

GENDER AND DIVERSITY IN THE JUDICIARY

NORTH MACEDONIA



Kosana Beker, PhD
Neda Chalovska Dimovska

**GENDER AND DIVERSITY
IN THE JUDICIARY**
NORTH MACEDONIA

Skopje, December 2021

Publisher:

OSCE Mission to Skopje

Authors:

Kosana Beker, PhD

Neda Chalovska Dimovska

Design and print:

Polyesterday, Skopje, 2022

Circulation:

250 copies

The materials in this publication are for ease of reference only. Although the OSCE has invested the utmost care in its development, it does not accept any liability for the accuracy and completeness of any information, instructions and advice provided or for any misprints. The contents of this publication, the views, opinions, findings, interpretations and conclusions expressed herein do not necessarily reflect the official policy or position of the OSCE. For these reasons, no claims can be made against the OSCE in respect of potential consequences from the reliance on information or conclusions contained in this publication.

ISBN: 978-92-9271-001-9



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

TABLE OF CONTENTS

1. Introduction	7
2. Research methodology	8
3. International and national legal framework	9
3.1. International legal framework	9
OSCE Commitments	10
International treaties – United Nations and Council of Europe	12
Special Rapporteur on the independence of judges and lawyers	15
Good practice examples	18
UN Human Rights Treaty Bodies Recommendations to North Macedonia	19
Representation of women	20
Training of judiciary and promotion of the UN Human Rights Treat Bodies Recommendations	20
Access to justice and free legal aid	21
3.2. National legal framework	22
Procedure and criteria for selection and promotion of judges, lay judges and public prosecutors	22
Selection of members in the Judicial Council	23
Selection of Lay judges	23
Selection of Judges	23
Selection of Public Prosecutors	24
Admission criteria for selection in the initial training in the Academy for Judges and Public Prosecutors	25
4. Research results	26
Participation in the interviews, focus groups and online questionnaire	26
4.1. Diversity in the judiciary (representation by group)	27
4.2. Judges and Public prosecutors perceptions on gender and diversity	31
4.3. Recruitment, selection, promotion and retention	32
4.4. Continuing education and training	35
4.5. Access to justice – justice system users perception	36
5. Conclusions and Recommendations	41

ABBREVIATIONS

RNM	Republic of North Macedonia
OSCE	Organization for Security and Co-operation in Europe
ODIHR	OSCE Office for Democratic Institutions and Human Rights
Council	Council of Public Prosecutors
AJPP	Academy for Judges and Public Prosecutors
CRPD	Committee of the Rights of Persons with Disabilities
MPs	Members of the Assembly of Republic of North Macedonia
HIV	Human immunodeficiency virus
CEDAW	Committee on the Elimination of all Forms of Discrimination against Women
SEE	South East Europe
ECHR	European Convention for Human Rights

1. INTRODUCTION

The ODIHR paper 'Gender, Diversity and Justice' published in April 2019¹ offers analysis and recommendations for building a more inclusive justice system in the OSCE region, drawing on results of a needs assessment study carried out by the ODIHR in 2017. The paper outlines specific challenges identified by the needs assessment study and highlights some of the good practice solutions used to address them. Yet, the discussions among diverse legal communities from SEE region during various ODIHR organized webinars on gender mainstreaming and gender equality in the justice systems revealed that data regarding gender and diversity considerations in the justice system is still difficult to obtain.

In order to address this issue and considering the fact that North Macedonia was not included in the 2017 ODIHR survey, the OSCE Mission to Skopje engaged experts to develop a baseline study focusing on the judiciary (courts, prosecution offices, Council of Public Prosecutors, State Judicial Council, and Academy for Judges and Public Prosecutors). The study seeks to bring an international perspective on the national understanding of the role of the women in the judiciary and to provide relevant data and analysis from a gender and diversity (ethnicity, language, disability, age, social status, religion or belief) perspective. The study's goal is to reflect on the current situation in North Macedonia and offer recommendations that would serve as a solid basis for future fact-based and sustainable interventions in line with the good practice solutions highlighted in the ODIHR paper.

1 OSCE-ODIHR, Gender, Diversity and Justice: Overview and Recommendations, 2019, available at: https://www.osce.org/files/t/documents/3/4/419840_0.pdf

2. RESEARCH METHODOLOGY

At the beginning of this small-scale research, the research plan was developed. The research was conducted from September to December 2021. This research consists of two parts. The first part of the research is desk research, while the second part is field research.

As part of the desk research portion, various resources were collected and analysed, including available legislative and regulatory instruments, reports, and other publications by relevant state agencies, international organizations, and civil society organizations (CSOs), as well as policy documents about ensuring diversity and promoting equal access to justice for all.

As for the field research, it consists of two parts. The first part focuses on the judiciary, while the second part focuses on the justice system users' perception. Key assessment areas in the part on the judiciary were: judges and public prosecutors' diversity by group (gender, minority status, disability, etc.); judges and public prosecutors' perceptions (perceived biases, stereotyping, etc.); recruitment and selection (election of judges, including the legal framework and selection criteria); encouraging new entrants to the profession and strategic recruitment; promotion and retention; as well as continuing education and training. Key assessment areas in the part on justice system users' perception were: experiences with the justice system; overall fairness; perception of gender bias, and perception of bias towards specific vulnerable groups, such as Roma, other ethnic minorities, religious minorities, persons with disabilities, LGBTI population, etc.

To conduct this study, the expert team developed research instruments: an in-depth interview guide, a focus group discussion guide and end users survey questionnaire.

Due to the COVID-19 epidemiological situation, in-depth interviews were organized online. Six in-depth interviews were conducted: with two public prosecutors (basic and higher prosecution office), one civil court judge, and with representatives from the Judicial Council, the Council of Public Prosecutors and the Academy for Judges and Public Prosecutors. In addition, two focus groups discussions were organized, one with judges and the other with public prosecutors, also online. In a focus group discussion with judges, participated a total of 14 judges (11 women and three men) from several different courts, while in a focus group discussion organized for public prosecutors five participants took part, all of them women from three different basic public prosecution office.

Finally, the end users survey questionnaire was made available online, and it was filled out by 15 participants (14 women and one man). Having in mind time constraints, participants were targeted and included end users of the justice system, as well as CSOs (free legal aid providers, organizations dealing with vulnerable groups, attorneys at law that represent victims of discrimination, etc.).

3. INTERNATIONAL AND NATIONAL LEGAL FRAMEWORK

3.1. International legal framework

Gender and diversity are interwoven in all spheres of society, and they are very important in every society. Consequently, they are important for the justice system, as part of the society. Concepts of gender and diversity are very broad. Diversity as a term includes not only gender, as a broader concept than a number of women and men, but also different groups of people who are recognized as important parts of every society. The international legal framework on equality and non-discrimination is very comprehensive and well developed at different levels (e.g. UN system, Council of Europe, OSCE, etc.).

The very notion of all international conventions on human rights and non-discrimination is that we are all equal and have the same rights, regardless of any personal characteristics. As stated in the UN General Assembly Resolution (1998), each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, inter alia, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice.² The concept of equality before the law entails a responsibility on the part of the State to not only refrain from violating the rights of citizens based on any personal characteristic, but also to take positive measures to ensure that persons belonging to different minorities can effectively obtain a remedy if their rights have been violated or need enforcing. In addition, equality of human beings also includes equal opportunities for them.

On the other hand, each person is a valuable member of their community/society and has the right to be included in society, and in the public sphere. Diversity in society is a very important value, and it should be promoted and appraised. However, women and different minorities (e.g. ethnic, religious, persons with disabilities, etc.) have historically faced discrimination and lack of participation in the public sphere. The disadvantaged position of those groups it is reflected in the justice systems throughout OSCE participating States. In the ODIHR study on Gender, Diversity, and Justice,³ among the main presented results, it is stated that even in the OSCE participating States where there is gender parity among justice system actors, gender-based barriers to promotion and career advancement persist. Also, ethnic minorities remain underrepresented among justice system actors, even in the OSCE participating States with high rates of ethnic minority representation, especially in the case of the Roma community. Finally, persons

- ² Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, General Assembly resolution 53/144 of 9 December 1998, available at: <https://www.ohchr.org/en/professionalinterest/pages/rightandresponsibility.aspx>, Article 2.1.
- ³ OSCE-ODIHR, Gender, Diversity and Justice: Overview and Recommendations, 2019

with disabilities are also underrepresented among the men and women working as judges and prosecutors throughout the OSCE region.

Having that in mind, in this study, we focused on the most relevant international legal framework on gender equality, ethnic minorities, and persons with disabilities in relation to the judiciary.

OSCE commitments

During the last three decades, the OSCE declared significant commitments to principles of non-discrimination and gender equality, including in the judiciary. The OSCE supported participating States in meeting their commitments to respect the internationally recognized standards that relate to the independence of judges and legal practitioners and the impartial operation of the public judicial service, to ensure that the independence of the judiciary is guaranteed and enshrined in the constitution or the law of the country and is respected in practice, paying particular attention to the Basic Principles on the Independence of the Judiciary, which, *inter alia*, provide for ensuring that judges are properly qualified, trained and selected on a non-discriminatory basis.⁴

In addition, the OSCE supported participating States to promote gender equality, stating that full and true equality between men and women is a fundamental aspect of a just and democratic society based on the rule of law. It calls for participating States to recognize that the full development of society and the welfare of all its members require equal opportunity for full and equal participation of men and women. In this context, they will, *inter alia*, encourage and promote equal opportunity for full participation by women in all aspects of political and public life, in decision-making processes, and in international co-operation in general.⁵ Furthermore, the OSCE supported participating States in implementing relevant commitments to promoting equality between women and men. In the 2004 OSCE Action Plan for the Promotion of Gender Equality,⁶ among the priorities are: ensuring a non-discriminatory legal and policy framework in order for participating States to comply with international instruments for the promotion of gender equality and women's rights, as well as ensuring equal opportunity for participation of women in political and public life. These commitments in particular emphasize the importance of gender mainstreaming and declare support to participating States' effort to promote gender equality, with a special focus on promoting women's participation in public and political life.⁷

Finally, recognizing that women may face additional barriers, beyond those based on gender, to their participation in political and public life, the OSCE called on the participating States to consider providing for specific measures to achieve the goal of gender balance in

4 Document of the Moscow Meeting of the Conference on the Human Dimension of the CSCE, Moscow, 10 September to 4 October 1991, paras. 19.1. and 19.2 (iv), available at: <https://www.osce.org/files/f/documents/2/3/14310.pdf>

5 *Ibid.*, para. 40 and 40.8

6 Annex to Decision No. 14/04; 2004 OSCE Action Plan for the Promotion of Gender Equality, Sofia 2004, available at: <https://www.osce.org/files/f/documents/7/d/23295.pdf>

7 *Ibid.*, V. Supporting OSCE participating States in implementing relevant commitments to promoting equality between women and men, 44, (b) and (d)

all legislative, judicial and executive bodies, and to consider possible legislative measures, which would facilitate more balanced participation of women and men in political and public life and especially in decision-making.⁸

As with the representation of women and men, the representation of minorities in the judiciary is also an important aspect of diversity. In 2006, to combat intolerance and discrimination and promote mutual respect and understanding, OSCE participating States recognized the positive contribution that all individuals can make to the harmonious pluralistic character of our societies by promoting policies focusing on equality of opportunity, rights, access to justice and public services, and on fostering dialogue and effective participation.⁹ Furthermore, ODIHR issued recommendations in 2010 on judicial independence in which representation of minorities in judiciaries was addressed.¹⁰ One of the recommendations is that the composition of the judiciary should reflect the composition of the population as a whole. To increase the representation of minorities in the judiciary, underrepresented groups should be encouraged to acquire the necessary qualifications for being a judge, and nobody must be excluded because they are a member of a certain minority group.¹¹

In the 2012 Ljubljana Guidelines,¹² it is stated that public administration and the civil service should mainstream diversity in the structures and mechanisms of their work, including by employing persons belonging to minority groups. It is further stated that public administration should, to the extent possible, reflect the diversity of society, which means that states should identify ways of promoting the recruitment and retention of persons belonging to minorities in the public sector. Special attention should be paid to achieving an adequate presence of persons belonging to minorities in sectors that provide essential services, inter alia, in the judiciary.¹³ Mainstreaming a diversity policy in the public sector implies that the composition and promotion of staff at all levels of public administration should be monitored to prevent direct or indirect discrimination. Furthermore, one of the main recommendations issued by the OSCE High Commissioner on National Minorities is for participating States to ensure that the composition of courts, tribunals, prosecution offices, law-enforcement agencies, correctional services, enforcement agencies (or bailiffs), and human rights institutions, aims to reflect the diversity of the population at all levels.¹⁴

For the persons with disabilities and their inclusion, the OSCE participating States in 1991 committed to protecting the human rights of persons with disabilities and to take steps to

8 Decision No. 7/09, Women's Participation in Political and Public Life, OSCE Ministerial Council, Athens, 2 December 2009, paras. 1 and 2, available at: <https://www.osce.org/files/f/documents/2/a/40710.pdf>

9 Decision No. 13/06, Combating Intolerance and Discrimination and Promoting Mutual Respect and Understanding, OSCE Ministerial Council, Brussels, 5 December 2006, available at: <https://www.osce.org/files/f/documents/f/a/23114.pdf>, para 3.

