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**THE LAW ON FREE ACCESS TO INFORMATION  
OF PUBLIC CHARACTER AND ITS RESPECT  
FROM THE JUDICIAL COUNCIL OF RN  
MACEDONIA<sup>1</sup>**

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**ABSTRACT**

The functioning of the judiciary authority is important for each state but above all for each individual citizen. It is for these reasons that the need to assess the openness, publicity and transparency of the judiciary power in the Republic of North Macedonia is evident.

The paper is based on the assumption that openness, publicity and transparency contribute to combating corruption in the judiciary and the state, improving the daily lives of citizens, and increasing trust in institutions, ie the judiciary.

It deals with open situation, publicity and transparency of the Judicial Council as an independent and autonomous body of the judiciary in charge of ensuring and guaranteeing the independence and autonomy of the judiciary.

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<sup>1</sup> professional paper

The paper examines the legal (constitutional, legal and by-law) and institutional framework for an open, transparent and participatory Judicial Council in compliance with the Law on Free Access to Public Information, which is wide enough to enable transparent and participatory functioning of judicial institutions and power.

**Key words:** Judicial Council, Information, Transparency, Participation, Public.

### **1.Introduction**

As a public body, the Judicial Council falls under the regime of the Law on Free Access to Public Information adopted in 2019.<sup>2</sup> Also, the employees in the Judicial Council have the status of employees in the public sector, due to which the Law on Public Employees obliges them as well<sup>3</sup>. The work of the Judicial Council is regulated by a special regulation, which is the Law on the Judicial Council.<sup>4</sup>What is important is that this law does not provide only rules for the functioning of the Judicial Council but also the methods for qualitative monitoring of the courts.

### **2. Provisions on the Law on Judicial Council for publicity and transparency in operations**

The Law on the Judicial Council stipulates several obligations in this part. First of all, the Judicial Council must publish on its website data on the election of its members (Article 14 and Article 25), in addition, the processed quarterly and annual reports on the work of the judiciary must be published (Article 36, paragraph 1, item 14). Article 39 stipulates that the sessions of the Judicial Council are public, i.e. that the public can be excluded only if it is necessary to protect the integrity of the judge or the candidate. The same article stipulates that the Judicial Council prepares minutes of its sessions which it publishes on its website. Article 72, paragraph 5, on the other hand, provides that the Judicial Council announces the decisions made in the repeated procedure. These are cases when the decisions made by the Judicial Council in the first instance were overturned by the Appeals Chamber within the Supreme Court. In these cases, the Judicial Council is obliged to repeat the procedure and make a new decision

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<sup>2</sup>Official Gazette of the Republic of Macedonia, No. 101/2019

<sup>3</sup> Official Gazette of the Republic of Macedonia, No. 27/2014

<sup>4</sup>Official Gazette of the Republic of Macedonia, No. 102/2019

in accordance with the guidelines of the Council of Appeals, and to announce the appropriate decision. The Judicial Council is obliged to publish its annual reports on its website.

### **3. Provisions on the Rules of Procedure of the Judicial Council for publicity and transparency in operations**

At the very end of 2019, the Judicial Council adopted a new Rules of Procedure of the Judicial Council of the Republic of N.Macedonia . Article 18 of the Rules of Procedure elaborates in details the public as part of the work of the Judicial Council, defining that the public in the work of the Council is provided by publishing announcements through the media, announcements through the Council's website for the day and time of the sessions, by publicly announcing the decisions taken by the Council.

The Rules of Procedure envisage organization of open days for informing the general public about the work of the Judicial Council, as well as giving interviews and briefings or participating in debate shows in the media by the President of the Council and other members. Additionally, the Rules of Procedure recognizes the right of dissenting opinion of the members of the Judicial Council and if requested by them, in addition to the decisions of the Judicial Council, they also publish possible dissenting opinions of the members of the Judicial Council, which directly strengthens publicity and transparency in the work of this body.

### **4. Provisions on Strategies relevant to publicity and transparency in the work of the Judicial Council**

The Judicial Council and its work are included in the Strategy for Reform of the Judicial Sector for the period 2017-2022 and its Action Plan. Namely, one of the strategic activities (under number 2.5.1.) In the Action Plan refers exactly to the Judicial Council, i.e. it is envisaged that its sessions in the future should be public. According to the report on the implementation of the Strategy for Judicial Reform, this strategic activity has been successfully implemented. This was done with the amendments to the old Law on the Judicial Council. The sessions of the Judicial Council are public according to the new Law on the Judicial Council from 2019.

