

REFORMS OF THE JUDICIAL SECTOR IN THE REPUBLIC OF NORTH MACEDONIA

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Abstract

The research of this scientific paper is based on the necessary reforms in the justice sector with the purpose of development a system of autonomous, independent and impartial judiciary and institutions that gravitate towards the achievement of its function of effective, quality and equitable justice is a central postulate of the principle of the rule of law and the humane and sustainable development of the Macedonian society as a community based on the right legitimised by respecting the highest general civilisation values.

Despite all new legal projects and new institutions in the judicial sector, incorporation of international standards and norms into the legal system, the problem of their inconsistent implementation and application has remained. The results achieved in the field of judiciary efficiency remain overshadowed by its impaired independence, resulting in a low degree of quality and distrust of citizens in the institutions of the justice system.

This paper has several main objectives, which represent unity and presuppose the phased overcoming of the weaknesses identified in the judiciary, its placement on the track of European and international standards and its stable functioning as the main pillar of the democratic state of the rule of law.

Keywords: Reform, judicial sector, rule of law, democratic.

1. Introduction

The improvement of the judicial system and its functioning is a key prerequisite for the development of the Republic of North Macedonia as a democratic state of the rule of law and a multicultural society of citizens with equal rights and freedoms and for its Euro-Atlantic integration. The development of a system of autonomous, independent and impartial judiciary and institutions that gravitate towards the achievement of its function of effective, quality and equitable justice is a central postulate of the principle of the rule of law and the humane and sustainable development of the Macedonian society as a community based on the right legitimised by respecting the highest general civilisation values.

Despite all new legal projects and new institutions in the judicial sector, incorporation of international standards and norms into the legal system, the problem of their inconsistent implementation and application has remained. The results achieved in the field of judiciary efficiency remain overshadowed by its impaired independence, resulting in a low degree of quality and distrust of citizens in the institutions of the justice system.

Civil Society Organisations have played a significant role in Macedonian society over the past years as a key factor contributing to resolving the political crisis in the country and maintaining minimum professional standards in the justice sector. The Association of Judges as a professional association has proved itself to be a very important civil organisation in the justice sector that has succeeded to survive in the past period and to impose itself as a relevant factor trying to maintain the professional dignity and expertise of the judges. This has not remained

unnoticed by the international community, which has noted its activity as a positive one. At the same time, the adoption and implementation the reform of the justice sector is essential to the preservation and promotion of the effects/benefits of the previous reform processes and activities, but also to the prevention of the regressions in the justice sector of the state identified over the past few years.

The reforms gives instructions, directions for improving the judicial system by overcoming the existing normative and institutional deficiencies permeating throughout the system, but above all, takes into account the main issue with the interference of the executive power and the partisanship, as causes of the regression and dysfunctionality of the judicial sector. The reforms should represent a roadmap for the Government to ensure all the preconditions within its competence to create an independent, impartial, efficient, high-quality and transparent judiciary responsible for the protection of individual rights and freedoms of citizens while protecting the public interest. On the other hand, the reforms sets out guidelines for creating legal conditions, as well as an environment for the judiciary to properly apply the principle of liability in its work.

2. Objectives of the Reforms

The Reforms has several main objectives, which represent unity and presuppose the phased overcoming of the weaknesses identified in the judiciary, its placement on the track of European and international standards and its stable functioning as the main pillar of the democratic state of the rule of law.

- Establishment of the principle of the rule of law as a top political and legal principle in regulating the relations among the three holders of power, with due respect to the autonomy, independence and integrity of the judicial power;
- Removal from the legal order and modification of the legal decisions that block the exercise of the judicial control function over the legality of the conduct of the executive power and the state administration;
- Re-examination of the functioning of certain institutions, whose constitutional and legal competence are the guarantees for ensuring the independence and efficiency;
- Re-examination of the judicial system and the public prosecution system from the aspect of the network and the competence of the institutions, their personnel and material capabilities;
- Re-examination of the system for evaluation of the quality and efficiency of the work of judges and public prosecutors;
- Simplification of the access to justice, reviewing free legal aid, court fees, attorneys' fees and costs for enforcement of judgments;
- Europeanisation of the judiciary and the public prosecutor's office through the introduction of European institutional and procedural legal, managerial and other standards in the functioning of the judiciary, public prosecutor's office and the attorneyship; (Strategy of reform of the judicial sector for the period 2017-2022 with an action plan).

3. Independence and impartiality of the justice system

The reform is based on the following principles: principle of compliance and consistency of policies with reforms, principle of fiscal sustainability of policies, principle of compliance with European Union policies, principle of relevance and reliability, principle of economy, efficiency and effectiveness, principle of transparency, the principle of accountability and responsibility, as well as the principle of sustainability.

