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**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW**  
**(VENICE COMMISSION)**

**“The former Republic Yugoslav of Macedonia”**

**DRAFT LAW (\*)**  
**ON TERMINATION OF THE VALIDITY**  
**OF THE LAW ON THE COUNCIL FOR ESTABLISHMENT OF FACTS**  
**AND INITIATION OF PROCEEDINGS FOR DETERMINATION**  
**OF ACCOUNTABILITY FOR JUDGES**

**DRAFT LAW (\*)**  
**AMENDING THE LAW ON THE JUDICIAL COUNCIL**

**DRAFT LAW (\*)**  
**AMENDING THE LAW ON WITNESS PROTECTION**

**AND**  
**EXPLANATORY NOTES**

*(\*) Translation provided by the authorities*

**DRAFT LAW ON TERMINATION OF THE VALIDITY OF THE LAW ON THE COUNCIL  
FOR ESTABLISHMENT OF FACTS AND INITIATION OF PROCEEDINGS  
FOR DETERMINATION OF ACCOUNTABILITY FOR JUDGES**

**in summary proceedings**

16.10.2017, Skopje

**Introduction**

**I. ASSESSMENT OF THE SITUATION IN THE AREA TO BE REGULATED AND REASONS FOR THE ADOPTION OF THE LAW**

The Law on the Council for Determination of Facts and Initiation of Proceedings for Establishment of Accountability of Judges was adopted in 2015. This Law governs the proceedings for the election of the Council for Determination of Facts and Initiation of Proceedings for Establishment of Accountability of Judges (disciplinary procedure and procedure for unprofessional and unconscientiously work, pursuant to law), the method of exercising its functions, election, termination, decision-making and other matters related to the work of the Council for Determination of Facts and Initiation of Proceedings for Establishment of Accountability of Judges.

The provisions of the Law on the Courts, the Law on the Judicial Council of the Republic of Macedonia and the Law on the Council for Determination of Facts and Initiation of Proceedings for Establishment of Accountability of Judges were subject to review by the Council of Europe Venice Commission. In this context, the Venice Commission in December 2015 adopted an opinion outlining some suggestions to improve the provisions of the package of laws regulating the judiciary field. Acting on the observations of the Venice Commission, we approached the drafting of new legislation in the package of laws related to the judiciary, which implement the opinions of the Venice Commission.

The key findings of the Venice Commission referred to the Law on the Council for Determination of Facts and Initiation of Proceedings for Establishment of Accountability of Judges, to the grounds for disciplinary responsibility of judges and disciplinary measures, as well as the provisions for the evaluation of judges. Some of these issues are addressed in this Proposed Law.

Namely, in the opinion of the Venice Commission it is stated that: "The functions of the Council for Determination of Facts should be transferred to the Judicial Council, provided that the members or bodies of the Judicial Council are involved in the initial phase of the disciplinary proceedings as "prosecutors" or "investigators" not to participate in the final decision as "judges". This recommendation is implemented with the termination of the validity of the Law on the Council for Determination of Facts and Initiation of Proceedings for Establishment of Accountability of Judges and the transfer of the whole procedure to the competence of the Judicial Council, with the members who initiated the proceedings and members participating in the investigation not being entitled to vote when deciding on disciplinary responsibility.

The practice has showed that the formation of such a professional body to initiate a procedure to establish the responsibility of a judge has not fulfilled the aim of its establishment; on the contrary, it was established without having made a full analysis of the shortcomings in the Law on the Judicial Council which resulted in a negative report from the international institutions.

Considering the above and the comments of the Venice Commission on the laws on disciplinary responsibility and evaluation of judges which criticise "the creation of such an authority as an unfavourable move", steps have been made to develop this Law.

The text of the law was submitted to the competent institutions for opinion.

## **II. AIMS, PRINCIPLES AND BASIC SOLUTIONS**

The main aim of the Law is to terminate the validity of the Law on the Council for Determination of Facts and Initiation of Proceedings for Establishment of Accountability of Judges and to restore the competence to conduct the disciplinary proceedings to the Judicial Council of the Republic of Macedonia, taking into account the observations and guidelines of the international institutions regarding the conduct of the proceedings and the adoption of a decision by the Judicial Council of the Republic of Macedonia.

## **III. ASSESSMENT OF THE FINANCIAL IMPACT FROM THE PROPOSED LAW ON THE BUDGET AND OTHER PUBLIC ASSETS**

The adoption of the Law has no fiscal implications on the Budget of the Republic of Macedonia.

## **IV. ESTIMATION OF THE FUNDS NEEDED TO IMPLEMENT THE LAW, A WAY OF PROVIDING THEM, DATA ON WHETHER THE IMPLEMENTATION OF THE LAW IMPOSES MATERIAL OBLIGATIONS FOR CERTAIN ENTITIES**

The law will not cause financial obligations for other entities.

## **V. SUMMARY PROCEEDINGS FOR ADOPTION OF THE LAW**

Given that it is not a large and complex law, pursuant to Rule 170 of the Rules of the Assembly of the Republic of Macedonia, it is proposed to adopt this Law in a summary proceedings.

### **DRAFT LAW ON TERMINATION OF THE VALIDITY OF THE LAW ON THE COUNCIL FOR ESTABLISHMENT OF FACTS AND INITIATION OF PROCEEDINGS FOR DETERMINATION OF ACCOUNTABILITY FOR JUDGES**

#### **in summary proceedings**

##### **Article 1**

With the entry into force of this Law, the Law on the Council for Establishment of Facts and Initiation of Proceedings for Determination of Accountability of Judges ("Official Gazette of the Republic of Macedonia", no.20/2015) shall cease to be valid.

##### **Article 2**

Upon entry into force of this Law the mandate of the President and members of the Council for Establishment of Facts and Initiation of Proceedings for Determination of Accountability of Judges shall terminate and the employment of all employees shall terminate.

The Judicial Council of the Republic of Macedonia shall be obliged to take on immediately the cases, archive, items, equipment, utilities and other assets of the Council for

Establishment of Facts and Initiation of Proceedings for Determination of Accountability of Judges.

Initiated proceedings shall continue before the Judicial Council of the Republic of Macedonia, pursuant to provisions of the Law on the Judicial Council.

The Court Budget Council shall be obliged to reimburse the financial liabilities arising from the work of the Council for Establishment of Facts and Initiation of Proceedings for Determination of Accountability of Judges.

#### Article 3

This Law shall come into force on the eighth day from the date of its publication in the "Official Gazette of the Republic of Macedonia".

### **REASONING OF THE PROPOSED LAW ON TERMINATION OF VALIDITY OF THE LAW ON THE COUNCIL FOR DETERMINATION OF FACTS AND INITIATION OF PROCEEDINGS FOR ESTABLISHMENT OF ACCOUNTABILITY OF JUDGES AND INITIATION OF PROCEDURE FOR ACCOUNTABILITY OF JUDGES**

#### **I. EXPLANATION OF THE CONTENT OF THE PROVISIONS OF THE PROPOSED LAW**

The proposed Law contains 3 Articles which envisage termination of the validity of the Law on the Council for Determination of Facts and Initiation of Proceedings for Establishment of Accountability of Judges and it enters into force on the eighth day from the date of its publication in the Official Gazette.

#### **II. INTERCONNECTION OF THE SOLUTIONS CONTAINED IN THE PROPOSED PROVISIONS**

The solutions in this Law are connected with appropriate solutions provided for in the Law on the Judicial Council of the Republic of Macedonia, for which reason the two laws need to be adopted at the same session.

#### **III. CONSEQUENCES DERIVING FROM THE PROPOSED SOLUTIONS**

The adoption of this Law will fulfill one of the key observations of the Venice Commission in the field of the judiciary.

**DRAFT LAW AMENDING  
THE LAW ON THE JUDICIAL COUNCIL  
OF THE REPUBLIC OF MACEDONIA**

16.10.2017, Skopje

**Introduction**

**I. ASSESSMENT OF THE SITUATION IN THE AREA TO BE REGULATED AND REASONS FOR ADOPTION OF THE LAW**

The Law on the Judicial Council was adopted in 2006 with the aim of harmonising this matter with the constitutional amendments XXVIII and XXIX to the Constitution of the Republic of Macedonia. The system of election, dismissal and disciplinary liability of judges was among the most identified weakness of the judicial system noted in the Strategy for Reform of the Judicial System that the Government adopted in November 2004. To this end, special attention in the Reform was paid to the reinforcement of the independence of the judiciary, *inter alia*, by redefining the system of election and dismissal as well as redefining the position, composition and powers of the body that will make the election and dismissal. In order to provide conditions for professional, conscientious and independent performance of the juridical functions more activities were provided in the direction of maximum removal of political influences on the process for election and dismissal of judges. In that sense, the Strategy for Reform of the Judicial System provided redefinition of the position, competence and composition of the National Judicial Council. Thereby, as particularly important was noted that the "National Judicial Council should be composed of a majority of judges, who will be elected through direct elections from all judges, and the other members of the National Judicial Council will be elected by the Assembly of the Republic of Macedonia ..."

The Law on the Judicial Council of the Republic of Macedonia was amended five times and the amendments intervened in the provisions on the conditions for members of the Council from among the judges, election of a judge in a higher court, the disciplinary procedure as to the criteria and procedure for monitoring and evaluating the work of judges.

The main intention of the Government of the Republic of Macedonia to accede to the European Union requires continuation of the reforms in the judicial field and total reform of the judiciary.

In the past decade the Judicial Council worked without any transparency, Article 33 paragraph 2 which provides in which case the public may be excluded from the work of the Council was practiced as a rule and citizens of the Republic of Macedonia *de facto* had no opportunity to follow the election and dismissal of judges. The decisions of the Council were insufficiently reasoned and the candidates for judges who were not elected at the announcement were denied the right to appeal.

