


# LEGAL ANALYSIS

## INDEPENDENCE OF THE JUDICIARY

December 2009



Organization for Security and  
Co-operation in Europe  
**Spillover Monitor Mission to Skopje**



The content of this publication does not necessarily represent the view or the position of the OSCE Spillover Monitor Mission to Skopje

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## ***Abbreviations***

<b>Academy</b>	Academy for Training of Judges and Prosecutors
<b>CBC</b>	Court Budget Council
<b>Council of Prosecutors</b>	Council of Public Prosecutors of the Republic of Macedonia
<b>ECHR</b>	European Convention on Human Rights
<b>ECtHR</b>	European Court of Human Rights
<b>Judicial Council</b>	Judicial Council of the Republic of Macedonia
<b>IAJ</b>	International Association of Judges
<b>MJA</b>	Association of Judges of the Republic of Macedonia
<b>MoJ</b>	Ministry of Justice
<b>PPA</b>	Public Prosecutors' Association of the Republic of Macedonia
<b>UN</b>	United Nations

## ***Preface***

The right of the citizen to be tried by an independent and impartial judge is the guarantee for the society that the judicial power is fulfilling the duty it was entrusted with by the Constitution and this right of the citizen is raised to the highest level by the guarantees and the consistent application of the Universal Declaration of Human Rights, the European Convention on Human Rights, as well as of other documents of the Council of Europe, including the numerous Recommendations of the Committee of Ministers and the many conclusions from multilateral meetings.

These documents represent a broad platform and a source of legal norms for constitutional and legal regulation of the principle of independence of the judiciary and of the judge. These documents allow consideration of the realistic conditions in every country and give a guideline and orientation for the development of the processes which will reinforce the elements composing the judicial power, with an opportunity to achieve broader acceptance of the institutional principles of an independent judiciary.


The independence of the judiciary as a principle is reflected in the judiciary's independence and autonomy from the bodies of the legislative and the executive powers, but also from the political parties, state and all other institutions, centers of power, public opinion and from all other sources of possible pressures.

The state of judicial independence in a country is not only determined by the laws pertaining to it. It is also a product of the respect which is paid in practice to the independence of the courts, of the conditions and the circumstances in which justice is administered. Judges are not independent only because the law says that they are. They can adjudicate on the basis of the law and the applicable facts only if they feel safe and well-protected against attempts to improperly influence their decision.

The independence of the judge as a person can be assessed in his determination to defend the independence and the autonomy of the judiciary and to always judge in accordance with the law in every case and on every single occasion, regardless of the consequences. Thus, the judges' perception of their own independence is as crucial for the independence of the judiciary as the legal framework.

The independent position of a judge is guaranteed and safeguarded by the Constitution, the national laws and the ratified international treaties which offer: objective election and dismissal procedures, unrestricted term in office, judges' irremovability, immunity and a salary which provide for a secure, self-sufficient and independent material and social position, etc.

The results of the conducted survey have to be regarded as drawing a picture of the state of the independence of the judiciary in the country. The picture drawn is very concerning. It shows that attempts to influence the adjudication of cases occur frequently and on a broad scale. This does not mean that those attempts always or even in the majority of the cases actually have an impact on court proceedings and decisions. But the fact alone that they take place casts doubt on the judicial system and the independence of the judiciary.



Each and every one of us as judges, either through the media or through our practical work and personal contacts with our colleagues and with the citizens, received information through which the influence exerted on the judiciary and the judges could be sensed. After reading the findings of the Analysis, we can ask ourselves the following questions:

How functional is a system in which attempts to influence judges often happen but which remain unnoticed and unpunished? How independent is a judicial system in which judges do not think that their own peers are independent? And how are citizens supposed to believe in such a judicial system when a significant number of judges do not believe in it?

In practice, all the principles and standards that refer to the independence and the autonomy of the judiciary and the judges are not always strictly and fully implemented by everyone. Due to these irregularities one may raise the question: what does an independent judiciary need to do in the future in order to promote the existing foundations for independence and autonomy? And what does such an independent judiciary need to do to substantiate those foundations' content and direction with a view to strengthen their position in the society, and with a final goal to enforce the rights and freedoms of the citizens and all other subjects?

In order to be able to overcome these kinds of unfavorable conditions in the development of the independence and the autonomy of the judiciary and the judges, there is a need to continue developing and implementing the institutional guarantees. However, all of this will not produce any result if there are no changes in the mindset and the behavior of the judges and if they, on their own initiatives, do not fight for their place and role within the society through consistent and practical application of the guarantees for independence, autonomy and impartiality.

Agim Miftari,  
Justice of the Supreme Court, retired

## ***Executive Summary***

This OSCE Spillover Monitor Mission to Skopje Analysis presents the findings of a countrywide survey on the independence of the judiciary as perceived and experienced by the judges of the host country.

According to domestic as well as international legal standards, the judiciary shall adjudicate free from improper external influence. However, the findings of this survey show that attempts to influence the administration of justice are common practice in the host country.

A significant portion of the judges surveyed report being exposed to attempts to influence their work, in particular by the executive power and political parties. A large majority of the respondents think that the mechanisms for protection from external influence are dysfunctional. The Judicial Council, which is in charge of many decisions crucial for the professional career of judges, is perceived by the vast majority of respondents as a biased and dependent institution, which is itself subject to external influence. To a certain extent, working conditions, especially low wages, subordinated court financing and possible threats to physical security, also raise concerns for judicial independence.

As the "EU Progress report on the former Yugoslav Republic of Macedonia 2009" states: "[...] continuous efforts are needed" in the field of judicial independence. This Analysis was conducted to provide reliable data on which to base an open discussion on judicial independence. It compiles and assesses the responses of 421 judges (out of the current total of 650 judges). These judges anonymously completed a questionnaire on their perceptions of their own independence.

After briefly reviewing applicable domestic and international principles on the independence of the judiciary, this Analysis focuses on findings contained in the judges' answers.


The first section of the Analysis examines the existence of improper influence, both generally perceived and personally experienced. 43% of judges surveyed think that external interferences with the judiciary exist and affect the way that justice is administered<sup>1</sup>. The respondents consider the executive power and the political parties the strongest sources of pressure.

In section two, the role of the Judicial Council - the body which is responsible for magistrates' professional advancement and discipline - is discussed. For 66% of judges surveyed, the Judicial Council does not fulfill its function properly and does not act independently. Another revealing observation is the judges' belief that if there were an increase in their salaries, the level of corruption would decrease.

In section three, the Analysis examines the judges' working conditions. An important proportion of the judges surveyed are personally satisfied with the existing technological resources in their courts. However, 88% of respondents contend that there are insufficient funds to cover the costs of effective administration of justice. 83% of respondents consider the judiciary to be financially dependent (on the executive power).

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<sup>1</sup> For detailed results, see Chart 1 of this Analysis



Significantly, a little more than one third of the respondents do not feel physically safe at their work place.

The Analysis also addresses the role of the Macedonian Judges Association (MJA). 77% of the respondents feel that the MJA needs to play a more active role in protecting the judiciary against attacks on the judicial profession and its reputation. They almost all consider that the Association should contribute more to legislation drafting.

Finally, the OSCE Analysis addresses the level of transparency of the judiciary. Although an important percentage of the respondents recognize that their profession is under external pressures, they still believe the degree of public trust in the judiciary is relatively high (3.5/5). As for possible mechanisms to increase transparency, less than a quarter of the judges think that free access to court decisions would effectively help increase public trust in the judiciary.

Besides presenting an insiders' assessment of the current situation of the judiciary in the host country, this Analysis is designed to provide information to start an open discussion among stakeholders about the most effective solutions to deter interferences into the judicial sphere and correct deficiencies in the current system. One result of an open discussion should be the identification of legislative amendments necessary to improve the judiciary's independence and transparency.



## ***Introduction***

The independence of the judiciary is generally viewed as a cornerstone of the rule of law. Numerous international documents and covenants, such as the United Nations Basic Principles of the Judiciary and the European Charter on the Status of Judges, underline its importance and strive to describe key-elements of an independent judiciary.

Although there is no clear definition of the term “independence of the judiciary”, it can generally be said that the extent to which judges are independent is determined by two factors<sup>2</sup>:

- the way judges are protected against improper influences by third parties, persons or institutions
- the degree to which judges think, act and render their decisions autonomously, without considering factors other than the facts of the case and the applicable law.

The first factor refers to the legal framework, but also to the practice within a judicial system; the second refers rather to the mindset of judges. These factors are obviously interlinked. A judge will not feel free to make his<sup>3</sup> decision solely based on the law, if the legal framework and the conditions of his service do not provide sufficient protection against improper attempts to influence his decision. Conversely, the best legal framework cannot guarantee independent decisions, if judges themselves are not fully willing to render their judgments on the basis of the law only, but tend to act in ‘anticipatory obedience’ to external influences.

Thus, the independence of the judiciary is determined not only by the legal framework, but also by its practical implementation – and by the judges’ *perception* of their independence.

On several occasions, it has come to the attention of the OSCE Spillover Monitor Mission to Skopje that many judges do not have the impression that their independence is respected and protected. During seminars, round tables and promotional events, members of the judiciary have complained (in many cases personally to OSCE’s staff members rather than openly during the event) that they are subjected to pressure and feel intimidated. Also, the OSCE has received complaints by judges, prosecutors and lawyers expressing concerns about improper influences in specific cases, requests for meetings and monitoring of cases. Thus, the OSCE has become aware of widespread concerns within the judiciary regarding the appointment and dismissal of judges, the role of the Judicial Council, and political influence on the administration of justice in many cases.

In 2008, the MJA adopted the following conclusions and recommendations<sup>4</sup> pertinent to this discussion:

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<sup>2</sup> Russel/O’Brien (editors), *Judicial Independence in the age of democracy*, 2001.

<sup>3</sup> For purposes of readability, the male form has been chosen

<sup>4</sup> Final conclusions and recommendations, OSCE project 2600478 ‘Pre-trial detention’, Final Report; also published in ‘Judicial Newsletter’ No. 47/December 2008

*“Conclusion 8:* Judges and public prosecutors are facing various pressures during their work, influencing their independence in decision making. These pressures are coming from their colleagues in higher positions, the police, state representatives, party activists, media (the manner of reporting on some detention cases), etc.

*Conclusion 11:* Judges and prosecutors consider a need for stronger protection while performing their duties and protection of their impartiality when exercising their legal functions by their professional associations.

*Recommendation 7:* The MJA and the PPA (Public Prosecutors' Association) should take a more active role in the protection of the independence and the impartiality of the legal profession. In cases of identified violation of the independency and the impartiality of the judicial function an appropriate reaction should follow.

*Recommendation 26:* Seminars to discuss the current situation with the independency and the impartiality of the judicial function, the integrity of judges and prosecutors and seminars on respecting the principle of “equality of arms in the procedure” within the practice of the national legal system should be organized.”

Although the Judicial Council has been established “by the judges for the judges” with a composition that gives the majority of votes to the profession, in practice, the influence of the other powers has been perceived as a stronger element. In our informal discussions, judges criticize the Judicial Council as biased and not objective in the process of election and dismissal of judges.

In addition, the “2009 EU Progress Report on the former Yugoslav Republic of Macedonia” states: “The Minister of Justice has made a number of public statements concerning the decisions on appointment of judges which could be perceived as an attempt to unduly influence the Judicial Council”<sup>5</sup>. The EU Progress report comes to the conclusion that “Further progress was made towards establishing the independence of the judiciary, although continuous efforts are needed.”<sup>6</sup>

These observations were the starting point for this Analysis. Its goal is to contribute to an open discussion on the independence of the judiciary in the host country and the challenges that it is facing. The Analysis strives to achieve this goal by providing and discussing objective, reliable data on the judges' perception of factors which could impact judicial independence. The absence of such data appeared to be one of the main obstacles to a candid discussion about how to address barriers to judicial independence in the country. It seemed that the fact that they did not feel protected and safe, prevented many judges from openly voicing their concerns, while the lack of open criticism made it easy to ignore allegations about improper influence on the judiciary.

The Rule of Law Department of the OSCE Spillover Monitor Mission to Skopje decided therefore to conduct an anonymous survey among judges, an inquiry into their perceptions of their independence. The Department developed a catalogue of questions targeting areas which are generally viewed as paramount to the independence of the judiciary: pressures on judges, improper influences on their work, election and dismissal

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<sup>5</sup> See Segment 1 Chapter 2 on Judges

<sup>6</sup> See Annex 3

processes. It also solicited judges' opinions on other factors which are important for their independence, including remuneration, the role of the judicial council, the work of their professional association, financial independence of the judiciary, etc<sup>7</sup>. In order to ensure the validity of the answers and the possibility of statistical analysis of the data obtained, a professional consulting company that specializes in conducting surveys, was hired.

The questionnaire's methodology was developed by the company. The substantive aspects of the questionnaire were developed by the Rule of Law Department of the OSCE Spillover Monitor Mission to Skopje. The company helped refine the questionnaire, by adding control questions to check the reliability of the findings. The company was also responsible for preparing computer based statistical analysis.

This questionnaire was distributed to all the judges in the country. Each questionnaire was accompanied by a stamped envelope with the OSCE address and a seal. Thus, the participants had the possibility of sending their questionnaire back by post, anonymously and sealed. In this way, completed questionnaires reached the OSCE without any possibility of manipulating the results. Out of 650 questionnaires which were sent out, the Department received 421 answers. Once the results arrived at the OSCE address they were processed by the company which conducted a statistical evaluation of the findings. This statistical overview<sup>8</sup> served as a basis for the Analysis.

This paper endeavors to explain and discuss the findings of the survey in the light of the national legal framework for the independence of the judiciary and with a view to international standards. The main target group for this paper is national stakeholders, including judges, lawyers, prosecutors, members of the judicial council, and government representatives. However, this paper could also be useful to the international community and others involved in supporting the process of judicial reform in the host country. To give a more complete picture, this paper also contains a brief overview of legal provisions and institutions which are relevant to the independence of the judiciary.

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<sup>7</sup> The complete questionnaire which was sent to the judges is attached as Annex 1 to this Analysis

<sup>8</sup> The complete statistical overview prepared by the engaged professional company is attached as Annex 2 of this Analysis.

## SEGMENT I: LEGAL FRAMEWORK

### Chapter 1: International Standards

The independence of the judiciary is generally viewed as the cornerstone of the rule of law. Numerous international Covenants and documents underline its outstanding importance. The UN Basic Principles on the Independence of the Judiciary state: “*The independence of the judiciary shall be guaranteed by the State and enshrined in the Constitution or the law of the country. It is the duty of all governmental or other institutions to respect and observe the independence of the judiciary*”<sup>9</sup>. The right to be tried by an independent tribunal is enshrined in the European Convention on Human Rights (ECHR), ratified by the host country in April 1997, as well as in the International Covenant on Civil and Political Rights.

There is still no general theory or commonly accepted definition of the independence of the judiciary<sup>10</sup>. However, several international documents set out core elements for independence of judges.

In 1983, the first World Conference on the independence of the judiciary took place in Canada. It adopted the Universal Declaration on the Independence of Judges, which states: “*Judges individually shall be free, and it shall be their duty to decide matters before them impartially, in accordance with their assessment of the facts and their understanding of the law without any restrictions, influences, direct or indirect, from any quarter or for any reason*”. The Universal Charter of the Judge stipulates: “*The judge, as holder of judicial office, must be able to exercise judicial powers free from social, economic and political pressure, and independently from other judges and the administration of the judiciary*”.

Judicial independence can only be guaranteed if the framework, in which judges exercise their functions, provides sufficient safeguards against attempts to improperly influence the administration of justice. Again, the differences between national jurisdictions and legal systems make it impossible to construct a universal formula for the requirements which have to be met for an independent judiciary to exist. Still, there are certain factors which determine if the legal framework in a given country provides for an independent judiciary.

In order to more closely examine the issue of independence we must refer and consider the European Court of Human Rights (ECtHR) judgments in *Campbell and Fell v UK*<sup>11</sup> and *Incal v Turkey*<sup>12</sup>, where the Court established the “**independence**” requirements<sup>13</sup>, which include the following: the manner of appointment of judges, the duration of their

<sup>9</sup> United Nations Basic Principles on the Independence of the Judiciary, adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to September 1985 and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985

<sup>10</sup> Russell, ‘Towards a general theory of judicial independence’, p. 1, in: Russell/O’Brien (editors): *Judicial Independence in the Age of Democracy*, 2001

<sup>11</sup> *Campbell and Fell v United Kingdom*, ECtHR judgment on 28 June 1984, (*Application no. 7819/77; 7878/77*), para.78

<sup>12</sup> *Incal v Turkey*, ECtHR judgment on 9 June 1998, (*Application no. 41/1997/825/1031*), para. 65

<sup>13</sup> S. Trechsel, *Human Rights in Criminal Proceedings*, (Oxford University Press, 2005), pgs. 53-54

term of office, the guarantees against outside pressure and the question, whether the body presents an appearance of independence<sup>14</sup>.

- **Manner of appointment** – It is universally understood that the process of selection of judges based on their political affection, on discriminatory basis, not taking into consideration the integrity, professional ability and appropriate qualifications, excluding the judiciary from the appointment process will not be recognized as fulfilling the independence criteria.<sup>15</sup> Principle 10 of the Basic Principles on the Independence of the Judiciary does not suggest an exclusive manner of appointment; however it states that “*any method of judicial selection shall safeguard against judicial appointments for improper motives*”.<sup>16</sup>
- **The term of office** – In numerous occasions the Court examined the terms of office of judges sitting in national courts. Although in general fixed terms tend to be regarded as a guarantee against outside pressure, no particular term of office has been specified as a necessary minimum to ensure judicial independence.<sup>17</sup> Thus, the Court has accepted terms of office of six years<sup>18</sup> and even as low as three years<sup>19</sup> to be sufficient to provide guarantees in respect to article 6(1).
- **Safeguards against outside pressure** – This requirement is closely connected to tenure as it includes restrictions on the removal of judges from office.<sup>20</sup> This requirement is additionally strengthened with Principle 12 which reads: “*Judges, whether appointed or elected, shall have guaranteed tenure until a mandatory retirement age or the expiry of their term of office, where such exists.*”<sup>21</sup> The irremovability of judges, according to the Court, does not necessarily need to be formalized, provided it is recognized in fact and there are other guarantees present.<sup>22</sup>
- **The appearance of independence** –In light of the ECHR case-law, this requirement seems to be intertwined with the impartiality principle. The appearance of independence was found to be crucial in a few cases to determine whether an established body constitutes a “tribunal” for the purposes of article 6(1).<sup>23</sup>

<sup>14</sup> ECtHR, *Campbell and Fell v. United Kingdom* (application no. 7819/77, 7878/77), judgment of 28 June 1984, para 77

<sup>15</sup> S. Stavros, *The guarantees for accused persons under article 6 of the European Convention on Human Rights*; (Martinus Nijhoff Publishers, 1993); pg. 127

<sup>16</sup> *Basic Principles on the Independence of the Judiciary*; adopted by the 7th UN Congress on the Prevention of Crime and the Treatment of Offenders; endorsed by General Assembly Resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985

<sup>17</sup> A. Grotrian, *Article 6 of the European Convention on Human Rights – The right to fair trial*; (Council of Europe Publishing and Documentation Service, 1994); pg. 29

<sup>18</sup> *Le Compte, Van Leuven and De Meyere v. Belgium*, ECtHR judgment on 23 June 1981 (*Application no. 6878/75; 7238/75*); para.57 in relation to para.26


<sup>19</sup> *Sramek v Austria*, ECtHR judgment on 22 October 1984, (*Application no. 8790/79*), para.37 in relation to para.26

<sup>20</sup> S. Trechsel, *Human Rights in Criminal Proceedings*; (Oxford University Press, 2005); pg. 55

<sup>21</sup> *Basic Principles on the Independence of the Judiciary*; adopted by the 7th UN Congress on the Prevention of Crime and the Treatment of Offenders; endorsed by General Assembly Resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985

<sup>22</sup> *Campbell and Fell v United Kingdom*, ECtHR judgment on 28 June 1984, (*Application no. 7819/77; 7878/77*), para.80

<sup>23</sup> K. Reid, *Practitioner's Guide to the European convention on Human rights*; (Sweet and Maxwell Ltd, 2<sup>nd</sup> edition, 2004); pg. 114



In addition to these factors, other international documents highlight the importance of the judges' remuneration and conditions of service as relevant factors in determining whether judges are sufficiently protected against improper influences.

## **Chapter 2: The domestic legal framework**

### **2.1 Independence in general**

The principle of an independent judiciary is envisaged in the Constitution<sup>24</sup> as well as in the ordinary laws.

Article 98 paragraph 2 of the Constitution stipulates: “*The Courts are autonomous and independent*”. The Constitution also contains safeguards for the independence of judges such as unlimited term of office (until retirement), protection against transferal without consent and immunity of judges.<sup>25</sup>

The autonomy and independence of the courts is again reiterated in the Law on Courts<sup>26</sup>, which also explicitly states: “*Any form of influence on the independence, impartiality and autonomy of a judge in exercising the judicial function, on any grounds or by any entity is prohibited*”.<sup>27</sup>

The Criminal Code foresees imprisonment of up to three years for anyone coercing a judge or lay-judge to do or fail to do something.<sup>28</sup> Bribing a judge or attempting to do so is punishable under article 358 of the Criminal Code.

### **2.2 Judges**

Judicial functions in the host country are exercised by professional judges. In certain cases foreseen by law, lay-judges are involved in the administration of justice. There are separate provisions governing the selection and remuneration of lay-judges. However, according to the law, in cases in which lay-judges sit, they act in the full capacity of a judge. Rules regarding independence and impartiality apply to lay-judges in the same way as to professional judges.

#### **a) Election and dismissal**

Judges are elected by the Judicial Council.<sup>29</sup>

##### **❖ Professional Judges**

The procedure foreseen by the law for the selection of professional judges differs with respect to first instance court judges and judges of higher courts.

Regarding vacancies in *first instance courts*: the Judicial Council establishes every two years how many positions for judges will be opened in the following two years and informs the Academy for Training of Judges and Prosecutors (the Academy)

<sup>24</sup> The Constitution of RM, Official Gazette of RM No. 52/91, 31/98, 91/01

<sup>25</sup> Article 98 and 99 of the Constitution of RM

<sup>26</sup> Article 1 para 2 of the Law on Courts, Official Gazette of RM No.58/2006

<sup>27</sup> Article 11 para 2 of the Law on Courts, Official Gazette of RM No.58/2006

<sup>28</sup> Article 375 of the Criminal Code, Official Gazette of RM No.19/2004

<sup>29</sup> Article 105 of the Constitution of RM and Article 31 of the Law on the Judicial Council, Official Gazette of RM No.60/2006

accordingly. Following this decision, vacancy announcements are published in the Official Gazette and in daily newspapers. Candidates for positions in first instance courts must have both completed the initial training by the Academy and have applied for a position in response to the public advertisement.

