



Civil Society Report: North Macedonia under review at 2020 High Level Political Forum

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The Coalition Sexual and Health Rights of Marginalized Communities MARGINS was founded in 2007 as a non-formal, joint platform and the result of the joint efforts of several organizations. Since 2011, the Coalition has been registered as an individual legal entity, i.e. as an NGO whose founders include: HOPS – Healthy Options Project Skopje, HERA, IZBOR – Strumica, EGAL and STAR-STAR, and Stronger Together. Since then, MARGINI has been working on equal access and enjoyment of human rights of marginalized communities (sex workers, people living with HIV, people who use drugs, marginalized women, and LGBT people) and better life quality in different social spheres. Since 2017 MARGINS jointly with Association for Emancipation, Solidarity and Equality of Women – ESE Skopje and with support of Foundation Open Society Macedonia takes concrete action to monitor the implementation of the SDG 16.3.

Association for Emancipation, Solidarity and Equality of Women – ESE is a civil organization, founded in 1994. ESE works locally, nationally and in the region of Central and Southeast Europe in cooperation with partner civil society organizations to improve the implementation of the social and economic rights of vulnerable groups of citizens, by strengthening them, mobilizing and engaging in the planning, implementation, and evaluation of public policies and services; ensuring equal access to justice and promoting fiscal transparency of institutions in the area of social and economic rights. These three strategic priorities reflect ESE's belief that social and economic rights should be the highest priority of the state and that their implementation should be based on the interests and needs of citizens, according to the principle of allocation of maximum available resources, the progressive realization of rights and non-discrimination. ESE has significant experience in reporting on the human rights situation in the country envisioned in several UN human rights instruments

Foundation Open Society Macedonia

Foundation Open Society – Macedonia (FOSM) was founded in 1992, and more than 25 years is committed to building dynamic and tolerant societies whose authorities are accountable and open to the participation of all citizens. FOSM mission is the internal integration of society as a precondition for North Macedonia's integration into the European Union.

Focused on strengthening the rule of law, protecting human rights, and building an open society where citizens and CSOs are aware of and actively control and correct the work of the government. FOSM helps create public policies that ensure greater fairness and protect basic human rights. Highest priority is to protect and improve the lives of citizens, especially those belonging to marginalized groups.

The authors of this report have longstanding experience in the field of access to justice to the most vulnerable communities and monitor the compliance of the laws, policies, and practices of the institution with the international human rights standards. The effective implementation of the SDGs depends on their incorporation into all relevant national frameworks. Therefore, this report aims to present how the rule of law and access to justice frameworks are aligned with the SDGs, identify the critical gaps, and propose improvement. The information in the report is based on the one-year monitoring process on the implementation of Goal 16.3. Based on the previous experience in the field of access to justice and using the experience from the international organizations that work in the area, Coalition Margins and ESE prepared a list of indicators based on which the implementation of Goal 16.3 was measured on a national level.

1. National indicators, national plan

The Office of the Vice President of the Government for Economic Issues in Macedonia is the primary institution responsible for SDGs implementation. Moreover, a National Council for Sustainable Development as inter-sectoral bodies have been established, but NGOs are not part of this Council. There is a lack of involvement of NGOs in the phase of aligning national documents with SDGs. Even though there is a positive trend regarding the political will to include NGOs, the main challenge for NGOs to be involved in the accomplishment of Agenda 2030 in North Macedonia remains the lack of political will by the national authorities to predict certain roles for NGOs and to consider them as partners in these processes. The main initiative in this respect is coming from the civil society sector, but often ignored by the relevant institutions. What is more worrying is that NGOs face trends of shrinking space, political instability, frequent elections, and most recently the health and economic crises with COVID-19, that hamper the possibility for their development, therefore their dedication to Agenda 2030. At the meeting of the National Council for sustainable development in December 2018 the Council reaffirmed the efforts of the Government for implementation of the Agenda 2030 and prioritized five goals for 2019 and 2020, including Goal 1; Goal 4; Goal 8; Goal 13; and Goal 16.¹

Regarding the implementation of Goal 16.3, the authors of this report have taken steps to partner with the relevant institution, mostly with the Ministry of Justice and develop National plan for implementation of Goal 16.3 or include the implementation plan for this goal in a comprehensive national plan. The National Strategy for Sustainable Development 2009-2030² does not refer to the rule of law and access to justice and there are no specific actions related to the indicators of Goal 16.3. Moreover, the Government has not developed national indicators relevant for the context and failed to adopt a national plan of action for sustainable development where specific actions for implementation of Goal 16.3 will be reflected.

