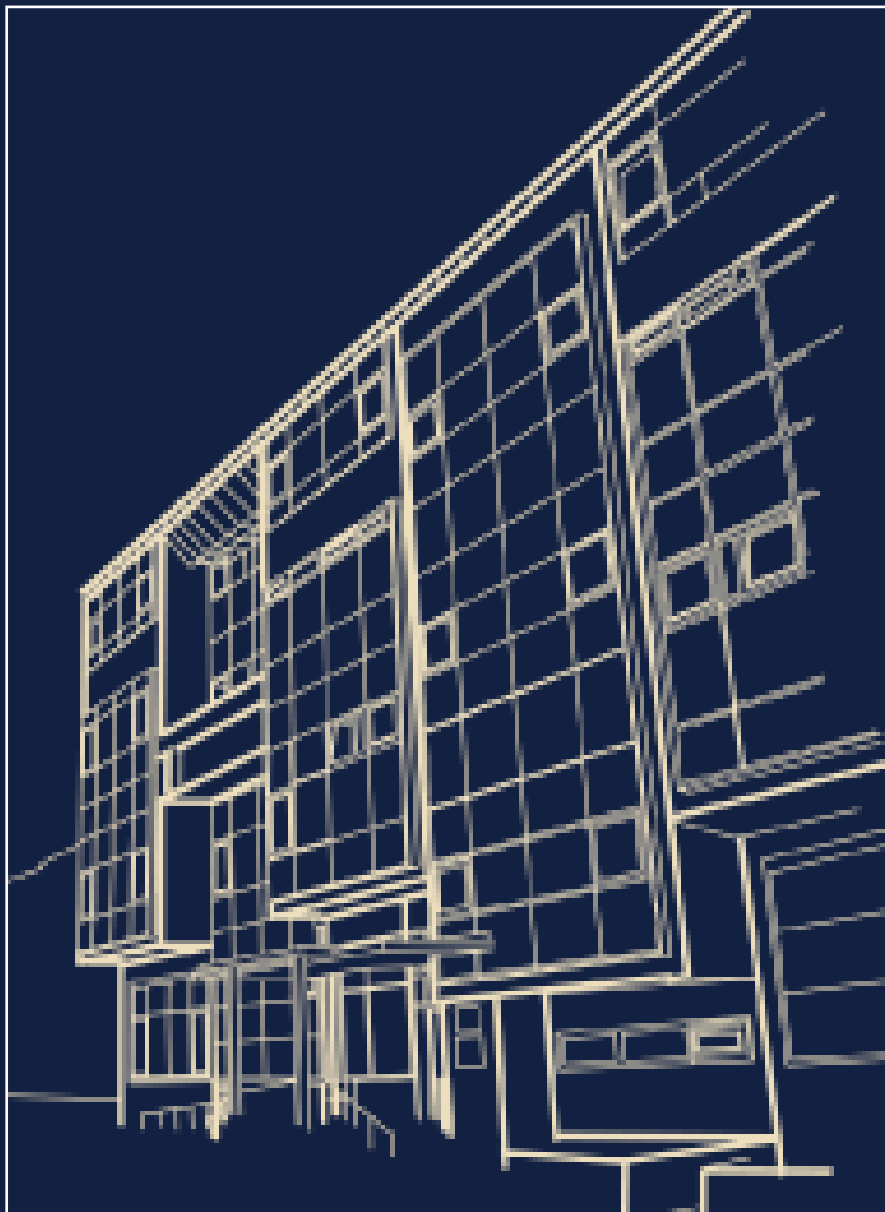


MONITORING REPORT ON

# THE WORK OF THE JUDICIAL COUNCIL

January - June 2022



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# INTRODUCTION

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January - June  
2022

The Institute for Human Rights, by attending all open sessions, regularly monitors the work of the Judicial Council. The aim of this activity is for the Institute for Human Rights to note the problems and progress in the work of the Council, through objective monitoring of its work, as well as to contribute, with conclusions and recommendations based on evidence, towards the improvement of the situation in the judiciary.

This report is divided into three main parts that relate to the **transparency**, **effectiveness** and **efficiency** of the Judicial Council.



For the purposes of this report, the following sources of information were used: attendance at all open sessions of the Judicial Council, reports on the Judicial Council, announcements and documents published on the website of the Judicial Council of the RNM, media reports, etc.



