



**FRIEDRICH NAUMANN  
FOUNDATION** For Freedom.



**INSTITUTE OF SOCIAL SCIENCES  
AND HUMANITIES  
SKOPJE**

# ON THE PATH TOWARDS THE EU:

Effective and Transparent Administration  
in Service for the Citizens

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POLICY STUDY

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# About the publishers



**FRIEDRICH NAUMANN  
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## Friedrich Naumann Foundation for Freedom Project Office for Bulgaria and North Macedonia

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# 1. Executive summary

On 25<sup>th</sup> March 2020, the European Council adopted a decision to open accession negotiations with North Macedonia, a veteran EU candidate country of 16 years (it acquired its candidate status in March 2004, and therefore before Croatia which is now a member state). The European Commission's negotiating framework was presented to the European Council on 1<sup>st</sup> July 2020. In spite of the changes in the negotiating methodology adopted by the Commission in the spring of 2020, upon France's proposal, the negotiating chapters 23 and 24 remain the opening ones, covering the European fundamental principles and rights as well as the judiciary.

The goal of this study is to demonstrate how interlinked the questions of good administration, according to EU standards, and the values and standards covered by said chapters are, in particular, Ch. 23. At the centre of the European Charter of Fundamental Rights lies the principle of the citizen's dignity.

For a state like North Macedonia, that conceives the administration as self-serving, carried out by a centralized executive branch overriding the power of the other two branches in an excessive manner, putting institutional interests before those of the citizens is in direct conflict with the cornerstone of the European Charter of Fundamental Rights. We argue that the legislation in the Republic of North Macedonia, containing procedural administrative details that normally belong in bylaws or good practices, is conceived in a manner that neither puts the citizen at its centre nor does it offer efficient

and economical procedures. Article 41 of the European Charter of Fundamental Rights states that good administration is part of the fundamental rights that EU citizens are entitled to. Good governance, that is also democratic governance, is expressed through good administration, which, according to the European Charter, consists in efficient procedures. The efficiency at issue is conceived in line with the overarching principle of the Charter – it serves the citizens in a timely and reasonable manner, and not the state institutions. Unlike the case of North Macedonia, as demonstrated in this study, efficiency according to the EU Charter of Fundamental Rights is not conceived as a sluggish procedure that serves the administration in order to protect itself from potentially fraudulent citizens, but quite the opposite – to serve the citizen that is presumed to be honest. Inefficiency, lack of clarity, transparency, reasonability of procedure and absence of legal responsibility, i.e., inefficient administrative courts, create fertile ground for corruption.

One of our central recommendations at the end of this study is the full digitalization of the administrative procedure. However, unless the notion of good administration is aligned with the principles of the European Charter that is covered by negotiating chapter 23, digitalization alone will not serve the purpose. Our main claim here is that the prevailing notion of "good administration" among the policy makers in the country must be discarded and replaced with that of citizen-centred efficient administration in line with the European Charter of Fundamental Rights and its value system.

## 2. Introduction

We would like to remind the reader that the protest years in (then) Macedonia extended from the end of 2014 with the rise of the student-professor plenums that shook the country for almost a year, culminating with a university occupation and the #protestiram movement that yielded clashes with the police in May 2015.

In the spring of 2015, Zoran Zaev, the leader of SDSM (The Social Democratic Union of Macedonia), started releasing wiretapped conversations indicating abuses of power and corruption in the government led by Nikola Gruevski. Simultaneously, the Senior Expert Group appointed by the European Commission, and led by Reinhard Priebe, conducted a study on the independence of the Judiciary as well as the excessive power of the executive branch embodied in the UBK (intelligence agency) that had conducted a mass illegal interception of the opposition opinion makers, but also members of the ruling elite. The political crisis culminated in May/June of 2015 yielding to the so-called Przino agreement and a set of priorities against, which even nowadays, the country's EU integration progress is measured – the Urgent Reform Priorities (URP).

This is the reason for looking back more than 5 years ago: what the Urgent Reform Priorities require even to this day is a dismantling of what was in the subsequent EU progress report (2016) called "state capture." It is important to note that the "diagnosis of state capture" concerns itself with the state of affairs when the legislation is seemingly aligned with the European Acquis but is in essence an *overregulated, constantly changing and contradictory body of text that simply legalizes what in a normal democracy should not be legal*. Thus, the constant mantra about Gruevski's governance that ruled in Brussels until far into 2015 was finally overturned – the "legislation was not good but the implementation bad."<sup>1</sup> The allegedly good law on higher education adopted in 2008 had undergone 24 amendments that had stripped it of any provisions of academic autonomy.<sup>2</sup>

The law on audiovisual services was in line with the EU directive, however, it had two little tricks in it that enabled the government to *legally* own the allegedly independent media: it permitted not only product placement according to the EU directive, but also the "placement of ideas" which permitted the government to run constant campaigns and thus become the biggest advertiser in the country. The now deleted Articles 92 and 93 of the same law allowed the state agency on audiovisual services control over the program content – seemingly, the law did not control the content but the form

of the program. However, the form was so excessively regulated that the outlets were indirectly monitored as to what they show. So, when an outlet would receive a fine of 20.000 euro for not having translated the word "ouch" in Macedonian in a "Tom and Jerry" cartoon, and if that outlet happened to be somewhat critical of the government, one would interpret it as intimidation.<sup>3</sup> Subsequently, all media would mind both the content and the form, as they would be fined, perfectly legally, moreover, according to a law that is praised as European.

In other words, it is an old tactic of democratic backsliding once recognized by the European Union, identified also in Albania<sup>4</sup> and Serbia under Aleksandar Vučić – produce as many laws as you need to cover dubious practices and all unlawfulness will become legalized. There will be rule of law, but what law is, is the real question to be posed. All imperfections are then transposed onto the "Balkan mentality" of the citizens and the poor administration conducted by individuals, on the illusion of corrupt personalities and the absence of individual integrity. Thus, the question of good governance is reformulated as a question of psychology and deontology. This is the great ruse of the autocrats of the region – "the legislation is good, the implementation is bad" implies our policy making – thus governance – is good, but the evasive and uncontrollable phenomenon called "the mentality" is to blame.

