

REFORMS IN THE JUDICIAL SYSTEM OF THE REPUBLIC OF N. MACEDONIA¹

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ABSTRACT

The development of the judicial system in the Republic of N.Macedonia is in three phases. The first phase begins with the independence of the state and lasts until the constitutional changes in 2001. The second phase starts mostly through the obtaining of the status for candidate for EU membership in 2005 when the laws on judiciary, prosecution, attorney, notary, enforcement agents and criminal procedural legislation were passed.

We are in the third phase of reforms that we can freely say that they are consequence of the political conditions that began in 2015 and for which the international screening found that the judicial system did not correspond properly with the newly created conditions in the country and failed to resist influences on it.

This paper aims to locate these situations and offer a solution for exiting and overcoming the qualification of a "captured judiciary" in the Republic of N.Macedonia.

KEY WORDS: judicial system, reforms, influences.

INTRODUCTION

Screening made by EU experts in 2015 and 2017 determined that reforms in the judicial system in the Republic of N.Macedonia are necessary because it

¹ review scientific paper

isincapable and ineffective to counter all kinds of corruption, and above all, political corruption. The Republic of N.Macedonia received an EU qualification "captured state". The reforms can be said to have started with the Strategy in December 2017, and the implementation began with a big delay, partly in April - May 2018, and mainly since September 2018 and still areundergoing. The delay was also noted in the latest Monitoring² conducted by the non-governmental sector. The reason for this delay by the government is that it was preoccupied with political and other issues (negotiations with Bulgaria and Greece, the name change treaty, referendum on the issue, etc.)

Research in this field gives one worrying data. Although it is a segment of government that should be independent from the influence of the executive and legislative power, however, the political will for reform and firm persistence of the implementation of the legal reforms is most evident. This behavior demonstrates that the political elite stands firmly behind the principle of power-sharing in the country, and since there is no perfect law that can not be abused, and in this case it is left to the goodwill of governing structures to pass laws and left it the judiciary to act in accordance with them.

STRATEGY AND LEGISLATION FOR REFORM IN THE JUDICIAL SYSTEM

Although remarks on the situation in the judiciary in the Republic of N.Macedonia have been coming from the EU, the CE and the OSCE, until 2017/2018. there was no more serious effort to make a step forward in the legislation, and especially in the strategy for building an independent third judicial authority. One of the key documents mentions - The strategy is passed, although this did not go without tremors and some of the experts who worked, so they got out of the team, they went to the place where they were ridiculed with the document. They argued that the Strategic Planning Council is a decor and that the whole thing is commanded by the Government through the Ministry of Justice.³

²Helsinki Committee for Human Rights in the Republic of Macedonia - (28.11.2018) Monitoring Brief for monitoring the reforms in the judiciary - (available at http://mhc.org.mk/system/uploads/redactor_assets/documents/3297/Infografik_final.Pdf)

³ [http:// true.mk / members of the reform council did not see all the laws](http://true.mk/members_of_the_reform_council_did_not_see_all_the_laws)

However, the Strategy for Changes in the Judiciary was adopted in November 2017, and in December a team was set up for implementation, and this team is personally led by Prime Minister Zoran Zaev, which is also subject to reexamination and criticism. The strategy identifies the necessary reforms in the sector, i.e. in the key laws - the Law on the Judicial Council of the Republic of N.Macedonia (SSRM), the Law on Courts (ZS), the Law on Public Prosecution of the Republic of N.Macedonia (JORM), the Law on the Council of Public Prosecutors of the Republic of N.Macedonia (PJORM), the Law on Public Prosecution Service, Special Public Prosecution (SLO)⁴ and others. The Government has shown understanding and initiated and, through the Ministry of Justice, in 2017, established a working group for the preparation of the Strategy for Reforms in the Judiciary Sector⁵, which was adopted on 29.11.2018.

Together with the Strategy, an Action Plan for its implementation was adopted. It must be emphasized that the institutions and implementers of the reforms have been identified. Budgeting for the time being is done in accordance with the Program for work of the Government and the Budget of the Republic of N.Macedonia. The expert public has doubts about whether all reform projects are appropriately budgeted.

There are also doubts and criticisms of the situation by EC. This is reflected in the last report for 2018, and in 2017, the EC expert group said that there were no changes in terms of what they noted as a weakness in 2015.

Despite the problems with the two-thirds majority in the Assembly of the Republic of N.Macedonia, since the key laws in this area are adopted by two-thirds of the MPs, the Government has managed to amend two laws in the area that are considered crucial - the Law on Judicial Council and the Law on Courts. The problem arises because after these changes have been

⁴ The full official name of this law is the Law of the Public Prosecutor's Office for prosecuting related crimes and arising from the content of illegal interception of communications

⁵ Ministry of Justice - Strategy for reforms in the judicial sector 2017/2022 with an action plan (2017) - (available on [http:// www. Pravda.gov.mk/resursi/12](http://www.Pravda.gov.mk/resursi/12))

made, additional remarks from the Venice Commission⁶ have been received, and now new amendments and supplements to these laws are made.

