



# THE RULE OF LAW IN MACEDONIA

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Assessment based on the Rule of Law Checklists developed by the Council of Europe  
(The Venice Commission)

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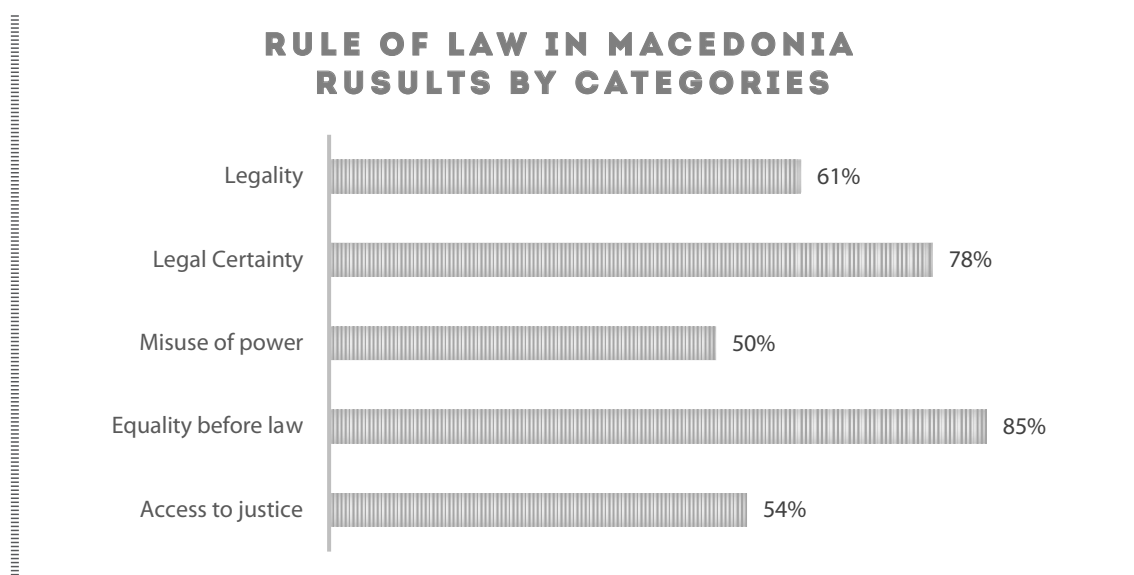


# 1. EXECUTIVE SUMMARY

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This analysis is part of the project “**Developing methodology for assessing the rule of law in Macedonia and Kosovo based on CoE’s Checklist**”. The implementing partners are the Center for Research and Policy Making – Skopje and the Group for Legal and Political Studies – Pristina.

The aim of the research is to assess the current state of affairs regarding the rule of law in Macedonia, for the purpose of identifying the main issues and challenges in this area and to contribute towards shaping the agenda for tackling the priorities in the reform process. The methodology, as stated, is based on the Rule of Law Checklist, developed and adopted by the Venice Commission which is used as a tool for systematic and comprehensive assessment of the fundamental pillars of the rule of law.



*Figure 1 Rule of law in Macedonia – results by categories*

The average fulfillment percentage of Macedonia in the 5 categories of the rule of law, as defined by the CoE’s Rule of Law Checklist is 66 %. This means that the country performs slightly better than the passing score of half of the maximum score concerning the rule of law. The best category within this area is Equality before the law with 85% of fulfillment, which means that the county ensures that all citizens can enjoy their rights, and seek protection by the law, should their right be violated by the state or any other actor. This is true when it comes to the formal guaranties of the citizens’ rights. On the other side, however, as far as the access to justice is concerned, the situation is not that bright. Namely, in this category, Macedonia is performing second worst in comparison to the other categories of the rule of law, with only 54% of fulfillment of this indicator. The situation with the category “Legality” is slightly better, where the fulfillment percentage is 78. The country has the worst result in the category misuse of power, with only 50% fulfillment of the requirement within this indicator.

## 2. INTRODUCTION

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According to the Constitution of the Republic of Macedonia, the political system of the country was established as parliamentary democracy and consists of three branches of government: Legislative (Parliament) Executive (President and Government) and Judiciary. However, the system of checks and balances between these branches of government has often been out of balance as usually the executive branch, especially the government led by the prime minister, dominates over the Parliament and the Judiciary. Political and especially party polarization has been characterizing the society since the independence.

In the past few years, however, Macedonia has been experiencing severe political and institutional crisis that started with revealing the wiretapped conversations by the then opposition leader Zoran Zaev. The turmoil following the period after the scandal was only temporarily calmed with the change of government, as the mandate to form a new government was given to the SDSM leader Mr. Zaev, since the VMRO-DPMNE led coalition did not manage to ensure a ruling majority in Parliament. However, the main challenges related to the reform process, especially the reforms of the judiciary still seem to remain unaddressed.

The wiretapping scandal, nevertheless, revealed more than meets the eye. Besides the obvious corruptive practices in which high ranked officials were involved, also many systemic flaws of the constitutional and political system came to the surface, which has been piling up for decades. In this regard, the judiciary was more affected, as the wiretapped conversations revealed its submissiveness to political and party influence, clientelism, nepotism and other corruptive practices that undermine the questionable trust of citizens in the judicial system in general.

In order to mediate the process and help the country overcome this crisis, the EU sponsored group of experts, led by former EC director Rienhard Priebe in 2015, prepared a report for the situation in the country, giving recommendations for tackling the problematic areas in the society. Firstly, the report underpinned the rule of law as a central issue and priority which has to be strengthened in many areas. In addition, the Priebe Report could be seen as an instrument for agenda setting, given that it delineates the frames in which the (new) government should set its priorities of the reform process.

Regarding the above, the new government adopted the Judicial Reform Strategy for 2017-2022 so as to tackle the challenges and promote the reform process in light of the EU accession process. Indeed, strengthening the reform process has been pointed as one of the top priorities by the EU commission in its progress reports. However, one year after the adoption of the Strategy, it seems that despite the high expectations raised by the government by heralding that it will make fundamental changes, the strategy and the action plan failed to yield any significant improvements in this area.

