life of the employees.
5. Finding formal mechanisms for the affirmation and implementation of the European Commission Directive on Work-Life Balance (COM / 2017/0253 final - 2017/085 (COD) adopted on 21 June 2018).
6. Creating legal and financial instruments for the creation of public and private partnerships for the implementation of the concept of friendly companies that will develop social responsibility of the enterprises, contributing to the work-life balance (occasional informal meetings of the employees with their families, kindergartens within the company, canteen with the possibility of adequate nutrition according to the working conditions).
7. Employers must respect the legal regulations regarding the maintenance of “social work time” and the labour inspection should increase its control and provide appropriate sanctions for the employers who do not respect the legal regulations.
8. Strengthening labour inspection services by introducing a system of regular evaluation of labour inspectors and special incentives for inspectors that have effective solutions for violations of the legislation.
9. It is urgently needed to increase the number of labour inspectors by employing young staff.

The sixth session took place on 26 August 2019 at the MPs Club in Skopje. The session was attended by more than 50 participants, such as representatives of relevant state institutions, labor unions, employers’ organizations, and relevant NGOs. This session considered the issues related to the occupational safety and health of workers and their relevance to the Macedonian economy. The session emphasized the need to harmonize national legislation with European labor directives and standards on issues related to occupational safety and health. According to the presented data from the Institute of Public Health, one can locate most of the occupational injuries in the sectors of industry and mining. There is a need to adequately record occupational injuries and occupational diseases. Full implementation of the legislation in the preparation of the risk assessment

requires the engagement of all experts in this sensitive field. Social dialogue is also needed to involve all stakeholders. With regard to the occupational safety and health of workers, the responsibility of employers and workers for the application of safeguards in the workplace was highlighted. At the secession, presentation was also made of the circumstances and problems that the State Labor Inspectorate faces in practice as well as the court practice in the field of occupational health and safety.

## **RECOMMENDATIONS FROM THE SIXTH SESSION OF WORKING GROUP 2**

### **“Health and Safety of Workers at the Workplace: National Conditions and European Perspectives”<sup>29</sup>**

1. The draft amendments to the Labour Relations Law should take into consideration the different forms of flexibility by which the new forms of labour that actually exist on our labour market would be regulated.
2. Social partners should initiate signing of branch collective agreements in order to create organisational conditions for the implementation of measures for greater flexibility that would enable harmonisation of the needs of the employees with the professional obligations respecting the specifics of the branch.
3. For faster and more efficient harmonisation of the national labour legislation with the European standards, the draft amendments to the Labour Relations Law should take into consideration the possibility of redefining of the category “part-time work”, adapting to the new conditions and needs for greater flexibility. Flexibility would mean that part-time work has no limitations in terms of the number of working hours.
4. To open a debate between social partners about the possibility for the law to regulate the working hours in the retail sector so that Sundays would be non-working days. This would contribute to a greater interest in employment in this sector and to improving the quality of life of the employees.
5. Finding formal mechanisms for the affirmation and implementation of the European Commission Directive on Work-Life Balance (COM / 2017/0253 final - 2017/085 (COD) adopted on 21 June 2018).
6. Creating legal and financial instruments for the creation of public and private partnerships for the implementation of the concept of friendly companies that will develop social responsibility of the enterprises, contributing to the work-life balance (occasional informal meetings of the employees with their families, kindergartens within the company, canteen with the possibility of adequate nutrition according to the working conditions).
7. Employers must respect the legal regulations regarding the maintenance of “social work time” and the labour inspection should increase its control and provide

<sup>29</sup> The sixth session of Working group 2 was held on 26.08.2019

appropriate sanctions for the employers who do not respect the legal regulations.

8. Strengthening labour inspection services by introducing a system of regular evaluation of labour inspectors and special incentives for inspectors that have effective solutions for violations of the legislation.

9. It is urgently needed to increase the number of labour inspectors by employing young staff.

### Applicability of recommendations

The Working Group has formulated and adopted more than 70 recommendations in the area of employment and labor market. In the period of 2018 and 2019, a series of regulations in the area of employment and social policy were adopted and amended, while some of them adopted and incorporated several recommendations offered by the Working Group. In addition, it is expected that some of the recommendations will be taken into account when aligning national legislation with European legislation, primarily by the competent Ministry of Labor and Social Policy, the Employment Service Agency of the Republic of North Macedonia, as well as by other relevant public institutions.

Of particular importance for the National Convention on the EU are changes in the labor market context that relate to the use and adaptation of active measures to job seekers and the needs of the local economy. Namely, one of the changes made refers to the registration of unemployed persons by the Employment Service Agency of the Republic of North Macedonia.<sup>30</sup> In context of the labor market, the Working Group, in one of its recommendations, pointed out the problem of fluidity between active and passive job seekers, i.e., limiting the opportunity for passive jobseekers to participate in active employment measures, such as the problem of losing active jobseeker status due to failure to comply with the deadline for registering with the Employment Service Agency and transitioning to a status of passive jobseeker. In line with the NCEU recommendation, the Ministry of Labor and Social Policy made the necessary changes and enabled flexibility in the transition from active to passive job seeker status and vice versa. Thus, any unemployed person, registered for at least one day in the records of active jobseekers at the Employment Service Agency, may apply for inclusion in active employment measures.

The second change that has been made in the area of the labor market, due to the recommendations of the NCEU Working Group on Employment and Social Policy, is to create conditions for greater adaptability of active employment measures to the very needs of the local economy. This recommendation was taken into account when preparing the Employment Service Agency 2019 Operational Plan for Active Employment Programs and Measures and Labor Market Services. In this context, great attention has been paid to the alignment of active labor market needs measures and employer requirements; this needs-based approach is founded on research data that the Employment Service Agency has been doing in relation to the needs of the labor market for specific skills of potential workers.

<sup>30</sup> According to the report by the co-chair of the Working Group Jovana Trenchevska, at the second plenary conference of the National Convention on European Union in the Republic of North Macedonia (NCEU-MK)

In order to promote the participation of young people in the labor market, as well as to improve their skills, in May 2019 the Assembly of the Republic of North Macedonia adopted the Law on Internships. An important novelty in this regard is the financial reimbursement as well as the length of the internship as such. The law defines the roles and criteria by which internships may be conducted. Namely, the law limits the internship period to a maximum of 6 months. The law also sets limits on the maximum number of interns per employer. The number of interns is proportionally dependent on the number of full-time employees hired by the employer at the time the intern is hired. When hiring interns, the employer may not reduce the number of the full-time employees, except in the event of employer death or retirement. At the same time, the law prescribes a limitation on performing internship, saying that an intern may perform internship at a specific employer only once as such. An obligation is laid down to establish the process of monitoring and reporting on internships, while the Employment Service Agency is required to report once a month to the State Labor Inspectorate on employers who have engaged interns. The law stipulates that the employer is obliged to pay remuneration during the internship to the intern in the amount of 42% to 74% of the minimum net salary established by law, for internship up to 3 months, or remuneration in the amount of the minimum wage to an intern from the 4th to the 6th month of internship.

The reforms in the field of social protection are in line with the recommendations of the NCEU in relation to increased participation of vulnerable categories of persons in the labor market. Namely, according to the novelties in the Law on Social Protection, it is foreseen to have the activation of the beneficiaries of guaranteed minimal welfare assistance, preparation of individual plans for the beneficiaries receiving the guaranteed minimal welfare assistance and introduction of a case guide.

An important novelty in the area of promoting social inclusion of vulnerable categories of persons in the labor market is the introduction of mentoring. To achieve this goal, it is foreseen to increase the cooperation between the Employment Centers and the Social Work Centers at local level. The implementation of the mentoring process for social inclusion is managed by experts at local employment centers and local social work centers.

Regarding the amendments to the legislation in the field of prevention and protection against discrimination, we would like to emphasize the adoption of the Law on Prevention and Protection against Discrimination and the establishment of a professional and responsible mechanism for protection against discrimination (Commission for Protection against Discrimination) having greater competences and the capacity to act with the Government. Namely, in May 2019, the Assembly of the Republic of North Macedonia adopted the Law on Prevention and Protection against Discrimination, which was followed by its immediate implementation. Also, the Assembly of the Republic of North Macedonia, at its session held on 11 June 2019, adopted a Decision on making a public advertisement for election of members of the Commission for Prevention and Protection against Discrimination and it was published in the Official Gazette of the Republic of North Macedonia. According to the new Law, the mechanism for protection against discrimination (the Commission for Prevention and Protection against Discrimination) is professionalized and its competences are supplemented with new obligations to act, while an expert staff will be provided to offer technical and administrative support to the Commission as such.



An important step forward in the field of prevention and protection against discrimination is also the implementation of the recommendation to urgently harmonize all relevant laws (in the area of substantive and procedural law) with the Law on Prevention and Protection against Discrimination. Namely, after the adoption of the Law on Prevention and Protection against Discrimination, the Ministry of Labor and Social Policy in cooperation with the Skopje OSCE Mission hired an expert who started the analysis of the laws that are necessary to be harmonized with the Law on Prevention and Protection against Discrimination, with the aim of harmonization of legislation with the provisions of the new law and enabling greater protection of fundamental human rights and freedoms.

In the field of equal opportunities, activities were undertaken to establish a Secretariat for Equal Opportunities (SEO) at the Government of the Republic of North Macedonia with precisely defined legal competences and powers, which is also one of the recommendations of the fourth session of the NCEU Working Group on Employment and Social Policy. Namely, in order to fulfill this recommendation, and in accordance with the Ministry of Labor and Social Policy program, activities have begun to determine the level of implementation of the Law on Equal Opportunities for Women and Men, the functionality of gender equality mechanisms and, based on the reports and conclusions received, amendments will be proposed.

With regard to the recommendation on achieving greater efficiency in the fight against prejudice and applying the principles of non-discrimination, the Ministry of Labor and Social Policy, together with CSOs, in 2019, continuously provided training to ministries and other state institutions on the principle of equality and non-discrimination. These trainings covered a large number of civil servants at all levels, in order to familiarize them with the application of the legislation in the field of equal opportunities. Trainings were also organized with service providers and managers of the local Centers for Social Work and kindergartens. The concept of equality and non-discrimination is part of the modules for licensing service providers in the field of social and child protection. In this domain, there is congruence between the recommendation to reduce the impact of stereotypes and prejudices throughout society and the Government Strategy for one society and interculturalism, with a separate cluster addressing the application of the concept of non-discrimination and establishing equal opportunities for everybody in the school curricula and syllabi.

It is expected that by the end of the year, within the frame of the Law on Labor Relations, there will be adoption of the recommendation regarding the redefinition of the composition and the model of functioning of the Economic and Social Council at national and local level, as well as its harmonization with the work of the EU Economic and Social Council, which includes civil society organizations representing different categories of socially disadvantaged groups. Also, the forthcoming amendments to the Law on Labor Relations should clearly specify the criteria for regulating the work from home, in order to avoid the implementation of the subjective approach when adopting measures to ban work from home.

Finally, we can conclude that the NCEU Working Group 2 has made a significant contribution to bringing domestic legislation in the field of employment and social policy into line with European relevant legislation. At the same time, the Working Group

raised a number of issues in this field, giving relevance to some issues, including a public, transparent debate, in which civil society organizations, labor unions, employers' associations, academia, and representatives of the Ministry of Labor and Social Policy, were actively involved. Therefore, we believe that the NCEU deserves a mandate to be part of the accession negotiation process that will be a particular challenge for the country in the coming period.

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## **WORKING GROUP 3**

# **JUDICIARY AND FUNDAMENTAL RIGHTS (CHAPTER 23)**

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### Introductory remarks

The road to a full European Union membership is not short or simple. This is particularly true for countries facing a problem of full compliance with the Copenhagen Criteria (defined by the 1993 European Council held in Copenhagen), where, among other things, there is the requirement of stable institutions that will guarantee democracy, the rule of law and the protection of human rights.<sup>2</sup>

Chapter 23: Judiciary and Fundamental Rights, is one of the key chapters in every negotiating process. This chapter, together with Chapter 24, covers the area of “Europe as an area of freedom, security and justice”, or formerly known as the area of justice (judiciary) and home affairs.