Therefore, as the ruling elite cannot enlighten an entire population, it is not to be blamed, its only fault is not enforcing stricter punishments on the corrupt judges, administration, businesses, academia, media, etc. – thus, the vicious cycle is established. What began as Europe encouraging the government to "implement the good legislation" ends up being the core of the democratic backsliding, i.e., state capture enabled by an excessively powerful executive branch, subjugating the legislative and the judicial branches.

We are revisiting this question in order to prevent the current government and the EU from falling into the trap of the era of 2011-2014 and mislead themselves by the mantra "the legislation is good, but the implementation is bad." There is always, as the examples above demonstrate, some series of tricks in the *legislation that enable the phenomenon of state capture as one of the main mechanisms of democratic backsliding*.

For example, in spite of the good legislation, in presumably most of its aspects, each procedure the physical and private persons engage with in front of the state

institutions requires the notarization of literally all documents, including originals and translations of court certified translations. The courts in many of their proceedings choose to ignore the presentation of originals and require notarized copies, as confirmed by two personal accounts of lawyers as part of our qualitative field research. Isn't this costly outsourcing of the institutions' own authorities to the private services of the notaries not some form of systemic inefficiency? Isn't this inefficiency even more striking considering the enormously robust administration, which poses an economic problem for North Macedonia? Doesn't the question of accountability follow, almost automatically? Likewise, isn't this costly service also making services and institutions more inaccessible for the citizens? Doesn't the absurdity of ignoring originals by the courts and demanding notarized copies – as per the law – raise suspicion about systemic corruption, between the Chamber of Notaries and the executive branch that produces these very same laws? This is a mere example, with the issue of notarization as a particular case. The same worrying aspects of the administrative organization and service provision have been observed in all areas of the institutions' operations.

Therefore, let us return to the question as if it were 2015 again: Is it true that the legislation – in all of its aspects – is good but the implementation is bad? Considering how

detailed every implementation of each legal provision, in the laws themselves, is, it would be surprising to expect very much improvisation by those who implement the legislation.

**The focus topic of this report is the establishment of a citizens-centred, responsive, accessible, accountable, and efficient public administration that should be an important, if not one of the key, elements of the country's full compliance with the European Charter of Fundamental Rights in the legislation itself, as well as the practice that should ensue from its implementation.**

It is very important for the upcoming period when North Macedonia will open the negotiations for EU integration by meeting the criteria of the opening chapters for accession (human rights, democracy, and rule of law). We are using it as an illustration of the falsity of the preconception that "the legislation is good, but the implementation is bad," and that this slogan used to mark Gruevski's era of democratic backsliding. In spite of the generally good legislation – if and when we can claim that this is the case – there can always be a policy solution that is part of it, promulgating practices of administrative application that are neither transparent, accountable nor based on the respect of citizen's dignity.

### 3. The current context

Since 2017, when the Social Democrats (SDMS) seized political power on the national level and later on the local level, there has been improvement in terms of expanding freedom of speech, the overall democratization of the political climate, and improvement in terms of political depolarization. The progress at issue has been marked in the EU progress reports, but also by other international institutions and organizations of authority such as Freedom House (cf. reports of 2017-2019). It is, however, noteworthy that it was not some vague and unmeasured (and probably unmeasurable) notion of implementation that contributed to North Macedonia's improved ranking on the Freedom House charts, but rather, a policy change carried out through changes in legislation – the removal of the aforementioned Article 92 from the law on audiovisual services.<sup>5</sup>

Additionally, the reduction of the (formerly incomparable to any European country) number of fines and their draconic content, has helped improve the general climate and has encouraged the freedom of expression. In other words, right policies have set the right climate for nurturing the rights and the European values in the area of the freedom of the press. This example can be applied in all areas. In order to do so, one must keep in mind Priebe's Senior Experts Groups' second report of warning to the new government, released in 2017, whose corollary is: **one form of state capture must be replaced by another, unless a balance between the executive and the other two branches is established.**<sup>6</sup>

The essence of the phenomenon of "state capture," in the Macedonian context, therefore consists in the asym-

metry of the executive branch that subjects, systemically – and not only by way of corruption – the judiciary, in particular the prosecution as well as the legislative branch. One of the mechanisms of this type of governance, not unlike in the cases of Orbán led Hungary and Vučić led Serbia, is the government's use of the parliament as a mere instrument for legislating all sorts of practices that are rendered legal even though they seem to express values that are contrary to the European Charter of Fundamental Rights. Considering that North Macedonia is expected to initiate the process of negotiations towards the end of 2020, and keeping in mind that the first negotiating chapter covers precisely the areas of the judiciary and European fundamental rights, we consider it more than timely to monitor and raise awareness as to whether the legislation and its implementation indeed subscribes to the key values of the European Charter of Fundamental Rights. One of the principles – if not the core principle – expressed in the preamble of the Charter is the following: "It places the individual at the heart of its activities by establishing the citizenship of the Union and by creating an area of freedom, security and justice."<sup>7</sup>

**An authoritatively designed system of administration is unable to provide "individual-centred" governance,** whereas the excessive regulation that serves the quasi-absolute control of the executive branch cannot guarantee a citizens' centred and responsive administration. Furthermore, *Article 41 of the European Charter of Human Rights guarantees the right to good administration,* which is to be interpreted with the founding principle of the preamble cited above.



## 4. The problem at hand: “administration too big to fail?” or a citizen responsive, efficient administration in the era of digitalization?

