Republic of Macedonia

The Reform of the Judicial System in the Republic of Macedonia

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I. INTRODUCTION

The process of transition of the Republic of Macedonia towards an economically developed, modern, democratic and legal state and civil society encountered certain weaknesses, hence, the need to intensify the reforms in all of the segments of societal life. EU and NATO membership of the Republic of Macedonia is conditioned with the existence of operational democratic institutions and legal State thereby the efficient and independent functioning of the judiciary is one of the most important attributes. These requirements are explicitly laid down in the Copenhagen criteria of the European Union, underpinning stable institutions and ensuring democracy, rule of law, protection of human rights and the rights of the communities. By signing the Stabilization and Association Agreement with the EU, the Republic of Macedonia is obliged, inter alia, to reform its legal system and harmonize its legislation and application of EC law, as well as to reform the structure of its judiciary in relations to the other two powers and ensure efficient functioning. Consequently, the National Programme for Approximation of Legislation with that of the EU and the Action Plan for its implementation is an activity envisaged to approximate the Macedonian legal system with the *acquis communautaire*.

Fulfilling the obligations stemming from the ratification of the Stabilization and Association Agreement with the EU is motivated by the need of the Macedonian judicial system to prepare itself to function as part of the European justice system, i.e., the system of the Member-States of the single European legal area.

To that end, the Government of the Republic of Macedonia striving towards an efficient legal system and a favourable business climate to attract foreign investors has identified the need to reform its judicial system as a strategic priority. To achieve the successful reform of the judiciary the Government of the Republic of Macedonia adopted the Strategy for the reform of the judicial system in November 2004. The Strategy needs to be seen as a part of a well-synchronized complementary reform project that encompasses: the reform of the executive power and the public administration, as well as the reform of local self-government in line with the economic reform.

The two key areas underpinning judicial reform are strengthening its independence and increasing its efficiency. Accomplishing judicial independence that will ensure fully impartial court decisions is a complex issue that very much influences the performance of other judicial institutions. Nevertheless, the success of the judicial reforms depends upon the level of development of the judicial and the broader political system, the readiness and the expectations, and above all, the efficiency of the institutions implementing the reform.

II. THE WEAKNESSES OF THE JUDICIAL SYSTEM

The weakness identified in the judicial system in the Republic of Macedonia, along with the directions of the future reforms and the specific actions are based upon numerous national and international analyses of the sector, comparative experience
from countries with stable political systems, and, above all, on international standards stemming from relevant international documents.

The analyses on the functioning of the judiciary in the Republic of Macedonia up to date identify a significant number of weaknesses, which address judicial independence, judicial efficiency and judicial accountability. The biggest problem seems to be the judicial inefficiency that reflects on:

- slow procedures and inaccessibility of justice;
- difficult and prolonged enforcement of final decisions in the civil cases;
- overburdened judicial institutions with minor cases;
- unorganised case management;
- obsolete IT equipment and insufficient use of IT;
- insufficient coordination between the Supreme Court, State Judicial Council and the Ministry of Justice;
- insufficiently skilled human resources, in professional and ethical terms;

The problems with the judicial independence seems to be connected with:

- the actual Constitutional and legal solutions for selection of judges and appointment of Public Prosecutors enable political influences;
- absence of detailed criteria for financing courts and the Public Prosecution;
- poor economic situation of the judges and court’s employees;

The problem with the judicial accountability seems to be connected with:

- the lack of continuous education system of judges, public prosecutors and other staff of the judiciary and the Public Prosecution;
- instances of unprofessional and unconscientiously behaviour and corruption;
- underdeveloped public relations

III. STRATEGY OBJECTIVES AND IMPLEMENTATION INSTRUMENTS

The Judicial Reform Strategy contains measures and actions for the Government and the Assembly of the Republic of Macedonia, as well as for the judiciary and the Public Prosecution directed towards setting up a new Constitutional and legal framework with improved organizational, managerial, material and human resource prerequisites for the purpose of performing the main function of the judicial system: legal protection of human freedoms and rights and ensuring rule of law and legal security to secure the development of a society based on the principles of democracy, market economy, human rights and freedoms and legal State.