10 Kyiv Recommendations on Judicial Independence in Eastern Europe, South Caucasus and Central Asia, OSCE/ODIHR and Max Planck Minerva Research Group on Judicial Independence, June 2010, available at: <https://www.osce.org/files/f/documents/a/3/73487.pdf>

11 Ibid, para. 24

12 Ljubljana Guidelines on Integration of Diverse Societies, OSCE High Commissioner for National Minorities, 2012, available at: <https://www.osce.org/files/f/documents/0/9/96883.pdf>

13 Ibid, Guideline 26.

14 Graz Recommendations on Access to Justice and National Minorities & Explanatory Note, OSCE High Commissioner on National Minorities, November 2017, available at: <https://www.osce.org/files/f/documents/a/c/340066.pdf>, Recommendation 5.

ensure equal opportunity for persons with disabilities to participate fully in the life of their society.¹⁵

Finally, it should be noted that women and men are complex identities defined not only by their gender, but the convergence of different personal characteristics leads to different forms of discrimination and marginalization. For example, relevant OSCE commitments on ensuring equal opportunity for participation of women in political and public life recognized intersectional discrimination of minority women, stating that the High Commissioner on National Minorities will address specific issues relating to the participation in the public and private life of women belonging to national minorities and, in policies and projects developed by his/her office, take steps necessary to counter the double discrimination suffered by these women.¹⁶

International treaties – United Nations and Council of Europe

As stated previously, there are numerous groups in the societies whole over the world, that have historically suffered discrimination, such as women, different ethnic minorities, persons with disabilities, etc. Systemic discrimination of those groups resulted in their exclusion from political and public life. At the universal level, numerous international treaties had been adopted after World War II, to proclaim and guarantee human rights, as well as to correct historical injustices that different groups of people experienced.

The main universal documents on human rights and non-discrimination have been ratified by North Macedonia. Although all United Nations' documents are relevant to the member states, we will enlist the most relevant in regard to gender and diversity in the judiciary. North Macedonia accessed by way of succession the following international human rights treaties:¹⁷

- International Convention on the Elimination of all Forms of Racial Discrimination (ICERD, 1965);
- International Covenant on Economic, Social and Cultural Rights (ICESCR, 1966);
- International Covenant on Civil and Political Rights (ICCPR, 1966);
- Convention on the Elimination of all Forms of Discrimination against Women (CEDAW, 1979);
- Convention on the Rights of Persons with Disabilities (CRPD, 2006).¹⁸

All mentioned UN human rights treaties prohibit discrimination, on any ground, including discrimination based on sex/gender, ethnicity, disability, etc.

¹⁵ Document of the Moscow Meeting of the Conference on the Human Dimension of the CSCE, Moscow, 1991, para. 412.

¹⁶ Annex to Decision No. 14/04; 2004 OSCE Action Plan for the Promotion of Gender Equality, Sofia 2004, priority 44 (d)

¹⁷ 18 January 1994

¹⁸ Ratified on 29 December 2011

Besides the prohibition of discrimination of persons with disabilities, the Convention on the Rights of Persons with Disabilities, *inter alia*, prescribes the right of persons with disabilities to work, on an equal basis with others in a labour market and work environment that is open, inclusive and accessible to persons with disabilities, including employment of persons with disabilities in the public sector, as well as ensuring that reasonable accommodation is provided to persons with disabilities in the workplace.¹⁹ This means that persons with disabilities have the right to participate on an equal basis in the justice system, not only as users of the system but also as judicial professionals (judges, prosecutors, lay judges, lawyers). Also, persons with disabilities face numerous obstacles with regard to access to justice. States are obliged to ensure effective access to justice for persons with disabilities on an equal basis with others, including through the provision of procedural and age-appropriate conditions, in order to facilitate their effective role as direct and indirect participants, including as witnesses, in all legal proceedings, including at investigative and other preliminary stages.²⁰ It is very important to note that the Convention on the Rights of Persons with Disabilities stipulates that States parties shall take appropriate measures to ensure access for persons with disabilities, on an equal basis with others, to the physical environment, to transportation, to information and communication, including information and communication technologies and systems, and to other facilities and services open or provided to the public, both in urban and in rural areas, to enable persons with disabilities to live independently and participate fully in all aspects of life.²¹ Accessibility should be provided to all persons with disabilities, regardless of the type of impairment, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, legal or social status, gender or age. Accessibility should especially take into account the gender and age perspectives for persons with disabilities.²²

In addition, North Macedonia ratified the Council of Europe main conventions, including the Convention for the Protection of Human Rights and Fundamental Freedoms (1950),²³ Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms (2000),²⁴ as well as the Council of Europe Convention on preventing and combating violence against women and domestic violence (2011).²⁵

Article 14 of the Convention for the Protection of Human Rights and Fundamental Freedoms prohibits discrimination in the enjoyment of the rights and freedoms enshrined in this Convention on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status. It should be noted that this provision refers only to the enjoyment of the rights and freedoms set forth in the Convention, which means that it does not refer to protection from discrimination in the enjoyment of a right not enshrined in the Convention. In 2000, the

19 CRPD, Article 27, paragraph 1 (a, e, g, i)

20 *Ibid.*, Article 13

21 *Ibid.*, Article 9

22 CRPD/C/GC/2, 2014, para 13

23 Ratified on 10 April 1997

24 Ratified on 13 July 2004

25 Ratified on 26 December 2017

Protocol No. 12 to the ECHR was adopted, which provides a general non-discrimination clause and thereby affords a scope of protection that extends beyond the enjoyment of the rights and freedoms outlined in the Convention, that is to say, protection from discrimination is provided to any right guaranteed by national law.

With specific reference to the judiciary, the Council of Europe Plan of Action on Strengthening Judicial Independence and Impartiality stressed tacking adequately into account society as a whole in the composition of tribunals and the judiciary to increase public trust in the judiciary. To achieve this result, member states should consider a policy aimed at ensuring gender equality and representation of society as a whole.²⁶

In addition, having in mind historical disadvantages that certain groups of persons were exposed to, anti-discrimination laws and sole prohibition of discrimination may not be sufficient to correct this injustice in a timely manner, thereby necessitating the adoption of special measures.²⁷ The non-discriminatory nature of special measures is explicitly prescribed in the international documents.

For example, in the CEDAW General Recommendation No. 25 on temporary special measures,²⁸ the CEDAW Committee emphasized that a purely formal legal approach is not sufficient to achieve substantive equality between women and men. Biological as well as socially and culturally constructed differences between women and men must be taken into account, and non-identical treatment of women and men might be required to address such differences. An effective strategy aimed at overcoming the underrepresentation of women and a redistribution of resources and power between men and women is needed for achieving substantive equality.²⁹ Furthermore, the CEDAW Committee acknowledged that certain groups of women may suffer from multiple forms of discrimination, and called for specific temporary special measures to eliminate such multiple forms of discrimination against women and its compounded negative impact on them.³⁰

Furthermore, in the CEDAW General Recommendation No. 33 on women's access to justice,³¹ the CEDAW Committee stressed a number of obstacles and restrictions that impede women from realizing their right to access to justice on a basis of equality, and these obstacles occur in a structural context of discrimination and inequality owing to factors such as gender stereotyping, discriminatory laws, intersecting or compounded discrimination, procedural and evidentiary requirements, and practices, etc. All these obstacles constitute persistent violations of women's human rights,³² and need to be properly addressed. In addition, the CEDAW Committee recommended that States parties confront and remove barriers to women's participation as professionals within all bodies and levels of judicial and

26 Council of Europe Plan of Action on Strengthening Judicial Independence and Impartiality, CM(2016)36 final, April 2016, available at: <https://rm.coe.int/1680700285>, Paragraph G.

27 See for example: Article 1 paragraph 4 of the ICERD; Articles 4 and 5 of the CEDAW; Article 5 of the CRPD.

28 CEDAW General Recommendation No. 25 on Article 4, paragraph 1 of the CEDAW convention on temporary special measures, (CEDAW/C/GC/25) 2004, available at: [https://www.un.org/womenwatch/daw/cedaw/recommendations/General%20recommendation%2025%20\(English\).pdf](https://www.un.org/womenwatch/daw/cedaw/recommendations/General%20recommendation%2025%20(English).pdf)

29 Ibid, paragraph 8

30 Ibid, paragraph 12

31 CEDAW General Recommendation No. 33 on Women's Access to Justice, (CEDAW/C/GC/33) 2015, available at: <https://undocs.org/en/CEDAW/C/GC/33>

32 Ibid, paragraph 3.

quasi-judicial systems and providers of justice-related services, and take steps, including temporary special measures, to ensure that women are equally represented in the judiciary and other law implementation mechanisms as magistrates, judges, prosecutors, public defenders, lawyers, administrators, mediators, law enforcement officials, judicial and penal officials, and expert practitioners, as well as in other professional capacities.³³

All international human rights and non-discrimination conventions are applicable to all spheres of private and public life, including the judiciary. Although there are significant differences across countries, a global need to promote women's and minorities' participation in the judiciary continues to exist.³⁴ An international example may be the election of the candidates for the European Court of Human Rights. In 2004, a rule was set that expressly required the lists of candidates for the European Court of Human Rights to include at least one candidate of each sex. However, this rule was changed in 2005 to allow single-sex candidate lists if they were from the underrepresented sex at the Court (i.e. the sex to which under 40% of the total number of judges belong), or in exceptional circumstances where a contracting party has taken all the necessary and appropriate steps to ensure that the list contains candidates of both sexes.³⁵ Furthermore, when political groups are nominating their representatives to the committee, they should aim to include at least 40% women, which is the parity threshold deemed necessary by the Council of Europe to exclude possible gender bias in decision-making processes, and one of the criteria used by the committee should be that, in the case of equal merit, preference should be given to a candidate of the sex underrepresented at the Court.³⁶ However, this process is very slow. In 2004 when the measure was introduced women made up only 26% of the judges (11 women and 32 men), while as of 13 September 2021 this ratio was 15 women (32%) compared to 32 men.³⁷

Special Rapporteur on the independence of judges and lawyers

The work of the Special Rapporteur on the independence of judges and lawyers plays a very important role in advancing women and minorities rights in the judiciary. With its function under the United Nations' mandate, the Special Rapporteur on the independence of judges and lawyers is subject to the thematic special procedures overseen by the United Nations Human Rights Council.³⁸ This mandate was created to: record attacks on the independence of judges, lawyers, and prosecutors; monitor the progress made in protecting and enhancing their independence; make concrete recommendations to States and other actors, and

33 Ibid, paragraph 15 (f)

34 Shelby Quast, Justice Reform and Gender, Gender and Security Sector Reform Toolkit. Eds: Megan Bastick and Kristin Valasek, DCAF, OSCE/ODIHR, UN-INSTRAW, Geneva, 2008, available at: https://www.files.ethz.ch/isn/143084/Tool%2004_Justice%20Reform%20and%20Gender.pdf, p. 14.

35 Candidates for the European Court of Human Rights, Resolution 1366 (2004) of the European Parliamentary Assembly as modified by Resolutions 1426 (2005), 1627 (2008), 1841 (2011), 2002 (2014) and 2278 (2019), available at: http://assembly.coe.int/nw/xml/RoP/RoP-XML2HTML-EN.asp?id=EN_CEGCAIFG, Article 4.

