



# TRANSPARENCY, ACCOUNTABILITY AND EFFECTIVENESS OF THE COUNCIL OF PUBLIC PROSECUTORS OF THE REPUBLIC OF NORTH MACEDONIA

Policy paper



Институт за човекови права



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# **TRANSPARENCY, ACCOUNTABILITY AND EFFECTIVENESS OF THE COUNCIL OF PUBLIC PROSECUTORS OF THE REPUBLIC OF NORTH MACEDONIA**

Policy paper

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**Institute for Human Rights**

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**Skopje, December 2022**

*This document was prepared with the financial support of the French Embassy. Its content is the responsibility of the Institute for Human Rights and does not reflect the views of the French Embassy or the Government.*

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# INTRODUCTION

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This policy paper was prepared within the framework of the project “Increased Transparency and Accountability of the Council of Public Prosecutors”, financially supported by the French Embassy in Skopje and implemented by the Institute for Human Rights. The policy paper provides a review of the legal framework for transparency, accountability and effectiveness of the Council of Public Prosecutors of the Republic of North Macedonia through an analysis of the Law on the Council of Public Prosecutors and the Law on the Public Prosecutor’s Office.

The policy paper is based on previously conducted activities such as: continuous monitoring of the Council of Public Prosecutors’ sessions; organized workshop on development of communicational skills for greater transparency of the public prosecution system, and conducted expert debate with the purpose to initiate a discussion regarding the challenges with which the public prosecution system is faced with, as well as the need of eventual amendments of the Law on the Public Prosecutor’s Office and the Law on the Council of Public Prosecutors. The purpose of these eventual amendments will be oriented towards the better functioning of the public prosecution system and familiarizing the public with its scope of action.

The above mentioned activities contributed towards a detailed and comprehensive analysis of the need for the preparation of this policy paper, which is structured in two main thematic units: (1) transparency and accountability and (2) effectiveness of the Council of Public Prosecutors . Each of these thematic units is analysed through three different segments such as: (1) review of the legal framework of the Council of Public Prosecutors of the Republic of North Macedonia and analysis of the Law on Public Prosecutors and the Law on the Public Prosecutor’s Office; (2) analysis of the transparency, accountability and effectiveness of the Council of Public Prosecutors in practice and (3) possible amendments to the legal regulation for improvement of the transparency, accountability and effectiveness of these institutions.

Moreover, the policy paper provides conclusions and recommendations for the improvement of the transparency, accountability and effectiveness of the Council of Public Prosecutors, as well as guidance, which could serve well all institutions within the public prosecution system.

# TRANSPARENCY AND ACCOUNTABILITY

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Transparency presumes and guarantees openness in the work of the Council of Public Prosecutors and of the public prosecution system in general. This is ensured by having visibility of their work, in accordance with the competencies provided for in the Law on the Council of Public Prosecutors and in the Law on the Public Prosecutor's Office. Accountability involves the Council of Public Prosecutors presenting its work within its competences to the public and thus bringing it closer to the wider audience.

The Council of Public Prosecutors and the public prosecutors themselves should possess the highest ethical standards, should have integrity and act in accordance with legal norms. The transparency and accountability of prosecutors and of the Council members is shown by openly stating the reasoning behind their decisions and by publishing reports on its work. In addition, the independence of the public prosecution system can be ensured and guaranteed through the existence of the Council of Public Prosecutors – an institution that will protect public prosecutors,<sup>1</sup> but will also act in accordance with the laws when dismissing prosecutors or determining their responsibility in the event of disciplinary proceedings.

The European Court of Human Rights highlights that it is necessary to stress that “in a democratic society, both courts and investigative bodies must remain free from political pressure.” Hence prosecutors should be autonomous in deciding, and, while cooperating with other institutions, they should carry out their duties, without external pressures or interference from the executive government or parliament, bearing in mind the principles of segregation of powers and responsibility.<sup>2</sup>

The Consultative Council of European Prosecutors, in its Opinion No. 8 of 2013,<sup>3</sup> emphasized the importance of transparency in the exercise of the prosecutors' functions, towards the media, the parties in the proceedings and towards the prosecutors themselves. The application of the principle of transparency in the work of prosecutors, in terms of sharing information about their functions and powers, is a way of ensuring public trust. The reputation of the prosecution is an important element in creating public trust in the proper functioning of the justice system. The broadest access to information about prosecutors' activities for the media also serves as a tool to strengthen democracy and develop open interaction with the public. The application of the principle of transparency increases the trust in the public prosecution system and brings its work closer to the citizens, which is a key component in building appropriate (good) relations between the public prosecutors' institutions and the citizens.

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1 Medel Declaration of Principles Concerning the Public Prosecutors, 1996.

2 Consultative Council of European Prosecutors to the Committee of Ministers of the Council of Europe on European norms and principles concerning prosecutors, Opinion no.9, 2014, <https://rm.coe.int/168074738b>

3 Consultative Council of European Prosecutors, Opinion no.8, 2013 on relations between prosecutors and the media, <https://www.coe.int/en/web/ccpe/opinions/preliminary-works/opinion8>

# Overview of the legal framework for transparency and accountability of the Council of Public Prosecutors of the Republic of North Macedonia, by analyzing the Law on the Council of Public Prosecutors and the Law on the Public Prosecutor's Office

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The Law on the Council of Public Prosecutors<sup>4</sup>, as well as the Rules of Procedure of the Council of Public Prosecutors<sup>5</sup> guarantee the transparency of the Council during its sessions, in the process of deciding on the election and dismissal of the members of the Council and prosecutors, as well as in deciding upon a decision adopted in a disciplinary procedure. They furthermore stipulate proactive publication of information, that is, transparency towards the public in relation to its scope of work, taking into account the specificity of the setup of the public prosecution system in terms of the principles of hierarchy and subordination.

The openness of sessions, as one of the prerogatives for transparency of the Council of Public Prosecutors, is guaranteed in Article 10-a of the Law on the Council of Public Prosecutors and in Article 14 of the Rules of Procedure of the Council. The sessions of the Council are public. The public may be excluded only by a decision of the Council, in order to protect the reputation and integrity of a public prosecutor, whereby, for the exclusion of the public, the Council decides by a two-thirds majority vote of the total number of members. In the event that the Council has decided to exclude the public from the session, the President of the Council is obliged to notify the public of the reasons for such a decision and if on that session the Council adopts a decision by voting, the vote on the decision shall be public.<sup>6</sup>

The reasons for the exclusion of the public need to be adequately explained.