The initial training conducted by the Academy lasts 15 months, comprised of five months of lectures in the Academy and ten months of practical training in a court or prosecution office.<sup>30</sup> Candidates who are interested in undergoing the initial training in the Academy must have a law degree, must have passed the bar exam, and then gained one year of working experience after passing the bar. They must also have an active knowledge of one of the widely spoken world languages. The selection procedure starts with a public announcement, which indicates the number of available places. A commission comprising of members proposed by the Judicial Council, the Minister of Justice and the Council of Public Prosecutors selects the most suitable candidates, considering also equal and adequate representation of citizens belonging to all communities in the host country.

The admitted candidates are assessed on the basis of grades obtained during their training at the Academy, during practical training, and their grade on the mandatory final exam. According to this assessment, the Academy establishes a list of candidates. This list of candidates is submitted to the Judicial Council. The Judicial Council elects the candidates who have responded to the public announcement and are named on this list.

For judges of *higher courts* (i.e. Appellate Court, Supreme Court), it is not mandatory to have undergone initial training at the Academy.

Apart from general requirements, including citizenship of the host country, fluency in Macedonian language, passage of the bar exam, etc., eligibility for appointment to the higher courts is determined by degrees of experience set out in the law. For example, candidates that apply for the Appellate Court must have a minimum of 5 years of working experience in legal matters obtained after the bar exam.<sup>31</sup>

Vacancies for judges at higher courts or at the Administrative Court are advertised in the Official Gazette and in daily newspapers. Following the announcement, the Judicial Council selects the most suitable candidates for the open positions based on a number of criteria stipulated by law, including but not limited to professional knowledge, drafting skills, attitude towards work, etc.<sup>32</sup>

The Judicial Council decides upon the election of a judge by two-third majority.

#### ❖ Lay-judges

Lay-judges are selected by the Judicial Council upon proposal by the President of the competent Court of first instance and the Appellate Court.<sup>33</sup> Lay-judges must be adults,

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<sup>30</sup> Article 38 of the Law on the Academy for Training of Judges and Prosecutors, Official Gazette No. 13/2006

<sup>31</sup> Article 6, para 1, line 2 of the Law on Changes and Amendments of the Law on Courts, Official Gazette of RM No. 35/2008

<sup>32</sup> Article 41 of the Law on Courts, Official Gazette of RM No.58/2006

<sup>33</sup> Article 46 of the Law on the Judicial Council, Official Gazette of RM No.60/2006



have completed at least secondary education, be fluent in Macedonian and not be over sixty years old and “enjoy the necessary reputation to perform this function”.<sup>34</sup>

#### **b) Tenure**

Professional judges are selected without restriction of their tenure and remain in office<sup>35</sup> until they reach the retirement age (64 for men, 62 for women). Prior to that, their function can be terminated only by reasons set out in the law (e.g. conviction for a crime, upon request by the judges, loss of ability to exercise judicial functions). Judges can be dismissed as a consequence of a disciplinary proceeding and/or a procedure for unprofessional conduct and bad faith in the exercise of the judicial office.

Lay-judges are elected for a term of four years and may be re-elected.<sup>36</sup>

#### **c) Disciplinary measures**

Judges can be subjected to disciplinary measures for violations of their duties. The law distinguishes disciplinary infringements and unprofessional conduct and bad faith in the exercise of the judicial office.

For cases of disciplinary infringements, the law foresees the following measures:

- written notice
- public reprimand
- reduction of the judge's monthly salary by 15-30% for up to six months

In cases of serious disciplinary infringements and unprofessional conduct and bad faith in the exercise of judicial office, judges are dismissed.

Article 75 of the Law on Courts describes unprofessional conduct and bad faith in the exercise of the judicial function. For example, the provision lists biased conduct of court proceedings, delay of the court proceedings without justified grounds, deliberate violation of the rules for fair trials, and public presentation of information and data on court cases in which no final decision has been taken.

The body which is competent for disciplinary procedures against judges is the Judicial Council. The procedure is initiated by a member of the Council, the President of the court, the President of the higher court or upon decision by the general session of the Supreme Court.

The Judicial Council establishes a Disciplinary Commission, which conducts the disciplinary procedure. It gives the judge, whose behavior is in question, the possibility of giving a statement regarding the request for disciplinary procedure. The judge may choose to be assisted by counsel. The disciplinary commission gathers information and evidence and submits to the Judicial Council a proposal stating whether the disciplinary procedure should be conducted or suspended. If the Judicial Council decides that the procedure shall be conducted, this decision is submitted to the initiator and the judge

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<sup>34</sup> Article 48 of the Law on Courts, Official Gazette of RM No.58/2006

<sup>35</sup> Article 99 of the Constitution of RM

<sup>36</sup> Article 49 of the Law on Courts, Official Gazette of RM No.58/2006

and the file handed over to the Disciplinary Commission to conduct the procedure. Details are regulated in the Rulebook for the Procedure of the Disciplinary Liability of the Judges.<sup>37</sup> The procedure can end with suspension of the procedure, imposition of a disciplinary measure, or dismissal of the judge. Judges can appeal against this decision. The appeal is decided upon by a council established by the Supreme Court. The Council consists of three Supreme Court judges, four Appellate Courts judges and two judges working at the same court as the judge who filed the appeal.

In 2008, 8 judges were dismissed for unprofessional conduct and exercise in bad faith following procedures initiated in 2007.

In 2008, 14 procedures for unprofessional conduct were initiated. In two cases, the procedures were terminated because the judges in question asked to be released from their judicial functions. Two procedures were conducted against Presidents of courts. In one of these cases, the procedure led to the dismissal of the judge. In the other case, the judge in question resigned as President of the court, but he was not dismissed as a judge because the legal requirements for dismissal were not met. An additional four procedures involving disciplinary measure have been conducted.

### **2.3 The Judicial Council**

The Judicial Council is the body which is competent for the election and dismissal of judges, disciplinary measures against judges, deliberations regarding the immunity of judges and other decisions relevant to the profession of judges.<sup>38</sup> The Judicial Council in the present composition – comprised of 15 members and with expanded competences – was introduced in 2006, following a trend in many European States, with the goal to strengthen and protect the independence of the judiciary.<sup>39</sup>

The President of the Supreme Court and the Minister of Justice are ex-officio members; eight members are elected by fellow judges. Three members are elected by the parliament and two members are appointed by the President of the host country.

The procedure for the election of the members from the rank of judges is governed by the Law on the Judicial Council. For the election of the members from the rank of judges, the Judicial Council establishes a commission that prepares the list of candidates and a separate commission that is in charge of facilitating the election of the judge members. Candidates must have five years of experience as judges and must have received positive evaluations of their performance for three consecutive years. The election is conducted by secret vote under supervision by the electoral commission established by the Judicial Council.

The members of the Judicial Council who are selected by the Parliament – either directly or upon proposal of the President of the host country – shall be law professors, attorneys or other eminent lawyers. They are elected in one session of the Parliament, which has to take place no later than 30 days after the election of the judicial members of the Council.

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<sup>37</sup> Official Gazette of RM No.15/2007

<sup>38</sup> Article 105 of the Constitution of RM

<sup>39</sup> Article 46 of the Law on the Judicial Council, Official Gazette of RM No.60/2006

Members of the Judicial Council are elected for a term of six years, with the possibility of one re-election. The term of the *ex-officio* members ends with the termination of their office. Prior termination of the term of office is possible in certain cases set out by law, for example, upon reaching retirement age, resignation, or conviction of a crime.<sup>40</sup>

The sessions of the Judicial Council are in general public. However, the public can be excluded in order to protect the reputation and integrity of the judges who are subject to the procedure, if the Judicial Council decides so by two-third majority.<sup>41</sup> In particular, disciplinary procedures against judges are confidential and conducted in non-public session.<sup>42</sup>

## **2.4 Court Budget**

Courts are funded from the Court Budget, which also provides funding for the Judicial Council, the Court Budget Council (CBC) and the Academy. The Court Budget is a part of the State Budget.

The CBC is in charge of conducting preparatory work related to the determination of the court budget. It has a President and ten members. The President of the Supreme Court is President of the CBC. The other members are the President of the Judicial Council, the Minister of Justice, the Presidents of the Appellate Courts, the President of the Administrative Court, four Presidents of Basic Courts and the Director of the Academy.

The CBC develops, in co-ordination with the Ministry of Finance, a budgeting template, which contains the main guidelines for the financial plans of the courts. This template is distributed to all courts. It also contains an explanation of the methodology for the development of a financial plan.

Every court returns to the CBC a budget request on the basis of the template. The CBC processes this information and produces a draft budget, which is submitted to the Ministry of Finance. The Ministry of Finance incorporates the court budget into the state budget and sends it to the Government for adoption. However, there is a maximum limit for the court budget. In case the requested court budget exceeds this limit, the Ministry of Finance files a report to the Government and the budget is cut.

## **2.5 Judges' salaries**

The remuneration of judges is governed in the Law on Judges' Salaries<sup>43</sup>. The salaries are calculated on the basis of two parameters:

- the average net salary in the country during the previous year<sup>44</sup>

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<sup>40</sup> Article 30 of the Law on the Judicial Council, Official Gazette of RM No.60/2006

<sup>41</sup> Article 33 of the Law on the Judicial Council, Official Gazette of RM No.60/2006

<sup>42</sup> Article 55 of the Law on the Judicial Council, Official Gazette of RM No.60/2006

<sup>43</sup> Law on Judges' Salaries, Official Gazette of RM No.110/2007

<sup>44</sup> The average net salary in December 2008 was 17.363 MKD, which is approximately 283 Euros (source: State Bureau for Statistics, [www.stat.gov.mk](http://www.stat.gov.mk))

- a coefficient which depends on a variety of factors which influence the complexity a judge's tasks and his workload.

The coefficient varies between 2.8 and 3.7 depending on:

- the type of court in which the judge works (Basic Court, Basic Court with enhanced competence, Appellate Court, Administrative Court, Supreme Court)
- Court division (criminal, civil, misdemeanor)
- Internal duties within the court (President of the Court, department, division, panel)
- Professional experience
- Performance of the judge.

*Example: Judges in Basic Courts with ordinary competence receive a salary in the amount of the average salary of last year times 2.8, while Supreme Court judges are paid the amount of last year's average salary with a coefficient of 3.4.*

In addition to that, judges are entitled to additional benefits and reimbursements for professional travel and alimention and severance pay in the amount of two average salaries.

The salaries calculated on the basis of the Law on Judges' Salaries cannot be decreased by other laws or decisions by other state bodies. A reduction is only possible as a disciplinary measure upon decision of the Judicial Council (*see also the section 2.3 on the Judicial Council*).

## **2.6 The Academy for the Training of Judges and Prosecutors**

The body called upon to provide training to members of the judiciary is the Academy for Training of Judges and Prosecutors. It was established by the Law on the Academy for Training of Judges and Prosecutors adopted in 2006<sup>45</sup> with the goal to contribute to the professional, impartial and independent administration of justice by providing training.<sup>46</sup>

The Academy provides initial training to law graduates aspiring to become judges or prosecutors and continuous legal education for members of the judiciary and prosecution offices.

Candidates for positions as judges at basic courts must have undergone initial training at the Academy and passed the final exam in order to be eligible. In December 2008, the first generation of 27 future judges and prosecutors has completed their initial training at the Academy. The 27 new candidates of the second generation have commenced their initial training in September 2008.

For judges and prosecutors, fifteen to fifty hours of continuous legal education per year are mandatory depending on their professional experience<sup>47</sup>. In 2008, the Academy offered a total of 221 trainings (equaling 2298 training hours) to 4.723 participants. Thus,

<sup>45</sup> Official Gazette of RM No. 13/2006

<sup>46</sup> Article 2 of the Law on the Academy for Training of Judges and Prosecutors, Official Gazette No. 13/2006

<sup>47</sup> Article 43 of the Law on the Academy for Training of Judges and Prosecutors, Official Gazette No. 13/2006

85% of the judges and prosecutors have fulfilled the necessary minimum of training required by law.<sup>48</sup>

The Academy is a legal entity with its seat in Skopje. Its funding is provided by the Court Budget of the host country. The Academy can also receive funding from third parties, provided, that this does not impact its independence.<sup>49</sup> In 2009, the Academy had a budget of approximately 450,000.00 Euro. Additionally, many seminars and trainings were conducted with the assistance of the international community.

The bodies of the Academy are the Managing Board, the Director, the Executive Director and the Program Council.<sup>50</sup> The highest body of the Academy is the Managing Board composed of 11 members - representatives from the Supreme Court, Public Prosecutor's Office of RM, lower courts and Public Prosecutors' offices, MoJ, MJA and PPA. The Managing Board has a mandate of 4 years. Ex-officio members of the Managing Board are the President of the Judicial Council, the President of the Supreme Court, the State Public Prosecutor and the Minister of Justice. The Director of the Academy is the managing body that represents the Academy and has a mandate of 4 years. The Executive Director is the executive body of the Academy. The Executive Director has a mandate of 5 years. All of the members have the right to be reappointed. Pursuant to the statute of the Academy, the Managing Board is competent<sup>51</sup>, for appointments regarding important functions within the Academy and for numerous programmatic and financial decisions regarding the Academy<sup>52</sup>.

## 2.7 Macedonian Judges Association

The judicial profession requires constant upgrading of the knowledge of those that exercise it. Judges must also respect the principles of the judicial ethical code. These requirements are more easily fulfilled if judges are organized in a professional association.

Following the international standards, the national legal system has incorporated these principles and guarantees the right of judges *"...to establish associations in order to accomplish their interests, promote vocational specialization, and protect the independence and autonomy of the judicial function"*<sup>53</sup>. In 1993 the MJA was established as a voluntary non-governmental, non-partisan and non-political organization for active and retired judges. Currently it has approximately 650 judges as members. Since 1996 the MJA is a member of the International Association of Judges (IAJ).

The main goals and objectives of the MJA are: to promote and strengthen the independence of judges and judicial power to a level that corresponds with its constitutional position; to make efforts for adequate implementation and respect for the constitutionality and legality in the host country and its strengthening as rule of law state; to strengthen and secure independence of judges and judicial power as a whole; to make efforts to strengthen and promote the social status of the judges, protecting their

<sup>48</sup> Annual reports on the work of the Academy for Training of Judges and Prosecutors for 2007 and 2008.


<sup>49</sup> Article 30 of the Law on the Academy for Training of Judges and Prosecutors, Official Gazette No. 13/2006

<sup>50</sup> Article 7 of the Law on the Academy for Training of Judges and Prosecutors, Official Gazette No. 13/2006

<sup>51</sup> Article 5 of the Law on the Academy for Training of Judges and Prosecutors, Official Gazette No. 13/2006

<sup>52</sup> Article 9 of the Law on the Academy for Training of Judges and Prosecutors, Official Gazette No. 13/2006

<sup>53</sup> Article 51, Law on Courts, Official Gazette of RM No. 58/2006



social and material interest; to enact a Code of Judicial Ethics; to initiate reforms in the judiciary by participating in legislative drafting processes of laws related to the judiciary; to undertake activities for professional improvement of judges; to undertake activities that unite members of the Association and foster the cooperation among them; to foster cooperation with other national and international associations with similar interests; to initiate changes and amendments of laws and other regulations and to provide opinions for the procedures of their enacting.<sup>54</sup>

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<sup>54</sup> Statute of the Macedonian Judges Association, published in Judicial Review No.1 from 1995

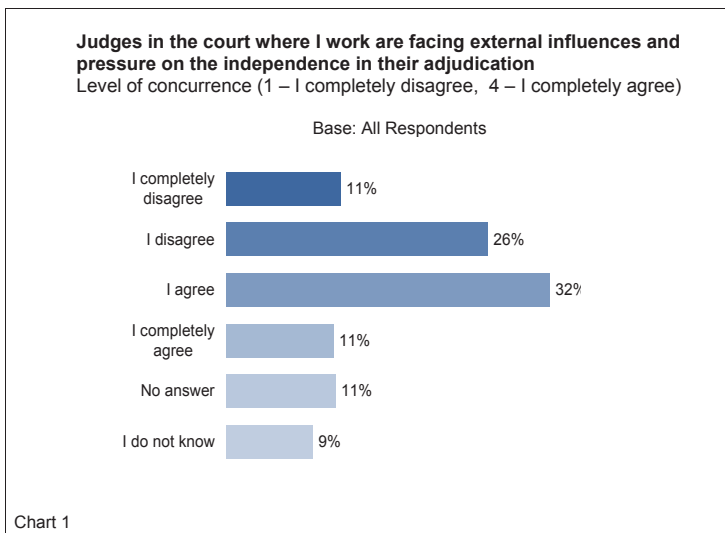
## SEGMENT II: FINDINGS OF THE SURVEY

### Chapter 1: Influences by others

(Questions from parts A1 and A2 and a selection of Questions from part A11 of Annex 1)

It is generally viewed as the cornerstone of the independence of the judiciary that judges can exercise judicial powers without influence by third parties. Therefore, the first section of the questionnaire inquired about attempts to influence judges' decisions by third parties.

Despite the legal regulations aimed at the protection of the independence of judges, the findings show that attempts to influence decisions are a common practice in the host country. **Almost half of the judges who participated in the survey think that the judges in the court in which they work are facing external influences and pressures** (32% agreed with this statement, 11% even strongly agreed). (see chart 1)

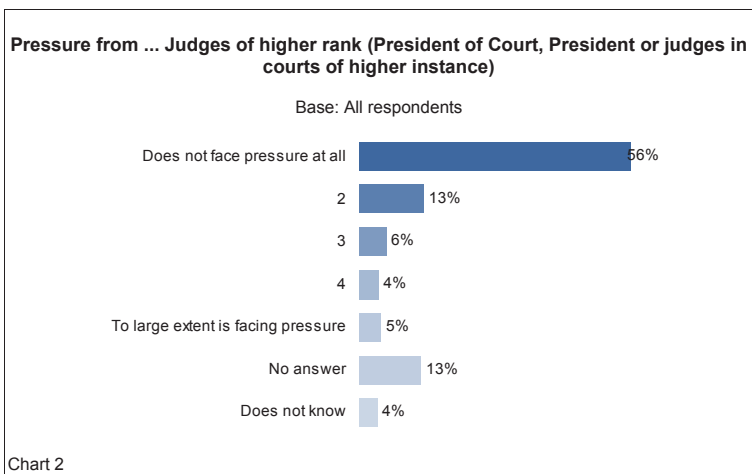


The strongest source of attempted external influence according to the judges is the executive power. **19% of all judges marked that the judges in their court are “to a large extent” facing pressure from representatives of the executive power (such as the Government, MoJ, Ministry of Internal Affairs)**. Less than half (43%) answered

that the judges in their court do not face any pressures from representatives of the executive power at all. On a scale from 1 (not facing any pressure at all) to 5 (to a large extent facing pressure), the average of all answers to the question “to what extent do judges in your court face pressure from representatives of the executive power” is 2.4.

The second largest factors of attempted influence are, according to the findings of the survey, political parties. Here, the average of all answers regarding the question to what extent judges in a certain court are facing pressures is 2.3. 14% of judges surveyed responded that the judges in their court are facing pressures from political parties “to a large extent”. In other words, **every seventh judge thinks that political parties try to pressure courts to a large extent.**

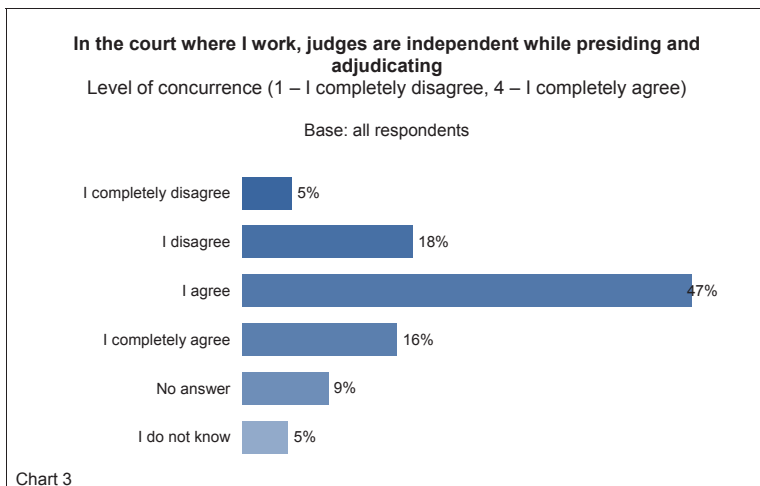
Attempts to limit the independence of judges do not necessarily come from stakeholders outside of the judiciary. For this reason, the Universal Charter of the Judge states in article 2: “*The judges, as holder of judicial office, must be able to exercise judicial powers (...) independently from other judges and the administration of the judiciary*”. **In fact, 5% of judges surveyed stated that judges in their courts are “to a large extent” facing pressure from judges of higher rank.** 56% said that the judges in their court do not face pressure from higher-ranking judges at all. (see chart 2)



With respect to attempts to influence decisions by fellow judges, only 1% claimed that there was to a large extent pressure put on the judges of their courts. Despite the many attempts to influence their work, many judges seem to believe that those attempts do not have much impact on the administration of justice in practice. 47% of the judges think that the judges in their court are independent while presiding and adjudicating. 16% even completely agree with that claim. **Still, almost one quarter of the judges are of the opinion that the judges in their court do not adjudicate independently** (18% disagree with the statement that the judges in their court adjudicate independently, 5%



are even strongly convinced that this is not the case). **This means that almost every fourth judge does not believe in the independence of the judiciary in the host country.** (see chart 3)



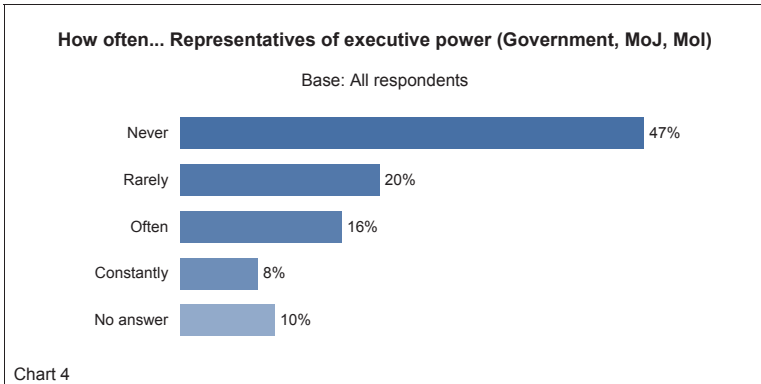
Considering the information presented in chart 3, two aspects of concern should be highlighted:

- the significant percentage (from 11% to 20%) of answers “I don’t know” or “No answer” from all 421 surveyed judges. It is hard to imagine how such a high number of judges should be unable to answer whether or not they are facing pressure;
- the troubling number of judges giving the highest grade of five (“to large extent is facing pressure”), especially when responding to questions regarding pressure by the executive power and political parties.