2. Legal framework, policies, and practice relevant for the implementation of Goal 16.3

¹ <https://vlada.mk/node/16237>

² <http://www.macefdr.gov.mk/files/dokumenti/NSSD.pdf>

Civil court proceedings

In terms of achieving target 16.3, North Macedonia should promote and enforce, laws that ensure equal access to justice for all including the most marginalized and implement non-discriminatory laws and policies for sustainable development. In the last decade, many laws and strategic documents that partially tackled the SDGs targets were adopted, while the implementation of most of the respective documents faces difficulties. As noted in the EU Country report for North Macedonia for 2016, the reforms of the last decade continued to be undermined by the political interference in the work and appointment of the judiciary. Three years later, the EU Commission reported that the country has continued to deliver tangible results in key areas identified in the Council Conclusions such as the judiciary, fight against corruption and organized crime, intelligence services reform, and public administration. However, the results from the filed demonstrate little or no change in the access to justice of the most marginalized.

In the period from 2012 to 2016, the number of initiated civil court procedures is on the continuous increase, however, no additional information is available about the structure of individuals who initiated proceedings, if needed, that is, whether they exercised the right to be exempted from the costs of the proceedings and whether and to which extent the citizens exercised their right to an interpreter during proceedings.³

No data are kept on the average length of civil disputes in North Macedonia. However, data are kept on the average length of disputes at each court and all different types of courts, respectively. Available data on the average length of proceedings show a significant increase in the last two years (2017 и 2018). There is a fourfold increase in the average length of court proceedings in some of the courts compared to the previous year, which is indicating a major delay in court proceedings. Having analyzed the data from Basic Court 2, one can conclude that civil proceedings take a month and a half to five months unlike proceedings in other basic courts and all courts in the country, in general.⁴ It is worrisome that deadlines for urgent protection of women suffering from domestic violence are not respected when interim measures are imposed (judges imposed protection measures within the foreseen legal deadline in 57% of cases), while the average length of criminal proceedings for domestic violence until a final judgment is 717 days. In 2017, the average time for case resolution in all courts is highest, that is, 340 days.⁵

The alternative dispute resolution mechanisms are still not recognized as an option to improve access to justice, especially for marginalized communities. The Law on Civil Procedure imposes compulsory mediation in a limited number of cases, mostly connected to company disputes. The fact that there is no obligation for mediation in most cases contributes to the situation citizens

³³ Boshkova N., Drndarevska D, Mishev S., Gelevska M. Can one monitor the realizing of the Goal 16.3 and to which extent are rule of law and equal access to justice for all promoted in R. Macedonia?, Coalition MARGINS and Association ESE, 2108, p.34. available at: <https://bit.ly/35YbETx>.

⁴ Boshkova N., Drndarevska D, Mishev S., Gelevska M. Can one monitor the realizing of the Goal 16.3 and to which extent are rule of law and equal access to justice for all promoted in R. Macedonia?, Coalition Margins and Association ESE, 2108, p. 79.

⁵ Association ESE, Findings from court monitoring of the cases of domestic violence of women, 2017, available at: <http://www.esem.org.mk/pdf/Publikacii/2017/Naodi%20od%20sudsko%20nabljuduvanje.pdf>

exercise their rights only before the court. Also, the lack of promotion and knowledge about the advantages of alternative dispute resolution mechanisms contributes to the low number of out-of-court resolved disputes.

