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Jernej Šček

AMOR MUNDI. FRAGMENTI POLITIČNOSTI V SOMRAKU ČLOVEČNOSTI

Luka Martin Tomažič

SVOBODA, PRAVO IN TEMELJNE VREDNOTE

Jože Ruparčič

VERSKA SVOBODA, PRAVIČNOST, ETIKA IN PRAVO

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ŽENSKO DOBRODELNO DELOVANJE V 19. STOLETJU:
PRIMER GORIŠKEGA GOSPEJNEGA DRUŠTVA V PODPORO REVEŽEM

*Hristina Runcheva Tasev/Aneta Stojanovska-Stefanova/
Leposava Ognjanoska*

LEGAL AND JUDICIAL SYSTEM TRANSFORMATION
IN TRANSITION ECONOMY: THE MACEDONIAN CASE

Lovro Šturm/Blaž Ivanc/Andrej Naglič

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Vsebina

Jernej Šček

*Amor mundi. Fragmenti političnosti
v somraku človečnosti*

7

Luka Martin Tomažič

Svoboda, pravo in temeljne vrednote

43

Jože Ruparčič

Verska svoboda, pravičnost, etika in pravo

64

Robert Devetak

*Žensko dobrodelno delovanje v 19. stoletju:
primer goriškega Gospejnega društva v podporo revežem*

90

Hristina Runcheva Tasev

Aneta Stojanovska-Stefanova

Leposava Ognjanoska

*Legal and Judicial System Transformation
in Transition Economy: The Macedonian Case*

126

Lovro Šturm

Blaž Ivanc

Andrej Naglič

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154

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Legal and Judicial System Transformation in Transition Economy: The Macedonian Case

Abstract: Economic growth and poverty reduction are highly dependent on the well-functioning legal and judicial institutions. Experience in transition countries suggests that the legal transition and economic performance go hand in hand in advancing results. The transition from socialism to capitalism in the Republic of North Macedonia has required fundamental reforms of legal and judicial institutions. The paper analyses the experience of the country in the legal and judicial institutions transformation, a long-term process that still has active and ongoing reforms. Despite the adoption of the structural preconditions for judicial independence

(legal framework, judicial councils, and academies), political intervention, corruption and influence in judicial decisions are common and legal uncertainty remains. The authors explore the effects that the legal and judicial institutions' transformation has on Macedonian economic development by drawing data from official sources/reports. The conclusions suggest that creating a well-defined judiciary system with enforcement ability should be a priority for the executive branch of the Macedonian government to achieve improved economic performance and functional market economy.

Key words: legal and judicial institutions, transition, economic development, Macedonian case study

Preoblikovanje pravnega in pravosodnega sistema v tranzicijskem gospodarstvu: makedonski primer

Izvleček: Gospodarska rast in zmanjševanje revščine sta izrazito odvisna od dobro delujočih pravnih in pravosodnih institucij. Izkušnja tranzicijskih držav kaže, da gresta pravna tranzicija in gospodarska učinkovitost z roko v roki ter prinašata dobre rezultate. Prehod iz socializma v kapitalizem v Republiki Severni Makedoniji je zahteval temeljite reforme pravnih in pravosodnih institucij. Članek analizira izkušnje omenjene države na področju preoblikovanja pravnih in pravosodnih institucij, to je procesa še vedno trajajočih in nezaključenih reform. Kljub uvedbi strukturnih predpogojev za neodvisnost pravosodja (pravni okvir, pravosodna posvetovalna telesa in visokošolske ustanove) so politični posegi, korupcija in vmešavanje v odločitve sodstva še vedno običajni, kar povzroča nadaljevanje pravne negotovosti. Avtorice preučujejo, kakšne so posledice preoblikovanja pravnih in pravosodnih institucij na gospodarski razvoj Makedonije

v skladu s podatki iz uradnih virov oz. poročil. Ugotavljajo, da bi morala biti vzpostavitev natančno opredeljenega pravosodnega sistema, ki bi zmožgel svoje odločitve uveljavljati v praksi, prioriteta makedonske izvršne oblasti – tako bi bilo doseženo izboljšanje gospodarske učinkovitosti in delujoče tržno gospodarstvo.