The general goal of the Strategy is to put in place a functional and efficient justice system based on European legal standards.
The judicial system reform encompasses: substantive law reform, procedural law reform, and structural reform. Structural reform, on the other hand, covers the relations between the specific institutions within the judicial system, including their internal organization and competencies.

The substantive law reform, which directly is related to the contents of the functions of the judicial system, aims at setting up a new legal framework in line with European and international standards, a new system of legally recognized and protected values based on human freedoms and rights and other principles of democratic society and legal State.

The procedural law reform, which contains the basic tools for performing the functions of the judicial institutions, aims at prompt access to justice, prompt and easy exercise of the rights and interests of citizens and legal persons, efficient protection from crime, and litigation guarantees for protecting human rights through the mechanisms of the justice system. One of the direct effects of the reform should increase the efficiency of the judicial institutions and decrease the number of pending cases.

The structural reform, which covers the institutions of the judicial system, aims at redefining the position and competencies of specific bodies for the purpose of setting up efficient, stable, non-partisan, independent and accountable institutions, including the relations within the institutions based on professional, competent, ethical output and protection from abuse and corruption.

The accomplishment of the general and specific objectives of the Strategy is based on the following principles:

- Rule of law;
- Separation of powers into executive, legislative and judicial;
- Guaranteeing independence of the judiciary and the Public Prosecution;
- Equitable and appropriate representation of the communities in the judicial institutions;
- Protection of citizen's rights;
- Ensuring equal access to justice;
- Prompt and efficient action;
- Prevention of abuse and unconscientious acts or corruption;
- Adhering to the rules of professional conduct;
- Adopting European standards in the field of justice.

IV. MEASURES AND ACTIONS OF THE REFORM OF THE JUDICIAL SYSTEM

According to their contents, the measures and actions of the Strategy can be divided into: political actions, for the purpose of achieving political consensus for the adoption and implementation of the Strategy; legal measures, that refer to the adoption of the substantive, procedural and organizational legislation related to the field of judiciary; financial measures, that need to create the conditions for the new legal solutions, as well as for organizational, human resources, IT, technical and other measures and actions pertaining to the level of human resources, equipment and technology for
performing the functions of judicial institutions; training activities and a media-plan for promoting the basic ideas, directions and measures of the Strategy to bring in public support for its implementation.

1. **Strengthening the independence of the judiciary**

According to the Constitution, the judicial power is performed by the independent and autonomous courts on the basis of the Constitution, the laws and the international agreements ratified in compliance with the Constitution. The judiciary has a single organization and extraordinary courts are prohibited. The Constitution provides for judges to be elected for a life term. Judges are elected and dismissed by the Parliament of the Republic of Macedonia upon the proposal of the State Judicial Council.

The State Judicial Council was introduced for the first time in the Constitution of the Republic of Macedonia in 1991. It consists of seven members, distinguished legal professionals elected by the Parliament of the Republic of Macedonia. Among a lot of duties of the Judicial Council the most important is to propose the Parliament the list of judges to be elected or dismissed.

Key points that determine judicial independence are: selection, election and dismissal of judges, training of judges and financing the judiciary. Increasing the level of efficiency assumes changes in several segments of the judicial system that will eliminate the factors that have an impact on prolonging the procedures such as: weaknesses of the procedural legislation, inappropriate organizational structure of the judiciary, absence of a system for alternative resolving of disputes and the absence of a system that fully covers the judiciary with information technology.

So far the independence of judges and courts was, allegedly, secured through the selection of judges (proposal or election by an independent body defined by the Constitution), tenure and immunity for judges, requesting their assent to be moved elsewhere, and salaries that provide for secure, autonomous and independent social status. Practice, however, showed that judicial independence is especially threatened by two aspects: the manner of election and dismissal of judges and financial independence of the judiciary, including the necessary funds required to perform their function. The following will be undertaken to overcome such a situation and to enhance judicial independence:

a) Constitutional amendments related to the procedures for selecting judges.

b) Re-definition of the setup, competence, and composition of the State Judicial Council; The State Judicial Council shall be composed by mainly judges, directly elected by all judges, while the other members of the State Judicial Council shall be elected by the Parliament of the Republic of Macedonia bearing in mind the principle of equal representation of members of the communities;

c) The selection of candidate-judges shall be performed on the basis of an entry exam for the School for Judges, followed by a period of initial training and final examination, bearing in mind equal representation of members of the communities.

d) Successful completion of initial training will result with a final examination followed by judge-appointment by the Judicial Council.
e) Introducing a merit career system. The Judicial Council shall appoint the judges in higher courts as well as court presidents.

f) Adopting objective criteria for accountability of judges and clarifying the part that refers to disciplinary responsibility of judges and their immunity.

g) Establishing a Supervisory Body composed of exclusively judges and determining mechanisms for supervising the performance of the judges without prejudice to the court decision made.