36 Ibid, Article 5 (iv), and (vi)

37 European Court of Human Rights, Composition of the Court, as of 13 September 2021, available at: <http://www.echr.coe.int/Pages/home.aspx?p=court/judges>

38 More information on the Special Rapporteur on the independence of judges and lawyers available at: <https://www.ohchr.org/EN/Issues/Judiciary/Pages/SRJudgeslawyersIndex.aspx>

identify ways to improve the independence of the judiciary and the legal profession. The Special Rapporteur presents annual thematic reports to the Human Rights Council and the General Assembly highlighting important issues or areas of concern related to the mandate.³⁹

As stated by the Special Rapporteur on the independence of judges and lawyers in 2011, an independent, impartial and gender-sensitive judiciary has a crucial role in advancing women's and men's human rights, achieving gender equality, and ensuring that gender considerations are mainstreamed into the administration of justice.⁴⁰ Therefore, States should make an effort to evaluate the structure and composition of their judiciaries to ensure adequate representation of women and provide necessary conditions for the advancement of gender equality within judiciaries.⁴¹ Among other things, the proposed lists of candidates for judicial appointments and promotions should ensure adequate representation of women and minorities at all levels in the judicial system.⁴² Ensuring women's perspectives in the administration of justice, including in judgments delivered by courts could be done through the appointment of women judges, since reflecting the diversity of societies is essential to building trust in the judicial system and ensuring that women's experiences and needs are taken into consideration in all judicial affairs.⁴³ In addition, women from minority and other underrepresented groups should also be adequately represented in the judiciary.⁴⁴

In its report from 2016, the Special Rapporteur on the independence of judges and lawyers stated that States should, *inter alia*, ensure that anyone can enter the legal profession, the prosecution service, and the judiciary without discrimination of any kind, in particular on the grounds of gender, as well as promote greater representation of women and minorities.⁴⁵ On the other hand, it is important to bear in mind that judges have an obligation to mete justice impartially and equally to all regardless of their personal characteristics, such as gender, minority, or other status. Women should be seen as key actors in the administration of justice and as legal professionals with strengths and capacities to contribute to the integrity of the justice system, and this could be achieved, *inter alia*, through training of all judges and judicial staff on gender stereotyping and equal competences of women and men.⁴⁶

Finally, in 2021, the Special Rapporteur on the independence of judges and lawyers submitted the report on the participation of women in the administration of justice.⁴⁷ The report examines the current status of women's representation in judicial systems, identifying

39 UN Human Rights, OHCHR, About the mandate for the Special Rapporteur on the independence of judges and lawyers the available at: <https://www.ohchr.org/EN/Issues/Judiciary/Pages/Mandate.aspx>

40 UN General Assembly, Report of the Special Rapporteur on the independence of judges and lawyers, A/HRC/17/30, 29 April 2011, paragraph 45.

41 *Ibid.*, paragraph 47.

42 *Ibid.*, paragraph 58.

43 *Ibid.*, paragraphs 48–49.

44 *Ibid.*, paragraph 49.

45 UN General Assembly, Report of the Special Rapporteur on the independence of judges and lawyers, A/HRC/32/34, 5 April 2016, paragraph 44.

46 UN General Assembly, Report of the Special Rapporteur on the independence of judges and lawyers, A/HRC/17/30, 29 April 2011, paragraphs 54–55.

47 UN General Assembly, Report of the Special Rapporteur on the independence of judges and lawyers, A/76/142, 25 July 2021

the barriers hindering their adequate access to, and promotion and retention in the judiciary and prosecution services.

An independent, impartial judiciary and prosecution system committed to gender equality is crucial for the realization of human rights, the strengthening of democracy, the inclusion of all voices in matters of public interest, and the eradication of gender-based violence against women. For this reason, the equal representation of women and men in the system of administration of justice is both an objective in itself and an essential condition for the equitable and effective protection of human rights and substantive equality. A diverse composition brings different voices and perspectives to the judiciary and reinforces the legitimacy of the judiciary and the prosecution service.⁴⁸

In this report, a number of constraints faced by women in accessing and advancing in a judicial career were identified, including various regulatory obstacles and institutional, structural, and cultural barriers that lead to the underrepresentation of women in decision-making positions or to their confinement to certain areas of the judicial system, as well as gender stereotypes as one of the main causes of inequality. The Special Rapporteur acknowledged the progress made in several countries, however, progress is uneven and inconsistent, and achieved results achieved are still insufficient. The Special Rapporteur gave numerous recommendations, including:

- Design and implement a quota system that is not merely symbolic in order to ensure equality in access to positions in the administration of justice and to achieve greater equality from a geographical or regional perspective;⁴⁹
- Use the Sustainable Development Goals to ensure that, by 2030, 50 percent of public positions, both in the judiciary and in prosecution services, are held by women;⁵⁰
- Adopt substantive and procedural standards to ensure women’s equal participation in decision-making roles in public institutions, including the judiciary and prosecution services;⁵¹
- Review the formal requirements for entering or being promoted in the judicial profession so that the “glass ceiling” does not persist and there are no bureaucratic barriers that hinder women’s access to positions in the judiciary;⁵²
- Eliminate stereotypes that pigeonhole women in specific areas of law or at certain levels in the judicial hierarchy;⁵³
- Encourage the creation of associations of women judges and prosecutors that strengthen women’s participation in the judicial and prosecutorial professions,

48 Ibid, paragraphs 19 and 20.

49 Ibid, paragraph 98

50 Ibid, paragraph 99

51 Ibid, paragraph 102

52 Ibid, paragraph 103

53 Ibid, paragraph 104

defend their rights, and enable them to participate in the adoption of policies to promote gender equity in the judiciary and the prosecution service;⁵⁴

- Eradicate the gender stereotypes that plague the courts and prosecutors' offices [...] and adopt gender perspective as a method of reasoning and objective, rigorous analysis that identifies, at first hand, the power relations and the differentiated consequences experienced by women and men in almost any situation.⁵⁵

Finally, the Special Rapporteur on the independence of judges and lawyers underlined the importance of actively promoting the representation of different minorities in the legal profession.⁵⁶

Good practice examples

There are numerous good practice examples at international level on enhancing gender equality and diversity in the judiciary. Some examples are presented below, that might serve as inspiration for the judiciary in North Macedonia in their efforts to promote gender equality and to become more diverse.

Many states have general legislation pursuing the objective of parity between men and women in the public sector which also affects the organization of their judicial system. For example, Germany (at the level of Regional States – Länder), Austria, Denmark, and Norway have explicitly indicated the use of these general laws in relation to judicial appointments, while in some Regional States in Germany, Scotland, and Northern Ireland, specific action plans were developed to make the judicial profession more accessible to women.⁵⁷ In the Council of Europe's research, 13 States reported gender consideration in the recruitment and appointment process (Armenia, Austria, Bosnia and Herzegovina, Denmark, Georgia, Germany, Iceland, Montenegro, Norway, Serbia, Spain, UK-England, Wales and Scotland and Israel) which indicates that they apply specific rules in this regard. However, research has shown that these replies must be assessed with caution since in many cases only the principle of non-discrimination on the basis of gender is applied, while quotas or incentives to recruit persons of the underrepresented gender with equal skills are very rare.⁵⁸

It is worth noting that in October 2020, the High Judicial and Prosecutorial Council of Bosnia and Herzegovina adopted the Gender Equality Strategy for the Bosnia and Herzegovina Judiciary,⁵⁹ based on which all judicial institutions in BiH will develop their own action plans. This Strategy will be implemented using the method of gender mainstreaming, i.e.

54 Ibid, paragraph 107

55 Ibid, paragraph 110

56 UN General Assembly, Independence of judges and lawyers, Report of the Special Rapporteur on the independence of judges and lawyers, A/71/348*, 22 August 2016, paragraph 78.

57 European judicial systems: Efficiency and quality of justice, CEPEJ Studies No. 23 2016 Edition (2014 data), Council of Europe, 2016, available at: <https://rm.coe.int/european-judicial-systems-efficiency-and-quality-of-justice-cepej-stud/1680786b58>.

58 European judicial systems: Efficiency and quality of justice, CEPEJ Studies No. 26 2018 Edition (2016 data), Council of Europe, 2018, available at: <https://rm.coe.int/rapport-avec-couv-18-09-2018-en/16808def9c>, p. 98

59 Gender Equality Strategy for the BiH Judiciary, HJPC, 2020, available at: <https://vstv.pravosudje.ba/>

an approach in the adoption of policies, laws, and programmes which takes into account the different interests and needs of men and women. The High Judicial and Prosecutorial Council will coordinate the process of adopting action plans by judicial institutions and provide support and guidance within this process, with the ultimate goal of enabling equal access to justice and equality before the law for all citizens.

In addition, there are some good practices from the US, offering some diversification tools that may be adopted by prosecutors' offices to improve workforce representation, such as inclusive hiring; diversity attracts diversity; community engagement, and active retention.⁶⁰ For example, within the area of inclusive hiring, diversification tools such as proactive recruiting seeking out minority candidates and combating the stigma against prosecution to broaden its appeal to minority candidates are suggested.⁶¹ Other diversification tools are designed to attract more diverse candidates, to combat implicit bias during recruitment, and to ensure gender parity and minority representation at management levels.⁶² Another good practice example is conducting ex ante policy impact assessment as well as impact monitoring of existing policies, including those in the human resources area. The UK's Crown Prosecution Service first introduced this impact review and monitoring requirement with regard to race, but from 2006 similar requirements took effect with regard to gender and disability.⁶³

Still, building a workforce representative of the community it serves remains a serious challenge in many states, and good practice in both recruitment for diversity and retention of minority staff is essential to improving the situation.

Finally, it is important to mention that there is a constant need for continual education, training, and capacity building for the judiciary, to properly address gender bias and stereotyping (e.g. based on gender, ethnicity, disability, etc.) in the justice system.

UN Human Rights Treaty Bodies' recommendations to North Macedonia

At the end of 2018, two UN Human Rights Treaty Bodies gave recommendations to North Macedonia (at that time former Yugoslav Republic of Macedonia), namely the CEDAW Committee and the CRPD Committee. Both documents contain several observations and recommendations relevant to gender and diversity in the judiciary.

Observations and recommendations from the Concluding observations on the sixth periodic report of the former Yugoslav Republic of Macedonia⁶⁴ and Concluding observations on

60 Bies, Katherine J., et al, Diversity in Prosecutors' Offices: Views from the Front Line. A Report of the Stanford Criminal Justice Center, 2016, p. 24.

61 Ibid, p.p. 25-26.

62 Ibid, p.p. 27-29.

63 Addressing Equality and Diversity in the Crown Prosecution Service: A Stocktake Report. Crown Prosecution Service, United Kingdom, 2004, p. 33.

64 Concluding observations on the sixth periodic report of the former Yugoslav Republic of Macedonia, CE-DAW/C/MKD/CO/6 from 14 November 2018, available at: https://tbinternet.ohchr.org/_layouts/15/treaty-bodyexternal/Download.aspx?symbolNo=CEDAW%2fC%2fMKD%2fCO%2f6&Lang=en

the initial report of the former Yugoslav Republic of Macedonia⁶⁵ are briefly presented in this report, divided into three subtopics: representation of women, training of judiciary and promotion of the UN Committees Recommendations, and access to justice and free legal aid.

Representation of women

The CEDAW Committee expressed concerns because women are still underrepresented in the Macedonian society, including in the judiciary, and due to the lack of programmes and strategies to ensure the participation of Roma women, rural women, and women with disabilities in all spheres of life and in decision-making positions and processes in public and private organizations.⁶⁶ Therefore, the Committee recommended to North Macedonia, *inter alia*, to: adopt targeted measures, including temporary special measures, such as a gender parity system, for the accelerated recruitment and appointment of women to decision-making positions in public administration, as well as to adopt strategies and programmes to facilitate and promote the involvement of women in political and public life, in particular women belonging to disadvantaged groups.⁶⁷

The Committee remained concerned about the limited implementation of temporary special measures and that the existing measures, such as quotas, do not cover all areas of the CEDAW Convention, and consequently recommended to North Macedonia to reinforce the application of temporary special measures in the legislative and executive authorities and in the judiciary, in all areas covered by the Convention in which women, including women belonging to ethnic minority groups, are underrepresented or disadvantaged.⁶⁸

Training of judiciary and promotion of the UN Human Rights Treaty Bodies' recommendations

The CEDAW Committee notes that the Convention is an integral part of the legal order in North Macedonia and that information about the Convention, its principles, and provisions are an integral part of the training for judges at the Academy for Judges and Prosecutors (AJPP). Nevertheless, the Committee is concerned about the general lack of awareness of the Convention, the Optional Protocol, and the Committee's general recommendations.⁶⁹

Among other things, the Committee recommended to North Macedonia to ensure that the CEDAW Convention is applied by public authorities, across all sectors and at all levels, in legislation and policies and by the judiciary in court decisions, as well as to strengthen legal training and capacity-building programmes for judges, prosecutors, lawyers and

65 Concluding observations on the initial report of the former Yugoslav Republic of Macedonia, CRPD/C/MKD/CO/1 from 29 October 2018, available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fMKD%2fCO%2f1&Lang=en