Ključne besede: pravne in pravosodne institucije, tranzicija, gospodarski razvoj, makedonski študij primera

Introduction

The role of the well-functioning legal and judicial institutions is essential for economic growth and poverty reduction in democratic societies. They are responsible for creation and enforcement of a legal framework and legal certainty for all the stakeholders in a market economy. They are also responsible for providing specific means for dispute resolution, human rights protection (economic and social right in particular), fight against corruption and governmental accountability in general. These functions for the legal and judicial institutions in the Central and Eastern Europe became available after the transition from socialism to market-economy has been made. Experience in transition countries suggests that the legal transition and economic performance go hand in hand in advancing results. A weak legal system can undercut efforts to develop a modern, market-oriented economy (Gray 1997, 14).

The paper explores the interdependence between legal and judicial institutions on one side and economic growth and poverty reduction in market economies on the other side, with particular focus on the Macedonian case. The main focus of the research is to examine if there is a strong correlation between the well-functioning legal and judicial institutions and the economic growth. Very often economic growth and legal and judicial institutions development have been separately studied in the Macedonian context, but their correlation and interdependence have not been a focus of interest. In the first part of the paper, the authors explore how the process of transition from socialism to capitalism has affected the legal and judicial institutions of the country, with specific focus on the interdependence between legal

institutions functionality and market economy. The second part of the paper is focused on the experience of the country in the legal and judicial institutions transformation, a long-term process that still has active and ongoing reforms. In this context, despite the adoption of the structural preconditions for good legal system and judicial performance, still many challenges remain such as political intervention, corruption, influence in judicial decisions, legal uncertainty etc. The data that explore the effects that the legal and judicial institutions' transformation have on Macedonian economic development have been drawn from official sources/reports indicated in the paper.

Transition from socialism to capitalism for legal and judicial institutions

The beginning of the 1990s was marked by the transition challenge in the CEE and CIS countries. The fall of Yugoslavia and the breakup of the former Soviet Union into independent states at the beginning of 1990s was one of the most important developments in recent history. The transition to market economies was a synonym for deep and radical changes in economic and social policies and building of core institutions from the beginning (from scratch). Creating market economies was a developing process that went together with other significant processes that changed the landscape of the political systems such as building parliamentary democracies and complete political transformation.

In the early 1990s', the Macedonian economy reflected the multi-decade structure of the socialist system characterized by elements of both planned and market economy. The

most prominent features of the economy at that time were: predominance of social ownership (almost 90 percent of total ownership), low level of economic development, high inflation rates, low level of capital accumulation, simultaneous existence of unemployment and over-employment, social and political instability in the country as well as in the region. (Micevska et al. 2002, 5) In September 1990, the Assembly adopted amendments to the Constitution of the Socialistic Republic of Macedonia (SRM) from 1974, which made radical changes in the socio-economic and political system. It marked the beginning of the state's transition to a future parliamentary system and to the creation of a sovereign and independent state. The constitutional amendments, among other things, introduced private ownership and political pluralism and restructuring of the main institutions in the country (the Assembly became unicameral, the Executive Council became the Government, and instead of the collective Presidency, the function of the President of the Republic was introduced for the first time). The delegate system was abolished, and the MPs in the Assembly of SRM were elected by direct and secret voting of the citizens. (Parliamentary Institute 2014) This process of preparation led towards the first democratic and multi-party elections in Macedonia. The referendum for independence of the country held on 8 September 1991 was accompanied by the adoption of the Constitution two months later, 17 November 1991. It marks the beginning of the construction of the new constitutional order and the establishment of the Republic of Macedonia as a parliamentary democracy where the principle of separation of state power (legislative, executive, and judicial power) has become a fundamental value of the constitutional order (previous constitutions of the country

recognize the principle of parliamentary rule or the principle of unity of power).