### 4.1. The authoritarian reasoning in administration, and possibly corruptive laws impeding efficient and economic procedures

EU accession negotiations begin with chapters 23 and 24, concerning fundamental rights and the judiciary. It is assumed that a transposition of a value system, regardless of how general and vague the word “value” can sound, into legislation (and its practice) is possible. The Macedonian society, political elites, and in particular, policy makers, seem unable to recognize either that such a thing is possible and/or how such a possibility is materialized in practice. It is for this reason that any procedural step is prescribed through legislation. Autonomous actions of competent subjects seem to be presumed as an impossibility. However, if the administration – in its aspects of decision making, and not merely proceduralism that could be digital – cannot understand and comply with a certain value system, and if the legislation always already presumes this impossibility, how is the adherence to the value system laid out in the European Charter of Fundamental Rights to be espoused and practiced? We are reaching a point in law-making that has to do with traditions based on civilizational presuppositions. According to Ljubomir Frčkoski, the law-making in Europe is premised on the assumption of the honest citizen whose rights and freedoms are protected through legislation and its implementation, whereas the post-authoritarian societies, such as North Macedonia, seek to protect the system from the citizens.<sup>8</sup>

Thus, the excessive bureaucracy, veering toward absurdity, that Macedonian citizens encounter in situations as banal as getting their birth certificate (cf. the examples below) speaks to the fact that the legislature always-already presupposes their inclinations toward abuse and protects the bureaucratic apparatus from the citizens rather than the other way around. Therefore, the entire philosophy of law making, especially in its aspects of prescribed administrative procedures, must be fundamentally changed. **Such change requires legislators with a value system that is close in nature to the European fundamental rights.** In cases of digitally issuing documents, e.g., birth certificates, the algorithm can and

should rely on an input of legislation conceived in line with these fundamental values.

The lawmakers in North Macedonia, when engaging in negotiations on the first two chapters must see that legislation, if assessed through measurable indicators (in the form of a regulatory impact assessment, for example), reflects the following fundamental principles:

- **placement of the individual at the centre of the governing activities** (to paraphrase the Charter) and
- **the right to good administration as one of the fundamental rights**, guaranteed by the charter at issue.

For this reason, we will focus on the administration and its role of service to the citizens, namely, on the issue of the implementation of the URP (Urgent Reform Priorities). Especially in terms of the practice ordinary citizens are faced with on a daily basis.

We contend that “the bad implementation” consists in a heavily bureaucratized state apparatus that hinders the right to a good and individual-centred administration, instead keeping the citizens in vicious bureaucratic circles with no effective means to seek justice and compensation when damaged by the institutions (and private bodies performing public functions). The “bad implementation” (and we argue: not absence of implementation but rather – bad implementation) of the allegedly good laws is derived from certain *tenets of the legislation* that betray a self-serving state apparatus that renders the citizen a silent subject to contradictory and costly procedures. The same legislation and the prescribed steps of implementation, present in the laws and bylaws, leave the citizen without juridical and other mechanisms that would help defend the individual and collective civic rights vis-à-vis the state. **The Administrative court has proven to be useless as a mechanism of protection of physical and legal persons from the abuse of the executive branch.**

There is one law, however, that goes against our thesis that “the law is good but the implementation is bad.” but

only seemingly so. Namely, the general act regulating administrative procedures across sectors concerns the issue of implementation itself, regardless of the type of legislation. Thus, by preserving the old authoritarian bureaucratic mind-set and style of carrying out administrative procedures with regard to all other legal acts, the institutions are consciously invested in a non-implementation or underplaying of one act in particular – that of procedural implementation. **The two latest EU progress reports note the particularly low levels of implementation of the Law on General Administrative Procedure,**<sup>9</sup> stating:

Simplifying administrative procedures has been extremely difficult, as the Law on General Administrative Procedures has not yet been implemented systematically across the administration. The Ministry of Information Society and Administration has set up a 'help desk' team to support central and local government authorities in applying the law.<sup>10</sup>

The latest progress report, released in October 2020, in spite of its overwhelmingly positive tone, does note a considerable underperformance when it comes to the issue of the implementation of the Law on General Administrative Procedures. Simply to repeat the report, North Macedonia should “ensure full implementation of the Law on General Administrative Procedures.”<sup>11</sup>

Our qualitative research – the collected personal narratives – testifies to the grave disregard of precisely those aspects of the law that are supposed to align it with the European fundamental rights. What is glaringly missing, is the respect of citizen's dignity, the concern about efficiency, decision making and carrying out judgment that would work in favour of the citizen rather than the state apparatus (as in the practice the situation is reversed). Article 6 “The principle of proportionality,” Article 7 “The principle of economic and efficient procedure,” Article 14 “The principle of legal protection,” Article 17 “The principle of active assistance to the party,” to name a few among many, *are systematically breached by the prescribed procedures of literally every special law and specific public institution.*

Procedures are constantly rendered more complex, more contradictory, protracted, and lengthy, whereas the articles quoted above, among other articles in said law, require quite the opposite. The costs of every proce-

cedure are further complicated and rendered increasingly expensive thanks to the massive demand of the notarization of the entirety of each and every document, even when the original is presented or directly accessible to the authority. **The compulsory notarization by private notaries, demanded in mass by all institutions of the state, raises suspicion of a possible systemic corruption that benefits both the institutions and the Chamber of Notaries.** Our comparative reading of the German law on notary services<sup>12</sup>, and those that are in force in North Macedonia, shows an unprecedented and compulsive level of notarization that is requested by the state.<sup>13</sup>

Full implementation of the Law on the General Administrative Procedure could possibly be the only act that is not only not fully implemented but practically not implemented at all, whose implementation is undermined by contradicting other, and special legal acts regulating particular areas.

In order to fully implement the Law on the General Administrative Procedure, a full digitalization of the procedures should be enforced, going far beyond archiving documents. The law that was adopted in 2015 needs updating in order to be adjusted to the digital era, and aligned with the more recent Law on Central Population Register (2019), the Law on Electronic Management and Electronic Services (2019), and the Law on Electronic Documents, Electronic Identification and Trust Services (2019). This would both render the procedure efficient, shorter, and less costly as well as help cut down the number of administrative servants, a burden too heavy for the Macedonian economy to carry.

#### 4.2. The fundamental right to justice and the administrative procedures

We tackle the adherence to the principles of the fundamentals rights in law-making and governance, as well as the concomitant issues of *institutional transparency, accountability and low to middle level administrative corruption encountered by ordinary citizens (as opposed to the high level corruption that has been the main focus of the most recent reforms).* They will be measured through our evidence based research. We will focus on the transposition of Article 41 of the European Charter of Human Rights, which guarantees the right to good administration, onto the law-making, policymaking and their materialization in practice.