Undoubtedly, strengthening the rule of law is of highest importance for Macedonia in order to stabilize the country after the post crisis period and to allow the government to reinvigorate the reform process in light of EU and NATO accession. Therefore, in order to contribute to this process, this analysis offers a systematic review of the state of rule of law in Macedonia, which

aims at identifying the current state of affairs, and based on that, to offer recommendation for addressing the key issues in this area. In doing so, the analysis will apply the Rule of Law Checklist developed by the European Commission for Democracy through Law (Venice Commission)<sup>1</sup>. As part of the same project, supported by the Konrad Adenauer Stiftung, the same analysis will be conducted in Kosovo, which will allow us to compare the results and possibly to exchange best practices in strengthening the rule of law in both countries.

### 3. RULE OF LAW CONCEPT

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Rule of law is considered as one of the building blocks of democracies in modern society, which ensures that all people are treated equally before the law and that they can effectively participate in the decision making process. The concept of Rule of Law denotes structure of political power that is based on the respect of the constitution, laws and other acts adopted by the state institutions. Rule of law, as seen from the perspective of the constitutionalists, enshrines the principle of legality which stipulates that all acts and procedures should be based and be in accordance with the constitution as the highest legal act in the state, and in accordance with the law, seen as a generic concept.

However, Rule of Law should not be reduced only to formal applicability of legal instruments, on the contrary, its scope should be broadened to encompass the concept of the rule of justice, meaning that the state should provide protection to all citizens from absolute power, arbitrariness and discretion of those who rule. Moreover, the state should provide legal certainty to ensure that in a country, the law rules, not the people.

Hence, defining the rule of law is rather cumbersome endeavor, having in mind the different notions of it around the globe, which is based on their specific political and legal culture. Therefore, the Council of Europe, on the 86<sup>th</sup> plenary session, held on 26<sup>th</sup> March, 2011 adopted the report on the rule of law, which aims to reconcile the differences in notions in using the term Rule of Law, along with the use of the synonym such as "Rechtsstaat". In doing so, the report concludes that defining rule of law as concept is a difficult and complex endeavor, so it delineates the elements of the rule of law and the Rechtsstaat. These elements include:

1. Legality, including a transparent, accountable and democratic process for enacting law
2. Legal certainty
3. Prohibition of arbitrariness
4. Access to justice before independent and impartial courts, including judicial review of administrative acts
5. Respect for human rights
6. Non-discrimination and equality before the law.

Rule of Law is also one of the fundamental values of the European Union. As it is stated by the European Commission, the EU is based on the rule of law as every action taken by it is founded

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<sup>1</sup> Rule of Law Checklist, adopted by the European Commission for Democracy through Law, on its 106 plenary session on 12<sup>th</sup> of March 2016

on the treaties that had been approved by the EU member states. In that sense, the EU requires full respect of the European Convention on Human Rights and the Charter of Fundamental Rights of the European Union. Furthermore, the rule of law is one of the key requirements for EU membership, set out in the Copenhagen criteria, to which two negotiating chapters are dedicated: Chapter 23 – Judiciary and Fundamental Rights and Chapter 24 – Freedom, Justice and Security.

To put it more bluntly, the EU requires from the countries that want to join to make sure that their judiciary is independent and impartial: their government and its officials are accountable and fight against corruption, and that the process of law-making is transparent, participatory and fair.

## 4. METHODOLOGY

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The aim of the research is to assess the current state of affairs regarding the rule of law in Macedonia, for the purpose of identifying the main issues and challenges in this area and to contribute towards shaping the agenda for tackling the priorities in the reform process. The methodology, as stated, is based on the Rule of Law Checklist, developed and adopted by the Venice Commission which is used as a tool for systematic and comprehensive assessment of the fundamental pillars of the rule of law. The methodology was designed according to the aims of the research and includes the following elements:

- Creating matrix for data collection and imputation, based on the indicators in the checklist
- Qualitative data collection
- Data imputation which required translation of the qualitative data into quantitative data, as to enable comparison between the countries in the region and beyond
- Data analysis
- Preparing report and policy brief including recommendations

The same methodology will be applied in Kosovo, and the two analyses will be compared for the purpose of identifying best practices in certain areas of the rule of law, so it can contribute towards the reform process in both countries and eventually strengthening the rule of law.

The checklist is comprised of 23 indicators, grouped into 5 categories:

- Legality
- Legal certainty
- Prevention of abuse (misuse) of power
- Equality before law and non-discrimination
- Access to justice

The indicators within each group are further operationalized to questions that need to be answered in order the indicator to be fulfilled. Each operational question is assigned with a score, 1 point if the operational question is answered yes, and 0 points if the answer is no, and 0.5 points if the question is partially answered. Thus, the percentage of fulfillment of an indicator



shows the ration between the maximum points that can be obtained and the real points obtained within the indicator i.e. how many operational questions are fulfilled. For example, if certain indicator has 8 operational questions (8 points), and 6 are fully fulfilled (6 points), then we can say that the indicator is 75% fulfilled ( $6/8=0.75$  i.e. 75%). However, the intention of the analysis is to give as well a qualitative interpretation of the results in order to help policy creators and decision-makers better shape the agenda.

## **5. RULE OF LAW IN MACEDONIA - DATA ANALYSIS**

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### **5.1 LEGALITY**

This category is comprised of 8 indicators which are enlisted below. In its broadest sense, the principle of legality is a requirement of all legal acts, procedures as well as legal subject to act and to be in compliance with the law. This principle is a key element of various understandings of the principle of the rule of law around the world, whether it is part of the American notion of “Government under the law”, German notion of “Rechtsstaat”, or the French “Etat du Droit”. It should be noted however, that the principle of legality is not strictly confined to the requirement of legal acts to be in compliance with the law, but goes beyond and requires the law to be in compliance with the higher legal act – the constitution, establishing thus, the principle of hierarchy of legal acts. The legality has two aspects – formal legality, which stipulates the legal act to be adopted by the state body that is established as competent for adopting legal acts by higher legal norms, and material legality that stipulates that the “lowest” legal act should be in compliance with the higher legal act.