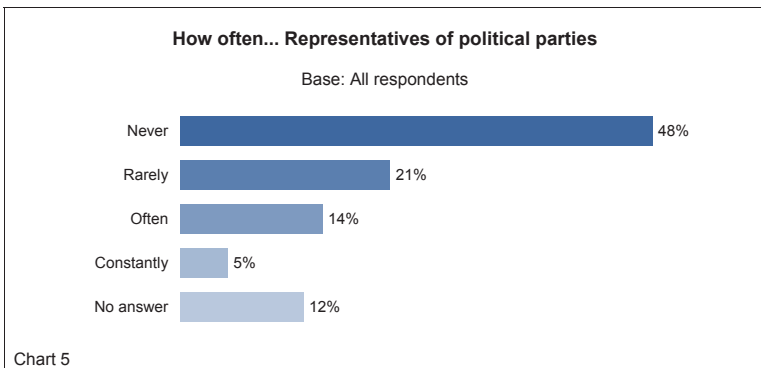
**While the first set of questions addressed the judges’ perception of attempts to influence the administration of justice in their court, the second part of the questions (A2) inquired about how frequently the judges were personally confronted with attempts to influence their decisions.** Judges could mark answers from 1 (Never) to 4 (constantly). Again, most attempts to influence the decisions of the judges came from representatives of the executive power. The average of answers regarding attempted influence from the executive branch was 1.8.

**Almost one fourth of the judges stated that they are exposed to pressures from the executive power on a regular basis.** 8% answered that they are confronted with pressures on the part of the executive power ‘constantly’; 16 % marked ‘often’. Only 47%

of the judges who answered this question noted that they had never been confronted with attempts to influence their decisions from the side of the executive power. That means that less than half of the judges feel completely free from the executive branch's influence. (see *chart 4*)



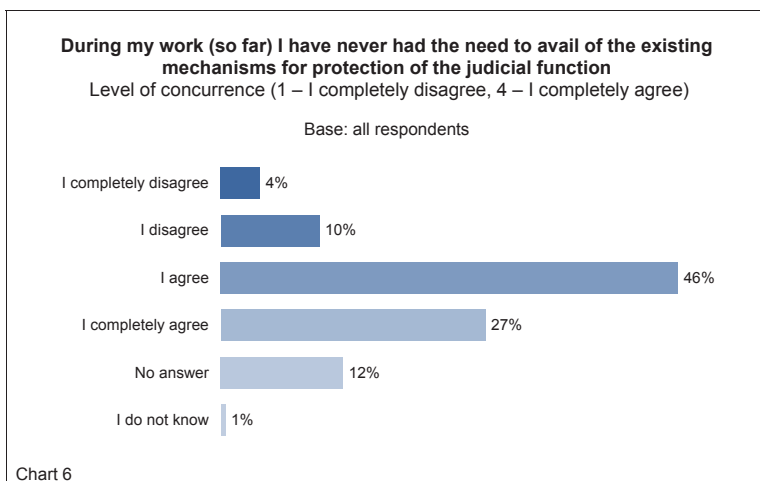
Political parties accounted for the second largest number of attempts to influence judges. 5% of the judges surveyed stated that they were constantly subjected to pressure by representatives of political parties and 14% stated that this happened often. **This means that almost one fifth or approximately 85 of the respondents are exposed to pressure from political parties on a regular basis.** Only 48% of the judges surveyed said that pressure from political parties never occurred. (see *chart 5*)



As for the members of the Judicial Council, 9% of the judges felt pressure by the Judicial Council (6% often and 3% constantly).

As pointed out above, it is an important criterion for the independence of the judiciary that there are effective mechanisms in place to protect judges against attempts to influence their work. **However, the vast majority (60%) of the respondents does not believe that such mechanisms are in place in the current framework.** Confronted with the statement "In the judicial system, there are effective mechanisms for protection of the judicial function against pressures/suggestions/attempts of influence", 21% stated "I completely disagree" and 39% stated "I disagree".

A comparatively low number of judges have ever tried to avail themselves of mechanisms for their protection, another indicator of the large degree of mistrust towards the tools currently available. Only 14% of the respondents disagreed or completely disagreed with the statement that they never used the existing mechanisms for the protection of the judicial function. **Thus, 73% of the judges surveyed never tried to rely on the existing protection mechanisms** (46% agreed and 27% even completely agreed with the above mentioned statement). (see chart 6)



## **Chapter 2: The Role of the Judicial Council**

### **(Questions from part A3 of Annex 1)**

The provisions governing the election and dismissal of judges and disciplinary proceedings are crucial to the independence of the judiciary. As pointed out earlier, the ECtHR assesses the independence of a tribunal *inter alia* having regard to the manner of appointment of its members.<sup>55</sup> The Council of Europe's Recommendation no. R (94)12 on the Independence, Efficiency and Role of Judges states:

*"All decisions concerning the professional career of judges should be based on objective criteria and the selection and career of judges should be based on merit, having regard to qualifications, integrity, ability and efficiency. The authority taking the decision on the selection and career of judges should be independent of the government and the administration. In order to safeguard its independence, rules should ensure that, for instance, its members are selected by the judiciary and that the authority decides itself on its procedural rules."*<sup>56</sup>

The Consultative Council of European Judges (CCJE) Opinion 10 recommends that judicial councils with mixed composition (judges and non judges) should represent the autonomous government of the judicial power, enabling individual judges to exercise their functions outside any control of the executive and the legislature.<sup>57</sup>

The competent body for the election and dismissal of judges and for disciplinary proceedings in the host country is the Judicial Council.<sup>58</sup> It consists of 15 members, of whom eight shall be elected by the judges from their ranks.<sup>59</sup> Three members are elected by the Parliament; two additional members are elected by the Parliament upon suggestion by the President of the country. All members elected by the Parliament are university professors of law, attorneys or other "eminent lawyers". The Minister of Justice and the President of the Supreme Court are ex-officio members of the Judicial Council.

As pointed out above the Judicial Council was introduced in the host country with the goal of securing and guaranteeing the independence of the judiciary.<sup>60</sup> **However, 66 % of the judges surveyed share the opinion that the Judicial Council does not fulfill this function.** This statistic might be taken as a serious message from the judiciary alarming the legal community that the Judicial Council, in its current state, has already lost the confidence it has been entrusted with by the judiciary members. (see chart 7)

<sup>55</sup> ECtHR, Campbell and Fell./United Kingdom (application no. 7819/77,7878/77), judgment of 28 June 1984, para 77; Findley./United Kingdom, judgment of 25 February 1997, Reports of Judgments and Decisions 1997-I, Para 73

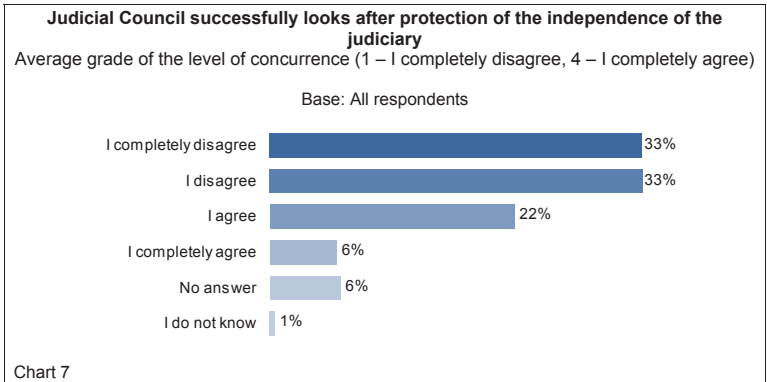
<sup>56</sup> Council of Europe – Committee of Ministers, Recommendation no. R (94) 12 of the Committee of Ministers on the independence, efficiency and role of judges, adopted by the Committee of Ministers on 13 October 1994 at the 518<sup>th</sup> meeting of the Ministers' Deputies, Principle 1, letter c), 1<sup>st</sup> paragraph

<sup>57</sup> Opinion no.10(2007) of the Consultative Council of European Judges (CCJE) to the attention of the Committee of Ministers of the Council of Europe on the Council for the Judiciary at the service of society, CoE doc, para.12

<sup>58</sup> Article 31 of the Law on the Judicial Council, Official Gazette of RM No.60/2006

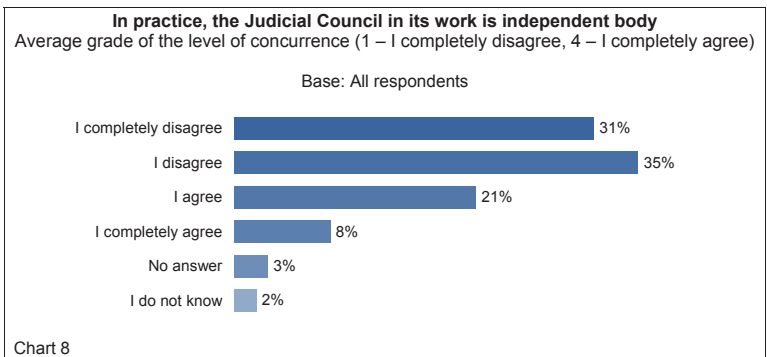
<sup>59</sup> Article 6 of the Law on the Judicial Council, Official Gazette of RM No.60/2006

<sup>60</sup> See for example art. 2 of the Law on the Judicial Council, Official Gazette of RM No. 20/2006.



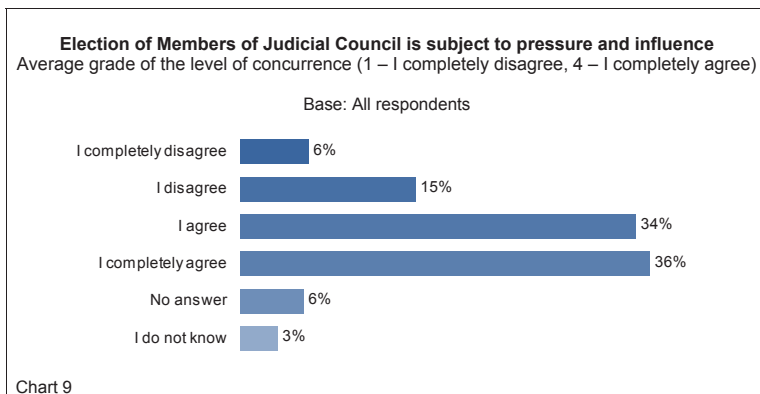
In order to fulfill its function, the body that selects judges should be independent. Recommendation No. R (94) 12 states: “*The authority taking the decisions on the selection and career of judges should be independent of the government and the administration*”.

However, **two thirds, i.e. 278 of the responding judges doubt that the Judicial Council is in fact independent and free from influences.** When confronted with the statement “in practice, the Judicial Council is an independent body”, 31% of the judges pointed out that they “completely disagree” with this statement; 35% stated that they “disagree”. However, 29 % gave positive answers from which 21% agreed and 8% completely agree. (see chart 8)



**Additionally, the vast majority of the participants in the survey (70%) believe that the selection of the Council members is biased.** Regarding the statement “the election of the members of the Judicial Council is subject to pressure and influence”,

36% of the judges stated "I completely agree" and 34% stated "I agree". Only 6% disagreed completely – which means that only 6 % are fully convinced that the election of the members of the Judicial Council is free from pressure and influence. (see chart 9)



A particular source of concern to the judges surveyed is the participation of the Minister of Justice in the Judicial Council.

It should be noted that the involvement of representatives of the executive power in the Judicial Council does not per se contradict international standards. For instance, in the case *Asadov and others v. Azerbaijan*, the ECtHR held: "[a]t the outset, the Court considers that the mere fact that a representative of the executive authority is to a certain extent involved in the process of formation of the Courts cannot be held as justifying, in itself, fears as to the independence and impartiality of the courts in general"<sup>61</sup> (however, the Court also mentioned that the legal framework in Azerbaijan was to be changed in that respect after the time to be considered for the purpose of its decision). In this case, the applicant had challenged the independence and impartiality of the tribunal which had tried him on the grounds that the Minister of Justice was a member of the Judicial Council selecting the judges. The ECtHR held that this cannot cause legitimate doubts as to the independence and impartiality of the Court, pointing out that the Minister of Justice was the only representative of the executive branch, while the remaining six members of the council were judges of high courts and that the Council was a collegial body which adopted decisions by a majority of votes<sup>62</sup>.

**Here, however, a clear majority of the judges (74%) thinks that the Minister of Justice should not be a member of the Judicial Council.** Confronted with the statement "the Minister of Justice should participate in the work of the Judicial Council", 47% of the judges stated "I completely disagree" and 27% stated "I disagree". Only 22% agreed (14% agreed and 8% agreed completely). (see chart 10)

<sup>61</sup> ECtHR, *Asadov v. Azerbaijan* (application no. 138/03), decision of 12 January 2006.

<sup>62</sup> ECtHR, *Asadov v. Azerbaijan*, *ibid*

**Minister of Justice should participate in the work of the Judicial Council**  
 Average grade of the level of concurrence (1 – I completely disagree, 4 – I completely agree)

Base: All respondents

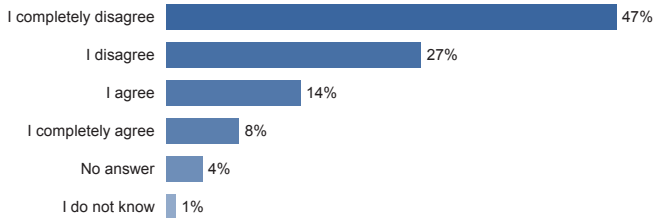


Chart 10

The participation of the legislative power on the Judicial Council meets criticism, too. **70% of judges surveyed disagreed that the Judicial Council should have members elected by the legislative power** (44% "I completely disagree", 26% "I disagree").

A similarly negative attitude is widespread regarding the appointment of ex-officio members of the Judicial Council. **More than half of judges surveyed think that there should not be ex-officio council members.** Confronted with the statement "the Judicial Council should have members appointed ex-officio", approximately 240 judges surveyed stated that they disagree (35 % of the judges stated that they completely disagree and 22% that they disagree). 23% agree with the statement and 12% completely agree. (see chart 11)

**Judicial Council should have members appointed ex-officio**  
 Average grade of the level of concurrence (1 – I completely disagree, 4 – I completely agree)

Base: All respondents

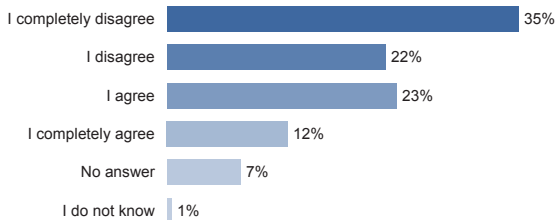
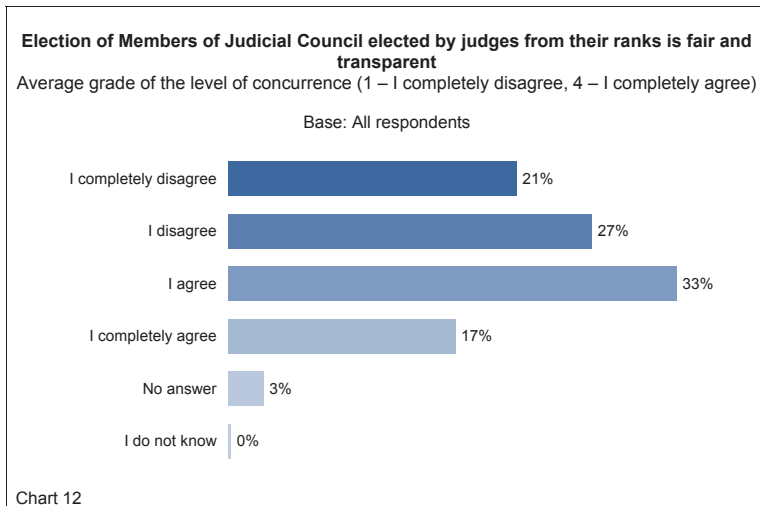


Chart 11

Regarding the manner of the election of the Council's members who are elected from their own ranks: the judges have split opinions.

**While 50% of the respondents deem this election fair and transparent (17% "I completely agree", 33% "I agree"), 48% are critical (21% "I completely disagree", 27% "I disagree").** (see chart 12)



The high level of distrust in its own election procedure shows a lack of internal transparent and democratic election processes within the judiciary.

The lack of trust in the Judicial Council, which becomes clear from the results above, is also reflected in the way judges view the procedures conducted by this institution. As pointed out above, the Judicial Council is in charge of disciplinary proceedings against members of the judiciary.

**More than 60% of judges surveyed believe that the procedures are not conducted in an objective manner.** (see chart 13)



**Disciplinary procedure and the procedure to establish unprofessional conduct and bad faith in the exercise of the Judicial Office are conducted in an objective manner**  
Average grade of the level of concurrence (1 – I completely disagree, 4 – I completely agree)

Base: All respondents

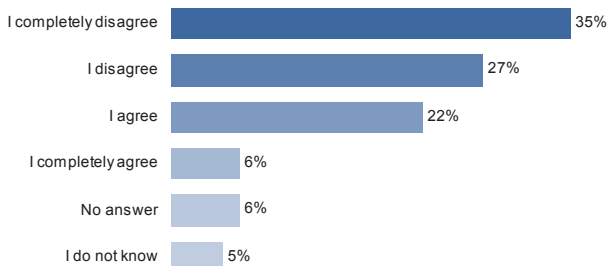


Chart 13

**An even greater number of judges (67%) think that the manner of election and dismissal of judges is subject to pressure. (see chart 14)**

**Manner of election and dismissal is subject to pressure**

Average grade of the level of concurrence (1 – I completely disagree, 4 – I completely agree)

Base: All respondents

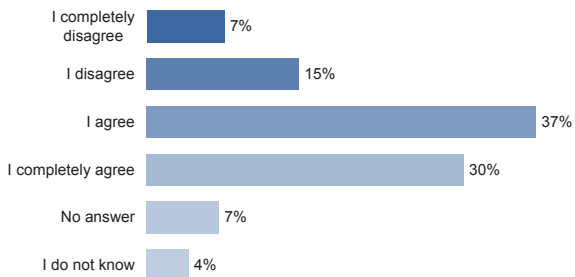
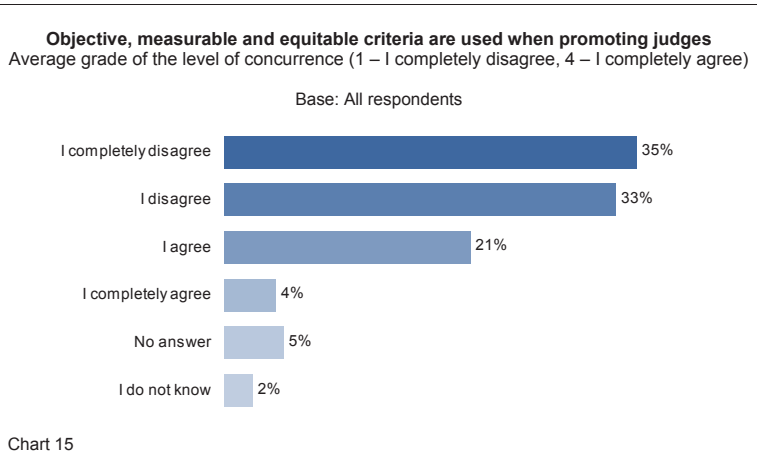


Chart 14

Also, 68% of the judges surveyed do not believe that there currently exist measurable and objective criteria for the promotion of judges. (see chart 15)



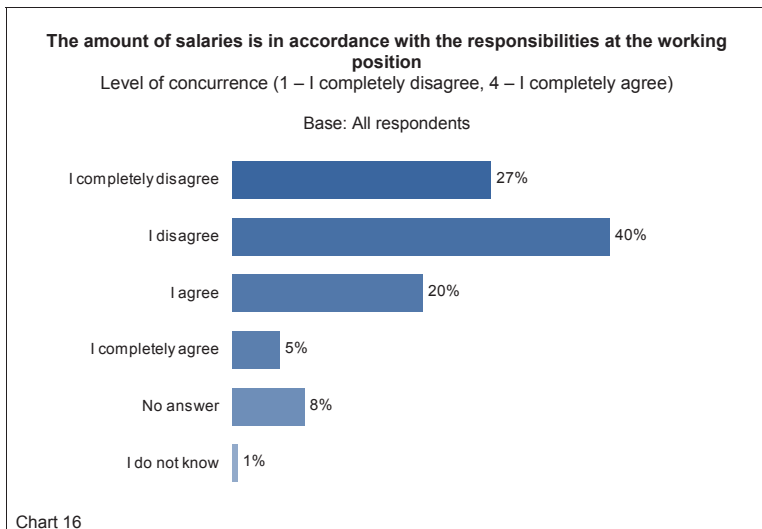
To summarize the results: the majority of judges surveyed thinks that judges in the host country are elected and dismissed pursuant to procedures which are conducted by a body that is perceived as biased.

