REFORMS IN THE INSTITUTIONS THAT ARE SUPPORTING THE COURT IN THE REALIZATION OF ITS RIGHT CREATION FUNCTION

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APSTRACT

Pursuant to the Constitution of the Republic of Macedonia and the Law on Courts, the judicial power is exercised only by the court. It is the exclusive holder of a judicial office consisting in the application of the law (ius dicere) and the protection of human rights and freedoms. No other state or authority has legal and legitimate power to judge and make decisions that deal with specific legal disputes.

However, the exercise of the judicial function for pronouncing the right (re-creation) presupposes the existence of other institutions that perform certain functions related to it. Exactly these institutions will be elaborated in this paper from the aspect of the research that was realized in order to find out what is the situation in the advocacy, the notary, the enforcement and the mediation in the Republic of Macedonia, which are the necessary reforms for their improvement in terms of functionality and in interest of the citizens as final users of their services.

In accordance with the nature of this paper methods of analyzing content of research, method of comparison of obtained data and the descriptive method will be used.

KEY WORDS: Trial, Advocacy, Notary, Enforcement, Mediation.

1 review scientific paper
INTRODUCTION

One of the steps for the consistent application of the European Convention on Human Rights and other international conventions on human rights and freedoms is the harmonization of substantive and procedural laws with the law of the European Union and harmonization with the laws on the Member States of the Union. This would be the so-called Europeanization of the judicial system in the country through the introduction of European institutional and procedural, legal and managerial standards.

The authors of this paper have done research on the opinion of the expert as well as the general public about the performances of the actors involved in the judicial system in the country, and in this paper we will present the conclusions regarding the lawyer, the enforcement service, the notary and the out-of-court settlement of disputes, that is, mediation as one of the ways provided by the Macedonian legislation.

Target groups of this research are:

1. Judges, court clerks and court administration;
2. Lawyers, public prosecutors, state attorneys, notaries, enforcement agents and mediators;
3. Academy for judges and public prosecutors, media, non-governmental sector and academia;
4. Physical and legal persons (as parties to litigation).

A population surveyed according to the methodology ranges with a sample size that can provide relevant data for this research, with a confidence interval of 95% and a statistical error of -3%. The subjects were surveyed through a structured questionnaire with questions intended for each target group, which the respondents filled in themselves for discretion and confidentiality of the answers. It is about 380 judges, 759 judicial officers, 734 attorneys, 33 state attorneys, 174 public prosecutors, 160 notaries, 91 executors, 33 mediators, 800 natural persons, 30 business entities and 30 non-governmental sector entities, academics for judges and public prosecutors, media and the academic community.

In this paper, we will narratively present the results in the field of interest obtained for the part of the bar, the notary, the enforcement service and the mediation.
ADVOCACY

Advocacy as an independent public service in the Republic of Macedonia has been in continuity since 1945. The existing Law on Advocacy Association was enacted in 2002, but since then it has been substantially amended with several decisions of the Constitutional Court which abolished part of the provisions of the Law on Advocacy. Membership in the Advocacy Association registers over 2500 active lawyers and there is a trend of increasing membership for about 100 people annually, primarily due to the inability to absorb young lawyers in the commercial sector (Directory of lawyers of RM). In 2016, the legal fees changed and the prices increased significantly. Recognizing the need to strengthen the law profession that can respond to the reformed judiciary sector, a comprehensive analysis is needed to detect the basic directions for systemic reform of the law profession, status, position and competencies of the Advocacy Association.

These were part of the questions in our research and the following conclusions derived from it:

It is necessary to establish law offices for free legal aid on the territory of each court in the Republic of Macedonia by the Advocacy Association, as well as ongoing analysis of the existing legal position and work of the law profession and its approach to reform in accordance with the reforms in the other segments of the Law and justice sector.

EXECUTION

The new system of enforcement in the Republic of Macedonia, introduced by the Law on Enforcement in 2005 (Law on Execution of the Republic of Macedonia / 2005), was the most revolutionary solution in the country, introduced in accordance with the Strategy for Judicial Reforms of 2004, which made the Republic of Macedonia a leader not only in the region, but also in the wider area. Executives have been operating since 2006 and are constantly monitoring their performance.

A fast enforcement status has been achieved where 50% of the enforcement cases end within 1 year at no cost on the state’s side. Employees are more than 500 people in the enforcement offices and a huge amount of assets (over 1 billion euros) are reintroduced again in the legal circulation in the country. (Chamber of Executors of the Republic of Macedonia). This situation contributed by 2014, the sphere of enforcement did not represent a
problematic area in the reports of the European Commission until the Report for 2016.

