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REFORMS IN THE JUSTICE SYSTEM OF THE REPUBLIC OF MACEDONIA IN 2017

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After the long political crisis we went through under a governing regime with many elements of a totalitarian system, where almost all the institutions of this country were seized by the ruling party in the last ten years of governing, and after the change of the political regime with the installment of a new reforming government, many issues of consolidating democracy and the functioning of its democratic institutions were raised, and above all in regard to restoring confidence in the judiciary.

The initial reforms were made to mitigate the political influence on the judiciary through the constitutional changes in the field of Macedonian judiciary in 2006 concerning the election process and the composition of the Judicial Council in the Republic of Macedonia.

Constitutional changes in 2005 represent the core changes in the judiciary. Also, these changes affect the most tangible field of judicial power, namely the appointment of judges, their work control and their dismissal. According to Thomas Aquinas, the judges "must be the guardians of the truth", "in the courts they must be powerful in their function as scientists in the field of science ... and fabrication in courts as well as in science represents a moral guilt." [308]

In addition to the constitutional changes, reforms have been made in the field of legislation too, notably those relating to the Law on Courts, the Law on the Judicial Council and the Law on Public Prosecution.

Reforms in the judiciary were also made with the latest 2010 amendments to the relevant legislation. Firstly, worth mentioning is the amendment to the Law on the Judicial Council under which the Minister of Justice as a member has no right to vote. This way it is impossible for the Minister to vote in the Council in relation to the decision-making process by this body. However, this does not mean that the Council in this way will be immune from the influences of exclusive power.

Starting from the idea that "delayed justice is not justice" and as a result many constitutions and the European Convention on Human Rights (Article 6) guarantee the "right to a fair trial and on a fixed term" and that this article became one of the most widely used articles on the basis of which the appeals were supported by the European Court of Human Rights[309], the Republic of Macedonia, in order to ensure the most effective judicial protection in court proceedings, also implemented due reforms in this regard to provide further guarantees for the efficiency of court proceedings. These reforms provide for the definition of strict deadlines for carrying out certain actions in the judicial proceedings. However, achieving this is not easy at all. Therefore, a special effect in this regard may and should also be provided by the Supervision Service in the Republic of Macedonia. This Service should contribute to the speeding up of procedures and effective decision-making in court proceedings. Another important aspect of the protection of human rights is the reduction of court fees at a level that responds to the standard of living of the population. In the Republic of Macedonia the court fees are very high, and this makes the courts unreachable for the individual. There is no doubt that the reform and modernization of the judiciary in the Republic of Macedonia are the most important issues that need greater attention.[310]

Reforms were also unavoidable in extending to the public prosecutor's office to increase the efficiency of this body in combating crime and violators in this country.[311] Constitutional changes also affected the public procurement, as part of the judicial authority.

Considering the effect of the reforms so far in the field of judiciary, launched before 2017 in Macedonia, we can't overlooked the public opinion among the citizens of this country regarding this issue which is mostly negative when we speak about the independence of the courts in the country.

Therefore, a survey was carried out by students of the Department of Journalism at the Faculty of Law of

[308] These chages have to do with the amendments XX, XXI, XXII, XXIII,XXIV, XXV, XXVI, XXVII, XXVIII, XXIX, XXX, Official Gazette of RM,No.107/2005 dated 09.12.2005

[309] D.Gomien, D.Harris and R.Zwaak, "Law and Practice of the European Convention of Human Rights and the European Social Charter" Strasbourg, 1996, fq.157.

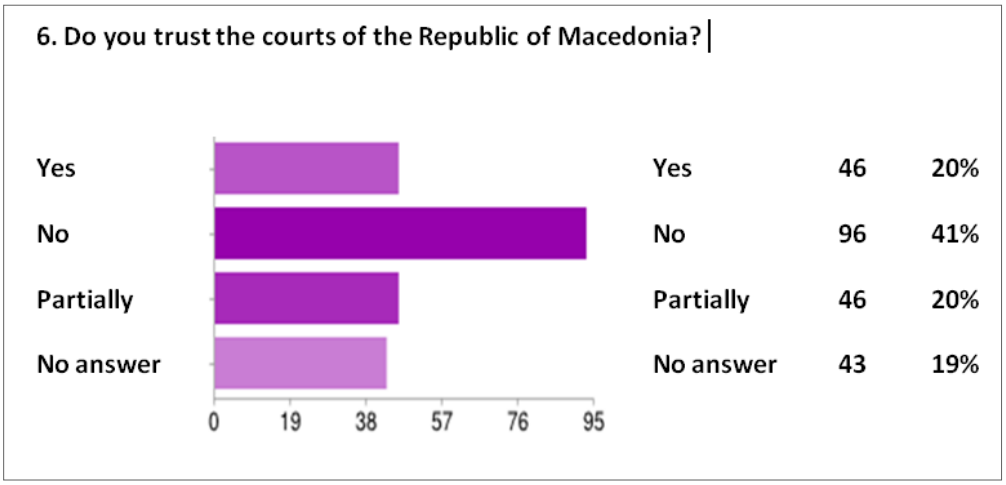
[310] Renata Treneseka – Deskoska, *Sudska Zashtita na Covekovite Prava*, Skopje, page 164;