66 CEDAW/C/MKD/CO/6, paragraph 29

67 *Ibid.*, paragraph 30

68 *Ibid.*, paragraphs 19 and 20

69 *Ibid.*, paragraph 9

other legal professionals on the Convention, the Optional Protocol, the Committee's general recommendations and the Committee's views on individual communications and inquiries, so as to enable them to apply, invoke and/or refer to the provisions of the CEDAW Convention directly and to interpret national legislation in line with the Convention.⁷⁰

In General Comment No. 6 on Article 5 of the CRPD, it is stated that in order to encourage appropriate respect for and fulfilment of rights and obligations, it is necessary to train law enforcement officers, raise awareness among rights holders and build the capacity of duty bearers. Appropriate training should include, inter alia: the complexities of intersectionality and awareness-raising on intersectionality issues; the diversity among persons with disabilities and their individual requirements in order to gain effective access to all aspects of the justice system on an equal basis with others; and different measures to ensure the effective training of personnel, including lawyers, magistrates, judges, etc. on the rights of persons with disabilities.⁷¹

Also, the CRPD Committee recommended conducting training for law enforcement personnel on the human rights-based approach to disability.⁷² In addition, it recommended adoption of measures to promote adequate training of judicial and social workers and legal protection to ensure that persons with disabilities are not discriminated against during legal and administrative proceedings concerning their sexual and reproductive rights, the right to create a family and legal custody of their children.⁷³

In the end, CEDAW Committee requested North Macedonia to ensure the timely dissemination of concluding observations, in the official language, to the relevant state institutions at all levels, including the judiciary, to enable their full implementation.⁷⁴ The CRPD Committee requested the implementation of given recommendations, and transmission of the concluding observations for consideration and action to members of the Government and the Parliament, officials in relevant ministries, the judiciary, etc.⁷⁵

Access to justice and free legal aid

The CEDAW Committee acknowledged the progress made by North Macedonia regarding the free legal aid legislation, but it is still concerned, among other things, because of the barriers for women to claim their rights and obtain redress, owing to the eligibility requirements, and the persistence of gender stereotypes among law enforcement officers, including the police.⁷⁶ The Committee recommended North Macedonia to ensure that intersecting forms of discrimination are adequately addressed by courts, including through awareness-raising activities and training for judges and lawyers on the importance of addressing violations of women's rights.⁷⁷

70 Ibid, paragraph 10 (a) and (c)

71 CRPD/C/GC/6, 2018, para 55

72 CRPD/C/MKD/CO/1, paragraph 24 (d)

73 CRPD/C/MKD/CO/1, paragraph 38 (b)

74 CEDAW/C/MKD/CO/6, paragraph 50

75 CRPD/C/MKD/CO/1, paragraph 60

76 CEDAW/C/MKD/CO/6, paragraph 13 (a) and (b)

77 Ibid, paragraph 14 (b)

The General Comment No. 2 on Article 9 of the CRPD,⁷⁸ emphasized that there can be no effective access to justice if the buildings in which law-enforcement agencies and the judiciary are located are not physically accessible, or if the services, information, and communication they provide are not accessible to persons with disabilities. In addition, accessible environment, transportation, information and communication, and services are a precondition for the inclusion of persons with disabilities in their respective local communities and for them to live independently. In order to ensure effective access to justice, processes must allow participation and be transparent, including delivery of information in an understandable and accessible manner; recognition and accommodation of diverse forms of communication; physical accessibility throughout all stages of the process; and financial assistance in the case of legal aid.⁷⁹

As for North Macedonia, the CRPD Committee is concerned about the lack of consistency in laws with regard to access to justice for persons with disabilities, lack of access to the judicial system due to the lack of knowledge of disability issues within the judicial sector, and the lack of adequate procedural accommodations, information in accessible formats and accessibility to judicial premises.⁸⁰ Therefore, it recommended to North Macedonia to take measures to align the laws requiring courts to facilitate trial procedures and procedural accommodation for persons with disabilities, and to adopt measures to ensure that all persons with disabilities have access to justice, and that information and communications are available in accessible formats.⁸¹

3.2. National legal framework

Procedure and criteria for selection and promotion of judges, lay judges and public prosecutors

The Constitution of the Republic of North Macedonia⁸² identifies the judicial branch of power as one of the pillars of the constitutional order in the country and as a guarantor of the rule of law and a protector of the fundamental rights and freedoms of citizens. Judiciary power is exercised by courts, as autonomous and independent.

The basic courts, the courts of appeal, the Administrative Court, the Higher Administrative Court, and the Supreme Court of the Republic of North Macedonia exercise the judicial power within the judicial system. The Supreme Court is the highest court in the state, providing uniformity in the implementation of the laws by the courts.

The judicial function is exercised by judges. The judge is elected with no limitation of the duration of the term of office. The judges act on all matters that fall within the competence

⁷⁸ CRPD/C/GC/2, 2014, para 37

⁷⁹ CRPD/C/GC/6, 2018, para 52

⁸⁰ CRPD/C/MKD/CO/1, paragraph 23

⁸¹ Ibid, paragraph 24

⁸² The text of the Constitution on Macedonian language is available on the following link: <https://www.sobranie.mk/content/Odluki%20USTAV/UstavSRSM.pdf>

of the court under the law. Lay judges participate in the trial when so determined by law. The judges, presidents of the courts, and lay judges are elected and dismissed by the Judicial Council of the Republic of North Macedonia.

According to the Law on Courts, discrimination on grounds of gender, race, the colour of the skin, national and social background, political and religious belief, material and social position shall be prohibited in the election of judges and lay judges. However, the Law for prevention and protection from discrimination includes a more extensive list of prohibited grounds for discrimination, which are also applicable in the selection process of judges and lay judges, especially sexual orientation, gender identity, belonging to a marginalized group, disability, family or marital status, property status. Equitable representation of the citizens from all communities shall be ensured when electing judges and lay judges without disturbing the criteria prescribed by law.

Selection of members in the Judicial Council

The Judicial Council is composed of 15 members, of whom ex-officio members are the President of the Supreme Court of RNM and the Minister of Justice, eight members are judges, elected from their own ranks, three of whom are members of ethnic minorities in the country. Three other members of the Council are elected by the Assembly of RNM by the majority of the total number of MPs, including majority votes from the total number of MPs belonging to the ethnic minorities that are not the majority in RNM. Two other members are proposed by the President of RNM, and the election is made by the Assembly of RNM, out of which one is a member of an ethnic minority. The ex-officio members participate in the work of the Judicial Council without the right to vote and do not participate in the working sessions on which the Judicial Council discusses and decides on the initiated procedures for determining responsibility, election, or dismissal of a judge or a court president.

Selection of lay judges

Every adult citizen of Republic of North Macedonia who has completed at least secondary education, is fluent in the Macedonian language, has a reputation for exercising this function, and is not older than 60 may be elected as a lay judge. Elected lay judges mandatorily attend specialized training, organized by the AJPP, after which the AJPP issues them training completion certificates. The content, duration, and the delivery of this training are defined in the AJPP's specialized lay judges' training programme.

Selection of judges

The Law on Courts envisages general and special criteria for the selection of judges. General requirements include: citizenship of the Republic of North Macedonia; active use of the Macedonian language; work ability, and good general health condition, to be proven by means of medical check-up and the resulting medical certificate; a proof of graduation from a four-year law faculty, or proof of accumulation of 300 credits under the European Credit Transfer System (ECTS); or a validated diploma for acquired 300 credits from a foreign

faculty of law; having passed the Bar exam in the Republic of North Macedonia; fluency in one of the three most widely used languages of the European Union (English, French or German); not to be sentenced with a final judgment or misdemeanor sanction that prohibits performance of legal profession, activity or duty, or for other criminal act punishable with imprisonment in duration of six months; computer skills; and having reputation, integrity in the exercise of the judicial function, and social skills for exercising the judicial function, for which integrity and psychological tests are conducted. The special criteria required to be met by those seeking election as judges in the basic courts require completion of the training at the AJPP, while those aspiring to positions in the higher court instances, relevant working experience as a judge in the lower court instances is required.

Selection of public prosecutors

The prosecutorial authority is exercised by autonomous and independent public prosecutors. The Law on the Public Prosecution Office and the Law on the Council of Public Prosecutors make the main legal framework around the public prosecution. The public prosecution is organized as Public Prosecution Office of the Republic of the North Macedonia, Higher Public Prosecution Offices, Basic Public Prosecution Office for Prosecuting Organized Crime and Corruption, and Basic Public Prosecution Offices.

The Public Prosecution Office of RNM is the highest in hierarchy. This office is led by the Public Prosecutor of North Macedonia, additionally supported by eight deputy prosecutors who work in the office. The Higher Public Prosecution offices correspond to the appellate regions. The Basic Public Prosecution Office for Prosecuting Organized Crime and Corruption is responsible for cases involving serious and organized crime and corruption and has jurisdiction across the country. The Basic Public Prosecution Office is established for the area of one or more basic courts.

The basic and higher public prosecutors are elected and dismissed by the Council of Public Prosecutors of the Republic of North Macedonia (the Council), with no limitation of the duration of the term of office. The Public Prosecutor of the Republic of North Macedonia is elected by the Assembly of the Republic of North Macedonia, with a six-year mandate, with a possibility for re-election.

According to the Law on the Council of Public Prosecutors, the Council is composed of 11 members with a mandate of four years, with a possibility for one re-election. The Public Prosecutor of the Republic of North Macedonia and the Minister of Justice are ex-officio members of the Council. One member is elected by the public prosecutors in the Public Prosecutor's Office of the Republic of North Macedonia, from their ranks; one is elected by the public prosecutors from the areas of higher public prosecutor's offices from Bitola, Gostivar, Skopje, and Shtip, from their ranks, one member of the Council is from an ethnic community that is not a majority in the country and is elected by all public prosecutors in the country; and three members of the Council are elected by the Assembly of the Republic of North Macedonia from the ranks of law university professors, attorneys at law and other prominent jurists, two of whom are members of minority ethnic groups in the country. The Council is represented and managed by its president, elected from the members of the Council with a mandate of two years, without a right of re-election.

As per the Law on the Public Prosecution Office, discrimination on grounds of sex, race, the colour of the skin, nationality, political and religious belief, sexual orientation, gender identity, and physical disability shall be prohibited in the election of public prosecutors, which is a more extensive list of discriminatory grounds compared with the Law on Courts. Equitable representation of the citizens from all communities shall be ensured when electing public prosecutors without disturbing the criteria prescribed by law. When the Council elects a basic public prosecutor or a public prosecutor in a basic public prosecution office established for the area of two or more courts of which at least one court is with headquarters on the territory of a local self-government unit in which the language spoken by at least 20% of the citizens in that local self-government unit is an official language besides the Macedonian language; and higher public prosecutor or public prosecutors in prosecutor's office located in the territory of a local self-government unit where at least 20% of the citizens speak an official language other than the Macedonian language, the decision for election must be ensured with a majority of votes from present members belonging to non-majority ethnic communities in the country.

The Law on the Public Prosecution Office envisages general and special criteria for the selection of prosecutors. The general requirements include: citizenship of the Republic of North Macedonia; active use of the Macedonian language; work ability; a proof of graduation from a four-year law faculty, or proof of accumulation of 300 credits under the European Credit Transfer System (ECTS); or a validated diploma for acquired 300 credits from a foreign faculty of law; having passed the Bar exam in the Republic of North Macedonia. The special criteria for someone to be elected as a prosecutor in the basic prosecution office require completion of the training at the AJPP and for the higher prosecution instances relevant working experience working as a prosecutor.

Admission criteria for the initial training at the Academy for Judges and Public Prosecutors

The Law on the AJPP stipulates that a candidate for initial training must be a law graduate with a four-year legal studies corresponding to the national VII/1 or a law graduate with 300 credits obtained according to the European Credit Transfer System (ECTS); to have passed the Bar exam; to have work experience of at least two years in legal affairs after passing the Bar exam; not to have security measure imposed on him/her, not to be banned from performing a profession, activity or duty; to be a citizen of the Republic of North Macedonia, to have mastery of the Macedonian language, to have active knowledge of one of the three most commonly used languages of the European Union (English, French or German), which is assessed within the AJPP qualification exam; to be computer literate; to have the ability to work and to be in good general health.

4. RESEARCH RESULTS

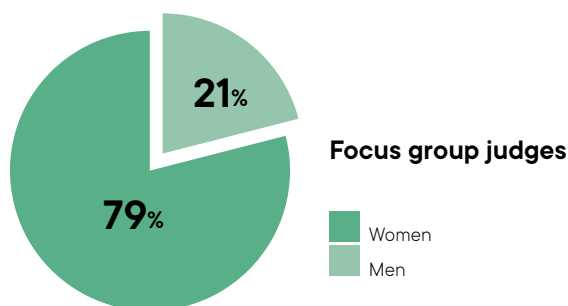
This section includes an analysis of the quantitative and qualitative data gained through the focus groups and interviews with judiciary representatives, through the questionnaire sent to relevant CSOs who provide legal support to marginalized groups, and through the relevant reports from the institutions and CSOs.