## 5. Methodology and research questions

Concerning methodology, let us note that the analysis shall be carried out through what we might call discourse analysis, but one translatable into empirical evidence that shows what sort of concerns are predominant in the legislation and whether it demonstrates the key value of the European Charter of Fundamental Rights – the citizen as the central concern. Apart from this approach, we will engage in an analysis that is grounded in empirical field research. We have compiled data on the perception of the citizens regarding whether the administration is efficient and citizen centred, “displaying respect toward citizens”, or, in fact, quite different. We have also produced data measuring the authoritarian penchant of the predominant political culture in the country.

### Desk analysis and discourse analysis

Desk analysis and discourse analysis of legislation and secondary literature, including different reports, evaluations from institutions such as the Venice Commission, GRECO, as well as the Council of Europe was done, and will give an insight into the respect of the individual citizen and the hierarchy between the institutions and the state, therefore addressing some of the central research questions:

1. Is the administration, and thus the system of law and public policies *implementation*, based on the respect of the citizen, and the protection of one's civic and citizen's rights?
2. Is the system of implementing public policies (i.e. the administration) conceived as efficient and responsive toward the needs of the citizen, implying transparency, accountability, and judicial defence of the individual's rights vis-à-vis the institutions?
3. What is the underlying philosophy of the legislation: is it centred on the liberal tradition of defending the citizen from the whims of the state, or is it the other way around, namely, centred on protecting the state from the presumably always-already corrupt citizen?

### Empirical research

Qualitative field research consisting of oral histories that will enrich our analysis of the legislation and what type of administration it implies: the previously stated research questions will be addressed in the process of pattern identification in the data, with an emphasis on the implied question of the respect for individual citizen's dignity.

### 5.1. Structure of the study

- Overview of samples of legislation that citizens encounter on a daily basis, including the bylaws, and an analysis of its envisaged procedures and their effects when it comes to citizens' responsive administration, respectful of the individual's dignity. This overview will consist of comparative readings of the legislation against the backdrop of the European Charter of Fundamental Rights. The inferences will be both a product of discourse analysis as well as empirically corroborated through quoted sources and data from the field research (up to 5 pages);
- Analysis of individual examples obtained through the field research (up to 3 pages);
- Comparative readings of similar issue related procedures in developed EU democracies and in North Macedonia (up to 2 pages);
- Considerations of the democratic principles that would be respectful of individual's dignity for an e-government; identification of the basic services that could be fully automated as a concrete step forward in order to be proposed to the policy makers (up to 2 pages);
- Conclusions and recommendations toward an accelerated automation of the administration based on legislation espousing the principle of human dignity centred, citizen's responsive, transparent, and responsive administration as a true service to the citizens (up to 2 pages).

### 5.2. Main findings

When it comes to the issue of the rule of law and corruption in the state administration, one that physical and legal persons encounter on a daily basis, the designated court to solve disputes of potential abuses of administrative power and neglect of responsibility is the Administrative court of North Macedonia. The Law on Administrative Disputes, adopted in 2019 and effective since May 2020, should enable tangible justice for those who have been wronged by the administration of an excessively strong executive branch. The court's website does not offer information for the number of disputes resolved in favour of the plaintiffs. The Ombudsman

has issued reports on the matter covering the period of 2016-2019, stating that the administrative disputes were resolved in such a manner that citizens began to lose trust in the institutions, and the judiciary in particular.<sup>14</sup> That report was meant to serve as a proof of a captured state.<sup>15</sup>

The further reports issued by the Ombudsman restated the same information with an even more alarming tone.<sup>16</sup> It can be considered as an indication of "one state capture being replaced by another," to paraphrase Reinhard Priebe.

The widespread corruption among the lower ranks of the administration could be encountered by ordinary citizens on a daily basis<sup>17</sup> according to a study produced recently by the Macedonian Center for International Cooperation (MCIC or the Macedonian transliterated acronym MCMS).<sup>18</sup>

White-collar corruption is something that regular citizens cannot identify as affecting their lives directly, except when they see it as systemic corruption. This suspicion is expressed among the respondents in our qualitative research through the idea that the excessive outsourcing of institutional duties to the private notaries might be a result of a "deal between the institutions and the chamber of notaries."

According to our in-house quantitative studies, **the distrust in the state institutions, including the judiciary, is very high,<sup>19</sup> due to the perception that the institutions "serve themselves, the elites" and are everything but a service to the citizens.**

In this respect, they do not see the judiciary, in particular the Administrative Court, as an institution that could deliver justice to the citizens when they demand *transparent and accountable* actions of the institutions. Their suspicions are corroborated by the afore-cited reports of the Ombudsman. If the national and local govern-

ments and their institutions do not act as a service for the citizens and regularly get away with it due to the absence of juridical, impartial deliberation, the rule of law is in deep crisis, and not because it is "good but not implemented." Quite to the contrary, the law on administrative procedures, as well as the one on administrative disputes, allows for loopholes such that the physical or legal persons engaged in a process against the state institutions can never reach justice. And none has ever been reached, as the four consecutive annual reports by the Ombudsman clearly indicate.

This is why, we argue, that instead of focusing solely and exclusively on white-collar crime and high-level corruption – which, when carried out throughout the past decades and not only recently, usually serves to undermine political opponents – **the local and international civil society watchdogs and the EU rapporteurs should focus more closely on the corruption encountered by the ordinary citizens.**

In order to counter that corruption, the Administrative Court and the Law on Administrative disputes should act in an effective, just, and transparent manner, and should be subjected to institutional and civil society oversight. In short, *their blatant issue with transparency and accountability must be addressed.* To proceed with a systematic dismantling of state capture is to arrive at a truly efficient and non-partisan administration.

The perception of wide-spread corruption and its acceptability to an overwhelming majority of citizens<sup>20</sup> needs to become a priority for any future government, instead of focusing solely on the white-collar crime and high level political corruption. In addition to a reform in the administration where promotion, demotion, and professional mobility would be an actual (not merely theoretical) possibility, North Macedonia urgently requires efficient administrative courts.