### **Chapter 3: Salaries**

(Selected Questions from part A11 of Annex 1)

Remuneration is a traditional area of concern and possible impact on judges<sup>63</sup> independence. Recommendation No. R (94) 12 specifies that the signatory states should enable judges to work efficiently, by "ensuring that the status and remuneration of judges is commensurate with the dignity of their profession and burden of their responsibilities". The U.N. Basic Principles for the Independence of the Judiciary stipulate that the adequate remuneration of judges shall be secured by law. Also, the Beijing Statement stipulates that "judges must receive adequate remuneration and be given appropriate terms and conditions of service".<sup>64</sup>

The vast majority of the judges who participated in the survey do not think that their remuneration meets these requirements. **67% disagreed that the judges' salaries are in accordance with their responsibilities at the working position** (27% "I completely disagree", 40% "I disagree"). (see chart 16)

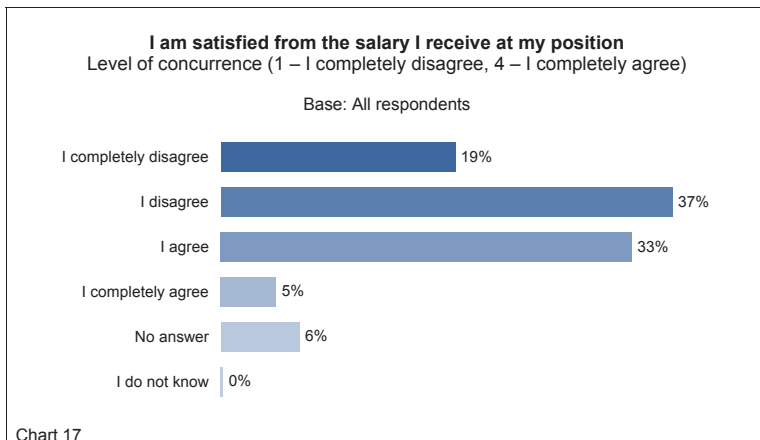


**However, when asked about their view regarding their personal salary, only 56% of the judges surveyed are not satisfied with their wages.** Indeed, when questioned about the statement "I am satisfied with the salary I receive at my position", 19% stated

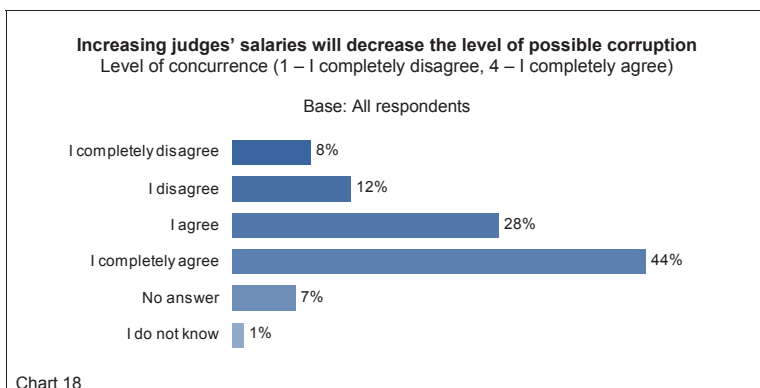
<sup>63</sup> Peter H. Russel, Towards a general theory of judicial independence, p.14 in: Russell/O'Brien, Judicial independence in the age of democracy, 2001, see also Dick Howard, Judicial Independence in Post-Communist Central and Eastern Europe, p. 95 in: Russell/O'Brien, Judicial independence in the age of democracy, 2001

<sup>64</sup> Beijing Statement of principles of the independence of the judiciary in the law Asia region of 1997, para. 32

that they completely disagree and 37% that they disagreed. 33% agreed and 5% completely agreed. (see chart 17)



**For 72% of the judges surveyed, the low level of salaries entails risks for the independence of the judiciary:** 44% of the judges surveyed stated that they completely agree with the statement "increasing the judges salaries will decrease the level of possible corruption" and 28% agreed with that. (see chart 18)



## **Chapter 4: Professional development and working conditions**

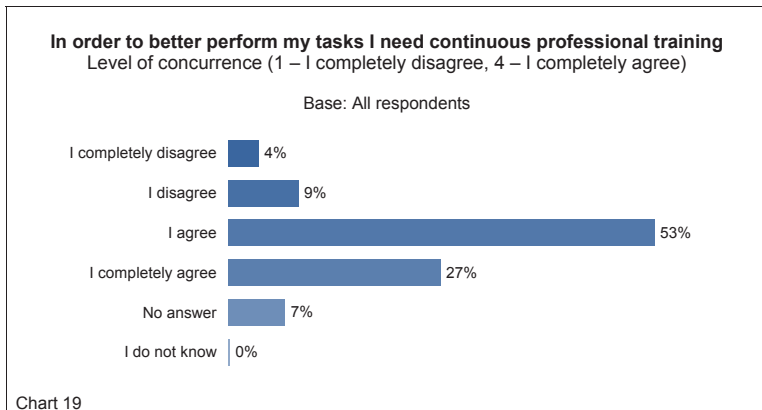
*(Selected Questions from part A11 of Annex 1)*

Justice can only be administered efficiently and independently if proper working conditions are provided. Recommendation no. R (94) 12 states: “*Proper working conditions should be provided to enable judges to work efficiently (...)*”.

### **Professional training**

In particular, the recommendation stresses that a sufficient number of judges necessary to handle the workload should be recruited and that appropriate training should be provided to them.

**80% of the judges surveyed see the importance of continuous professional training.** 53% agree that they need continuous professional training and 27% completely agree. Only 13% disagree (9% 'I disagree', 4 % 'I strongly disagree'). (see chart 19)



### **Equipment**

The above-mentioned recommendation also states that judges should be provided with adequate support staff and equipment, in particular, office automation and data processing facilities.<sup>65</sup>

<sup>65</sup> Principle III 1 d) of Recommendation no. R (94) 12 of the Committee of Ministers of the Council of Europe

As far as technical equipment is concerned the opinions of the judges surveyed are split. **Confronted with the statement “I am satisfied with the technical resources such as computers, telephone, e-mail available”, 44% disagree (19% “I completely disagree”, 25% “I disagree”). On the other hand, 49% do agree (37% “I agree”, 12% “I completely agree”).**

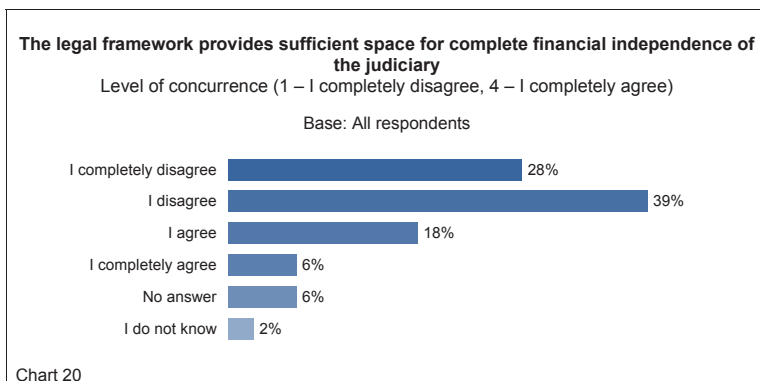
However, there is a large degree of dissatisfaction among the judges with respect to the budget allocated to courts and their equipment and ability to procure necessary goods and services. **Almost 90% of the respondents think that the court budgets are not sufficient:** 53% of the judges stated that they completely agree with the statement “the funds determined with the court budget are insufficient to cover the realistic expenses for administration of justice.” 35% said they agreed.

Providing sufficient equipment plays an important role in ensuring the independence of the judiciary. The Beijing statement stipulates that “*it is essential that judges be provided with the resources necessary to enable them to perform their functions*”<sup>66</sup>.

### Court Budgeting

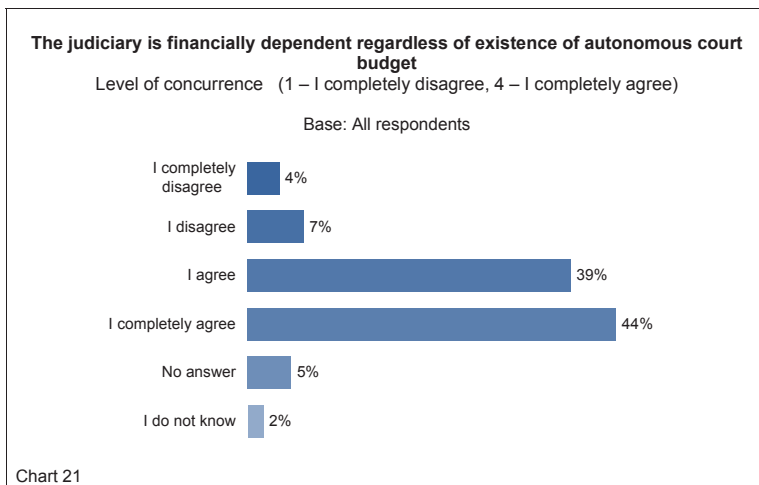
In practice, the funds requested by the courts at the beginning of each year are not awarded to the full amount, since the requests regularly exceed the maximum limit indicated by the Ministry of Finance. The CBC regularly adjusts the requested budget to the limit by decreasing the amounts requested by the courts for certain budget lines. At the moment, the courts do not use consistent criteria to calculate their expenditures for the next year.

The vast majority of the judges surveyed see the reason for insufficient funding in the legal framework. **67% of the respondents think that the legal framework does not provide sufficient space for the complete financial independence of the judiciary.** 24% think that it does. (see chart 20)



<sup>66</sup> Beijing Statement of principles of the independence of the judiciary in the lawasia region of (1997), para 41

A high percentage of the respondents think that the judiciary remains financially dependent. **44% of the participants in the survey stated that they completely agreed that the judiciary is financially dependent despite of the existence of an autonomous court budget.** 39% agreed and only 11% disagreed (4% "I completely disagree", 7% "I disagree"). (see chart 21)



In fact, the control over the budget of courts and the allotment of sufficient funds is an important matter in the context of the independence of the judiciary. The Beijing statement stipulates in that respect: “[t]he budget of the Courts should be prepared by the courts or a competent authority in collaboration with the courts having regard to the needs of the independence of the judiciary and its administration. The amount allotted should be sufficient to enable each court to function without an excessive workload”.<sup>67</sup>

**In the view of the majority of the judges surveyed, the solution to the problem of insufficient funding lies in generating more funds by the judiciary itself.**<sup>68</sup> Regarding the statement “the judiciary should generate more funds autonomously that will be incorporated in the court budget”, 46% of the judges completely agreed, 37% agreed. (see chart 22)

<sup>67</sup> Beijing statement, *ibid*, para 37

<sup>68</sup> The Questionnaire did not specify in which way the courts could generate their own funds.

**The judiciary should generate more funds autonomously that will be incorporated in the court budget**

Level of concurrence (1 – I completely disagree, 4 – I completely agree)

Base: All respondents

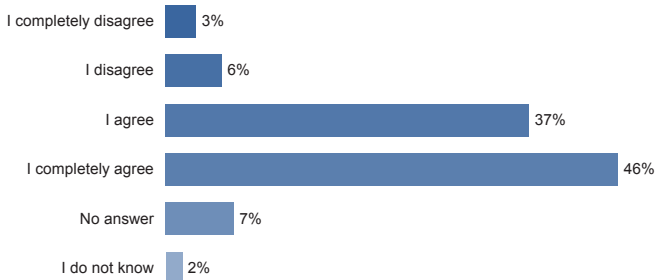


Chart 22

***Physical safety***

Physical security (and the perception of being physically secure) is an important element of an independent judiciary. Menacing, physical intimidation or even violence are the most blatant methods to influence the judges' decisions. It is paramount for the independence of judges that they feel physically secure in their working environment.

The participants of the survey seem to be split over their perception of their safety. **58% state that they feel secure in the premises of the court in which they work** (18% "I completely agree", 40% "I agree"). **On the other hand, 23% disagree with the statement "I feel secure in the premises of the court in which I work" and 12% even completely disagree.**



## **Chapter 5: Macedonian Judges' Association** (Questions from part A8 of Annex 1)

Associations of judges can play an important role in protecting judges against improper attempts to influence their decisions and safeguarding the independence of the judiciary. Principle IV of Recommendation R (94) 12 states: "*Judges should be free to form associations which, either alone or with another body, have the task of safeguarding their independence and protecting their interests*". Paragraph 9 of the UN Basic Principles on the Independence of the Judiciary stipulates that "*judges shall be free to form and join associations of judges or other organizations to represent their interests, to promote their professional training and to protect their judicial independence.*"

The right of a judge to belong to a professional association must be recognized in order to permit the judges to be consulted, especially concerning the application of their statutes, ethical and otherwise, and the means of justice, and in order to permit them to defend their legitimate interests.<sup>69</sup>

The questions under part A8 of the Questionnaire gave the opportunity to the judges to present their satisfaction with the role and the work of the MJA.<sup>70</sup> The results that were gathered are devastating in respect of the high level of dissatisfaction of the judges. From 421 judges that answered the Questionnaire<sup>71</sup>:

- 76% completely disagree or disagree that the MJA protects the status of the judges;
- 94% completely agree or agree that the MJA should be more active in protecting its members when there are attacks on the judicial profession and the judges' reputation;
- 95% completely agree or agree that the MJA should regularly submit to the drafters comments on draft laws related to the judiciary;
- 96% completely agree or agree that the MJA should undertake initiatives for suggesting amendments and enacting laws relevant for the judiciary.

**The results of the survey should serve as a starting point for serious discussions among the members of the MJA.** The by-laws of the MJA should not be perceived only as words on paper. The objectives and principles contained in the by-laws must be seen by judges as achievable. **The MJA should articulate in one voice the needs and the views of the judges,** for instance through public relations activities, submission of comments on relevant laws, initiation of processes for changes of current laws or for drafting new laws, public debates on relevant issues, etc.

<sup>69</sup> Article 12, the Universal Charter of the Judge, International Association of Judges

<sup>70</sup> See questions from part A8 from the Questionnaire presented as ANNEX 1 to this Analysis

<sup>71</sup> For detailed results see ANNEX 2 to this Analysis

## **Chapter 6: Transparency**

### **(Questions from part A6 of Annex 1)**

Transparency may not be an obvious element of an independent judiciary. The publicity of trials, which is an important element of the transparency of court proceedings and the judiciary in general,<sup>72</sup> serves first and foremost the interest of the parties. The ECtHR states: “*the public character of proceedings (...) protects litigants against the administration of justice in secret with no public scrutiny.*” As 18<sup>th</sup> Century legal philosopher Jeremy Bentham has said, “*publicity keeps the judge himself, while trying, under trial*”.

While independence of the judiciary is crucial to the rule of law, it must not be understood that members of the judiciary are free from any kind of control. In the words of UCLA Law Professor Lynn M. LoPucki: “*Judicial independence is not freedom to do as judge pleases, but rather freedom to do what a judge should*”. Thus, transparency of courts is important to counterbalance the independence of the judiciary.

Moreover, the judiciary hinges on public trust. Transparency of the courts and publicity of procedures contributes to increasing the trust of the population in the court system. The ECtHR has held that the public character of proceedings is also a means “*whereby confidence in the Courts can be maintained.*”<sup>73</sup>

The practical mechanisms for implementation of the principle of transparency range from the manner of publication of court decisions, transparency of court finances and accountability, to specific issues such as posting trial schedules, courts spokespersons and relations with the media, etc. The automated distribution of cases introduced in the domestic judicial system surely is one of the operational modes for securing the transparency which is being introduced in the domestic judiciary.

The survey presented the question of transparency to the judges in a different format, by offering them a set of ideas - possible practical means for improvement of the transparency in general. The judges were asked “*to what extent could the following activities contribute towards improving the transparency of the judiciary*”:

- holding regular press conferences;
- establishing a special media outreach department;
- regular trainings of the administrative personnel;
- free access to court decisions;
- staffing

The respondents were given the opportunity to answer the question “to your knowledge, to what degree do the citizens trust the work of the court you work in” on a scale from 1 to 5 (1 indicated the least degree of trust and 5 the highest). **The average answer was 3.5. Furthermore, 12% of the judges surveyed marked the “highest degree of trust”, 30% marked a “4” on the mentioned scale from one to five.** (see chart 23)

<sup>72</sup> ECtHR, Pretto./Italy (application no. 7984/77), judgment of 8 December 1983, para 21

<sup>73</sup> ECtHR, Werner./Austria (application no. 138/1996/757/956), judgment of 24 November 1997 para 45

**To your knowledge, to what degree do the citizens trust in the work of the court you work in?**

Degree of trust (1 – lowest degree of trust, 4 – highest degree of trust)

Base: All respondents

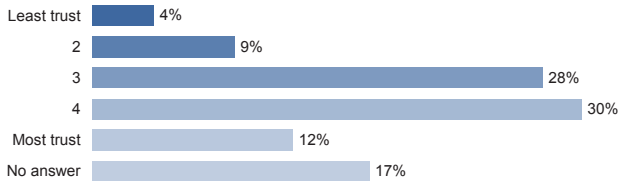


Chart 23

Thus, according to the participants of the survey, citizens trust the court system more than the judges themselves. As observed earlier, 43 % of all judges surveyed stated that the judiciary is facing external pressures and influences.<sup>74</sup>

The best way to increase the transparency of courts is in the judges' opinion the recruitment of necessary personnel. **59% of the respondents stated that hiring more indispensable staff would contribute "to a very large extent" to increasing the transparency of court decisions.** Only 6% thought that this would contribute to a very small extent. (see chart 24)

**Hiring necessary personnel in courts**

Base: All respondents

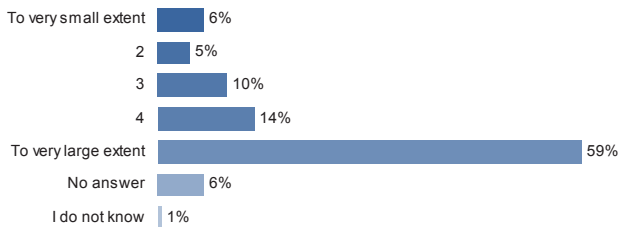



Chart 24

<sup>74</sup> See "Influence by others", Chapter 1 of Segment II.



Opinions are split regarding the importance of free access to court decisions. **21% of the judges surveyed think that granting free access to court decisions will to a very large extent contribute to increasing the trust in the judiciary, while 25% are of the opinion that this means will be effective to a very small extent.**

As the results show, judges responded positively to all of the above-mentioned ideas. These ideas can be further promoted and developed by the domestic judiciary.

### ***Distribution of cases***

The assignment of certain cases to certain judges is a possible means of influencing the outcome of a procedure. But, the automatic distribution of cases, which excludes the “human factor”, reduces the possibilities to tamper with the procedure as automatic distribution of cases ensures that it is impossible to assign a case to a specific judge (for instance, a judge who bows to pressure).

The international community has made considerable efforts to assist the authorities in installing a system of automatic distribution of cases in the country. 65% of the judges stated that the automated system is in place in their court and it is used in every case. However, 7,6% of the judges stated that there is no such system in their court, and 5 % said that the system is there, but not being used.

14% answered that the automatic distribution of cases is partly used, but that cases are still assigned by the President of the court or the archive – a practice, which defies the purpose of the automatic distribution and shows that the best technical fix does not help if the stakeholders are not willing to implement it properly.

## ***CLOSING REMARKS***

In closing, the findings of the survey give rise to grave concerns regarding the independence of the judiciary in the country.

The results show that attempts to influence the decisions of judges are a common practice and occur frequently. Common violations of the law and of the principle of independence of the judiciary remain to a large extent unnoticed and unpunished. A considerable portion of the judges think that these attempts do have an influence on the administration of justice.

The mechanisms and instruments to protect their independence are perceived by judges as ineffective and therefore are very rarely used.

The conducted survey reveals a large degree of distrust in judicial institutions and mechanisms of the judicial system on the part of the judges. An overwhelming majority of judges views the Judicial Council, probably the most important body for the independence of the judiciary, as biased and the procedures it conducts as non-transparent and politically influenced.

Many judges are dissatisfied with their working conditions, their salaries and their possibilities for professional development.

The high response rate to the questionnaire demonstrates that judges believe it is time to engage into discussion of this issue and initiate improvements.

We hope that this Analysis will mark the first step in a process of discussing the challenges for the independence of the judiciary in the country and providing possible solutions for overcoming current obstacles and strengthening independence.

The project was implemented in close co-operation with the Macedonian Judges Association, which we would like to thank. We would also like to thank the Judicial Council and the Supreme Court for their support of the project.

Last but not least, we would like to express our gratitude to all the judges in the country who took the time to answer the Questionnaire, share their views and contribute to this Analysis.



# ANNEX 1

Project:

# Independent Judiciary

Anonymous questionnaire for judges

**The content of your answers is confidential  
and shall be used solely for the requirements of this project**



Organization for Security and  
Co-operation in Europe  
**Spillover Monitor Mission to Skopje**

Please mark the appellate district of the court where you are employed:

1. Bitola      2. Gostivar      3. Skopje      4. Stip

A1	Referring to your past professional experience, please answer:  In the course of decision-making, to what extent do the judges in your court face pressure/suggestions/attempts to exert influence by:	A SCALE OF 1 TO 5 IS USED WHERE 1 SIGNIFIES THAT JUDGES ENCOUNTER NO PRESSURE FROM THE CORRESPONDING SOURCE AND 5 SIGNIFIES THAT JUDGES ENCOUNTER PRESSURE FROM THE CORRESPONDING SOURCE TO A LARGE EXTENT						
		There is no pressure				Pressure exists to a large extent	No answer	I don't know
		S1	S2	S3	S4	S5		
1	Representatives of the international community	1	2	3	4	5	98	99
2	Representatives of the business sector	1	2	3	4	5	98	99
3	Representatives of political parties	1	2	3	4	5	98	99
4	Representatives of the executive powers (the Government, the Ministry of Justice, the Ministry of Internal Affairs)	1	2	3	4	5	98	99
5	Fellow judges	1	2	3	4	5	98	99
6	Higher ranking judges (president of the court, president of a superior court)	1	2	3	4	5	98	99
7	Members of the Judicial Council	1	2	3	4	5	98	99
8	Parties involved in a procedure (attorneys, public prosecutors)	1	2	3	4	5	98	99
9	Other _____	1	2	3	4	5	98	99
10	Other _____	1	2	3	4	5	98	99

A2	How often do you encounter certain direct or indirect pressure/suggestions/attempts to influence the independence of your profession:	Never	Seldom	Often	Constantly	No answer
1	Representatives of the international community	1	2	3	4	98
2	Representatives of the business sector	1	2	3	4	98
3	Representatives of political parties	1	2	3	4	98
4	Representatives of the executive powers (the Government, the Ministry of Justice, the Ministry of Internal Affairs)	1	2	3	4	98
5	Fellow judges	1	2	3	4	98
6	Higher ranking judges (president of the court, president of a superior court)	1	2	3	4	98
7	Members of the Judicial Council	1	2	3	4	98
8	Parties involved in a procedure (attorneys, public prosecutors)	1	2	3	4	98
9	Other _____	1	2	3	4	98
10	Other _____	1	2	3	4	98

Please give any additional opinions/comments/suggestions about the Macedonian Judges' Association:

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A3	The table lists several statements pertaining to the work of the Judicial Council of the Republic of Macedonia. Please specify the extent to which you agree or disagree with each of the following statements:	PLEASE MARK ONLY ONE VALUE FOR EACH OF THE GIVEN STATEMENTS					
		I disagree completely	I disagree	I agree	I agree completely	No answer	I don't know
1	The Minister of Justice should participate in the work of the Judicial Council.	1	2	3	4	98	99
2	In practice, the Judicial Council is an independent body.	1	2	3	4	98	99
3	The election of members of the Judicial Council, conducted by judges from the judicial community is fair and transparent.	1	2	3	4	98	99
4	The method of electing members of the Judicial Council should be altered.	1	2	3	4	98	99
5	The Judicial Council should have members elected from the legislative power.	1	2	3	4	98	99
6	The Judicial Council should have members assigned by post.	1	2	3	4	98	99
7	The term of the Judicial Council members should be shorter.	1	2	3	4	98	99
8	There is an effective procedure to determine the responsibility of members of the Judicial Council.	1	2	3	4	98	99
9	The election of members to the Judicial Council is subject to pressure and influence.	1	2	3	4	98	99
10	The Judicial Council is successful in protecting the independence of the Judiciary.	1	2	3	4	98	99
11	The method of electing judges is objective and transparent.	1	2	3	4	98	99
12	The disciplinary procedure and the procedure to determine unprofessional conduct in the judicial post is carried out in an objective manner.	1	2	3	4	98	99
13	The method of election and dismissal is subject to pressure.	1	2	3	4	98	99
14	In the promotion of judges, objective, measurable and fair criteria are used.	1	2	3	4	98	99
15	The Judicial Council is efficient in preserving the reputation of the judges.	1	2	3	4	98	99

Please give any additional opinions/comments/suggestions about the Macedonian Judges' Association:

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A4	According to your awareness, to what extent do the citizens trust the work of the courts in the RM? PLEASE USE A SCALE OF 1 TO 5 WHERE 1 SIGNIFIES THE SMALLEST DEGREE AND 5 SIGNIFIES THE LARGEST DEGREE OF TRUST						
	S1	S2	S3	S4	S5	I don't know/No answer	
	1	2	3	4	5	99	
A5	According to your awareness, to what extent do the citizens trust your court/the court where you are employed? PLEASE USE A SCALE OF 1 TO 5 WHERE 1 SIGNIFIES THE SMALLEST DEGREE AND 5 SIGNIFIES THE LARGEST DEGREE OF TRUST						
	S1	S2	S3	S4	S5	I don't know/No answer	
	1	2	3	4	5	99	