Participation in the interviews, focus groups and online questionnaire

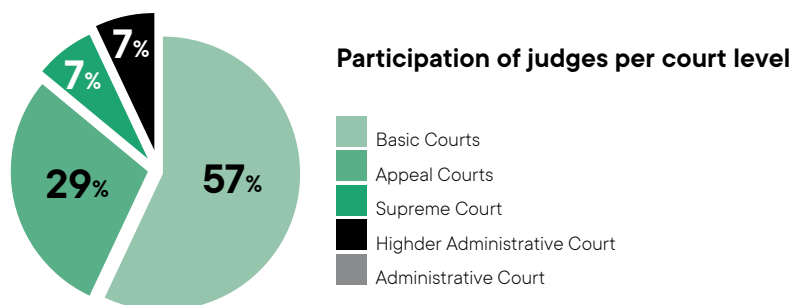
As stated in the methodology part, for this research, six in-depth interviews were conducted with five women and one man from different judicial institutions and functions – two public prosecutors (basic and higher prosecutor's office), one civil court judge, and with representatives from the Judicial Council, the Public Prosecutors Council, and the AJPP. In addition, two focus group discussions were organized, one with judges and the other with public prosecutors.

In the focus group discussion with the judges, a total number of 14 judges participated (11 women and three men) from several different courts across the country.

Graph 1: Participation of judges by sex

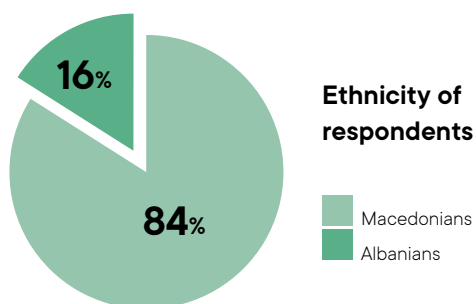


Graph 2: Participation of judges per court level



In the focus group discussion organized for the public prosecutors, five participants took part, all of them women, from three different basic public prosecution offices.

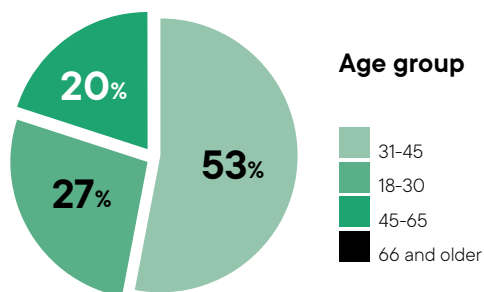
Graph 3: Overview of the ethnicity of the respondents



The end users survey questionnaire was filled out by 15 participants (14 women and one man). Having in mind time constraints, participants were targeted, so to include end users of the justice system, as well as CSOs (free legal aid providers, organizations dealing with vulnerable groups, attorneys at law that represent victims of discrimination, etc.).

End users survey questionnaire was sent to 14 civil society organizations, from which 13 are registered for providing free legal aid under the Law on free legal aid and to three attorneys at law who work with disadvantaged and marginalized groups. The total number of received answers was 15, from which 14 answers were received from women and one answer was from a man. Concerning the ethnicity of the respondents, 14 were Macedonian and 1 belonged to an ethnic group not specified in the questionnaire. Considering the age of the respondents of the online questionnaire, more than half (53%) are in the age group 31-45. Furthermore, 73% of the respondents have represented or accompanied someone as a plaintiff in a court proceeding, and 40% were plaintiffs or defendants.

Graph 4: Respondents' age



4.1. Diversity in the judiciary (representation by group)

The general perception of all respondents concerning gender-balanced representation within the judiciary is that there are no obstacles for women to be elected as judges or public prosecutors within the judiciary system. On the contrary, women are more

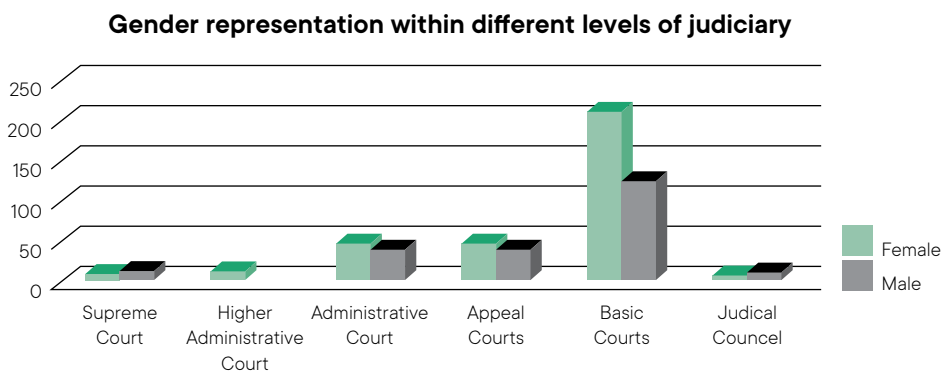
represented within the judiciary system, which, by the respondents has a “woman’s” face. This can be also confirmed through the available data published in the reports from the Judicial Council and the Council of Public Prosecutors. The available data from the annual report on the work of the Judicial Council for 2020⁸³ confirm the higher representation of women judges, with 60.2 % compared to men judges, represented with 39.8%. The situation is slightly different in the public prosecution, where women are represented with 55% and men with 45%. Furthermore, the judicial function is seen as a “woman’s” profession, because it ensures a long-term financial security and more flexible working hours, and is preferable compared to the public prosecutor’s function.

Concerning the gender representation of the applicants and the selected candidates for the basic training for judges and public prosecutors within the AJPP, the AJPP representative confirmed that women are more represented than men. However, the AJPP annual reports do not offer gender statistics for the applicants or the candidates for basic training.

The existing reports from the Judicial Council do not provide sex-disaggregated data per court, while the Council of Public Prosecutors includes statistics of women and men public prosecutors in each public prosecution office. Concerning the gender representation in managerial positions, the Judicial Council and the Public Prosecution of the Republic of North Macedonia do not provide such statistics in their reports. However, for the needs of this study, relevant data on gender representation within different levels of the judiciary system and the managerial positions was gathered through the web pages of the relevant courts and public prosecutions.

The data shows that women are more represented as judges at all levels of the judicial system, except in the highest court, the Supreme Court. Also, women are less represented in the Judicial Council with 6 women compared to 8 men.

Graph 5: Gender representation in the judiciary

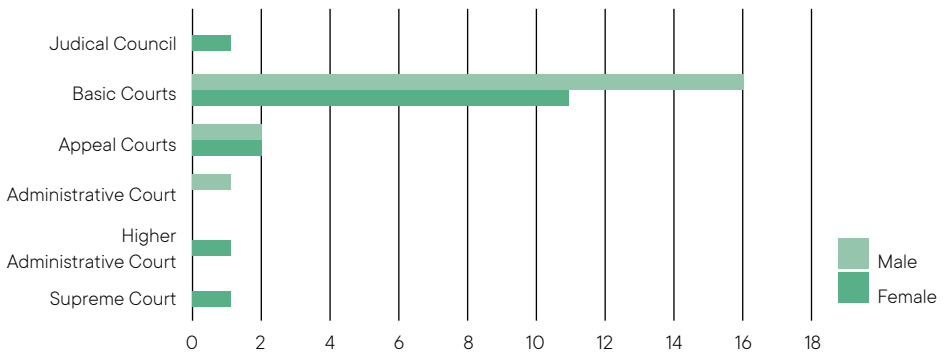


Compared to the representation of women as judges, they are less represented as presidents of courts. It is a positive fact that for the first time since the establishment of the Judicial Council, a woman has been appointed president of the institution.

⁸³ Annual Report for the Work of the Judicial Council for 2020 available in Macedonian language on the following link <http://sud.mk/wps/wcm/connect/ssrm/>

Graph 6: Presidents of the courts, by sex

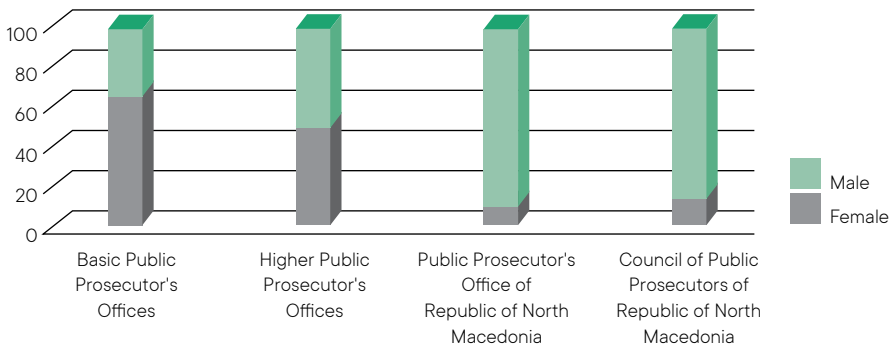
Gender representation of the presidents of the courts



Regarding the situation in the public prosecution, the analysis of the data⁸⁴ shows that the higher the level of the public prosecution office in the hierarchy of responsibilities, the lower the percentage of women represented in the public prosecution offices. Also, women are underrepresented in the Council of Public Prosecutors of North Macedonia with only two women members compared to 9 men members.

Graph 7: Public prosecutors, by gender

Gender representation by different levels in the public prosecution

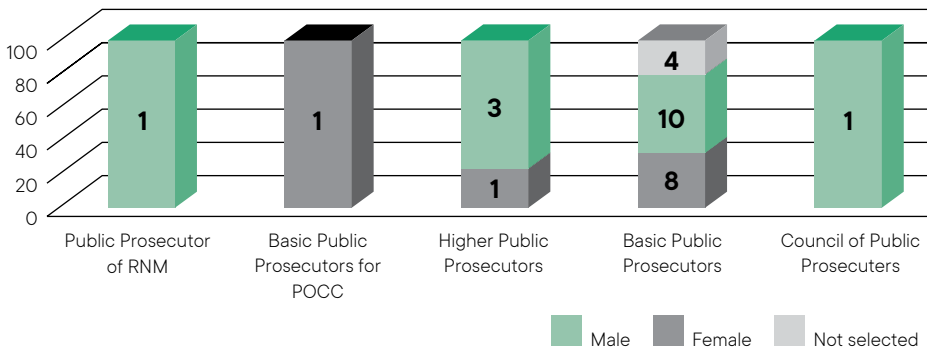


The situation is similar with the heads of the public prosecution offices. The analysis of the data is again showing that the higher the level of the public prosecution office in the hierarchy of responsibilities, the lower the percentage of women heads of the public prosecution offices. Also, the president of the Council is a man.

84 Annual report for 2020 of the Council of Public Prosecutors, available in Macedonian language on the following link: <http://sjorm.gov.mk/>; Annual report of the Public Prosecution of North Macedonia, available in Macedonian language on the following link: <https://jorm.gov.mk/wp-content/uploads/2021/08/izvesta%D1%98-za-2020-%D1%98o-na-rsm.pdf>

Graph 8: Heads of public prosecution offices, by gender

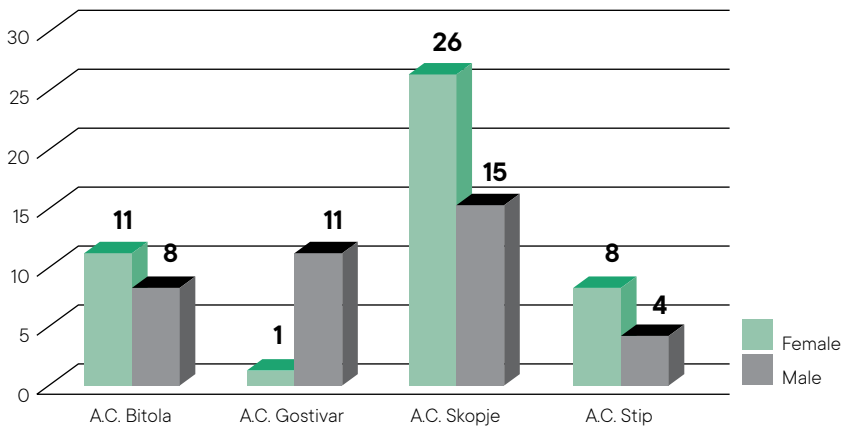
Gender representation of the Heads of the Public Prosecutor's Offices



When it comes to gender representation in correlation with ethnicity, women are less represented in the courts where ethnic minorities are the dominant ethnic group. For example, the Appellate Court Gostivar is the only court that has man dominance of judges and only one woman as a judge.