## TRANSPARENCY OF THE JUDICIAL COUNCIL

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15 sessions  
held

The transparency regarding the announcement of the sessions shows continuity, compared to last year, which means that the announcements about the sessions are published in a timely manner and immediately after the end of each session an announcement about the decisions made is also published.

The legal obligation for publishing the minutes of the meetings of the JCRNM is respected and the minutes, which are detailed, are published after their adoption.

However, the meetings are being adopted slower compared to before. . Perhaps one of the reasons for this is that some of the members of the Council have reservations about their content, that is, some of the members demand that their discussions be reliably transcribed in the minutes and not paraphrased. For this reason, the minutes are not being continuously published, bearing in mind that in order for them to be published, the minutes must be adopted at a session.

**The electronic sound recording and voting system does not work.** The members vote publicly, by raising their hands. If one of the members is not present at the session, he or she will monitor the session and vote through the Viber application, which was established as a practice during the pandemic caused by Covid-19. The sessions are recorded on a dictaphone, and the minutes are by the administration.

The legal obligation to adopt the Annual Report on the work of the JCRNM<sup>1</sup> is respected. **Immediately after its adoption, the report was published on the website** and submitted to the Assembly.

The Annual report contains details and data on elected and dismissed judges, on the promptness of the courts, etc. **It is a legal obligation that the report contains data on the fulfillment of the Annual Work Program**; however, although the activities and objectives of the program are listed and their explanation is given, this part does not provide a complete reflection of the fulfillment of the Annual Program and the detailed activities for each objective. At the same time, the work report of JCRNM for 2021 has not yet been adopted by the Assembly.

A smaller number of sessions held on a monthly basis has been noted, but at the same time the sessions that have been held have more extensive agendas and points for discussion. One session per month is always reserved for deciding upon complaints submitted by citizens and legal entities, which is also a legal obligation. It is common practice to consider and decide on submitted complaints in the last week of the month.

However, regarding this way of working, there are reactions from some members of the Council who indicate that there is a need for more sessions to discuss important points that deserve attention and cause dilemmas among the members. They emphasize that it is not enough to argue about them in a collegium. The Judicial Council, as a collective body, decides in public sessions, so in accordance with that, it is necessary to hold discussions at the sessions in order to adopt harmonized views, and not to only discuss points for which, according to law, decisions must be made by the JCRNM.

Among other things, it has been requested several times to review the requests of judges regarding their status after the entry into force of the amendments to the Law on Labor Relations, in order to reach a conclusion, but these requests were not put on the agenda until the day when the JCRNM had to make a decision.

Regarding the way the sessions are being conducted and the engagement of the members of the Judicial Council, **a continuous increase in the activity of individual members who participate in the work of the Judicial Council by giving opinions, remarks and proposals can be ascertained**. The debate regarding the points on the agenda takes longer than usual with the constructive participation of several members who express their opinion on a specific issue through replies and arguments. Conflicting opinions of members indicating different interpretations of procedural aspects are common, but sometimes these individual interpretations create difficulties in conducting the sessions. **These different interpretations point to constructiveness and continuous engagement of the members, which are essential in developing a debate and making sustained decisions**.

Despite the fact that **the Minister of Justice and the President of the Supreme Court of the RNM (SCRNM) are ex-officio members of the Council, they very rarely or never attend the sessions**. Although the Minister of Justice has not attended the sessions for years, his participation in individual sessions would be significant, especially since the Minister of Justice proposes important laws in the field of justice, and for that reason his cohabitation with the Judicial Council is necessary for the unobstructed cooperation in the implementation of judicial reforms. The president of SCRNM explains that her absence has been due to the untimely delivery of the invitation (with the agenda) and materials for the session. Her

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<sup>1</sup> Article 100 of the Law on the Judicial Council of the Republic of North Macedonia ("Official Gazette of the RNM" no.102/2019)

absence is mostly for justified reasons, but when she attends the sessions, she contributes to the work of the Judicial Council. According to the law, the president of SCRNM does not have the right to vote at the sessions, but still, her presence provides an opportunity to discuss important issues and exchange experiences that affect the work of the Judicial Council and the Supreme Court, but also the judiciary in general. It is for this reason that the intention of the legislator was to connect these two significant judicial institutions with the current events in the judiciary by respecting the principles of independence, impartiality, openness and transparency.

#### **Analysis of the content of the Judicial Council's announcements and media statements:**

Following the website of the Judicial Council, a positive change can be ascertained in the manner and content of the notices published on it. **A more detailed description of the items on the agenda** that were discussed at the sessions is noted, as well as **more detailed reports on the meetings they had with ambassadors and representatives of international institutions and organizations**. This is due largely to the personnel strengthening of the Department for Cooperation with the Public with a new employee, who is a journalist by profession.