In addition, in 2015 the Law on the Council for Determination of Facts and Initiation of Proceedings for Liability of Judges was adopted, which transferred some of the jurisdiction of the Judicial Council to this body, the establishment of which was criticised by the international community. Namely, the opinion of the Venice Commission states that: "The functions of the Council for Determination of Facts should be transferred to the Judicial Council, provided that the members or bodies of the Judicial Council involved in the initial

phase of the disciplinary proceedings such as "prosecutors" or "investigators" do not participate in the final decision as "judges". This recommendation is implemented with the termination of the validity of the Law on the Council for Determination of Facts and Initiation of Proceedings for Liability of Judges and the transfer of the entire proceedings to the competence of the Judicial Council, with the members who initiated the proceedings and members participating in the investigation being not entitled to vote in the decision-making on disciplinary responsibility. The practice has showed that the formation of such a professional body to initiate a procedure to establish the liability of a judge did not fulfill the purpose of its establishment; on the contrary, it was established without having made a full analysis of the shortcomings in the Law on the Judicial Council which resulted in a negative report from the international institutions.

Because of the above reasons, it was deemed to be necessary to proceed to an urgent amendment of the provisions of this Law, which will provide for greater transparency in the work of the Council, simplify the disciplinary procedure for establishing the liability of a judge in accordance with international recommendations and the Programme of the Government of the Republic of Macedonia for the period 2017-2020, and restore the jurisdiction from the Council for Determination of Facts and Initiation of Proceedings for Establishment of Liability of a Judge to the Judicial Council regarding the initiation of the procedure for establishing the liability of a judge or president of a Court.

The text of the law submitted to the competent institutions for an opinion.

## **II. AIMS, PRINCIPLES AND BASIC SOLUTIONS**

The main purpose of the Law is to increase transparency in the work of the Council and to simplify the disciplinary procedure for establishing disciplinary liability of judges and in accordance with international recommendations and the Programme of the Government of the Republic of Macedonia for the period 2017-2020, and also to comply with the Proposed Law on Termination of the Council for Determination of Facts and Initiation of Proceedings for Liability of Judges.

The Law proposed to be adopted is based on the following principles:

- Legality
- Expertise and professionalism
- Respect for the standards of morals and ethics
- Responsibility
- Transparency

## **III. ASSESSMENT OF THE FINANCIAL IMPACT FROM THE PROPOSED LAW ON THE BUDGET AND OTHER PUBLIC ASSETS**

The adoption of the Law has no fiscal implications on the Budget of the Republic of Macedonia.

## **IV. ESTIMATION OF THE FINANCIAL MEANS NEEDED TO IMPLEMENT THE LAW, THE MANNER OF PROVIDING THEM, DATA ON WHETHER THE IMPLEMENTATION OF THE LAW WILL IMPOSE FINANCIAL OBLIGATIONS FOR CERTAIN ENTITIES**

The Law will not cause financial obligations for other entities.

## **V. SUMMARY PROCEEDINGS FOR ADOPTION OF THE LAW**

Given that it is not a large and complex law, pursuant to Rule 170 of the Rules of the Assembly of the Republic of Macedonia, it is proposed that this Law be adopted in a summary proceedings.

**DRAFT LAW AMENDING THE LAW ON THE JUDICIAL COUNCIL  
OF THE REPUBLIC OF MACEDONIA**

Article 1

The following words shall be added after the comma in Article 31 paragraph 1 line 15 of the Law on the Judicial Council of the Republic of Macedonia ("Official Gazette of the Republic of Macedonia" nos.60/2006, 69/2006, 150/2010, 100/2011, 20/2015 and 61/2015):  
" and shall publicly announce them,"

A new line 16 shall be added which reads:

*"- to act upon petitions and complaints of citizens and legal entities on the work of judges and courts;*

*The current line 16 shall become line 17.*

*In line 17, which becomes line 18 of the same article after the word "submit" the word "annual" shall be added.*

*Lines 18, 19 and 20 shall become lines 19, 20 and 21.*

*Two new paragraphs 2 and 3 shall be added in the same Article which read as follows:*

*"The Council must at least once a month hold a session to discuss individually on all petitions and complaints filed by citizens and legal entities on the work of judges and courts, as well as on the delay of court procedure and shall make a decision on each petition and complaint, within 60 days at the latest.*

*The session of the Council referred to in paragraph 2 "of this Article shall be public."*

Article 2

In Article 33 after paragraph 2, three new paragraphs 3, 4 and 5 shall be added which read as follows:

*"Where the Council has decided to exclude the public from the session, the President of the Council is obliged to inform the public about the reasons for excluding the public, and if at the same session a decision is made by voting, the voting on the decision shall be public.*

*When the Council decides on the election of the President of a Court or election of a judge the public may not be excluded in any case.*

*The minutes of the voting must be posted on the website of the Council.*

*The existing paragraph 3, which becomes paragraph 6, shall be amended as follows:*

*"The Council shall take minutes for the work at the session. The adopted minutes shall be posted on the website of the Council, except for the minutes of the session for which a decision was made to exclude the public **and is acted in** accordance with paragraph 3 of this Article."*

Article 3

In Article 36 paragraph 2 a new sentence shall be added after the full stop at the end of the paragraph which reads:

*"The Minister of Justice shall, when needed, inform the Judicial Council on the strategic plans of the Government of the Republic of Macedonia in relation to adopted measures and activities for reinforcement of the autonomy and independence of the judicial system."*

## Article 4

In Article 42 after paragraph 2 two new paragraphs 3 and 4 shall be added which read as follows:

*"Each member of the Council with a voting right shall publicly at a session of the Council explain his/her decision referred to in paragraph 2 of this Article."*

*The candidate who is not elected a judge or president of a court shall have the right to an appeal to the Supreme Court of the Republic of Macedonia within eight days from the receipt of the notification."*

## Article 5

In Article 44 after paragraph 2 a new paragraph 3 shall be added which reads as follows:

*" Each member of the Council with a voting right shall publicly at a session of the Council explain his/her decision referred to in paragraph 2 of this Article."*

## Article 6

The titles before the Articles and Articles 54, 55 and 56 shall be amended and read as follows:

*"Procedure for determination of accountability of a judge or president of a court*

*Article 54*

*The procedure for determination of accountability of a judge or president of a court (hereinafter: procedure) shall be initiated upon a request of a member of the Council, the court president, the president of the higher court or the general session of the Supreme Court of the Republic of Macedonia within six months from the day of finding out about the violation, but no longer than three years from the date of the violation.*

*The procedure shall be urgent and confidential, shall be conducted without the presence of the public and with respect for the reputation and dignity of the judge or court president taking into account the protection of personal data of the judge or court president in accordance with the regulations on personal data protection.*

*At the request of the judge or court president, the session may also be attended by a representative from the Association of Judges.*

*At the request of the judge or court president the Council shall decide that the procedure be public."*

*Application for initiation of procedure for determination  
of accountability of a judge or president of a court*

*Article 55*

*The application for initiating procedure for determination of accountability of a judge or president of a court (hereinafter: application) shall be filed to the Council and shall contain the full name of the judge or president of the court, address and place of residence, personal identification number, the court in which he/she performs the office, description of the violation, the legal title of the violation by citing provisions of the Law on the Courts and the proposed evidence to be examined at the hearing.*

*The evidence on which the application is based shall be enclosed with the application.*

*Commission for determination of accountability of a judge or president of a court*

*Article 56*

*The Council shall debate on the application for determination of accountability of a judge or president of a court if the application is timely, admissible and complete.*

*If the Council finds that the application is untimely, incomplete or inadmissible it shall reject the application with a decision.*

*If the Council accepts the application it shall, from its ranks based on the system of drawing lots, set up a Commission for determination of accountability of a judge or president of a court composed of a chairperson and two members (hereinafter: Commission).*

*If the Council sets up a Commission for determination of accountability of a judge or president of a court who belongs to the communities that are not majority in the Republic of Macedonia, the Commission shall be set up under paragraph 3 of this Article and it must include one member of the communities that are not majority in the Republic of Macedonia.*

*Article 7*

After Article 56 eight new Articles 56-a, 56-b, 56-c, 56-d, 56-e, 56-f, 56-g and 56-h shall be added which read as follows:

*Service*

*"Article 56-a*

*The Commission shall serve the application and evidence in person to the judge or president of a court against whom it has been filed.*

*The judge or president of a court may give written answers to the allegations in the application or give an oral statement in the minutes within eight days from the date of receipt of the application.*

*The judge or president of a court against whom the application has been filed shall have the right to a counsel who he/she himself informs and provides for the hearing.*

*The judge or president of a court shall, along with the answer to the application, submit all the evidence on which he/she bases his/her reply to the application or with which he/she refutes the allegations and evidence in the application.*

*The judge or president of a court in the reply to the application shall state the address at which the writs will be served to him/her during the procedure in writing, as well as the electronic address to which the writs will be served electronically.*

*During the procedure the writs shall be served by registered mail personally to the judge or president of a court and electronically to the address stated in the reply to the application referred to in paragraph 4 of this Article.*

*If the judge or president of a court is not found at the address stated in the reply to the application where the service of the writ is to be made, the bailiff shall leave a notification for receipt of the writ by which he/she is notified to come on a certain day and at certain time in a certain room of the Council to receive the notification. If the judge or president of a court fails to comply with the notification the service shall be considered to have been made on the date and at the time specified in the notification.*

*The electronic service shall be made under the provisions of the Civil Procedure Act.*

*Gathering data and evidence*

*Article 56-b*

*The Commission shall, with a request, collect data and evidence that are of interest to determine the situation relating to the determination of accountability of a judge or president of a court.*

*If the data and evidence referred to in paragraph 1 of this Article are kept in a state body, a body of the local self-government unit or by a natural or legal person who has been entrusted with public mandates, they shall be obliged without charge to submit them to the Council within*

*the deadline specified in the request referred to in paragraph 1 of this Article.*