[311] The Law on the Council of Public Prosecutors of the Republic of Macedonia, Official Gazette of the RM No 150/2007 dated 12.12.2007

the State University of Tetova in February 2013 regarding how citizens perceive reforms in the field of judiciary, whereby the results of this research give the weight and special importance to this work.

On the question to the citizens how much they trust the courts?

Only 20 % have replied with a Yes, whereas 41 % have replied with a No and with Partially 20 %, whereas 19 % have claimed to not have an answer.



Factors that lead to the introduction of new judicial reforms

Macedonia in the recent past has fallen behind in creating and securing the independence of institutions and the justice system. This occurred as a result of the heavy interventions of the executive power over the independent position of the judicial system in this country.

The strategic goals of the 2017 reforms in the judiciary are the independence and further supervision of the judiciary. In the last 10 years there have been serious violations in regard to the independence and impartiality of the institutions of the judiciary, with serious violations of legal norms in terms of their improper interpretation and direct intervention of executive power in the work of the judiciary and the prosecution. This was carried out through the dismissal of politically disloyal judges and prosecutors, non-transparent selection of new judges and prosecutors without the need to justify any of the concrete choice.

The perception that strictly written standards are respected by the judiciary and the prosecution in many areas, especially when it comes to corruptive cases that have a political dimension, is already largely exposed among most of the citizens of this country and these result in a loss of trust in the judicial institutions. [312]

The pressures over the judiciary and the prosecution in the last few years come from many institutional centers such as executive government, mayors, various public sector holders, media, family circles, as well as friends, business elites etc. This is a primary social problem, both for judges and prosecutors and for the citizens.

The Judicial Council of the Republic of Macedonia, despite the positive provisions that state that this should be an institution that protects the independence and the impartiality of the courts, has so far completely failed to enforce this role. It is not foreseen that the members of the Judicial Council elected from judges in Macedonia be accountable for their failures. The criteria for the selection of judges are not sufficiently objective, and the procedure of their selection is not sufficiently transparent.

The engagement in the profession of judges and prosecutors is quite bureaucratic and "hermetically" closed through the obligation to graduate within the Academy for Judges and Public Prosecutors.

The Judicial Council decisions on the selection of judges are not adequately justified. Reforms foresee that those decisions should be reasonably justified and publicly announced. There is a system incompatible with international standards in relation to the disciplinary responsibility of judges. The demand from the reforms is that judges and prosecutors apart from the Academy of Judges and Prosecutors, be elected also from experienced law practitioners as well as university professors, since the short experience of selection only from the Academy of Judges and Prosecutors in practice did not prove very effective. The academy served as a good ground for recruiting judges and prosecutors according to the loyalty towards the ruling political party.

[312] The Strategy and Action Plan for Judicial Reforms - issued by the Ministry of Justice in 2017, prepared by the group of experts formed by this ministry

Another factor that affects the independence of every institution is undoubtedly its financial autonomy. We are in preparation for measures that will positively influence in this regard as well. Reforms foresee a more active role of the Judicial Budget Council in identifying the needs of the judicial system. Financial independence represents an active role of justice institutions in improving the working conditions of the courts. There is a lack of ability in managing the courts and good profiling of court personnel. It has been found that presidents of courts should represent the courts more rightfully and exercise court administrative affairs without intervening and giving direction in the process of decision making about concrete cases of judges.

Enabling the Case Allocation (Automated Court Case Management Information System - ACCMIS) without the influence of external factors is also an important measure of the implementation of the principles set as strategic goals of these reforms.

The evaluation procedure of judges should be reviewed through the use of good comparative practices and experiences. The assessment above should all be based on the objective criteria and focus on the professional skills, experience and integrity of judges. As for the advancement of judges, the new reforms envisage that they are made in correlation with the judge's internship and the weight of the cases they have chosen.