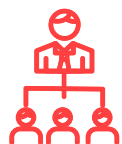
## **OPENNESS TO THE PUBLIC AND THE MEDIA**

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In contrast to the period before the pandemic caused by the corona-virus, **a decreased interest and decreased presence of the media at the open sessions has been noted**. In the last period, information about the work of the JCRNM is not present in the media and the President does not initiate press conference and meetings with the media when there are important issues that are within the competence of the Council, and which are in the interest of the public. Statements or interviews by the President regarding individual current events can be noticed. During this period, only one press conference was held, during which the report on the work of the JCRNM for 2021 was presented.

# EFFECTIVENESS AND EFFICIENCY OF THE JUDICIAL COUNCIL

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## ELECTION OF A MEMBER OF THE JUDICIAL COUNCIL AMONG THE JUDGES

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In the first half of 2022, there was no election of a member of the Judicial Council from among the ranks of judges. With the retirement of three members of the Council who are among the ranks of judges, namely Kire Zdravev, Zoran Teofilovski and Gordana Spireska, in accordance with the new amendments to the Law on Labor Relations, it will be necessary to elect three new members in the coming period.

After numerous recommendations, in the Law on JCRN<sup>2</sup> from 2019, for the first time, judges have been given the opportunity to directly submit a request to initiate a procedure for disciplinary responsibility of a member of the Judicial Council that they have chosen. Such a request can be submitted by at least 20 judges, or any member of the Judicial Council with the right to vote. The legislator, when drafting the text of the Law on JCRNM did not foresee deadlines in separate provisions, which leaves room for possible practices of corruption, influence on the members of the Judicial Council or the appearance of a conflict of interests, contrary to the legal provisions. Such legal gaps are located in Article 32, which refers to the temporary removal from the exercise of the function of a member of the Judicial Council, as well as in Article 35, regarding the submission of a request to initiate disciplinary proceedings for a member of the Council.

So far, no request has been submitted to initiate a procedure for disciplinary responsibility of a member of the Judicial Council. It is significant to note that for a member of the Judicial Council, a representative of the Gostivar appellate area, the Basic Public Prosecutor's Office for the Prosecuting Organized Crime and Corruption filled charges as a first defendant, together with 6 other persons, for the illegal privatization of land in Tetovo. The Judicial Council, in December 2019, stripped him of his judicial immunity, but in the meantime, despite the fact that the Court accepted the accusation and started the court proceedings, the Judicial Council did not initiate a procedure for his temporary removal from the exercise of the function as a member of the Council, which would be a good step to restore citizens' trust in an impartial and independent judiciary. In the meantime, the member of the Council for whom criminal proceedings are being conducted has been dismissed from the position of judge due to fulfilling the conditions for an old-age pension, but also from the position of member of the Judicial Council of the RNM.

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2 Articles 34 and 35 of the LJCRNM ("Official Gazette of the RNM" no.102/2019).



## ELECTION OF JUDGES AND PRESIDES OF COURTS

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During this reporting period (January-June 2022), the Judicial Council of the RNM carried out its ongoing activities which arise from its competences and are related to certain deadlines established in the Law or in the Rules of Procedure of the JCRNM, but did not make selections, i.e., promotion of judges. Characteristic for this period is the performance of preparatory activities for the evaluation of judges, which is directly related to their promotion. Namely, with the Law on JCRNM from 2019, for every promotion of judges, it is necessary to evaluate them in accordance with the new method of evaluation. For a long time, the JCRNM was drafting the by-laws (in which they were assisted by external experts) related to the implementation of the new way of evaluating judges and court presidents. As a reminder, during 2020, the **Methodology for the qualitative evaluation of the presidents of the courts** and **Methodology for evaluating the work of the judge based on the fulfillment of the qualitative criteria for the judicial work** were adopted, and during 2021 the **Methodology with indicators for determining the complexity of cases** and **Rulebook on the method of forming committees for evaluating the work of judges and court presidents** were adopted. **On March 29, 2022, the JCRNM adopted the last act needed to start the evaluation of judges, i.e. the Rulebook for the formation and operation of the JCRNM commissions for regular and extraordinary evaluation.** Based on this, in April of the same year, commissions were formed for inspection and assessment of judges and presidents of courts, for the basic and appellate courts and for the Administrative Court, which were composed of 5 members, and which will carry out the regular assessment of all judges and presidents of courts. At the same time, commissions were formed to evaluate the work of judges and court presidents, which should perform an extraordinary evaluation of the candidates who applied for promotion, that is, for court president. The formation of the commissions brought many dilemmas (ambiguities) related to their practical work, and for that reason meetings were organized with experts, who were involved in the process of developing the methodologies, with the aim to enable easier application and at the same time conduct trainings of the members of the commissions.