#### **5.1.1 SUPREMACY OF THE LAW**

According to Article 51 of the Constitution of the Republic of Macedonia, the laws must be in accordance with the Constitution, and all other regulations with the Constitution and laws. Everyone is obliged to respect the Constitution and the laws. The Constitution of the Republic of Macedonia is a codified constitution outlining the country’s system of government and basic human rights adopted in the Macedonian Parliament on November 17, 1991. The Constitution of the Republic of Macedonia is the highest legal document - lex superior, all other acts in the state should be complying with the provisions of this act.

Findings of the research show that even though the supremacy of the law is to a large extent ensured, still there is room for improvement in this area. This is especially true when it comes to respecting this principle in practice, especially in political and institutional crisis when it is more needed. In Macedonia, however, due to the political crisis and as a consequence of the political agreement in Przino, a legal precedent arises from the promulgation of a law that goes beyond the frames of the Macedonian Constitution. The Assembly of the Republic of

Macedonia together with the President of the Republic of Macedonia issued a Decree on the proclamation of the Law on Public Prosecution for Prosecution of Crimes related and Arising from the Contents of the Illegal Interception of Communications in 2015 Pursuant to Article 106 of the Constitution: The Public Prosecutor's Office is a single and independent state body that prosecutes perpetrators of criminal acts and other criminal acts determined by law and performs other activities determined by law. But the newly created Special Prosecutor's Office works without further legal obstacles.

When it comes to whether regulations are adopted without delay when required by legislation, Article 52 of the Constitution, stipulates that the laws and other regulations are published before they come into force and the laws and other regulations should be published in the "Official Gazette of the Republic of Macedonia" no later than seven days from the day of their adoption. The laws shall come into force at the earliest on the eighth day from the day of publication, and exceptionally, as determined by the Assembly, on the day of its publication. In accordance with the provisions of the Constitution, the laws shall be proclaimed with a decree. The President of the Republic and the President of the Assembly shall sign the decision on the proclamation of laws. According to Article 79 of the Rules of Procedure of the Constitutional Court of the Republic of Macedonia: "The decision of the Constitutional Court of the Republic of Macedonia that repeals or annuls a law, regulation or other general act shall produce a legal effect from the day of its publication in the "Official Gazette of the Republic of Macedonia". In Article 80 it is written that the execution of the legally valid individual acts adopted on the basis of a law, regulation or other general act that is annulled by a court decision cannot be allowed or enforced, and if the enforcement is initiated, it will be stopped.

Article 2 of Law on the Government of the Republic of Macedonia stipulates that "the Government of the Republic of Macedonia as the holder of the executive power is an institution of the Republic of Macedonia that performs its activities independently within the framework of the Constitution, laws and ratified international agreements, and on the basis of the principles of transparency, efficiency and protection of human rights and freedoms". The Government and the other institutions of the executive branch have a legal duty to work in accordance with the Constitution and laws in the Republic of Macedonia.

According to Article 11 of the Rules of Procedure of the Constitutional Court of the Republic of Macedonia "The procedure for assessing the constitutionality of a law and the constitutionality and legality of a regulation or other general act is initiated by a decision of the Constitutional Court on the occasion of an initiative submitted". In accordance with Article 12, everyone can file an initiative for initiating a procedure for assessing the constitutionality of the law and the constitutionality and legality of a regulation or other general act. Article 13 stipulates that the submitter of the initiative and the submitter of the challenged act are participants in the procedure before the Constitutional Court. In Article 14 "The Constitutional Court can initiate a procedure for assessing the constitutionality of the law, that is, the constitutionality and legality of a regulation or other general act. When examining the constitutionality of the law, that is, the constitutionality and legality of a regulation or other general act, the Constitutional Court may assess the constitutionality and legality and the provisions of the regulation or other general act that are not contested in the initiative". According to Article 86, the decisions of the Constitutional Court are carried out by the submitter of the law, the other regulation or the general act that is annulled or abolished by a court decision. The decisions by which the Court decides on the protection of rights and freedoms determined by the Constitution are performed by the institution or organization that passed the individual act that was annulled by the court decision, i.e. the body or organization that took over the action that the

Constitutional Court prohibited with a decision. The Constitutional Court monitors the execution of its decisions and, if necessary, requests the Government of the Republic of Macedonia to secure their enforcement. (Article 87) Review of the conformity of the acts and decisions is regulated in the Rules of Procedure of the Assembly of the Republic of Macedonia in the Article 160 "If the regular working body and the Legislative Committee find that certain provisions of the draft law when adopting the amendments in the second reading are inconsistent with each other or are not in accordance with the Constitution or other laws, they shall inform the Assembly thereof and propose possible solutions".

## **INDICATOR FULFILLMENT: 81% |**

### **5.1.2 COMPLIANCE WITH THE LAW**

The competences of public authorities in Macedonia are defined by the Constitution and by special laws, regulations, by-laws and rulebooks. Their functioning is legally established through the Law on the Government of the Republic of Macedonia, the Law on the Assembly of the Republic of Macedonia, the Law on Local Self-Government and separate legal norms for other public institutions.

According to Article 8, paragraph 4 of the Constitution of the Republic of Macedonia, the separation of powers is carried out in legislative, executive and judicial authority. According to Article 110 of the Constitution of the Republic of Macedonia, the Constitutional Court decides if there is a conflict of competences between the holders of the legislative, executive and judicial authorities. The decision on the conflict of competencies of the central institutions and the units of the local self-government, as well as on cases of impeachment of the President of the Republic.

However, it must be noted that in many occasions the acts undertaken by the public authorities put into question the compliance of such action with the law, or even with the highest legal act, the Constitution. A fresh example for this is the so called Prespa Agreement with which, as the government said, the name dispute with Greece should be settled. However, the Prespa Agreement is criticized on many aspects. Firstly, the sole act of signing the agreement by the Minister of Foreign Affairs was seen as illegal and not in compliance with the Constitution, since the international agreements are (by law) signed by the President of the Republic of Macedonia (Article 119 p.1). According to paragraph 2 of the same article, the Government (in this case the Minister of Foreign Affairs) could conclude international agreement but only in special occasions when that is specifically prescribed by law. Secondly, the agreement envisaged a consultative referendum to be organized in order the citizens to have their say on this agreement i.e. whether they support the agreement or not. The judge of the Constitutional Court Elena Gosheva, expressed doubts on the legality of the procedure, claiming that the referendum question is confusing for the citizens, since it provided three separate answers. Moreover, since it asks whether you support the NATO accession, if NATO is treated as a military alliance, then according to the Constitution, the citizens should decide on this on obligatory referendum.