## **5. Provisions on relevant international instruments on publicity and transparency in the work of the Judicial Council**

The Republic of North Macedonia has been a member of the Open Government Partnership Initiative since 2011. The state has undertaken to increase the openness of all institutions in the three government sectors: legislative, judicial and executive. However, the Open Government Partnership Action Plan (2018-2020)<sup>5</sup> does not contain specific activities related to increasing the transparency of the judiciary per se. Thus, only one activity in this action plan is related to the judicial system, and that is activity under number 6.1. which is related to free legal aid and improving access to justice. This activity is partially fulfilled, having in mind that a new Law on Free Legal Aid was adopted by the Assembly of the Republic of North Macedonia.<sup>6</sup>

## **6. Provisions on the dual role of the Judicial Council**

The Judicial Council has a dual role when it comes to transparency in the Judicial System. On the one hand, it has an active role, it should monitor the transparency and openness of the judiciary, and on the other hand it appears as a passive entity that has to fulfill legal obligations related in order to achieve transparency.

Talking about the active role, it is about the new competencies of the Judicial Council to qualitatively monitor the work of the presidents of the courts. Namely, the Judicial Council should assess whether all the information that the courts should publish on their websites can be found there. Additionally, the Judicial Council assesses the performance of court presidents by assessing whether the court is actually acting in accordance with the law in terms of access to public information (in accordance with the Law on Free Access). Moreover, the Judicial Council collects reports from the courts and publishes them on its website.

What is disputable from the aspect of such an active role of the Judicial Council is the (in) possibility for it to really be performed. Namely, the Judicial Council has not yet adopted its rules of procedure based on the Law on the Judicial Council from 2019. Therefore, it could not be claimed that

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<sup>5</sup> Available at: <http://www.mioa.gov.mk/?q=mk/documents/open-government-partnership> (last visited on 02.01.2021)

<sup>6</sup> Official Gazette of RM no. 101/2019

the Judicial Council will monitor the websites of the courts, that it will evaluate the work of the presidents, if there are no specific procedural rules for that purpose (which employee or which organizational unit within the Judicial Council will inspect the websites of the courts, how that person / organizational unit will inform the Judicial Council about the findings, how the members of the Judicial Council will assess whether the president of the particular court acted in accordance with the law or not).

When it comes to its passive role, the Judicial Council is the holder of information under the Law on Free Access. This means that it must fulfill the obligations arising from that regulation. In addition, the Judicial Council should publish data on its website and in accordance with the Law on the Judicial Council.

## 7. Concluding remarks

Starting from the premise that the Judicial System in this country is still facing difficulties in terms of its transparency, publicity and openness in the concluding observations, we will systematize the situation in the Judicial Council.

The Law on Free Access to Public Information is the only legal act that is equally binding on every segment of the judicial system. All other rules and regulations are divided in sectors and incomplete in scope (e.g. the Law on Courts and the Rules of Procedure bind the courts but not the Judicial Council or the Academy for Judges and Public Prosecutors, etc.).

From the aspect of this Law we can see the documents and information that the Judicial Council should publish in accordance with Article 10, paragraph 1 and for them we will present whether they comply with what the Law requires.

The following conditions have been **published**: Explain the legal responsibilities of the information holder, its main duties and tasks, basic data for contact with the holder of information such as: name, address, tel. number, fax number, e-mail and website; data on the responsible person with the information holder (CV, contact information, etc.), basic data for contact with the official for mediation with public information with name and surname, e-mail and tel. number; regulations relating to the competence of the holder of information related to the register of regulations published in the Official Gazette; regulations adopted by the holder of information in

accordance with his competence in the form of bylaws: regulations (regulations for internal organization, regulations for systematization of jobs, regulations for protected internal reporting, etc.), regulations, orders, instructions, plans, programs, decisions and other types of acts for execution of the laws and other regulations, when by law they are authorized for that purpose; strategic plans and strategies for the work of information holders, annual budget and annual accounts; annual financial plans by quarters and programs for budget implementation; the manner of submitting an application for access to information (manner of submitting an oral and written application for access to information, as well as an electronic application) as well as published reports on the work submitted to the bodies responsible for control and supervision.