Finally, let us note that according to an in-house survey produced through a nationally representative sample

Juxtaposing citizens' perception of the praise of the judicial reforms received by the EC in its annual report and March 2020 update of said report, we can infer the following conclusion: nominal advancement can be noted, whereas the practice has been lagging behind. We wish to avoid repeating the habitual mantra: "laws are good, implementation is bad" – if the lawmaking were of a high quality, there would be provisions in it that would ensure their implementation. When reviewing the country's progress, the European commission, the international community and the expert public should focus on the legislative and bylaws, extrapolating principles from the actual provisions that ensure the practical implementation of the laws.

The policy component in the analysis is key as it sheds light on how the principles are transformed into practice. We insist on calling many of the provisions mere principles; if there are no mechanisms envisaged in the laws and bylaws for their implementation and repercussions, if the institutions, including the judiciary, fail to enforce the laws and fulfill their duty vis-à-vis the citizens. A "captured" judiciary, politically and/or corruptively manipulated, deprives physical and legal persons from the right to a just trial as a fundamental right. It is important to note this issue in the face of the incipient negotiating process of EU integration according to the methodology that nonetheless begins with Chapters 23 and 24.

of 1100 respondents, an overwhelming majority has ranked the judiciary lowest when it comes to its independence and quality of work when compared to the other forms of governance. According to the results of the survey conducted by ISSHS, citizens' perception of the independence of the judiciary in the past year is the lowest so far, with an average grade of 1.92 (on a scale where 1 is the lowest grade, and 5 is the highest grade). Last year this grade was 2.03, showing that although the grade is similar, the perception is that the independence of the judiciary system is still in decline.

According to the annual report by the Ombudsman office, several important tendencies were noted. Out of a total of 3,454 cases, 1,219 (35.29%) were noted violations of human rights and freedoms and out of these, in 532 cases (43.64%) the state administrative bodies, other bodies, and organizations with public authorizations accepted the Ombudsman's interventions.<sup>21</sup> Compared to 2018, the data shows that in 2019 there was an increase in the number of identified injuries by 5.82%. On the other hand, the analysis of the data in relation to the accepted recommendations/indications shows a decrease of 28.25% compared to 2018 when the percentage of accepted recommendations was 71.89%.<sup>22</sup>

This indicates the fact that the ambiguities in the legal regulations, as well as the unwillingness of the responsible persons to cooperate with the Ombudsman still cause harm to the citizens in terms of respect and the realization of their rights. An example of this was the non-acceptance of the recommendations for the violation of the right to education of children with incomplete vaccination statuses, due to which 200 children were left out of the education system.

The number of complaints related to the work and actions of the Public Prosecutor's Offices in the Republic of North Macedonia is smaller than the complaints in the previous year. However, the remarks regarding the length of the pre-investigation procedures conducted before the Basic Public Prosecutor's Offices and the failure to inform the citizens (applicants about their cases e.g.), remains a problematic characteristic of this reporting period.<sup>23</sup>

### 5.3. Examples from everyday life illustrating the problem of self-centred administration, legislation, and the procedures in place

If one needs to "nostrify"<sup>24</sup> a foreign degree, one should first get the diploma translated into Macedonian by a court translator. Then they should go to a notary to get an ACMIS stamp, which is mandatory for the verification of the diploma. However, there is an experience, shared

as a personal story, where a notary asked for an additional document proving that the court translator was indeed a court translator, registered in the Ministry of Justice, although it is already legitimized by the stamped translation.

It seems that the legislation exists not to enable the nostrification of the diploma for the citizens, but to primarily protect the state from supposed fraud, which, as an effect, makes the administration inefficient and untrustworthy.

Another equally paradoxical case, well-known to the public, was the case of a socially disadvantaged boy seeking a birth certificate. The Ministry of Justice granted free legal aid to him so that he may fight before the Registry Office, which is, indeed, an institution under the Ministry of Justice. The case shows that the state is using its resources twice to correct the error in its own case and procedure. We have chosen a case, as referred to above, on audiovisual services as a case study demonstrating that what seems to be a good on paper law but lacking implementation is oftentimes bad on paper too. Let the reader be reminded that the mere removal of Article 92 improved media freedom in the country by 14 ranks in 2019.

This example demonstrates how predominantly good legislation can ensue grave negative practices due to a couple of articles legalizing, what in a European democracy should, and would be considered utterly undemocratic and contrary to the European values. The discourse analysis that follows, however, demonstrates that the law is not citizen-centred, or service oriented, but that it is encumbered with the state's self-centeredness, and, finally, with control rather than good service and products.<sup>25</sup>

The comparative analysis of the language used in the Macedonian law on audiovisual services on the one hand, and the corresponding laws of a few EU member states (Austria, Croatia, Denmark, Finland, Greece, Netherlands and Sweden,) on the other, was undertaken to identify the central concerns according to a frequency of words that appeared in the respective acts of legislation.

The analysis is based on the presupposition that lexical frequency is a valid indicator not only of the nature of a legal text, but more importantly, *of its practice defining and regulating intentions and potential effects among the target audience (wider ideological implications)*.

The procedure was carried out in three steps: a) identification of the 10 most frequently occurring full semantic expressions in each of the laws, b) interpretation of the data and construction of the nature of the law based on the data so-collected, c) and a cross-national comparison.

The word count of the Macedonian national law showed that:

- a) The most frequently used term is "Article", which together with the expressions "law" (4<sup>th</sup> most used term) and "paragraph" (of the article – 7<sup>th</sup> most used) are the focal points of the Macedonian law, providing the semantic core of the law itself. The frequency of their combined occurrence by far surpasses all other expressions with high frequencies. Compared to the laws for the other countries, only Netherlands and Croatia show a similar tendency.
- b) However, unlike all other laws analyzed, the second<sup>26</sup> most frequently occurring (combination of ) expressions in the Macedonian law are "the Agency", referring to the Agency of AVM, and the term "the Council", referring to the Council for radio broadcasting.

In comparison, the terms referring to regulatory bodies in the laws of the other countries such as "authorities", "minister", "centre", "board" have 4 to 12 times lesser frequencies than their occurrences in the Macedonian law. Additionally, the frequency of all of these occurrences places them in the lower part of the 10 most frequently occurring expressions.

