

Private legal aspects of the Republic of North Macedonia towards EU

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Abstract

Much has been said and done since the Republic of North Macedonia became an EU candidate country.

The Republic of North Macedonia deserves progress in moving closer to the European Union and NATO, avoiding obstacles on this path, and starting negotiations.

The purpose of this paper is to clarify the path that Macedonia decided to follow long time ago. The Government of the Republic of North Macedonia remains committed to the reforms related to the date for the opening of negotiations for membership in the European Union, despite the recent decision of the EU, as well as NATO membership, first to ensure fair governance, stability, economic development of the country and better life of the citizens.

Failure to set a date at a time when North Macedonia has received the most positive report so far, with the recommendation to start talks was a blow to the institutions and the country, primarily due to the closure of one of the most sensitive issues, that of changing of the name. Thus, not giving the date can open many issues, it may eventually return nationalism, radicalism, populism that do not bring progress. The possible consequences for the state are low motivation for reforms, fostering a climate of political division, and even a possible political crisis.

Because of these risks, and despite the same ones, the Government must continue its well-directed diplomatic commitments and continue with the reforms, but within the framework of a clearly defined strategy with incorporated national priorities.

The general feeling is that the EU, instead of criticizing and setting new conditions for Macedonia, decided to encourage it to continue with the reforms, this may be due to the fear coming from many authors that the countries of the Western Balkans are losing their confidence in the EU integration process.

The methods that i used in this paper are related to qualitative and quantitative methods, comparative methods, and historic methods.

Keywords: Analysis, Consolidation of legislation, Private legal aspect of RMN, Jurisprudence, *Acquis Communautaire*, Ability to take on membership obligations.

1. Rule of law as a fundamental right

1.1. Jurisprudence

Harmonization of national legislation with the law of the European Union *Acquis Communautaire*

The country has achieved a degree of readiness to implement the *acquis* and European standards in this area. Recent legislative changes mainly refer to **"urgent reforms", as well as the recommendations of the Venice Commission, legal changes, in the field of justice, non-discrimination and police.** The Venice Commission praised the authorities' ongoing efforts to align the justice system with international standards and practices. The country has accelerated the implementation of the strategy in judicial reform. Regular monitoring at all levels is necessary to ensure compliance with the deadlines given. In addition to legal changes, it is relevant to note that all institutions make additional efforts to restore trust in the judiciary.

In the coming year, the country should especially:

→ Continue the strategic implementation of justice reforms, giving priority to human resources and the management of the electronic court case system (AKMIS), which would reflect security in the functioning of this system.

→ Ensure the continuous implementation of the new naming rules, disciplinary procedures, and dismissal of judges where they would prove

that the independence of the judicial system is respected, supported and promoted in all instances, protecting it from any political danger.

→ Implement the Judicial Council reform and approve a reform for the Council of Public Prosecutors.

→ Strategic document: The strategic plan for judicial reform in the period 2017-2022 is a guiding document of the reform in this sector as an action plan, updated in October 2018, which is continuing its implementation. **The Ministry of Justice has brought many legal changes that regulate this sector, especially in the Law on Courts and the Judicial Council, in accordance with the recommendations of the Venice Commission, the Criminal Code and the Law on Minor Offenses.** (Action Plan for the implementation of the Reform Strategy in the Judicial Sector 2017-2022, p.36, Ministry of Justice).

→ Amendments to the Law on the Council of Public Prosecutors are envisaged, which has not yet been adopted. The council does not yet have enough resources and a separate budget, which calls into question its independence from the State Public Prosecutor's Office. The council must exercise its role proactively.

¹Judicial Sector Reform Strategy for the period 2017-2022, RMV, Ministry of Justice

The Judicial Council retained its composition with mixed members. In 2018, the judges elected six new members of the Judicial Council and the President of the Council was elected by this group in April 2019. **In May 2018, the Law on the Judicial Council was amended, and in April 2019 in consultation with the Venice Commission, the Council responsibly updated its internal rules.** The Council remains a full-time professional body, while the new provision removes the possibility of direct renewal of the six-year term of its members.

1.2. Efficiency - Almost all courts maintained a rate of resolution of cases of 100% or more, showing continued efficiency.

→ The implementation of the Language law *may* have an impact on the efficiency of courts and prosecutors' offices.

In December 2018, amendments were made to the Law on Judges' Salaries, as well as the Law on Judicial Service, providing additional payment methods for judges and judicial administration.

In terms of efficiency, progress has been made in reducing the number of remaining cases in the judicial system. A significant number of cases and

out-of-court cases were removed from the judicial system because of the transfer of competencies of professional bailiffs and notaries.

Thus, **the amendment to the Law on Notaries was adopted in December 2018. The new tariff for police officers was adopted in February 2019.** Overall, the system proved to be an improvement over the previous one, however, the total cost of implementation and duration of the procedure still hamper efficiency in the system. This, together with the mandatory presence of a lawyer during the notarial procedure (including inheritance) prevents intervention access to justice.