*Hearing upon the application*

*Article 56-c*

*The Commission shall schedule a hearing within seven days from the date of receiving the reply to the application by the judge or president of the court.*

*The Commission shall work with all the members and shall be chaired by the Chairperson.*

*"Summons for a hearing*

*Article 56-d*

*The judge or the president of a court and their counsel to whom the evidence is served shall be summoned for the hearing.*

*If the judge or president of a court is properly summoned and fails to come for the hearing, and does not justify his/her absence, the hearing shall take place."*

*"Hearing*

*Article 56-e*

*The evidence proposed by the applicant, the judge or the president of a court and the evidence obtained by the Commission shall be examined at the hearing.*

*The judge or president of a court shall be entitled to state his/her view on all the evidence examined at the hearing orally in the minutes or in writing, within three days.*

*"Minutes*

*Article 56-f*

*Minutes shall be made for the actions taken at the hearing.*

*Minutes are taken by a person assigned by the Council, from the ranks of the Administrative Office of the Council.*

*The minutes shall contain in particular the following data: date, time and place of the hearing, the Chairman and members of the Commission and the person who takes the minutes, the names of the persons present, the statement of the judge or president of a court, that is, his/her counsel and evidence examined.*

*The minutes shall be signed by the applicant, the judge, or the president of the court, that is, their counsel, the Commission and the person taking the minutes.*

*If any of the persons mentioned in paragraph 4 of this Article does not sign the minutes, it shall be recorded therein.*

*Audio recording shall be made for the course of the hearing in addition to the minutes.*

*The minutes, that is, audio recording shall be reviewed within 48 hours and included in the minutes, along with the transcript of the audio recording."*

*"Commission's report*

*Article 56-g*

*The Commission shall, within 15 days after the conclusion of the hearing, submit a Report on the situation established upon the application with a proposed decision to the Council to decide on:*

- suspending the procedure,*
- imposing a disciplinary measure, or*
- dismissing the judge or president of the court for committing more serious disciplinary violation defined by law, which makes him/her unsuitable to perform the juridical office or unprofessional and unconscientious performance of the juridical office defined by law.*

*The Report should contain all the writs and acts that the Commission had at its disposal*

*during the procedure, the plead of the judge or president of the court, the description of the actions taken, and elaborated proposal for adjudication of the Council.*

*All writs on the case must be available to the members of the Council."*

*"Temporary removal*

*Article 56-h*

*The Commission may, with the Report and the proposed decision on the merits of the application, submit a proposed decision to the Council to temporarily remove the judge or president of the court from exercising the juridical office, in accordance with the Law on Courts.*

*Article 8*

Article 60 shall be amended and read as follows:

*"At the hearing before the Council the Chairman of the Commission shall elaborate the case and proposed decision.*

*At its session the Council shall debate on the Report of the Commission and decide on the proposed decision.*

*The Chairman and members of the Commission shall participate in the hearing before the Council but shall be excluded from the voting for the final decision.*

*The decision referred to in paragraph 2 of this Article shall be adopted by the Council by a majority vote of the total number of members of the Council with a voting right, except the members of the Commission referred to in paragraph 3 of this Article, at the same session in which the report referred to in paragraph 2 of this Article is considered.*

*When the Council decides on a proposed decision for a judge or president of a court who belongs to the communities that are not a majority in the Republic of Macedonia, it shall decide under Article 43 of the Law, in conjunction with paragraph 3 of this Article.*

*The judge or president of a court against whom a procedure for determining accountability is initiated may, during the procedure, apply for termination of his/her juridical office. In such case the Council shall suspend the procedure with a decision and shall conclude termination of the juridical office, at his/her request."*

*Article 9*

After Article 60 five new Articles 60-a, 60-b, 60-c, 60-d and 60-e shall be added and read as follows:

*"Council decisions*

*Article 60-a*

*After the conclusion of the hearing the Council may decide:*

- to suspend the procedure:*
- to impose a disciplinary measure, or*
- to dismiss the judge or president of a court due to committed more serious disciplinary violation defined by law, which makes him/her unsuitable to carry out the juridical office or unprofessional and unconscientious performance of the juridical office defined by law."*

*"Suspension of procedure*

*Article 60-b*

*When the Council finds that there are no grounds for accountability of the judge or president of a court, that is, that there was no violation committed defined by the Law on the Courts it shall decide to suspend the procedure.*

*When a decision is taken to suspend the procedure if a decision for temporary removal from*

*the performance of the juridical office is taken, that decision shall be put out of effect."*

*"Imposition of a disciplinary measure*

*Article 60-c*

*When the Council finds that the judge or president of a court committed a disciplinary violation defined by the Law on the Courts, it shall, with a decision, impose a disciplinary measure prescribed by law."*

*"Decision on dismissal*

*Article 60-d*

*When the Council finds that the judge or president of a court committed a more serious disciplinary violation defined in the Law on the Courts which makes him/her unsuitable to perform the juridical office or unprofessional and unconscientious performance of the juridical office defined by law, it shall dismiss him/her with a decision.*

*When the Council decides on the dismissal of the judge or president of a court, the Council may, by decision, temporarily remove the judge, that is, president of a court from exercising the juridical office, that is, the office of president of a court until the procedure has been concluded with a final decision.*

*Article 60-e*

*"If the Council during the debate on the proposed decision finds that it is required to further work on the case, it may remit the writs in the case to the Commission for further work, with instructions and guidelines which shall be obliged to submit the report on the case with all further implemented actions to the Council within 15 days."*

*Article 10*

Article 61 shall be amended and read as follows:

*"The decision referred to in Article 60 of this Law shall be prepared within 15 days from the date of its adoption and shall contain an introduction, enactment, reasoning and legal instruction.*

*A copy of the decision shall be served to the judge, that is, president of a court, his/her counsel, the applicant and the president of the court in which the judge carries out his/her office that is the president of the immediately higher court.*

*The service shall be made in accordance with Article 56-a of the Law."*

*Article 11*

Articles 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94 and 95 shall be deleted.

*Article 12*

Article 96 shall be amended and read as follows:

*"The judge or president of a court shall have a right to an appeal against the Council's decision to the Supreme Court of the Republic of Macedonia, within eight days from the date the decision was received.*

*The Supreme Court of the Republic of Macedonia shall, at a general session within 30 days at the latest, decide on the appeal, in the way that it may uphold or modify the Council's decision.*

*The President of the Supreme Court may participate in the discussion without the right*

to adjudication.

*If the applicant for establishment of accountability of a judge or president of a court is a judge of the Supreme Court of the Republic of Macedonia he/she shall be exempted from the decision-making.*

#### Article 13

Article 97 shall be amended and read as follows:

*"Re-opening of the procedure based on a final judgment  
of the European Court of Human Rights in Strasbourg*

#### Article 97

*"When the European Court of Human Rights finds a violation of a human right or fundamental freedoms foreseen in the European Convention for the Protection of Human Rights and Fundamental Freedoms and the Additional Protocols thereto, which the Republic of Macedonia has ratified, the judge or the president of a court whose rights have been violated, in the procedure in which the Judicial Council acted, may, within 30 days from the date the judgment of the European Court becomes final, apply to the Council for a retrial.*

*The Council shall submit the application to the Inter-Ministerial Commission for Implementation of the Decisions of the European Court of Human Rights, notifies it in accordance with Article 24 of the Law on the Execution of the Decisions of the European Court of Human Rights.*

*The Council is obliged in the retrial to comply with the legal positions stated in the final judgment of the European Court of Human Rights finding the violation of fundamental human rights and freedoms.*

*The Council may, in accordance with Article 25 of the Law on the Execution of the Decisions of the European Court of Human Rights, re-open the procedure to eliminate the violation and the consequences resulting from the violation.*

*The Council shall set up a Commission from its ranks composed of three members in order to act on the application for re-opening of the procedure.*

*The Commission shall assess whether the application lodged is timely, complete and admissible.*

*If it determines that it is timely, complete and admissible it shall submit a copy of the application to the applicant that initiated the procedure and he/she may give his opinion in writing within 7 days.*

*The Commission files a proposal for the merits of the application for retrial to the Council.*

*The Council at a session debated on the proposal and decides on the re-opening of the procedure in accordance with Article 60 paragraph 3 of the Law on the Judicial Council.*

*If the Council allows the re-opening of the procedure it shall repeal the decision in which the violation was found.*

*The re-opened procedure regarding the violation found shall be conducted in accordance with the provisions of the Law on the Judicial Council."*

#### Article 14

In Article 134 paragraph 4 the words "three days" shall be replaced with the words "24 hours".

#### Article 15

In Article 135 paragraph 1 the full stop at the end of the paragraph is deleted and the words "no later than 30 April in the current year" shall be added.

### Article 16

This Law shall come into force on the eighth day from the date of its publication in the "Official Gazette of the Republic of Macedonia".

## **REASONING OF THE PROPOSED LAW AMENDING THE LAW ON THE JUDICIAL COUNCIL OF THE REPUBLIC OF MACEDONIA**

### **I. REASONING OF THE CONTENT OF THE PROVISIONS OF THE PROPOSED LAW**

Amendments proposed are aimed at increasing transparency in the work of the Council and simplifying the disciplinary procedure for establishing the liability of a judge or president of a court, and in accordance with international recommendations and the Programme of the Government of the Republic of Macedonia for the period 2017- 2020, and at the same time in order to a Law on the Termination of Validity of the Law on the Council for Determination of Facts and Initiation of Proceedings for Liability of Judges, it is necessary this competence of the Council to be transferred back to the Judicial Council of the Republic of Macedonia.

The Proposed Law contains 16 Articles.

Article 1 extends the jurisdiction of the Judicial Council in relation to the handling of petitions and complaints of citizens for the work of judges.

Article 2 reinforces transparency in the work of the Council.