With the adoption of the new Law on Enforcement in 2016, the application which began on January 1, 2017, meant a departure from the existing concept and aroused stormy reactions in the economic sector of the country, and procedures were initiated before the Constitutional Court. Such situation was also detected by the EC in the report for 2016, where it was concluded that the hasty adoption of several laws, shortened procedures and without proper consultation with the professions concerned, generates problems for which the resolution requires a consistent political will (EC Report / 2016). The main problems detected obligatory representation of the creditor before the enforcement agent by the lawyer in enforcement requests exceeding 10,000 Euros, the mandatory attempt for out-of-court debt collection for public utility bills before initiating a procedure for issuing a notarial payment order, an extremely complex procedure for appointment of enforcement agents and appointment of deputy enforcement agents, ineffective procedure for taking the electronic exam, as well as excessive tariff of the enforcement agents.

These conditions are also observed by the respondents in this research as noted, so we can list the following remarks:

It is necessary to strengthen the professional capacities of the enforcement agents, simplify the execution, reduce the costs of enforcement, properly conceive the exam for executors and the manner of its taking, as well as continuous monitoring of the effects of the enforcement and the quality of the work of the enforcement agents.

**NOTARY**

The notary public in the Republic of Macedonia was introduced in 1996, as an independent, independent public service with public authorizations that performs acts of verification on the basis of law, at request by citizens, state bodies, legal entities and other interested institutions (Notary Law of the Republic of Macedonia / 1996). The functioning of the notary public positively affected the overall functioning of the legal system, and in particular influenced the promotion and increase of legal certainty.

In April 2016, a new Law on Notaries was passed which greatly disrupted the previous notary concept and the principles of the Latin notary, which was also stated by the EC in the 2016 report.
The research concludes that it is necessary to strengthen the professional capacities of the notary and increase the efficiency of their work, return of the notary act in accordance with the principles of the Latin notary and continuous monitoring of the results and the quality of the notary.

MEDIATION

Mediation in the Republic of Macedonia has been introduced since 2006, but its application is still at a very low level. In 2013, a new Law on Mediation was adopted. However, the dysfunctional concept of mediation remains a remark that has dragged on for years in the progress report of the European Commission. There is still a lack of licensed mediators ahead of the complex and inadequate exam for mediators. The Mediation Board is also functional, and the process of establishing the Chamber of Licensed Mediators has also been delayed.

The judiciary stimulates the double concept of mediation (mediation before initiating court proceedings and mediation during the procedure itself). The Academy for Judges and Public Prosecutors is passive in organizing training on the topic of Alternative Dispute Resolution, especially for mediation and arbitration. The number of reported and registered cases in the Register for registering the mediation procedures conducted by the Ministry of Justice not to coincide with the number of enrolled cases in the individual registries of mediators. This situation is due to the inconsistencies of the Law regarding the obligation of the mediators to report the cases to the Ministry of Justice and the different interpretations.

The mediation attempt, although envisaged an opportunity in the Children's Justice Law, does not apply because the Public Prosecutor's Office does not have enough financial resources to comply with the law. Awareness of the benefits of mediation remains low and work needs to be done on its further strengthening.

The survey showed that it is necessary to promote the concept of mediation through legal changes in the part of the exam for mediators in order to review the exam for mediators, to take into account the necessary competencies and skills that the mediators should possess; introduction of electronic delivery in mediation, harmonization of the keeping registries for mediation procedures conducted by the Ministry of Justice and mediators.

It is necessary to have more frequent use of mediation by public authorities by enabling assumptions and encouraging public authorities to resolve their disputable situations through mediation. It is also necessary to stimulate the application for mediation in court proceedings in the application for
Children's Justice Law, litigation procedures against journalists for defamation and insult, consumer disputes, insurance disputes. Promotion of the benefits of mediation for awareness-raising which is needed, in accordance with the European Commission Directive on mediation in civil and commercial disputes of 2008 and the Consumer Dispute Disciplinary Directive.

CONCLUSION

The survey conducted with target group from all categories of legal professions gives relevant knowledge that can contribute to the improvement of the judiciary system by overcoming the existing deficiencies for normative and institutional character.

These institutions, such as lawyers, notaries, enforcement and mediation in the Republic of Macedonia, need reform because their improvement will improve the overall judicial system in the country, inter alia, in terms of functionality and in interest of the citizens as end users of their services. These data should be a roadmap on which the Government will move in providing all the preconditions within its competence for creating an independent, impartial, efficient, high-quality and transparent judiciary, responsible for protection of individual rights and freedoms of citizens, as well as for simultaneous protection of the public interest.

One of the ways to do this is to create a long-term strategy that would determine guidelines for creating legal conditions, as well as an ambient for real implementation of the principle of responsibility by all these institutions in the area of their own operations.

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