A6	To what extent can each of the following activities contribute to the process of improving the transparency of the work of courts in the RM?	A SCALE OF 1 TO 5 IS USED WHERE 1 SIGNIFIES THAT THE CURRENT ACTIVITY CONTRIBUTES VERY LITTLE TO IMPROVING TRANSPARENCY AND 5 SIGNIFIES THAT IT CONTRIBUTES A GREAT DEAL.						
		Very little				A great deal	No Answer	I don't know
		S1	S2	S3	S4	S5		
	Holding regular (every month, every three months) press conferences by the courts	1	2	3	4	5	98	99
	Organizational changes – introducing a special public relations department	1	2	3	4	5	98	99
	Regular trainings for the expert services	1	2	3	4	5	98	99
	Free public access to court decisions	1	2	3	4	5	98	99
	Staff additions in courts	1	2	3	4	5	98	99
	Other _____	1	2	3	4	5	98	99

A7		Which of the following statements best describes the process of case distribution to judges in the court where you are employed? PLEASE MARK ONLY ONE OPTION
		<ol style="list-style-type: none"> <li>The court has an automatic case distribution system and every case is assigned to a judge electronically (on a random basis)</li> <li>There is a court practice of combined assignment of cases – by electronic means and through the record room or by the president of the court.</li> <li>An automatic case distribution system is not installed in the court – the assignment of cases is conducted via the record room or by the president of the court.</li> <li>The court has an automatic case distribution system, however, it is not employed – the assignment of cases is conducted via the record room or by the president of the court.</li> </ol>
		99. No answer/I don't know

A8	The table lists several statements pertaining to the Judges' Association. Please specify the extent to which you agree or disagree with each of the following statements:	PLEASE MARK ONLY ONE VALUE FOR EACH OF THE GIVEN STATEMENTS					
		I disagree completely	I disagree	I agree	I agree completely	No answer	I don't know
1	The Macedonian Judges' Association is concerned with protecting the status of judges.	1	2	3	4	98	99
2	The Association should protect its members from unfounded attacks on the judicial profession and reputation.	1	2	3	4	98	99
3	The Association should regularly make available its comments on judiciary-related draft laws to the respective drafters.	1	2	3	4	98	99
4	The Association should raise initiatives to amend and enact laws relevant to the judiciary.	1	2	3	4	98	99
5	The Association should take a more active part in protecting the interests of judges.	1	2	3	4	98	99

Please give any additional opinions/comments/suggestions about the Macedonian Judges' Association:

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A9	The table lists several statements pertaining to the cooperation of the court with the institutions of the national administration  Please specify the extent to which you agree or disagree with each of the following statements:	PLEASE MARK ONLY ONE VALUE FOR EACH OF THE GIVEN STATEMENTS					
		I disagree completely	I disagree	I agree	I agree completely	No answer	I don't know
1	The Courts should have more legal and practical mechanisms at their disposal in order for the cooperation with other institutions of the national administration to be at a higher level.	1	2	3	4	98	99
2	While resolving pending cases (acquiring evidence, acting on orders), the judges encounter problems in cooperating with institutions of the national administration.	1	2	3	4	98	99
3	The courts' financial problems have a dramatic effect on the cooperation with institutions of the national administration.	1	2	3	4	98	99

Please give any additional opinions/comments/suggestions about the cooperation of the court with the institutions of the national administration.

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A10	The table lists several statements pertaining to the regulation and financing of the Judiciary in the RM.  Please specify the extent to which you agree or disagree with each of the following statements:	PLEASE MARK ONLY ONE VALUE FOR EACH OF THE GIVEN STATEMENTS					
		I disagree completely	I disagree	I agree	I agree completely	No answer	I don't know
1	The present legal structure provides sufficient conditions for total financial independence of the Judiciary.	1	2	3	4	98	99
2	The Judiciary is financially independent in spite the court budget.	1	2	3	4	98	99
3	The funds allocated with the court budget are insufficient to cover the actual costs of enforcing justice.	1	2	3	4	98	99
4	The Judiciary should generate more funds autonomously which would enter the court budget.	1	2	3	4	98	99
5	The current arrangement of the court budget council does not provide efficient results.	1	2	3	4	98	99

Please give any additional opinions/comments/suggestions about the financial independence of the Judiciary in the RM.

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A11	Please specify the extent to which you agree or disagree with each of the following statements:	PLEASE MARK ONLY ONE VALUE FOR EACH OF THE GIVEN STATEMENTS					
		I disagree completely	I disagree	I agree	I agree completely	No answer	I don't know
1	I am satisfied with my financial compensation, or salary, for my work.	1	2	3	4	98	99
2	A transparent reward/bonus system is a genuine method of evaluating the work of judges.	1	2	3	4	98	99
3	I need professional training in order to be more successful at completing my work-related tasks.	1	2	3	4	98	99
4	The salary is appropriate to the responsibility attached to a professional position.	1	2	3	4	98	99
5	Increasing salaries will diminish the extent of potential corruption in the workplace.	1	2	3	4	98	99
6	I am satisfied that my superior can recognize the quality of my work.	1	2	3	4	98	99
7	The Court that I am employed in offers opportunities for professional advancement.	1	2	3	4	98	99
8	I am satisfied with the technical resources (computer equipment, e-mail, telephone) that are at my disposal.	1	2	3	4	98	99
9	The judges in my court face external influences and pressure on their independence of judgment.	1	2	3	4	98	99
10	I feel secure when performing my judicial duties in the area of the court that I work in.	1	2	3	4	98	99
11	In the court where I am employed, the judges are independent in acting and deciding.	1	2	3	4	98	99

A12	Please specify:	Very unsatisfied	unsatisfied	Satisfied	Very satisfied	No answer/I don't know
B32	What is the extent of your satisfaction with your working environment/surroundings?	1	2	3	4	99
B33	What is the extent of your satisfaction with your compensation/salary?	1	2	3	4	99
B34	What is the extent of your satisfaction with the possibility of professional advancement?	1	2	3	4	99

THANK YOU FOR YOUR CONTRIBUTION!

## ANNEX 2

**NOTE:**

Figures in some of the charts presented below in the Statistical Report (Annex 2) when added up reach a total of 101% or 99%. This can be explained by the calculation technique used by the statistics software. Namely, in the presented charts, the percentages are given as whole numbers depending on the number of the respondents that have answered or not to a question, the result can appear as well as a decimal number. The data processing software rounds off the decimal numbers in accordance to mathematical rules, i.e. each figure above 0.5 is rounded up to 1 and each figure below 0.5 is rounded down to 0.



**SMMRI Skopje**

Part of Strategoc Pulse Group and member of ECOMAP

Report

# Independence of the Judiciary

For OSCE

July 2009

# KEY FINDINGS



- 421 persons participated in this survey
- When asked to estimate to what extent in the course of the decision-making process the judges in your court face pressure/ suggestions/ attempts to exert influence the examinees responded that mostly they feel pressured by the representatives of the executive power (with an average grade of 2,4); then they listed the representatives of political parties (2,3), representatives of the business sector (1,8), parties involved in the procedure (1,7), members of the Judicial council (1,7), higher ranking judges (1,7), fellow judges (1,5), representatives of the international community (1,3).
- From the aspect of *direct or indirect pressures/suggestions/ attempts to exert influence upon the independence of the personal work of the judges*, again most often the pressures are coming from the representatives of the executive power. So, on a scale from 1 – never, to 4 – always, the examinees estimated that the average grades of the frequency of pressures from various sides can be described as follows: representatives of the executive power-1,8, representatives of political parties 1,7, parties involved in the procedure (attorneys, public prosecutors and etc)-1,5, representatives from the business sector - 1,5, higher ranking judges-1,5, fellow judges-1,4, members of the judicial council - 1,4, while very rarely do the examinees feel pressured by the representatives of the international community – 1,2 .
- *The work of the Judicial Council of the Republic of Macedonia* when examined through the degree to which the respondents agree with given statements related to the Judicial Council's functioning (where 1 means-I disagree completely and 4 means-I agree completely) is also evaluated as subjected to pressures. The average grades reflecting the degree of support to the Judicial Council's work can be summarized in the following manner: the election of members of the Judicial Council is subject to pressure and influences -3,1, the manner of election of the members of the Judicial Council is subjected to pressure -3, the method of electing members of the Judicial Council should be altered - 3, the term of the Judicial Council members should be shorter- 2,9, the election of members of the Judicial Council, conducted by judges from the judicial community is fair and transparent – 2,5, the Judicial Council should have members assigned by post – 2,1, in practice, the Judicial Council is an independent body -2,1, the Judicial Council is successful in protecting the independence of the Judiciary-2, the disciplinary procedure and the procedure to determine unprofessional conduct in the judicial post is carried out in an objective manner-2, the method of electing judges is objective and transparent-2, in the promotion of the judges, objective, measurable and fair criteria are used -1,9, the Judicial Council is efficient in preserving the reputation of the judges -1,9, the Judicial Council should have members elected from the legislative power – 1,8, the Minister of Justice should participate in the work of the Judicial Council – 1,8 .
- Referring to *the trust that the citizens have in the courts*, the examinees almost identically evaluated the degree of trust of the citizens towards all the courts in the country and towards the court in which they work (to what extent do the citizens trust your court/the court where you are employed - 3, 5, to what extent do the citizens trust the work of the courts in the country - 3, 1).
- Asked about the activities that can *contribute to the improvement/ increase of the transparency in the work of the judiciary*, the examinees considered that this can be achieved mainly with additional human resources in the courts ( average grade of influence 4,2 where 1 means to a very little extent a 5 means – to a great extent), then with regular trainings for the expert services -3,9, organizational changes – introducing a special public relations department -3,4, free access for the public to court decisions -3, holding regular (every month, every three months) press conferences by the courts- 2,7.
- Referring to the *process of distribution of the cases to judges in the court where they are employed*, 1% of the examinees answered that the court has installed a system for automatic distribution of cases and that each case is assigned to a judge electronically (by random selection); 14% of the examinees stated that in their court there is a practice of combined assignment of the cases- by electronic means and through the Registrar or by the President of the court; 7,6% of the examinees claimed that the court does not have an installed system for electronic distribution of cases, so the distribution is conducted via the Registrar or by the President of the court, while 5% of the examinees stated that such system existed but it was not used; 8,3% did not answer the question.
- *The work of the Association of Judges of the Republic of Macedonia* was evaluated according to the extent to which respondents agreed with the given statements, where 1 means complete disagreement and 4 means complete agreement. According to the examinees, the Association



should have a more active role: the association should have a more active role in the protection of the interests of the judges (average grade of agreement - 3,9); the Association should raise initiatives to amend and enact laws relevant to the judiciary - 3,8; the Association should more actively protect its members from unfounded attacks on the judicial profession and reputation - 3,8; the Association should regularly make available its comments on judiciary-related draft laws to the respective drafters - 3,8; according to the examinees, the Association is insufficiently concerned with the protection of the status of the judges- 1,7.

- *Cooperation of the courts with other bodies of the state administration* was evaluated according to the extent of agreement with the given statements describing that cooperation (1- I disagree completely, 4 – I completely agree). According to the examinees, the courts should have more legal and practical mechanisms at their disposal in order for the cooperation to be raised on a higher level ( average grade of agreement with this statement - 3,6); according to the examiners the financial problems of the courts have a significant effect on the cooperation with institutions of the state administration - 3,3; while resolving pending cases, judges encountering problems in the cooperation with the bodies of the state administration- 3,2.
- Using the same evaluation method (1- I disagree completely, 4 – I agree completely), the examinees rated the *regulation and the financing of the judiciary in the country* in the following manner: the funds allocated to the court budget are insufficient to cover the actual costs of justice administration-3,5; the judiciary should generate more funds autonomously which would enter the court budget-3,4; the judiciary is financially dependent in spite of the court budget-3,3; the current arrangement of the Court Budget Council does not provide efficient results- 3,3; the present legal structure provides sufficient conditions for total financial independence of the judiciary.-2.
- Referring to the statements measuring *the satisfaction of the judges*, the examinees agreed with the given statements in the following manner: the increase of the salaries will diminish the extent of possible corruption -3,2; for a more successful completion of the work, professional training is needed- 3,1; in the court where I am employed I had no need to utilize the mechanisms for protection of the judges' function- 3,1; in the court where I am employed the judges are independent in acting and deciding- 2,9; I feel secure when performing my judicial duties in the premises of the court where I am employed-2,7; I am satisfied that my superior can recognize the quality of my work -2,6. On the other hand, the examinees did not agree with the statements: the salary is in accordance with the responsibility of the working position – 2; there are efficient mechanisms for protecting the judges role from pressures/ suggestions/ attempts to exert influence – 2,1; I am satisfied with my financial compensation, or salary, for my work-2,2; the court where I am employed offers opportunities for professional advancement - 2,4; I am satisfied with the technical resources that are at my disposal – 2,4.
- *The general satisfaction of the examinees* measured through their degree of agreement with given statements (on a scale from 1 – very unsatisfied , to 4 – very satisfied) is quite low: satisfaction with the working environment/ surroundings- 2,8; satisfaction with the salary – 2,4; satisfaction with the possibility for professional advancement – 2,2.

# RESULTS

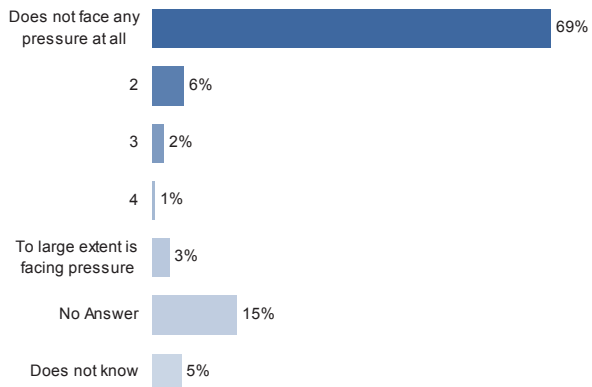
To what extent, while conveying decisions, the judges in the court are facing pressure/suggestions/attempts to influence their work – Average Value (1 – not at all, 5 – to large extent are facing pressure)

Base: Respondents who have answered the question



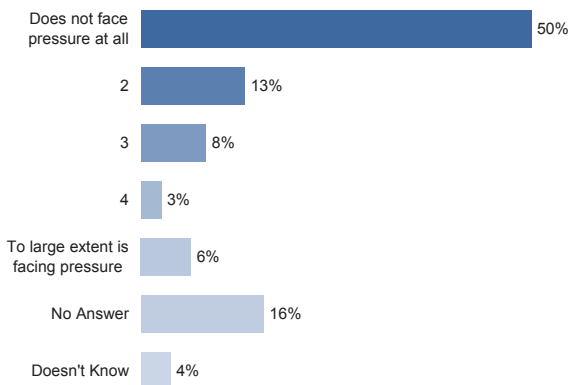
## Pressure from ... Representatives of international community

Base: All respondents



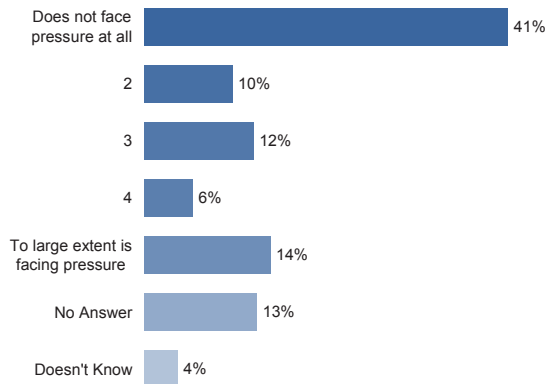
## Pressure from ... Representatives of business sector

Base: All respondents



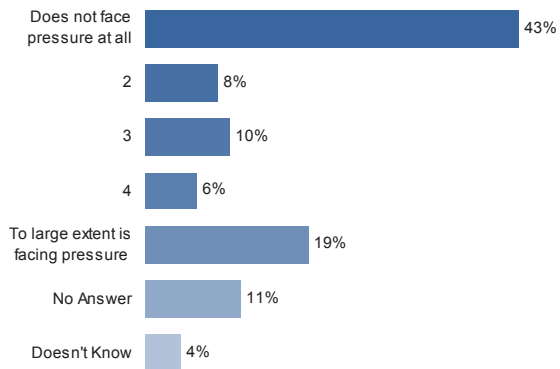
## Pressure from ... Representatives of political parties

Base: All respondents



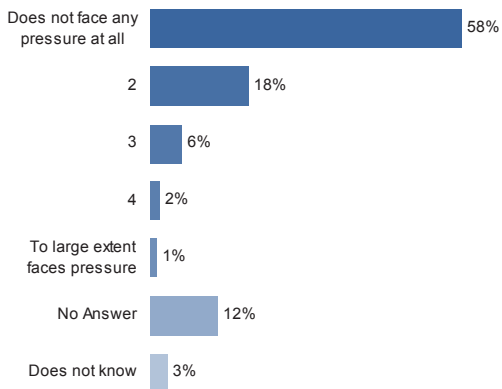
## Pressure from ... Representatives of executive power (Government, MoJ, MoI)

Base: All respondents



## Pressure from ... Fellow judges

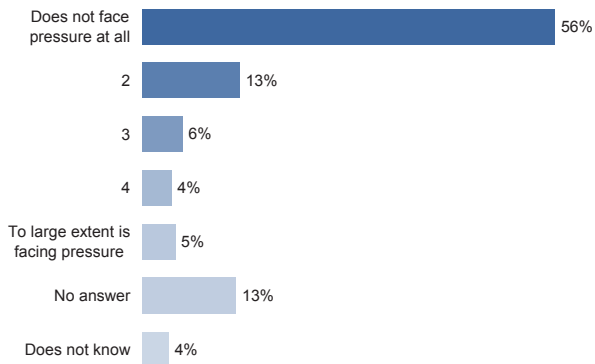
Base: All respondents





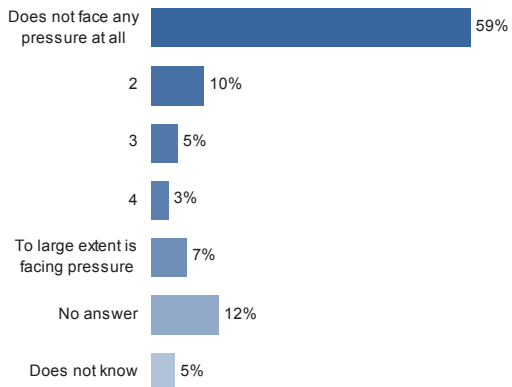
## Pressure from ... Judges of higher rank (President of Court, President or judges in courts of higher instance)

Base: All respondents



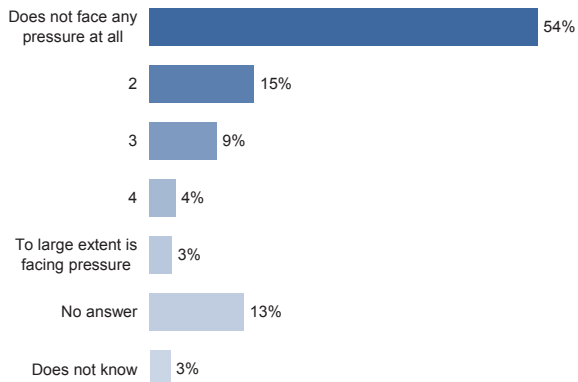
## Pressure from ... Members of Judicial Council

Base: All respondents



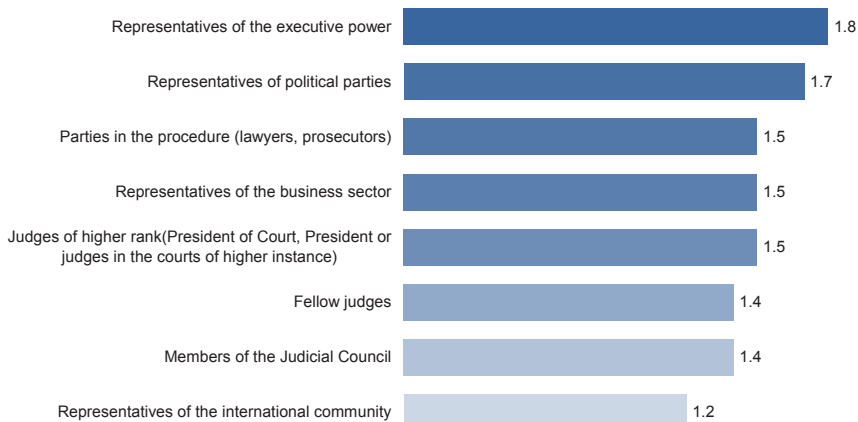
## Pressure from ... Parties in procedure (lawyers, public prosecutors, etc.)