What is worrying about the expert public is the fact that all main remarks of the laws in this area refer to insufficiently precise solutions that ensure the independence of the judiciary and accountability in the area. The proposed amendments to these laws in the Strategy make an effort to ensure genuine independence of the judiciary as a third power, and the personal responsibility of judges and prosecutors to be raised to the level of precise criteria that will relate to the quality of their work.⁷

THE ROLE OF THE JUDICIAL COUNCIL IN REFORMS

The Judicial Council of the Republic of N.Macedonia is a body that decides on all situations in the judiciary, including the election and dismissal of judges. It was established in 2006 with the Law on the Judicial Council of the Republic of N.Macedonia⁸ and since then it has been formally "an independent body in the judiciary". Unfortunately, it is still only a formally independent and autonomous authority, and de facto, he failed to get rid of the influence of politics, and is constantly in the focus of the reports of international organizations, including the EU, with the Judicial Council of the Republic of N.Macedonia is evaluated in a negative context.

In the latest expert report of the EU, the so-called Priebe's report in 2017, the Judicial Council is mentioned 29 times, often in a negative context. It is most noteworthy that the Judicial Council of the Republic of N.Macedonia failed to break away from the influence of politics in the election or dismissal of judges, although such a recommendation was given in 2015.⁹ Due to such criticism, 6 amendments were made to the law, but regarding the election, dismissal and assessment of judges, the most fundamental changes were

⁶Government of the Republic of Macedonia - Minister of Justice Renata Deskoska at a meeting with the Venice Commission: Positive opinion on the amendments to the Law on the Judicial Council .. - (available at <https://vlada.mk/node/15564>)

⁷ <https://vlada.mk/node/15659>

⁸ Judicial Council of RM - Law on SSRM - (available at <https://bit.ly/2FTgBnn>)

⁹ EC - (2017) 2017, item 39 (available at https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/2017.09.14_seg_report_on_systemic_rol_issues_for_publication.pdf)

made in May 2018, with a much greater emphasis now on the qualitative assessment of judges than in the previous solution, the quantitative.¹⁰

I think it is appropriate to point out that the non-governmental sector that directly monitors the judiciary in the country gave recommendations for the deprofessionalization of the Judicial Council before the November 2017 Strategy for reform was adopted.¹¹ This was also acknowledged in the Government's Reform Strategy, as apart from the democratization of the Judicial Council, the de-professionalization and the responsiveness of the members of the Council of Public Prosecutors who were also included (page 6 of the Strategy). But at the last moment, the government abandoned its depreciation, explaining that it would not be able to prevent a conflict of interest that would arise (a judge of a lower court would retaliate, say, a judge of a higher court due to some decision of the higher court - an example given to the public by the Minister of Justice Renata Descoska.

The judicial and prosecutorial authorities in the Republic of N.Macedonia do not have a significant influence in determining the funds for the needs of the third (judicial) government. Only if you look at the latest annual report of the Judicial Council of the Republic of N.Macedonia,¹² it is quite clear that the judiciary constantly complains of a fraction of the money for normal functioning. It is characteristic that the judiciary is financed by a special law, according to which each year it should receive at least 0.8% of the state budget for the current year. The Public Prosecutor's Office is financed by submitting a summary report from all public prosecutors for their needs each year and submitting the projected amount to the Ministry of Finance. Judges on the other hand, according to the Law on the Salary for Judges, which was first introduced in 2007, "are entitled to a salary appropriate to the meaning and reputation of the judicial office they perform, the severity of their work

¹⁰ Draft-law Amending the Law on the Judicial Council (with an explanation) - Parliament of the Republic of Macedonia - available at: <https://www.sobranie.mk/materialdetails.nsp?materialId=c3c56866-11ea-4f51-bb63->

¹¹ Coalition All for Fair Trial (2017) - p.1 (available at: <http://all4fairtrials.org.mk/wp-content/uploads/2017/07a4bb901bd50b>

¹² Assembly of the Republic of Macedonia - Annual report on the work of the SSRM for 2017 (available at <https://www.sobranie.mk/materialdetails.nsp?materialId=c4f61542-8303-4177-86e0-fe94185e0103>)

and their responsibility" (Article 2 of the Law)¹³ . But although it is paid with coefficients from 2.8 to 3.7 on a base of over 400 euros, in 2015 the Law on Payment of Allowances was amended again on various basis of the basic salary up to 35%. However, that did not seem to work, because when choosing the new leadership of the Association of Judges in 2016, it was decided to work on the consistent application of the law on payroll, which practically meant that the judges were dissatisfied with their salaries.

As for the Council of Public Prosecutors of the Republic of N.Macedonia (SJORM), which is also the highest body in the prosecutor's office, it is formally legally independent and autonomous. In the Law on JSORM enacted in 2007 there are two members (Articles 2 and 3), 15 which emphasize autonomy and independence, i.e. the non-policy of the Council. However, in practice, it did not work. Until 2017, until the election of the new President of the Council, this body knew how to act as an extended arm of the previous political set, especially to the cases of the Special Public Prosecutor's Office.