The press releases should contain information about the session held, the decisions taken at the session, as well as minutes of the sessions. However, this formal transparency, envisaged by the legislator is not enough. It is also necessary to publish other information relating to the everyday work of the Council of Public Prosecutors, such as information about official meetings held, participation in international conferences, participation of the media and networking with other institutions. It is also necessary to publish strategic documents relating to the work of the Council of Public Prosecutors, in particular the Strategic Plan of the Council of Public Prosecutors for 2022-2025, which was adopted by the Council on 29 August 2022, but it has not yet been published on the Council's website.

Transparency, apart from the sessions which are open to the public and the publication of information on the website, also includes proactively informing the public about issues that are critical for greater transparency. The Council of Public Prosecutors should work on improving

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4 Law on the Council of Public Prosecutors, Official Gazette of the Republic of North Macedonia No.150/07, 100/2011 and 42/2020.

5 Rules of Procedure of the Council of Public Prosecutors, Official Gazette of the Republic of North Macedonia 118/2021.

6 Article 14 of the Rules of Procedure of the Council of Public Prosecutors contains identical provisions.

performance and better informing the public about its scope of work. This information is not only important to the public, but should also be available to the prosecutors themselves.

The information published on the website is not fully updated and accessible. Regular contacts between the Council and the journalists take place only upon election or dismissal of prosecutors.

The Council of Public Prosecutors is an independent body that ensures and guarantees the independence of public prosecutors in the performance of their function.<sup>7</sup> Furthermore, the Law on Public Prosecutor's Office stipulates that the public prosecutor should perform their function lawfully, impartially and objectively, should respect and protect the freedoms and rights of people and of citizens, as well as the rights of other legal entities and within its competences should take care for the effectiveness of criminal prosecution.<sup>8</sup>

The Law on the Council of Public Prosecutors, in Article 13, stipulates that the Council prepares an annual report and submits it to the Parliament of the Republic of North Macedonia. The report should contain data on the number of elected and dismissed public prosecutors, the number of initiated and completed disciplinary proceedings, the staffing in the Public Prosecutor's Office, the material and financial situation in the Public Prosecutor's Office, data on actions taken upon complaints and proposals from citizens and legal entities and other data from the scope of the work of the Council.

Namely, the Annual Report on the work of the Council of Public Prosecutors for 2021<sup>9</sup> contains information relating to the work of the Council in the previous year, whereby it highlights the following: (a) for the first time the Council has its own budget (it was previously funded from the budget of the Public Prosecutor's Office); (b) the Code of Ethics and the Rulebook on Disciplinary Procedure for Public Prosecutors were adopted, and (c) the problem of lack of staff continues, which is the biggest problem and the reason for the untimely actions of prosecutors, which in turn increases the number of complaints. From the analysis of the report, but also from the remarks made by the members of the Council of Public Prosecutors at the session at which the annual report was discussed, it can be concluded that there is a lack of concrete data on how many complaints were justified, how many complaints lead to inspections and supervision, as well as whether the public prosecutor was notified of possible omissions, in order to take further corrective action. It can be concluded that in the Annual Report on the work of the Council of Public Prosecutors for 2021, does not contain any analysis of the complaints, because the Council of Public Prosecutors does not keep a database with information about the complaints.

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7 See Article 2 of the Law on the Council of Public Prosecutors.

8 See Article 7 paragraph 1 of the Law on Public Prosecutor's Office, Official Gazette of the Republic of North Macedonia no.42/20.

9 Annual Report of the Council of Public Prosecutors for 2021, adopted on the 52nd session of the Council of Public Prosecutors held on 6 April 2022 <http://sjorm.gov.mk/%d0%b3%d0%be%d0%b4%d0%b8%d1%88%d0%b5%d0%bd-%d0%b8%d0%b7%d0%b2%d0%b5%d1%88%d1%82%d0%b0%d1%98/>

One of the responsibilities of the Council of Public Prosecutors is to review and evaluate the annual reports of the higher public prosecutor's offices and of the Public Prosecutor's Office of the Republic of North Macedonia. The annual reports of the four higher public prosecutor's offices contain data on the individual basic prosecution offices under each higher prosecution office and data on the work of the respective higher public prosecutor's office. Given that these reports have not been published, no data can be extracted on whether there is an assessment of the work of individual public prosecutors in all prosecution offices analysed in the annual report. The Council of Public Prosecutors positively appraises the reports, but members nonetheless point to shortcomings. Those shortcomings relate to a small number of investigations and inspections carried out on the spot in certain prosecution offices, to backlogs of cases from the previous year, to a small number of requests for protection of legality, to failure to specify the exact number of investigations, to undelivered data on the amount of material damage caused by a criminal offense, as well as to the fact that no measure - confiscation of property - has been imposed in any of the areas of the higher public prosecutor's offices.<sup>10</sup> During the monitoring period, no reports have been returned for amendments. Such a situation is unacceptable, not only because the reports have not been published, but also because there is a certain contradiction manifested by the fact that the reports receive a positive assessment, although shortcomings have been identified, which have not been removed.

The Council of Public Prosecutors has generally positively assessed the Annual Report on the work of the Public Prosecutor's Office of the Republic of North Macedonia, which is based on data obtained from the higher and basic public prosecutor's offices, as well as from the Basic Public Prosecutor's Office for Organized Crime and Corruption. Individually, the members of the Council have provided remarks regarding the shortcomings of the report. These shortcomings relate to: lack of data on the number of complaints submitted to the higher public prosecutor's offices, the number of public prosecutors referred to other prosecution offices, disciplinary proceedings initiated in general and before the Ethical Council, incomplete and unclear analysis of the number of investigations, etc.<sup>11</sup> Considering that there is no uniformity in the reports of the higher public prosecutor's offices, it is not possible to make a comparative analysis, and therefore transparency and accountability is lacking.

The accountability of the Council of Public Prosecutors can also be analysed in terms of its involvement in the discussions on election of public prosecutors. In certain election procedures, the members of the Council discussed about each prosecutor individually, while in others, the discussion by all members of the Council is missing or it is reduced to general statements on the work of the candidates. For these reasons, only the presence of the public at the session will not satisfy the principle of accountability and transparency, because at the session the public does not have the opportunity to hear the reasons why some candidates for public prosecutors are elected and others not.