The transition from socialism to capitalism for the legal and judicial institutions was manifested with a dramatic change of the whole concept of functioning. In fact, during socialist times their role was limited and subordinated to the Communist Party (League of Communists) in the process of enforcement of adopted governmental economic plans and schedules. The ideas of separation of powers, limited stated and individual rights were not familiar at all. However, some legal systems in socialist economies appeared to be like those in Western market economies, with, among other things, an extensive network and reliance on courts, lawyers, and prosecutors—the roles of both the system itself and the actors within it were very different from analogous roles in market economies. (Anderson et al. 2005, 7)

The socialism hoped and believed that the state could satisfy all the needs and legitimate aspirations of the working class, and that armed with full and unlimited power, it would be desirous and capable of inaugurating a new social order. (Bakunin 1968, 3; Chen 2002) The main function of the socialist-communist state, therefore, was to promote economic production based on public ownership of the means of production. In such a public-ownership system the state had the mandate to run economy and organize production on behalf of the society. (Chen 2002, 6)

According to socialist theory, the majority of the working class ruled with the socialist state represented by the Communist Party whose control was undoubtedly set over the legal institutions, including judiciary. Socialist law theorists

traditionally argued that “the legislature is conceived to be the supreme expression of the will of the people and beyond the reach of judicial restraint”. (Hazard et al. 1984, 320) Legislation, not judicial decisions, was recognized as the sole source of law in the socialist system (Hazard et al. 1969, 40). Although the prevailing definition of socialist law emphasized that it is a hierarchically structured sum of state-made norms, in reality a fundamental disregard of the promulgated law prevailed. Substantive and procedural institutions like the Public Prosecutor’s Office, political control over the courts, denial of access to court, and restrictions on fundamental rights, as well as institutionalized politically biased discretionary powers of the administration undermined the rule of law. (Sajo, 2001)

Prior to socialism, Macedonia and the other socialist countries had long legal traditions based on Roman civil law, and socialist principles were essentially grafted on this civil law base. This eased the later transition away from socialism, by giving some transition countries a more advanced starting point from which to adapt their legal system to the needs of a market economy. (Gray et al. 1993) In the socialist states, the public law was dominant, in particular administrative and criminal law and institutions in charge to enforce them. The state had a dominant role in social life and economy, so that the administrative law and institutions had extensive legal structure. Criminal laws and institutions reflected the interests of the “working class”—in practice it was the Communist Party. Special “crimes,” such as the prohibition against entrepreneurship, protected the state economic monopoly. The prohibition against “parasitism” enforced full employment. Attacks against state ownership were punished by more severe sanctions than attacks against

private or personal ownership, and people belonging to the working class even received lesser punishments in certain cases. (Anderson et al. 2005, 8)

The socialist legal institutions were also focused on management of the society and the economy in response to the ideological context. The market was dominated by the state-owned companies and the state managed the enforcement of contracts and property rights with the state arbitration controlled by the Ministry of Economy, instead of the courts. Arbitrators' role was to fulfill state's planned economy rather than providing justice, so they were not acting independently. The judiciary, although organized in a hierarchy of courts, managed by the Ministry of Justice, was directly controlled by the communist party and was mainly responsible for civil and criminal matters. The non-existence of checks and balances, and subordinated courts, powerful procuracy and no role for constitutional courts, created a system that was expected to "serve to the people", i. e. the working class.

The socialist law was the basis for training new generations of lawyers, judges, and prosecutors. Their associations were under state control, as well as their wages, which were not particularly on a satisfactory level. The transformation of the socialist system created increased demand for legal expertise in the newly created private sector, opening many opportunities, competition and change in the income as well as change in the societal status of the profession. The transition from this socialist model was supposed to bring: heightened independence from the executive; new roles and skills for judges, lawyers, and other personnel; and a rapid increase in institutional capacity to handle legal cases

efficiently and effectively. This process required many new incentives for improvement of skills in legal profession in order to respond to the institutional needs in the democratic society and emerging market economies.

The reform agenda: legal and institutional change

The basic Macedonian structural reforms as well as those in the countries from CEE and CIS were provided by domestic institutions, but also with significant assistance by the international community. This was happening in order to create political and economic transformation, including privatization, providing foundations for further long-term institutions building and stability of the system. Realization of any method of transition affects the country in different ways, but some findings suggest that there is no painless method of transition. (Kljusev et. al. 2002, 46) The introduction of democratic procedures has proven to be much faster and easier than creating a system of market economy with a dominant private ownership. But it can be safely assumed that democracy, in order to be sustainable system of political organization, requires economic recovery and prosperity. But “the longer it takes for a market economy to deliver goods in a democracy, the more authoritarian the alternative will look”. (Baumol 1993, 69)