Graph 9: Appellate Courts judges, by gender

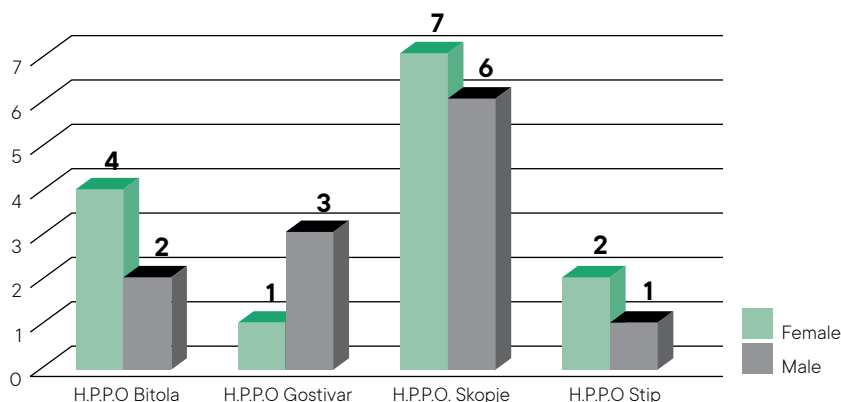
Gender representation within the Appellate Courts



Also, the higher public prosecution in Gostivar is the only higher prosecution that has more men than women higher public prosecutors.

Graph 10: Higher Public Prosecution Offices, by gender

Gender representation within the Higher Public Prosecutor's offices



Regarding the participation of minority and marginalized groups in the judicial and public prosecution service, including their appointment on managerial positions, no further analysis can be made, because the existing reports do not include disaggregated data.

Regarding the representation of the LGBTI population, respondents stated that they had not heard any judge or public prosecutor openly talk about their sexual orientation (i.e. LGBTI). Only one respondent stated that some of the candidates at the AJPP openly expressed their sexual orientation. Furthermore, the respondents answered that they had not heard of any complaints of discrimination due to sexual orientation or gender identity.

Finally, regarding the participation of women and men in public prosecution service and as lay judges in the courts, no further analysis can be made, because the existing reports do not include sex-disaggregated data.

4.2. Judges and public prosecutors' perceptions on gender and diversity

Most of the judges responded that the main principle of equal treatment is always observed in the judicial procedures and in the judgments, that and they act free of bias towards any group. The respondents from the Public Prosecution Offices, on the other hand, revealed that they have witnessed biased behavior from both judges and public prosecutors towards Roma, women survivors of gender-based violence, mainly sexual and domestic violence, and people who use drugs. One of the respondents mentioned that the whole criminal system is based on biases, especially towards Roma and people who use drugs, not allowing them to reintegrate into society and pushing them to become repeat offenders.

All the respondents agreed that there is a need to increase the participation of smaller ethnic minorities and marginalized groups in the judiciary system, which will result in a more inclusive judiciary system, increased trust in the judiciary from all groups of citizens in the country, and increased quality of the justice. Also, all respondents agreed that there is a need for further sensibilization and strengthening of the capacities of all the actors

in the judiciary to properly act in cases related to minorities or marginalized groups. Few respondents recommended that joint events between judges, public prosecutors, and representatives from the disadvantaged and marginalized groups should be organized by AJPP in co-operation with the civil society sector. This will contribute to understanding the perspective of the persons belonging to marginalized groups and increased sensibilization of the judges and public prosecutors to work with these groups.

The respondents' general understanding of the term "diversity and underrepresented groups in the judiciary" is mostly understood from the perspective of representation of ethnic minorities. Most of the respondents answered that smaller ethnic minorities are less represented, especially Roma, with only one Roma elected as a judge and no Roma elected as a public prosecutor. This can be also confirmed from the Judicial Council's 2020 annual report, where it is stated that there is one judge from the Roma ethnic minority or 0.19% of the total number of judges in the judicial system. Based on the analysis of the available data in the reports from the judicial institutions, it can be concluded that the smaller ethnic groups are underrepresented as judges and public prosecutors.

Only few respondents listed the persons with disabilities as a most underrepresented group in the judiciary, because they haven't seen a judge or a public prosecutor with a disability. Only one respondent was familiar with a judicial employee with a physical disability. This conclusion cannot be confirmed through analysis of the relevant reports from the judiciary institutions, because the reports do not provide statistical data on the representation of persons with disabilities among judges and public prosecutors nor for the judicial and prosecution service.

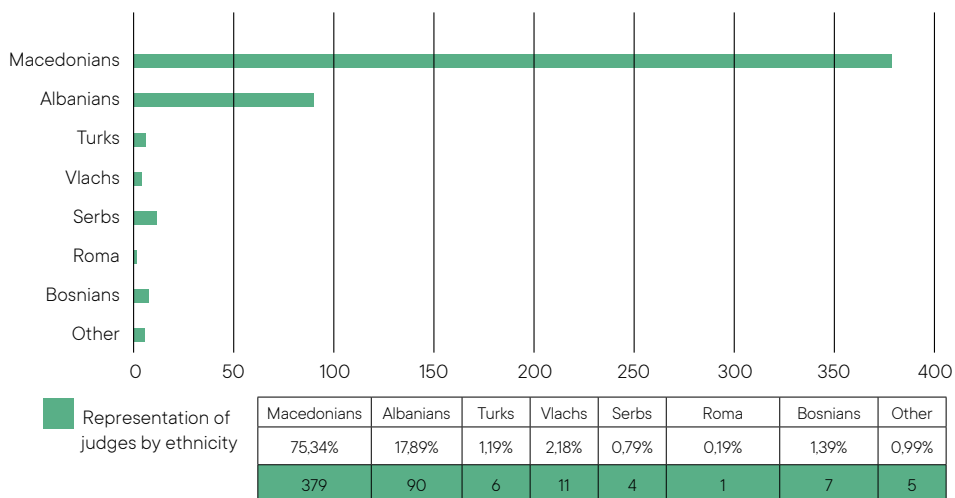
4.3. Recruitment, selection, promotion, and retention

The respondents' perception is that the recruitment process is not discriminatory towards women. However, most of the respondents stated that women from ethnic minorities are less represented within the judiciary system. Among the factors that influence this situation, gender and social norms were listed as the most important reasons as to why women from ethnic minorities were less represented in the judiciary than men from ethnic minorities. Another reason that influences this situation is the quota system for the selection of candidates within the AJJP, that is to say, not integrating the intersectional approach and therefore should be re-examined. This means that in the quotas for the number of candidates to be chosen from the ethnic minorities, there is no additional gender quota. Furthermore, the AJJP does not encourage the participation of persons with disabilities with quotas.

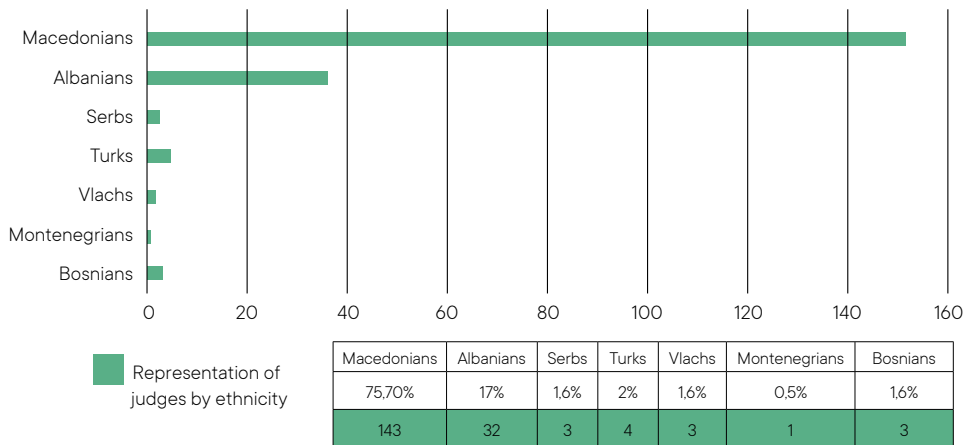
Few of the respondents stated that the quota as an affirmative measure should be re-examined after some period if the goal is achieved. This was intended for the ethnic minorities quotas, stating that some of the ethnic minorities were already included in the judiciary system and that preference should be given to smaller ethnic minorities or other disadvantaged groups in the society. However, this statement cannot be corroborated with official data, because according to the official data there is no ethnic community that has achieved representation in the judiciary matching the one in the population, which should be the minimum goal of this quota. The closest to achieving this parity is the Albanian community, represented with 17.89% among the judges and with 17% among the public

prosecutors. Farthest from achieving parity is the Roma ethnic community, represented with only one judge or 0.19%.

Graph 11: Representation of judges by ethnicity



Graph 12: Representation of public prosecutors by ethnicity



Another aspect that was mentioned was also the quotas in the public university education, which include a quota of 10% for people from the ethnic minorities from the total number of students and a quota for students from single parent families.⁸⁵ However, ethnic minorities' quota does not include an additional gender quota. Quotas for persons with disabilities within university education are missing.

⁸⁵ Rulebook for the procedure of realizing the quota for students who are children of single parents http://ukim.edu.mk/dokument_i_m/Pravilnik_kriteriumi_samo_eden_roditel_sl.v._56-2017.pdf

Besides the quotas, another strategic recruitment method that the respondents mentioned was that the AJPP should develop strategic communication with the disadvantaged groups because the information for the open call for selection of candidates does not reach these groups. This can be achieved through increased co-operation with the civil society organizations representing these groups, by developing informative brochures in different languages, also accessible for persons with disabilities, and organizing open days at the AJPP.

In general, the establishment of the AJPP and its role in the judiciary system is seen as a very positive step towards a more independent and quality judiciary. In addition, the AJPP is seen as a mechanism for preventing possible cases of sexual harassment towards women candidates for judges and public prosecutors, which has happened in the past.

Concerning the promotion and career advancement of women in the judiciary, the general perception of the respondents is that there are no gender-based barriers for women judges or public prosecutors to be promoted or to be selected for senior management positions. The positive example that was mentioned was the election of a woman judge as president of the Supreme Court. However, few respondents replied that women face obstacles based on gender stereotypes when it comes to promotion or selection for managerial positions within both the judicial and the prosecutorial function. Some respondents emphasized the fact that women judges are underrepresented as presidents of the courts and that women public prosecutors are underrepresented in the higher public prosecutions, especially in the public prosecution of the Republic of North Macedonia, where there are eight men and only one woman as a public prosecutor. Even though women are more represented as public prosecutors in the country, still no woman has been elected as a Public Prosecutor of the Republic of North Macedonia. The Basic Prosecutor's Office for Prosecuting Organized Crime and Corruption was given as a positive example, because for the first time is led by a woman public prosecutor. The election of a woman as President of the Judicial Council was also emphasized as a good example by some respondents.

Few of the respondents answered that there is sexism in the judiciary. The gender roles are still present within the decision-making processes, where male judges or public prosecutors are not allowing space for women to participate in these processes, or they are openly undermining the points made by women. This is also preventing women to be elected as managers of the courts or the public prosecution offices. The basic forms of sexual harassment are still present, which include whistling, comments on the physical appearance or their private life. Women judges or public prosecutors are additionally exposed to sexism through the media, which is contributing to an increased level of pressure on the workplace compared to men. However, the respondents mentioned that, in absence of internal support and protection mechanisms, many women are accepting the existing sexism as a workplace culture.

Most of the respondents noted that the requirement for AJPP candidates to be in "good general health" can be limiting to persons with physical disabilities. Furthermore, most of the respondents did not find that persons with intellectual disability could work in the judiciary even as judicial clerks. Two respondents said that the criterion "general health ability" was not a limitation for persons with physical disabilities to be selected for candidates in the AJPP nor to be elected as judges or public prosecutors, because the assessment of their general health should provide reasonable accommodation. In line with this, one of the respondents noted that currently there is one candidate with physical

disability in the AJPP, for whom reasonable accommodation was provided, according to the guidelines given in the assessment of their general health. This is an isolated case because the general process of work ability assessment is observed through the medical 'lens', rather than the functionality 'lens', recognizing the interactions between impairment and barriers faced by persons with disabilities.⁸⁶ Therefore, it is necessary for the laws to make a clear distinction between "health ability" and "working ability", by using the disability assessment method that fully incorporates the human rights-based approach,⁸⁷ which would enable the inclusion of persons with disabilities in the judiciary.