In spite of the fact that separation of powers is defined in the Constitution and further regulated with the laws and by-laws, there are often cases where the law provisions are not respected fully.

**INDICATOR FULFILLMENT: 83% |**

### **5.1.3 RELATIONSHIP BETWEEN INTERNATIONAL**

#### **LAW AND DOMESTIC LAW**

Pursuant to Article 118 of the Constitution of the Republic of Macedonia, international agreements ratified in accordance with the Constitution are part of the national legal order and cannot be amended by law. The Assembly of the Republic of Macedonia ratifies the international conventions.

The Macedonian legal system ensures compliance with human rights law, including binding decisions of international courts. This is regulated with Article 98 of the Constitution, which states that “the courts decide on the basis of the Constitution, the laws and international agreements ratified in accordance with the Constitution”. According to Article 118, International agreements ratified in accordance with the Constitution are part of the internal legal order and cannot be changed by law. Courts rule on the basis of the Constitution and laws and international agreements ratified in accordance with the Constitution.

Furthermore, it also establishes clear rules on implementation of these rules with Article 18, paragraphs 2, 4 and 5 of the Law on Courts of the Republic of Macedonia stating that “when the court considers that the application of the law in concrete cases is contrary to the provisions of an international agreement ratified in accordance with the Constitution, it shall apply the provisions of the international agreement, if they can be directly applied”. Further in paragraph 5, the Article envisages that in concrete cases, the court could directly apply the final and enforceable decisions of the European Court of Human Rights, the International Criminal Court or another court whose jurisdiction is recognized by the Republic of Macedonia, if the decision is eligible for enforcement.

**INDICATOR FULFILLMENT: 100% |**

### **5.1.4 LAW-MAKING POWERS OF THE EXECUTIVE**

The Assembly of the Republic of Macedonia is a representative body of the citizens and the holder of the legislative power in the Republic (Article 61, Constitution of RM). The organization and functioning are regulated by the Constitution and the Rules of Procedure. In essence, according to the Constitution, the Assembly is given more power, but it is controlled by the ruling political party that comes to power, which manifests its control through the executive power - the government (for example the Assembly adopts the Constitution, elects and politically controls the Government and other holders of the public institutions that are also elected by the Assembly of the Republic of Macedonia (and more in Article 68 of the Constitution).

**INDICATOR FULFILLMENT: 75% |**

## 5.1.5 LAW-MAKING PROCEDURES

In recent years, a higher degree of use (utilization) of the practice of passing laws under the shortened procedure has been noted. Pursuant to the Rules of Procedure of the Assembly of the Republic of Macedonia (Article 178), the proposer of the law may propose to the Parliament to discuss the proposal of the law on shortened procedure when (1) it is not a complex and comprehensive law, (2) when the validity of a law is terminated or certain provisions of a law or when (3) there is no complex and extensive harmonization of the law with the law of the European Union. The procedure for passing laws and other acts is regulated in the Rules of Procedure of the Assembly of the Republic of Macedonia. Pursuant to Article 132, each MP in the Assembly, the Government and at least 10,000 voters (authorized proposer of a law) has the right to propose passing a law. According to Article 133, the initiative for passing a law to the authorized proposers can be given by every citizen, group of citizens, institutions and associations. The initiative addressed to the Assembly shall be submitted to the Members of Parliament and shall be notified to the submitter of the initiative.

The draft law is submitted to the President of the Assembly. The President of the Assembly immediately, and at the latest within three working days from the day of submitting, submits it to the Members of Parliament, in written or electronic form, which starts the legislative procedure. (Article 137) The proposal of a law that has not been submitted by the Government shall be submitted by the President of the Assembly to the Government for the purpose of giving an opinion (Article 138).

According to Article 145, for proposal of a law that is of broader interest, the Assembly, after the general debate, may decide to conduct a public discussion according to that law and to determine a working body that will organize the public discussion. The working body that organizes the public discussion will:

- take care that the draft of the law is published in order to be made available to citizens, public institutions, institutions, citizens' associations, political parties, trade unions and other interested parties,
- provide gathering and arranging the opinions and suggestions that were made during the public discussion and
- prepare a report on the results of the public discussion (Article 146).

Pursuant to Article 147, the draft of the law that is put on public discussion is published in the daily press, a call for submission of opinions and proposals is announced and the deadline within which they can be submitted is determined. In this way, the public is involved in the process. The proposal for amending or supplementing the draft law is submitted in the form of an amendment.

The President of the Assembly may decide to conclude the debate on the proposal of the law, amendments and other acts within the competence of the Assembly, and for determining the day and time when the Assembly will announce.

The laws are enacted with the majority of the votes of the Members of Parliament determined in the Constitution of the Republic of Macedonia and the law (Articles 165 and 166).

The participation of the public and the civil sector is regulated by several laws, regulations and codes, and its promotion was noted with the accession of the Republic of Macedonia and its efforts through the global initiative for an Open Government Partnership. The draft and the draft laws are published on the website of the Single National Electronic Registry of