In fact, both chapters aim towards a continuous development of the Union as an area of freedom, security and justice. Actually, the European Union’s experience in accession negotiations, particularly with Bulgaria and Romania,<sup>3</sup> has shown that in the area of justice and the fight against corruption numerous insufficiencies have been observed even after lengthy reforms. Therefore, in the 2005 negotiation framework, which aimed at Croatia and Turkey, a new chapter was introduced, namely Chapter 23: Judiciary and Fundamental Rights, making the previous Chapter 23 now Chapter 24: Justice, Freedom and Security. With these two chapters, in particular Chapter 23, the Union emphasizes the importance of the rule of law and the fight against crime and corruption in general.

It is not a coincidence that these chapters are opened at the beginning of the negotiation process and are usually the last ones to be closed. They can cause stagnation of the accession negotiations, even when negotiations in other chapters are advanced or already closed. After all, these chapters represent and protect the core European Union values, such as justice, rule of law, protection of human rights and freedoms, etc.<sup>4</sup> These chapters are not subject to classical negotiations, but the principles stipulated within them should be implemented unconditionally.

The key questions that attracted the interest of the experts and the other relevant stakeholders in the NCEU-MK were related to the functioning of the judicial system and the fight against corruption. Many previous analyses on these subjects done by the civil sector, as well as the European Commission Reports on our country’s progress in the European integration process, have shown that the lack of complete independence and impartiality in the judiciary is still a serious problem — an obstacle to the functioning of the rule of law. The same refers to the issue of corruption, with experts pointing out that, given its scale and intensity, the corruption has become systemic in nature, and thus remains one of the main brakes of the reform and the rule of law.<sup>5</sup>

The conclusions of the European Commission’s 2018 Progress Report for the Republic of Macedonia, assessed that the country has reached some level of preparation to

2 EC, Conditions for membership, available at: [https://ec.europa.eu/neighbourhood-enlargement/policy/conditions-membership\\_en](https://ec.europa.eu/neighbourhood-enlargement/policy/conditions-membership_en)

3 Nozar, Wolfgang, The 100% Union: The rise of Chapters 23 and 24, 2012 available at: <https://www.clingendael.org/sites/default/files/pdfs/The%20100%25%20Union.%20The%20rise%20of%20Chapters%2023%20and%2024.pdf>

4 Nacionalni Konvent o Evropskoj Uniji (Serbia), Knjiga preporuka, 2014/2015

5 Prof. Nikola Tupanceski, National Convention on the EU in Republic of Macedonia, Newsletter 3, January – June, 2019

implement European standards and the European Acquis (regarding the judicial system). The report emphasized Chapter 23, where it recommends: a) reforming the system of appointment, promotion, discipline and dismissal of judges and prosecutors; b) respect for the independence of judges at all levels; c) adoption and implementation of measures to strengthen institutions for the prevention and fight against corruption, as well as their proactive approach etc.<sup>6</sup> Furthermore, the report noted the lack of final judicial decisions in the so-called high corruption cases.

The European Commission's 2019 Report<sup>7</sup> noted some progress in the area of justice, but recommended to prioritize the issue of providing the necessary human resources, as well as to improve the functioning of the ACCMIS system, consistent application of the new rules on appointment, promotion, disciplinary responsibility and dismissal of judges, full implementation of the new legal solutions for the Judicial Council, and also recommended reform of the Council of Public Prosecutors. Regarding the issue of corruption, it concluded that the new law was adopted and a new State Commission for Prevention of corruption was established, which provides visible results. Results were noted in the area of the fight against high corruption, but corruption in the country remains a prevalent issue that dominates many areas and remains a matter of concern.

Regarding the issue of corruption, it should also be stressed that the NCEU-MK in its discussions also took into consideration the GRECO reports. It is important to note that the fourth round of GRECO's evaluation of the Republic of Macedonia (of January 2014) on the prevention of corruption among members of Assembly, judges and prosecutors, generated 19 recommendations, but both compliance reports noted that some recommendations remained unimplemented. Thus, recommendation no. 5, which in the first report was assessed as partially implemented, in the second report was assessed as not implemented at all, referring to strengthening the independence of the judiciary from external influences by abolishing the participation of the Minister of Justice in the Judicial Council - by function. Recommendation no. 16 concerning disciplinary liability in the prosecution and review of the grounds for dismissal of public prosecutors, was also not implemented. The GRECO Fifth Round Evaluation Report of 2019 was also mentioned in the discussions, albeit it was published after the first five NCEU-MK sessions. The report deals with the prevention of corruption at the level of central government (top executive) and law enforcement agencies. Among other things, it explicitly states at the outset that the criminal justice system is not successful in the fight against corruption and that progress in the fight against corruption depends directly on whether the judiciary can start functioning independently and impartially.<sup>8</sup> The report contains a total of 23 recommendations.

The publication of the aforementioned reports was followed on a regular basis and the issues identified therein were discussed at all six NCEU-MK working sessions of

6 European Commission, Commission Staff Working Document: The former Yugoslav Republic of Macedonia 2018 Report , Strasbourg, 2018, <https://www.pravdiko.mk/wp-content/uploads/2018/04/20180417-the-former-yugoslav-republic-of-macedonia-report.pdf>

7 European Commission, Commission Staff Working Document: North Macedonia 2019 Report , Brussels, 2019, <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20190529-north-macedonia-report.pdf>

8 GRECO, Петти круг на оценка, Извештај, Северна Македонија (Fifth Evaluation Round, Report, North Macedonia), GrecoEval5Rep(2018)7, available at:[http://www.pravda.gov.mk/Upload/Editor\\_Upload/%D0%98%D0%B7%D0%B2%D0%B5%D1%88%D1%82%D0%B0%D1%98%D0%BE%D1%82%D0%BD%D0%B0%20%D0%93%D0%A0%D0%95%D0%9A%D0%9E%20-%20%D0%9F%D0%B5%D1%82%D1%82%D0%B8%20%D0%BA%D1%80%D1%83%D0%B3.pdf](http://www.pravda.gov.mk/Upload/Editor_Upload/%D0%98%D0%B7%D0%B2%D0%B5%D1%88%D1%82%D0%B0%D1%98%D0%BE%D1%82%D0%BD%D0%B0%20%D0%93%D0%A0%D0%95%D0%9A%D0%9E%20-%20%D0%9F%D0%B5%D1%82%D1%82%D0%B8%20%D0%BA%D1%80%D1%83%D0%B3.pdf)

Chapter 23. The NCEU-MK was therefore also an additional platform for discussion of the conclusions of the reports as well as other relevant documents regarding Chapter 23.

### Summary of the sessions

Working Group 3 (WG3) of the NCEU-MK had six sessions. Discussing vital topics of Chapter 23: Judiciary and Fundamental Rights, the NCEU-MK managed to bring together representatives from relevant civil society organizations, but also from the state administration, judges, prosecutors, the academic community and the wider professional public.

In the period between 01.03.2018 and 11.09.2019 there were six sessions of WG3: Judiciary and Fundamental Rights. The topics focused on current events and the priorities in the reform process following the EU guidelines, corresponding to the stage of the reform cycle. Thus, the first session was held in Skopje on 01.03.2018 on the topic: **“Independent and impartial Judiciary: Systemic and Moral Dilemmas”**. The discussion and recommendations were drafted by the expert team: Mirjana Lazarova - Trajkovska and Simonida Kacarska, as well as co-chairs Frosina Tasevska and Muhamed Halili. The second session focused on the topic: **“Mechanisms for effective Fight against Corruption”** and it was held on 03.07.2018 in Skopje led by the expert team: Aleksandra Deanoska-Trendafilova, Natali Petrovska, Milka Ristova, Simonida Kacarska as well as the permanent co-chairs. The third session focussed on **“Accession Negotiations in Chapter 23: What to Expect and What can we Learn?”** It took place in Skopje, on 15.11.2018, and it was prepared and led by the Expert Team: Simonida Kacarska, Slagjana Taseva, Aleksandra Deanoska - Trendafilova and others. The fourth session, held in Skopje on 12.2.2019 addressed the topic of **“Constitutional Court Reforms related to Chapter 23”**. It was covered by experts Gordana Siljanovska Davkova and Denis Preshova with the participation of Natasha Gaber Damjanovska. The Fifth Session was held on 05.06.2019 on the topic of **“Judiciary and High Corruption: Are We Approaching or Departing from European Standards?”** This session was edited by experts Nikola Tupancheski and Aleksandra Deanoska-Trendafilova with the participation of Judges Vesna Dimiskova and Olja Ristova and the public prosecutor Maja Konevska. The sixth session was held on 11.09.2019 and the experts Gordan Kalajdziev, Boban Misoski and Olja Ristova with the participation of Toni Menkinoski and, of course, the permanent co-chairs, discussed their views on the topic of **“Plea Bargaining as a Measure for More Efficient Judiciary”**.

### Focus on the working sessions

As it can be seen from the aforementioned session topics, the judiciary and corruption were at the focus of all six sessions of WG3. The importance of the judiciary, in a state where rule of law is consistently respected as one of the supreme European values and principles, is more than obvious. According to some authors, the courts are the “guardians” of the legal system and human rights.<sup>9</sup> Hence, the lack of an independent and impartial judiciary, in the broadest sense, undermines the whole democratic state of

<sup>9</sup> Тренеска – Дескоска, Рената, Конституционализам, Скопје, 2015, p. 379

law. Therefore, within the framework of the NCEU-MK in almost all working sessions, these issues were thoroughly discussed by all relevant stakeholders and, depending on the current state of the legislation appropriate recommendations were agreed upon; they are elaborated in the text below.

Another very relevant issue in this area (Chapter 23) is the issue of corruption. As an extremely destructive phenomenon, corruption is present in all spheres of social life and unfortunately does not sidestep the judiciary. This negatively impacts the state's ability to fulfil key European criteria (which represent core European values) and ultimately the lack of effective protection of human rights and freedoms. The trading in influence, abuse of public office, actions of active and passive bribery, etc., are noted in some cases in the judiciary and the prosecution, and they undermine legal certainty and cause the state serious regress in its European integration path.

In light of the abovementioned, in the text that follows, the recommendations from the working sessions will be presented with appropriate comments and brief evaluations of their implementation.

### **a) Judiciary - How to Achieve Independence and Impartiality?**

At the very first session of this working group it was pointed out that the rule of law and the effective protection of human rights and freedoms, represent the highest values are directly related to the issues of independence and impartiality of the judiciary. It was also rightly emphasized that our country's path to Brussels goes through Strasbourg,<sup>10</sup> that respecting the standards that have been built for decades through the practice of the European Court of Human Rights in Strasbourg should be imperative for any representative of the judiciary.

The first session adopted a number of recommendations, particularly highlighting the need for (at the time) urgent reform of the Judicial Council in order to enable the strengthening of human resources and functional capacity through transparent, accountable and accountable work. It was also emphasized the need for individual and collective responsibility of the members of the Judicial Council in front of the body that elects them.

In order to achieve greater transparency in the appointment and promotion of judges, the recommendations underscored the need for consistent adherence to objective, expertise and qualitative criteria, without any exceptions of political or other nature. Furthermore, as already mentioned, it was emphasized that the application of the substantive and procedural law should respect the existing case law, i.e. the judgments of the European Court of Human Rights. European standards and criteria should be taken into account while dismissing or determining/imposing disciplinary measures against judges.

In May 2018, the Parliament adopted the Law on Amendments of the Law on the Judicial Council of the Republic of Macedonia,<sup>11</sup> which covered the abovementioned issues, but in May 2019 a completely new Law on the Judicial Council of the Republic of

10 Mirjana Lazarova Trajkovska, see. National Convention on the European Union in the Republic of Macedonia, Newsletter, Working Group 3, August, 2018, available at: <http://nkeu.mk/wp-content/uploads/2018/08/WG-3-Newsletter.pdf>

11 Official Gazette of RM, No. 83/2018

North Macedonia was enacted.<sup>12</sup> In January 2019 a Law was enacted amending the Law on Courts, which *inter alia* intervened in the provisions on the conditions for election of judges at all levels, disciplinary liability and grounds for dismissal.<sup>13</sup>

With regard to the issue of “entry into the judiciary”, in the process of selection of candidates for judges and public prosecutors from the Academy for Judges and Public Prosecutors, it was proposed to introduce a short and intensive initial training for candidates from the following categories: a) judicial and prosecution associates with at least five years of experience; and b) outstanding lawyers with over ten years’ experience.