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10 Minutes from the 53rd session of the Council of Public Prosecutors, Minutes from the 54th session, Minutes from the 55th session of the Council of Public Prosecutors

11 Minutes from the 66th session of the Council of Public Prosecutors <http://sjorm.gov.mk/%d0%b7%d0%b0%d0%bf%d0%b8%d1%81%d0%bd%d0%b8%d0%ba-%d0%be%d0%b4-66-%d1%81%d0%b5%d0%b4%d0%bd%d0%b8%d1%86%d0%b0-%d0%bd%d0%b0-%d1%81%d1%98%d0%be%d1%80%d1%81%d0%bc/>



The purpose of the legislation is not only to exhaust all formally stipulated aspects in the law relating to transparency and accountability, but to leave room for the institution to develop additional mechanisms that will increase transparency and accountability and will bring the work of the Council of Public Prosecutors closer to the public. Such a goal should be accepted as a positive one and as an opportunity to interpret the law in a broader sense, which, in turn, leaves room for creativity in the work of the Council.

## **Transparency and accountability of the Council of Public Prosecutors in practice**

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Transparency and accountability are an indispensable element for the quality functioning of the Council of Public Prosecutors, insofar as its mission is to increase and maintain public trust in the work of the Council, but also in the public prosecution system. Transparency and accountability, as stipulated in the law, guarantee independence, impartiality, quality and effective action of the Council of Public Prosecutors within the scope of its competences. At the same time, they transparency and accountability guarantee the implementation of the principle of the rule of law and ensure an open and transparent justice system.

The Council of Public Prosecutors, in order to be transparent and accountable, needs to continuously ensure transparency while exercising its competencies, to provide sufficient information to the public and the media, in order they accurately to perceive the situation, as well as to regularly inform the public about the sessions held by publishing announcements, reasoned decisions and minutes.

Transparency in the work of the Council is mainly manifested through the possibility for the public to attend the sessions, as well as through the publication of the minutes of the sessions held on the Council's website. The accountability of the Council is guaranteed through its obligation to submit a quality and reasoned annual report on its work to the Assembly of the Republic of North Macedonia, but also through the election and dismissal of public prosecutors and its deciding in the second instance procedure for determining disciplinary responsibility of public prosecutors.

In addition to the referred document, it is necessary to emphasize that the Institute for Human Rights, as of May 1, 2022, regularly monitors the sessions of the Council of Public Prosecutors. During this period, the Council held 18 sessions (the 70th session was extended twice), at which various issues were discussed in terms of reviewing the annual reports of the higher public prosecutor's offices, election of prosecutors in the basic and higher public prosecutor's offices, in the Prosecution Office for Prosecuting Organized Crime and Corruption, as well as the election of the Basic Public Prosecutor of the Prosecution Office for Organized Crime and Corruption, which, in accordance with the Law on Public Prosecution, was performed for the first time by all prosecutors from the prosecution offices.

In terms of transparency and accountability, it can be concluded that the Council of Public Prosecutors is generally transparent and accountable. Sessions are open to the public, except where by law, the public must be excluded. Regarding the manner of conducting the sessions and the engagement of the members of the Council, their engagement is mostly noted when they give their opinions, remarks and proposals. It is noted that the members of the Council pay special attention to the procedural aspects of decision-making, whereby they discuss and adopt a joint decision, which is often unanimous, but there are also separate opinions of certain members, which is recorded in the minutes, and the content corresponds to the addresses of the members, whereby it should be concluded that the minutes of the 69th and 70th sessions, as well as the extensions of the 70th session, have not yet been published. However, when it comes to the election of prosecutors in the basic or higher public prosecutor's offices, one gets the impression that there is a lack of transparency and accountability in several segments of the election procedure due to the following: a) non-publication of the list of candidates, as well as their biographies; b) previous discussions among the members of the Council, etc.

The first remark is given due to the fact that for certain elections, the candidates were known to the media even before the election, as was the case when there was an election of the Basic Public Prosecutor of the Basic Public Prosecutor's Office for Prosecuting Organized Crime and Corruption and the Higher Public Prosecutor of the Higher Public Prosecutor's Office in Skopje. The biographies of the candidates were briefly announced at the session when the election was held, without them being previously published on the Council's website and without familiarizing the public. This gave room for comments by legal experts questioning the expertise of the prosecutor elected (specifically for the election of the Basic Public Prosecutor at the Basic Public Prosecutor's Office for Organized Crime and Corruption). Regarding the election of the Basic Public Prosecutor of the Basic Public Prosecutor's Office for Organized Crime and Corruption, there was no reaction when the names of the candidates were published, but after the election there were reactions and the media wrote about it, but only after the election was finished. The election procedure is legally well regulated because it stipulates that the election is to be performed by fellow prosecutors. The discussions should have been held before the election, i.e., before the professional public, legal experts and civil society organizations reacted to the results of the election. Regarding the election of the Higher Public Prosecutor of the Higher Public Prosecutor's Office Skopje, three candidates applied on the call for applications, and eventually two candidates withdrew from the procedure, but the reasons for the withdrawal of the candidacies were not publicly explained.

The second remark relates to the fact that during every election procedure when public prosecutors should be elected, there is an impression that the decision has already been made behind "closed doors", because each session where a prosecutor is to be elected begins much later than scheduled. This gives an impression that the members of the Council are making previous consultations on the election before the session and agree on which discussions should be public and conducted during the scheduled public session. If there is a discussion about each individual

candidate, most often the members of the Council generally state a general reason for voting, without sharing specific data why they would vote for a particular candidate, but the emphasis is not always on the candidate's professional career and his/her qualities as a prosecutor.

The Law on the Council of Public Prosecutors guarantees formal-legal transparency, which should be raised to a higher level, that is, it should be implemented in practice. From the daily monitoring of the website of the Council of Public Prosecutors, it can be concluded that there is a need for greater continuity in the publication of the announcements for the scheduling of the sessions. This is because the announcement for holding of the 56th session was published on the day of the session, or after it was held. A similar action was noted with the announcement for the holding of the 61st session. In accordance with the Rules of Procedure of the Council of Public Prosecutors, in Article 13 paragraph 5 it is provided that the invitation to the session, with the proposal of the agenda and all relevant materials, as a rule, is delivered to the members of the Council in writing or electronically, at least 3 days before the session. The date, time and place of the session and the agenda are published simultaneously with the invitation on the Council's website. As an exception, the session can be scheduled and held in a shorter period of time, if the urgency of the issue requires immediate action, as well as if all members of the Council agree to it, or for some other reasonable reasons.