→ While improving efficiency in jurisprudence is a significant achievement, care must be taken to ensure that the quality of jurisprudence is given equal priority.

Conclusion: In general, in relation to jurisprudence, there are legal and institutional safeguards, but additional efforts are needed to guarantee independence and impartiality in practice. Progress has been made in reducing the number of unresolved cases. Additional efforts are needed to establish a clear and transparent basis, which will ensure proportionate dismissal procedures, and which will significantly improve the implementation of the appointment of judges based on merit and career development. (The political spectrum is in an internal debate over the Vetting of Judges, following the elections due to be held on April 12, 2019).

1.3. Anti-corruption policy - Additional changes were made to the legal framework. **Amendments have been made to the Law on Financing of Political Parties and the Law on Prevention of Conflict of Interest, which improved the control and executive powers of the competent authorities.**

Stricter penalties for corruption-related offenses were imposed by the courts. However, only in a few cases is there an order to seize and confiscate property.

→ The dossier of investigations, prosecutions, and charges, including the full use of available means of coercion and special investigative techniques should be determined in the future.

→ The overall capacity of the judiciary to deal with corruption cases remains to be improved. Only a small number of high-level corruption cases have been prosecuted and almost all remain in the judiciary even after many years, after being returned for retrial on appeal, due to inadequate review of evidence by the court in the first instance

(Government Action Plan of RNM, 2017-2022, Government of the Republic of North Macedonia, Skopje).

Customs Administration enforced their system of internal self-control, by doubling the number of procedures against the customs employees.

→ Corruption in public supplies continues to be a serious problem. The institutional frame and undertaken measures remain disabled for efficient resolution of this phenomenon. There is necessary an additional improvement of the existing legislation for confrontation with risks from corruption and increasing of the transparency in public supplies. The system for internal control in the central and local administration remains weak. The efficient mechanisms of “whispering” in the public and private sector should be determined in the future.

There exist some criminal accusations for abusing of the public supplies.

1.4. Basic rights - The Government of the Republic of North Macedonia ratified the largest part of instruments of human rights. (Government Action Plan of RNM, 2017-2022, Government of the Republic of North Macedonia, Skopje). The Government prepared an action plan to implement the recommendations of European Council for prevention of torture and sends quarter reports to the Commission. This has taken to improvement, prevention of tortures and inhuman treatment.

→ Flowing reform of prison systems should be continued. Important efforts are necessary for improvement of the management of the prisons, especially for minors.

The legal frame for children’s rights is mainly in accordance with international standards. With changes in the Criminal Code approved in December 2018 is extended the definition of the violence against children, including the psychological violence, the internet violence, and the violence from peers.

The EU accession is a basis for harmonization of national legislation with the right of the European Union (Blerim Reka, Otmar Holl, Ylber Sela., Institutions and Policies of the European Union, pg.111-114, Tetovo, 2010). The EU frame right regarding the equality and non- discrimination are basic agreements, charter for EU citizens’ rights and directives on equality-Frame Directive for Employment, Directive for race equality, Recast Directive, Directive for goods and services, as well as the directives which regulate the gender equality regarding the pregnancy, breast feeding and being parent and self- employment.

The non-discrimination law continues to be in accordance with EU and European Standards. (National Strategy for equality and non-discrimination 2016-2020, RNM, Skopje).

The law on non-discrimination. With this law is regulated the principle of equality, respectively forbids the non-justified and unequal treatment of all physical and legal entities. This law covers a wide specter, which also includes the sexual orientation. An authority on coordination, monitoring and implementation of the legal frame and the strategy on non-discrimination has been established.

Conclusion: generally, the civil and political rights are widely respected and there is achieved a specified further progress. Nevertheless, the prevention, protection, social services on terrain still have no sufficient financial and human resources, especially regarding to children with disabilities, street children, children who use narcotic substances and children who are victims of familiar violence, sexual abuse or children trafficking. The Roma community remains a challenge for the government. The implementation of approved policies is slow.

1.5 Reforms in administrations - North Macedonia showed results in reformation of the public administration (Strategy for Reforms in Public Administration 2018-2022, Skopje).

There is good progress in implementation of the strategic framework for the reform in public administration. The Social Ministry of Information and Administration appointed a coordination team with the effort to reform the public administration. The Ministry also has established a supporting team for the implementation of the law on general administrative procedure. Additional steps are marked in the area of transparency, including the announcement of the employee's number. The State Commission for Corruption Prevention began to solve the cases of political appointments from current and past governments.

In the future, the country needs:

→ Provision of complete respect for employment based on merits and good civil services.

→ To fulfill the horizontal view of the administration and to clearly implement the responsibility of the institutions.