Main structural and institutional reforms in the transition countries were based on privatization, restructuring the enterprises and financial consolidation of the banks. The pace of Macedonian structural and institutional reforms was very slow and the attempts to stabilize the economic flows in the country were unsuccessful because they were not accom-

panied with structural reforms, such as effective privatization. Unfortunately, Macedonia occupied the infamous last place according to the pace of privatization and its results. It is symptomatic that the Macedonian ruling parties in the period before 1994 were not interested in speeding up the privatization process. Some of the reasons for the delay of the process, which was already ongoing in other transition countries, may be located in the fear of political risks from the necessary structural changes and intertwined interests of different interest groups that use their control functions in the form of informal ownership rights of illegal acquisition of property. (Kljusev et. al. 2002, 71)

During this chaotic period of economic transformation, the pace of the institutional changes became a source of debate. According to Peter Murell (1992, 51) and Mancur Olson (1992, 58–59), institutions in well-developed economic systems, though often regarded as insufficient, are not a symbol of the underdevelopment of the political system, but rather are an indicator of progress and democracy. Despite that, governments of developed countries are always searching for the optimal institutional structure. They emphasize the importance of institutional dimension on the process of achieving macroeconomic stability and microeconomic efficiency. According to their perspective, the socialist institutions should be dismantled only when proper market institutions exist in order to avoid the so-called “institutional vacuum”. The rapid need for institutional strengthening required reform of legal and judicial institutions, in order to provide competitive market, based on legal frameworks that enabled legal certainty and fairness. The Macedonian legal reforms were focused on drafting constitution, civil code, commercial, land, labor laws and privatization legislation.

The process of rapid lawmaking and efforts for fast societal transformation led towards adoption of legal solutions without broad participation of different actors in the lawmaking process and nontransparent procedures that led to numerous shortcomings.

According to the EBRD Legal Indicator Survey from 1999, the accessibility of draft laws in Macedonia was moderate and not much attention was paid to transparency and broad participation in the lawmaking process. There was also minimal input of different stakeholders who would use or interpret legislation such as lawyers, judges, regulatory bodies, or companies that would be affected. The nontransparent lawmaking process resulted with problems in applying and enforcing new laws that led to series of implementation gaps which was best reflected into the growing mistrust in courts and undermining the rule of law. During the initial period of transformation, the legal institutions were not transformed with the same pace of the lawmaking. The judicial system that expected to interpret and apply the newly adopted laws was cut off from the development of the modern legislation. The slow legal and institutional change was in favor of some of the owners of the newly created private capital in order to take monopolistic positions or manipulate corporate governance of more companies to concentrate capital. The slow institutional transformation resulted with rapid modern business-related legislation that was not implemented effectively. The lack of effective implementation of laws can have a significant impact on economic development. One study found that the effectiveness of legal institutions is more important to the provision of external finance in transition countries than the existence of new commercial laws. (Pistor, Raiser and Gelfer 2000)

There is a complex and indivisible relationship between law-making process and institutional transformation. Legislative changes have created new demands for the existing institutions to improve their performance in law enforcement and implementation. The first step towards a successful system is adopting well-drafted laws that can be enforced in practice. Judicial reforms that were undertaken mainly with donor assistance, tended to focus on creating an independent and depoliticized judiciary, free from state control, which could act as a bulwark for newly won political and civil rights. (Anderson et al. 2002, xii) Also, a separate Macedonian constitutional court was established with the constitutional provisions aiming to provide assessment of the constitutionality and legality of laws and other regulations, as well as to act upon requirements for protection of certain freedoms and rights, as protector of constitutionality and legality.

Rebuilding institutions and adopting laws on implementing macroeconomic and structural reforms during the 1990s went hand in hand with lawmaking focused on adopting *acquis communautaire* in order to reinforce the EU accession process and express strong European aspirations. Macedonia had expressed interest in becoming part of the European family since the early 1990s which was later formally recognized by signing the Stabilization and Association Agreement (SAA) in 2001 and was granted a candidate status in 2005. The dynamics of the lawmaking process has been closely related to these aspirations during the period of legal and institutional transition.