- c) Another notable difference in the text of the Macedonian law is the unprecedented occurrence of the constitutional name of the state, "Republic of Macedonia," and the national broadcaster Macedonian Radio Television in the top ten most frequently appearing expressions. A tendency not found in any other national law.
- d) The analysis of the texts of the laws on AUM in the other countries showed a rather different tendency. In these laws, the most frequently occurring expressions are: service, broadcast, media and program. In comparison, while the expression "program" appears frequently in the Macedonian law, the term "broadcast" is positioned 11<sup>th</sup>, while 'media', and especially "service", fall out even from the 20 most occurring expressions.

**Interpretation of the frequency of keywords**

North Macedonia	Other countries
Law, article, paragraph	Program
Agency, council	Service
Program	Media
MRT	Broadcast
Macedonia	Audiovisual

The differences in the lexical frequencies between the Macedonian law and the laws from the EU countries are shown in the table below. They show, in descending fashion, the most frequent expressions as organized in regard to an aspect from the process rather than individual occurrences.

**5.4. Interpretation**

**The high frequency occurrence of the expressions related to the law itself, such as law, article, and paragraph, indicates a high level of auto-referentiality, a sort of myopia that focuses on itself.** This focus on the instrument of definition and regulation itself (the law), rather than on its contents and practices, as is the case with almost all other laws where the notions of program, services, and broadcasting are foreground, lead to two tentative interpretations. Firstly, that the law is hyper-regulating the content by placing more importance on itself as an instrument of regulation rather than the regulated material, and secondly, that it is a result of 'bad' or abusive/tendentious nomo-technique.

The first assumption; that it is hyper-regulative, is additionally confirmed by the fact that unlike the laws of the other countries analyzed, where the focus is first and predominantly on the content of the defined and regulated practices and participants, and only then on the regulator, the Macedonian law places much more attention to the regulatory body rather than the regulated practices.

In laymen's terms, the Macedonian law does not place primary and dominant importance on the practice (program, service, and broadcasting), or who it is carried out by (media), while the laws of other countries do. Instead, the focus is on *how it must be done* (law), and *who monitors and controls* the practice (The Agency).

Finally, while the frequent use of the constitutional name is a rather interpretative challenge, the frequent appearance of the national broadcaster MRT could potentially mean two things: a) North Macedonia, unlike Croatia, has no separate laws on national and private media, or b) the law potentially prioritizes the national broadcaster.

For the purpose of this study, we have revisited our analysis of the law on audiovisual services, now improved by the removal of Article 92, in order to illustrate what remains from the task of "decapturing the state." The goal is to overcome the excessive power of the executive branch, and as such, the administration ought to stop producing legislation that is self-serving and instead espouse the value of serving the citizens. The latter, in our analysis, refers also to legal persons as well as a self-serving administration that undermines entrepreneurial endeavours, academic autonomy, and the true freedom of the press etc. The asymmetric power

of the executive branch is also manifested through the judiciary, in the form of the executive court, which seems to serve to protect the institutions of the state from the physical and legal persons, instead of the other way around.

**The de-capturing has, therefore, not been completed, as the ordinary citizens remain captured by the state, both by the executive and the judiciary branch. They are thus captive of a self-serving system that refuses to be accountable, transparent, and legally responsible to its citizens.** This self-enclosed system leaves the citizen outside of it, as an alien entity, and its omnipotence is intimidating toward those outside the walls of the self-serving, inefficient and non-accountable administration.

### 5.5. Proceduralism based on the whim of a massive and incompetent administration

Considering the problem of state-capture, what the SDSM led governments have undertaken to overcome is apparently ideological, namely, it implies a method of governance pertaining to the so-called model of "illiberal democracy." We have to raise the question, then, as to why the new government has not recruited and promoted/demoted staff on at least the leading administrative positions, as the EU progress reports of 2018 and 2019 advised:

*The Commission's 2018 recommendation on merit based recruitments in open competitions remains valid, especially on senior management appointments. The respect for principles of transparency, merit and equitable representation remains essential.<sup>27</sup>*

One also wonders why instead of decreasing the number of people employed in the administration, as it was announced by the government,<sup>28</sup> the number of employees in fact keeps growing. We presume it is the result of the well-known phenomenon of political clientelism, whereby political parties reward their most active members with employment in the public administration, who, in turn, vote for them in the elections to come. The old

administration remains, as it can also be motivated through means of political clientelism to support the current or incumbent government.

Thus, public administration is in fact a huge potential voting machine, a political weapon no government wishes to give up on – or, at least, no truly democratic government. Those whose jobs are independent from the mercy of the ruling party think for themselves when they vote, and cannot be used as an easily manipulated voting machine. We contend that it is for this reason that all of the governments so far have resisted cutting down on the number of public servants and introducing greater digitalization, thus maintaining a tacit systemic corruption.

While in principle the Law on Administrative Servants and the Law on Public Sector Employees ensure merit-based recruitment, promotion and dismissals, these laws are not fully applied across the administration. There are contradicting provisions in the Law on Internal Affairs, which allow employees to be excluded from the application of the Law on Administrative Servants. Procedures for temporary or service employments with lower criteria are used in many cases, bypassing the criteria set in the Law on Administrative Servants.<sup>29</sup> Some progress was made in improving transparency, with the adoption of the 2019-2021 Transparency Strategy, the operationalization of the open government data portal and the publication of data on government spending.

One of the documents considered to be the key step in ensuring the necessary reform process for the administration is the Strategy for reform of the administration 2018-2022. It was adopted by the Ministry of information society and administration in 2017.<sup>30</sup> The strategy focuses on four aspects as priorities in the reform process: policy development and coordination; public service and the management of human resources; responsibility, accountability and transparency; and Services and ICT support of the administration.

Although the priorities overlap with our analysis in some of its parts, our study confirms that there are no substantial improvements in the implementation of the Strategy.<sup>31</sup>

## 6. Digitalization of the administration

Digitalization is an agile process while the state bureaucracy is completely the opposite. Digital transformations enable easier accessibility and the improvement of the services for the end users. Moreover, digitalization will ensure the efficacy and overall transparency of the work and will reduce the administrative expenditures.