→ Provision of full implementation of the Law on Administration.

2. Regional issues and international duties

The Republic of Macedonia proceeds completely to cooperate with the International Criminal Tribunal for former Yugoslavia (ICTY).

The regional cooperation and good neighbor relations represent the essential part of the progress of the country towards the European Union. The country continues to participate actively in regional initiatives, including the Process for Cooperation of the Southeast Europe (PCSE), the Council for Regional Cooperation (CRC), The Free Trade Agreement for Central Europe (CEFTA), The Agreement for Establishing of the Energy Community and the Agreement for the Common European Aviation Area (ECAA). The headquarters of the Secretariat on Medical Network of the Southeast Europe (SEEHN) is founded in Skopje.

The Republic of Macedonia keeps a full constructive role regarding the bilateral relation with other countries, which are part of the enlargement and neighbor countries, which are EU members.

- Bilateral relations with Albania (Agreement between Republic of North Macedonia and Republic of Albania in Civil and Criminal Issues), for mutual trips of the citizens of both countries and for cooperation, as part of the EU membership. There is signed an agreement for mutual center for information exchange between their appropriate services of the border and migration police.

- Relations with Bosnia and Herzegovina (Agreement between Republic of Macedonia and Bosnia and Herzegovina, on alterations of the Agreement between Republic of Macedonia and Bosnia and Herzegovina, in Civil and Criminal issues), continue to remain in good condition. There are concluded some agreements for judicial cooperation and cooperation in area of health and education.

- Cooperation with Montenegro (Agreement for Mutual Judicial Assistance with Montenegro in Civil and Criminal issues), continues to strengthen. The Agreement on extradition entered into force, as well as Agreements on economic cooperation and EU membership process. There was signed an Agreement on Readmission of persons, which reside illegally and agreement on police cooperation.

- Bilateral Agreement with Serbia (Agreement between Republic of Macedonia and Republic of Serbia on Judicial Assistance in Civil and Criminal Issues (Official Gazette of the Republic of Macedonia No. 15/13)

into force since 05.02.2013, article 4). Agreements on traveling conditions and compensation on medical protection have been signed.

- Bilateral Agreement with Kosovo, with entering into force of the agreement for border regulation of the railway traffic and signing of the agreement for mutual border control and supervision.

- Bilateral Agreement with Turkey, is advanced further in diplomacy, economy and culture. The Agreement on permanent air traffic between two countries entered into force.

- Bilateral Agreements with Italy.

- Agreement with Bulgaria. Close relations, especially in the economic area continue.

Generally, Republic of Macedonia participates actively in the regional cooperation and further development of bilateral relations with its neighbors. Important is the constructive access together with neighbors against challenges.

3. Economic criteria (According to evaluation from Office of National Statistics of RNM, 2018 Skopje)

During the review of events in economy in Republic of Macedonia, the commission was lead from conclusions of the European Council in Copenhagen from June of 1993, where was emphasized, that the EU membership imposes the existing of functional trade economy and the capacity for dealing with the competition pressure and trade forces in EU.

North Macedonia did some progress during the last 12 years and has a good level of the economic trade development. **The Government has undertaken measures for improvement of the managing of the public finances and transparency. It brought some reforms in the income tax and pension system.**

For improving of the function of trade economy, North Macedonia especially needs:

- Stabilization of debt of capital by improving the collection of incomes, fiscal management, by approving fiscal rules and adequate framework on medium term costs.

- Should implement measures for reducing the grey economy in accordance with the strategic dealing plan for 2018-2020.

The Government follows the economic trade policies, with additional concentration in social cohesion (Economy of European Integration,

Richard Baldwin and Charles Viploc, pg.189, also pg.265, 2012, Skopje), **while enforces the state assistance of cooperation with IMF, World Bank, and the European Commission. The Government implemented reforms to improve the management of public finances and progressive income tax.**

4. Ability for taking obligations from membership (Report of the European Commission for RNM (2019) 218, Brussels)

In this part is examined the ability of Republic of Macedonia for undertaking duties from the membership- respectively *acquis*, as expressed among agreements, secondary legislation, and Union policies. Also is analyzed the administrative capacity of the Republic of Macedonia to implement *acquis*.

4.1. Free trade of goods - Limited progress can be noted regarding the general principles. **Implementation of action plan on harmonization with articles 34 to 36 of the Agreement for European Union function, improves. There is progress around horizontal measures. The quality infrastructure got improved after the strategic plan on implementation of *acquis* in area of goods free trade. There is good progress in area of standardization. 25 608 European Standards (ES) have been approved as national standards.**

4.2. The right on establishing and freedom of service provision. In areas of the right of establishing and freedom of service provision can be seen a defined progress, especially in area of post services.