How the legal institutions affect the market economy

Literature on economic development and socialist transition over the past decade has increasingly stressed the critical importance of well-functioning institutions to economic growth, social development, and poverty reduction (North 1990; Bardhan 1997; Murell 2001; World Bank 2003). According to the neo-institutional theories, institutions that would tame social conflict and would define property laws are crucial to the economic prosperity of the countries in transition. (Bojadzieva 2020, 8) In fact, institutions play a central role in formulating laws and providing their enforcement, legal certainty when it comes to resolving disputes among private parties or citizens and the state, economic and social rights protection, legal setting that affects the investment climate or counterbalance for the executive.

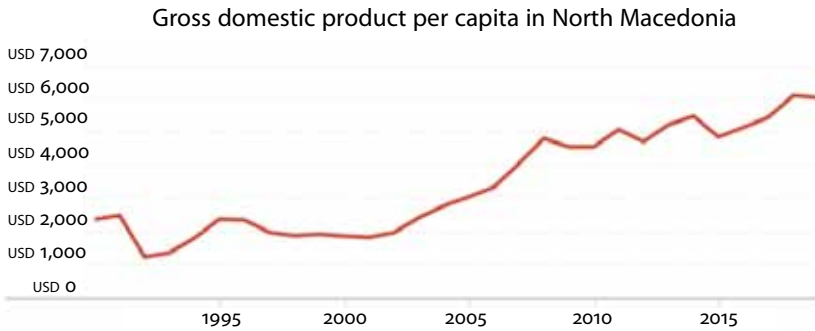
The World Bank (2003, 1) states that one of the critical lessons learned from the East Asian financial crisis and the collapse of some of the Eastern European transition economies in the 1990s was that, without the rule of law, economic growth and poverty reduction can be neither sustainable nor equitable. The rule of law is defined as a state where the government itself is bound by the law; Every person in society is treated equally under the law; The human dignity of every person is recognized and protected by law; and Justice is accessible to all. The rule of law promotes economic growth and reduces poverty by providing opportunity, empowerment, and security through laws and legal institutions.

Although the legal and judicial institutions are not uniform in their structure and functions in different countries, they can play a significant role in economy only if they are legitimate,

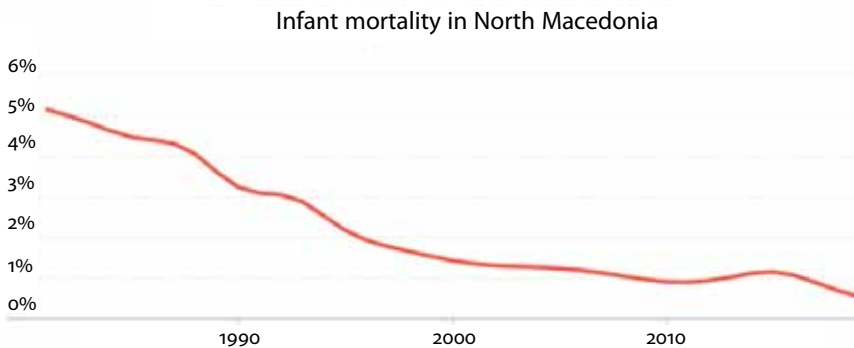
effective, and transparent with due process and enjoy public trust. To create investment and jobs, laws and legal institutions must provide an environment conducive to economic activity. If the legal and judicial institutions provide basis for private individuals to engage in business and investments on one hand and legal framework for functional economy on the other then the economic development is inevitable by fostered domestic and foreign investment, creation of jobs, and the reduction of poverty. The three pillars of which the World Bank's legal and judicial reform (LJR) strategy is based are: independent, impartial, and effective judiciary, which is particularly challenging in countries where the executive branch views the judiciary as its instrument for political goals. Second, an appropriate legal framework must provide enforceable rights to all. Third, there must be access to justice, without which all laws and legal institutions are meaningless. (The World Bank 2003, 2)

The IMF, for example, suggests that strengthening the judiciary system should be a priority for the transition economies. In the 2003 country report of Macedonia, IMF economists analyze the correlation among sectors and indicators in the country and conclude that there is a high rate of rent seeking activities correlated with a weak judiciary system. For that reason, these economists suggested that creating well-defined judiciary system with enforcement ability should be a priority for the executive branch of the government of Macedonia. (Bojadzieva 2020, 8) Following the empirical studies undertaken by the World Bank that show a strong correlation between rule of law and development indicators such as gross national income and infant mortality, Macedonia is a case where this correlation can be also found if we compare the available data of the World

Bank and the dynamics of the reforms in the judicial system explained below.