Another factor that is quite limiting for persons with disabilities to be included in the judiciary system at all levels, including their access to justice, is the inaccessibility of the judiciary institutions. Few of the respondents mentioned that the courts or the public prosecutions where they work are not fully accessible. One of the respondents mentioned that the Council of Public Prosecutors is completely inaccessible since it is located on the 5th floor in a building without an elevator. Furthermore, no respondents are aware of the existence of any accessible informative materials on the rights of persons with disabilities in the civil, criminal, or administrative procedure. According to the research conducted by the CSO "Coalition All for Fair Trials" on the physical accessibility of the basic courts in the country,⁸⁸ court buildings of the basic courts are accessible from the outside. However, half of the courts do not have adequate access to the court premises, courtrooms and services for persons with disabilities, nor do they have adequate facilities for independent and free movement within. Furthermore, the information system is not accessible for persons with disabilities and there is a lack of a systematized and organized approach in the overall work of the basic courts for persons with disabilities. The same findings are also confirmed in the research⁸⁹ conducted by the CSO "Open the Windows", which examined the accessibility of all courts in the country, including the appellate courts, the administrative courts, and the Supreme Court, and which found that most of the courts do not fulfill the basic standards for accessibility. As for the Public Prosecution Offices, the Judicial Council, the Council of Public Prosecution, and the AJPP, no research has, to date, examined the physical accessibility of these institutions and the accessibility of the information system.

4.4. Continuing education and training

Regarding the capacity-building activities on diversity and sensibilization, most of the respondents answered that they hadn't attended any training or received any materials related to these topics by the AJPP. Only two respondent judges answered that they had been involved by the AJPP as trainers on equality and non-discrimination. All the respondents emphasized the OSCE Mission to Skopje's support regarding the provision of

86 Poposka Z, Kochoska E, Shavreski Z. "Holistic report on persons with disabilities in the Republic of Macedonia", available at: https://civicamobilitas.mk/wp-content/uploads/2018/02/O_holisticki_izvestaj_za_licata_so_poprecenost_vo_makedonija-mk.pdf

87 CRPD/C/MKD/1

88 Legal, financial, and physical access to justice to the basic courts in the Republic of North Macedonia – Coalition all for fair trials, 2021, available at: https://all4fairtrials.org.mk/wp-content/uploads/2021/06/CEP_PFF-P_2021MKD.pdf

89 Accessibility and Inclusivity of the Courts in Macedonia – Association Open the Windows – 2017. Available in Macedonian language at: https://civicamobilitas.mk/wp-content/uploads/2018/03/izvestaj-mk_web.pdf

materials and capacity building on equality and non-discrimination. In relation to awareness-raising activities on equality and non-discrimination, some of the respondents emphasized the good co-operation with the civil society sector, which should be further strengthened.

In the AJPP annual report for 2020⁹⁰ it is stated that the continuous training programme covers a range of legal topics, focusing on the most current areas of interest, such as corruption prevention, cross-border crime, cybercrime, EU law, human rights, human trafficking, and other similar topics. Furthermore, it covers other topics that are particularly important to the legal practitioners and are not directly law-related (i.e. court and public prosecution management, public relations, ethics, topics related to economy, psychology, sociology, etc.). The AJPP created a Learning Management System (LMS) that allows judges and public prosecutors to take online courses and originally designed modules after working hours. These online opportunities will be recognized as part of the compulsory education. The LMS includes a number of training offerings on the ethics of judges and public prosecutors, asylum, countering terrorism, and the criminal procedure. Furthermore, in 2021, the OSCE Mission to Skopje jointly with the AJPP developed an e-module on gender equality.

Most often the programme for continuous learning is realized through seminars, conferences, distance learning. Most of the educational events are organized by AJPP itself, where national legal experts are hired, as well as professors from the law faculties in the country. According to the report, in 2020, a total number of 130 educational events were organized, which were attended by a total of 2,858 participants, out of which: 1,392 judges, 647 public prosecutors, and 819 representatives of other relevant institutions (no sex-disaggregated data available).

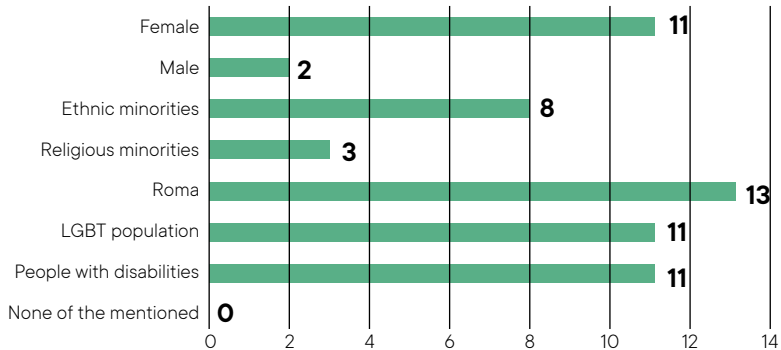
Within the programme for mandatory continuous training, the AJPP regularly organizes specialized training for presidents of the courts and heads of the public prosecution offices, as well as for judges of the Administrative and the Higher Administrative Court. In 2020, a total of 6 specialized training events were organized, out of which 3 for court presidents and 3 for heads of public prosecution offices. A total of 13 trainings were organized for the judges of the Administrative Court and the Higher Administrative Court. However, no specific training on the principle of equal treatment, non-discrimination, and work with disadvantaged and marginalized groups was organized. Additionally, the information about the existing LMS platform should be disseminated among the judges and the public prosecutors, since it was obvious during the focus groups, that they were not informed of the opportunities for following online training.

4.5. Access to justice – justice system users' perception

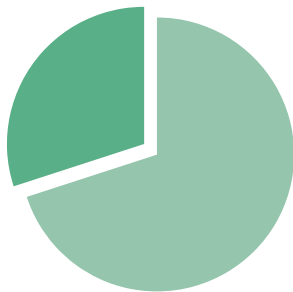
Respondents who participated in the online survey have experienced biases both in criminal and civil proceedings. The respondents think that many groups experience discrimination in the judiciary, especially the Roma, the elderly, people who use drugs, sex workers, people living with HIV, the poor, women survivors of gender-based violence, political dissidents, the LGBTI population. Also, the table below shows that the respondents' perception is that women suffer far more discrimination compared to men.

90 <https://jppacademy.gov.mk/wp-content/uploads/2021/05/godishen-izveshtaj-lektoriran2020-eng-1-1.pdf>

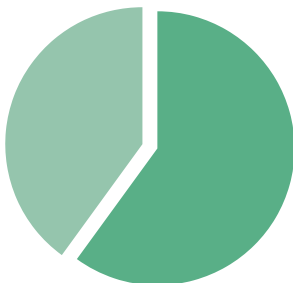
I believe that the following groups suffer from discrimination in the justice system (mark all relevant answers). Discrimination means that a person is treated less favourable from others because he / she belongs to a specific group



When it comes to the fairness of the proceedings, the majority of respondents (73%) who have participated as plaintiffs or defendants in civil procedure or have represented or accompanied plaintiffs or defendants think that the judiciary is partly fair.

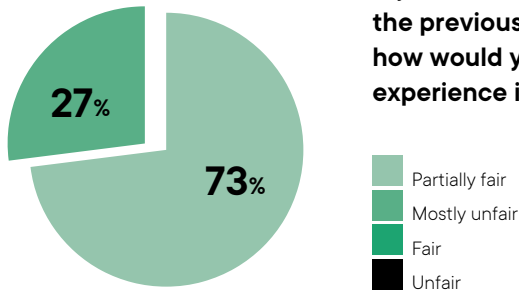


Have you ever sued someone in a civil proceeding, represented or accompanied someone as a plaintiff?



Have you ever been sued in a civil proceeding, represented or accompanied a defendant in a civil proceeding?

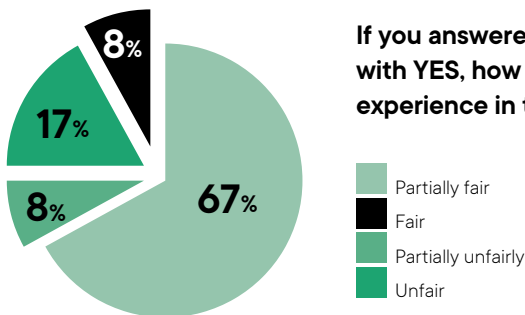
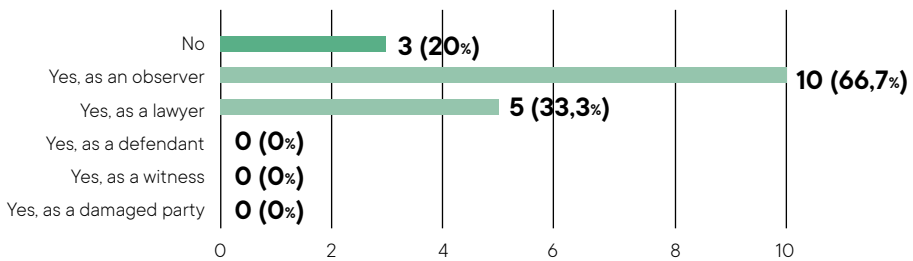




If you answered YES to any of the previous two questions, how would you rate your experience in terms of fairness?

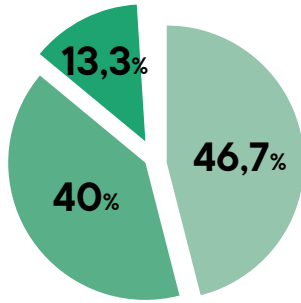
Concerning the perceptions of the respondents for the fairness of the criminal procedure, it is obvious that they perceive the criminal procedure as more unfair compared to the civil procedure.

Have you been involved in criminal proceedings in any capacity (as a victim, witness, defendant, lawyer, observer)? (mark all relevant answers)



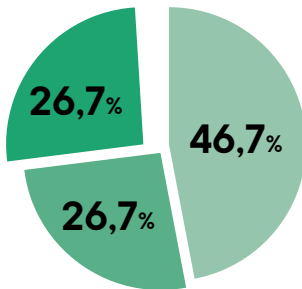
If you answered the previous question with YES, how would you rate your experience in terms of fairness?

When it comes to the trust in the judges and the public prosecutors the majority of the respondents partially agree or disagree that they are fair and objective, which shows a general mistrust in the judiciary system.



I think that the judges in my country are fair and objective.

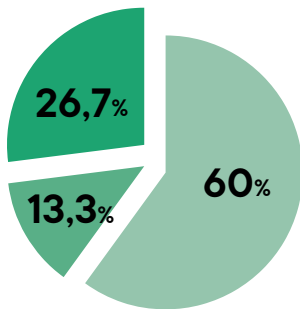
- I partially agree
- I absolutely agree
- I pretty much disagree
- I do not agree at all



I think that public prosecutors in my country are fair and objective

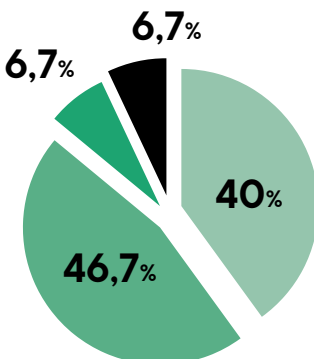
- I partially agree
- I absolutely agree
- I pretty much disagree
- I do not agree at all

Furthermore, the respondents find a strong connection between diversity in the judiciary, increased trust, and decrease of discrimination against some minority or marginalized groups.



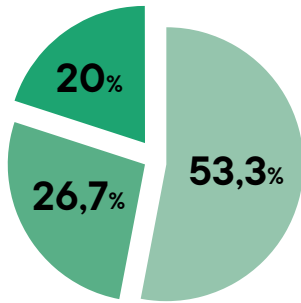
I find that judges belonging to ethnic or religious minority groups are less likely to discriminate against other members of their minority group in the trial

- I partially agree
- I absolutely agree
- I pretty much disagree



I find that women judges are less likely to discriminate against other women participating in court cases

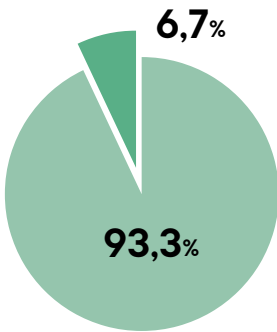
- I partially agree
- I absolutely agree
- I pretty much disagree
- I do not agree at all



I find that judges with disabilities are less likely to discriminate against persons with disabilities who participate in court proceedings

- I partially agree
- I absolutely agree
- I pretty much disagree

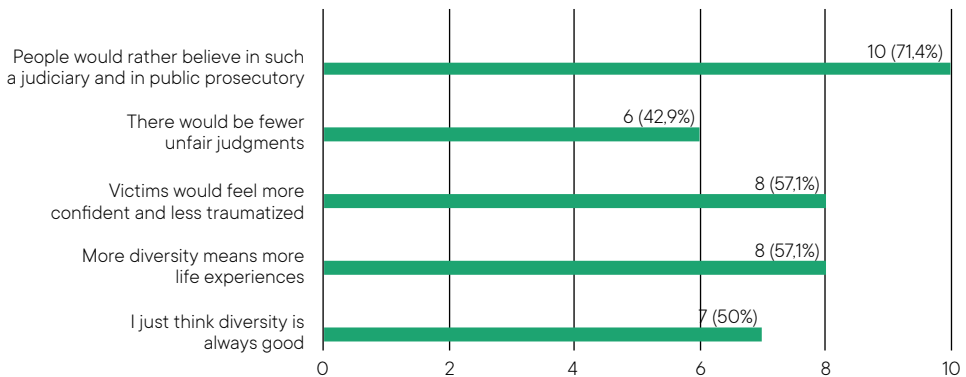
The respondents strongly support diverse judiciary, including diverse judicial/public prosecutor service with 93.3% stating that it would change things for the better. The respondents' perception is that if the diversity increases in the judiciary system, victims would feel more confident and less traumatized, there would be fewer unfair judgments and the trust in the judiciary would increase.