this right may be restricted only in conditions of military and state of emergency. The freedoms and rights of the individual and the citizen can be limited only in cases determined by the Constitution. The freedoms and rights of the individual and the citizen may be restricted during a military or state of emergency according to the provisions of the Constitution. According to Article 27: Every citizen of the Republic of Macedonia has the right to move freely within the territory of the Republic and freely choose the place of his residence. Every citizen has the right to leave the territory of the Republic and return to the Republic. The exercise of these rights may be restricted by law only in cases where it is necessary for the protection of the security of the Republic, the conduct of a criminal procedure or protection of human health. According to Article 126: In the event of a military or emergency state, the Government, in accordance with the Constitution and by law, adopts decrees with the force of law. The authority of the Government to adopt decrees with legal force lasts until the end of the military or state of emergency, which the Assembly decides. According to Article 127: During a state of war, if the Assembly cannot meet, the President of the Republic may appoint and dismiss the Government and appoint and dismiss officials whose election is in the competence of the Assembly. Article 128 reads as follows: The mandate of the President of the Republic, the Government, the judges of the Constitutional Court and the members of the Republic Judicial Council shall be extended during the duration of the military or state of emergency. In the Rules of Procedure of the Assembly of the Republic of Macedonia in Article 167, it is stated that exceptionally, a law can be issued in emergency procedure when required by the interests of the security and defense of the Republic or in cases of major natural disasters, epidemics or other extraordinary and urgent needs. Article 10 of the Law on the Government of the Republic of Macedonia states that during a military or emergency situation, if there is no possibility for convening the Assembly, the Government shall adopt decrees with legal force issues within the competence of the Assembly. Article 21 stipulates that the Government may decide by a majority of the votes of the members present at the session for the efficient realization of the security and the implementation of the preparations for defense and other extraordinary circumstances. This is also regulated by Article 36 of this Law.

Pursuant to Article 126, in the event of a state of war or emergency, the Government, in accordance with the Constitution and by law, adopts decrees with the force of law. Authorization of the Government to adopt decrees with legal force lasts until the end of the military or state of emergency, for which the Assembly decides. The working body can also decide with the majority of votes of the members of the body present at the session when it takes urgent measures for efficient realization of the security of the state and the implementation of defense preparations and in other emergencies.

**INDICATOR FULFILLMENT: 75% |**

### **5.1.7 DUTY TO IMPLEMENT THE LAW**

The government of the Republic of Macedonia, according to Article 91, is responsible for the implementation of the laws in the country and for that purpose defines the strategy for their implementation. However, no particular sanctions are foreseen as to ensure effective implementation of the legal acts, apart from political responsibility and accountability before the Parliament.

Accordingly, the indicator's fulfillment is 25% per cent, meaning that basic provisions which regulated this area are in place, but further steps are needed in order to contribute towards strengthening of the rule of law in the country.

**INDICATOR FULFILLMENT: 25% |**

### **5.1.8 PRIVATE ACTORS IN CHARGE OF PUBLIC TASKS**

The accountability of the private actors in charge of public tasks is measured based on the question whether the law guaranties that non-State entities which, fully or partially, have taken on traditionally public tasks, and whose actions and decisions have a similar impact on ordinary people as those of public authorities, are subject to the requirements of the Rule of Law and that are accountable in a manner comparable to those of public authorities. Our analysis did not find any special requirements for the private actors' accountability but, it is assumed that the general requirement for the rule of law i.e. respect of the general law regulating the area, and the government bodies in charge of the law implementation is applicable in this case.

**INDICATOR FULFILLMENT: 0% |**

## **5.2 LEGAL CERTAINTY**

### **5.2.1 ACCESSIBILITY OF LEGISLATION**

The first indicator in this category is the accessibility of the law. In this regard, according to Article 52 of the Constitution of the Republic of Macedonia, laws and other regulations are published before they enter into force. The laws and other legal acts must be published in the "Official Gazette of the Republic of Macedonia" no later than seven days from the day of their adoption. Furthermore, it is stipulated that laws enter into force at the earliest on the eighth day from the day of publication, and exceptionally, as determined by the Assembly, on the day of its publication. On the website of the Single National Electronic Registry of Regulations (ENER), citizens can follow the notifications and preparations of the draft laws that are in the process of their adoption. ENER is an electronic system that, in addition to the existing regulations in the Republic of Macedonia, contains notices for the beginning of preparation of a draft law, draft RIA Reports, draft laws of the ministries in the phase of preparation, consolidated texts of laws, annual plans for implementation of RIA after the ministries, relevant documents from the analyzes carried out by the ministries, as well as the comments, opinions and opinions of the affected stations on specific draft legal solutions.

As for the ease of accessibility, all laws that are published in the Official Gazette of the Republic of Macedonia are available on the website of the official Gazette in free copies in online format and citizens can also be subscribed to receive the contents in hard copy, etc.

**INDICATOR FULFILLMENT: 100% |**





## 5.2.6 NON-RETROACTIVITY

Pursuant to Article 52 of the Constitution of the Republic of Macedonia, laws and other regulations cannot have a retroactive effect, except in cases when it is more convenient for the citizens. Also on these issues there are many court decisions of the Constitutional Court of the Republic of Macedonia, and it refers to the preservation of the rule of law and the maintenance of the principle of Article 52 of the Constitution.

**INDICATOR FULFILLMENT: 100% |**

## 5.2.7 NULLUM CRIMEN SINE LEGE AND

### NULLA POENA SINE LEGE PRINCIPLES

According to Article 14 of the Constitution, no person may be punished for an act committed before it was not established by law or other regulation as an offense and for which no punishment had been prescribed. Article 1 of the Criminal Code further states that no punishment or other criminal sanction can be imposed on a person who, before being committed, was not defined by law as a criminal offense and for which a punishment was not prescribed by law.

**INDICATOR FULFILLMENT: 100% |**

## 5.2.8 RES JUDICATA

According to Article 14 of the Constitution of the Republic of Macedonia, no one can be trialed again for a crime for which he has already been trialed and for which a verdict has been brought. This is also regulated by Article 7 of the Criminal Procedure Law, which emphasizes the Prohibition of Double Trial or Punishment.

As for the revision of the judicial decision, the states that the final court decision has an inviolable legal effect. However, the court decision can be changed or revoked only by a competent court in a procedure prescribed by law. Article 33 stipulates that the Court of Appeal is competent: 1) to decide upon appeals against decisions of the Basic Courts from its area; 2) to decide on a conflict of jurisdiction between the courts of first instance in their area; and 3) to perform other activities determined by law.

**INDICATOR FULFILLMENT: 75% |**

## 5.3 PREVENTION OF ABUSE (MISUSE) OF POWER

Regarding the legal safeguards against arbitrariness and abuse of power (*détournement de pouvoir*) by public authorities, it must be noted that legal framework that regulates this area is largely in place. However, its implementation is to large extent dubious. Namely, the relevant institution, responsible for implementation of the legal provisions generally lacks resources, or in many cases institutions have failed to establish any cooperation between themselves in

order to effectively tackle the issues related to abuse of power. For example, many reports and analysis have shown that the cooperation between the two leading institutions in this area, the State Commission for Prevention of Corruption and State Prosecutor Office is on a very low level, which results in very low number of prosecution of public officials, despite the citizen's perception of widespread corruption and abuse of power. In this regard, the most emphasized example is with the former Prime Minister Vlado Buchkovski, who was sentenced for 2 years for abuse of power in 2014, but has not served the sanction yet. What is more, recently some media connected his name as one of the possible ambassadors to the US.