Article 3 provides for a possibility for the Minister of Justice if necessary to inform the Judicial Council of the strategic plans of the Government of the Republic of Macedonia in relation to adopted measures and actions to strengthen the autonomy and independence of the judicial system.

Articles 4 and 5 are aimed at strengthening transparency in the work of the Judicial Council.

Article 6 governs the proceedings for establishing the liability of a judge or president of a court and introduces the election of the members of the commission for establishment of liability based on a system of drawing lots.

Article 7 adds eight new articles governing the proceedings for establishment of liability of a judge or president of a court, and that proceedings with the enactment of the Law on Termination of Validity of the Law on the Determination of Facts and Initiation of Proceedings for Establishment of Liability of a Judge is transferred back to the Judicial Council, with embedded comments in accordance with international recommendations. It further regulates the service, the collection of evidence, the debate on the application. Namely, the Commission schedules a debate within seven days from the date it received a reply to the application of the judge or president of the court. The Commission works with all members and is chaired by the President.

Article 8 provides for the exclusion of the members of the Commission from the adjudication in the Council.

Article 9 adds five new Articles concerning the decisions of the Council and also provides a possibility if the Council during the debate on the proposed decision holds that the case needs to be further worked on, it may remit the writs of the case to the Commission for

further development, with instructions and guidelines, which must submit the report on the case with any further investigations undertaken to the Council within 15 days.

Article 10 specifies the deadline for making the Decision.

Article 11 deletes the articles of the Law that regulated both disciplinary proceedings for disciplinary liability and for dismissal of a judge, because of the introduction of a uniform procedure for determining the liability of a judge or president of a court.

Article 12 governs the manner of decision-making on appeals against decisions of the Council. That means the judge or the president of a court has the right to appeal against a decision of the Council, which is decided on at the general session of the Supreme Court.

Article 13 stipulates the manner of acting in the event of a final judgment adopted by the European Court of Human Rights in Strasbourg.

Article 14 shortens the deadline for deciding on detention for a judge from three days to 24 hours, because of the urgency of the proceedings.

Article 15 introduces a deadline for submitting the annual report to the Assembly of the Republic of Macedonia, that is, 30 April.

Article 16 regulates the entry into force of the Law.

## **II. INTERCONNECTIVITY OF THE SOLUTIONS CONTAINED IN THE PROPOSED PROVISIONS**

The solutions in this Law are connected with the Proposed Law on Termination of Validity of the Law on the Council Determination of Facts and Initiation of Proceedings for Establishment of Liability of a Judge, for which reason both laws need to be adopted at the same session.

## **III. CONSEQUENCES ARISING FROM THE PROPOSED SOLUTIONS**

The adoption of this Law will contribute to greater transparency in the work of the Council, simplifying the disciplinary procedure for establishment of liability of a judge or president of a court and it also means compliance with the recommendations given in international reports regarding the work of the Council, and with regard to the performance its function.

### **PROVISIONS OF THE LAW THAT ARE AMENDED**

#### **Jurisdiction Article 31**

The Council is authorised to:

- elect and dismiss judges,
- elect and dismiss presidents of courts,
- establish termination of the juridical office,
- elect and dismiss jury judges,
- monitor and evaluate the work of judges,
- decide on disciplinary accountability of judges,
- establish unprofessional and unethical performance of the juridical office,
- establish termination of the juridical office due to permanent incapacity for work as a judge,
- decide to revoke the immunity of a judge,
- decide on a request for approval of detention of a judge,

- nominate two judges of the Constitutional Court of the Republic of Macedonia from the ranks of judges,
- consider the annual report of the Supreme Court of the Republic of Macedonia on established principled positions and principled legal opinions on issues of importance to securing the uniform application of laws,
- decide on the temporary removal of a judge from carrying out his/her juridical office,
- determine the number of necessary juridical positions in courts,
- review and evaluate the quarterly and annual reports for the work of the courts,
- take care of the reputation of judges and citizens' trust in the judiciary,
- report for its work,
- adopt rules and other general acts that regulate the activities within its jurisdiction,
- establish approximate number of cases that a judge should decide per month, and
- perform other duties defined by law.

#### Transparency in the work Article 33

The Council sessions shall be public.

The public may be excluded by a decision of the Council only in order to protect the reputation and integrity of the judge or candidate for judge. The Council shall decide to exclude the public from its sessions by a two-third majority vote of the total number of the members of the Council with a voting right.

Minutes and stenographic notes shall be taken for the work of the session of the Council.

#### Rights, obligations and responsibilities of a member of the Council

##### Article 36

A Council member with a voting right shall have the following rights, obligations and responsibilities:

- to participate in the work and decisions of the Council,
- to give initiatives, proposals and opinions on matters within the competence of the Council,
- to take part in the working bodies of the Council in which he/she is elected,
- upon conclusion of the Council to examine the work of a judge and to take other actions and report to the Council thereof,
- is responsible for violation of the Constitution and the law in connection with the performance of the office in the Council, and
- perform other works defined by this Law.

The Minister of Justice as a member of the Council shall have the same rights, obligations and responsibilities as the members with a voting right referred to in paragraph 1 of this Article, except for the right of decision-making referred to in paragraph 1 line 1 and having an insight into the work of a judge upon the conclusion of the Council and taking other actions referred to in paragraph 1 line 4 of this Article.

#### Decision on the election of judges

##### Article 42

For appointment of judges the Council shall debate and decide at a session attended by at least two thirds of the members of the Council with a voting right.

The candidate who received two-thirds of the votes of the total number of the members of the Council with a voting right shall be elected a judge.

#### Election of the President of a Court

##### Article 44

The Council shall elect the president of a court from the judges candidates who applied to the call for election of president of a court by a two-third majority vote from the total number of

members of the Council with a voting right.

The Council shall elect for president a person who meets the requirements and criteria stipulated by the Law on the Courts.

#### Disciplinary procedures for establishing disciplinary accountability of a judge

##### Article 54

The disciplinary procedures for establishment of disciplinary accountability of a judge (hereinafter: disciplinary procedures) is initiated at the request of the Council for establishment of facts and initiation of procedure for establishment of accountability of a judge within six months from the date of learning of the violation, but no longer than three years from the date of the violation.

The disciplinary procedures shall be urgent and confidential, shall be conducted without the presence of the public and with respect for the reputation and dignity of the judge, thereby taking into account the protection of personal data of the judge in compliance with the regulations on personal data protection.

At the request of the judge the Council shall decide that procedure are conducted in the presence of the public.

#### Application for initiation of disciplinary procedures

##### Article 55

The application for disciplinary procedures under Article 54 paragraph 1 of this Law (hereinafter: the application) shall be submitted to the Council and contain the full name of the judge, address and place of residence, personal identification number, in which court the judge carries out his/her office, description of the disciplinary violation, the legal title of the violation by citing provisions of the Law on the Courts and the proposed evidence to be examined at the hearing.

The evidence on which the application is based shall be enclosed with the application.

#### Disciplinary Commission

##### Article 56

The Council based on the filed application for disciplinary procedures shall appoint a rapporteur from its ranks.

The rapporteur of paragraph 1 of this Article shall prepare a report on whether the application is timely, complete and admissible and submit it to the Council for decision-making.

If the Council finds that the application is untimely, incomplete or inadmissible it shall reject the application with a decision.

#### Debate on the application

##### Article 60

The Council at a session shall debate on the report of the rapporteur and decide to initiate disciplinary procedures or to suspend the disciplinary procedures.

The Council shall adopt the decision referred to in paragraph 1 of this Article by a majority vote of the total number of members of the Council with a voting right at the same session at which the report referred to in paragraph 1 of this Article is considered.

If the judge against whom the disciplinary procedures is conducted files an application for termination of the juridical office, the Council in the decision on termination of juridical office upon request shall conclude termination of the juridical office upon his/her request, in which it shall indicate that it was made while disciplinary procedures was being conducted against the judge.

In the case of paragraph 3 of this Article the disciplinary procedures shall be suspended.

### Service of decisions

#### Article 61

The decision under Article 60 of this Law shall be served to the applicant, the judge and the president of the court where the judge carries out his/her office.

### Temporary removal

#### Article 62

When the Council decides on initiating disciplinary procedures, the Council may, by decision, temporarily remove the judge from exercising the juridical office, pursuant to the Law on the Courts.

### Hearing before the Council

#### Article 63

The Council schedules a hearing within 15 days from the date of adoption of the decision to initiate disciplinary procedures.

The hearing shall be run by the rapporteur for the specific case.

### Summons for a hearing

#### Article 64

The applicant and the judge shall be summoned to the hearing; the evidence submitted by the Council for establishment of the facts and initiation of procedure for determination of accountability of a judge shall be served to them.

If the participants referred to in paragraph 1 of this Article who are duly summoned fail to appear, and do not justify their absence, the hearing shall take place.

#### Article 65

The evidence proposed by the applicant, the judge and the evidence collected during the procedure before the Council shall be examined at the hearing.

The judge shall have the right to give his/her opinion on all the evidence examined at the hearing.

### Modification of an application

#### Article 66

If the examined evidence suggests committed more serious disciplinary violation under Article 76 of the Law on the Courts which was not listed in the application, the applicant may modify the application by highlighting a new one, in addition to the existing one.

The applicant may modify the application in the minutes before the Council or request the hearing be postponed because of the preparation of the new application, and the judge may immediately reply to the application or ask for postponement of the hearing for the purpose of preparing a reply to the allegations in the modified application.

In case of postponement of the hearing for the purpose of preparing a reply to the allegations in the modified application the judge is obliged to submit, within three days, a reply to the modified application.

A copy of the minutes shall be handed over to the judge.

After the given reply to the application the rapporteur shall, within eight days, submit a report with proposals on the merits of the new application to the Council which decides on the continuation of the disciplinary procedures or suspension of the disciplinary procedures on the new application.

## Minutes

### Article 67

Minutes shall be composed of the actions taken at the hearing.