Several months ago, there were certain activities that aimed to reform this segment, i.e., there were discussions for amendments to the legislation in preparation of a new Law on the Academy for Judges and Public Prosecutors. According to the announcements the adopted decisions were in line with the recommendations from the NCEU-MK, i.e. part of future judges and public prosecutors to be derived from experienced lawyers.<sup>14</sup> Such option for analysis is envisaged by the Strategy for Reform of the Judiciary 2017-2022<sup>15</sup>, although according to Priebe’s recommendations and the TAIEX Assessment Mission, the entry to the judiciary should exclusively be done through the Academy.<sup>16</sup> However, the draft law on the Academy for Judges and Public Prosecutors does not provide for special programs for initial training, although the conditions for entry into the Academy are simplified and more accessible to a wider circle of lawyers.<sup>17</sup> What will eventually be adopted and implemented as a solution in the eventually new Law remains to be seen in the future.

Returning to the interminable question of the independence and impartiality of the judiciary, in almost every session it was emphasized that the professional integrity of the judge is paramount and no legal formulation can substitute for it or define it. Considering that the independence and impartiality of the judiciary, in addition to the above, is closely linked to the use of adequate material resources and technologies, the need for urgent but also continuous measures to improve the material conditions for the operation of the courts has been repeatedly accentuated. Multiple sessions particularly referred to the insufficient human resources in the judicial offices throughout the country, among both the judiciary and the public prosecution. At the sixth session this was highlighted once again. The lack of human resources within the prosecution has a serious impact on the quality of its work, so human resources in this area should be raised as quickly as possible.

Dealing with the lack of transparency, in the Public Prosecutor’s Office and in part in the courts in the Republic of North Macedonia, is crucial for restoring citizen’s confidence in the institutions. Therefore, at the working sessions of WG3 it was proposed to regularly and timely publish the court and public prosecutor’s decisions in accordance with the relevant legislation, as well as to inform the public regularly about actions taken in specific cases by these institutions.

Unfortunately, although in one of the Reports of the European Commission the need

12 Official Gazette of RNM, No. 102/2019

13 Published in Official Gazette, No.93/2019

14 <https://akademik.mk/ministerstvoto-za-pravda-podgotvuva-nov-zakon-za-akademijata-za-sudii-i-javni-obviniteli/>

15 Ministry of Justice, Strategy for Reform of the Judiciary for the period of 2017-2022 with Action Plan

16 Блуепринт Група за реформи во правосудството, Анализа на спроведувањето на Стратегијата за реформа во правосудниот сектор (2017-2022) за периодот од 2018/2019 година, Скопје, 2019, p. 38-39

17 Ibid, p. 42-44

to reform the Council of Public Prosecutors was stressed, as well as the issue of prosecutors' responsibility, due to political "brakes" the legal reform regarding the prosecution remains at the same *status quo*.

The mechanisms for an efficient judiciary were also subject of one of the sessions of the NCEU-MK, with the focus being on settlement (plea bargaining). The experts concluded that it is crucial to take a number of actions to improve and properly apply this criminal law institute. In this regard, it was recommended to promote the rights of the defendants in order to eliminate the practice of covert threats by the prosecutors towards the defendants, in particular through improper application of detention, its prevention by judges and the refusal of such confessions by judges. It has also been recommended in cases where public prosecutors have indisputable evidence of the defendant's guilt to call the defendant and his defense attorney to plead guilty. In order to promote the defendant's right to defense, the need for uninterrupted access to the files was emphasized, as well as to need for sufficient time for defense attorney to prepare fully for all aspects of the guilty plea and for participation in plea bargaining.

The experts also pointed out the need for amendments of the Settlement Guidelines from November 2015 adopted by the Public Prosecutor in the area of evaluation and approval by the hierarchically higher Public Prosecutor, with the consent of the Public Prosecutor to be given to the appropriate Public Prosecutor's Office. The experts at the last, sixth session of the NCEU-MK have also recommended the drafting of Guidelines on the settlement on the type and duration of criminal sanctions for uniform court practice in the courts, as well as improved data entry in the ACCMIS in order of obtaining data on average sanction imposed for a particular crime.

Among the recommendations were the amendments to the Law of Criminal Procedure (LCP) in the part of the shortened procedure, with a view to calling the defendant to inform him of the initiating an investigation or gathering evidence, thus enabling of the settlement procedure at this stage of the criminal proceedings, as well as amendments to the LCP so that the property claim is an integral part of the draft - settlement and the court's binding decision on property claims in cases when it can undoubtedly be determined.

In respect of the comparative experience on settlement in criminal proceedings, it is interesting to note the fact that, in Slovakia, the use of this institute in practice is also diminishing. We underline that this institute is very useful in terms of enhancing the efficiency of the judiciary - achieving the opposite effect of the belief that justice is slow and expensive.

### **Does the Constitutional Court need reforms?**

Apart from questions regarding the so-called 'regular judiciary', subject of discussion of one working session of WG3 was the Constitutional Court. The legality and legitimacy of the legal regulations has been brought into question in many occasions, and the "misuse" of the law as a political instrument has been an issue throughout history, as well as today. The protection of constitutional rights and freedoms of the individual and the citizen, as well as the protection and control of the constitutionality and legality, at the highest level even at a so-called abstract level, from a comparative-legal point of view, is

done by the constitutional courts.<sup>18</sup> During her address at the session, the Minister of Justice stated that: “In the constitutional system of any country, the Constitutional Court should be the guardian of the constitution and the constitutionality, a guardian of human rights, a guardian of the rule of law.”<sup>19</sup>

Hence, the NCEU-MK faced the challenge and opened a discussion on the kind of Constitutional Court we have *versus* the kind of Constitutional Court we need as a state, and how to achieve that.

In respect of the issue of reform of the Constitutional Court, the experts concluded that it is primarily needed in order to protect the rights and interests of the citizens, although this is not a direct requirement for the EU accession process. Consequently, it was recommended to develop a strategic document and an action plan for reform of the Constitutional Court, to make necessary constitutional changes and thus create constitutional basis for legal regulation of the constitutional judiciary. Namely, during the session it was pointed out that there is no Law on the Constitutional Court in North Macedonia, and the constitutional framework governing the existence of a constitutional judiciary is not ideal as it has often proved to be inaccurate or restrictive, which is the reason for controversial decisions and a reason why the Court is often subject to political influence.<sup>20</sup> Therefore, in a future Law on the Constitutional Court, there should be stricter and more precise criteria for the selection of judges to the Constitutional Court, its jurisdiction should be broadened and specified, the institute of constitutional appeal/lawsuit established, and it was also proposed to expand the list of human rights and freedoms that will fall under the jurisdiction of the Constitutional Court,<sup>21</sup> as well as to regulate the procedure for assessing the constitutionality of a law at the request of a regular court, as a matter of previous issue to resolve.

In terms of protecting fundamental human rights and fundamental values, fulfilling these recommendations for ensuring rule of law, in the true sense of the word, is a *conditio sine qua non*. At the moment, the Constitutional Court is not part of the current legal reform, but it has been highlighted that the Court should impose itself as a balance between political executive and legislative power. A balance which in case of a political deviation of established legal principles will restore the harmony of the legal system, make adjustments within the constitutional system, and ensure the protection of human rights and promotion of constitutional values in North Macedonia. All of this could be achieved through goodwill and practical implementation.<sup>22</sup>

Moreover, the experts accentuated that the Constitutional Court is the most unreformed institution in the country. However, the address of the Slovak expert, where he explained that the situation was similar in Slovakia, prior to the introduction of the constitutional lawsuit, which significantly improved the situation, gave hope that this will be a beneficial reform for our system as well. The Slovak expert further emphasized that there are no real reforms if the constitutional judges do not “reform” themselves. The Constitutional Court is an institution that should be legally regulated for the sake of

18 Тренеска – Дескоска, Рената, Конституционализам, Скопје, 2015, p., pp 402-404

19 National Convention on the EU in Republic of Macedonia, Newsletter 3, January – June, 2019

20 Ibid.

21 Ibid (Presentation of prof. Natasa Gaber Damjanovska), p.3.

22 Ibid (Presentation of prof. Renata Deskoska, Minister of Justice).

legal certainty and in order to “resolve dispute situations” rather than being part of certain disputes itself and thereby further reduce citizens’ confidence in the courts.<sup>23</sup>

Although the Constitutional Court is not part of the regular judiciary, it is in close correlation with it because, as experts have pointed out, the road to constitutionality is guided by the rule of law.<sup>24</sup>

## **b) Measures to combat corruption in the judiciary and against corruption in general**

The fight against corruption was a subject of two separate sessions in WG3. The issue of corruption, however, was an unavoidable subject of discussion at almost every session. In reference to mechanisms for an effective fight against corruption it was urgently recommended that a new anti-corruption body is established, comprised of the most competent professionals whose level of knowledge of the field and personal integrity should be at the same or above the professional level of those they control. The revision of legislation was also pointed out as necessary (it should be noted that at the time of the session the new Law on Prevention of Corruption and Conflicts of Interest has not been yet enacted), explicitly providing for control mechanisms and grounds for accountability of members of this body in the event of non-compliance or abuse of office. These were the recommendations that came from the July 2018 session.

On 17 January 2019 the new Law on Prevention of Corruption and Conflict of Interest<sup>25</sup> was adopted by the Assembly and in February 2019 the new State Commission for Prevention of Corruption was elected. Since its inception, its work has received favorable public reactions due to its visibility, transparency, etc.

Furthermore, the sessions also highlighted the importance of the Law on Protection of Whistleblowers.<sup>26</sup> This is a new institute in our legislation and it is a rather useful mechanism in the combat against all forms of corruption, so it was recommended that the Ministry of Justice, as the relevant institution to oversee the implementation of the Law, to determine whether public institutions have authorized persons for admission of reports and whether the relevant legal acts are publicly available to employees of the institutions or legal entities. Although the Law was adopted at the end of 2015 and the bylaws were adopted in 2016, its implementation has been delayed for almost three years. In the first half of 2019, the new State Commission for the Prevention of Corruption has declared that it has initiated proceedings due to received reports from whistleblowers.

In addition, given the insufficient number of judgments in cases of high corruption, it was recommended the creation of mechanisms for re-evaluating the work of judges and public prosecutors handling such cases. It should be noted that in the European Commission’s Progress Report on North Macedonia’s euro-integration process, it was also pointed the “lack” of judgments in the so-called cases of high corruption.

It can be concluded that a problem appears on two bases: the inactivity i.e. passivity of the public prosecutors in the handling of sensitive cases, and the long duration of court

23 Ibid.

24 Presentation of prof. Gordana Siljanovska Davkova, see Newsletter 3, January - June 2019, p.2.

25 Published in Official Gazette of RNM, No. 12/2019

26 Official Gazette of the Republic of Macedonia” No. 196/2015 and 35/2018



proceedings as well as the selectiveness. Namely, prior to the establishment of the Special Public Prosecutor's Office, one of the arguments for its establishment was the Prosecution's failure to prosecute in very serious situations.

In their address the experts also stated that there is no real and effective fight against corruption without the use of confiscation of property and proceeds as a separate criminal law measure, even in cases where due to a factual or legal matter it is not possible or allowed to prosecute (e.g. death, amnesty, pardon, statute of limitations), especially as this is explicitly provided by the Criminal Code,<sup>27</sup> and the Law on Criminal Procedure provides a separate procedure on the aforementioned grounds.<sup>28</sup>

At the next session where the issue of corruption was the main topic of discussion, experts pointed out that despite legislative compliance and harmonization of legislation, the legal framework itself does not guarantee that problematic issues will be resolved.<sup>29</sup> Some of the recommendations were aimed at the relevant authorities to implement the recommendations of the fourth GRECO evaluation round of 2014, which remained unimplemented even after the second compliance report, and despite the fact that the Fifth Round of evaluation was already completed at that point. One of them aimed at re-examining the decision on the composition of the Judicial Council and the participation of the Minister of Justice in it. The other recommendation regarded the disciplinary responsibility of the prosecution and the re-examination of the grounds for dismissal of public prosecutors, which is nevertheless linked to the adoption of the new Law on Public Prosecutor's Office, which for known political reasons has not yet been adopted.