Regarding the funding, it should be emphasized that in 2018 the budget for the Prosecution is greater than in the previous three years. There are other specifics. Since autumn 2015, the newly established Special Public Prosecutor's Office (PPO) has entered into budget financing. Only for the PPO there is no dilemma that the prosecutors (10 in number) pay salaries according to their dignity and work weight (between 2.5 and 3.5 thousand Euros by their own confession). In all other levels of prosecution, salaries vary depending on the level of prosecution and office. According to some data, prosecutors who are not in the SLI are taking a salary between 900 (lowest) and 1,800 euros for the state prosecutor.¹⁴ The fact is that, unlike judges, there is no special law on the salaries of prosecutors.

¹³ Law on Salaries of Judges - Fig. Journal 110/2007, p.69 - (available at <http://www.slvesnik.com.mk/Issues/603C9DC248EA3C40B8>)

¹⁴ Judiciary - (2018) Survey - The grantees pay wages, but stuck in loans ... (available at <http://www.sudstvo.mk/grande-plati/>)

HOW TO INDEPENDENT AND IMPARTIALITY JUDICIARY?

It is easy to conclude that with the method of pronouncing justice by the judges, the manner of explaining their decisions and the great distortions from case to case, the judges, themselves have deserved the criticism from domestic and international observers that judicial decisions are not immune from the influence of the political nature. In other words, they were not very concisely stated and were not - independent and impartial.

In the EU Progress Report for 2016¹⁵, it is explicitly stated that the government failed to deal with the problem that refers to the dependent judiciary.

The report of 2017 of Priebe's expert group,¹⁶ states that only one of the 12 recommendations of 2015 has been implemented and that many negative practices in the judiciary continue.

In the EU Progress Report of 2018, judicial reform is assessed with "good progress ... towards the beginning of the return of the independence of the judiciary".¹⁷

One of the indicators of independence and impartiality is the mandate of the judges. The fact is that they are elected with a lasting mandate and as regards the replacement of judges, it is not always done only because of the misconduct of the judges. In the current practice and the way of changing the position of one judge (what colloquially said progress or degradation) was not a transparent process. In any case, criteria exist, and the question is how they apply.

¹⁵ Assembly of the Republic of Macedonia - EC Progress Report on the Republic of Macedonia (2016), p.78 - (available at: https://www.sobranie.mk/content/%D0%9D%D0%A1%D0%95%D0%98/izveshtaj_na_evropskata_komisija_za_republika_makedonija_2016_godina-mk2-raboten_prevod.pdf)

¹⁶ EK – (2017) The former Yugoslav Republic of Macedonia: Assessment and recommendations of the Senior Experts' Group on systemic Rule of Law issues 2017, точка 39 (достапно на https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/2017.09.14_seg_report_on_systemic_rol_issues_for_publication.pdf)

¹⁷ European Commission Progress Report RM 2018, p.18 - (available at <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20180417-the-former-yugoslav-republic-of-macedonia-report.pdf>)

Appropriate criteria has been entered in the assessment of the work of the presidents of the courts in the qualitative assessment. As for the removal of individual judges from a case, there are guarantees in the law. However, the practice showed series of deviations.¹⁸

The election of the public prosecutor of the Republic of N.Macedonia, according to the law, is exclusively based on merit and his professional qualification. In addition to the general conditions, a number of special conditions are also required in the corresponding Article of the Law on the Public Prosecutor's Office. However, in the history of an independent N.Macedonia, there is no memory of a period, so even today, the public prosecutor should not be associated with the closeness on a party or other basis with any executive power. Although, several times, including the election of the last public prosecutor of the Republic of N.Macedonia, that rank has always been confirmed persons in the prosecution service, familiarity and speculation about the public prosecutor as a kind of political elite remains. The mandate of the state public prosecutor in the law is six years. Also, the public prosecutor has the right to be re-elected for another term. In practice this has not happened so far, and only one public prosecutor has been dismissed before the expiration of his mandate due to unlawful and untimely performance of his work.¹⁹ It is still a dilemma in the professional public who thinks that he has been dismissed without evidence and great debate, but with a political decision.

CONCLUSION

Based on the research and in detailed discussions with the experts who helped this paper, we can make the following recommendations:

1. Continuous expression of a strong political will for changes in the laws that will ensure independence, impartiality and efficiency of the justice system, but also consistent implementation of legal solutions without attempts for abuses;

¹⁸Pravdiko - Supreme Court annulled the transfer of seven judges from the Criminal Court - (2017) - (available at <https://www.pravdiko.mk/vrhoven-go-ponishti-premestuvaneto-na-sedum-sudii-od-krivichniot-sud/>)

¹⁹Academician - Parliament dismissed the public prosecutor Marko Zvrlevski - (available at <https://www.akademik.mk/assembly-go-razreshi-public-obvinitel-marko-zvrlevski>)

2. Providing solid legal instruments and their implementation that will prevent political corruption in the Public Prosecutor's Office;
3. Ensuring the continuity of the autonomy of the Special Public Prosecutor's Office;
4. Providing strong legal instruments and political will for their implementation in order to prevent political corruption in Basic Courts and factual corruption, which, for some of our experts, has no dilemma that exists in Courts of Appeals.

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