Minutes shall be taken by a person that will be appointed by the Council from among state counselors.

The minutes shall contain in particular the following data: date, time and place of the hearing, the rapporteur and the person who takes the minutes, the names of the persons present, the statement of the applicant, the statement of the judge, that is, his/her counsel and the evidence derived.

The minutes shall be signed by the applicant, the judge or his/her counsel, the rapporteur and the person taking the minutes.

The entire course or part of the hearing before the Council shall be in shorthand, that is, audio recorded.

The shorthand notes, that is, audio recording shall, within 48 hours, be translated, reviewed and included in the minutes, along with the transcript of the audio recording.

### Another committed disciplinary violation

### Article 68

If the examined evidence indicates another committed more serious disciplinary violation under Article 76 or disciplinary violation of Article 77 of the Law on the Courts with actions different from the actions with which the violation was made for which the disciplinary procedure is initiated, the applicant may extend the application by including another requirement in addition to the existing one.

The applicant may extend the application in the minutes before the Council or request the hearing be postponed because of the preparation of the new application, and the judge may immediately reply to the application or ask for postponement of the hearing for the purpose of preparing a reply to the allegations in the extended application and a copy of the minutes shall be handed over to the judge.

In case of postponement of the hearing for the purposes of preparing a reply to the allegations in the extended application, the judge shall submit a reply to the extended application within eight days.

After the given reply to the application the rapporteur shall, within eight days, submit a report with proposal on the merits of the extended application to the Council which decides to continue the disciplinary procedure or to suspend the disciplinary procedure upon the extended application.

The application shall not be considered an extended application if the applicant supplements the application with other acts of commission of the violation for which the procedure were initiated.

In the case referred to in paragraph 5 of this Article the judge is allowed to make a statement of other actions as well, and if the judge asks for postponement of the hearing for the preparation of the reply the Council shall postpone the hearing and a copy of the minutes shall be handed over to the judge.

In case of postponement of the hearing referred to in paragraph 6 of this Article the judge is obliged to reply to the application within the time period specified in paragraph 3 of this Article.

### Article 69

After the conclusion of the hearing the Council shall decide to:

- suspend the disciplinary procedures,
- impose disciplinary measures, or
- dismiss the judge for committed more serious disciplinary violation.

### Council decisions

#### Article 71

After the hearing at the session of the Council, the Council shall, no later than 15 days from the date of the holding of the hearing, may:

- suspend the disciplinary procedures,
- impose disciplinary measure appropriate to the violation, and
- dismiss the judge for committing serious more disciplinary violation.

The Council decision must contain an introduction, enacting clause and a reasoning.

### Suspension of the procedure

#### Article 72

When the Council determines that there has been no disciplinary violation it shall adopt a decision to suspend the procedure.

### Imposition of disciplinary measures

#### Article 73

Upon the establishment of disciplinary accountability of a judge, the Council may impose the following disciplinary measures:

- written warning,
- public reprimand, and
- reduction in salary of 15% to 30% of the monthly salary of a judge, for the period from one to six months.

The decision to impose a disciplinary measure referred to in paragraph 1 of this Article shall be adopted by a majority vote of the total number of members of the Council with a voting right.

#### Article 74

When imposing disciplinary measures referred to in Article 73 of this Law, the Council shall consider the following circumstances:

- the number and severity of the violations and their consequences,
- the degree of accountability,
- the circumstances under which the violation was committed,
- the previous work and conduct of the judge, and
- any other circumstances that may affect the type of decision, including the cooperativeness of the judge during the disciplinary procedures.

#### Article 75

The Council shall dismiss the judge for committed a more serious disciplinary violation under Article 76 of the Law on the Courts.

#### Article 76

The Council shall take the decision under Article 75 of this Law by a two-third majority vote of the total number of members of the Council with a voting right.

The decision shall be made in writing within 15 days from the date of its adoption.

A copy of the decision shall be submitted to the judge, his/her counsel, the applicant, the president of the court in which the judge carries out the office, that is, the president of the immediately higher court.

When a decision is made to suspend the disciplinary procedures, then if taken the decision on the temporary removal from the performance of the juridical office shall be put out of force.

Procedure for determination of unprofessional  
and unconscientious performance of the juridical office

Article 77

A judge shall be dismissed from his/her office due to unprofessional and unconscientious performance of the juridical office under the conditions defined by law.

Application for determining unprofessional  
and unconscientious performance of the juridical office

Article 78

The procedure for determination of unprofessional and unconscientious performance of the juridical office shall be initiated at the request of the Council for establishment of facts and initiation of procedure for determination of accountability of judges within one year from the date of learning about the violation.

The procedure shall be urgent and confidential, conducted in camera and by respecting the reputation and dignity of the judge, thereby taking into account the protection of the judge's personal data pursuant to the regulations for personal data protection.

At the request of the judge the Council shall decide that the procedure be conducted in the presence of the public.

The procedure for determination of unprofessional and unconscientious performance of the juridical office may not, in any case, be initiated if more than five years have passed from the date of the violation, unless a decision is made by the European Court of Human Rights for violation of Article 6 of the European Convention Human Rights or by the Supreme Court of the Republic of Macedonia regarding the right to a trial within a reasonable time, as a result of actions by the judge against whom the procedure has been initiated for determining unprofessional and unconscientious performance of the juridical office.

Content of the application

Article 79

The application for initiation of procedure for determination of unprofessional and unconscientious performance of the juridical office under Article 78 paragraph 1 of this Law (hereinafter: the application) shall be submitted to the Council and contain the full name of the judge, address and place of residence, personal identification number, the court in which he/she performs his/her office, description of the violation, the legal title of the violation by citing the provisions of the Law on the Courts and the proposed evidence to be examined at the hearing.

The evidence on which the application is based shall be enclosed with the application.

Commission for determining unprofessional  
and unconscientious performance of the juridical office

Article 80

Upon the application for determining unprofessional and unconscientious performance of the juridical office the Council shall appoint a rapporteur from its ranks.

The rapporteur of paragraph 1 of this Article shall prepare a report on whether the application is timely, complete and admissible and submit it to the Council for decision-making.

If the Council finds that the application is untimely, incomplete or inadmissible it shall reject the application with a decision.

Debate on the application

Article 84

The Council at a session shall debate on the report of the rapporteur and decide on the

initiation of procedure or suspension of the procedure.

The decision referred to in paragraph 1 of this Article shall be adopted by the Council by a majority vote of the total number of members of the Council with a voting right at the same session at which the report referred to in paragraph 1 of this Article is considered.

If the judge against whom procedure for determining unprofessional and unconscientious performance of the juridical office is conducted files an application for termination of his/her juridical office, the Council shall conclude in the decision on the termination of juridical office upon his/her request termination of his/her juridical office upon his/her request, in which it shall indicate that it is made at the time while procedure for determining unprofessional and unconscientious performance of the juridical office was being conducted against the judge.

In the case of paragraph 3 of this Article the procedure shall be suspended.

#### Service of the decision

##### Article 85

The decision referred to in Article 84 of this Law shall be served to the applicant, the judge and the president of the court where the judge performs his/her office.

Temporary removal

##### Article 86

When the Council makes a decision to initiate procedure for determining unprofessional and unconscientious performance of the juridical office, the Council may, with a decision, temporarily remove the judge from exercising the juridical office, pursuant to the Law on the Courts.

#### Hearing before the Council

##### Article 87

The Council shall schedule a hearing within 15 days from the date of the decision to initiate procedure for determining unprofessional and unconscientious performance of the juridical office.

The hearing shall be chaired by the rapporteur for the case at issue.

#### Summons for a hearing

##### Article 88

The applicant and the judge shall be summoned for the hearing; the evidence submitted by the Council for establishment of facts and initiation of procedure for determining disciplinary accountability of a judge shall be served to them.

If the participants referred to in paragraph 1 of this Article who are duly summoned fail to appear, and do not justify their absence, the hearing shall take place.

##### Article 89

The evidence proposed by the applicant, the judge and the evidence gathered during the procedure before the Council shall be examined at the hearing.

The judge shall have the right to state his/her view on all the evidence examined at the hearing.

#### Minutes

##### Article 90

Minutes shall be composed for the actions taken at the hearing.

The minutes shall be taken by a person assigned by the Council, from among state counselors. The minutes shall in particular contain data on the date, time and place of the hearing, the rapporteur and the person taking the minutes, the names of the persons present, the statement of the applicant, the statement of the judge, that is, his/her counsel and the evidence derived.

The minutes shall be signed by the applicant, the judge or his/her counsel, the rapporteur and the person taking the minutes.

The entire course or part of the hearing before the Council shall have shorthand notes, that is, shall be audio recorded.

The shorthand notes, that is, audio recording shall, within 48 hours, be translated, reviewed and included in the minutes, along with the transcript of the audio recording.

#### Another violation

##### Article 91

If the examined evidence point to another violation of Article 75 of the Law on the Courts with actions different from the actions with which the violation was committed for which the procedure was initiated, the applicant may extend the application by including another application in addition to the existing one.

The applicant may extend the application in the minutes before the Council or request the hearing be postponed for the purposes of preparing the new application, and the judge may immediately reply to the application or ask for postponement of the hearing for the purposes of preparing a reply to the allegations in the extended application and a copy of the minutes shall be handed over to the judge.

In case of postponement of the hearing for the purposes of preparing a reply to the allegations in the extended application the judge shall submit a reply to the extended application, within eight days.

Upon the given reply to the application, the rapporteur shall, within eight days, submit a report with a proposal on the merits of the extended application to the Council which shall decide to continue the procedure for determining unprofessional and unconscientious performance of the juridical office or to suspend the procedure on the extended application.

The application shall not be considered extended application if the applicant supplements the application with other acts of commission of the violation for which procedure have been brought.

In the case referred to in paragraph 5 of this Article the judge shall be allowed to state his/her views on other actions as well, and if the judge asks for postponement of the hearing for the preparation of a reply, the Council shall postpone the hearing and shall hand over to the judge a copy of the minutes.