Base: All respondents



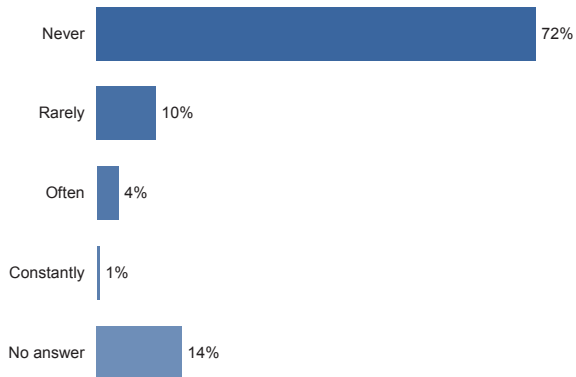
How often do you face direct or indirect pressure/suggestions/attempts to influence the independence of your work – Average Value (1 – never, 4 – all the time)

Base: Respondents who have answered the question



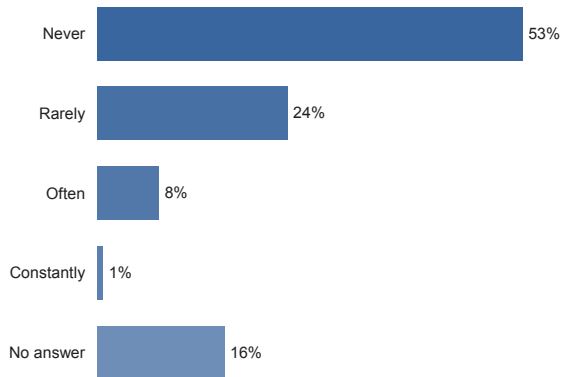
## How often... Representatives of international community

Base: All respondents



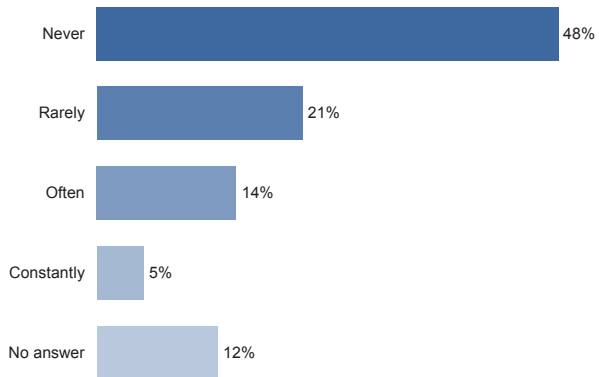
### How often... Representatives of business sector

Base: All respondents



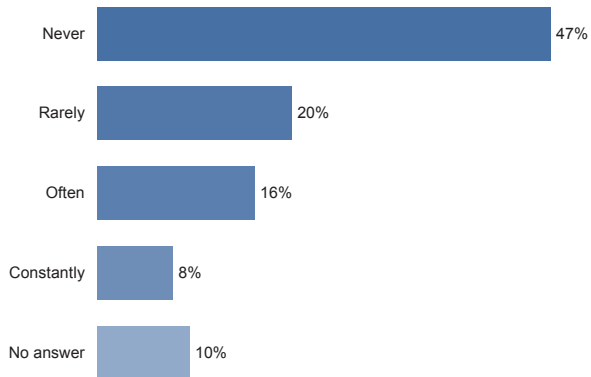
## How often... Representatives of political parties

Base: All respondents



## How often... Representatives of executive power (Government, MoJ, MoI)

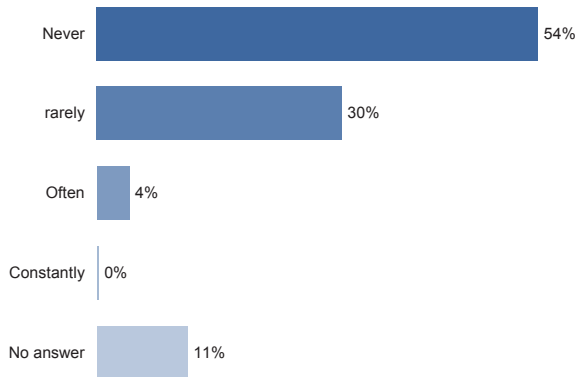
Base: All respondents





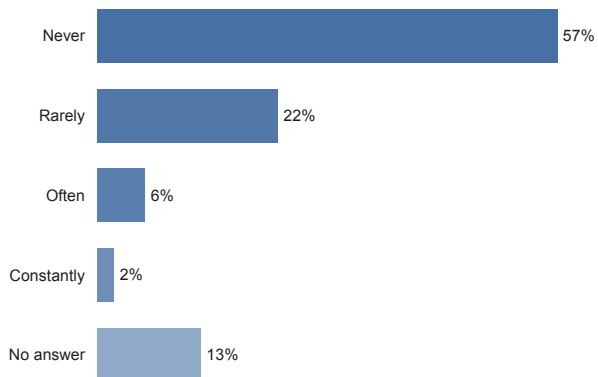
## How often... Fellow judges

Base: All respondents



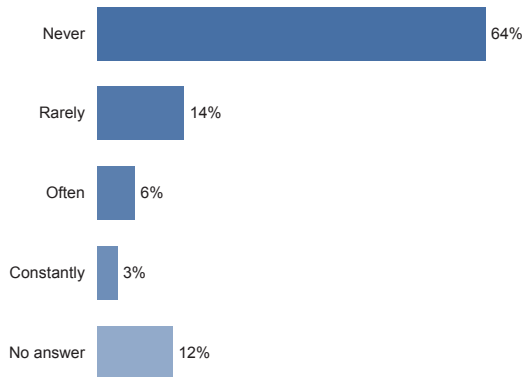
### How often... Judges of higher rank (President of Court, President or judges in courts of higher instance)

Base: All respondents



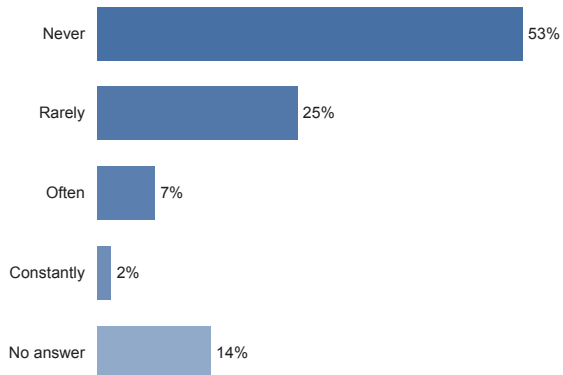
## How often... Members of Judicial Council

Base: All respondents



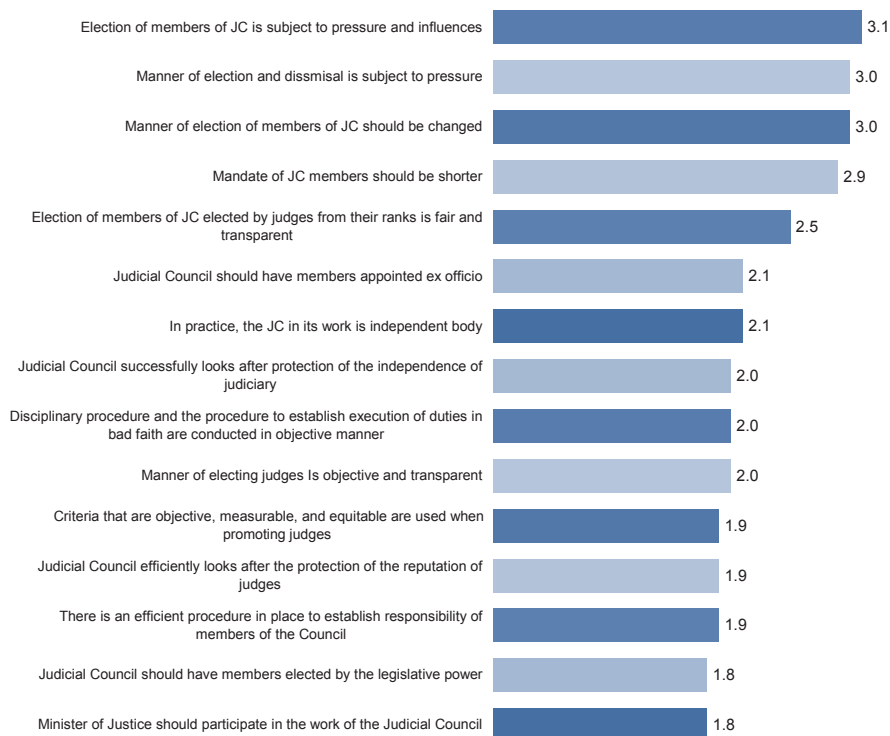
## How often... Parties in procedure (lawyers, public prosecutors, etc.)

Base: All respondents



## Functioning of the Judicial Council – Average grade of the level of concurrence (1 – I completely disagree, 4 – I completely agree)

Base: Respondents who have answered the question



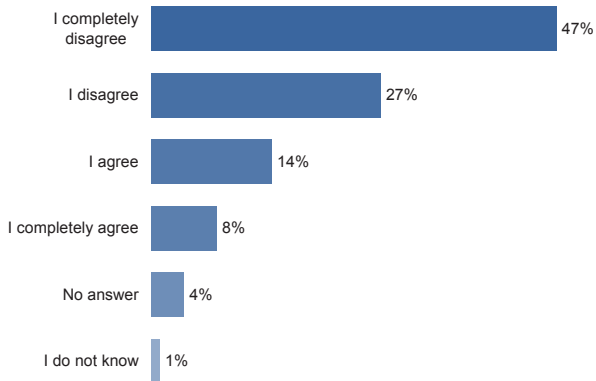
## Functioning of the Judicial Council – Average grade of the level of concurrence (1 – I completely disagree, 4 – I completely agree)

Base: Respondents who have answered the question

	Total
Election of Members of Judicial Council is subject to pressure and influence	3.1
Manner of election and dismissal is subject to pressure	3.0
Manner of election of members of Judicial Council should be changed	3.0
The mandate of members of Judicial Council should be shorter	2.9
Election of Members of Judicial Council elected by judges from their ranks is fair and transparent	2.5
Judicial Council should have members appointed ex officio	2.1
In practice, the Judicial Council in its work is independent body	2.1
Judicial Council successfully looks after protection of the independence of the judiciary	2.0
Disciplinary procedure and the procedure to establish execution of duties in bad faith are conducted in objective manner	2.0
Manner of election of judges is objective and transparent	2.0
Criteria that are objective, measurable and equitable are used when promoting judges	1.9
Judicial Council efficiently looks after the protection of the reputation of judges	1.9
There is an efficient procedure in place to establish responsibility of members of the Council	1.9
Judicial Council should have members elected by the legislative power	1.8
Minister of Justice should participate in the work of the Judicial Council	1.8

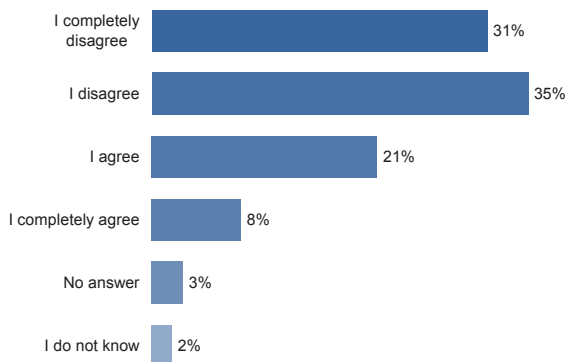
Minister of Justice should participate in the work of the Judicial Council –  
Average grade of the level of concurrence (1 – I completely disagree, 4 – I completely agree)

Base: All respondents



In practice, the Judicial Council in its work is independent body – Average grade of the level of concurrence (1 – I completely disagree, 4 – I completely agree)

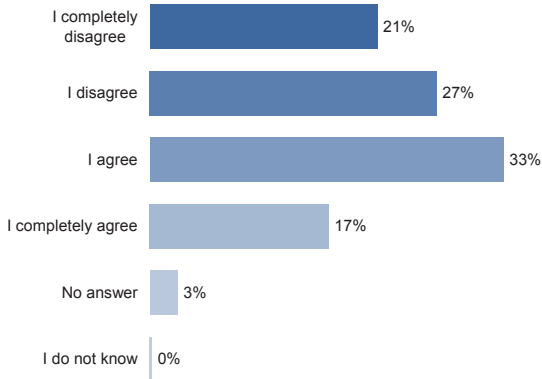
Base: All respondents





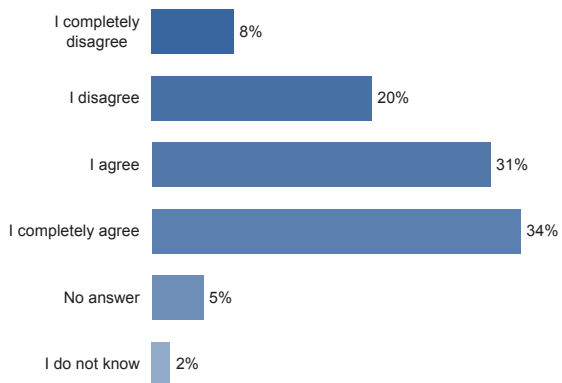
Election of Members of Judicial Council elected by judges from their ranks is fair and transparent – Average grade of the level of concurrence (1 – I completely disagree, 4 – I completely agree)

Base: All respondents



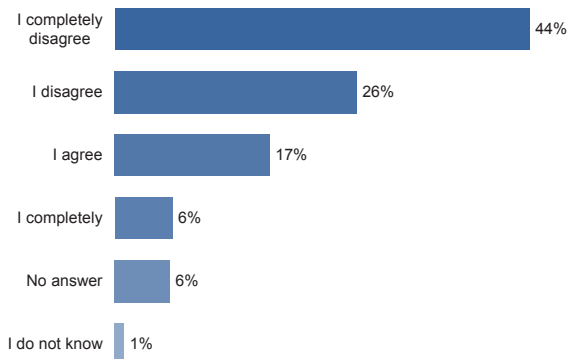
Manner of election of members of Judicial Council should be changed – Average grade of the level of concurrence (1 – I completely disagree, 4 – I completely agree)

Base: All respondents



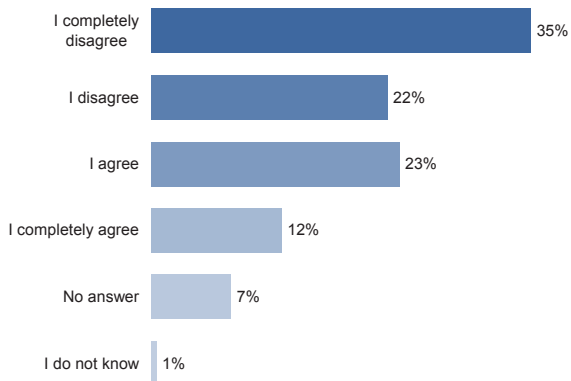
Judicial Council should have members elected by the legislative power –  
Average grade of the level of concurrence (1 – I completely disagree, 4 – I completely agree)

Base: All respondents



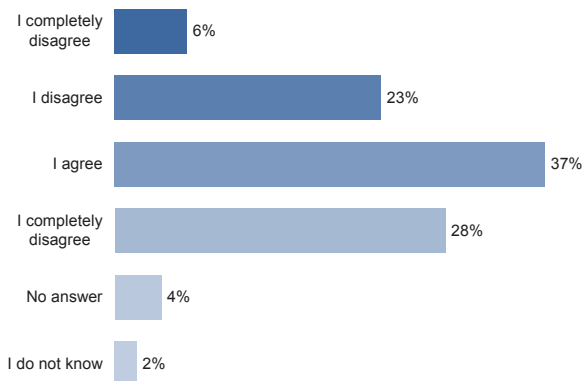
Judicial Council should have members appointed ex officio – Average grade of the level of concurrence (1 – I completely disagree, 4 – I completely agree)

Base: All respondents



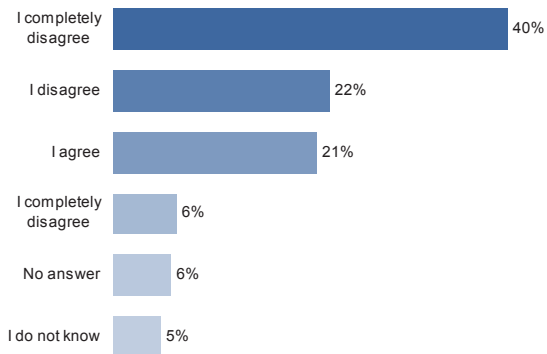
The mandate of members of Judicial Council should be shorter – Average grade of the level of concurrence (1 – I completely disagree, 4 – I completely agree)

Base: All respondents



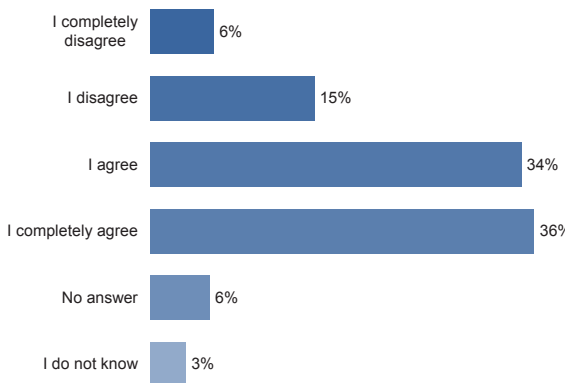
There is an efficient procedure in place to establish responsibility of members of the Judicial Council – Average grade of the level of concurrence (1 – I completely disagree, 4 – I completely agree)

Base: All respondents



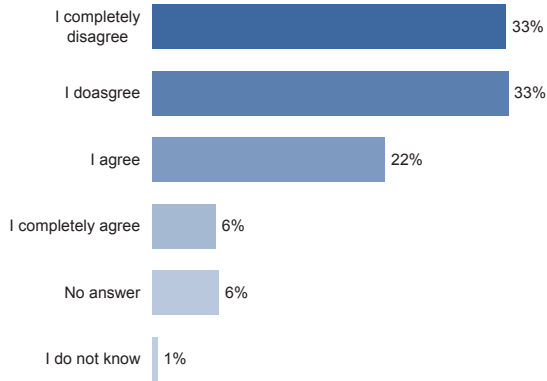
Election of Members of Judicial Council is subject to pressure and influence –  
Average grade of the level of concurrence (1 – I completely disagree, 4 – I completely agree)

Base: All respondents



Judicial Council successfully looks after protection of the independence of the judiciary – Average grade of the level of concurrence (1 – I completely disagree, 4 – I completely agree)

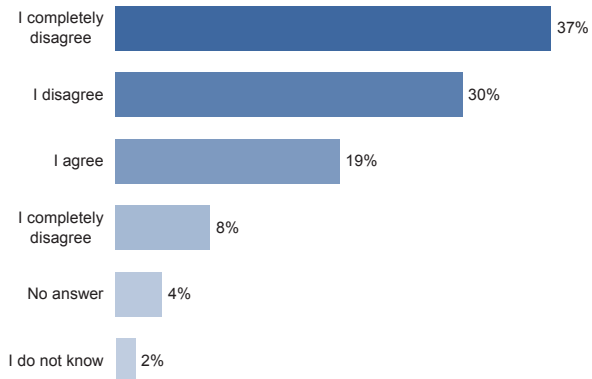
Base: All respondents





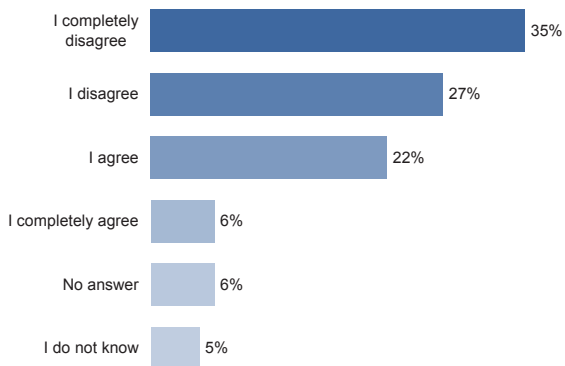
Manner of election of judges is objective and transparent – Average grade of the level of concurrence (1 – I completely disagree, 4 – I completely agree)

Base: All respondents



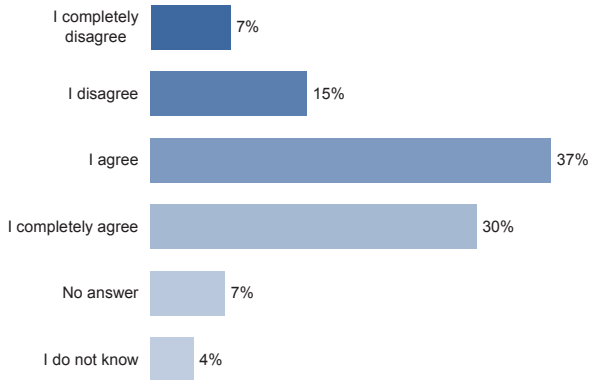
Disciplinary procedure and the procedure to establish execution of duties in bad faith are conducted in objective manner – Average grade of the level of concurrence (1 – I completely disagree, 4 – I completely agree)

Base: All respondents



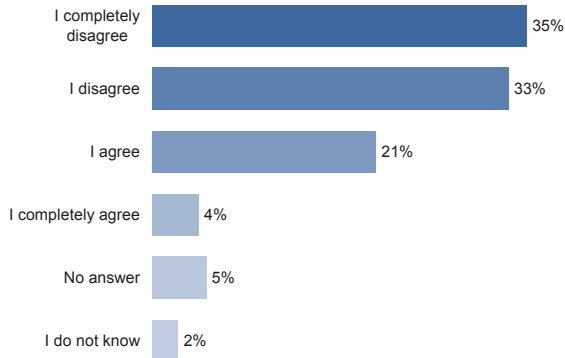
Manner of election and dismissal is subject to pressure – Average grade of the level of concurrence (1 – I completely disagree, 4 – I completely agree)

Base: All respondents



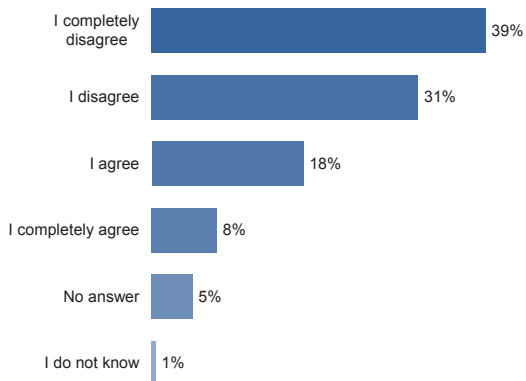
Criteria that are objective, measurable and equitable are used when promoting judges – Average grade of the level of concurrence (1 – I completely disagree, 4 – I completely agree)

Base: All respondents



Judicial Council efficiently looks after the protection of the reputation of judges –  
Average grade of the level of concurrence (1 – I completely disagree, 4 – I completely agree)

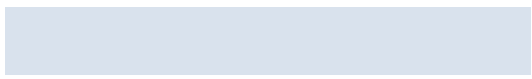
Base: All respondents



Trust in courts – Average grade of the level of concurrence (1 – lowest degree of trust, 4 – highest degree of trust)

Base: Respondents who have answered the questions

To your knowledge, to what degree do the citizens trust in the work of the court you work in?



3.5

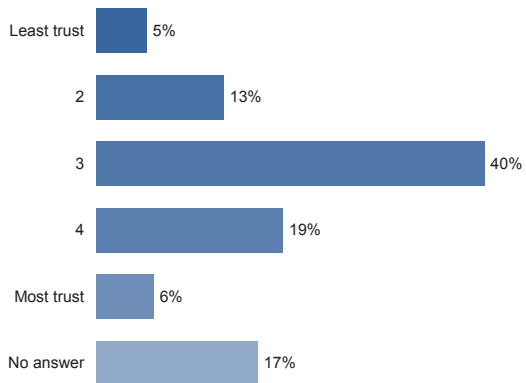
In your opinion, to what degree do the citizens trust in the work of the court in the country?