The JCRNM devoted a long time to the preparatory activities for the implementation of the evaluation of judges and court presidents, which is understandable, considering that it is a **complex evaluation process**. But on the other hand, this had a negative impact on the promotion of judges who responded to announcements for the open positions announced more than a year ago, for which the procedure was started and has not yet been fully implemented. This delay in the selection of judges to higher courts is justified by the need to carry out an extraordinary evaluation of the candidates, which is a legal requirement. However, the need to fill the vacant judicial positions in some courts is more than necessary, as can be seen from their delay in several quarterly periods. For these reasons, **the announcements for the selection of judges are currently active, among others, in the SCRNM, the Court of Appeal in Skopje and the Court of Appeal in Gostivar**, where a large number of candidates have applied, the judges' interest in a promotion is huge, and two courts have a large number of vacancies.

Namely, in the SCRNM, according to the systematization, there are 28 judges' positions, but only 18 judges are actively working. In the Court of Appeal in Skopje, there are 52 judicial positions planned, but only 39 judges are active, while in the Court of Appeal in Gostivar, 16 judicial positions are planned, and only 11 judges are actively working.



## DISMISSAL OF JUDGES AND PRESIDENTS OF COURTS

In the period until June 2022, the Judicial Council **dismissed 2 (two) judges** and imposed 1 (one) measure for a **more serious disciplinary violation**.

A judge of the SCRNM was dismissed due to violations committed as VD president of the Basic Court (reason-abuse of official position and overstepping of official authority by not applying the provisions regarding the distribution of court cases, which means that he unprofessionally and negligently performed the function of VD President).

A judge was dismissed from the Court of Appeal in Shtip, for unprofessional and negligent performance of the judicial function (reason-failure to exempt a judge from acting and deciding in a procedure before the Court of Appeal in Shtip, in which as the plaintiff's attorney appears a law firm where a person with whom the judge is related to by blood is employed as a lawyer).

A measure was imposed for a more serious disciplinary violation (reason-acting and participating in decision-making in a procedure before the Court of Appeal in Shtip, in a case in which as the plaintiff's attorney appears a law firm where a person with whom the judge is related to by blood is employed as a lawyer).

It is important, in this report, to mention the dismissal of the judges, i.e. the retirement of 42 judges due to the entry into force of the amendments and additions to the Law on Labor Relations.<sup>3</sup> The amendments provide that all those who have concluded an employment contract and who have fulfilled the conditions for old-age pensions (at least 64 years of age and 15 years of pensionable service) will not be able to continue their employment, that is, they will have to retire. The Judicial Council, at the session held on July 1, 2022, in applying this legal solution, retired 42 judges who met the conditions for an old-age pension, and who had extended their mandate based on the previous legal provisions. This problem was present for a long time. The adoption of amendments to the Law on Labor Relations were expected, in order to prevent the retirement of a large number of judges and thus to prevent an even greater shortage of judges in all judicial instances.

In relation to this issue, there was no discussion in the JCRNM, even though there were dilemmas and requests from the judges and some members of the JCRNM to discuss and consider all the possibilities offered by the relevant laws in case the amendments to the Law on Labor Relations are not adopted by the Assembly. For that reason, the Judicial Council found itself in an unpleasant situation immediately after the amendments and additions to the Law on Labor Relations entered into force on June 30, 2022, to discuss the legal validity of the retirement of judges who have met the conditions for old-age pensions according to the new legal amendments. Several problems were pointed out that would appear with the simultaneous retirement of a large number of judges, namely the (late) scheduling of cases, the new schedules of judges in the councils, the need to start over a large number of cases due to the appointment of new judges, the use of vacations, and before all else the overload of judges with new cases they will inherit from their colleagues who will retire, in a situation where there is already a great shortage of judges in all instances, while the next generation of candidates from the Academy of Judges and Public Prosecutors will graduate in December 2022.