In case of postponement of the hearing referred to in paragraph 6 of this Article, the judge is obliged to reply to the application within the period specified in paragraph 3 of this Article.

##### Article 92

After the conclusion of the hearing the Council shall decide to:

- suspend the procedure if incompetent and unconscientious performance of the juridical office has not been found, or
- dismiss the judge on grounds of incompetent and unconscientious performance of the juridical office.

#### Council decisions

##### Article 93

After the conclusion of the hearing the Council may, 30 days from the date of the hearing at the latest:

- suspend the procedure if incompetent and unconscientious performance of the juridical office has not been found; and
- dismiss the judge on grounds of incompetent and unconscientious performance of the juridical office.

The Council decision must contain an introduction, enacting clause and a reasoning.

##### Article 94

The Council shall, with a decision, dismiss a judge for unprofessional and unconscientious performance of the juridical office, if incompetent and unconscientious performance of the juridical office is found in the cases referred to in Article 75 of the Law on the Courts.

#### Article 95

The decision referred to in Article 94 of this Law shall be adopted by the Council with a two-third majority vote of the total number of members of the Council with a voting right.

The decision shall be made in writing within 15 days from the date of its adoption.

A copy of the decision shall be served to the judge, his/her counsel, the applicant, the president of the court in which the judge performs the office, that is, the president of the immediately higher court.

If the judge is not found at the address stated in the reply to the application where the service of the writ is to be made, the bailiff shall leave a written notice for receipt of the writ notifying to come on a certain date at a certain time in a certain room of the court to receive the writ. If the judge does not act upon the notice the service shall be deemed to have been made on the day and at the time specified in the notice.

When a decision on suspension of the procedure is made, if the decision on temporary removal from the performance of the juridical is made it shall be put out of force.

#### Right of appeal

#### Article 96

The judge shall have a right to appeal against the decision of the Council on dismissal of a judge, that is, on imposed disciplinary measure, to the Council on decision-making upon the appeals of the Judicial Council, set up at the Supreme Court of the Republic of Macedonia, within eight days from the date of receipt of the decision.

The Council on decision-making on an appeal is made up of nine members, of which three judges of the Supreme Court of the Republic of Macedonia, four judges from the courts of Appeal and two judges from the court of the judge against whom the procedure are conducted.

The President of the Supreme Court of the Republic of Macedonia may not be a member of the Council referred to in paragraph 1 of this Article.

The Council on decision-making on appeals may uphold or repeal the decision of the Council to dismiss the judge, that is, to impose a disciplinary measure.

The final decision on dismissal of the judge, that is, on imposed disciplinary measure shall be posted on the website of the Council within two days from the date the decision became final, in accordance with the regulations pertaining to personal data protection and classified information respecting the reputation and dignity of the judge.

#### Article 97

The provisions of this Law governing the procedure for determining disciplinary accountability, that is, the procedure for determining unprofessional and unconscientious performance of the juridical office shall also apply to the president of a court.

#### Ruling on a request for detention

#### Article 134

The Council at a session decides on the request for approval of detention of a judge, that is, upon the notification that the judge has been detained.

Following the notification of the detention of a judge who has not invoked immunity, the Council may decide to apply immunity to the judge, if it considers it necessary for the exercise of the juridical office.

If the Council does not approve detention, the judge shall be immediately released.

The procedure in which the Council decides to revoke the immunity of a judge is urgent and shall be conducted within three days of the submitted request, that is, notification for detention.

## Report on the work

### Article 135

The Council shall submit an annual report to the Assembly of the Republic of Macedonia for its work.

The report referred to in paragraph 1 of this Article shall be published.

The report shall contain data:

- on the number of elected and dismissed judges and jury judges,
- on the number of initiated and concluded disciplinary procedures,
- on the staff in the judiciary,
- on the material-financial situation in the judiciary,
- an assessment of the cooperation and relations of the courts with other judicial bodies and the bodies of the legislative and executive powers,
- evaluation of the situation in the judiciary for the protection of human rights and fundamental freedoms, and
- data on acting upon petitions and the proposals from citizens and institutions for the work of the judges and courts.

The report shall also contain evaluations of the work of judges in the Republic of Macedonia in terms of the quality and efficiency of their work, and other matters concerning the achievement of the independence and autonomy of the judiciary.

The Council at a session adopts the report on its work with a two-third majority vote from the total number of members with a voting right and submits it to the Assembly of the Republic of Macedonia for consideration and adoption.

Following the adoption of the report on its work, the Council shall submit it to all courts in the Republic of Macedonia.

If the Assembly does not adopt the report, it shall be a ground for initiating a debate before the bodies that elected the members of the Judicial Council for evaluation of their work in the Council.

**DRAFT LAW  
ON AMENDING THE LAW ON WITNESS PROTECTION**

16.10.2017, Skopje

**INTRODUCTION**

**I. ASSESSMENT OF THE SITUATION TO BE REGULATED BY THE LAW AND REASONS FOR ADOPTION OF THE LAW**

In the Republic of Macedonia witness protection is regulated by the Law on Witness Protection (Official Gazette of RM, nos.38/05 and 58/05). The Public Prosecutor's Office for Prosecution of Criminal Offences Related to and Arising from the Content of the Unlawful Monitoring of Communications was established by the Law on the Public Prosecutor's Office for Prosecution of Criminal Offences Related to and Arising from the Content of the Unlawful Monitoring of Communications (Official Gazette of RM, no.159/15). This Law also defines the responsibilities of this Public Prosecutor's Office, whereby the adoption of the Law on Amendments to the Law on Protection of Witnesses arises from the need to regulate the jurisdiction of the Public Prosecutor's Office for Prosecution of Criminal Offences Related to and Arising from the Content of the Unlawful Monitoring of Communications in the proceeding on witness protection.

In addition, it is necessary to consider on the one hand the specifics of the powers of this Public Prosecutor's Office as well as the sensitivity of the regulation of witness protection issue in terms that witnesses should have confidence to help law enforcement bodies and the prosecutor's office. At the same time, they should be certain that they will receive support and protection from intimidation and damage that criminal groups may inflict on them in an attempt to discourage or punish them for that cooperation.

The purpose of this proposed legislative amendment is to ensure conditions for implementation of the Law on the Public Prosecutor's Office for Prosecution of Criminal Offences Related to and Arising from the Content of the Unlawful Monitoring of Communications (Official Gazette of RM, no.159/15).

The adoption of this Law will ensure full implementation of the principle of autonomy of the Public Prosecutor's Office for Prosecution of Criminal Offences Related to and Arising from the Content of the Unlawful Monitoring of Communications, governed by Article 6 of the Law on Public Prosecutor's Office for Prosecution of Criminal Offences Related to and Arising from the Content of the Unlawful Monitoring of Communications (Official Gazette of RM, no.159/15), that is, will provide conditions for the Public Prosecutor for Prosecution of Criminal Offences Related to and Arising from the Content of the Unlawful Monitoring of Communications to enjoy full autonomy in the investigation and prosecution of crimes related to and arising from the content of the Unlawful Monitoring of communications.

In addition, this legislative amendment will further provide protection from impacts on the work of the Public Prosecutor's Office for Prosecution of Criminal Offences Related to and Arising from the Content of the Unlawful Monitoring of Communications embedded in paragraph 2 of Article 6 of the Law on the Public Prosecutor's Office for Prosecution of Criminal Offences Related to and Arising from the Content of the Unlawful Monitoring of Communications, where the legislator stipulates that "no Public Prosecutor in the Public Prosecutor's Office of the Republic of Macedonia, including the Public Prosecutor of the Republic of Macedonia, may

influence its work, or ask for reports related to cases from the Public Prosecutor or Public Prosecutors within the Public Prosecutor's Office.

According to the existing legal provision, a proposal for inclusion of a person in the Programme is filed by the Public Prosecutor of the Republic of Macedonia on the basis of a written request received from the competent public prosecutor, the judge handling the case or the MoI (Article 15). Then the Council decides, and for the possible extension of the inclusion in the Programme the Council again decides upon a proposal of the Public Prosecutor of the Republic of Macedonia or the Head of the Department.

The proceedings regulated in this way contains in itself an opportunity to indirectly influence the work of the Public Prosecutor's Office for Prosecution of Criminal Offences Related to and Arising from the Content of the Unlawful Monitoring of Communications given that under the current law (Article 15 of the Law on Witness Protection), the Public Prosecutor's Office for Prosecution of Criminal Offences Related to and Arising from the Content of the Unlawful Monitoring of Communications may file a request for making a proposal to the Public Prosecutor of the Republic of Macedonia for certain witness to be included in the Programme but there is no statutory provision obliging him/her to act upon that request.

Given that the Republic of Macedonia has in continuity been harmonizing the domestic legislation with European and international standards through their incorporation into the legal solutions, it is necessary to highlight the fact that in January 2015 the Republic of Macedonia ratified the United Nations Convention against Transnational Organised Crime, which together with its Protocols calls upon States to introduce adequate measures to prevent witness intimidation, coercion, corruption or corporal injury, and to strengthen international cooperation in this regard. However, the implementation of the existing Law on Witness Protection has not been properly analysed so far, and individual incidents suggest that it is necessary to further strengthen this practice. The need for proper application of this law and its further harmonisation is imposed in particular in terms of cross-border cooperation, particularly in relation to the change of identity and relocation of witnesses at risk. Witness protection is not an area that should only be implemented and supported by judicial authorities and the police; on the contrary this is highly sensible matter that requires broad approach and regulation. Current legislations in the European Union have absolved this matter and everywhere are present the observations that the proper implementation of the regulations regarding the protection of witnesses must be mutually or consensually accepted by all state institutions, supported and close to non-governmental organisations, and clear for the citizens. Hence, it is necessary to emphasise that in addition to the operationalisation of the obligations arising from the UN Convention for the Suppression of Transnational Crime and the Recommendation of the Committee of Ministers of the Council of Europe this Law should be a regulation for one of the most powerful means to combat organised crime; with it what should be achieved are the international standards for exchange and use of evidence; greater efficiency of court proceedings, and thus better results in the fight against sophisticated type of crime.