Table 1: Number of initiated mediation procedures and agreement achieved

Year	Number of initiated mediation procedures	Number of agreements achieved
2016	64	26
2017	109	88
2018*	57	50

Source: Ministry of justice⁶

Free Legal Aid

The Law on Free Legal Aid guarantees free legal aid and legal representation by an attorney of the people who does not have sufficient finances to initiate civil and administrative court procedures or administrative procedure before specific state organs. The first Law on Free Legal Aid was adopted in 2009 and it was in force until October 2019 when the new Law on Free Legal Aid came into force. The research from 2017 shows that many citizens find the procedure for approval of free legal aid very complicated. The poverty rate in the country is much higher than the established share of 1,1% of citizens that fulfill the criteria for approval of the free legal aid. Data from the Ministry of Justice show a very low number of people who succeeded to achieve state-funded legal aid.

Table 2: Number of submitted requests, delivered decisions, and approved requests for free legal aid.

Period	Submitted request	Delivered decision	Approved request
25 Mar 2011 – 31 Mar 2012	154	172	64
1 Apr 2012 – 31 Mar 2013	180	196	68
1 Apr 2013 – 31 Dec 2013	162	162	75
1 Jan 2014 – 31 Dec 2014	270	254	114
1 Jan 2015 – 31 Dec 2015	199	192	113

Source: Annual report of the Ministry of justice for the implementation of the Law on Free Legal Aid.

⁶ Boshkova N., Drndarevska D, Mishev S., Gelevska M. Can one monitor the realizing of the Goal 16.3 and to which extent are rule of law and equal access to justice for all promoted in R. Macedonia?, Coalition Margins and Association ESE, 2108, p. 42.

Based on the report on the Council of Europe European Commission for the Efficiency of Justice⁷ in 2016 the civil courts in North Macedonia in 35 cases exempted the party from the court fees, and in 65 cases the Ministry of Justice approved free legal aid. The authorities also reported that the approved free legal aid includes exemption from all court fees during the court proceeding such as the fee for acquiring evidence, expert opinion fees, etc. However, the Law on Free Legal Aid that was in force till October 2019 did not guarantee this right and in practice, there is no documented case where people received completely covered free legal aid in civil procedure. The new Law on Free Legal Aid guarantees full coverage of the expenses for the court proceeding but there are no results from the implementation of this law that show improvement in the access to justice.

Criminal procedures

In the last two reports published by the Public Prosecutors Office (PPO), citizens are second-ranked based on their proportion in reporting crimes. In 2015, 12,2% of criminal charges were brought by citizens, and 11,2% in 2017. Unlike the Public Prosecutors Office, the Ministry of the Interior (MOI) has no available data on the number of charges brought by citizens. On the other hand, it is of utmost importance that the ministry makes publicly available exhaustive data in terms of the situation in several categories of crimes, perpetrators of crimes, as well as their characteristics. Data on perpetrators of crimes and their characteristics are also part of the statistics that the State Statistical Office (SSO) keeps regularly and publishes on its web site. Except for the existing exhaustive data on perpetrators of crimes, competent institutions (MOI and PPO) and SSO keep no data on the victims of crimes and victims of violent crimes which is very important for monitoring of trends and situations in respect of victimology, victims' rights and their access to justice.

Related to the criminal proceedings in the period from 2012-2015, the number of reported perpetrators of crimes in North Macedonia ranges from 15.012 to 16.113, which declined to 11.866 in 2016. Even though the number of reported and convicted perpetrators reduced in 2016, one can notice in 2016 there is highest rate of convicted persons, which accounts for 87,6% of all defendants. The Criminal Procedure Code guarantees access to free legal representation of defendants who do not have finances to pay for an attorney and at the same time are mute, deaf or incapable to defend her/himself, or the one is indicted for a crime for which the law prescribes ten and more years of imprisonment. Additionally, the Code guarantees the right to legal representation by an attorney in cases when the conditions for compulsory defense are not met. However when the defendant s has no finances and there is a complex case, in the interest of justice the president of the court can assign an attorney to the defendant that submitted a request for "defense of the poor". There is a lack of data on the number of defense lawyers (public defenders) appointed when the defense is mandatory in proceedings, as well as about the number of submitted and approved/rejected requests to appoint a public defender to poor people at the Basic Court Skopje 1 Skopje. Therefore, there is no available data in the country about the number of criminal cases when defendants had no legal or other representatives in court. The analyses undertaken by civic organizations include mapping of the deficiencies in the system to provide *ex officio* counsel from the state budget, however, there is no data about the number of