**INDICATOR FULFILLMENT: 50% |**

## **5.4 EQUALITY BEFORE LAW AND NON-DISCRIMINATION**

Article 8 of the Constitution of Republic of Macedonia determines the fundamental values of the constitutional order of the Republic of Macedonia. These are the basic rights and freedoms of the person and citizen recognized by the international law and established by the Constitution; the free expression of national affiliation; legal protection of property; humanism, social justice and solidarity.

In the following Article 9 of the Constitution of the Republic of Macedonia, it is stated that the citizens of the Republic of Macedonia are equal in their rights and freedoms, regardless of sex, race, color of the skin, national and social origin, political and religious beliefs; property and social status. The citizens before the Constitution and laws are equal.

The equality of all citizens is also guaranteed by the labor market, in addition to the basic fundamental rights that each citizen has. Everyone has the right to work, free choice of employment, protection at work and material security during temporary unemployment. Every workplace is available to everyone under equal conditions. Every employee has the right to adequate earnings. Every employee is entitled to be paid daily, weekly and annual leave (Article 19 of the Constitution of the Republic of Macedonia).

Equality is also guaranteed in education. As prescribed in the constitution, everyone has the right to education, which is available to everyone on equal terms. Primary education is compulsory and free of charge.

Article 2 of the Law on Prevention and Protection against Discrimination states that the protection and prohibition of discrimination applies to all natural and legal persons in the process of exercising the rights and freedoms guaranteed by the Constitution and the laws of the Republic of Macedonia. Furthermore, article 3 prohibits any direct or indirect discrimination, recourse and incitement to discrimination and aiding in discriminatory treatment based on sex, race, color, gender, belonging to a marginalized group, ethnicity, language, nationality, social origin, religion or belief, other types of beliefs, education, political affiliation, personal or social status, mental and physical disability, age, family or marital status, property status, health status or any other basis provided for by law or by ratified international agreement.

## 5.4.1 EQUALITY BEFORE THE LAW

According to Article 9 of the Constitution of the Republic of Macedonia, citizens are equal in their rights and freedoms, regardless of sex, race, skin color, national and social origin, political and religious beliefs, property and social status. The citizens before the Constitution and laws are equal. However, the international institutions, the Council of Europe and European Union have criticized the Law on Prevention and Protection of Discrimination on the ground that it does not include the gender identity and sexual orientation in the list of grounds for discrimination.

As for the remedy against discriminatory or unequal application of the law, Article 34 of the Law on Prevention and Protection against Discrimination stipulates that a person, who believes that due to discrimination has been violated for some right, is authorized to file a lawsuit before a competent court. In the procedure, the provisions of the Law on Civil Procedure are applied respectively. The procedure is urgent.

Furthermore, Article 34 of the Law on Prevention and Protection against Discrimination states that a person who believes that due to discrimination has been violated for some right is authorized to file a lawsuit before a competent court. In the procedure, the provisions of the Law on Civil Procedure are applied respectively. The procedure is urgent.

However, the Law on Prevention and Protection of Discrimination (LPPD) has been subject of criticism from the Council of Europe and the European Union. In particular, the critics were related to the text of the Law, as well as to the implementation of the law. The main criticism concerns the weak institutional framework, especially the lack of independence and impartiality of the Commission for Protection against Discrimination, lack of financial and human resources, the non-mention of the sexual orientation and gender identity in the list of grounds for discrimination, non-availability of free legal aid for bringing a court case and some other deficiencies.

**INDICATOR FULFILLMENT: 85% |**

## 5.5 ACCESS TO JUSTICE

### 5.5.1 INDEPENDENCE AND IMPARTIALITY

According to Article 98 of the Constitution of the Republic of Macedonia, the judicial power is exercised by the courts and they are independent. The Court judges on the basis of the Constitution and laws and international agreements ratified in accordance with the Constitution. The organization of the judiciary is unique and extraordinary; the courts are prohibited. Protection from the control of the judiciary is accomplished by the fact that the types, competence, establishment, abolition, organization and composition of the courts, as well as the procedure before them, are regulated by law, which is adopted by a two-thirds majority of the total number of Representatives. Pursuant to the Constitution (Articles 99 and 100), judges enjoy immunity for which the Assembly decides, and the Constitution prohibits political organization and action in the judiciary. The judge has no limitation on the duration of the mandate, which increases his/her professional independence from political influence.

The Law on Courts determines the basic principles stipulated in the Constitution of the Republic of Macedonia. Article 1 of the Law states that the courts are independent state bodies.

Courts in application of the law protect human freedoms and rights. In accordance with Article 11: the judge decides impartially by applying the law on the basis of a free assessment of the evidence. Any form of influence on the independence, impartiality and autonomy of the judge in the exercise of judicial office on any grounds and by any subject is forbidden. The procedure for the selection of judges and magistrates and the necessary criteria are specified in the Law on Courts (Articles 41-50).

Even though the legal framework guaranties the independence of the judiciary, in practice the judiciary independence has been undermined by political and party influence, which is evident in the politically and party coated court decisions, which has been established as a practice since the independence of the country. EU progress reports since its beginnings, as well as reports by the US state departments have constantly pointed out on the selective justice of the judiciary. Even the controversial Special Prosecutor’s Office has been criticized for the alleged party or political agenda trying to attain. As stated above, all this developments and state of affairs in the judiciary have, to a large extent, shaped the perceptions of the public that is characterized with low level of trust.