The proposed legal solution is a necessity and may even now eliminate the possibility of placing numerous obstacles in the work of the Public Prosecutor's Office for Prosecution of Criminal Offences Related to and Arising from the Content of the Unlawful Monitoring of Communications in the proceedings for the protection of witnesses.

## **II. AIMS, PRINCIPLES AND BASIC SOLUTIONS**

The purpose of the proposed law is to fully regulate the issue of protection of witnesses in proceedings for prosecution of criminal offences related to and arising arise from the content of the Unlawful Monitoring of communications.

The Proposed Law is based on the following principles: legality, autonomy of the Public Prosecutor in charge of the Public Prosecutor's Office for Prosecution of Criminal Offences Related to and Arising from the Content of the Unlawful Monitoring of Communications, hierarchy and subordination.

### **III. ASSESSMENT OF THE FINANCIAL IMPACT OF THE PROPOSED LAW ON THE BUDGET AND OTHER PUBLIC FINANCIAL ASSETS**

The provisions of the Proposed Law imply financial impact on the Budget of the Republic of Macedonia.

### **IV. ASSESSMENT OF THE FINANCIAL RESOURCES REQUIRED FOR THE IMPLEMENTATION OF THE LAW, THE MANNER OF THEIR PROVISION, DATA ON WHETHER THE IMPLEMENTATION OF THE LAW IMPOSES MATERIAL OBLIGATIONS FOR CERTAIN ENTITIES**

The means for the implementation of the law will be provided from the Budget of the Republic of Macedonia in terms of funding for the Public Prosecutor's Office for Prosecution of Criminal Offences Related to and Arising from the Content of the Unlawful Monitoring of Communications.

## **DRAFT LAW ON AMENDING THE LAW ON WITNESS PROTECTION**

### *Article 1*

In the Law on Witness Protection ("Official Gazette of the Republic of Macedonia" nos.38/05 and 58/05), in Article 2 paragraph 1 item 5 the words "or the Public Prosecutor for Prosecution of Criminal Offences Related to and Arising from the Content of the Unlawful Monitoring of Communications" are added after the words "the Council for witness protection".

### *Article 2*

In Article 12 paragraph 1 the words "or the Public Prosecutor for Prosecution of Criminal Offences Related to and Arising from the Content of the Unlawful Monitoring of Communications" are added after the words "the Council".

### *Article 3*

After Article 15 a new heading and a new Article 15-a are added which read:

*"Decision for inclusion in the Programme by the Public Prosecutor's Office for Prosecution of Criminal Offences Related to and Arising from the Content of the Unlawful Monitoring of Communications*

### *Article 15-a*

*For cases within the competence of the Public Prosecutor's Office for Prosecution of Criminal Offences Related to and Arising from the Content of the Unlawful Monitoring of Communications pursuant to the Law on the Public Prosecutor's Office for Prosecution of Criminal Offences Related to and Arising from the Content of the Unlawful Monitoring of Communications (Official Gazette of RM, no.159/15) a Decision for inclusion in the Programme referred to in Article 15 of this Law is taken by the Public Prosecutor for Prosecution of Criminal Offences Related to and Arising from the Content of the Unlawful Monitoring of Communications.*

*The decision referred to in paragraph 1 of this Article is taken by the Public Prosecutor for Prosecution of Criminal Offences Related to and Arising from the Content of the Unlawful Monitoring of Communications on the basis of a written request for inclusion in the Programme filed by the witness, the collaborator of justice, the victim appearing as a witness or the Ministry of the Interior.*

*A request for inclusion in the Programme referred to in paragraph 2 of this Article may also be filed by a person who, due to the possible danger of being subjected to intimidation, threat of retaliation or danger to life, health, freedom, physical integrity or property of a larger scale, disagrees to testify in the capacity of a witness in the criminal proceedings, following which the Public Prosecutor for Prosecution of Criminal Offences Related to and Arising from the Content of the Unlawful Monitoring of Communications shall provide data under Article 16 of this Law.*

*The Public Prosecutor for Prosecution of Criminal Offences Related to and Arising from the Content of the Unlawful Monitoring of Communications shall communicate to the Department all the necessary information for the person whose involvement in the Programme is requested in order to obtain an opinion containing a description and assessment of the danger that threatens the person, a proposal of the expenses for the implementation of the protection measures and the proposed measures for protection and their duration.*

*The Public Prosecutor for Prosecution of Criminal Offences Related to and Arising from the Content of the Unlawful Monitoring of Communications may decide to apply the protection measure of an "identity change".*

#### Article 4

In Article 16 paragraph 1 the words "and Article 15-a" are added after the words "Article 15 paragraph 2".

#### Article 5

In Article 18 paragraph 1 the words "or the Public Prosecutor for Prosecution of Criminal Offences Related to and Arising from the Content of the Unlawful Monitoring of Communications" are added after the words "the Council".

#### Article 6

A new heading and a new Article 19 are added after Article 19 which read:

*"Inclusion of a person in the Programme upon a decision of the Public Prosecutor's Office for Prosecution of Criminal Offences Related to and Arising from the Content of the Unlawful Monitoring of Communications*

#### Article 19-a

*If the Public Prosecutor's Office for Prosecution of Criminal Offences Related to and Arising from the Content of the Unlawful Monitoring of Communications decides on inclusion in the Programme, he/she will charge the Department with concluding an agreement with the person included in the Programme.*

*If the Public Prosecutor's Office for Prosecution of Criminal Offences Related to and Arising from the Content of the Unlawful Monitoring of Communications decides to include a close person in the Programme, he/she will charge the Department with concluding an agreement with the close person."*

#### Article 7

A new heading and a new Article 21-a are added after Article 21, which read:

*"Written consent to the inclusion in the Programme*

*Article 21-a*

*Before making the decision referred to in Article 19-a of this Law, the Public Prosecutor's Office for Prosecution of Criminal Offences Related to and Arising from the Content of the Unlawful Monitoring of Communications shall require the written consent of the person for whom proceedings are conducted for inclusion in the Programme.*

*The decision along with the written consent of the person to be included in the Programme referred to in paragraph 1 of this Article shall be submitted to the Department.*

*Article 8*

A new heading and a new Article 22-a are added after Article 22, which read:

*"Continuation of the Programme by the Public Prosecutor for Prosecution of Criminal Offences Related to and Arising from the Content of the Unlawful Monitoring of Communications*

*Article 22-a*

*Protection measures set out in the Programme and specified in the Agreement may be extended at the request of the Head of the Department or by a decision of the Public Prosecutor's Office for Prosecution of Criminal Offences Related to and Arising from the Content of the Unlawful Monitoring of Communications, if there is still need for protection of the person.*

*If there is no request from the Head of the Department, and there is still a need for protection of the person, the Public Prosecutor for Prosecution of Criminal Offences Related to and Arising from the Content of the Unlawful Monitoring of Communications may decide to extend the protection measures set out in the Programme.*

*The duration of the protection measures referred to in paragraphs 1 and 2 of this Article may be extended with the consent of the protected person only."*

*Article 9*

Two new paragraphs 2 and 3 are added in Article 23 after paragraph 1, which read:

*"In case when the Public Prosecutor for Prosecution of Criminal Offences Related to and Arising from the Content of the Unlawful Monitoring of Communications has available knowledge of the existence of the circumstances referred to in paragraph 1 of this Article, he/she shall notify the Department of the need for the application of emergency measures.*

*Upon receiving the notification referred to in paragraph 2 of this Article, the Department shall, within 24 hours, decide on their application, take those measures and notify the Public Prosecutor for Prosecution of Criminal Offences Related to and Arising from the Content of the Unlawful Monitoring of Communications thereof.*

*In paragraph 2, which becomes paragraph 4, the words "and 2" are added after the number "1", after the words "the Council" the word "and" is replaced by a comma, and the words "or Public Prosecutor's Office for Prosecution of Criminal Offences Related to and Arising from the Content of the Unlawful Monitoring of Communications are added after the words "Republic of Macedonia".*

Paragraph 5 shall become paragraph 7.

In paragraph 6, which becomes paragraph 8, the words "and 2" are added after the number "1", and the words "or the Public Prosecutor's Office for Prosecution of Criminal Offences Related to and Arising from the Content of the Unlawful Monitoring of Communications" are added after the words "the Council".

Paragraph 7 shall become paragraph 9.

#### Article 10

In Article 25, paragraph 1 the words "and Article 19-a" are added after the number "19", and the words "and Article 21-a" are added after the number "1".

#### Article 11

In Article 32 in paragraph 3 the words "or the Public Prosecutor for Prosecution of Criminal Offences Related to and Arising from the Content of the Unlawful Monitoring of Communications" are added after the words "shall inform in writing the Council".

In paragraph 3 in the second sentence the words "or the Public Prosecutor for Prosecution of Criminal Offences Related to and Arising from the Content of the Unlawful Monitoring of Communications" are added after the words "the Council".

#### Article 12

In Article 34 the words "the body that decided for inclusion in the Programme, that is" are added after the words "shall inform", and the words "or the Public Prosecutor for Prosecution of Criminal Offences Related to and Arising from the Content of the Unlawful Monitoring of Communications" are added after the words "the Council".