Digitalization in the executive branch has been initiated and it is an ongoing process. Announcing the digitalization in the administration based on the Strategy for reform of the administration 2018-2022, the government has so far presented 707 out of 1267 services under all ministries on the platform [Uslugi.gov.mk](http://Uslugi.gov.mk). Most of them could not be finished from beginning to end online. Some of the services presented are not services at all, but are just digitized lists of needed documentation. With other services, one can submit applications online but there are problems like: required physical presence for getting the documents, contact with post-offices, and some of the services do not accept online payments etc. As a response to the COVID-19 pandemic, some of the processes provided by the government and ministries have been digitalized. Official meetings turned online, and the economic measures provided by the government for the citizens have been fully digitalized and they could be done fully online. The Ministry of Education and Science provided an online educational platform on the primary and secondary level. The faculties also turned to digital classes, but most of them stopped there, making the bureaucracy complicated, even for the students.

Additionally, the Ministry of Health has announced some changes in the contact between the doctors and patients by using digital tools. These changes included: digital scheduling of tests for COVID-19, new digital health services in order to extend maternity leave and health insurance, home treatment by the family doctors of patients with COVID-19, the introduction of a new centralized system for online prescriptions, and a register of e-prescriptions for an easier provision of the pa-

tients' therapy. Likewise, the "Stop Corona" national application was designed and shortly in use, but has never been truly accepted by the citizens.

The digitalization process, on the municipal level, is still an issue. The processes of digitalization depend on the local authorities' will for change. There are a few ongoing projects, in partnership with CSOs, for active citizen enrolment in the decision making process and for creating initiatives for action. These have been realized in the municipalities of city of Skopje, Karposh, Veles, and Valandovo. They are still not payment-related, nor do they present an alternative to the submission of hard copy documents, but are first good steps towards the digitalization of services at the municipal level.

There was an announcement for starting the process of digitalization on the local level, the "Call for development of digital tools and solutions for better quality of services in the local government" that will be implemented by the Fund for Innovation and Technology Development and UNDP.<sup>32</sup> It will consist of setting up an E-platform for the payment of taxes to the municipality, as well as a system for the electronic payment of bills to public enterprises, an electronic system of volunteers, and an online platform for municipal forums.

This local-level digitalization plan will focus on five pilot municipalities: Centar Zhupa, Bogovinje, Sveti Nikole, Prilep and Kumanovo. It was announced that it will be in use by the end of 2020 with the intention to be later available for other municipalities that would be willing to cooperate. The realization of this project will be a big step forward in improving the services for the citizens provided by the municipalities.

Although there are different pushes and processes, the digitalization of the administration remains to be a serious challenge that reflects in the overall efficacy, transparency, accessibility, and satisfaction of the citizens.



## 7. Field research on the perception of inefficiency, lack of transparency, and corruption

The following part of the text will present an analysis of personal stories, as part of the oral history research gained through our website as a crowdsourcing method for gathering the personal experiences of the citizens with institutions and the public administration. The examples used here are the result of the qualitative coding process that enabled us to extract several categories that recurred in the stories and related to the overall goal of the research. The analysis of personal stories goes hand in hand with the data gathered through our desk research that was necessary for a proper reading of the findings.

### 7.1. Transparency

Transparency is measured mainly through open information for the processes and decisions of the institutions. However, the provision of not just open but also clear and understandable information is a part of transparency. Official information should not be understood only by experts, researchers, and civil society advocates. The information and procedures should be accessible and comprehensible for all citizens. **The analysis shows that our institutions lack transparency not only in terms of the provision of open information to citizens but also in terms of accessibility.** Accessibility entails clear pathways for each administrative procedure, and support into gaining knowledge and assistance in understanding and navigating through complex procedures.

**In practice, where the procedures are complex, citizens use lawyers for navigation and the execution of their rights and obligations.** This practice is more efficient, but costly, and creates and encourages unequal access for the citizens. An individual citizen usually faces many obstacles and frustrations when dealing with institutions. For example, in the following quote, the lack of accessibility and transparency meant failing to apply for a certain service.

"I had problem to find the right and precise information on procedure for application and failed to submit the documentation on time. I faced confusing information, then difficulties in communication with the officials. I had to call many times and still didn't have the answers I needed. Additionally, there is no possibility for electronic communication nor submission which makes for me as

an employed person difficult to access the institutions, since they work also within my working hours and I had to use my breaks or ask for extended time from work to manage all the requirements. As a young person I find it hard to navigate in those institutional mess and be able to make things done without help of friends, relatives and connections." Student from Bitola (25 years).

Another aspect of transparency is related to the official communication with the institutions. Most of the stories contain information concerning problems in the communication with officials in terms of non-professional communication, discrimination and incomplete information.

"I have called the Contact Phone Office 38 times. I have written 10 emails to ask if there is a problem and when it would be. There is no answer whatsoever."

"The clerk at counter 4, where we were directed, also did not have a mask. When I asked him where his mask was, he addressed me in a terribly harsh tone and said: "I do not intend to suffocate at work for 8 hours, you are rude to address me like this! I am here to do you a favour. ... All women are the same!" (35 years).

Although the Ministry has adopted Codex for workers in the administration<sup>33</sup>, the lack of accountability, both in terms of the internalization of the professional ethic code and mechanisms for self-regulation, as well as functional administrative procedures for complaints, again proves to be one of the key barriers in strengthening the transparency and communication in the administration.

### 7.2. Inefficiency

The overall inefficacy of the administration was a pervasive element in almost all of the citizens' experiences. Under efficacy we refer to getting services without complications and through regular procedures. However, in most of the stories there are different obstacles in the administrative processes – errors in the procedure, errors in documentation, asking for additional documentation, extending the timeframes, non-punctuality and problems in communication with officials etc. Other research also confirms inefficacy to be the biggest problem for the citizens. For example, in the survey research

by Euro Think it is stated that unclear procedures, long pathways until the procedure is finalized, unpleasant and unprofessional approaches of the employees in institutions, and the longevity of procedures are named as the most frequent problems citizens face.<sup>34</sup> The inefficacy results with confusion, frustration and the overall lack of trustworthiness in institutions. Here are some examples of the overly **confusing and inefficient administration of procedures that make institutions vulnerable to corruption and citizens frustrated, and feeling uncertain.**

"I live 150 km from the capital, even though I gave birth in Skopje. I can get a birth certificate only in Skopje. There was a small mistake that needed to be corrected, but they sent me back 3 times because it has not been corrected and they told me to come in 5 days." P. from Kicevo (about 40 years).