The same remarks also apply to the publication of the minutes of the held sessions, but continuity in the publication is required. When monitoring the website of the Council of Public Prosecutors, it can be determined that the minutes of a later session have been published, while the minutes of the previously held session has not yet been made public, despite the fact that the minutes of the previous session are adopted at the next session of the Council of Public Prosecutors, without or with incorporated comments from the members of the Council. For the purpose of timely transparency and familiarization of the public with the decisions made, it is necessary to publish the minutes in order, as they are adopted at the sessions of the Council of Public Prosecutors.

So, the more transparent the public prosecution institutions are, the more their accountability rises to a higher level, and thus the confidence in the prosecutor's function is strengthened.

In terms of communication with the public and the proactive publication of information, from the monitoring of the website of the Council of Public Prosecutors, it can be concluded that information is available regarding the president and members of the Council, their expertise and professional development, the Council's contact information and email address. From the analysis of the proposal Strategy for the communications of the Council of Public Prosecutors, for the period 2018-2021, it can be determined that it has not been fully implemented, but a significant improvement in the transparency and accountability of the institution can be observed. Although its goal was to help in the consistent implementation of the principle of transparency and public involvement in the work of the judiciary, simultaneously strengthening the confidence in the work of the Council of Public Prosecutors, nevertheless, certain mid-term and

long-term goals were not realized in the planned period of time. The mid-term and long-term goals set in the Communications Strategy have not been fully realized, especially in terms of:

- Transformation of the institution, in accordance with the priorities defined in the Strategy for Reform of the Judicial Sector for 2017-2022;
- There is no wider selection of communication tools (except the website and holding a press conference after the election for public prosecutors);
- A strategic partnership with multiple media has not yet been fully developed;
- A blog has not been established on the website, where members of the Council of Public Prosecutors will be able to communicate with citizens and answer their questions.

During the implementation of the project, a workshop<sup>12</sup> was held to increase the communication skills of the Council of Public Prosecutors and the public prosecutor's system, at which the necessary communication tools were presented, with the aim of communicating information that will be clear and understandable to the public, complete and appropriate. In addition, the website, as one of the means of communication with the public and the media, needs to be regularly updated with news and information that will ensure two-way communication with the public and the media. The Council of Public Prosecutors should work on improving performance and informing the public about its scope of work. The information published on the website should be timely, accurate, clear, easily understandable and accessible.

If we analyse the website of the Public Prosecutor's Office of the Republic of North Macedonia, which also contains the websites of the four Higher Prosecution Offices and the Basic Public Prosecutor's Offices, the general impression is that the website is not easy to navigate. From the perspective of transparency, it can be seen that only the e-mail of the Public Prosecutor's Office of the Republic of North Macedonia is available, while the e-mails of the Higher and Basic Public Prosecutor's Offices are not available. The same finding applies to the telephone contacts of the Higher Prosecutor's Offices, Basic Prosecutor's Offices and the Basic Prosecutor's Office for prosecuting organized crime and corruption, where some of the telephone contacts are not functional, and in the case of unpublished e-mails, there is no possibility to establish communication. The website does not contain more detailed data regarding the prosecutors, in terms of the year when the prosecutor was first elected and the year they were assigned to that particular public prosecutor's office. In addition, the Report on the work of the Public Prosecutor's Offices of the Republic of North Macedonia for 2021 has been published, together with the financial review, but the reports of the Higher Public Prosecutor's Offices for the area of Skopje, Bitola, Shtip and Gostivar have not been published, which were previously reviewed and evaluated by the Council of Public Prosecutors. The annual accounts and financial reports for the Basic and Higher Public Prosecutor's Offices refer to the previous years, i.e., more recent accounts and reports from 2021 have not been published.

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12 At the workshop which was held with representatives from the public prosecutor's system (representatives from the Council of Public Prosecutors, the Public Prosecutor's Office, the Higher Public Prosecutor's Office Skopje and the Primary Public Prosecutor's Office Skopje), Dr. Jasmina Mironski - an expert in communication skills, emphasized the need for efficient and timely communication with the public, presenting communication tools and maintaining correct relations with the media.

## Possible amendments to laws and bylaws aimed at improving transparency and accountability of the Council of Public Prosecutors

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Transparency, which is formally and legally regulated in the Law on the Council of Public Prosecutors and the Law on Public Prosecutor's Office, still needs to be fully and effectively implemented in practice. Having in mind the purpose of the laws, as we have previously pointed out, certain changes need to be made to improve the transparency and accountability of the Council of Public Prosecutors.

Transparency and accountability of the Council of Public Prosecutors are particularly important components of the procedure for election and dismissal of public prosecutors, as well as in disciplinary proceedings. Hence, in the Law on the Council of Public Prosecutors, in the section concerning the election of public prosecutors for the Public Prosecutor's Office of the Republic of North Macedonia, the Higher Public Prosecutor's Office and the Basic Public Prosecutor's Office for Prosecuting Organized Crime and Corruption, an amendment should be made adding an obligation, after receiving the applications from the candidates, the Council of Public Prosecutors to issue a statement containing the names of the applicants and their biographies covering the expertise and professional development of each candidate, in order to present them to the public and the media.

The provisions regulating the disciplinary procedure for determining the responsibility of a public prosecutor in both laws (the Law on Public Prosecutor's Office and the Law on the Council of Public Prosecutors) is problematic, given its goal to ensure accountability in the work of the Council of Public Prosecutors. In accordance with the Law on Public Prosecutor's Office, the procedure for determining the responsibility of public prosecutors for disciplinary violation is initiated upon a reasoned proposal submitted by the Public Prosecutor of the Republic of North Macedonia for all public prosecutors and upon a reasoned proposal of the Higher Public Prosecutor of the Higher Public Prosecutor's Office for public prosecutors in a higher public prosecutor's office, for basic public prosecutor from a basic public prosecutor's office and for public prosecutors from the basic public prosecutor's offices, ex officio or after receiving information about the violation. The proposal for initiating disciplinary proceedings, should be accompanied by evidence of the disciplinary violation. A commission of five members or their deputies, is established to conduct the procedure for determining the responsibility of a public prosecutor in the performance of the public prosecutors' duty. One of the members in the Commission is a member from the Higher Public Prosecutor's Office and one member is from the Public Prosecutor's Office of the Republic of North Macedonia, elected by prosecutors from the prosecution offices. The Law on Public Prosecutor's Office classifies the public prosecutor's disciplinary violations in two categories: serious and minor disciplinary violations.<sup>13</sup>

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13 See Article 90-93 from the Law on Public Prosecution Service of the Republic of North Macedonia.