In 2019, a new Law on the Judicial Council of the Republic of North Macedonia was adopted, which provides for the President of the Supreme Court and the Minister of Justice to be members of the Judicial Council by function, that is, to participate in its work, but without the right to vote. However, according to article 6 p. 3 of this Law: "the members of the Council by function do not participate in the work of the sessions of the Council on which the members discuss and decide on the initiated procedure for determining the responsibility, election or dismissal of a judge or president of a court".

The National Convention on EU reiterated its support and recommendation for continuity in the process of fight against high corruption in our country. It was also recommended that the State Commission for the Prevention of Corruption, which commenced its work with the new composition (new members) and in accordance with the new Law on Prevention of Corruption and Conflict of Interest and which showed visible activity and public presence as well as transparency and accountability, take into account the fact that the irregularities that are/will be detected do not always constitute only misdemeanors, but that some of them may have the character of crimes, that is to say, they correspond to some of the offences of Chapter 30 of the Criminal Code - Crimes against official duty, and therefore the Commission should proceed with criminal prosecution initiatives as well.

27 Art.97 of the Criminal Code, Official Gazette of RM, No. 37/1996, 80/1999, 4/2002, 43/2003, 19/2004, 81/2005, 60/2006, 73/2006, 7/2008, 139/2008, 114/2009, 51/2011, 135/2011, 185/2011, 142/2012, 166/2012, 55/2013, 82/2013, 14/2014, 27/2014, 28/2014, 41/2014, 115/2014, 132/2014, 160/2014, 199/2014, 196/2015, 226/2015, 97/2017 and 248/2018.

28 Art. 540 Of the Law on Criminal Procedure, Official Gazette of RM, No. 150/2010, 100/2012, 142/2016 and 198/2018.

29 Presentation of prof. Tupanceski, see Newsletter 3, January - June 2019, p.8

The State Commission for the Prevention of Corruption, through its press conferences, reports, press releases and participations at scientific and expert debates, has confirmed that it is taking such options into account in its work.

In the fight against corruption, as noted earlier - the highest indicator of efficiency, especially for the so-called cases of high corruption, are the final court decisions. In the run-up to the second session dedicated to this issue (and the overall fifth in WG3), the new 2019 EC progress report for North Macedonia was published. In it, it was noted that such decisions were already being delivered. Nonetheless, it has to be underlined that this practice must not stop here, but continue.

The etiology of the problem of lengthy court proceedings in some cases, which has been stated before, is a complex issue that requires serious analysis, because it is unclear why when there are specialized institutions to fight corruption, such as a special commission, the special prosecution, special departments in the public prosecution office and in the courts, there is no epilogue to most of the cases of corruption. The reasons for the long duration of some proceedings and the non-enforcement of appropriate decisions should be clearly determined. Namely, it is important to determine whether there are inconsistencies in the legal provisions and problems with the implementation of some provisions of the legislation, or whether there are problems with timely procurement of evidence, whether there is insufficient staffing in the judiciary or other factors.

The Slovak experience presented by the Slovak expert who participated in the fifth session, provided an interesting perspective. Namely, the expert explained that although the highest EU standards were implemented in their country by 2005, with a near-perfect legal framework for the judiciary, soon afterwards the system virtually fell apart. According to the Slovak experience, it is necessary to ensure financial and political independence, and to increase transparency at the highest level. In order to regain the trust and control of the citizens over the institutions and their work, in Slovakia the Judicial Council sessions were made public and could be monitored online. In addition, the entrance exams for the judiciary were also made public and the oral exams broadcasted. The judges, when pressured by political elites, were united in appropriate petitions, so under public pressure, even the proclamation of the Special Criminal Court as unconstitutional was followed by its re-establishment by the legislature.<sup>30</sup>

Here again we come to the conclusion that the citizens and the civil sector play a crucial role as “a radar and correction” of everything that is a derogation from the rules and jeopardizes the independence of the judiciary. The transparency of the work of the institutions must be ensured, and every government that proclaims such a thing and advocates for the rule of law and zero tolerance of corruption and unethical work should create the conditions (appropriate legal solutions, etc.) to make such transparency effective.

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The general recommendation of one of the last working sessions was the need to complete the judicial reform in line with the frameworks and deadlines set out in the strategic documents and action plans, but also as indicated by the European Commission, GRECO and other relevant institutions competent for monitoring and evaluating compliance with European standards by our state in this area.

30 National Convention on the EU in Republic of Macedonia, Newsletter 3, January – June, 2019

It should also be mentioned that the issue of accession negotiations in Chapter 23, in terms of what to expect and what to learn, was the subject of separate discussion. As highlighted at the outset, bearing in mind that Chapters 23 (Judiciary and Fundamental Rights) and 24 (Justice, Freedom and Security) are first opened and remain open until the end of negotiations, it is necessary that we engage in long-term planning of commitments and detection of so-called “weak” or “problematic points”, i.e. topics (areas) that could prolong the negotiation period but also cause a delay in the negotiation process.

It was recommended to involve a wide range of stakeholders (national and international experts, representatives of all relevant institutions, in particular for the protection of human rights and for the fight against corruption, relevant professional chambers etc.), with full respect for independence and expertise. Furthermore, it was also pointed out to the need to build a model for involving relevant NGOs in the negotiation process in a systematic way<sup>31</sup> and ensuring their continued participation while the European Union and other donors to increase project engagement and support in all chapters, especially in Chapter 23 during the whole negotiation period.

### **Concluding remarks: discussion and open issues**

With regard to the recommendations adopted at the individual sessions, as can be concluded from the abovementioned, some of them, above all those concerning legal drafting, are already accepted and implemented by the relevant institutions. Some of the laws referenced in the recommendations have already been adopted or amended, the anti-corruption body has been established under the provisions of the new legislation, and according to information from the State Commission for the Prevention of Corruption, it is already examining cases due to whistleblower reports, meaning that this mechanism, which on various occasions was underlined in the recommendation, is being implemented in a certain extent as well.

On the other hand, some of the recommendations are still applicable and are expected to be taken into consideration by the Ministry of Justice and other relevant institutions throughout the process of EU integration.

The publication of GRECO’s Fifth Round of Evaluation Report, as well as recent developments related to corruption scandals and speculation of possible involvement by the representatives from the judiciary, and even from the legislative and the executive power (which still remains a matter for the authorities to investigate and prove), are a sufficient indicator that corruption in the judiciary is still seriously weak point of the system, which slows down our country’s Euro-integration progress. It is therefore more than clear that in the upcoming period, both national and foreign experts in National Convention on the EU will be faced with the challenge to bring forward sound recommendations for improvement in these areas.

It should be underlined that in terms of the Euro-integration process, the Screening started in September 2018 with the so called explanatory meetings.

31 Presentation of Simonida Kacarska, National Convention on the EU in Republic of Macedonia Newsletter 2, July – December 2018, p.4

**Where are we and how do we proceed?** As to the substance of the matter covered by Chapter 23, especially given the current developments in our country, it remains unclear - in what direction are we moving as a state? Although the screening is underway, we still do not have a specific date to start negotiations. The latest European Commission Report gives better assessments of the situation in the judiciary meaning that things have moved away from a 'dead end'. However, when it comes to the fight against corruption, developments in the Macedonian judiciary and newly discovered corrupt practices seem to further bring the country back in terms of assessments in this area, and citizens are losing confidence in the institutions of the system.

It is difficult to truly achieve independence and impartiality of the judiciary in small and relatively young states like ours. In addition to ensuring that there is a good legal framework, financial independence, excluding political influence, even though the participation of executive representatives in the judiciary, etc., it is essential that people with high integrity work in the judiciary who will not fall under the pressure to diverge from the letter of the law and from legal and legitimate action when dealing with conflicts of interests or influential persons, in politically sensitive cases, etc.

The higher in the judiciary and prosecution hierarchy, as well as in the composition of the councils (Judicial Council and Council of Public Prosecutors), the more important it is to maintain personal and professional integrity. The comparative experiences from other countries should be especially taken into consideration and applied when electing members of the judiciary or the public prosecution in our country. If we want a non-corrupt, knowledgeable, professional and independent judiciary, there must be full respect for: first, formal criteria in terms of qualifications, ability, prior experience, etc., and second, integrity in previous work and life in general. In the selection of Supreme Court Justices candidates in the United States, even the slightest past mistake, a misdemeanor or unethical act, has often disqualified and challenged the legitimacy of otherwise eligible candidates. There are plenty of similar examples from other countries as well. Personal integrity is a key factor for trust especially in the judiciary.

The delay in initiating proceedings and the selective actions of the public prosecution, which was especially accentuated in the period before the establishment of the Special Public Prosecutor's Office, further undermined the legal certainty and the citizen's sense that their rights are protected. If the judiciary is often reproached for lengthy procedures, it should not be forgotten that the decision whether to investigate and whether to undertake criminal prosecution, is brought by the prosecution itself.

However, the essential problem that cannot be solved through a legal solution, code or strategy, and which is much deeper, is how to achieve the necessary sense of responsibility and awareness of the importance of being a judge or a public prosecutor? How to overcome the problem of the inactiveness or passivity that often follows representatives of these institutions? The problem with the adoption of the new Law on Public Prosecutor's Office and reasons for *de facto* termination of the so-called Special Public Prosecution brought to the surface the inability of our society as a whole to demonstrate the minimal democratic capacity, even though the European Commission has long indicated the need for reforms in the area of public prosecution.

This is a sufficient indication that the judicial sphere still remains strongly influenced by political interests and political parties interests, and it is not the common interest of all citizens in society that dictate the pace and path of the reforms. The judiciary seems to still have a sense of powerlessness and in many such cases it responds with silence.

Creating a mentality for honest, responsible and dignified work in the judiciary is a problem that requires deeper observation and serious intervention in all spheres of society in order to change the mentality and specific lifestyle of the societies with decades long transitions. The general notion that it is “normal” in life to achieve success in a faster and easier way at the expense of professionalism, knowledge and ethics - as a mentality - is a result of the loss of the value system in the society and is the ideal ground for corrupt thinking and acting, which leads to flourishing of violent and criminal behavior. It is therefore necessary to create legislative frameworks that reduces to a minimum the ability of an individual in the judiciary to act in the aforementioned manner, that is, by providing mechanisms — competent institutions to act quickly and effectively to correct what is wrong, illegal, while at the same time working on the ever-necessary awareness of the importance of independence and separation of powers.

Another element that may also be a serious cause of some of the problems in the judiciary is the legal education and its quality. In our country, quantity has not contributed to raising the quality. The fact that there are a very high number of law faculties in the country has become a serious handicap, the consequences of which will further be felt in the area of professional expertise. Such remarks are made directly at the account of the state, which has enabled inflation of higher education institutions and many of them actually do not fulfill all the requirements for their accreditation, and which in addition allocates far less funds for education and science than are necessary to meet the basic prerequisites for a proper future practice of law by law students.

A certain partial correction to the consequences from the aforementioned issue may be the Academy for Judges and Prosecutors, where only the best lawyers, future judges and prosecutors should be enrolled objectively, and the admission and training itself should be a serious test and check on all formal and personal qualities relevant to the future function of the trainees in the Academy. In other words, the resourcing of staff that really is required for judiciary (that exists now, but field results show that it is insufficient) necessarily requires a series of preventive and corrective links in the chain.

As long as the judiciary is not managed and controlled by professionals with the highest expertise, but who also have the required moral integrity - professionals whose name and reputation are not stained, there will be no proper reparation mechanism for the lower levels.

Here again we come to the conclusion that the Judicial Council and the Council of Public Prosecutors are the key to resolving many problems in the judiciary and that it is more than necessary that the composition of these bodies is completely flawless. Is the new Law on the Judicial Council, for example, a good legal framework? Here, several dilemmas arise. Can it be expected that the election of members from the judiciary itself will be completely regular; are we certain that there won't be illicit lobbying and influence trading? Will proposals coming from the executive branch not reflect political influence?

Won't the election of members in Assembly also reflect party bias? Do MPs prioritize the fact that they are representatives of the people and that they should be governed by that mere fact, and not strictly by the interests of the party they come from?

It is more than clear that the problem is systematic, and the determination to go in the right direction should be reflected at all levels and in all segments of the power-sharing system.