**Partially published:** draft programs, programs, views, opinions, studies and other similar documents related to the acts within the competence of the information holder, announcement for download from the websites in accordance with the legal competences, bulletins, official gazettes , insofar as it is an obligation under the law.

**Not published:** contact details with the person authorized for protection of internal application with name and surname, e-mail and tel. Number; list of persons employed by the information holder, including position, official e-mail and official tel. number; organization chart for internal organization; annual working plans and programs; audit report; the complete documentation related to the public procurements, concessions and agreements for public-private partnership; statistics on the work of the judiciary (The Judicial Council should publish data on the work of the courts, the part of its website entitled "Statistics" and "Analysis" is completely empty. However, when annual reports on the work of the judiciary courts, only those for 2018 and 2016 are published, are not narrative here in the table and do not provide details on the challenges facing the courts, obstacles to their functioning, the number of judges, the number of employees, etc.).

Finally, the **inapplicable** data:types of services provided by the information carriers (information on the physical availability for provision of services and information on e-services, data on legal basis, name of the services, documents and data required provide each of the them, mechanisms for legal protection and other relevant data) and prices for fees for issuing real acts.

When it comes to the Judicial Council, we have already mentioned that a body should monitor whether the courts function in a transparent manner. The Judicial Council monitors whether court presidents maintain the highest quality standards for the judiciary by providing sufficient information on their websites. The Judicial Council should perform this task by visiting the websites of the respective courts. This task of the Judicial Council is set out in Article 92, paragraph 1.1, subparagraph 5 of the Judicial Council Act. Following the adoption and adoption of the new Rules of Procedure of the Judicial Council, it is necessary for the Judicial Council to adopt a special methodology for assessing the transparency and public relations of the courts, with adapted and specific content.

When it comes to the Judicial Council, it should be noted that the website contains up-to-date information for its sessions. Namely, the Judicial Council regularly publishes information on when its sessions will be held. However, despite the fact that the Judicial Council regularly publishes announcements to hold its sessions, it is still not as successful when it comes to announcing its decisions. The part of the website entitled "Decisions" is confusing for users of the website. The decision that first appears is from 2009. You will decide on 2012 and 2015. The decisions from the years after 2015 were not published at all (at least they could not be found by visiting the relevant part of the website). At the bottom of this section of the website is a search engine; although, it is reasonable to emphasize that the purpose of this search engine is to improve the user experience, it is not very functional. Namely, for the users to find a certain decision of the Judicial Council, they should know the date when it was made, or at least provide a time frame (from-to) and look for it among the results. Furthermore, despite the obligation to publish the minutes of the sessions, they cannot be easily found on the website. There is no part entitled "Minutes" as is the case with "Decisions". When you enter the summary record in the web browser, the results that appear from 2015, you can see some new records (e.g. from 2016).

The Judicial Council is also obliged to publish the annual reports on the work of the judiciary. Such reports are published in just two years. The latest is from 2018, and the one before that is for 2016. In addition, these reports are not in narrative form. They are published as tables with basic information on the inflow and outflow of cases. Although these reports provide some relevant information on the work of the judiciary, they are not sufficient for

analysis or studies related to the judiciary. For example, the tables do not allow a researcher or policy maker to assess to the quality of first instance courts as there is no information on the number of revoked or reversed judgments in second instance proceedings. In addition, the lack of additional information does not allow conclusions to be drawn regarding human capacity, technical resources and other challenges facing the courts.

Simply, these figures serve as pure statistical indicators showing the efficiency of the courts. However, without additional information, they cannot be the starting point for any reforms in the judiciary.

It is an indisputable fact that it is necessary to develop a methodology according to which the Judicial Council for websites of the courts as well as to make a detailed analysis of the compliance of the legal framework and building rules based on evidence, adapted by the courts and their real possibilities. It is also necessary to develop a Strategy for Openness of the Judiciary as a five-year document attached to the Action Plan, so that all efforts to increase the transparency, publicity and openness of the Judicial Council and the overall openness of the judiciary will be systematized.

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