In this disciplinary procedure, the Council of Public Prosecutors plays the role of a second instance body that decides on appeal, whereby it may abolish, change or confirm the proposal of the Commission. Dilemmas arise regarding the competence of the Council of Public Prosecutors, i.e. as to whether the Council is indeed acting as a second instance body, because, in accordance with the Law on the Public Prosecutor's Office, if the majority of members of the Commission consider that the facts and evidence established during the proceedings show legal grounds for dismissing a public prosecutor, they may propose dismissal to the Council of Public Prosecutors, and may also submit the proposal to the public prosecutor subject of the proceedings. Following the proposal for dismissal, the public prosecutor is entitled to appeal to the Council of Public Prosecutors within 7 days since the proposal was submitted.

The terminology used concerning decisions taken by the disciplinary commission and the Council of Public Prosecutors leaves room for confusion, and leads to contradictory interpretation. Namely, the Commission is adopting a proposal for imposing a disciplinary measure, under which the disgruntled prosecutor is entitled to appeal to the Council of Public Prosecutors (Law on Public Prosecutor's Office and the Law on the Council of Public Prosecutors). The question is whether the Commission adopts a decision, and upon that decision the Council of Public Prosecutors takes action as a second instance, or if the document adopted by the Commission is a proposal upon which the Council adopts a decision as a first-instance body, stating if it accepts the proposal for imposing the measure and dismissing a public prosecutor.

Accountability for the work of the Council of Public Prosecutors also cannot be fully achieved with regard to the evaluation of public prosecutors, which now, in accordance with the Law on Public Prosecutor's Office, is being carried out by the Public Prosecutor of the Republic of North Macedonia who evaluates the work of public prosecutors in the Public Prosecutor's Office, the higher public prosecutors of the higher public prosecutor's offices and of prosecutors in the Basic Public Prosecutor's Office for Prosecuting Organized Crime and Corruption. An assessment of the work of public prosecutors in the Higher Public Prosecutor's Office and of the basic public prosecutors in the basic public prosecutor's offices is made by the higher public prosecutor of the respective higher public prosecutor's office. The work of the public prosecutors in the basic public prosecutor's offices is assessed by the higher public prosecutor, after previously receiving an opinion from the basic public prosecutor of that prosecution office.

If the public prosecutor is dissatisfied with the assessment he has received, he may file a written complaint<sup>14</sup> to the Council of Public Prosecutors. Before deciding, the Council of Public Prosecutors may inspect the work of the public prosecutor who filed the complaint, may interview him or the public prosecutor who made the assessment. If the Council of Public Prosecutors assesses that the complaint is well grounded, the decision will oblige the public prosecutor who conducted the assessment to conduct a re-assessment, and will give him specific instructions on which he will have to act. In such a case, the role of the Council of Public Prosecutors is to decide upon a submitted complaint, as a second instance body. The effectiveness and

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14 See Article 52 from the Law on Public Prosecutor's Office of the Republic of North Macedonia.

efficiency of the work of the Council of Public Prosecutors in certain situations is under question, bearing in mind that it cannot make a meritorious decision and assess a public prosecutor, but it can only provide suggestions and guidelines with regard to inappropriate assessment, despite the fact that it reviews the assessment against given criteria. A public prosecutor who is dissatisfied with the assessment may, in any case, raise an administrative dispute regarding the correctness of the assessment.

The evaluation itself is quite complex, because it is based on different criteria: expertise and quality of decisions, legal remedies and other writes; timeliness and efficiency, impartiality and conscientiousness; reputation and ethics worthy of the office; cooperation and attitude towards the parties and other employees in the prosecution office; ability and readiness for professional development and acquisition of new knowledge and organizational abilities.<sup>15</sup> It should be determined if these criteria are really applicable, because prosecutors, in different prosecution offices, have different types of cases. The weight of cases handled in basic prosecution offices for the territory of the basic court with basic jurisdiction differs from the weight of those cases handled in prosecution offices for the territory of basic courts with extended jurisdiction or from those handled by the Basic Public Prosecutor's Office for Prosecuting Organized Crime and Corruption. In this situation we should also mention the promotions of prosecutors, because prosecutors in basic public prosecutor's offices handling cases on the territory of basic courts with basic jurisdiction, and those from prosecution offices for the territory of basic courts with extended jurisdiction, are promoted under the same conditions. For this reason, the career degree of prosecutors should be taken into account in promotions. When reading the legal provisions, it is not clear what is the situation with the imposition of other disciplinary measures.

The Law on the Council of Public Prosecutors regulates the procedure for the election of a member of the Council from the order of public prosecutors and the election of the Basic Public Prosecutor of the Basic Public Prosecutor's Office for prosecuting organized crime and corruption. In these provisions, the turnout of public prosecutors is not determined, that is, how many public prosecutors should vote in order for the election to be considered successful. For that reason, it is necessary to intervene in the Law on the Council of Public Prosecutors and supplement the provisions relating to the election, by determining the census according to which the election will be considered successful, in order to avoid dilemmas in the future if the majority of the public prosecutors would not vote.

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15 See Article 37 of the Law on Public Prosecutor's Office of the Republic of North Macedonia.

# EFFECTIVENESS OF THE COUNCIL OF PUBLIC PROSECUTORS

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Every democratic state that claims the rule of law is a basic principle on which justice in the state will be based, connects the effectiveness of its public prosecutor system with transparency, responsibility and accountability of all structures within the system. Prosecutors are obliged to act fairly, impartially and objectively. Their independence is not a prerogative or a privilege, but an obligation given in the interest of fair, impartial and effective justice. The structure of the prosecution system is hierarchical, and effectiveness is strongly linked to transparent lines of authority and responsibility. Therefore, the highest level of professional skill and integrity is a prerequisite for an effective prosecution and public trust in that service. Skills and integrity should be upgraded through appropriate education and training of prosecutors, with the aim of their further specialization.