Consequently, the previous rather unfavourable conditions of financial limitations remain to hinder the efficiency of the judiciary. To overcome this problem, it is necessary strengthen and improve the financing of courts on the basis of previously defined objective criteria, and also to adopt the regulations on salaries of judges since salaries are an important element for the independence of the judiciary.

The Government of the Republic of Macedonia already initiated the procedure for amending the Constitution. In that sense, in May 2005 the Parliament adopted the Proposal for initiating the Constitution’s amending and the main goal of those changes is to increase the independence of the judiciary.

2. Increasing court efficiency

The second big weakness of the court system—ineficiency, is planned to be overcome by three steps. The first one will be performed by:

a) Changes in the Organizational Setup and Competence of the Courts in the Republic of Macedonia

Establishing a dual system of first instance competence by introducing higher courts to deal with cases from the field of organized crime, corruption and major criminal offences; civil disputes above specific values; administrative, commercial and working relations disputes; bankruptcy cases and misdemeanour cases. The biggest “bottleneck” in the operation of first instance courts is misdemeanour cases. To overcome this exceptionally acute problem the new constitutional solution will give jurisdiction to the administrative bodies in resolving minor offenses in the field of traffic, customs, financial and commercial matters, but also specify certain constitutional and legal mechanisms for court protection of citizens against illegal acts of administrative bodies.

The registration of commercial undertakings will be exempt from court competence and will be performed by the Central registry.

The second step for increasing the court efficiency will be performed by:

b) Simplifying procedures

The analyses of the functioning of the judiciary system in the Republic of Macedonia done up-to-date reveal the following weaknesses: inefficient delivery of summons, slow procedures, poor management, frequent postponing of cases, and slow execution of court decisions.
To overcome such problems the new Law on enforcement and The Civil procedure law were prepared.

With the new Law on Enforcement adopted by the Assembly of the Republic of Macedonia on 5th May 2005 enforcement of the enforceable court judgments is completely excluded from the courts and the private bailiffs licensed by the Minister of Justice shall perform it. Once an enforceable court decision and a final administrative decision has been made and the deadline for voluntary satisfaction of the obligation established therein expires, then it becomes an enforcement document that the creditor delivers to an enforcement agent of their choice, who shall enforce it in the manner that they deem most appropriate. This concept will abandon the favourable position of the debtor and will also considerably reduce the bases for revoking the institutes of appeal and objection.

The new Law on Civil Procedure will determine clear positions of the court and the parties in a proceeding; will introduce more order and discipline in proceeding; and will ensure clear, precise submissions to the courts within a certain timeframe to enable a given court to properly apply the law and reach a decision. The novelties will also include: reviewing the notion of "substantive truth", i.e., investigation and hearing principle, and shifting the burden of proof to the parties; preventing the introduction of new facts and evidence in appeal procedures; introducing fines for abuse of authority by parties in a procedure; specifying a new way of summoning; abandoning the institute of adjournment of trial; and redefining some extraordinary legal remedies.

The third step to increase the court efficiency concerns:

c) The Introduction of an Information Technology System in the Courts

In order to simplify and accelerate court procedures and manage court cases more efficiently, the implementation of the Justice Information System Project will be intensified. A complete network will be put in place linking the IT systems in the courts, Public Prosecution, penitentiary institutions, Ministry of Justice, Ministry of Interior, and the State Judicial Council. The completion of the process of installing information technology and software applications in the judiciary and the Public Prosecution will ensure, inter alia, electronic and more precise statistics concerning the inflow of new cases and cases pending in each body, department and employee separately. The development of software applications in the courts, the Public Prosecutor's Office, the State Judicial Council and in the penitentiary institutions is almost completed- and that will considerably improve the efficiency of these institutions.