As to which questions should be the subject of future analysis, it should be emphasized that there are very weak points that need to be adequately addressed. For example, is the ACCMIS system finally implemented correctly? It is sufficiently good the way it is or it needs to be upgraded? Judges who directly work with the system are best placed to respond to this question. Another question that deserves attention, and we open it several times so far, is whether more complex cases should be handled by judges with more professional experience? Are the legal rights and obligations of judges for children, for example, to attend continuous training abroad at the expense of the state to the extent and in the manner required by law, fulfilled to the fullest, especially if we consider that they are dealing with cases involving perhaps the most vulnerable category - children? Do we have a balance or, on the contrary, a huge discrepancy in the spatial, technical and human resources of courts and prosecutors across the country? Do judges and prosecutors maybe need non-mandatory guidelines on sentencing, available average sentence information for the different offenses, etc.?

Furthermore, in terms of corruption, does the state not generate corruption or, to put it in milder words, doesn't state somehow allow it, through positive financial intervention in certain areas, but totally neglecting or degrading other areas and professions?

While these findings sound rather serious and pessimistic, the clear determination of the authorities in a country to create conditions for responsible, honest, uncorrupted, lawful and accountable work will best be demonstrated by involving the civil sector and the expert public in all processes. Citizens, individually and through associations, as well as proven experts in their field, should be the "eyes and ears" of the society, and the state should be ready to hear, consider and examine all opinions and arguments.

Therefore, the NCEU-MK is tasked with opening and updating the above and other issues and advocating for the serious involvement of civil society organizations, the expert public and the representatives of institutions together to create and control the reform process and one day to be part of the accession negotiation process.

**RECOMMENDATIONS FROM THE FIRST SESSION OF WORKING GROUP 3**

**“Independent and unbiased judiciary – systematic and moral dilemmas”<sup>32</sup>**

1. An urgent reform of the Judicial Council is needed to enable the strengthening of personal and functional capacities through transparent, accountable, and responsible work. For this purpose, a procedure should be envisaged for the election of members of the Judicial Council with a qualified majority of the total number of judges, as well as an opportunity to appeal the procedure. Also, individually and collectively, the members of the Judicial Council should be liable before the body that elects them. Due to the insufficient clarity of the basic criterion for electing members, it is recommended to define more precisely, what really a “prominent lawyer” is.
2. In order to achieve greater transparency in the appointment and promotion of judges, it is necessary to consistently and fully respect objective, professional, and qualitative criteria, without any concessions from a political or other nature.
3. In dismissing judges or in determining disciplinary measures against judges, the standards established in the case law of the European Court of Human Rights (ECHR) should be respected.
4. In addition, in the application of substantive and procedural law, judicial practices and judgments of the European Court of Human Rights should be respected.
5. In the selection of candidates for judges and public prosecutors to be trained at the Academy for Training of Judges and Public Prosecutors, it is proposed to also introduce shortened and intensive initial training for candidates from the files and ranks of: a) legal officers in the courts and public prosecutor’s offices who have at least five years of working experience, and b) from prominent attorneys-at-law with experience of over ten years.
6. Considering that the independence and impartiality of the judiciary is closely related to the use of adequate material resources and technologies, it is necessary to take urgent measures to improve the material conditions for the work of the courts, as well as increase the salaries of judges and court administration.
7. In order to effectively implement its role as a bridge linking justice institutions, civil society and the executive branch of government, the Judicial Reform Council should be formally relocated outside the Government, thus ensuring transparency of the dialogue and recommendations.
8. The Assembly and its bodies should increase their participation in the EU accession process through continuous parliamentary monitoring of the implementation of the recommendations relating to Chapter 23 and by intensifying the practice of public debates with key stakeholders, including the non-governmental sector.

<sup>32</sup> The first session of Working group 3 was held on 01.03.2018

## RECOMMENDATIONS FROM THE SECOND SESSION OF WORKING GROUP 3

### “Effective measures in fighting corruption in Macedonia”<sup>33</sup>

1. Urgent formation of the New Anti-Corruption Body comprised of the most competent professionals whose level of knowledge in this field and the integrity of their personality is at the same, or higher level, than the professional and expert level of those who control them.
2. In case of possible revision of the anti-corruption legislation, one should explicitly foresee control mechanisms and bases of responsibility of the members of this body in the event of failure to act or abuse the office.
3. Having in mind the insufficient transparency of the public prosecutor’s office and some of the courts in the Republic of Macedonia, which is crucial for the return of citizens’ trust to the institutions, it is proposed that there be regular and timely publication of court and public prosecution decisions, in accordance with the relevant legislation. In the same context, it is also proposed to regularly inform the general public about the processing of specific cases in these institutions.
4. In context of corruption prevention in the judiciary, it is proposed that the relevant laws prohibit and sanction all forms of influence and pressure on judges and public prosecutors as such.
5. According to the amendments to the Law on Protection of Whistleblowers (February 2018), it is recommended that the Ministry of Justice, – being responsible for supervising the implementation of the Law, undertake the following activities:
  1. To determine whether the public institutions / authorities have already established authorized officers for receiving reports from whistleblowers, and,
  2. To determine whether the relevant legal acts are publicly available to the employees in the institutions, that is, the legal entities.
6. It is necessary to establish clear procedures and determine the competence within the institutions for practical implementation of the protection of the whistleblowers. To this end, it is necessary to revise other relevant laws in order to have amendments to ensure consistency between them and the Law on Protection of Whistleblowers.
7. Given the insufficient number of judgments relating to high corruption cases, it is recommended to create mechanisms for reevaluation of the work of judges and public prosecutors processing such cases. In this context, as part of the current judicial reform, it is recommended to provide for such corresponding provisions in the Law on Courts and the Law on Public Prosecution.

<sup>33</sup> The second session of Working group 3 was held on 03.07.2018



**RECOMMENDATIONS FROM THE THIRD SESSION OF WORKING GROUP 3**

**“Accession Negotiations in Chapter 23: What to Expect and What Can we Learn?”<sup>34</sup>**

a) Recommendations related to the context of pre-accession negotiations in Chapter 23

1. Due to the numerous topics covered by Chapter 23, as well as the lack of a specific Acquis for this chapter, in the process of negotiating it is recommended to include a wide range of stakeholders (experts from national and international context, representatives of the Legislative Committee from the Parliament of the Republic of Macedonia, from institutions for protection of human rights and fight against corruption, as well as from the relevant chambers), while respecting their independence and expertise.

2. To build a model for involvement of relevant civil society associations in the negotiation process, thus ensuring their continued participation in: implementation of specific analyses, preparation of solutions, and monitoring of reforms. Further, the recommendations from the civil sector regarding the measures for effective implementation of laws should at least be taken into consideration.

3. Considering the fact that in the preparatory period for pre-accession negotiations in Chapter 23, several civil platforms are active, including the National Convention on the European Union in the Republic of Macedonia, it is recommended to create a system for recognising, communicating, and exchanging information between them.

4. The European Union and other donors to increase project support in all chapters, especially in Chapter 23 during the entire negotiating period.

b) Recommendations related to reform processes in the judiciary system.

5. To conduct a unique training focused on the reforms and implementation of the legislation for the negotiating teams in Chapter 23, in order to achieve a higher degree of independence of the judiciary.

6. It is recommended that the measures envisaged in the Judicial Reform Strategy be followed, given that some of the new legal solutions deviate from it. This in particular refers to the importance of the measure of professionalisation of the members of the Judicial Council and an increase in the requirement regarding judicial experience, as an important criteria in the advancement of higher judicial levels.

7. Recalling the recommendation from the first session of the NCEU-MK that refers to the possibility for professional associates with long work experience to be able to obtain the right to be elected to the judiciary, through the Academy of Judges.

8. Corruption is an extremely important problem for society and its resolution resolves many problems in other chapters. The fight against corruption should be based on ethical components including resignations and dismissals, but also through instruments of criminal responsibility, with consequences such as confiscating illegally acquired property.

34 The third session of Working group 3 was held on 15.11.2018

### RECOMMENDATIONS FROM THE FOURTH SESSION OF WORKING GROUP 3

#### **“Reforms in the Constitutional Court related to Chapter 23 of the pre-accession negotiations for integration into the European Union”<sup>35</sup>**

1. Constitutional Court reforms are needed in order to protect the rights and interests of citizens, albeit this is not a condition for the accession process to the EU.
2. To develop a strategic document and an action plan for reform of the constitutional judiciary.
3. To approve constitutional changes in the part of the Constitutional Court.
4. To create a constitutional basis for legal regulation of issues related to the constitutional judiciary.
5. To introduce strict and precise criteria for the election of judges in the Constitutional Court.
6. To extend and specify the jurisdiction of the Constitutional Court.
7. To introduce the instrument Constitutional Complaint.
8. To regulate the procedure for assessing the constitutionality of the law, at the request of a regular court as a preliminary matter.

### RECOMMENDATIONS FROM THE FIFTH SESSION OF WORKING GROUP 3

#### **“Judiciary and high corruption: Are we moving forward or backwards from the international standards?”<sup>36</sup>**

1. Urgent adoption of the Law on Public Prosecution is recommended. A recommendation is made to the Ministry of Justice, but also to all other entities involved in the process of reaching consensus on the final legal solutions regarding the Draft Law on Public Prosecutor’s Office, to speed up the process by responsible action in the direction of the recommendations of the European Union and other international bodies. Once again, the NCEU-MK’s support is emphasized in ensuring continuity in the fight against high corruption.
2. It is recommended to have greater transparency in the procedures for adopting the Law on Public Prosecution and greater participation of the expert community in the adoption procedure, which would reduce the great influence of the political parties as constantly pointed out by the experts.

35 The fourth session of Working group 3 was held on 12.02.2019

36 The fifth session of Working group 3 was held on 05.06.2019

3. In order to achieve greater efficiency in dealing with corruption cases, it is recommended that the new State Commission for the Prevention of Corruption show zero tolerance to all corruptive actions, fully respecting the principle of equal treatment of all before the laws.
4. In the light of the aforementioned, it is recommended that the State Commission for Prevention of Corruption, in its work and in submitting appropriate initiatives and reports to the competent authorities for further legal processing, take into account the fact that the established irregularities are not only misdemeanors (easier form of offense), but that some of them may also have the character of criminal offenses, above all as criminal offenses against official duty (Chapter 30 of the Criminal Code). In addition, the State Commission for the Prevention of Corruption should act proactively, upon its own initiative, not only upon reports and upon complaints filed by others in all areas for which it has jurisdiction.
5. High corruption is a specific phenomenon that infests the very institutions that need to fight it and is deeply embedded in them, from the lowest to the highest level. First of all, it is recommended that measures be taken to act in the direction of prevention of corruption and ways of detecting various forms of high corruption in the judiciary, and also to develop mechanisms for efficient punishment of corrupt judges, prosecutors, lawyers and other relevant stakeholders in the justice system.

### RECOMMENDATIONS FROM THE SIXTH SESSION OF WORKING GROUP 3

#### **“Settlement as a measure for more efficient judiciary”<sup>37</sup>**

1. To extend the rights of the accused in order to eliminate the practice of covert threats by the prosecutors, in particular through improper application of the detention measure, its dismissal by judges and the refusal to accept such confessions.
2. To increase the allocated funding for judicial institutions, for the sole purpose of enhancing professional services (human resources and other necessary resources) as required by the new Criminal Procedure Code.
3. To establish a regular practice of summoning the accused and his or her defence counsel to negotiate a plea bargain, in cases where public prosecutors have undisputed evidence of the accused’s guilt.
4. To extend the rights of the defence in order to provide complete access to the evidence, as well as sufficient time for the defence counsel to prepare fully for all aspects of the guilty plea and to participate in plea bargaining.
5. The Settlement Guidelines of November 2015 (adopted by the Public Prosecutor) should be amended in the part of the evaluation and approval by the

<sup>37</sup> The sixth session of Working group 3 was held on 11.09.2019

Hierarchically Higher Public Prosecutor, whereby the consent for plea bargaining will be approved by the Public Prosecutor of the appropriate Public Prosecutor's Office.

6. To develop Plea Bargaining Guidelines for the type and amount of criminal sanction, for the purpose of delivering uniform judicial practice of the courts, as well as to improve data entry in the ACCMIS to obtain data on the average sanction for a particular crime.