International standards that refer to the effectiveness, professional conduct and efficiency of public prosecutors are usually contained in ethical codes that are adopted within the framework of the public prosecutor's system in each individual country.

The Council of Public Prosecutors, in 2021, adopted a new Code of Ethics for Public Prosecutors whose purpose is to establish standards for ethical behaviour, by presenting guidelines and creating a framework for regulating behaviour. The guidelines contained in the Code represent a supplementation, not a deviation from the existing legal regulations and rules that public prosecutors must comply with.<sup>16</sup>

The effectiveness of the Council of Public Prosecutors is also presented in the Rules of Procedure of the Council of Public Prosecutors, as the most important by-law that governs the issues concerning the procedure and the manner of work of the Council, as well as other issues under its authority.

## **Review of the legal framework for effectiveness of the Council of Public Prosecutors through analysis of the Law on Public Prosecutor's Office, the Law on the Council of Public Prosecutors and by-laws**

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For the need of this policy paper, we define effectiveness as the degree of fulfilment of the Council's goals and the competences determined by the Law on the Council of Public Prosecutors. The following competences are particularly important when evaluating effectiveness: selection and dismissal of public prosecutors; decision-making as a secondary authority for determining the responsibility of a public prosecutor; and temporary removal from the office of public prosecutor.

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<sup>16</sup> Code of Ethics for Public Prosecutors, Official Gazette of the RNM no.114/21.



In accordance with the latest amendments to the Law on the Council of Public Prosecutors and the adoption of the new Law on the Public Prosecutor's Office, in the last two years by-laws have been adopted that refer to the smooth and effective performance of the Council's powers, such as:

- Rules of Procedure of the Council of Public Prosecutors of the Republic of North Macedonia (Official Gazette of the RNM no. 118/2021 of 1.6.2021);
- Code of Ethics of the Public Prosecutors of the Republic of North Macedonia (Official Gazette of the RNM no. 114/2021 of 26.5.2021)
- Rulebook on the method of implementing the procedure for determining the responsibility of a public prosecutor for a committed disciplinary violation (Official Gazette of RNM no. 114/2021 of 26.5.2021);
- Rules for determining the manner of supervising the work and actions of public prosecutors (Official Gazette of the RNM no. 6/2021 of 11.1.2021) and
- Rulebook on the form and content of the form and procedure for issuing and revoking identification of public prosecutors and members of the Council of Public Prosecutors (Official Gazette of the RNM no. 6/2021 of 11.1.2021).

The Rules of Procedure, as the most important by-law for the work of the Council of Public Prosecutors, governs the issues related to the procedure and the way of working of the Council, as well as other issues that are within its jurisdiction. The rules of procedure contain provisions on the dismissal of a member of the Council, the powers of the President of the Council and the members, giving opinions on the appointment and dismissal of the Public Prosecutor of the Republic of North Macedonia, as well as on the selection and dismissal of public prosecutors, in general. The Council of Public Prosecutors, after a complaint filed by a public prosecutor, decides on the temporary referral to another prosecutor's office if there is a need for temporary removal from the performance of the office, as well as when an objection is filed regarding the evaluation of the public prosecutor.

The Council of Public Prosecutors, in accordance with its competence, acts on complaints submitted by citizens and legal entities that refer to the work of public prosecutors. If the majority of the members of the Council believe that there are grounds for suspecting that a disciplinary violation has been committed or that the public prosecutor performed his duties unprofessionally or negligently, the complaint, together with all the documents and findings, shall be submitted for further action to the Public Prosecutor of the Republic of North Macedonia.<sup>17</sup>

From the continuous monitoring of the sessions, it can be concluded that the number of complaints is small, and the reason may be due to the fact that the citizens are not familiar with the possibility of submitting a complaint and/or do not know how to write the complaint and to which institution they should submit it.

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<sup>17</sup> See Article 37 from the Rules of Procedure of the Council of Public Prosecutors of the Republic of North Macedonia, Official Gazette of RNM no.118/2021.

The Council of Public Prosecutors, as a competent authority, adopts the Code of Ethics of Public Prosecutors, which contains the standards for ethical behaviour of public prosecutors, which consist of: independence; impartiality; integrity; preventing conflict of interest; efficiency and professional behaviour; professionalism; dignity and restraint. In terms of efficiency and professional conduct, public prosecutors are obliged to respect the deadlines in all phases of the criminal procedure. Cases should be resolved according to the rules of priority in the resolution of cases. Public prosecutors, in order to perform their duty, must have a high level of knowledge of the law and its practical application. This includes obligations for continuous professional development and education. Public prosecutors must respect the principle of fair trial, which is guaranteed by Article 6 of the European Convention on Human Rights and to respect the jurisprudence of the European Court of Human Rights. They must guarantee that the investigation will be conducted according to established standards, in an impartial manner, that all evidence will be collected and that it will be presented to the court in an appropriate procedure.

## **Effectiveness in the work of the Council of Public Prosecutors**

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When assessing the effectiveness of the activities of the Council of Public Prosecutors, both the activities that have been implemented as well as those that have not been implemented, but have an influence on the overall effectiveness of the Council and the realization of its competences, must be evaluated.

Pursuant to Article 6 of the Law on the Council of Public Prosecutors, the Council is composed of 11 members. Currently, the Council has only 8 members, which puts its actions in question. As is currently the case, if a member is absent due to health or personal reasons, the election of prosecutors in several Higher and Basic Public Prosecutor's Offices could not be performed. In this way, the effectiveness of the Council in dealing with issues that are within its competence, and above all for the election of public prosecutors and the filling of vacancies in prosecutor's offices, is called into question. For that reason, it is necessary for the Assembly of the Republic of North Macedonia, as soon as possible, to elect two members from among the ranks of university professors of law, lawyers, former judges of the Constitutional Court, international judges, or other distinguished legal expert.

In general, the effectiveness of the public prosecutor's system is largely questioned due to the lack of staff in the public prosecutor's offices. This leads to untimely actions of the public prosecutors, which in turn leaves space for the parties, especially the injured parties, to react. This was also noted in the Annual Report on the work of the Council of Public Prosecutors for 2021, and that negative trend continues in 2022.