3.1

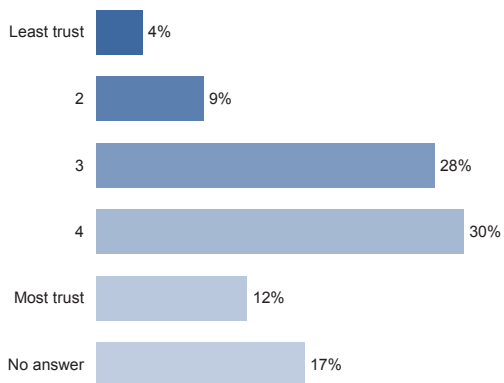
In your opinion, to what degree do the citizens trust in the work of the courts in the country? – degree of trust (1 – lowest degree of trust, 4 – highest degree of trust)

Base: All respondents



To your knowledge, to what degree do the citizens trust in the work of the court you work in? – degree of trust (1 – lowest degree of trust, 4 – highest degree of trust)

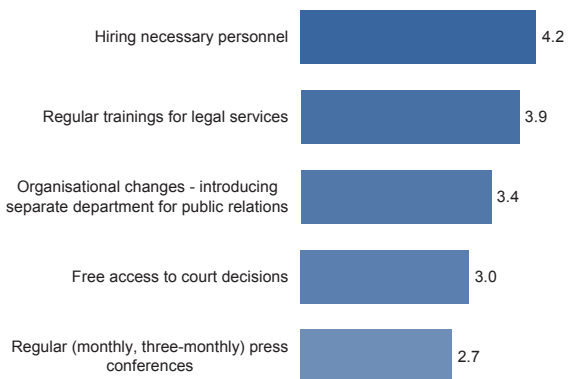
Base: All respondents





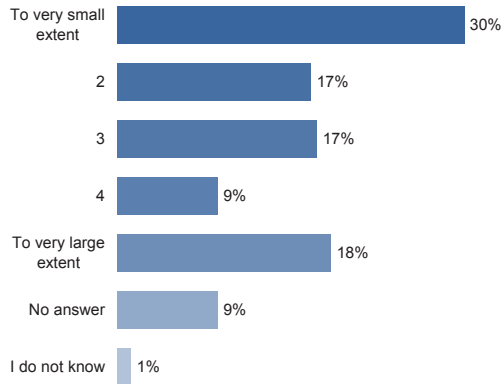
To what extent each of the following activities may contribute towards increase of transparency in the work of the courts in the country – Average value (1 – to very small extent, 5 – to very large extent)

Base: Respondents who have answered the questions



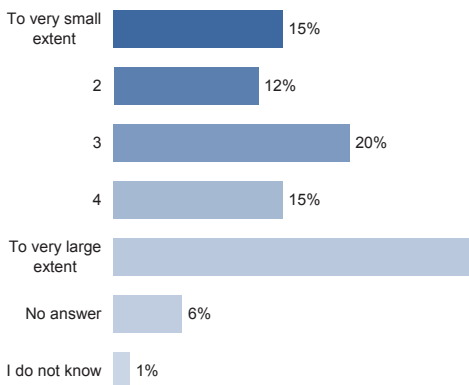
## Regular (monthly, three-monthly) press conferences

Base: All respondents



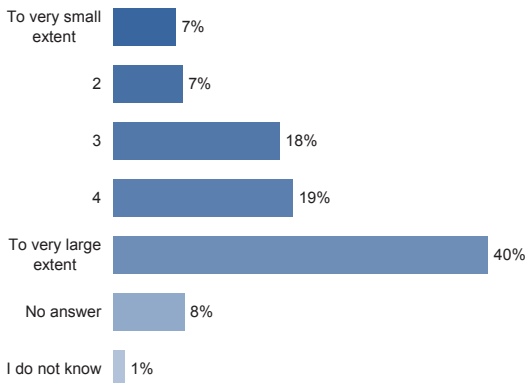
## Organisational changes - introducing separate department for public relations

Base: All respondents



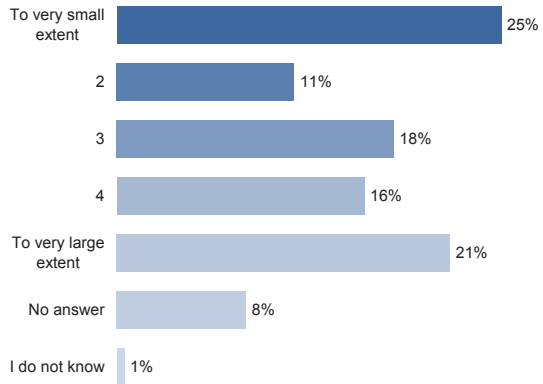
## Regular trainings for legal services

Base: All respondents



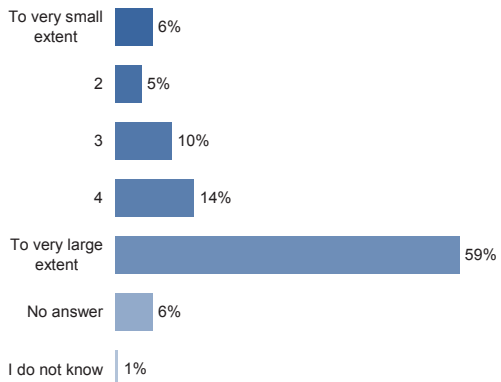
## Free access to court decisions

Base: All respondents



## Hiring necessary personnel in courts

Base: All respondents



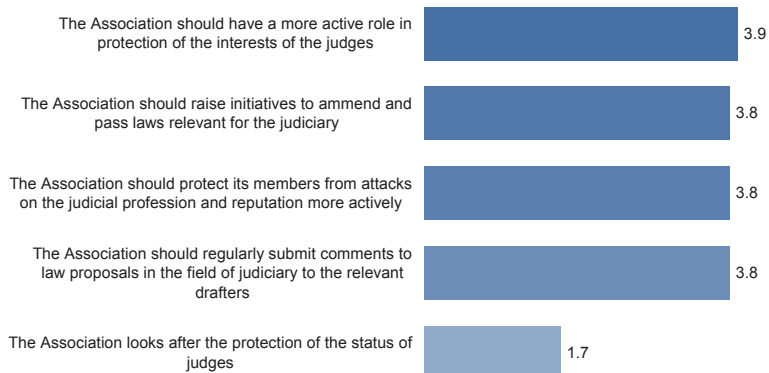
Which one of the following statements most closely describe the process of distribution of cases to judges in the court you work in?

Base: All respondents

	Total
H	421
There is system for automatic distribution of cases installed in the court and each case is distributed to the judge electronically (in random order)	65.1
There is a practice of combined allocation of cases in the court - electronically, via the archive office or by the president of the court	14.0
There is no system for automatic distribution of cases installed in the court - the allocation of cases is done either via the archive office or by the PoC	7.6
There is a system for automatic distribution of cases installed in the court but it is not being used - the allocation of cases is done either bvia the archive office or by the PoC	5.0
I do not know/No Answer	8.3
<b>Total</b>	<b>100%</b>

## Work of the Association of Judges of Republic of Macedonia – Average grade of the level of concurrence (1 – I completely disagree, 4 – I completely agree)

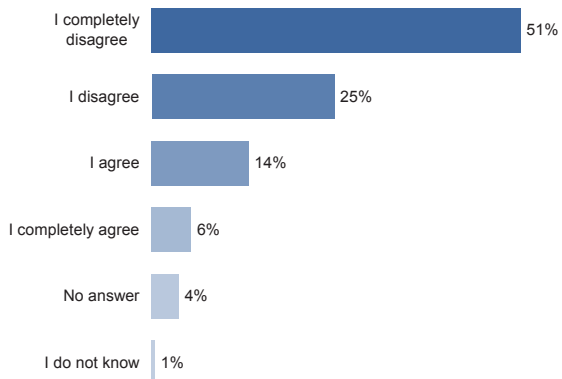
Base: Respondents who have answered the questions





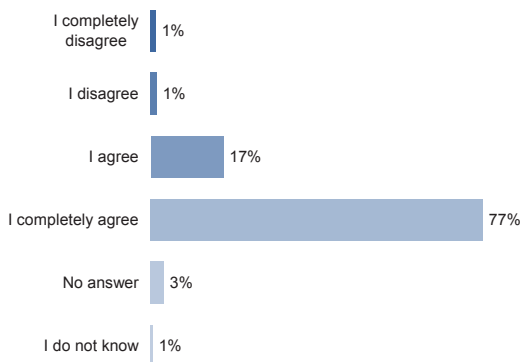
The Association looks after the protection of the status of judges – degree of concurrence (1 - I completely disagree, 4 – I completely agree)

Base: All respondents



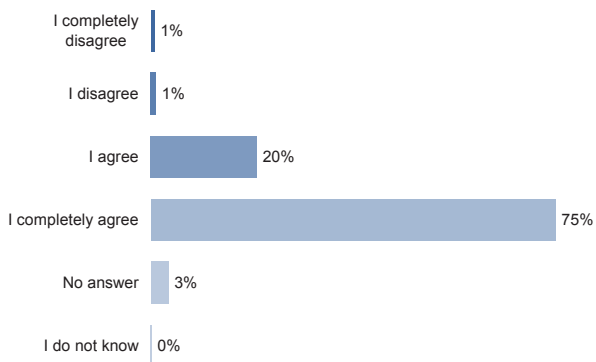
The Association should protect its members from attacks on the judicial profession and reputation more actively – degree of concurrence (1 - I completely disagree, 4 – I completely agree)

Base: All respondents



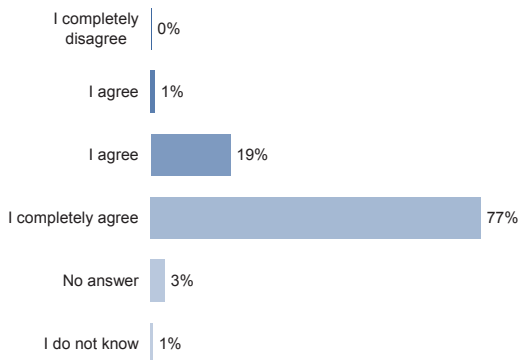
The Association should regularly submit comments to law proposals in the field of judiciary to the relevant drafters – degree of concurrence (1 - I completely disagree, 4 – I completely agree)

Base: All respondents



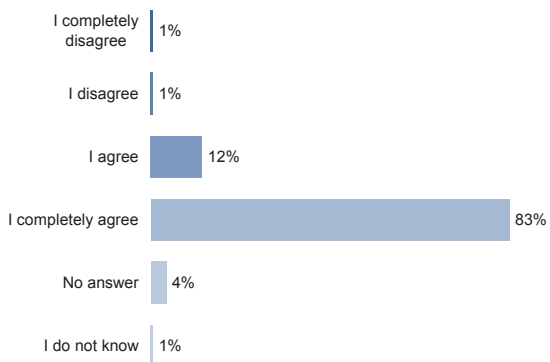
The Association should raise initiatives to amend and pass laws relevant for the judiciary – degree of concurrence (1 - I completely disagree, 4 – I completely agree)

Base: All respondents



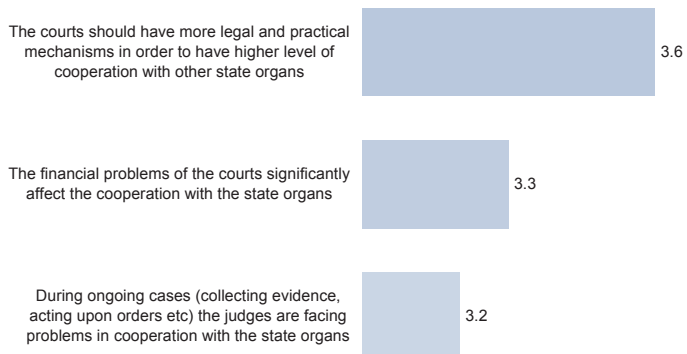
The Association should have more active role in protection of the interests of the judges – degree of concurrence (1 - I completely disagree, 4 – I completely agree)

Base: All respondents



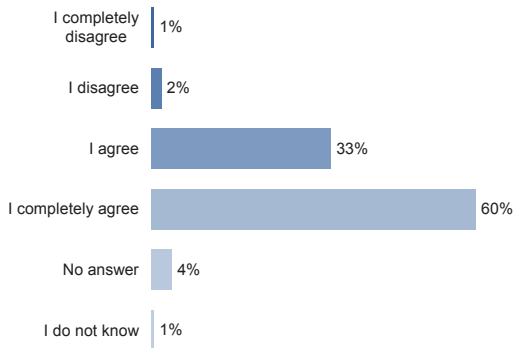
### Cooperation between the court and state organs – average grade of the level of concurrence (1 – I completely disagree, 4 – I completely agree)

Base: Interviewees that provided answers



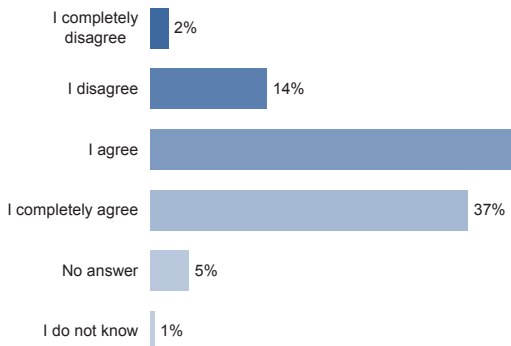
The courts should have more legal and practical mechanisms in order to have higher level of cooperation with other state organs – level of concurrence (1 – I completely disagree, 4 – I completely agree)

Base: All interviewees



During ongoing cases (collecting evidence, acting upon orders etc) the judges are facing problems in cooperation with the state organs – level of concurrence  
(1 – I completely disagree, 4 – I completely agree)

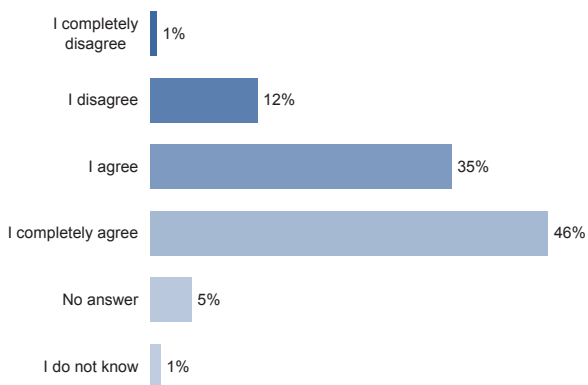
Base: All interviewees





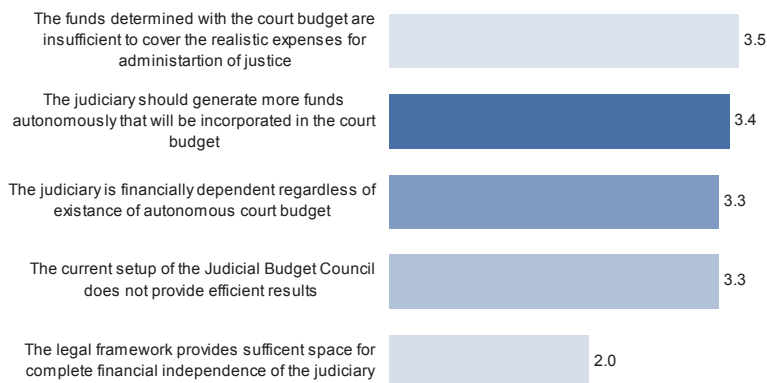
The financial problems of the courts significantly affect the cooperation with the state organs– level of concurrence (1 – I completely disagree, 4 – I completely agree)

Base: All interviewees



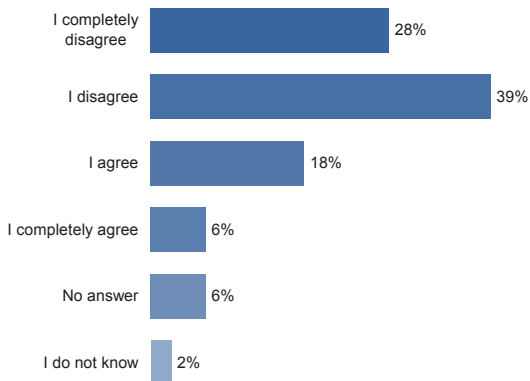
## Regulations and financing of the judiciary – average grade of the level of concurrence (1 – I completely disagree, 4 – I completely agree)

Base: Interviewees that provided answers



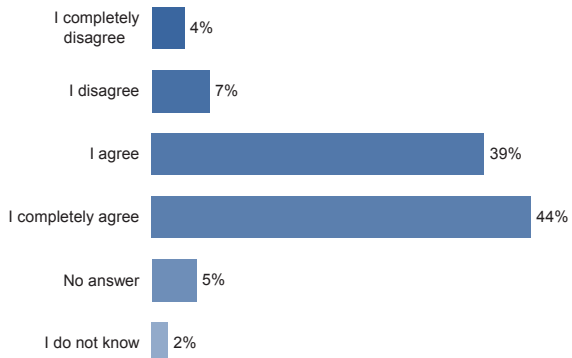
The legal framework provides sufficient space for complete financial independence of the judiciary – level of concurrence (1 – I completely disagree, 4 – I completely agree)

Base: All interviewees



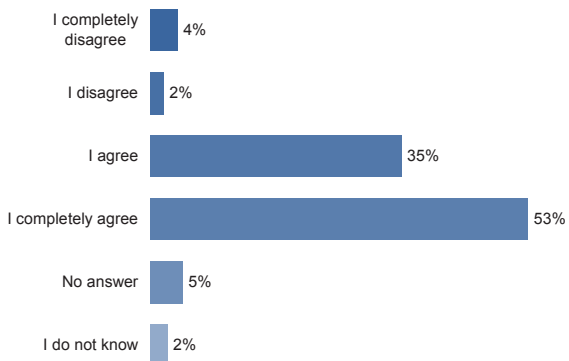
The judiciary is financially dependent regardless of existence of autonomous court budget – level of concurrence (1 – I completely disagree, 4 – I completely agree)

Base: All interviewees



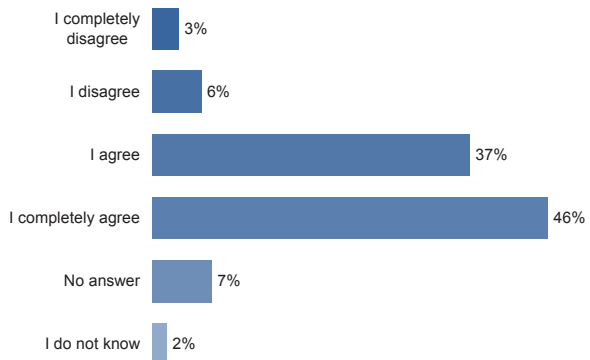
The funds determined with the court budget are insufficient to cover the realistic expenses for administration of justice - level of concurrence (1 – I completely disagree, 4 – I completely agree)

Base: All interviewees



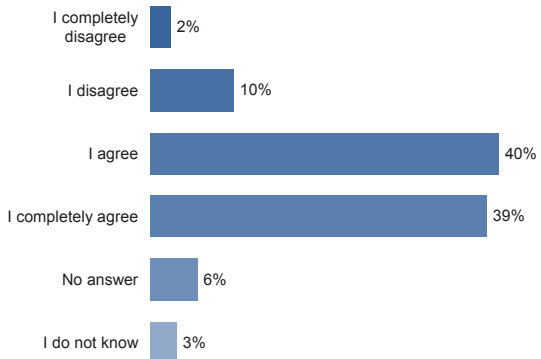
The judiciary should generate more funds autonomously that will be incorporated in the court budget - level of concurrence (1 – I completely disagree, 4 – I completely agree)

Base: All interviewees



The current setup of the Judicial Budget Council does not provide efficient results – level of concurrence (1 – I completely disagree, 4 – I completely agree)

Base: All interviewees



### Satisfaction of judges – Average grade of the level of concurrence (1 – I completely disagree, 4 – I completely agree)

Base: Interviewees that provided answers





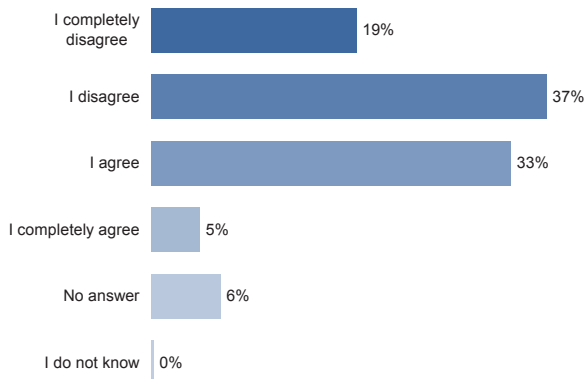
Satisfaction of judges – Average grade of the level of concurrence (1 – I completely disagree, 4 – I completely agree)

Base: Interviewees that provided answers

	Total
Increasing judges' salaries will decrease the level of possible corruption	3.2
In order to better perform my tasks I need continuous professional training	3.1
During my work (so far) I have never had the need to avail of the existing mechanisms for protection of the judicial function	3.1
In the court where I work, judges are independent while presiding and adjudicating	2.9
I feel safe while performing the judicial function in the premises of the court where I work	2.7
I am satisfied that my superior can see (recognize) the quality of my work	2.6
Judges in the court where I work are facing external influences and pressures on the independence in their adjudication	2.5
I am satisfied from the technical resources ( computers, e-mail, telephone) available	2.4
The court where I work offers opportunities for professional development	2.4
I am satisfied from the salary I receive at my position	2.2
In the judicial system, there are effective mechanisms for protection of the judicial function from pressure/suggestions/attempts for influence	2.1
The amount of (judges') salaries is in accordance with the responsibilities at the working position	2.0

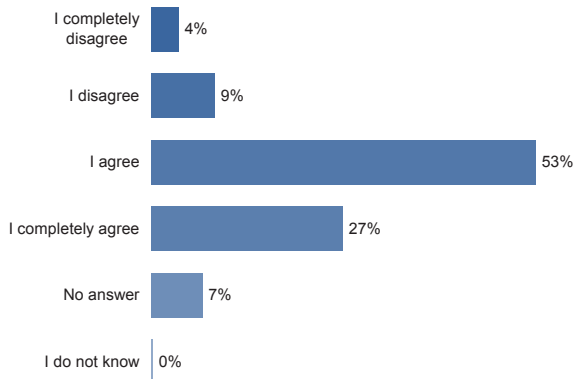
I am satisfied from the salary I receive at my position – level of concurrence (1 – I completely disagree, 4 – I completely agree)

Base: All interviewees



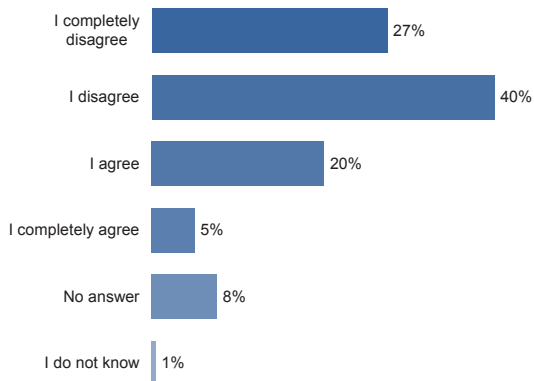
In order to better perform my tasks I need continuous professional training – level of concurrence (1 – I completely disagree, 4 – I completely agree)

Base: All interviewees



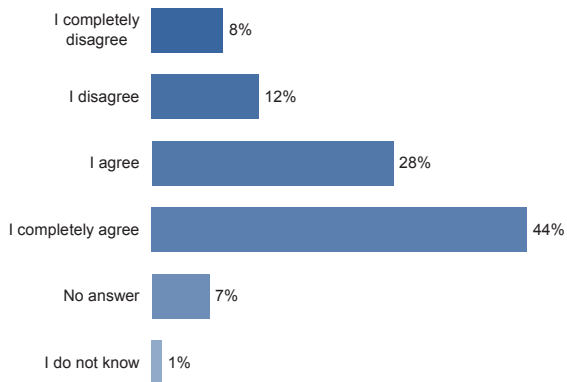
The amount of (judges') salaries is in accordance with the responsibilities at the working position – level of concurrence (1 – I completely disagree, 4 – I completely agree)