7. To provide further training for all entities involved in the plea bargaining process, in order to overcome the practical obstacles to the realisation of this legal instrument.

8. Raising the awareness among judges that they have the right to request, at the hearing of an assessment of the plea bargain, to present or evaluate any of the presented evidence, that is, to refuse to accept confessions that are not adequately substantiated by evidence, thus giving the judges a more active role in the evaluation of the confession and draft plea bargaining.

9. Correction and improvement of the provisions of the LCP in the part of shortened procedure, with the purpose of compulsory summoning of the accused during the initiation of the investigation or gathering of evidence, with the aim of informing him about the procedure, thus making possible the application of the plea bargaining procedure at this stage of the criminal proceedings.

10. The change of the LCP in the direction that property claim should be an integral part of the draft agreement and a mandatory court decision on the property claim in cases where it can be established without a doubt.

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**WORKING GROUP 3 – JUDICIARY AND FUNDAMENTAL RIGHTS (CHAPTER 23)**

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## **WORKING GROUP 4**

# **JUSTICE, FREEDOM AND SECURITY (CHAPTER 24)**

**Nikola Todorovski<sup>1</sup>**



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## Introduction to Chapter 24

With the new EU approach<sup>2</sup> to enlargement policy, as a result of dissatisfaction with previous enlargement processes, new rules were introduced in the process of pre-accession negotiations for the Western Balkan countries. In the accession negotiations, Chapters 23 and 24 are the first chapters to open and the last to close. This leaves sufficient time to practically implement key reform processes in these areas, which aim to ensure the rule of law and the democratisation of society. During negotiations in these areas, the European Commission has a key advisory role on the substance of the reform. To this end, transitional measures (interim benchmarks) and closing measures (closing benchmarks) were introduced to ensure that the reforms adopted are practically implemented. Furthermore, if sufficient progress is not achieved in these chapters there is a possibility that the negotiations in other chapters can be suspended.

Areas related to Chapter 24 are areas of public policy that are particularly important for the sovereignty of states. For the most part, they are in the domain of the internal affairs of states, on which security and access to justice depend. This chapter sets out regulations that represent standards and best European practices in a range of areas. They are central to securing the foundations of a democratic state, and therefore this chapter is wide unifying within itself 12 sub-sectors: migration, asylum, external borders, visa policy, fight against organised crime, drugs, terrorism, human trafficking, customs cooperation, police cooperation, judicial cooperation in civil and criminal matters, counterfeiting the euro.

Chapter 24 is an area that consists of the so-called hard law and the issues being negotiated are highly technical and require specific knowledge in a field that is traditionally rather closed off. Experiences from the previous enlargement processes show that the monitoring of negotiations in this area is a particular challenge for civil society organisations.

In line with the new approach, the harmonisation of North Macedonia's legislation within Chapter 24 with European legislation has started with the explanatory screening, before the accession negotiations began. Meetings on this chapter were held in Brussels from 12 to 14 November. The Secretariat for European Affairs enabled direct broadcast of the meetings via Skype, in their offices in Skopje, where representatives of the National Convention and other interested NGOs were able to follow the meetings.

The standards to be achieved in this chapter are already largely governed by the numerous International Conventions that have been signed or ratified by the Republic of Northern Macedonia. Commitments have been taken for their implementation, primarily in the area of combating organised crime, terrorism, trafficking in human beings. Many are

<sup>2</sup> COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL Enlargement Strategy and Main Challenges 2012-2013 2.1. Putting the rule of law at the centre of enlargement policy „Given the challenges faced and the longer-term nature of the reforms, the chapters judiciary and fundamental rights and justice, freedom and security will be tackled early in the negotiations to allow maximum time to establish the necessary legislation, institutions, and solid track records of implementation before the negotiations are closed. They will be opened on the basis of action plans to be adopted by the national authorities. The Commission will provide substantial guidance in its screening reports to support the elaboration of these action plans by the candidate country. An innovation is the introduction of interim benchmarks which will be set when negotiations are opened. Only once these are met will the Council lay down closing benchmarks.“

precisely regulated in a series of EU documents (regulations, directives, etc.), especially in the area of asylum, migration, visas and external borders. The achievements, commitments, challenges and shortcomings in this area are precisely stated in the so-called Priebe Reports and recommendations, the Compliance Reports with the GRECO<sup>3</sup> recommendations, and above all in the European Commission Reports (based on the Stabilisation and Association Agreement of April 2004), which are based on various national and international sources.

Thus, in the Priebe Group's assessment and recommendations of senior experts on systematic rule of law issues from 2017, it was emphasised, *inter alia*, that after the unlawful disclosure of the conversations there was a very serious deficiency in the Security and Intelligence Agency's (UBK) oversight mechanism and concentration of power in this institution. At the same time, it is pointed out that the publicly announced revelations testify to the serious emergence of political corruption at various levels and in many ways. The general conclusion is that the fight against corruption should definitely become a top priority for the country. It stresses the need for law enforcement agencies and independent regulatory, control, and oversight bodies to have sufficient autonomy to act in accordance with the law. Regarding the Urgent Reform Priorities of 2015, the new government set out to tackle old problems, declaring a zero-tolerance policy for corruption and bringing about a series of legal and institutional changes. Nonetheless, the problem of their full implementation in practice continues.

A report adopted by GRECO at the 80th Plenary Session in Strasbourg, 18-22 June 2018, concludes that the State has implemented, satisfactory, six of the nineteen recommendations contained in the Fourth Round Evaluation Report, while eight have been partially implemented and five not implemented. This report presents serious findings about the inefficiency of the institutions of justice and the presence of corruption therein and in particular the state of affairs in the police force.

The 2019 European Commission Report contains a number of important findings and recommendations for the situation related to Chapter 24. The overall assessment is that the country has continued to deliver concrete results in key areas such as justice, the fight against corruption and organised crime, as well as reform of the intelligence services. A reform of the intelligence services has been launched in co-operation with NATO and other partners. A model and a legal framework have been chosen to establish a new National Security Agency and to coordinate the intelligence and security community, and a new reformed Operational Technical Agency (OTA) has been set up to monitor communications. The existing legislative framework in the fight against organised crime is largely in line with European standards and its operational capacity in the fight against trafficking in human beings has been significantly improved. At the operational level, the efficiency of the National Coordination Centre for Combating Organised Crime has improved, as well as participation in joint operations with EU member states and neighbouring countries. An ambitious strategy has been adopted in line with the Istanbul Convention on the fight against violence against women. Further efforts are needed on a functioning mechanism for external police oversight, as well as for consistent dissemination and implementation of the recommendations of European and international human rights bodies regarding the

3 The Group of States against Corruption, French: Le Groupe d'Etats contre la Corruption (GRECO)

treatment of detainees, women, and persons with disabilities. The legal framework for the protection of fundamental rights is generally in line with European standards and states that the country has made good progress. Regarding the management of mixed migrant flows, the country has an active and constructive role, and the Status Agreement with the European Agency for Border and Seaside Guard, has been initiated.

It is important to emphasise that in the coming years the country should: provide all the resources necessary for the effective implementation of the Strategy to strengthen the capacity to conduct financial investigations and confiscation of property; to ensure that institutional security sector reforms are effective and applied in practice; to ensure that the priorities for combating terrorism are clearly defined and that the office of the appropriate coordinator is effectively executed.

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The challenges associated with the implementation of the complex and sensitive issues of Chapter 24 are dynamic and ever-changing, dependent on global geo-strategic movements, such as the migrant crisis that brought with it the risk of new forms of trafficking and terrorism, from the level of development of credibility of the state institutions that should enforce the law, the danger of their erosion caused by corruption, involvement in organised crime, and minimisation of their honesty and transparency. These are challenges whose implementation has long been delayed due to lack of political will or sufficient commitment to drive the changes that need to be made. It is extremely important that the initial enthusiasm for their solution be translated into tangible practical realisation.

#### Sessions of Working Group 4

The first session of the Working Group held on March 29, 2018, in Skopje, in the Parliament of the Republic of North Macedonia, was dedicated to the issue of **Establishing an External Mechanism to Control the Work of the Police**. The session was attended by 62 MPs, representatives of the Ministry of Interior, academic and professional associations, NGOs and trade unions related to the topic under consideration.

The introductory remarks addressed the conducted research on this topic, comparative insights, the existing experiences, as well as reform proposals to provide adequate external control over the work of police officers, which by its nature is not the most open social structure. It was pointed out that external control of police work should be based on a truly independent mechanism, outside the jurisdiction and influence of the police, which will be transparent in its work. At first it was thought to control only the security and prison services, but it was expanded to include other law enforcement officers with the equivalent of police powers. Introducing external control requires changes to seven laws and major structural changes. In this way, a formerly privileged system, due to its powers, will be subject to an objective external control mechanism. Reformed legislation should clearly define the civic concept aligned with EU and NATO aspirations, harmonised with their standards. It was emphasised that the independent external mechanism should be independent of the government as well as of party - political influences.

In an active and constructive three-hour debate a number of sensitive issues were highlight when designing and constituting the external control mechanism over the work of police officers. The CSOs involved in the new mechanism need to have adequate security clearance as well as professional skills to identify established police procedures. Their integration is envisioned through the office of the Ombudsman, as far as possible, which according to many is not the most ideal solution, nonetheless it is a subnational novelty in an area which thus far was not open to public scrutiny. Effective control through the external control mechanism should also take into account the dignity of police officers. For a balanced relationship that would provide protection from inhumane and degrading treatment, as well as the protection of the rights of police officers, the procedures for all police powers and actions need to be carefully defined.

The concept of the new control mechanism is regarded as an acceptable basis for creating a sustainable and transparent system. This concept has already been implemented in a number of legislative decisions, except for two laws (the Law on Public Prosecutor's Office and the Law on Courts) that require a two-thirds parliamentary majority. Without them the whole mechanism remains non-functional and therefore it is of utmost importance to adopt amendments to these laws, as soon as possible.

### **RECOMMENDATIONS FROM THE FIRST SESSION OF WORKING GROUP 4**

#### **“Establishment of a mechanism for controlling the work of persons with police authorizations and prison police”<sup>4</sup>**

1. Providing priority in the procedure for adoption of the Law on amendments of the Law on the Public prosecutions and the Law on amending the Law on Courts;
2. Adoption of bylaws which with concisely defined provisions will guarantee the efficient establishment and successful functioning of the external oversight system;
3. Establishment of a tool for continuous monitoring of the new concept for an external oversight mechanism and continuous improvement of the working methodology;
4. Organizing debates in all concerned institutions with the involvement of trade union organizations in order to provide a successful and efficient mechanism for external oversight for the Law Enforcement;
5. Design of training programs for all stakeholders in the relevant entities – stakeholder of the system for functioning of the concept of external oversight mechanism;
6. Ensuring high level of transparency by all stakeholders in the process of functioning of the new concept for an external oversight mechanism in order to create

<sup>4</sup> The first session of Working group 4 was held on 29.03.2018

conditions for critical review and analysis of its functioning by the civil society (professional and public);

7. Adoption of a separate document – Action plan that will determine the specific activities, the stakeholders of the activities, the deadline for their realization and possible fiscal implications, in order to provide an efficient methodological approach for fully establishing the concept of the external oversight mechanism for the Law Enforcement, in the direction of creating all the conditions for its functioning;

8. With the functioning of this new mechanism, the emphasis on controlling the work of the police from one side is increasing, which is certainly a benefit for every democratic society, but on the other hand, it is imposed on and recommended to further develop standard operating procedures for the application of all police powers, professionalization of the staff who will assess the conduct of the police and their continuous training, which provides a certain balance within this new concept of an external oversight mechanism.

The second session, held on June 21, 2018, in the Club of Deputies, in Skopje was on the topic of **Asylum - International and Temporary Protection**. In addition to members of the Working Group in Parliament, competent ministries, academic and expert circles, as well as NGOs, the session was attended by the Minister of Interior, Oliver Spasovski, and the director of the Slovak League for Human Rights, Zuzana Stevilova, who connected via Skype. In his introductory address, Minister Spasovski pointed out that two months ago the new Law on International and Temporary Protection came into force, which defined the status and procedures in the refugee protection process. He emphasised that the country has the option of short-term, temporary protection of refugees only, and rejected the speculation about the opening of permanent refugee camps.