Data from datacatalog.worldbank.org via Data Commons



Data from datacatalog.worldbank.org via Data Commons

Judicial reforms of the Macedonian legal system

Judiciary as a branch of power is one of the most important pillars on which the liberal democracy system is built and the main indicator of how well the system functions. After the Macedonian declaration of independence in September 1991, first steps in the transformation and building of a new

state system with the adoption of the Constitution provided for a clear division into three branches: legislative, executive, and judicial. The inherited conservative legal and judicial system had to be adapted to the new democratic values focusing on the fundamental human rights as rights of individuals. The process of institutional reforms began with the adoption of the Law on Courts in 1995 that established new judicial structure and promoted new principles such as legality, equality, fairness, publicity, adversarial procedure (Article 10). Novelties were also introduced regarding the system of appointment of judges in order to ensure the judicial independence and impartiality and more than 600 judges were re-elected in the Assembly on proposal of the Republic Judicial Council. The next phase of the reform process is characterized by the adoption of systemic laws in criminal and civil substantive and procedural law in the period 1996–1997. This initial reform process in the light of the overall democratization was completed with the ratification of the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) that refers to values and principles necessary in democratic society. Another milestone was the fulfillment of the content of Ohrid Framework Agreement from 2001 that introduced wider administrative and judicial proceedings participation and use of minority languages which make up more than 20 % in national and local institutions, including the judiciary. Broad constitutional and legal changes were made to accommodate the principle of equitable representation.

The enthusiasm for further improvement of the Macedonian judicial system continued within the European integration process that has begun with the Stabilization and Association Agreement (SAA) which was signed in 2001 and entered

into force in 2004. In the context of the conditionality policy, the candidate status in 2005 was granted based on the significant progress that Republic of North Macedonia has made in fulfilling the political Copenhagen criteria which also meant placing certain key areas such as the rule of law high on the enlargement agenda. (Naumovski, Apostolovska and Ognjanoska 2020, 8) The SAA emphasized the importance of the rule of law and reinforcing institutions at all levels, particularly the cooperation regarding the independence of the judiciary, the improvement of its effectiveness, and training in the legal professions. Judicial reform was initiated by the adoption of the Law on Court Budget in 2003, which was the first step towards strengthening the judicial independence through guaranteed financial independence of the judiciary. More comprehensive and strategic process focused on major judicial reforms that strived to fully implement the recommendations by the European Communities and the Council of Europe. First, the Strategy for the reform of the Judiciary was adopted in 2004 advocated for the model of judicial self-governance through the establishment of strong independent bodies such as the Judicial Council and Council of Public Prosecutors with exclusive competences in appointment of judges and public prosecutors, instead of the previous solution which provided for such competence for the Assembly as representative of the legislative branch of power. In the period 2006–2009 for the purposes of implementation of the 2004 Strategy, constitutional amendments were introduced in order to set the legal and institutional framework and more than 70 laws were adopted and/or amended, including the Law on Courts and Law on Public Prosecution. (Jovanovski and Jovanovska 2016, 88) European Commission for Democracy through Law was requested to provide its opinions to ensure that the reform is directed

towards the elimination of identified weaknesses in the judicial system by strengthening its independence and increasing its efficiency. This process of fully separating the judicial branch from the other two branches of power was complemented by the establishment of the Academy for Judges and Public Prosecutors as the sole point of entry to the judiciary, setting up a whole new system of initial and continuing legal education for judges and prosecutors, as well as training program for lawyers that apply to become judges and public prosecutors.

These major reforms were intended to present the Macedonian legal and judicial system transformation in transition economy in order to preserve democratic governance and human rights, as precondition for economic growth and functioning market economy. The results of these reforms were to be visible in the coming years, so the 2009 Strategy was expected to provide for further implementation of the Justice System Reform as its name implied. Instead of that, in 2015 systemic Rule of Law issues were identified in the so called Priebe Report (Senior Experts' Group 2015) mainly in five areas including the judiciary and prosecution services. It was emphasized that the country possesses a comprehensive set of rules which, if fully observed, should generally ensure a proper functioning of the judicial system to a high standard, but there is a serious gap between the legislation and the reality. Achievements of the previous decade's reform process have been undermined by the lack of the results in their implementation and serious concerns for political interference in the work and appointment of the judiciary. The same failings in performance of the previous judicial system might still be noticeable despite the introduction of a completely new model of judicial self-

governance, due to the lack of suitable contextualization of the overall system. (Burlyuk 2016, 510)

Current challenges of the Macedonian legal system and judiciary: Quo Vadis?

