

Strasbourg, 5 April 2022

CDL-PI(2022)020

Or. Engl.

EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

in cooperation with

THE UNIVERSITY LA SAPIENZA, ROME and
THE UNIVERSITY OF BARCELONA

International Round Table
**SHAPING JUDICIAL COUNCILS
TO MEET CONTEMPORARY CHALLENGES**

University *La Sapienza*, Rome
21 – 22 March 2022

(Hybrid format)

PRESENTATION

by

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THE ROLE AND POWERS OF THE JUDICIAL COUNCIL IN NORTH MACEDONIA



The international Round Table was co-financed by the project “Instrumentos contramayoritarios en el estado constitucional (PID2019-104414GB-C32)” of the Spanish Ministry of Research and by the European Union’s Horizon 2020 research and innovation programme under grant agreement No. 822590, DEMOS.

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Judicial reforms is a phrase that dominated the debate since the independence of Republic of North Macedonia. That debate culminated, but did not finish with the constitutional changes in 2005, when the Judicial Council was introduced. The subsequent steps that followed the constitutional amendments, were legislative changes in order to fix the competencies of the Judicial Council and to set criteria for election and dismissal of judges. In this long process of legislative attempts, the Venice Commission with its opinion was assisting the authorities to harmonize the legislation to the international standards and to best practices. This journey, finished in 2019, with the adoption of the new Law on Judicial Council which was completely harmonized with the recommendations of Venice Commission, and whose implementation these two and a half years have not shown serious problems or shortages.

During the adoption of this law, we had several dilemmas connected with the functions of the Judicial Council.

1. First was connected with the issue of **first-time appointment to the judicial positions**. The Judicial Council could appoint a judge in basic courts only from the list of the candidates who finished the two-years training at the Academy for Judges and Prosecutors. But even in this process, the decision of the Judicial Council must be based on objective criteria – the year when the candidates finished the training and their average result obtained at the Academy. On the basis of these criteria, the candidates can obtain 90% of the points, while on the interview they can obtain 10% of maximum points. There was debate on these criteria, whether they transfer the decisive part of competence of the Judicial Council to appoint the judges for the first-time to the Academy of Judges and Public Prosecutors, because the biggest part of the points is based on the success at the training. On the other side were demands to have as much as possible objectiveness in this process of appointments of the judges.

2. Second, challenge was the process of **dismissal of judges**. Several judges that were dismissed before 2016, started procedure in front of the European Court of Human Rights and obtained the Judgment in which it was said that the country violated the Art. 6 of the Convention. The Court has found that the whole procedure before the Judicial Council was not conducted by an 'impartial tribunal' in either the initial or appeal proceedings. Also, there was a reference on the decisive involvement of the Minister of Justice and the President of the Supreme Court in all parts of the procedure, as persons who initiated the procedure and participated in the adoption of final decision.

According to the Constitution, Minister of Justice and President of the Supreme Court are ex officio members of the Judicial Council. According to the new Law on Judicial Council, the **ex officio members do not participate in the work** of the Judicial Council when it discusses and decides on the responsibility, election or dismissal of judges or president of the court. In performing other competencies of the Judicial Council, ex officio members participate without the right to vote.

Also, **the procedure** for responsibility of judges was redesigned. In the mentioned Judgment Puposki and Duma, the European Court of Human Rights Court considered that a system in which members of the SJC who had carried out the preliminary inquiries and sought the impugned proceedings subsequently took part in the decisions to remove the applicants from office, casted objective doubt on the impartiality of those members when deciding on the merits of the applicants' cases.

In order to avoid future cases, according to the Law on Judicial Council, **the member of the Judicial Council who initiated the procedure for responsibility of the judge, cannot be member of the inquiry commission and cannot participate in debate and vote** in that procedure before Judicial Council.

Special challenge in the disciplinary procedure against the judges and presidents of courts, was to grant the **right to appeal**. The Constitution regulates that the Judicial Council is competent to decide on disciplinary responsibility of judges and their dismissal. So, it was difficult to provide appellate procedure and keep the final decision to be adopted by the Judicial Council.

The Law on the JC provides that decisions of the plenary JC are subject to an appeal to an Appeal Council – a body composed of judges of different levels defined by drawing lots at a plenary meeting of the Supreme Court, for each individual case. The right of appeal is given only to the judge concerned (or to the court president whose responsibility is invoked), thereby excluding those having initiated the procedure.

The biggest concern was the **effects the decision of the Appeal Council** might have. The Appeal Council shall “uphold or repeal” the decision of the plenary JC. In the case of “repeal” the case is reopened, and the JC takes a final decision, “appraising the guidelines” of the Appeal Council.

This suggests that **the Appeal Council cannot take a new decision, but may merely reopen the case for reconsideration by the JC, the latter having the final say.**

3. Next change that was made in the Law, concerns the **evaluation** of judges and presidents of the courts. The frequent evaluation of judges can be considered as kind of pressure over them. So, the new law prolonged the time for their evaluation. They are evaluated once every four years. Apart of this regular evaluation, the law provides special evaluation if they are candidates for appointment in higher court, for members of Judicial Council or for presidents of the court.

4. If I want to sum up my experience in judicial reforms in North Macedonia, the major challenge for me was on one side, to prevent partisan capture of the Judicial Council and through it of the judiciary, and on other side, to prevent corporativism, indifference and self-interest of the judges. In certain moments, it looked as these are to opposite tasks that exclude each other. That was question raised when we decided on the role of the members of the Judicial Council, when we included the procedure for responsibility of the members of Judicial Council as well as when we had to regulate the majority with which the Judicial Council decided in certain procedures.