The debate analysed the benefits and disadvantages of the new Law on International and Temporary Protection. It was concluded that this is a quality legal framework based on the previous 2003 Asylum Law with respect to domestic regulations, but also with regard to the obligations arising from the commitment to full EU integration. Furthermore, it was emphasised that the legal framework should be upgraded with the adoption of a series of by-laws to ensure the institutional operability and functionality of the law. It is necessary to raise the level of regional and international cooperation, especially the exchange of data and information in this field. Policies and procedures regarding asylum seekers are not expected to be an easy task for the country, given that no mutually agreed solution to this issue has been found in Europe, often followed by divergent positions among EU member states.

It was concluded that the issue of asylum is again at the focus of European countries, expecting to relocate a large number of migrants according to the not yet fully agreed criteria and readiness for their application. The problem is urgent given that migratory waves can recur at any moment. The country is on a frequent migratory route and therefore necessary preparations must be made for any future migratory waves.

## RECOMMENDATIONS FROM THE SECOND SESSION OF WORKING GROUP 4

### “ASYLUM – International and temporary protection”<sup>5</sup>

1. Providing priority in the procedure for adoption of the Law on amendments of the Law on the Public prosecutions and the Law on amending the Law on Courts;
2. Adoption of bylaws which with concisely defined provisions will guarantee the efficient establishment and successful functioning of the external oversight system;
3. Establishment of a tool for continuous monitoring of the new concept for an external oversight mechanism and continuous improvement of the working methodology;
4. Organizing debates in all concerned institutions with the involvement of trade union organizations in order to provide a successful and efficient mechanism for external oversight for the Law Enforcement;
5. Design of training programs for all stakeholders in the relevant entities – stakeholder of the system for functioning of the concept of external oversight mechanism;
6. Ensuring high level of transparency by all stakeholders in the process of functioning of the new concept for an external oversight mechanism in order to create conditions for critical review and analysis of its functioning by the civil society (professional and public);
7. Adoption of a separate document – Action plan that will determine the specific activities, the stakeholders of the activities, the deadline for their realization and possible fiscal implications, in order to provide an efficient methodological approach for fully establishing the concept of the external oversight mechanism for the Law Enforcement, in the direction of creating all the conditions for its functioning;
8. With the functioning of this new mechanism, the emphasis on controlling the work of the police from one side is increasing, which is certainly a benefit for every democratic society, but on the other hand, it is imposed on and recommended to further develop standard operating procedures for the application of all police powers, professionalization of the staff who will assess the conduct of the police and their continuous training, which provides a certain balance within this new concept of an external oversight mechanism.

<sup>5</sup> The second session of Working group 4 was held on 21.06.2018



The third Session was held on 15 October, 2018, in the Club of Deputies, in Skopje. The topic was, **Migration Flows and Security Challenges**, and over 50 permanent members of WG4, representatives of relevant government departments, NGO activists, university professors, experts, as well as foreign diplomatic representatives and interested citizens, attended the session.

In approaching the topic it was underlined that the experiences of the large migrant wave 2015-2016, as well as the presence of large numbers of migrants on the territory of the European Union, make extremely important and current the issues of their inclusion, as well as for any new migrant waves, including the security aspect. The Dublin regulations and guidelines from the last European Council meeting in Salzburg brought innovations to the regulations that affect our country, as a transit state for continued illegal migration. The crisis related to migration was overcome successfully, but it is now necessary to realistically evaluate the experiences and situations and prepare to deal with future challenges.

It has been suggested that the country is not currently experiencing a huge migration wave as it was a few years ago, but there are indications of the presence of illegal migration. Police bulletins register cases of smuggling of migrants and trafficking in human beings where the perpetrators are our nationals, who are part of domestic and international criminal groups. Illegal and uncontrolled migration presents a serious security challenge. In European countries the trend of growth of non-European citizens continues, which in January this year reached 5.8% of the total population. This has led to an increase in anti-immigrant sentiment and political change in several EU member states. On the eve of the 2019 European Parliamentary elections, the EU is wary of this issue and is proposing changes to the Dublin Migration Document.

This is a complex phenomenon that intertwines security and humanitarian aspects, imposing the need for further institutional upgrading and establishing clearer directions for balanced, legal action. Therefore, the initiative of the Ministry of Interior for a transparent debate on the Draft text of the Law on International and Temporary Protection, including NGOs and expert public, was welcomed.

The topic attracted a great deal of interest from the audience, and over 20 commentators, provided comments, questions, opinions and suggestions to be included in the Session's Recommendations. Due to the need for some of the wording to be refined, it was agreed that WG4 experts and the National Convention team would complete the text, which was submitted for electronic consultation and adopted by the Session participants.

## RECOMMENDATIONS FROM THE THIRD SESSION OF WORKING GROUP 4

### “Migration and security challenges”<sup>6</sup>

Considering that: The Republic of Macedonia is located in the very center of the so-called Balkan migration route; migration is a global phenomenon that shows a tendency to intensify; large migrant flows often receive a crisis character with security and administrative sequences — the experts and members of WG 4 and the NCEU-MK team have proposed and adopted the following recommendations:

1. Creating conditions for the implementation of national plans and strategies by developing and strengthening national capacities for monitoring the implementation of national migration policies.
2. Creation of measurable indicators for effective inter-institutional cooperation.
3. Further development of the statistical database in relation to migration flows in the Republic of Macedonia.
4. Harmonisation of the Macedonian legislation with the new EU regulations with special emphasis on their implementation, as well as continuous monitoring of the European and world programs related to migration.
5. To increase the national capacities for regional and international cooperation of the relevant institutions in the fight against organised crime, with a focus on peacekeeping and human trafficking.
6. To deepen and intensify the cooperation between the relevant institutions and civic associations, through regular consultative meetings and involvement of civil society organisations in the process of adopting migration policies.
7. Despite the experience gained from the previous massive wave of refugees, it is indisputable that every new wave would be a major national challenge. Therefore, it is necessary to continue with:
  - Strengthening the capacities for securing and monitoring state borders;
  - Strengthening the capacities of the Public Prosecutor’s Office in dealing with cross-border crime;
  - To create special teams (expert teams) for work with risky migration groups;
  - Strengthening the capacities of institutions responsible for better and more humane conditions for migrants and refugees seeking international protection;

<sup>6</sup> The third session of Working group 4 was held on 15.10.2018

**New forms of prevention and combating trafficking in human beings** are discussed at the Fourth Session of WG4 held on February 5, 2019. The following experts addressed the session: MIA Secretary of State, Magdalena Nestorovska, Professor of Security Faculty, Trpe Stojanovski, Professor of South East European University Blerim Reka, International Migration Expert-Bratislava, Zukorakaju Vatravava, the head of the National Unit for the Suppression of Migrant Trafficking and Human Trafficking in the Basic Public Prosecutor's Office, Gordana Smakoska, and the head of the MoI's Anti-Trafficking Unit, Ljupco Markudov.

Labor exploitation is a new form of trafficking that requires new forms of prevention, as well as additional education for those categories of people who need to be recognised, as is the case with labor inspectors. The MoI pays attention to educating law enforcement officers, as well as all entities involved in the human trafficking chain, to detect, prevent and combat this phenomenon. The phenomenon itself is thousands of years old, but new forms of exploitation appear daily, as this is one of the most severe forms of organised crime. New forms of combating trafficking in human beings or, according to former terminology - white slavery, need to be found. This is violence to the point of psychological and physical destruction, but it is difficult to recognise and difficult to build mechanisms for its suppression. Children are a particularly vulnerable category. According to Slovak experience, it is important to unite all efforts in the country in terms of work and finances to improve the fight against trafficking in human beings. Cooperation and coordinated efforts by all state institutions, civil society and international organisations are needed.

The National Unit for the Suppression of Migrant Smuggling and Human Trafficking from its Formation has achieved remarkable results in the past one year. Among other things, a successful international action has uncovered an international group that has smuggled a migrant from here to the US and Canada. Key to the successful operation of this unit are mobile teams of social workers, inspectors and psychologists, who first come into contact and discover potential victims. Certain customs in rural areas or in some ethnic communities can present a problem in the fight against human trafficking. There have been cases when the victim does not feel like a victim and accepts his or her position during the testimony.

A key recommendation from this session was that the problem of trafficking in human beings should not only be considered as a criminal phenomenon, but that socio-economic reasons should also be analysed and responded to. More action needs to be taken to prevent and eliminate the assumptions of its occurrence.

**RECOMMENDATIONS FROM THE FOURTH SESSION OF WORKING GROUP 4****“New forms of prevention and fight against human trafficking”<sup>7</sup>**

1. To work on the development of a broader concept of Human Trafficking that will include the causes which contribute to the rise of Human Trafficking and are closely related to socio-economic aspects (poverty, unemployment, discrimination, domestic violence, demand in the countries of destination), acting as the reason for appearance.
2. In the existing bodies working on prevention of Human Trafficking, protection of victims and prosecution of perpetrators, to involve interdisciplinary expert teams as well as representatives of the civil sector who will contribute to identify and define new forms of trafficking (child labor, forced labor, victims of trafficking in human organs and other forms).
3. To move from ratification to the implementation of international conventions on prevention, protection and punishment in human trafficking (the UN Convention against Transnational Organised Crime, the Council of Europe Convention on Action against Human Trafficking, the Palermo Protocol 2000, the Istanbul Convention).
4. To pay more attention to the protection of women and children as higher-risk groups, and to provide resources (institutional, human, and financial) for the implementation of the Istanbul Convention (2011) on the protection of women from violence, forced labor and any other kind of exploitation.
5. To create training programs in order to foster experts for more effective recognition of victims.
6. To organise frequent civic forums (panel discussions, TV and radio discussions, student debates, awarding small grants for research into the occurrence in local environments), in which teachers, local authorities, civic associations and relevant institutions will take part. In addition, wider socialisation is recommended in order to actualise the problem in the local communities in which the risk groups are present.
7. To educate vulnerable groups, especially of young people, to recognise false advertisements on social media, as well as institutional monitoring of adds (sanctioning groups that create false advertisements and detecting criminal associations).
8. The relevant institutions should establish programs for long-term support to victims of trafficking in order to avoid the conditions that will lead them to the same situation.

<sup>7</sup> The fourth session of Working group 4 was held on 05.02.2019

9. To take concrete measures for social inclusion of potentially vulnerable groups (people without documents, unemployed youth, especially unemployed women, persons without any resources).
10. To pay special attention to children leaving school early, because they represent an extremely risky group for human trafficking.
11. To intensify the activities of the relevant institutions in the discovery of the main networks of Human Trafficking (tracking the money, social network research and sanctioning of the organisers).
12. To strengthen cooperation between different institutions by involving the financial police, customs, police, and judicial authorities.
13. To provide dedicated financial resources for the implementation of national strategies for prevention and better protection of Human Trafficking, in practice.
14. Although the concept of prevention, protection and punishment in Human Trafficking is a global phenomenon, local actors such as schools, media, and the local government should all be involved in the fight of Human Trafficking.
15. Taking into account the continuous changes in the modus operandi of human trafficking and smuggling, capacity building activities for the implementation of the Law on Combating Human Trafficking and Cross-Border cooperation should be continued (positive examples include initiatives for signing protocols for cooperation in the area of prevention of smuggling and Human Trafficking with all neighbouring countries).

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The Fifth Session of **Working group 4 - Following the Road to Money: Strengthening Financial Investigation Mechanisms** was held in Tetovo, South East European University, on June 7, 2019. Greeting the participants, the Rector of SEE University, Academician Abdulmenaf Bexheti, emphasised that the inclusiveness of the European integration process is a particularly important process. In this sense universities are convenient places and have the capacity to contribute to this strategic commitment. A body linked to stability and security is also an important element of economic development, if not provided can lead to an exodus of the young populations, which is of particular concern.

In his opening remarks, Interior Minister Oliver Spasovski reminded that a decisive and indiscriminate fight against organised crime and corruption is a priority of democratic states and as such is the focus of activities undertaken to prevent and combat all forms of organised crime. However, achieving this strategic goal is not only sufficient to effectively detect and prosecute perpetrators, but also to effectively seize criminal proceeds, which are the most common motive and main driving force of criminals. To this end, there are already organisational units within the Ministry that are, inter alia, responsible for financial investi-

gations. However, the analysis of more efficient work requires the separation and formation of specialised organisational units. This need stems from the scope of the courses and the complexity of the activities, which require appropriate expert knowledge. The need to develop a multidisciplinary and coordinated approach to conducting financial investigations has also been identified, by strengthening the capacity not only of the Ministry of Interior, but also of the Public Prosecutor's Office, Customs Administration and the Financial Police. The stated objectives are implemented in the Strategy for strengthening the national capacities for conducting financial investigations and confiscation of property and with an Action Plan.