From monitoring the sessions of the Council of Public Prosecutors, it can be concluded that the Council was effective in publishing announcements for the selection of public prosecutors in the Basic Public Prosecutor's Offices, Higher Public Prosecutor's Offices and in the Basic

Prosecution Office for prosecuting organized crime and corruption. However, in terms of selection, that effectiveness is not satisfactory, for several reasons. Namely, at the 60th session of the Council of Public Prosecutors, the agenda item concerning the election of a Senior Public Prosecutor in the Higher Public Prosecutor's Office of Shtip and Bitola was removed from the agenda (the election of these prosecutors was carried out at the 65th session). At the same session, the candidates for the basic public prosecutor in the Basic Public Prosecutor's Office Gostivar and Kumanovo did not receive the necessary majority of the votes. The election of a basic public prosecutor was carried out only in the Basic Public Prosecutor's Offices in Debar, Kocani, Kicevo, Ohrid, Radovish and Prilep.

The Council of Public Prosecutors published an announcement for the election of four prosecutors in the Basic Public Prosecutor's Office for prosecuting organized crime and corruption. This election was postponed twice, that is, the item that referred to the election was postponed for consideration at a future session. Finally, at the 67th session, the members of the Council debated the election, but none of the candidates received the necessary majority to be elected as a public prosecutor in the Basic Public Prosecutor's Office for prosecuting organized crime and corruption. This behaviour of the members of the Council, i.e., postponing the election and then voting against all the candidates, is contrary to the principle of effectiveness of this institution. In addition, the minutes do not list the votes of each member individually, but they are summarized, stating how many votes each candidate received 'for' or 'against'. Considering the fact that the public was present at the election and had the opportunity to hear how each member voted individually for each candidate, the reason why this was not also stated in the minutes is not known. The same remark applies to all other minutes regarding the election of public prosecutors.

In accordance with the provisions of the Law on the Council of Public Prosecutors and the Law on the Public Prosecutor's Office, the Council established a Commission for the implementation of the election of the Basic Public Prosecutor of the Basic Public Prosecutor's Office for Prosecution of Organized Crime and Corruption, which is being implemented for the first time through organizing elections during which all 163 public prosecutors registered in the directory of prosecutors have the right to vote. The procedure was carried out in accordance with the legal provisions, but there were comments from the public and the expert community regarding the lack of transparency and presentation of the candidates who applied to lead one of the most important prosecutor's offices that deals with high-profile cases of corruption and organized crime.

## **Possible changes to the legal regulation to improve efficiency**

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The latest amendments to the Law on the Council of Public Prosecutors, from 2020, significantly reduced its competences in acting and thereby contributed to certain segments of its functioning to not meeting the standards of effectiveness that were previously legally provided as its competences. This means that it is necessary to work on applying structures that will

enable the retention of the Council's independence in the exercise of its competences and in its daily operations.

Namely, in accordance with the Law on the Council of Public Prosecutors and the new Law on the Public Prosecutor's Office, from 2020, the Council does not have the authority to supervise the legal and timely performance of the function of public prosecutors, nor to initiate disciplinary proceedings, for the reason that, in accordance with Article 51 of the Law on the Council of Public Prosecutors, the Council decides on appeals against the decisions made by the disciplinary commission, and, therefore, acts as a secondary authority. Additionally, the Council of Public Prosecutors does not have the authority to transfer public prosecutors from one public prosecutor's office to another.

Regarding the competence of the Council of Public Prosecutors in dealing with the petitions and complaints of citizens and legal entities about the work of the public prosecutors, a member of the Council checks the allegations in the complaint and if they considers that they are founded, he informs the Council, which deliberates the complaint at a session. If the Council assesses that there are grounds for suspecting that a disciplinary violation has been committed or that the public prosecutor performed his duties unprofessionally and negligently, the complaint and the supporting documentation is submitted to the Public Prosecutor for further action. This is actually where the competence of the Council of Public Prosecutors ends. Furthermore, the Council of Ethics is the one that acts and, after the procedure, assesses whether the complaint is founded.

The effectiveness of the Council of Public Prosecutors can only be evaluated from the aspect of the actions of the members in regards to the submitted petitions, their more detailed consideration of the content of the petition and the allegations presented in it. Such action can cause certain problems, if the prosecutor, acting on the complaint submitted by the Council of Public Prosecutors, opens a procedure related to the submitted complaint. After the decision made by him or after the decision of the commission, the Council of Public Prosecutors decides on any objections or appeals submitted by the public prosecutor involved in the procedure. The perception of impartiality here would be called into question, so this situation needs to be resolved in an appropriate way, through certain changes in the Law on the Council of Public Prosecutors and in the Law on Public Prosecutor's Office, which regulate the procedure for selection, dismissal and other disciplinary measures.

In the direction of greater efficiency and effectiveness in the work of the Council of Public Prosecutors, it would be possible to consider an intervention in the regulation in such a way that the Council would have greater autonomy in monitoring the work of public prosecutors in the Public Prosecutor's Office, in the Higher Public Prosecutor's Offices and in the Basic Public Prosecutor's Office for Prosecuting Organized Crime and Corruption. The Council of Public Prosecutors could, taking into account its previous work, propose some changes that would improve the effectiveness of its work.

# CONCLUSIONS

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Transparency, accountability and effectiveness, although to some extent made possible by the Law on the Council of Public Prosecutors and the Law on the Public Prosecution, still need to be improved in certain segments. Improvement should be made by applying certain instruments provided for in international documents and presented at the workshop on increasing the communication skills of prosecutors in the public prosecution system, as referred to in the recommendations.

Laws and regulations should be amended in order to clarify some issues related to the evaluation of public prosecutors in general, as well as in situations when disciplinary measures have been proposed, especially for dismissing a public prosecutor. Although there is a possibility for initiating an administrative dispute, it is unclear whether the obligation of the Council of Public Prosecutors is fully fulfilled, as well as who decides on the election, dismissal and other disciplinary measures against public prosecutors, and in certain situations it is not entirely clear whether the Council acts as a second instance body with capacity to adopt a meritorious decision?

To uniform the manner of preparing the annual reports of the higher public prosecutor's offices, which also contain the reports from the basic public prosecutor's offices in each appellate area, in order to facilitate review and evaluation of the reports. This is important both for the public and for the prosecutors themselves. The annual reports of the higher public prosecutor's offices should contain responses to the remarks previously given by the members of the Council of Public Prosecutors who reviewed the reports.

To research and analyze the effect of the evaluation made in accordance with the previous legal text (the Law on Public Prosecution and the Law on the Council of Public Prosecutors) and the current one.