⁷ Council of Europe European Commission for the efficiency of Justice, 2018 available at: <https://rm.coe.int/rapport-avec-couv-18-09-2018-en/16808def9c>.

citizens whose request for ex officio counsel were rejected or had no counsel for other reasons. The lack of information on the number of people that exercised the right to free defense and representation prevents us to analyze whether the vulnerable people in North Macedonia have a fair trial. Also, there is no available data on the gender and age structure of defendants and injured parties, and whether if needed, they exercised the right to an interpreter during criminal proceedings.

Detention and prisons

The Criminal Procedure Code, international and regional human rights standards promote detention as a last resort of taking measures toward people who have not been convicted yet. The level of implementation of these standards could be measured through detailed and updated statistics on the number of people detained and the length of the detention. Data about the number of persons detained in custody longer than 12 months, and not yet convicted, is missing. There is also a lack of data about the persons detained in custody disaggregated by gender, age, region, and social group. Data is only available for juvenile and adult persons detained in custody, without further information on the age of adult persons. Given the lack of information on the exact duration of custody, especially about custody longer than 6 months, one cannot state which is the average length of custody.

Most accurate data on the number of children in custody annually can be found in the annual publication “Perpetrators of crimes “of the State Statistical Office, while the Directorate for the execution of sanctions may provide only partial data because the situation of children in custody is presented quarterly. Data about the overall child population is available from the MAKSTAT database, so the number of children in custody is calculated per 100.000 child population.⁸

There is no public data on the number of deceased detainees. The only available data from the annual reports of the Directorate for the execution of sanctions include the number and cause of death among prisoners. The number of deceased prisoners insignificantly varies year after year (in 2012- 8, in 2013 - 12, in 2014 and 2015 - 13 deceased detainees, in 2016 - 11 and 2017 - 13). Natural death is the most common cause of death. Despite the lack of specific data on the number of deceased detainees, the situation in the penitentiary institutions is indicative of serious problems, such as overcrowding, substandard residential conditions, and dysfunctional health care system, which may contribute to deteriorated health and lethal consequences for detainees.

Unmet legal needs and degree of trust in police and courts

The Ministry of Justice and the State Statistical Office do not collect data about any unmet legal needs of the population.⁹ These data need to be collected at certain intervals through surveys based on previously set methodology, disaggregated by gender and age group of the population. Citizen associations conduct surveys on access to justice and unmet legal aid needs, however,

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<http://makstat.stat.gov.mk/PXWeb/pxweb/en/MakStat/?rxid=ab2d46fe-7567-4d9e-9192-249a6b209988>

⁹ Boshkova N., Drndarevska D, Mishev S., Gelevska M. Can one monitor the realizing of the Goal 16.3 and to which extent are rule of law and equal access to justice for all promoted in R. Macedonia?, Coalition Margins and Association ESE, 2108.

they fail to provide data concerning the respective indicator. Nevertheless, based on those surveys, one can conclude that poor and marginalized groups of citizens (people who use drugs, sex workers, and Roma) have unmet legal aid needs, in particular, concerning legal problems deriving from poverty and marginalized status.¹⁰¹¹ Both surveys show that poor and marginalized citizens rarely attempt to solve their legal problems, often because of a lack of funds or distrust that institutions would resolve the problem. Institutions do not measure the citizens' trust in institutions, which is the foundation of their legitimacy and provides for uninterrupted exercising of their rights. Public polls on citizens' trust in institutions are not undertaken on regular basis and available data exist only as a result of civic organization surveys and regular EU surveys, such as the standard Eurobarometer conducted twice a year. Data on institutional trust vary based on the source of data. In 2017, the police was second-ranked in terms of citizens' trust (55%), and the trust in another survey undertaken in the same year accounts for 34%. Unlike the police, citizens have less trust in the judiciary, which is 23%.¹²