## **INDICATOR FULFILLMENT: 50% |**

### **5.5.2 ACCESS TO JUSTICE AND FAIR TRIAL**

As stated elsewhere, the respect of the principle for fair trial before independent and impartial courts, free of political and party influence is continuously criticized by both domestic and international experts over the last years. In order to improve the access to justice, the judiciary in the first place has to improve transparency and accountability of its work for the purpose of strengthening the trust of the public in the judicial system in general. Next issues that to a large extent impede the access to justice is the selective justice, which in most cases is politically influenced, favoring public officials from the ruling party.

As part a research conducted by Metamorphosis<sup>3</sup> on the accessibility of the judiciary, courts have scored 58% under relevant indicators in this category.

In light of the trials of the high ex-government officials which stemmed from the wiretapping scandal, prosecuted by the Special Prosecutor, many prominent CSOs that monitor the judicial practice and the process of trialing the accused, raised its worries on the dynamics of the processes having in mind that some of the trials lasted more than 8 hours which might violate the right of fair trial in reasonable time.

Regarding the fees related to the trials and court proceedings, a survey conducted in Macedonia has shown that as many as 87 % of the respondents said that the fees are high.

Regarding the presumption of innocence, article 13 of the Constitution of the Republic of Macedonia states that people charged with a criminal offense shall be presumed innocent until their guilt is established by a final court decision. The person unlawfully deprived of liberty, detained or unlawfully convicted shall have the right to compensation of damages and other rights determined by law.

<sup>3</sup> <http://metamorphosis.org.mk/wp-content/uploads/2017/07/%D0%9E%D1%82%D0%B2%D0%BE%D1%80%D0%B5%D0%BD%D0%BE%D1%81%D1%82-%D0%BD%D0%B0-%D1%81%D1%83%D0%B4%D1%81%D1%82%D0%B2%D0%BE%D1%82%D0%BE-%D0%B2%D0%BE-%D0%9C%D0%B0%D0%BA%D0%B5%D0%B4%D0%BE%D0%BD%D0%B8%D1%98%D0%B0-%D0%B8-%D1%80%D0%B5%D0%B3%D0%B8%D0%BE%D0%BD%D0%BE%D1%82-%D0%B5%D0%BD%D0%B3.pdf>

As a general principle, the presumption of innocence is part of the Law on Criminal Procedure, which in Article 2 clearly states that a person charged with a criminal offense will be considered innocent until his/her guilt is established by a final court verdict. All state bodies, media and other entities are obliged to abide by the rule, and with their public statements about the ongoing procedure, they must not violate the rights of the defendant and the injured party, as well as judicial independence and impartiality. By ratifying the European Convention for the Protection of Human Rights, it has become an integral part of the legal system of the Republic of Macedonia. Article 6 of this Convention refers to the right to a fair trial, which includes the presumption of innocence.

The legal framework that guaranties presumption of innocence is fully in place, nevertheless, in practice many violations of this principle were identified, mainly from the media. As far as citizens are concerned, 50% believe that this principles is not respected in the country, a research conducted by relevant CSOs has shown the above-stated.<sup>4</sup>

Article 134 that regulates the legality and enforceability of decisions from the Code of Criminal Procedure states that the judgment and the decision become effective when they can no longer be challenged with an appeal or when an appeal is not allowed. The enforceable judgment is enforced when its delivery is performed and when there are no legal obstacles for the enforcement. If no appeal is lodged or the parties have denied or withdrawn from the appeal, the verdict is enforced by the expiration of the deadline for appeal, that is, from the day of denial or cancellation of the appealed appeal. If the court that has rendered the judgment in the first instance is not competent for its own enforcement, it will be delivered to the body responsible for the enforcement verified a copy of the verdict with a certificate of enforcement. Unless otherwise stipulated by this Law, the decisions shall be executed when they become legally valid.

**INDICATOR FULFILLMENT: 58% |**

## 5.6 PARTICULAR CHALLENGES TO THE RULE OF LAW IN MACEDONIA

The process of implementation of the principles of the rule of law in Macedonia has faced many challenges over the past years. Even though in general the legal and institutional framework is in place, the implementation and practicing of the principles of rule of law has been oscillating. Following the wiretapping scandal, as many area shortcomings of the rule of law related area has been exposed, the expert group led by Reinhart Priebe, has analyzed the situation in Macedonia and produced a report in which the group focused on the area where urgent action for intervention is needed.

In general, the recommendations stated that democratic governance, ensuring transparency in public affairs, guaranteeing the freedom of media as well as fighting corruption need to be ensured as overriding objectives in the country.

As for the corruption, it still remains a main challenge in the society, given its prevalence and the deficiencies of the institutions to effectively tackle this problem. In addition to this, there is a lack of political will on a highest level for implementation of the key strategic documents and action plans for successful reduction of corruptive practices in the society. Implementation of

<sup>4</sup> <http://civicamobilitas.mk/wp-content/uploads/2018/03/Sumarni-podatotsi-od-anketa-Fer-i-pravichno-sudene.pdf>

the court rulings is still a major problem, which downplays any significant effort undertaken by the relevant stakeholders.

As for prevention of corruption in public administration and the elected and appointed officials, the Law on Prevention of Corruption regulates the obligation to registration of property. Thus, Pursuant to Article 33 paragraph 1 of the Law, an elected or appointed functionary, a responsible person in a public enterprise, public institution or other legal entity disposing with state capital, in the election or appointment, and at the latest within 30 days from the day of election or appointment, has to fill in a questionnaire with a detailed inventory of real estate, movables of greater value, securities and receivables and debts, as well as other property that is in his possession, or ownership of the members of his / her family, stating the basis for acquiring declared property and shall notarize statement by a notary public for revoking protection of banking secrecy in relation to all accounts in domestic and foreign banks.

According to paragraph 2, the person referred to in paragraph 1 of this Article has an obligation to fill in a questionnaire within 30 days after the termination of the function. Questionnaires are submitted to the State Commission and the Public Revenue Office. Furthermore, an elected or appointed functionary, as well as another official person or responsible person in a public enterprise, public institution or other legal entity disposing with state capital that within three years from the day of termination of office or duty will establish a trade company or begin to deal with profitable activity in the area in which they worked, they shall be obliged to notify the State Commission within 30 days.