<sup>3</sup> Article 104 of the Law on Amendments and Supplements to the Law on Labor Relations Official Gazette of SRM 151/2021



The questions that afterwards arose in the session in which 42 judges were retired were related to the correlation between the employment relationship and the tenure of the judges, the collapse that the judiciary may face due to the lack of large number of judges, and on the other hand, the recommendation of the EU to reduce the number of judges, in accordance with the European standards.

The issue of the **retirement of judges who are also members of the JCRNM** remained controversial. At this session, two members from the ranks of judges of the Judicial Council retired – Kiro Zdraev from SCRNM and Zoran Teofilovski from the Court of Appeals in Gos-tivar, but the question remains whether they will be dismissed as members of the Judicial Council on the same basis. There is no provision for this situation in the Law on JCRNM, but on the other hand, they are elected as members of the Judicial Council because they are active judges. It can be assumed, based on the discussion at the session, that they were dismissed from their position as judges but not from their position as members of the JCRNM. It was mentioned that the Constitutional Court did not respond positively to this dilemma, even though it was posed by the JCRNM. **However, in accordance with the legal provisions, only an active judge can be a member of the Judicial Council, so the conclusion is drawn that the mandate of the members of the JCRNM – Kire Zdraev, Zoran Teofilovski and Gordana Spirevska – will end in August 2022 due to the fulfillment of the conditions for old-age pension.**



## MONITORING THE WORK OF THE COURTS

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The monitoring of the work of the courts is carried out by the JCRNM through the review and evaluation of the quarterly and annual reports on the work of the courts, but also through visits to the courts by commissions composed of members of the Judicial Council, which is provided in the Internal Plan for monitoring and evaluating the work of courts, judges and court presidents for the year 2022.

From the quarterly reports on the work of the courts, it can be concluded that the trend of out-of-date courts continues, and the reasons for this state are the reduced number of judges, the insufficient number of court administration staff, and the increased number of cases.

After the visits to the courts, the members of the commission that carried out the visit present the report of the visit in a session, highlighting the most significant findings they have reached and proposing conclusion for further action if deficiencies have been determined in the operation of the courts or of some judges or presidents of courts.



## DECISION-MAKING ON PETITIONS FROM CITIZENS AND LEGAL ENTITIES

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Complaints from citizens and legal entities that are submitted to the JCRNM, and that refer to the work of judges and presidents of courts, are regularly reviewed and resolved in compliance with the deadlines.

**The Judicial Council rejects the larger number of the complaints as unfounded, taking into account that with the complaints the citizens and legal entities seek to change the court decision because they are not satisfied with it.** In the majority of cases, the Judicial Council finds that the proceedings in the case are on appeal before the second-instance court, so the second-instance court will value the allegations in the petition as appeal allegations in the decision-making process and therefore the Judicial Council **has no authority to intervene in court decision, nor to change them, which is why it does not find grounds for action upon the complaints.**

However, due to the large number of complaints related to the non-compliance with the principles of exemption of judges, the Judicial Council visited and inspected the work of the Court of Appeal in Shtip. From the presented report, certain deviations can be ascertained in terms of compliance with the provisions related to the exemption of judges, both by the judges themselves and by the president of the courts who decide on the requests for exemption. As a result of such situations, two judges have been dismissed from the court, but the situation has not yet been resolved, which indicates the need for the Judicial Council, within its competences, to react and act in order to resolve the situation.

# RECOMMENDATIONS

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Based on the monitoring of the open sessions of the Judicial Council, reports on the Judicial Council, announcements and documents published on the website of the Judicial Council of the RNM, publications in the media, the following can be recommended:



The Judicial Council should carefully analyze the choice of strategies and actions, in order to ensure a judiciary that will be independent, impartial and work for the benefit of society and citizens as a whole.



In order to achieve greater transparency, in addition to the open nature of the sessions and the regular updates of the website of the JCRNM, it is also necessary to proactively inform the public about issues that are extremely important for ensuring the independence of this institution. For this purpose, in addition to formal protective measures, it is necessary for the Judicial Council to bring its work closer to the public, as well as to the judges, with the aim of better cooperation and mutual trust.



The Judicial Council should work on improving the internal functioning of the body. Internal communication between members and employees is particularly important and will contribute to a more constructive discussion and to a greater efficiency and effectiveness of the work of the Judicial Council.



With the new Law on the JCRNM, a good basis has been established for ensuring the transparency of the Judicial Council. At the same time, the Judicial Council has established formal procedures and communication strategies that should be applied accordingly, respecting the principles of professionalism, promptness, constructiveness, and dedication, which is one of the ways to restore trust in the judiciary.