It is also envisaged that judges in judicial decisions have the right and the possibility that if they disagree with the decision they have taken, they should do so in writing and describe the reasons why they have disagreed.

In many relevant international reports, the non-transparent work of the Judicial Council and the Council of Public Prosecutors has been established in view of the way in which their decisions are justified and the possibility for the general public to observe their work. There are critical remarks also in relation to the communication of high bodies of the judiciary with the general public, as well as with other important state institutions, primarily with the legislative power, and also other institutions.

All these findings related to the Judicial Council also apply to the Council of Prosecutors, which according to the wider public opinion is not quite active and has become unheard within the system of justice.

The judicial practice must be used as a means of argumentation in judicial decisions.

In November 2015, the Judicial Council made a decision to reduce the number of judges from 740 to 557 without analyzing how this would reflect on the efficiency of the court work.

The Supreme Court exercises the right to adopt legal positions and principles and give legal opinions in the context of the implementation of the Constitution, laws and other acts that ensure equality before the law for all legal entities, and through this respect the freedoms and rights of human beings. The last legal position and principle was published in 2014. This data indicates that the Supreme Court failed to exercise its constitutional and legal obligations effectively.

In 2016, court and prosecutorial budgets were considerably smaller than the European average per capita, while the number of judges and court staff per 100,000 inhabitants is significantly higher than the European average, which compromises the efficiency of courts. Another worrying problem is that only 14.5% of court employees are professional associates. There are no adequate criteria regarding the selection and accountability of court administrators.[313]

In the work of the public prosecutor's office, a selective approach was found especially in cases that affect or are related to political affiliation, resulting in the formation of a special prosecution for prosecution of criminal offenses arising from the illegal wiretapping carried out by state authorities in recent years.

In the past period, the public witnessed the frequent exceeding of official competencies by police officers, but on the other hand, we lacked the measures in relation to their accountability. In this case, the reform would mean dealing with the need for the establishment of special organizational units for the prosecution and resolution of these cases within the public prosecutor's office and the Office of the Ombudsman.

It can be concluded that there is no strategic approach to policy making in the field of judiciary. Establishing development policies and forms in the field of judiciary in the country does not only imply legislative initiative and change of existing legislation, but also a range of other activities related to tracking the situation in the relevant field, various analysis and undertaking concrete measures and actions.

[313] The Strategy and Action Plan for Judicial Reform - issued by the Ministry of Justice in 2017, prepared by the group of experts formed by this ministry – a part of this group is also the author of this paper

Preparing the Strategy in the Justice Sector and tracking its implementation is one of the actions that make up the strategic planning and policy making.[314]

The instant placement of cases in the first instance courts and their annual work reports speak of a notable imbalance in their work according to the number of cases they decide, and then a series of omissions that have been noted in their work suggesting measures towards assessment of their functioning and managing. Through this we notice a well argued need to reduce the number of basic courts in the country.

In relation to the second instance courts, it is legitimate to address the issue of the admissibility of legal application practice, as well as the same workload and the appropriateness for all these courts. In this regard Macedonia departs from the practice of other countries, taking as an example the case of Croatia, where the allocation of cases into second instance courts is done automatically, with which the courts do not know in advance where the second degree cases will be completed. According to this approach, judicial practice is better accepted, and we have a better balance in the workload and allocation of cases at the level of second instance courts.

Also, in regard to the second instance of the administrative court, i.e. the High Administrative Court, starting from its inefficient and dysfunctional work until now all the way to its unnecessary financial implications, we see the need for the non-existence of this court degree as a separate one. This implies that the court should be organized as a special unit within the Supreme Court.

All relevant international reports suggest a decrease in the number of judges, as this number is not in line with the standards for the number of judges per capita. Such an approach will provide benefits in terms of organization and financing in relation to the creation of better organizational and financial conditions for judges.

In the coming period, it is important to make a clear distinction between the protection of constitutionally guaranteed rights that are in the competence of regular courts and those that are or should be in the competence of the Constitutional Court. If the analysis indicates that it is necessary to establish a constitutional complaint as a mechanism for the protection of human rights and freedoms guaranteed by the Constitution and the European Convention on Human Rights, as the last filter before a lawsuit is initiated against the state at the European Court of Human Rights, it is necessary in advance to re-organize and strengthen the capacities of the Constitutional Court in terms of staffing and professionalism.

The reform strategy also envisages for the President of the Supreme Court to participate in the work of the Judicial Council, but without the right to vote which is similar to the position of the Minister of Justice.

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