



**NATIONAL CONVENTION ON THE EUROPEAN UNION IN
NORTH MACEDONIA (NCEU-MK)**

RECOMMENDATIONS

**12th Session of the Working Group – 3, Judiciary and Fundamental Rights
(Chapter 23)**

Skopje, 4 October 2023.

Topic: "Selection and promotion in judicial institutions - Through greater transparency and quality, to increase citizens' trust in the judiciary"

1. Changes to the Law on the Judicial Council of the Republic of North Macedonia are recommended to define precise and measurable criteria for the election of members of the Judicial Council of the Republic of North Macedonia from among the 'prominent lawyers' and to prevent the existence of the so-called 'rubber norms' (i.e., easily stretchable) provisions, which allow broad interpretations in their application, primarily by the Assembly of the Republic of North Macedonia and the President of the Republic of North Macedonia when proposing and electing members of the Judicial Council of the Republic of North Macedonia.
2. When electing holders of high public offices, especially when electing members of the Judicial Council of the Republic of North Macedonia, it is recommended to take into account the positive experience of the election of members of the State Commission for the Prevention of Corruption of the Republic of North Macedonia that was conducted by the Assembly of the Republic of North Macedonia, where public speeches and interviews (with all candidates) were directly transmitted via the Parliamentary TV Channel. Changes to the Law on Judicial Council are recommended so that this election model is defined as a legal solution.
3. When electing judges for members of the Judicial Council of the Republic of North Macedonia, it is recommended to introduce the so-called census or prescribing a minimum number of votes for election. The existing solution can hypothetically lead to the election of a member of the Judicial Council of the Republic of North Macedonia with only one vote (it can only be the own vote of the judge who has run). This problem is most relevant when a member of the Judicial Council of the Republic of North Macedonia is elected from among the judges of the Supreme Court, and for whose election only the judges of the Supreme Court may vote. Given the small number of such voters, this judge actually has much less legitimacy than the other members of

the Judicial Council of the Republic of North Macedonia elected from among the judges do, although he comes from the highest court in the country. It is unnecessary and inexpedient to elect a member of the Judicial Council of the Republic of North Macedonia from among the judges of the Supreme Court on a separate list (considering the small number of judges and the need for their knowledge and experience in the ordinary courts of law). This is especially so considering that the President of the Supreme Court is an ex-officio member of the Judicial Council.

4. Changes to the Law on the Judicial Council are recommended to define the procedure for termination of the term of office (revocation, dismissal) of a member of the Judicial Council of the Republic of North Macedonia. The term of office of the members of the Judicial Council of the Republic of North Macedonia is subject to regulation by the Constitution of the Republic of North Macedonia, but given the current situation in the Judicial Council, which indicates a flagrant violation of the law, a legally regulated dismissal procedure is recommended.
5. Given the fact that judges elect their own representatives as members of the Judicial Council of the Republic of North Macedonia, it is necessary to supplement the Law on the Judicial Council with provisions on initiating and implementing a procedure for the recall of each of these members, without having previously to conduct a disciplinary procedure against the judge, who is a member of the Judicial Council of the Republic of North Macedonia.
6. The legal provisions that will regulate the procedure for the dismissal of the President of the Judicial Council of the Republic of North Macedonia, should be clear and precise and in accordance with international standards, that is, to clearly determine: the reasons for dismissal; who may propose an agenda item for dismissal; to have a sustained and thorough rationale for the proposal; discussion on the proposal; required number of votes and method of voting. These recommendations aim to avoid any suspicion of bias and external influence during the implementation of this procedure.
7. It should be mandatory to prescribe a time frame (deadline) in which the Administrative Court will be obliged to decide on the lawsuit, which will eventually be submitted by the dismissed President of the Judicial Council of the Republic of North Macedonia contesting the legality of the dismissal decision and a deadline in which the Higher Administrative Court will be obliged to decide on an appeal filed against the decision of the Administrative Court. It is not enough to state that the procedure before the courts is of urgent nature.
8. Considering the problems arising from the way the Judicial Council of the Republic of North Macedonia operates (the untimely handling of petitions for professional misconduct and disciplinary accountability, the election to the higher courts independent of the ranking of the candidates, election and recall of the senior judicial



staff), it is recommended that the Assembly of the Republic of North Macedonia be proactive and use its right to raise the question of accountability of the members of the Judicial Council of the Republic of North Macedonia both proposed and elected by the Assembly of the Republic of North Macedonia, and if there are sufficient arguments to vote for their dismissal.

9. Accountability should always be individual, not collective as such.
10. The transparency of the operation of the Judicial Council of the Republic of North Macedonia is not solely guaranteed through the public sessions of this body. A much more significant element for the transparent operation of the Judicial Council of the Republic of North Macedonia is the existence of an exhaustive and well-argued rationale for every decision of the Council, especially for the decisions made after a procedure of (non)election and (non)dismissal of a given judge. It is recommended that all future decisions of the Judicial Council of the Republic of North Macedonia contain such detailed and comprehensive explanations that will correspond to the enacting clause of the decisions; otherwise, they should be subject to an administrative dispute (after the end of the appeal procedure, if the appeal is rejected), due to non-compliance with the rules of the procedure and the absence of one of the basic elements of the specific legal acts that renders the act null and void.
11. It is necessary to intervene in the Law on the Judicial Council and its provisions on the election of a judge to a higher court and to insert an obligation to offer an explanation why one does not vote, or votes against the first-ranked candidate and subsequent candidates, in order then to proceed with the election of the lower-ranked candidates.
12. It is necessary to consider the possibility of revising the provisions regarding the way of proposing two members of the Judicial Council by the President of the Republic of North Macedonia. Namely, it would be much more sustainable and transparent if the candidates proposed by the President of the Republic of North Macedonia were to be nominated by the professional associations: the bar association, the university community, etc., while the biographies of the proposed candidates were to be published on the website of the Assembly of the Republic of North Macedonia, before being formally elected by the very Assembly.
13. It is recommended to make changes to regulating the voting method in the Rules of Procedure of the Council of Public Prosecutors of the Republic of North Macedonia, in order to specify the definition of the term 'abstain' which is very often used during voting.
14. In the manner of operation and decision-making by the Council of Public Prosecutors of the Republic of North Macedonia, it is necessary to increase transparency, especially in providing a public explanation of the reasons for the election/non-election, which is especially necessary when the non-elected candidates do not have the right to object (such as provided for in the procedure for the election of members

of the Council of Public Prosecutors and of the Basic Public Prosecutor in the Basic Public Prosecutor's Office for Prosecution of Organized Crime and Corruption of the Republic of North Macedonia).

- 15.** In order to raise the quality of the decisions made by the Council of Public Prosecutors of the Republic of North Macedonia, it is recommended to take specific actions to amend the Code of Ethics of Public Prosecutors, and to do so in the shortest possible period. The provisions in the Code of Ethics of Public Prosecutors deny prosecutors the opportunity to comment on the decisions of the Council of Public Prosecutors of the Republic of North Macedonia, as well as to make public statements about the cases the prosecutors currently process.