The analysis of the report for 2021 and the remarks made by the members of the Council of Public Prosecutors at the session at which the annual report was discussed, show that there is a lack of concrete data on how many complaints were well grounded, how many complaints lead to inspections and supervision, and if the public prosecutor was notified of possible omissions, in order to take further corrective action.

The Report on the Work of the Public Prosecutor's Office of the Republic of North Macedonia for 2021 is published on the website of the Public Prosecutor's Office, together with the financial review, but the reports of the higher public prosecutor's offices for the appellate areas of Skopje, Bitola, Shtip and Gostivar have not been published, although they have been previously reviewed and evaluated by the Council of Public Prosecutors.

There is a lack of transparency in the work of the Council of Public Prosecutors since the candidates for public prosecutors and their biographies are not published, and also information about professional activities in the institutions and outside of them are not shared (in relation to the basic public prosecutor's offices, the higher public prosecutor's offices and the Basic Public Prosecutor's Office for Prosecuting Organized Crime and Corruption).

The website of the Public Prosecutor's Office of the Republic of North Macedonia, which contains the web pages of all higher public prosecutor's offices, basic public prosecutor's offices and the Basic Public Prosecutor's Office for Prosecuting Organized Crime and Corruption, should be easily understandable and it should contain the email addresses of the prosecution offices, and not only of the Public Prosecutor's Office of the Republic of North Macedonia. Moreover, certain telephone numbers that are no longer in function should be replaced.

The Draft Communication Strategy of the Council of Public Prosecutors, for the period 2018-2021 has not been fully implemented, especially the medium and long-term goals have not been achieved. It is necessary to implement it fully and prepare a new one for the upcoming period.

Formal transparency stipulated in the laws needs to be fully implemented in practice, in terms of timely publication of announcements for sessions scheduled, information about decisions taken at sessions and timely publication of minutes after their adoption by the Council of Public Prosecutors.

Since no information pertaining to the Council's current activities in terms of meetings with other institutions, press conferences, visits, public discussions, participation in conferences is being published, it is necessary, in the future, to correct this and to publish such information on the website of the Council of Public Prosecutors.

The Council of Public Prosecutors should improve the communication and maintain regular contacts with the media, and should not communicate with the media only when there is election of public prosecutors.

The ambiguity in the assessment of the reports of the higher public prosecutor's offices should be removed (when they are assessed as positive, while still having numerous remarks). Probably a legislative change is needed for this.

# RECOMMENDATIONS

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In order the Council of Public Prosecutors to effectively exercise its competencies, it is necessary the Assembly of the Republic of North Macedonia, as soon as possible, to elect two members from among the university law professors, lawyers, former judges of the Constitutional Court, international judges or other prominent jurists. A stronger instrument for guaranteeing and applying the principle of the rule of law needs to be applied, which will provide for an open and transparent justice system. This could be guaranteed by selecting members of the Council of Public Prosecutors of better quality, who will have greater theoretical knowledge that will be effectively applied in practice and who, as personalities, would have greater professional integrity.

The website, as a means of communication with the public and the media, needs to be regularly updated with news and information that will ensure two-way communication with the public and the media.

The Council of Public Prosecutors should work on improving its performance and on better informing the public about its scope of work. The information published on the website should be timely, accurate, clear and easily understandable and accessible.

The communication tools, especially press releases, need to be concise, precise and should provide information about what is relevant to the media and the public (stating facts and statistics).

Effective communication requires monitoring of the developments in the environment, promotion of the results, monitoring of the changes and timely communication with the public. For this reason, messages should be shared which are clear, expressed in plain language, concise and supported by evidence.

Good relations with the media are needed, which will be based on regular, planned and meaningful communication, which is especially important in building mutual trust between the public prosecution and the public. This should be followed as well as in the communication with the media.

In order to increase transparency, accountability and effectiveness of the Council of Public Prosecutors an intervention in the Law on the Council of Public Prosecutors is needed, in the section relating to the election of public prosecutors in the Public Prosecutor's Office of the Republic of North Macedonia, in the higher public prosecutor's offices and in the Basic Public Prosecutor's Office for Prosecuting Organized Crime and Corruption. The intervention should comprise adding an obligation for the Council of Public Prosecutors to publish a statement with the names of the candidates for public prosecutors as well as their biographies stating their expertise and professional development. This will familiarize the public and the media with the candidates and will enable elections for public prosecutors to be carried out in a timely manner, without unnecessary delay.

Certain changes in the legislation regulating disciplinary proceedings are needed in order this area to be clearly and precisely regulated.

It is necessary to amend the Law on the Council of Public Prosecutors in order to specify how the census is established when electing a member of the Council of Public Prosecutors who is elected from among the public prosecutors and when electing a Basic Public Prosecutor of the Basic Public Prosecutor's Office for Prosecuting Organized Crime and Corruption.

The Strategic Plan of the Council of Public Prosecutors for 2022-2025 was adopted by the Council at the session held on 29 August 2022, but, since it has not been published, it is necessary to publish it on the Council's website.

The Annual Report of the Council of Public Prosecutors should be more comprehensive, especially it should contain more information with regard to complaints. For this purpose, a database should be maintained, and this obligation should be regulated accordingly, for example, in the Law on the Council of Public Prosecutors or in the Rules of Procedure of the Council of Public Prosecutors.

It is necessary to make uniform the annual reports of the prosecution offices, especially of the higher public prosecutor's offices, which contain data on the work of the basic public prosecutor's offices operating in a specific appellate area. The annual reports should contain the same data and statistics in order to compare the work of the higher and basic public prosecutor's offices. The form and the content of the annual reports can be regulated by amending Article 23 of the Law on Public Prosecutor's Office, which provides that each public prosecutor's office should prepare a report on its work, or by a bylaw.

It is necessary to adopt a new communication strategy for the upcoming period, to determine what is needed in order the Public Prosecutors Council to operate smoothly, and to plan for a greater and proactive approach to communication with the public.

In order to increase transparency, accountability and effectiveness in the exercise of its competencies, the Council of Public Prosecutors needs to pay more attention to assessment of reports that have been positively evaluated, and for which numerous remarks have been made. Currently there is a certain dissonance that leads to unnecessary ambiguities. Therefore, assessments should be clear, specific and concise, with sufficient arguments and explanations for the specific grade given.



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