Varieties of democracy indicators on Justice

It is worrisome that the situation concerning **equality before the law and individual freedoms** shows no improvement. On the contrary, there is a continuous deteriorating trend from 2007 to 2017. Impartiality of public administration, non-transparent adoption of laws, and limited access to justice, especially for women, are singled out as basic problems in this area. Data in the respective period are indicative of a downward trend in the **public administration's impartiality**. The score of 2,56 in 2007 is followed by a downward trend up to the lowest score of 1,62 in 2013 and then increased to 2,47 in 2017. One can also notice a deteriorating situation concerning access to justice, whereby women are in a less favorable position, i.e. there are more restrictions in terms of access **to justice** compared to men. Namely, the scores for access to justice for women in the period from 2007 to 2017 range from 2,34 (lowest) to 2,74 (highest), whereas the scores for access to justice for men range from 2,52 to 3,02. There is no improvement concerning the **degree of transparency** or the degree to which laws are enforced for a period longer than 10 years. There is a certain regression trend in the period from 2007 (with a score of 3,06) until 2015, with a score of 2,25. One can notice an improvement in the last two years, which is of 2,44 in 2016, and 3,03 in 2017, however, the situation did not improve compared to the previous ten-year period. The situation concerning the **freedom of expression** did not improve as well. On the contrary, there is a deteriorating trend from 2007 (score-0,79) until 2015 (0,58), followed by an increase to 0,76 in 2017. In respect of **limiting the influence of the executive branch**, there is a worrying trend towards disrespect for the Constitution and court decisions by the executive branch, i.e. decline in the judicial independence and the extent of control by the legislative over the executive branch.

¹⁰ Cekovski I. Dimitrievski V. Research report: Legal needs and access to justice for people who inject drugs and sex workers in Republic of Macedonia, 2018. Available at: <https://hops.org.mk/en/research-report-legal-needs-and-access-to-justice-for-people-who-inject-drugs-and-sex-workers-in-macedonia/>

¹¹ Reactor- research in action. Legal needs of Roma community in Macedonia, 2018. Available at: <https://www.pravnozajakni.mk/wp-content/uploads/2020/05/KEY-FINDINGS-AND-THEIR-IMPLICATIONS-.pdf>

¹² Pointpulse, Western Balkan Pulse for police integrity and trust, 2017, www.pointpulse.net.

Proposed actions and recommendations

We consider this report useful in acting as a catalyzer for the national implementation of the SDGs, specifically Goal 16.3 and strengthening coordination among the Government, NGO, and other relevant stakeholders. It can strengthen the monitoring and evaluation of the progress in the implementation and identify areas where more help is needed. In that respect, we propose the following action that the Government should take to fully implement Goal 16.3 as a presupposition for sustainable development.

The Government should:

- Adopt National Plan for implementation of Agenda 2030 with specific actions for Goal 16.3. Adoption of special measures to improve access to justice for all, with a special focus on marginalized communities and taking into account the gender perspective of the actions.
- Establish and conduct transparent, participatory, inclusive, and regular reporting mechanisms (review) on the implementation of the SDGs through a national body, which will include broad multi-stakeholder participation.
- Enable participation of NGOs in the design, delivery, monitoring, and accountability of the SDGs to ensure that the goals are met for everyone, including involvement of NGOs in the implementation of SDGs, through particular institutional structures such as the National Councils for Sustainable Development.

State Statistical Office, Ministry of Justice and judiciary should:

- Introduce an integrated system for collecting, processing, and publishing data relevant for monitoring of the implementation of Goal 16.3 including all types of legal resolution.
- Collect annual data on unmet legal aid needs of the population in the poorest quintile.
- Collect data by several parameters in a systematized manner through citizens and institutions surveyed at certain intervals to measure their perception about the fairness of proceedings.
- Introduce a system for keeping detailed records of the length of custody and structure of persons remanded in custody to be able to get a clearer picture of the applied custody policy as opposed to the length of criminal proceedings while awaiting trial.
- Introduce a system with measurable and cumulative indicators of the judiciary, court system and legal aid budgets to ensure continuous monitoring of access to justice for individuals who cannot afford it.