Base: All interviewees



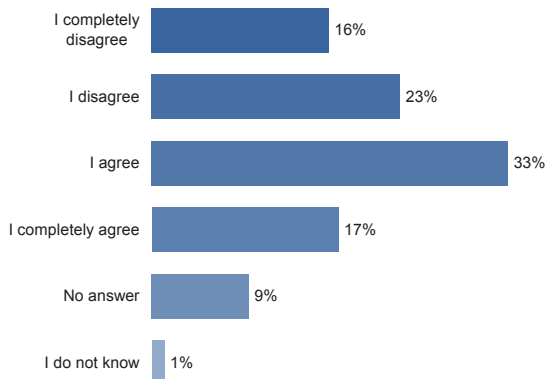
Increasing judges' salaries will decrease the level of possible corruption – level of concurrence (1 – I completely disagree, 4 – I completely agree)

Base: All interviewees



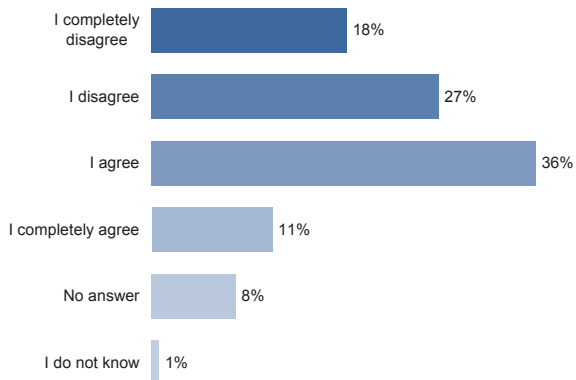
I am satisfied that my superior can see (recognize) the quality of my work – level of concurrence (1 – I completely disagree, 4 – I completely agree)

Base: All interviewees



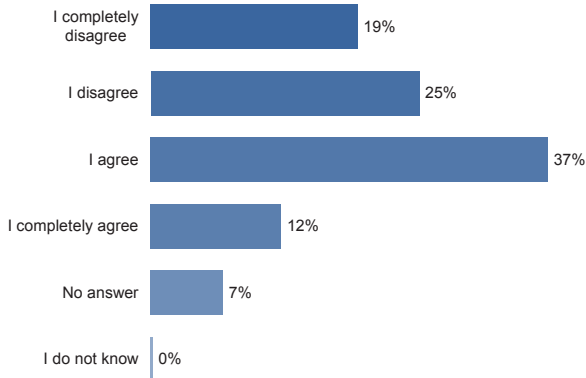
The court where I work offers opportunities for professional development – level of concurrence (1 – I completely disagree, 4 – I completely agree)

Base: All interviewees



I am satisfied from the technical resources (computers, e-mail, telephone) available – level of concurrence (1 – I completely disagree, 4 – I completely agree)

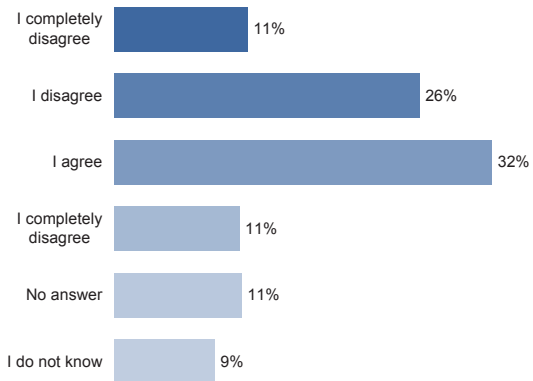
Base: All interviewees





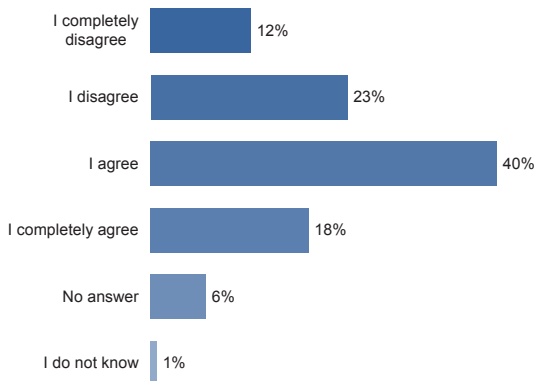
Judges in the court where I work are facing external influences and pressures on the independence in their adjudication – level of concurrence (1 – I completely disagree, 4 – I completely agree)

Base: All interviewees



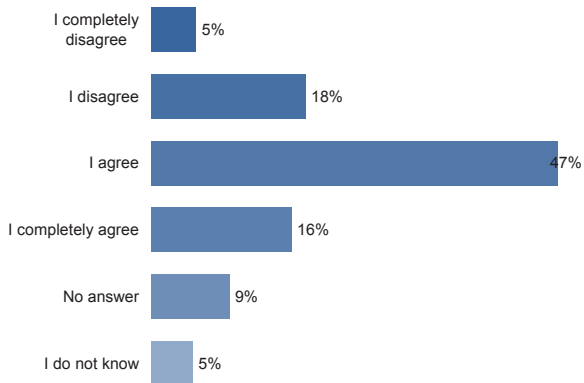
I feel safe while performing the judicial function in the premises of the court where I work – level of concurrence (1 – I completely disagree, 4 – I completely agree)

Base: All interviewees



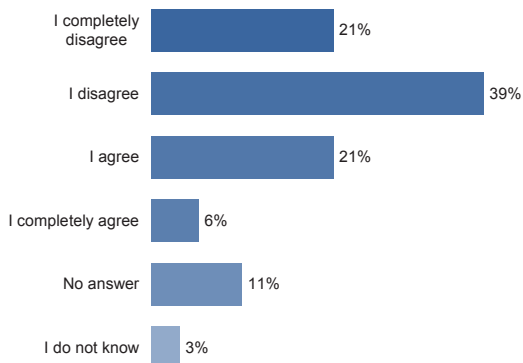
In the court where I work, judges are independent while presiding and adjudicating – level of concurrence (1 – I completely disagree, 4 – I completely agree)

Base: all interviewees



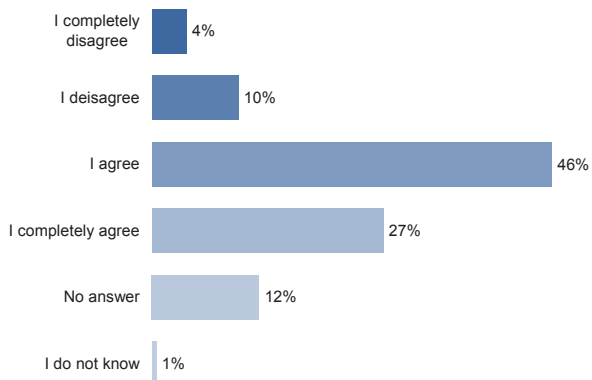
In the judicial system, there are effective mechanisms for protection of the judicial function from pressure/suggestions/attempts for influence – level of concurrence (1 – I completely disagree, 4 – I completely agree)

Base: All interviewees



During my work (so far) I have never had the need to avail of the existing mechanisms for protection of the judicial function – level of concurrence (1 – I completely disagree, 4 – I completely agree)

Base: all interviewees



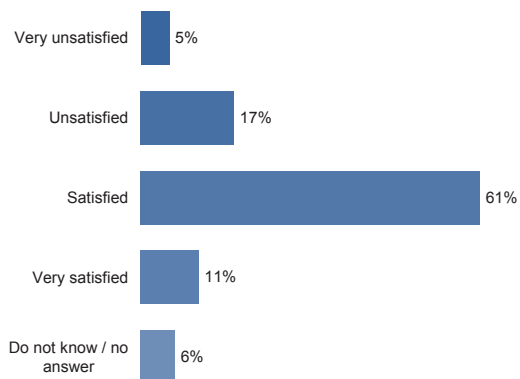
## General satisfaction of judges – average grade of the level of satisfaction (1 – very unsatisfied, 4 – very satisfied)

Base: Interviewees that provided answers



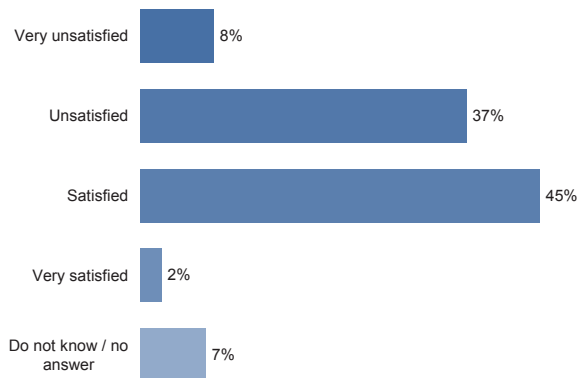
How satisfied are you from your professional/ working environment? – level of satisfaction (1 – very unsatisfied, 4 – very satisfied)

Base: All interviewees



How satisfied are you from your salary? – level of satisfaction (1 – very unsatisfied, 4 – very satisfied)

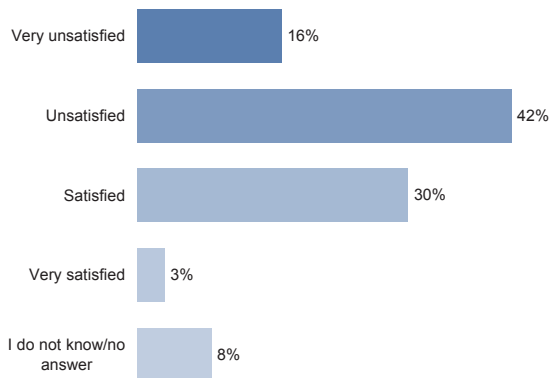
Base: All interviewees





### How satisfied are you from the opportunity for promotion? – level of satisfaction (1 – Very unsatisfied, 4 – Very satisfied)

Base: All interviewees





## **ANNEX 3**

# COUNCIL OF EUROPE COMMITTEE OF MINISTERS

## RECOMMENDATION No. R (94) 12

### OF THE COMMITTEE OF MINISTERS TO MEMBER STATES ON THE INDEPENDENCE, EFFICIENCY AND ROLE OF JUDGES

*(Adopted by the Committee of Ministers on 13 October 1994  
at the 518th meeting of the Ministers' Deputies)*

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

Having regard to Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter referred to as "the Convention") which provides that "everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law";

Having regard to the United Nations Basic Principles on the Independence of the Judiciary, endorsed by the United Nations General Assembly in November 1985;

Noting the essential role of judges and other persons exercising judicial functions in ensuring the protection of human rights and fundamental freedoms;

Desiring to promote the independence of judges in order to strengthen the rule of law in democratic states;

Aware of the need to reinforce the position and powers of judges in order to achieve an efficient and fair legal system;

Conscious of the desirability of ensuring the proper exercise of judicial responsibilities which are a collection of judicial duties and powers aimed at protecting the interests of all persons,

Recommends that governments of member states adopt or reinforce all measures necessary to promote the role of individual judges and the judiciary as a whole and strengthen their independence and efficiency, by implementing, in particular, the following principles:

#### *Scope of the recommendation*

1. This recommendation is applicable to all persons exercising judicial functions, including those dealing with constitutional, criminal, civil, commercial and administrative law matters.
2. With respect to lay judges and other persons exercising judicial functions, the principles laid down in this recommendation apply except where it is clear from the

context that they only apply to professional judges, such as regarding the principles concerning the remuneration and career of judges.

### **Principle I - General principles on the independence of judges**

1. All necessary measures should be taken to respect, protect and promote the independence of judges.

2. In particular, the following measures should be taken:

a. The independence of judges should be guaranteed pursuant to the provisions of the Convention and constitutional principles, for example by inserting specific provisions in the constitutions or other legislation or incorporating the provisions of this recommendation in internal law. Subject to the legal traditions of each state, such rules may provide, for instance, the following:

I. decisions of judges should not be the subject of any revision outside any appeals procedures as provided for by law;

II. the terms of office of judges and their remuneration should be guaranteed by law;

III. no organ other than the courts themselves should decide on its own competence, as defined by law;

IV. with the exception of decisions on amnesty, pardon or similar, the government or the administration should not be able to take any decision which invalidates judicial decisions retroactively.

b. The executive and legislative powers should ensure that judges are independent and that steps are not taken which could endanger the independence of judges.

c. All decisions concerning the professional career of judges should be based on objective criteria, and the selection and career of judges should be based on merit, having regard to qualifications, integrity, ability and efficiency. The authority taking the decision on the selection and career of judges should be independent of the government and the administration. In order to safeguard its independence, rules should ensure that, for instance, its members are selected by the judiciary and that the authority decides itself on its procedural rules.

However, where the constitutional or legal provisions and traditions allow judges to be appointed by the government, there should be guarantees to ensure that the procedures to appoint judges are transparent and independent in practice and that the decisions will not be influenced by any reasons other than those related to the objective criteria mentioned above. These guarantees could be, for example, one or more of the following:

I. a special independent and competent body to give the government advice which it follows in practice; or

II. the right for an individual to appeal against a decision to an independent authority; or

III. the authority which makes the decision safeguards against undue or improper influences.

*d.* In the decision-making process, judges should be independent and be able to act without any restriction, improper influence, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason. The law should provide for sanctions against persons seeking to influence judges in any such manner. Judges should have unfettered freedom to decide cases impartially, in accordance with their conscience and their interpretation of the facts, and in pursuance of the prevailing rules of the law. Judges should not be obliged to report on the merits of their cases to anyone outside the judiciary.

*e.* The distribution of cases should not be influenced by the wishes of any party to a case or any person concerned with the results of the case. Such distribution may, for instance, be made by drawing of lots or a system for automatic distribution according to alphabetic order or some similar system.

*f.* A case should not be withdrawn from a particular judge without valid reasons, such as cases of serious illness or conflict of interest. Any such reasons and the procedures for such withdrawal should be provided for by law and may not be influenced by any interest of the government or administration. A decision to withdraw a case from a judge should be taken by an authority which enjoys the same judicial independence as judges.

3. Judges, whether appointed or elected, shall have guaranteed tenure until a mandatory retirement age or the expiry of their term of office.

### **Principle II - The authority of judges**

1. All persons connected with a case, including state bodies or their representatives, should be subject to the authority of the judge.

2. Judges should have sufficient powers and be able to exercise them in order to carry out their duties and maintain their authority and the dignity of the court.

### **Principle III - Proper working conditions**

1. Proper conditions should be provided to enable judges to work efficiently and, in particular, by:

*a.* recruiting a sufficient number of judges and providing for appropriate training such as practical training in the courts and, where possible, with other authorities and bodies, before appointment and during their career. Such training should be free of charge to the judge and should in particular concern recent legislation and case-law. Where appropriate, the training should include study visits to European and foreign authorities as well as courts;

*b.* ensuring that the status and remuneration of judges is commensurate with the dignity of their profession and burden of responsibilities;

- c. providing a clear career structure in order to recruit and retain able judges;
  - d. providing adequate support staff and equipment, in particular office automation and data processing facilities, to ensure that judges can act efficiently and without undue delay;
  - e. taking appropriate measures to assign non-judicial tasks to other persons, in conformity with Recommendation No. R (86) 12 concerning measures to prevent and reduce the excessive workload in the courts.
2. All necessary measures should be taken to ensure the safety of judges, such as ensuring the presence of security guards on court premises or providing police protection for judges who may become or are victims of serious threats.

#### **Principle IV - Associations**

Judges should be free to form associations which, either alone or with another body, have the task of safeguarding their independence and protecting their interests.

#### **Principle V - Judicial responsibilities**

1. In proceedings, judges have the duty to protect the rights and freedoms of all persons.
2. Judges have the duty and should be given the power to exercise their judicial responsibilities to ensure that the law is properly applied and cases are dealt with fairly, efficiently and speedily.
3. Judges should in particular have the following responsibilities:
  - a. to act independently in all cases and free from any outside influence;
  - b. to conduct cases in an impartial manner in accordance with their assessment of the facts and their understanding of the law, to ensure that a fair hearing is given to all parties and that the procedural rights of the parties are respected pursuant to the provisions of the Convention;
  - c. to withdraw from a case or decline to act where there are valid reasons, and not otherwise. Such reasons should be defined by law and may, for instance, relate to serious health problems, conflicts of interest or the interests of justice;
  - d. where necessary, to explain in an impartial manner procedural matters to parties;
  - e. where appropriate, to encourage the parties to reach a friendly settlement;
  - f. except where the law or established practice otherwise provides, to give clear and complete reasons for their judgments, using language which is readily understandable;

*g.* to undergo any necessary training in order to carry out their duties in an efficient and proper manner.

#### **Principle VI - Failure to carry out responsibilities and disciplinary offences**

1. Where judges fail to carry out their duties in an efficient and proper manner or in the event of disciplinary offences, all necessary measures which do not prejudice judicial independence should be taken. Depending on the constitutional principles and the legal provisions and traditions of each state, such measures may include, for instance:

- a.* withdrawal of cases from the judge;
- b.* moving the judge to other judicial tasks within the court;
- c.* economic sanctions such as a reduction in salary for a temporary period;
- d.* suspension.

2. Appointed judges may not be permanently removed from office without valid reasons until mandatory retirement. Such reasons, which should be defined in precise terms by the law, could apply in countries where the judge is elected for a certain period, or may relate to incapacity to perform judicial functions, commission of criminal offences or serious infringements of disciplinary rules.

3. Where measures under paragraphs 1 and 2 of this article need to be taken, states should consider setting up, by law, a special competent body which has as its task to apply any disciplinary sanctions and measures, where they are not dealt with by a court, and whose decisions shall be controlled by a superior judicial organ, or which is a superior judicial organ itself. The law should provide for appropriate procedures to ensure that judges in question are given at least all the due process requirements of the Convention, for instance that the case should be heard within a reasonable time and that they should have a right to answer any charges.



## **ANNEX 4**



## **U.N. Basic Principles on the Independence of the Judiciary**

**Adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to 6 September 1985 and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985**

Whereas in the Charter of the United Nations the peoples of the world affirm, inter alia, their determination to establish conditions under which justice can be maintained to achieve international co-operation in promoting and encouraging respect for human rights and fundamental freedoms without any discrimination,

Whereas the Universal Declaration of Human Rights enshrines in particular the principles of equality before the law, of the presumption of innocence and of the right to a fair and public hearing by a competent, independent and impartial tribunal established by law,

Whereas the International Covenants on Economic, Social and Cultural Rights and on Civil and Political Rights both guarantee the exercise of those rights, and in addition, the Covenant on Civil and Political Rights further guarantees the right to be tried without undue delay,

Whereas frequently there still exists a gap between the vision underlying those principles and the actual situation,

Whereas the organization and administration of justice in every country should be inspired by those principles, and efforts should be undertaken to translate them fully into reality,

Whereas rules concerning the exercise of judicial office should aim at enabling judges to act in accordance with those principles,

Whereas judges are charged with the ultimate decision over life, freedoms, rights, duties and property of citizens,

Whereas the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, by its resolution 16, called upon the Committee on Crime Prevention and Control to include among its priorities the elaboration of guidelines relating to the independence of judges and the selection, professional training and status of judges and prosecutors,

Whereas it is, therefore, appropriate that consideration be first given to the role of judges in relation to the system of justice and to the importance of their selection, training and conduct,

The following basic principles, formulated to assist Member States in their task of securing and promoting the independence of the judiciary should be taken into account and respected by Governments within the framework of their national legislation and practice and be brought to the attention of judges, lawyers, members of the executive

and the legislature and the public in general. The principles have been formulated principally with professional judges in mind, but they apply equally, as appropriate, to lay judges, where they exist.

### **Independence of the judiciary**

1. The independence of the judiciary shall be guaranteed by the State and enshrined in the Constitution or the law of the country. It is the duty of all governmental and other institutions to respect and observe the independence of the judiciary.

2. The judiciary shall decide matters before them impartially, on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason.

3. The judiciary shall have jurisdiction over all issues of a judicial nature and shall have exclusive authority to decide whether an issue submitted for its decision is within its competence as defined by law.

4. There shall not be any inappropriate or unwarranted interference with the judicial process, nor shall judicial decisions by the courts be subject to revision. This principle is without prejudice to judicial review or to mitigation or commutation by competent authorities of sentences imposed by the judiciary, in accordance with the law.

5. Everyone shall have the right to be tried by ordinary courts or tribunals using established legal procedures. Tribunals that do not use the duly established procedures of the legal process shall not be created to displace the jurisdiction belonging to the ordinary courts or judicial tribunals.

6. The principle of the independence of the judiciary entitles and requires the judiciary to ensure that judicial proceedings are conducted fairly and that the rights of the parties are respected.

7. It is the duty of each Member State to provide adequate resources to enable the judiciary to properly perform its functions.

### **Freedom of expression and association**

8. In accordance with the Universal Declaration of Human Rights, members of the judiciary are like other citizens entitled to freedom of expression, belief, association and assembly; provided, however, that in exercising such rights, judges shall always conduct themselves in such a manner as to preserve the dignity of their office and the impartiality and independence of the judiciary.

9. Judges shall be free to form and join associations of judges or other organizations to represent their interests, to promote their professional training and to protect their judicial independence.

### **Qualifications, selection and training**

10. Persons selected for judicial office shall be individuals of integrity and ability with appropriate training or qualifications in law. Any method of judicial selection shall

safeguard against judicial appointments for improper motives. In the selection of judges, there shall be no discrimination against a person on the grounds of race, color, sex, religion, political or other opinion, national or social origin, property, birth or status, except that a requirement, that a candidate for judicial office must be a national of the country concerned, shall not be considered discriminatory.

#### **Conditions of service and tenure**

11. The term of office of judges, their independence, security, adequate remuneration, conditions of service, pensions and the age of retirement shall be adequately secured by law.

12. Judges, whether appointed or elected, shall have guaranteed tenure until a mandatory retirement age or the expiry of their term of office, where such exists.

13. Promotion of judges, wherever such a system exists, should be based on objective factors, in particular ability, integrity and experience.

14. The assignment of cases to judges within the court to which they belong is an internal matter of judicial administration. Professional secrecy and immunity

15. The judiciary shall be bound by professional secrecy with regard to their deliberations and to confidential information acquired in the course of their duties other than in public proceedings, and shall not be compelled to testify on such matters.

16. Without prejudice to any disciplinary procedure or to any right of appeal or to compensation from the State, in accordance with national law, judges should enjoy personal immunity from civil suits for monetary damages for improper acts or omissions in the exercise of their judicial functions.

#### **Discipline, suspension and removal**

17. A charge or complaint made against a judge in his/her judicial and professional capacity shall be processed expeditiously and fairly under an appropriate procedure. The judge shall have the right to a fair hearing. The examination of the matter at its initial stage shall be kept confidential, unless otherwise requested by the judge.

18. Judges shall be subject to suspension or removal only for reasons of incapacity or behavior that renders them unfit to discharge their duties.

19. All disciplinary, suspension or removal proceedings shall be determined in accordance with established standards of judicial conduct.

20. Decisions in disciplinary, suspension or removal proceedings should be subject to an independent review. This principle may not apply to the decisions of the highest court and those of the legislature in impeachment or similar proceedings.