The entry into the judiciary and the public prosecutor's office is one of the most important issues. The Republic of North Macedonia has adopted a legal framework which generally comprises the international standards of independent and impartial judiciary and proper functioning of the judicial system. Despite such normative foundation, there is a need to carry out additional legal interventions the implementation of which will ensure greater independence and impartiality in the work of the judiciary and the public prosecutor's office. (Strategy of reform of the judicial sector for the period 2017-2022 with an action plan).

An active stakeholder in the independence of each institution, hence the judiciary, is the financial autonomy. The Association of Judges has serious reactions and remarks on this part of judicial independence and has continuously been proposing measures to improve the situation. The independence of the judiciary may be guaranteed, among other things, with improved organisation and management of financial, personnel, information and other resources for the efficient operation of the court service and court personnel.

Reforms should particularly focus on: Timely filling of judge and public prosecutor positions by AJP candidates in accordance with legal criteria; clarification of the legal regulation for determining the deadline for publication of an advertisement for the election of a judge at least 6 months before the vacancy of a judge position; redefining the condition "prominent lawyer" where it is provided as a condition for selection through the determination of legal criteria: length of work experience, the matter with which they were professionally engaged, acquired certificates, awards, published professional and scientific works; improving the status of judges and public prosecutors through amendments and additions to the laws that will regulate all the rights of judges and public prosecutors; strengthening the legal guarantees for independent disposal of the court budget determined according to the gross domestic product and the needs of the judiciary with amendments and additions to the Law on the Court Budget based on an analysis, allocation of funds for the needs of the courts in terms of employment, expenses for current affairs and operation, maintenance and development of the information system and other infrastructure (capital expenditures), budget planning and budget projections and control and monitoring of the application of the Law on the judicial budget; creation of the Public Prosecutor's Budget Council within the framework of the Public Prosecutor's Office, which will be chaired by the Public Prosecutor of the RNM; implementation of the activities from the Human Resources Strategies for the judicial and public prosecutor's network in the direction of their personnel re-equipment according to the needs that they independently determine and implement; strengthening all constitutional and legal guarantees for the independence of the judiciary and the independence of the public prosecutor's office and protection from informal influences on the performance of their functions, and strengthening the integrity of the holders of the judicial and public prosecutor's office; protection of the integrity of judges and public prosecutors through effective application of internal mechanisms for resistance to corruption and political influences; the strengthened role of the president of the court in the mechanisms for exemption and resistance to corruption and political influences; amending the Law on Courts in

order to improve the status of lay judges in terms of their rights, including increasing their compensation, ensuring their presence at court processes and accountability. (Strategy of reform of the judicial sector for the period 2017-2022 with an action plan).

4. The principle of transparency of the justice system

The progress of the principle of transparency is visible and represents a motivation for improvement, especially regarding the issue of openness of the judiciary. Transparency can be achieved if the following reforms are made such as:

Strengthening the transparency of the Judicial Council and the Council of Public Prosecutors by establishing clear criteria, rules and procedures for the public at the sessions of the Judicial Council and the Council of Public Prosecutors and public announcement of all decisions on the selection, promotion and dismissal of judges and public prosecutors, as well as the decisions for determining disciplinary responsibility; the Council of Public Prosecutors should publish the registered candidates on a specific announcement for selection in the basic public prosecution office, the higher public prosecutor's office, the republic or in the basic public prosecutor's office for organized crime and corruption; the website of the CPP should be upgraded in more segments that would include the possibility to search for decisions, candidacy after published announcements as well as information related to the daily functioning of the Council of Public Prosecutors; strengthening the transparency of the Judicial Council, public announcement of conclusions, statistical analyzes and reports; strengthening of public relations capacities through continuous curricula and programs for strengthening communication skills and organizing trainings for public relations persons. (Strategy of reform of the judicial sector for the period 2017-2022 with an action plan).

5. Conclusion

The reforms gives instructions, directions for improving the judicial system by overcoming the existing normative and institutional deficiencies permeating throughout the system, but above all, takes into account the main issue with the interference of the executive power and the partisanship as causes of the regression and dysfunctionality of the judicial sector. The reforms should represent a roadmap for the Government to ensure all the preconditions within its competence to create an independent, impartial, efficient, high-quality and transparent judiciary responsible for the protection of individual rights and freedoms of citizens while protecting the public interest. On the other hand, the reforms sets out guidelines for creating legal conditions, as well as an environment for the judiciary to properly apply the principle of liability in its work.

So, the success of the judiciary reforms will by all means depend greatly on the political culture, but also on the (lack of) existence of a culture of judicial independence. Still, in order for such culture to be established, the preconditions must be created by having an appropriate institutional and legal framework.

Overall, the reform of the judicial system shows moderate progress, but the need to face certain challenges, raise the confidence of citizens, strengthen the integrity of judges and public prosecutors, neutralize various influences and pressures on judges and public prosecutors, continues to emerge. a media approach that will enable objective information of the citizens about the work of the courts and public prosecutor's offices and the cases on which they act.

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