I think it is good to have a diverse judicial/ public prosecutor service

- Yes, it would change things for the better
- Not necessary, it would not be changed a lot
- No, it would change things for the worse
- Don't know

If you answered YES to the previous question, please tell us why you think so (mark all relevant answers)



5. CONCLUSIONS AND RECOMMENDATIONS

This study showed that North Macedonia has a strong legal framework regarding equality and non-discrimination, including in the judiciary. Also, women are well represented in the judiciary in general, as well as candidates for the AJPP.

However, it is obvious that there is a need to improve statistical data, that is to say, to apply the provision contained in the Law on Prevention and Protection from Discrimination on duty to collect disaggregated data.⁹¹

Sex disaggregated data is available to some extent, while diversity disaggregated data (e.g. ethnic minorities, disability, etc.) usually is not available. For example, the Judicial Council's reports do not provide sex-disaggregated data per court. Concerning the gender representation in managerial positions, the Judicial Council and the Public Prosecution of the Republic of North Macedonia do not provide sex-disaggregated data. In addition, sex-disaggregated data is not available for the applicants and candidates for the basic training in AJPP. Furthermore, disaggregated data is not available on the participation of minority and marginalized groups in the judicial and public prosecution service, including in managerial positions, nor it is available on the participation of women and men as lay judges and in the courts and public prosecution service.

Although women are the majority of the judges, they are underrepresented in higher positions, such as Supreme Court judges and presidents of the courts. Regarding the public prosecution offices, the data show that the higher the level of the public prosecution office in the hierarchy of responsibilities, the lower the percentage of women, including as heads of the public prosecution offices. Also, women are underrepresented in the Council of Public Prosecutors of North Macedonia (two out of 11).

The study showed that women are less represented in the courts and public prosecution offices where ethnic minorities are the dominant ethnic group (e.g. Gostivar – Court of Appeal and Higher Public Prosecution Office). However, there is a need for more disaggregated data, minimum on sex and ethnic minority status.

Participants noticed the lack of women from ethnic minorities, members of the Roma community, and persons with disabilities in the justice system. The vast majority of respondents believe that there is a need to increase the participation of smaller ethnic minorities and marginalized groups in the judiciary, which will result in a more inclusive judicial system, increased trust in the judiciary from all groups of citizens in the country and increased quality of the justice.

As for the presence of gender bias and stereotyping in the judiciary, the majority of judges stated that the principles of equality and non-discrimination are always respected in judicial

⁹¹ All subjects mandated by the Law to gather, record and process data, shall be obliged to present them based on discriminatory grounds as referred to in Article 5 of this Law, relevant for the area, in order to promote and improve the equality and the prevention from discrimination. (Article 3 para 4 of the Law on Prevention and Protection from Discrimination).

proceedings. They consider that judges do not stereotype and are not biased. On the other hand, public prosecutors stated that they had witnessed biased behavior from both judges and public prosecutors towards Roma, women survivors of gender-based violence, mainly sexual and domestic violence, and people who use drugs.

Few of the respondents answered that there was sexism in the judiciary. The traditional gender roles are still present within the decision-making processes, where male judges or public prosecutors are not allowing space for women to participate in these processes, or they are openly undermining the points made by women. This is also preventing women to be selected as managers of the courts or the public prosecution offices. The basic forms of sexual harassment are still present, which include whistling, comments on the physical look or their private life. Women judges or public prosecutors are additionally exposed to sexism through the media, which is contributing to an increased level of pressure on the workplace compared to men. However, the respondents mentioned that many women were accepting the existing sexism as a workplace culture because of lacking internal mechanisms for support and protection, and in such circumstances, sexism becomes normalized both in the society and judiciary.

The respondents' perception is that the recruitment process is not discriminatory towards women. However, most of the respondents stated that women from ethnic minorities were less represented within the judiciary system, due to the existing gender and social norms. Also, quotas for the selection of candidates within the AJPP do not contain gender aspects. Respondents believe that AJPP should develop strategic communication with the disadvantaged groups, as a method of strategic recruitment.

Concerning the promotion and career advancement of women in the judiciary, the general perception of the respondents is that there are no gender-based barriers for women judges or public prosecutors to be promoted or to be elected in senior management positions. Some respondents emphasized that women faced gender stereotypes when seeking promotion or election for managerial positions, which has resulted in their lower representation in higher positions. In addition, sexism is recognized as a problem and the lack of internal mechanisms for protection is also recognized.

Most of the respondents believe that the requirement for the candidates for the AJPP to be in "good general health" can be limiting for persons with physical disabilities since there is no clear distinction between "good health" and "work ability". In addition, the inaccessibility of judicial institutions is recognized as another limiting factor for persons with disabilities, for both their inclusion in the judiciary and for general access to justice.

The majority of the respondents have never attended any training or received any materials related to gender, diversity, or non-discrimination from the AJPP, which shows the evident need for the inclusion of these topics in the continuous education of judges and public prosecutors.

End users' perception shows that respondents have experienced biases both in criminal and civil proceedings, and they consider that many groups experience discrimination in the judiciary, especially Roma, elderly, people who use drugs, sex workers, people living with HIV, poor people, women survivors of gender-based violence, political dissidents, LGBTI population. Also, respondents think that women are more exposed to discrimination compared to men.

When it comes to the fairness of the procedures, the vast majority of respondents think that the judiciary is partly fair, and they perceive the criminal proceeding as more unfair compared to the civil proceedings. In addition, there is a general mistrust in the judiciary system. On the other hand, respondents find a strong connection between diversity and the judiciary, and they strongly support the diverse judiciary. The respondents' perception is that if diversity increased in the judiciary system, the victims would feel more confident and less traumatized, there would be fewer unfair judgments and the trust in the judiciary would increase.

Finally, one of the main conclusions of this study is that more research needs to be conducted regarding gender and diversity in the judiciary in North Macedonia, including research on gender stereotyping in the judgments, gender discrimination, sexism, and sexual harassment in the workplace, the end users' perception of the justice system, etc.

Bearing in mind the above, the recommendations are as follows:

- The judiciary institutions (AJPP, the Judiciary Council, the Council, the Public Prosecution of RNM, the Supreme Court, the courts, and the public prosecution offices) should improve data disaggregation in their reports, according to the obligation arising from Article 3, paragraph 4 from the Law for Prevention and Protection from Discrimination, which states that all entities that are legally obliged to collect, record and process data, shall have an obligation to present such data in line with the discriminatory grounds under Article 5 of this Law, relevant in the area, aiming at promotion and advancement of equality and prevention of discrimination. These reports should at least provide sex-disaggregated data for the managerial positions of the judges and public prosecutors and the number of women and men judges per court. Also, the reports from the Judicial Council should provide data on gender and diversity among the lay judges. Additionally, the reports should include sex-disaggregated data for the judicial and public servants, per job position. In cooperation with the State Statistical Office and the CSOs, training on gender statistics should be provided to the responsible persons from the judiciary institutions for analysis and data administration;
- Assess the factors behind low application rates in the AJPP from the smaller ethnic minorities and marginalized groups, especially Roma and persons with disabilities. AJPP should also consider integrating the intersectional approach into the quota system so the most disadvantaged and marginalized groups can enter as candidates in AJPP, including women from these groups. A special quota for persons with disabilities should be introduced in public university education and AJPP.
- Develop affirmative actions and measures to address the challenges faced by smaller ethnic minorities and marginalized groups, especially Roma and persons with disabilities, including awareness-raising campaigns or meetings with specific civil society organizations that work with underrepresented groups. One of the aspects that should be included is meetings between judiciary representatives and disadvantaged groups for sharing experiences and outreach to women's organizations, organizations representing persons with disabilities, and organizations working on Roma-related topics.

- Diversity and gender assessment should be conducted for the overall work of the AJPP. This gender assessment should include both internal and external assessments of the activities and structure of the AJPP. The internal assessment should focus on evaluation within the decision-making processes and governing bodies and the employment structure. This will also include training needs assessment for AJPP's governing structure and employees for strengthening their knowledge on diversity and gender equality topics. Moreover, the assessment will further provide findings on whether the internal governing bylaws take into consideration diversity and gender equality in the functioning of the institution. The analysis of the external activities will assess whether diversity and gender equality are included in the overall training process of AJPP, including the bylaws for the initial and continuous training and the actual annual curricula for initial and continuous training. The analysis should also include an assessment of the level of understanding and knowledge of the trainers about diversity and gender equality, and the applicability in the design and delivery of the training. The assessment should positively contribute to building a more diverse and gender-sensitive AJPP, promote better work-family balance for the candidates of AJPP, in particular, by bridging the discrimination in access to parental leave. This will strongly contribute to building a diverse, inclusive, and equal judiciary system.
- AJJP, as well as courts and public prosecution offices, should increase its cooperation with the local communities and civil society organizations representing disadvantaged and marginalized groups, especially Roma and persons with disabilities, to increase access to information and promote open announcements for candidates for judges and public prosecutors among these groups. AJJP, the courts, and the public prosecution should consider having joint activities with the civil society organizations that represent disadvantaged and marginalized groups, but also the law faculties, which will include workshops and informative open days where the open calls and the criteria for candidates for judges and public prosecutors would be explained. At the same time, they should develop accessible materials for the persons with hearing and visual impairment and promote an accessible environment for future candidates.
- Broader research on the public opinion about gender, diversity, and access to justice, especially for the disadvantaged and marginalized groups should be conducted (ethnic minorities, persons with disabilities, LGBTI, survivors of GBV). This research should consider the direct experiences of the members of these groups in their different roles in the court proceedings.
- Work with representatives of the underrepresented groups, especially women from minorities, who are in the legal profession to help identify good candidates and encourage them in their quests for appointment. This can be especially achieved through strategic work between the AJJP, the Macedonian Bar Association, and civil society organizations.
- Increase the participation of underrepresented groups and women in the higher courts and higher public prosecution, especially in the State Prosecutor's Office of North Macedonia.

- Increase the diversity in the judiciary through selecting lay judges from different groups in the society (smaller ethnic minorities, religious minorities, persons with disabilities, women from minority groups)
- Introduce an internal mechanism for prevention and protection from sexual harassment, especially in AJPP, the Judiciary Council, and the Council for Public Prosecutors.
- Develop policies on reasonable accommodation, recruitment, and retention of persons with disabilities in the workforce of the justice sector.
- Transform the process for assessment of the “general health condition” for persons with disabilities from medical to functionality approach and change the laws so to make a clear distinction between “health ability” and “working ability”, with using disability assessment method that fully incorporates the human rights-based approach, which will enable inclusion of persons with disabilities in the judiciary task force.
- Continue the assessment of the accessibility of the courts initiated by the civil society organizations with an assessment of the higher courts and the Supreme Court and the public prosecution in all instances.
- Develop a strategy for legal internships, externships, and clerkships for minority and disability law students at courts and prosecutor’s offices.
- Improve the accessibility of courts, public prosecution offices, Judiciary Council, and Council of Public Prosecutors, taking into account the varied needs of justice system users with disabilities.
- The process of digitalization of the justice system should include the disability-friendly online perspective. Justice system digitalization should be accompanied by targeted efforts to promote access to the internet by marginalized groups.
- The Judiciary Council and the Public Prosecution Council should make regular reports of the inclusion of disadvantaged groups in the judiciary, including in the workforce of the justice sector.
- The Ministry of Justice should initiate a process for the development of a Judicial Diversity and Inclusion Strategy when the new strategy for the judiciary will be developed for the period of 2023 – 2027.

 **OSCE Mission to Skopje**
Bulevar 8-mi Septemvri No. 16, 1000 Skopje
e-mail: info-MK@osce.org
website: <http://www.osce.org/mission-to-skopje>