→ Necessary are additional efforts to harmonize the legislation with *acquis*, especially relating the implementation of the directive on services, establishing of unique contact point and mutual accepting of professional qualifications. *Generally*, in areas of the right on establishment and freedom of service provision, the country has shown some progress.

4.3. Free capital circulation - there is noted some certain progress in area of the free capital circulation, especially in improvement of the institutional frame for the fight against money laundering. Implementation of policies against money laundering is weak. There exist some plans for

further liberalization of the capital circulation and payments. Preparations in area of the capital free circulation are on right track.

4.4. Right of trade companies - Is achieved good progress in the trade right, especially in approving of the legislation for economic European interest groups.

Qualification of authorized auditors obtained abroad should be recognized in the future.

4.5. Competition policy - regarding the competition, is achieved a good progress.

The approved legislation in force improved the legislation framework. The trend for implementation continued to get improved in quality and quantity. The Commission for Competition Protection (CCP) has no appropriate budget resources. Generally, preparations in these areas are advanced.

4.6. Financial Services - there is progress in area of financial services, especially in the bank system, insurance and securities. The harmonization of the judicial framework for supervision of the insurance with *acquis* improves good. **It was approved the law on pensions payment from funds of pension insurance with capital financing and MAPAS kept the complete judicial and financial independence.** However, the uninsured driving remains a challenge for implementation of the fight against misdemeanors made from uninsured drivers.

→ There should be achieve harmonization with *acquis* in area of financial trade infrastructure.

4.7. Consumer protection and health care - The RMN has not made progress in the field of consumer protection and in the field of health care.

During the next year, the country should:

→ Harmonize the legal framework with that of consumer protection; and strengthening operational structures for consumer protection.

→ Increase the sustainability, efficiency, and quality of infectious disease services.

→ Publish reports on individual cancer and rare diseases and provide adequate funding, specialized knowledge for early detection and treatment, based on registry data.

In terms of horizontal aspects, the regulatory framework and evidence for implementation show no movement. The consumer organization continues to organize awareness-raising events, areas for improving education and consumer counseling, including in rural areas. However, the financial support provided to consumers is still insufficient.

→ The administrative capacity of the Consumer Protection Sector in the Ministry of Economy needs to be increased.

Issues related to product safety are not well resolved.

→ An online platform is needed where citizens can find all the information on consumer protection and greater awareness on issues related to insecurity.

Market surveillance has not yet fully provided effective protection and transparent consumer protection. Field activities are "soft-light" and they are implemented only with brochures and educational materials prepared by consumer organizations. Modern means of communication must be provided. The administrative capacity of the coordinating body should be significantly increased.

4.8. External relations - Significant progress has been made in the common trade policy. The Republic of Macedonia continues to gradually reduce customs tariffs in line with WTO obligations. **The country has also ratified the Regional Convention on Preferential Pan-Euro-Mediterranean Rules of Origin, which will allow it to participate in the diagonal collection system of origin.** The country participates in the work of the bodies of the Central European Free Trade Agreement (CEFTA) and continues to coordinate closely with the European Commission and harmonize on EU policies and positions in international trade negotiations.

Conclusions and Recommendations

Our country, the political actors in the country together with the professional staff and experts of the country (and abroad) have proved their readiness for continuous challenges, the joint effort for an organized justice. The RMN follows the ongoing activities with the agency and international organizations with (UN, EC, OSCE, OECD, GREKO) bodies and committees, activities for the implementation and monitoring of their recommendations.

However, whenever there are high expectations, the disappointment can potentially be as great as the expectations. Citizens had the greatest confidence in the implementation of reforms and the local political power self-promoted itself as a reformer in economic, democratic, and legal terms, it said that it will make quick reforms such as the making of the 3-6-9 plan.

Instead of the reforms, the referendum happened to the RMN, moreover, it was an important issue, instead of the state institutions dealing with the reform of the institutional system, all the potential was focused on the referendum on the new name of the country.

The word reform as a notion is a very sensitive and crucial issue in the foundations of the country and feels the need for change due to the dynamics of time and developments of this century, but even though this government was declared with the stigma of a "reformist government", unfortunately, the latter avoided institutional priority agenda.

The reform of the system in Macedonia and its adaptation in terms of the functioning of the EU has been submitted as an immediate request to the Skopje authorities, in almost every visit made to Macedonia by senior representatives of Brussels. Macedonia has been repeatedly criticized by international representatives for evident stagnation in reforms in general. Therefore, any delay in this regard will have negative consequences for the country's path towards EU membership.

And finally, I will close by quoting the dilemma of Prof. Dr. Blerim Reka: EU enlargement policy in the Western Balkans a promise or reality? (Blerim Reka, *Geopolitics and the techniques of enlargement of the EU*, p. 299, 2010 Brussels) The EU is part of Europe, but it is not within Europe. At least not within the EU. "Much remains to be done"...

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