The importance of international instruments for the effective prosecution of financial crime is also discussed. It is underlined that the Republic of North Macedonia has ratified international conventions in the field of organised crime, the fight against money laundering and financing of terrorism and the fight against corruption. The country participates in the work of all international organisations and institutions aimed at enhancing international co-operation in the fight against crime, including through a self-assessment and assessment procedure designed to further harmonise national legal systems with international standards, and to develop specific information exchange and cooperation mechanisms. These activities unequivocally demonstrate the commitment and political willingness to adapt national legislation to international documents. However, it should be noted that the EC reports have made progress, but also speak of the state's inability to prove, prosecute and adjudicate financial crime offences, including the effective deprivation of criminal benefits.

The Slovak experience was also discussed, with expert Pavel Jorkaj presenting more practical examples and results of financial investigations. Of particular interest was the case of a large criminal who transferred ownership of property to a third person, a young 22-year-old grandson. A quick and detailed investigation procedure, which was extended overseas, established that cash was deposited in Hungary on the basis of fictitious lottery profits in England and then transferred to Slovakia for the purchase of EUR 1 500 000 worth of property of additional investments with a profit of 1000 000 euros. Real estate, vehicles, bank accounts and all other property are confiscated. It is emphasised that small countries should specifically focus on financial investigations of illicit incomes and their accumulation, which can be used to corrupt institutions and endanger the rule of law and order.

The relevant participants from state structures, prosecutors, judges, university professors, NGO representatives engaged in the field of security have made a significant contribution, under the presence of a number of local and national media. After the constructive debate, the Draft Recommendations were refined and amended, and the final text was submitted electronically to all participants.

## RECOMMENDATIONS FROM THE FIFTH SESSION OF WORKING GROUP 4

### “Tracking the money trail: Strengthening the Financial Investigation Mechanism”<sup>8</sup>

1. For the purpose of efficient implementation of the Strategy for strengthening the capacities for conducting financial investigations and confiscation of property adopted by the Government of the Republic of Macedonia. Macedonia in March 2018, it is necessary to immediately start the establishment of a National Commission for monitoring the implementation of the Strategy, which should be composed of experts and senior representatives of the institutions responsible for conducting financial investigations, pronouncing and implementing temporary measures for securing the property and confiscation. The National Commission is obliged to submit quarterly reports to the RSM Government on the course of the implementation of the strategy.
2. Effective financial investigations require trained and experienced staff already in the relevant institutions. It is proposed to establish a system that will provide trained and proven cadres in the conduct of financial investigations not to be changed by changing political power.
3. In order to provide quality or timely evidence that is very important for the financial investigations, it is necessary to have a high level of functionality at the investigative centers in the Public Prosecutor’s Office, for which it is necessary to provide additional financial resources that will enable quality and efficiency in the operation.
4. Increase the activity of the Public Prosecutor’s Office in synchronizing the actions of criminal and financial investigations in terms of greater activity of public prosecutors in managing investigations and providing accurate guidelines for the future course of the investigation.
5. Exceeding the practice according to which the subject of confiscation is only the objects that served for the execution of the criminal act, that is, a regular practice of monitoring the property and the financial assets owned by the perpetrators, the members of their immediate family and those formally in the name of someone else .
6. The measure of confiscation of property acquired illegally is not carried out in the manner prescribed by the Law, which requires the Public Prosecutor’s Office to provide quality evidence of the crime and the origin of the property of the perpetrator of the crime. Evidence should be with causal link, that is, proving that the perpetrator’s property is acquired by committing the crime so

<sup>8</sup> The fifth session of Working group 4 was held on 07.06.2019

that the court can make a firm decision on confiscation. In order to increase the efficiency and consistency of the confiscation procedure, besides providing quality evidence, it is proposed to review and clarify the legal provisions that the Court handles.

7. Considering that in the domain of finances (electronic money transfer, use of so-called “black internet”, payment with bitcoins, use of crypto-currency) there are continuous innovations and new risks of transfer and transformation of capital occur, to the extent of inability to the offense and the perpetrator, if there are no trained experts in these areas, require continuous training and training of personnel for conducting financial investigations from all relevant institutions including the police, the customs, the finance ministry seek intelligence and prosecutors, including IT sectors.

The Sixth Session on **Vetting as a Measure for Achieving Institutional Integrity** was held on August 27, 2019, in the Club of Deputies, in Skopje. The session was attended by about 40 participants from the Ministry of the Interior, judges, university professors, foreign and domestic experts, NGO and international activists, as well as journalists covering the field of security and human rights.

The Co-Chair of WG 4, State Secretary in the Ministry of Internal Affairs, Magdalena Nestorovska, in her opening speech presented findings of comparative experiences in the use of vetting, pointing out that there is a possible model for vetting in our country, and that initial steps have been taken in that direction. With regard to the model to be applied in our country it is considered necessary to: determine the source of the problem and whether it can be resolved by vetting; determine which entities will be subject to vetting and in what order the process will be conducted; overcome the feeling that the vetting is being conducted for political elimination; perceive and anticipate financial implications; provide objective international support; define the necessary trained human resources in order to preserve the functionality of the institutions. It is a complex and sensitive process that requires adequate preparation, financial support, cooperation with a number of institutions, guarantees of objectivity, transparency and inclusiveness. The MoI has prepared Information explaining the need and the reasons for the implementation of the police vetting process, on the basis of which the Government has concluded a Working Group to prepare a Draft Plan on the measures, activities and timeframe for implementation of the process.

In the open and constructive debate of the session, particular attention is devoted to several key dilemmas related to the process of questioning the integrity of public servants in institutions where corruption and other forms of illegal activity have been reported. First of all, the question is whether it is possible for the process to be implemented in the police only, leaving out other state institutions? It was pointed out that according to some earlier comparative analysis of the judiciary in the region, where vetting has been conducted, there



was a need for reevaluation and re-election of judges. According to that analysis, the legal setup in our country does not give a possibility for vetting, rather it requires reevaluation of judges. In order to conduct vetting in the judiciary serious legal changes are required. Recent polls, however, show that the public has greater trust in the police, and much less in the judiciary and the prosecution. In a regard, the judiciary, the prosecution and the police are functionally one unit. If the situation in any of these institutions is alarming, that is why the vetting process should be applied to all of them.

The vetting process is an indispensable solution when an institution does not function due to contamination with party - political influences and corrupt economic interests. The dilemma is not whether to initiate a vetting process, but how to ensure its successful implementation. Self-evaluation should be operated internally, but someone needs to control and assist in the process. Accordingly, an additional recommendation was formulated requiring that in the construction of the vetting models carried out with an international partner as a guarantor of neutrality, and to enable the bodies that will follow the process to be represented by civic organisations with expert competences in this field.

The debate also gave rise to the proposal for the necessity of a complex and objective analysis of the factual situation, the need, the procedure and the consequences of vetting the institutions in which it will be implemented. It is particularly important that those institutions plan and be prepared to replace the staff who will not pass the vetting, in order for the institutions can carry out their functional responsibilities.

Such a protective mechanism is needed to prevent the repetition of the situations we now have. Sustainable Vetting is possible if there is a proper implementation of the legal solutions in practice. That is why it is necessary to provide a consensus, not only among the parliamentary parties, but among all main stakeholders in our society. Such a consensus will create a positive climate that the process is implemented to protect the integrity of both the institutions and their employees.

It is also worth noting that it is recommended to provide a brief definition of the vetting provisions contained in the implementing regulation, as well as an appropriate translation into Macedonian for future communication. Possible linguistic formulation - integrity assessment or reevaluation was also indicated.

## RECOMMENDATIONS FROM THE SIXTH SESSION OF WORKING GROUP 4

### “Vetting as a measure to build the integrity of the institutions”<sup>9</sup>

1. The term *Vetting* should be properly translated into Macedonian and thus used in future communication; (possible translation: Integrity assessment or reevaluation). It is also necessary to provide a definition of what constitutes vetting in the MoI and to include it in the legislation on the basis of which it will be implemented.
2. To provide an overall social consensus among main stakeholders in Macedonian society for the implementation of the vetting process. The consensus will create a positive climate that the process is implemented to protect the integrity of staff and the integrity of the institutions themselves.
3. To carry out a detailed analysis of the factual situation in the MoI and in society as a whole. The purpose is to define the need, the procedure and the consequences of the vetting process in the area where it will be implemented. The analysis should primarily provide an answer to what are the foreseeable results of it and whether the vetting will solve the dominant problems in the institution. The analysis should also foresee any risks, possible adverse consequences and prevent them.
4. To develop an Action Plan Program (as part of the analysis), which will be the framework on which the vetting will be done. Before starting the vetting procedure, it is necessary to devise a sustainable solution that will function after the implementation of the vetting. Namely, the vetting institution, perceived as a one-time process, with a clear deadline for start and finish, must create legal, organisational, staffing and material conditions for the creation of a functioning sustainable solution within the existing organisational structure of the institution. It would also be an appropriate guarantee of building and sustaining a credible and professional institution and a permanent investment in protecting the integrity of existing and future employees of the institution.
5. To precisely specify the criteria for the vetting process, what would be the personal scope of the vetting, in terms of which entities, which categories of staff in the institution will be subject to vetting and in what order the process will be carried out; (this will be contained in the Program).
6. The process of building a vetting concept in the institutions must be carried out with international partners as a guarantee of the neutrality of the whole procedure. In the bodies that will monitor the vetting process to enable greater representation of CSOs and associations, which have professional competences in this area, as well as a sufficient number of representatives from the expert and scientific public.

<sup>9</sup> The sixth session of Working group 4 was held on 27.09.2019

7. To establish an Independent Commission of experts and professionals who will conduct the vetting procedure, and to provide an opportunity for Appeal on the Commission's decision, in the interest of protecting the two-tiered process and respect for fundamental human rights.
8. Bearing in mind that this is a very sensitive and complex process, it is necessary to plan and prepare all stages of the process in advance and to undertake preparation for all financial and human resources. Namely, the Program should include that the institutions where the vetting is to be implemented should timely organise trainings in order to select and prepare a sufficient number of trained and qualified staff to carry out this process.
9. The Program should also include the procedure for obtaining documents and information from other non-MoI institutions, such as the PRO, the Agency for Real Estate Cadastre, for the purpose of carrying out the vetting process.
10. The implementation of vetting is a financially dependent process. Therefore, it is necessary to plan and provide sustainable financial resources the financial implications necessary for the implementation of the process. (It is also necessary to provide material conditions required by law for storing documents and materials obtained from the implementation of the veterinary procedure, as well as the appropriate procedure for their protection);
11. It is particularly important that the institutions that will undergo vetting have a procedure in place to replaced any staff that will not pass the vetting process, so that the institutions can continue to function properly.

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The sheer presence and active participation in the debates shows that the National Convention is fulfilling its purpose — providing a discussion among participants from different profiles that opens up a wide range of ideas and suggestions on a range of sensitive topics.

The noticeable presence of the news media is an indicator that the issues discussed are of great interest to the general public. All this suggests that Working Group 4, within the framework of the National Convention, has identified topics of particular interest that have allowed for meaningful and rich discussions to be developed, provided a multidisciplinary approach on each topic, and adopted numerous recommendations which provided additional focus for the activities of all state authorities and institutions, as well as civil society organisations, involved.

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Извештај за Северна Македонија за 2019 година во прилог на Комуникација на Комисијата до Европскиот парламент, до Советот, Европскиот економско-социјален комитет и до Комитетот на регионите Комуникација за Политиката за проширување на ЕУ за 2019 година (<http://www.sep.gov.mk/data/file/Dokumenti/Izveshtaj%202019-F.pdf>)

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НАЦИОНАЛНА ПРОГРАМА ЗА УСВОЈУВАЊЕ НА ПРАВОТО НА ЕВРОПСКАТА УНИЈА (НПАА)

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