#### Article 13

A new paragraph 3 is added in Article 39 after paragraph 2, which reads:

*"In case when the decision on inclusion in the Programme is adopted pursuant to Article 15-a of this Law, the decision on termination of the Programme in accordance with paragraph 1 items 4 and 5 of this Article is taken by the Public Prosecutor for Prosecution of Criminal Offences Related to and Arising from the Content of the Unlawful Monitoring of Communications, upon the proposal from the Head of Department or the protected person, that is, his legal representative".*

#### Article 14

Within 15 days from the date of entry into force of this Law, the Public Prosecutor for Prosecution of Criminal Offences Related to and Arising from the Content of the Unlawful Monitoring of Communications shall, with a bylaw, prescribe the manner of keeping records, protection of keeping the writs and the registry, authorised persons and manner of acting upon the request of the witness, collaborator of justice and victim appearing as a witness filed to the Public Prosecutor's Office for Prosecution of Criminal Offences Related to and Arising from the Content of the Unlawful Monitoring of Communications.

#### Article 15

The proceedings for the protection of witnesses, collaborators of justice and victims appearing in the capacity of witnesses initiated before the entry into force of this Law shall continue to be conducted and concluded in accordance with the provisions of the Law on Witness Protection ("Official Gazette of the Republic of Macedonia" nos.38/05 and 58/05).

#### Article 16

This Law shall come into force on the eighth day from the date of its publication in the "Official Gazette of the Republic of Macedonia" and shall apply until the termination of validity of the Law on the Public Prosecutor's Office for Prosecution of Criminal Offences Related to and Arising from the Content of the Unlawful Monitoring of Communications.

**EXPLANATION  
ON THE DRAFT LAW ON AMENDING THE LAW  
ON WITNESS PROTECTION**

I. EXPLANATION OF THE CONTENT OF THE PROVISIONS OF THE PROPOSED LAW

The Proposed Law governs the competence of the Public Prosecutor's Office for Prosecution of Criminal Offences Related to and Arising from the Content of the Unlawful Monitoring of Communications in the proceedings for the protection of witnesses.

The Proposed Law on Amending the Law on Witness Protection contains 16 Articles. Article 1 of the Proposed Law harmonises the terminological position of this provision with the concept that is developed further in the next provisions of this Law.

Article 2 harmonises terminologically Article 12 of the Law by including the Public Prosecutor's Office for Prosecution of Criminal Offences Related to and Arising from the Content of the Unlawful Monitoring of Communications, in addition to the Council for Witness Protection.

Article 3 adds a new Article 15-a, which gives competences to the Public Prosecutor's Office for Prosecution of Criminal Offences Related to and Arising from the Content of the Unlawful Monitoring of Communications regarding the decision on inclusion in the Witness Protection Programme. Namely, pursuant to this Article, for cases within the competence of the Public Prosecutor's Office for Prosecution of Criminal Offences Related to and Arising from the Content of the Unlawful Monitoring of Communications pursuant to the Law on the Public Prosecutor's Office for Prosecution of Criminal Offences Related to and Arising from the Content of the Unlawful Monitoring of Communications the Decision on inclusion in the Programme referred to in Article 15 of this Law is made by the Public Prosecutor for Prosecution of Criminal Offences Related to and Arising from the Content of the Unlawful Monitoring of Communications. The Public Prosecutor for Prosecution of Criminal Offences Related to and Arising from the Content of the Unlawful Monitoring of Communications takes this Decision on the basis of a written request for inclusion in the Programme filed by the witness, collaborator of justice, victim appearing in the capacity of a witness or by the Ministry of the Interior. A request for inclusion in the Programme may also be filed by a person who, due to the possible danger of being subjected to intimidation, threat of retaliation or danger to life, health, freedom, physical integrity or property of a larger scale, disagrees to testify in the capacity of a witness in the criminal proceedings, following which the Public Prosecutor for Prosecution of Criminal Offences Related to and Arising from the Content of the Unlawful Monitoring of Communications shall provide the data under Article 16 of this Law. Furthermore, this Article stipulates that The Public Prosecutor for Prosecution of Criminal Offences Related to and Arising from the Content of the Unlawful Monitoring of Communications communicates to the Department all the necessary information for the person whose involvement in the Programme is requested in order to obtain an opinion containing a description and assessment of the danger that threatens the person, a proposal of the expenses for the implementation of the protection measures and the proposed measures for protection and their duration. This Article also gives competence to the Public Prosecutor for Prosecution of Criminal Offences Related to and Arising from the Content of the Unlawful Monitoring of Communications to decide on the application of the protection measure of an "identity change".

In Article 4, regarding the content of the request for inclusion in the Witness Protection Programme there is technical harmonisation with the addition of Article 15-a.

Article 5 which governs the conditions for inclusion in the Witness Protection Programme also makes technical harmonisation by adding the Public Prosecutor for Prosecution of Criminal

Offences Related to and Arising from the Content of the Unlawful Monitoring of Communications.

Article 6 adds a new Article 19-a which refers to the inclusion of a person in the Programme upon the decision of the Public Prosecutor's Office for Prosecution of Criminal Offences Related to and Arising from the Content of the Unlawful Monitoring of Communications. Namely, if the Public Prosecutor's Office for Prosecution of Criminal Offences Related to and Arising from the Content of the Unlawful Monitoring of Communications decides on inclusion in the Programme, he/she will charge the Department with concluding an agreement with the person included in the Programme. In addition, if the Public Prosecutor's Office for Prosecution of Criminal Offences Related to and Arising from the Content of the Unlawful Monitoring of Communications decides to include a close person in the Programme, he/she will charge the Department with concluding an agreement with the close person.

Article 7 adds a new Article 21-a which regulates the matter of written consent for the inclusion in the protection programme under the newly proposed Article 19-a. Namely, before making the decision referred to in Article 19-a of this Law, the Public Prosecutor's Office for Prosecution of Criminal Offences Related to and Arising from the Content of the Unlawful Monitoring of Communications requests the written consent of the person for whom proceedings are conducted for inclusion in the Programme. The decision along with the written consent of the person to be included in the Programme is submitted to the Department.

Article 8 adds a new Article 22-a that governs the matter of Extension of the Programme by Public Prosecutor for Prosecution of Criminal Offences Related to and Arising from the Content of the Unlawful Monitoring of Communications. Namely, the protection measures set out in the Programme and specified in the Agreement may be extended at the request of the Head of the Department or by a decision of the Public Prosecutor's Office for Prosecution of Criminal Offences Related to and Arising from the Content of the Unlawful Monitoring of Communications, if there is still need for protection of the person. If there is no request from the Head of the Department, and the person needs to be protected further, the Public Prosecutor for Prosecution of Criminal Offences Related to and Arising from the Content of the Unlawful Monitoring of Communications may decide to extend the protection measures set out in the Programme. The duration of the protection measures according to what is laid out may be extended with the consent of the protected person only.

Article 9 intervenes in Article 23 of the Law by adding two new paragraphs in respect of emergency measures. Namely, in case when the Public Prosecutor for Prosecution of Criminal Offences Related to and Arising from the Content of the Unlawful Monitoring of Communications has available knowledge of the existence of the circumstances referred to in paragraph 1 of this Article, he/she notifies the Department of the need for the application of emergency measures. Upon receiving the notification the Department, within 24 hours, decides on their application, takes those measures and notifies the Public Prosecutor for Prosecution of Criminal Offences Related to and Arising from the Content of the Unlawful Monitoring of Communications thereof.

This Article also makes terminological harmonisation with the addition of the Public Prosecutor for Prosecution of Criminal Offences Related to and Arising from the Content of the Unlawful Monitoring of Communications in the other paragraphs of Article 23 of the Law on Witness Protection.

Article 10 makes technical harmonisation with the addition of the grounds of Articles 19-a and 21-a, which have already been explained.

Articles 11 and 12 make terminological harmonisation with the addition of the Public Prosecutor's Office for Prosecution of Criminal Offences Related to and Arising from the Content of the Unlawful Monitoring of Communications.

Article 13 intervenes in the Article of the Law regulating the matter of termination of the Protection Programme. Namely, a new paragraph is added pursuant to which in case when the decision on inclusion in the Programme is adopted pursuant to Article 15-a of this Law, the decision on termination of the Programme in accordance with paragraph 1 items 4 and 5 of this Article is taken by the Public Prosecutor for Prosecution of Criminal Offences Related to and Arising from the Content of the Unlawful Monitoring of Communications, upon the proposal from the Head of Department or the protected person, that is, his legal representative.

Article 14 stipulates that within 15 days from the date of entry into force of this Law, the Public Prosecutor for Prosecution of Criminal Offences Related to and Arising from the Content of the Unlawful Monitoring of Communications with a bylaw prescribes the manner of keeping records, protection of keeping the writs and the registry, authorised persons and manner of acting upon the request of the witness, collaborator of justice and victim appearing as a witness filed to the Public Prosecutor's Office for Prosecution of Criminal Offences Related to and Arising from the Content of the Unlawful Monitoring of Communications.

Article 15 provides that the proceedings for the protection of witnesses, collaborators of justice and victims appearing in the capacity of witnesses initiated before the entry into force of this Law continue to be conducted and concluded in accordance with the provisions of the Law on Witness Protection ("Official Gazette of the Republic of Macedonia" nos.38/05 and 58/05).

Article 16 regulates the entry into force and implementation of this Law. Namely, pursuant to this Article, this Law enters into force on the eighth day from the date of its publication in the "Official Gazette of the Republic of Macedonia" and is applied until the termination of validity of the Law on the Public Prosecutor's Office for Prosecution of Criminal Offences Related to and Arising from the Content of the Unlawful Monitoring of Communications.

## II. INTERCONNECTION OF THE SOLUTIONS CONTAINED IN THE PROPOSED PROVISIONS

The proposed provisions are interrelated and as such make a whole legally and are applicable.

## III. CONSEQUENCES DERIVING FROM THE PROPOSED SOLUTIONS

The proposed text of the Proposed Law on Amending the Law on Witness Protection regulates the competence of the Public Prosecutor's Office for Prosecution of Criminal Offences Related to and Arising from the Content of the Unlawful Monitoring of Communications in the proceedings for the protection of witnesses.