Special emphasis was given to the data collection and surveillance, having in mind that interception of communication was one of the main reasons that stirred the political crisis in the country, following the release of audio tapes recorded by the national security service at the Ministry of Interior by the then opposition leader Zoran Zaev. Thus, it became clear that effective measures that regulate the monitoring of the surveillance process should be adopted and implemented urgently. However, despite the clear recommendations by the expert group, up until now, this sector still needs effective and substantive measures as to ensure democratic oversight of the surveillance.

As a main body in preventing corruption, The State Commission for Preventing Corruption still lacks capacities and resources to effectively address main anticorruption issues. Some progress is made in investigating corruption and effectively prosecuting the offenders, but this is only true for low level corruption, whilst high level corruption still remains unaffected to a large extent.



## 6. CONCLUSION

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The average fulfillment percentage of Macedonia in the 5 categories of the rule of law, as defined by the CoE's Rule of Law Checklist is 66%. This means that the country performs better than the passing score of half of the maximum score concerning the rule of law. The best category within this area is Equality before the law, which means that the county ensures that all citizens can enjoy their rights, and seek protection by the law should their right be violated by the state or any other actor. This is true when it comes to the formal guaranties of the citizens' right. On the other side however, as far as access to justice is concerned, the situation is not that bright. Namely, in this category, Macedonia is performing second worst comparing the other categories of the rule of law, with only 54% of fulfillment of this indicator. Slightly better is the situation in the category Legality, where the fulfillment percentage is 78. The worst result the country has is in the category misuse of power, with only 50% fulfillment of the requirement within this indicator.

Hence, findings of the analysis have shown that whilst legal and institutional frameworks are largely in place, the implementation still remains weak spot in the process. The rule of law has been one of the most employed concepts in the political discourse related to EU and NATO accession process. Nevertheless, it seems that its value and applicability is largely misunderstood among the state actors.

One of the areas where most urgent interventions are needed, according to this research and many others in same field, is the judiciary. Constantly being under political and party control, one of the key priorities should unequivocally be ensuring its independence and partiality. In this regard, the Priebe report, and other relevant recommendations such as those of the Venice Commission, EU annually progress reports, delineate the main agenda that needs to be accomplished in order to reform this sector.

Misuse of power has surfaced as one of the worst categories in this analysis. And this may not come as a surprise. Many cases in which high government officials were involved have remained either not prosecuted or the court decision not being enforced. Recently, the former Prime Minister Nikola Gruevski has been sentenced to two years in prison for misuse of power, so we will wait to see weather this time, unlike Vlado Buchkovski, the court decision will be implemented.

As the principles of the rule of law are not fully respected in the country, the corruption is a widespread phenomenon. This is corroborated with the fact that the country is ranked very low on the indexes prepared by Transparency International and other researches that measure perception of the corruption.

Another key issues in the country that proved detrimental to the rule of law in Macedonia, is the effective control and oversight of the surveillance and data protection. In this regard, even though some progress has been made in last two years, there are still no effective guaranties that surveillance will not be abused for political or party purposes.

Last but not least, the citizens' trust in the system, especially in the institutions should be restored, as it has been constantly undermined in the past years. To that end, there is no better way as to promote, respect and fully implement the principles of the rule of law in all aspects of the society.



## 7. RECOMMENDATIONS

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In order to address the outstanding issues and key challenges in the field of the rule of law, the European commission drafted a list of urgent reform priorities that in most parts cover that deficiencies identified with this analysis. In that sense, in order to avoid any overlapping recommendations, we think that implementation of the urgent reforms priorities is of utmost importance for strengthening the rule of law in the country.

For that purpose, the Government in 2017 adopted the so called “3-6-9”, which meant that reforms will be implemented in 3, 6 and 9 months sequentially. In 2018, the report of implementation of the plan was handed in to Mr. Samuil Zbogor, High Representative of the EU delegation in Macedonia, which according to Bujar Osmani, Vice Prime Ministers responsible for the European affairs, 90 per cent of it has been implemented, and the remaining 10% are in hands of other institutions to implement it.

However, as the research has shown, the effect of the reforms is still blurred. Therefore, the key issues should be still addressed, in the first place those being:

- Misuse of power should be addressed on both legal and practical level. Special focus should be given on the prosecution of the public officials and effective implementation of the court decisions.
- Access to judiciary should be improved. The perception of the citizens is that justice is expensive, selective and party influenced. Therefore, the reforms in the judiciary should think about lowering the cost, strengthening the transparency and accountability of the judiciary in general and to ensure its independence.
- Law making procedures should be improved and the practice of adopting laws in shortened procedure should be reduced.
- As for the duty to implement the law, there should be provisions allocating the responsibility for implementing the law more specifically, and provisions which will envisage sanction in case the law was not implement adequately.
- Fight against corruption should be further strengthened as the country ranks low on every report for corruption. The focus should be more on implementation of the legal framework and strengthening the capacities of the relevant institutions.
- Effective oversight and monitoring of the surveillance and data protection should be one of the priorities of every government, as the trust in the responsible institutions has been shattered with the recent developments.

## 8. ANNEX – 1

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### RULE OF LAW INDICATORS BY CATEGORY

#### **A. Legality**

1. Supremacy of the law
2. Compliance with the law
3. Relationship between international law and domestic law
4. Law-making powers of the executive
5. Law-making procedures
6. Exceptions in emergency situations
7. Duty to implement the law
8. Private actors in charge of public tasks

#### **B. Legal certainty**

1. Accessibility of legislation
2. Accessibility of court decisions
3. Foreseeability of the laws
4. Stability and consistency of law
5. Legitimate expectations
6. Non-retroactivity
7. Nullum crimen sine lege and nulla poena sine lege principles
8. Res judicata

#### **C. Prevention of abuse (misuse) of powers**

#### **D. Equality before the law and non-discrimination**

1. Principle
2. Non-discrimination
3. Equality in law
4. Equality before the law

## **E. Access to justice**

1. Independence and impartiality
  - a. Independence of the judiciary
  - b. Independence of individual judges
  - c. Impartiality of the judiciary
  - d. The prosecution service: autonomy and control
  - e. Independence and impartiality of the Bar
  
2. Fair trial
  - a. Access to courts
  - b. Presumption of innocence
  - c. Other aspects of the right to a fair trial
  - d. Effectiveness of judicial decisions