The example above portrays how one of the simplest procedures for obtaining a birth certificate could easily turn into a never-ending saga of errors and frustrations which cost the citizens additional money and time and also cause stress. The following example is also a typical story of the lack of efficacy when dealing with mistakes. Those experiences, as mentioned before, cost lots of time and money, not just for the citizens but also for the administration, since it takes a number of identical procedures to be executed for a single document.

"My mother and I have different surnames. There was an error in her first marriage certificate and she took care to correct it. However, her erroneous surname begins to appear in my excerpt "out of nowhere" even though it was corrected once. This has caused us a lot of administrative problems. We had to pay for more than 20 excerpts, but the correct one was never taken out. We went to a special counter in the Registry Office to report the error with all the necessary documents and evidence and again had to pay 300 denars to correct the error. Still, the new certificate again was not corrected. It took us again time, stress and money to make complaints and try to find "connections" to get the corrected document, but we failed. Eventually we encountered an employee who listened to us and corrected the mistake (it only had to be entered in the computer) and managed to get a signature from the authority in 10 minutes." (36 years).

It is important to highlight that the endurance and resources invested in such cases are not available to all citizens.

**Many restrictions regarding intersecting demographic issues (social status, education, place, gender etc.) could prevent the person from persisting through the institutional labyrinth** due to scarce resources and/or access to them. Therefore, to maintain the accessibility

for disadvantaged citizens, institutions should further invest in additional support in terms of assistance.

Moreover, one of the main features that prevails in most of the personal experiences is the notion that it is necessary to find "connections" in order to more efficiently go through the administrative procedure. Other research also suggests that for most of the population (more than two thirds), there is a perception that you need to have "connections" in institutions to get your job done<sup>35</sup>. However, as pervasive as this strategy is, the data from the oral history shows that it does not actually make things easier or efficient. Therefore, "connections" seem to be more of a burden than an efficient tool for both the administration and citizens.

### 7.3. Perception of corruption

Typical examples of so called 'small scale corruption' are perceived to be present in all levels of institutional structures and fields. **The data we gathered did not give us a direct example of corruption, but the notion of corruption was part of the stories where citizens "know the tariff", or know there is a tariff for certain services and procedures.** Those are mostly analyzed to be part of the "culture of corruption" which also means it is very likely to be normalized. For example, it is perceived as a common experience to buy the doctor and the medical personnel (small) gifts as an act of gratitude for their help. In some cases, people accepted it as a correction mechanism for the state's shortcomings; people compensate doctors and professors for the insufficient salaries.

"She was my sister and was diagnosed to be in a life-threatening situation and urgently needed surgery. The doctors from the clinic said that the first free term for surgery is after three months and that she can't be operated immediately. Devastated we found a "connection", person related to the doctor, we paid a certain amount of money and they scheduled an operation for two days" (a respondent from Skopje).

The problem with corruption, but, moreover, the perception of corruption we focus on, is one of the effects of low efficacy and non-transparency as well as the lack of accountability discussed in the analysis before. Therefore, the perception of corruption could be countered by strengthening the trustworthiness, efficacy, transparency, and accountability, which are the main problems that should be directly tackled. As for the official reports regarding corruption, North Macedonia is ranked 106<sup>th</sup>, with a score of 35/100 on Transparency International. It showed a slight improvement over the past years.<sup>36</sup>

## 8. Recommendations

- The institutions should observe the right to good administration, part of the European Charter of Fundamental Rights, as one linked with Chapters 23 and 24 and thus consider the functioning of the institutions and the Administrative Court as an important element of the opening chapters' negotiations of the country with the EU.
- Full implementation of the Law on the General Administrative Procedure and its principle of efficient and economical procedures that puts the interests of the citizens before those of the state institutions, making the principle of the institutions the service of the citizens. Let us point out, the Law in question, adopted in 2015, must be amended and aligned with the recently adopted Law on Central Population Register (2019), the Law on Electronic Management and Electronic Services (2019), and the Law on Electronic Documents, Electronic Identification and Trust Services (2019).
- Aligning the procedural content in the other laws with the overarching principles and stipulations of the Law on the General Administrative Procedure.
- Further de-capturing of the state from an authoritarian style of governance and its complicity with private interests (such as the imposition of the obligatory and excessive use of private notaries) reflected in the principles of administrative procedures that are dominant in the legislation.
- Development of effective merit-based advancement of the administrative staff by espousing the premise that not necessarily all promotion and demotion is politically motivated and one should be able to find transparent mechanisms to distinguish the one from the other.
- To improve the accountability of institutions through the strengthening of the capacities and mechanisms for juridical protection of the citizens and legal persons through a greater independence and transparency of the Administrative court.
- In order to minimize possible corruption, and strengthen institutional accountability and transparency, further digitalization of the functioning of all institutions, including the courts, is required in addition to the reform processes stated above.
- Introduction of a comprehensive e-Governance reform for the digitalization of the internal functioning of the public administration and of the provision of services to citizens and businesses. Digitalizing the administration will naturally make it more effective, diminish bureaucratic procedures, and will contribute to cutting its expenses in a longer-term. Furthermore, it will open it towards citizens, who will be able to interact with institutions without time and cost consuming burdens.

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- 24** A term serving to camouflage the fact that a diploma is being literally re-recognized by the state instead of being simply acknowledged by a higher education institution if issued by a legal institution recognized by a national authority.
- 25** We are paraphrasing an excerpt of a wider analysis by the team of ISSHS, produced by one of its researchers, individually presented here: ISSHS, policy essays <http://www.isshs.edu.mk/wp-content/uploads/2017/11/Discursive-Forensics-of-the-Macedonian-Law-on-Audio-and-Audio-Visual-Services.pdf>, accessed on 5 November 2020.
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