Further attempts to overcome the serious challenges of Macedonian judicial reform continued in the context of the Europeanization process. Due to the lack of instruments for legal transformation of the established system, the process resorted to specific transitional measures: special ad hoc institutional arrangements with specific mission and competences designed to overcome the most difficult shortcomings. The results of their work were intended to be made sustainable by reintegrating into the “regular” system. Such an attempt was made with the Special Public Prosecutor’s Office formed amid a deep political crisis under international mediation in 2015 and tasked with tackling grave allegations of top-level crime in government, relying on strong independence and autonomy concentrated in the power of the Chief-Prosecutor. However, approaching the expiration of the term for its temporary existence into the judicial system, the Chief-Prosecutor was caught into a major corruption scandal that resulted with first-instance verdict for misuse of power. Following these developments, with the adoption of a new Law on Public Prosecution in 2020 this special institution ceased to exist.

Having in mind that the normative instruments and the ad hoc institutional interventions did not give the desired effects, there are fewer available instruments that can be used in the Macedonian case of judicial saga. Therefore, the

approach taken in the Strategy for Reform of the Judicial Sector 2017–2022 raises the question of what more to be done with regard to 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 as a central postulate of the principle of the rule of law. It highlights the main issue with the interference of the executive power and the patronage as causes of the regression and dysfunctionality of the judicial sector and admits that the normative measures will often mean only a step backwards to legal decisions before 2009 when the major judicial reform was completed. Such political interferences led even to irregularities of the functioning of the system for the allocation of court cases (ACMIS) that should represent an independent human factor tool for facilitating the court management.

Current state of play shows that the legal framework generally comprises the high international and European standards for independent and impartial judiciary and proper functioning of the judicial system, but despite such normative foundation, there is still a big gap between the legislation and the judicial reality. What is missing is closing the “implementation gap” regarding the good legal basis set to ensure the proper functioning of the judicial system. The biggest challenge is the strengthening of the institutions that inevitably take a major commitment of time and resources with primary focus on the integrity and quality of the representatives of the judicial branch – the human factor, judicial mentality, and legal culture. In that regard, Academy for Judges and Public Prosecutors has the crucial institutional role, considering its complexity and importance within the judicial system in conjunction with other key bodies

such as the judicial and prosecutorial councils. Institutional guarantees for the proper functioning of the Macedonian legal system and judiciary must be complemented by the personal qualities of the individual representatives whose significance should not be neglected. General re-election of judges known as “vetting” is one of the most important instruments of transitional justice which is often used to support and complement the institutional reforms in transition to sustainable peace and democracy. (Preshova 2020, 5) However, given the previous experience in the reform process explained above, this measure should be approached with particular caution because it can very easily lead to new problems that will only deteriorate the system.

Understanding linkages between economic and legal reforms: Lessons learned

Macedonian economic transition was based on the same “policy package” in the early 1990s: a liberal approach towards economic policy under a rigorous macroeconomic framework (Micevska et al. 2002, 80). Macroeconomic stabilization was just a precondition for the whole reform process, including reforms in the legal and judicial system introduced with the political transformation of the country into parliamentary democracy.

Equitable laws and effective justice are *sine qua non* for sustainable development and lasting poverty alleviation (The World Bank 2003, 76). There is not a single and easy solution to the problem, and usually it requires long-term and complex measures regarding law and justice activities that will be approached comprehensively and specifically

designed with full commitment of the stakeholders over long period of time. The World Bank data and Macedonian experience show that the legal and economic performances go hand in hand in advancing results. During the first years of transition, the weak legal system resulted with underdeveloped market-oriented economy. The study shows that in the Macedonian example there is a strong correlation and interdependence between well-functioning legal and judicial institutions that provide the rule of law on one hand and the economic growth on the other. Advanced development of legal and judicial institutions is reflected in advanced economic growth based on functional market economy and advanced economic performance.

The structural reforms in the Macedonian legal and judicial institutions resulted with economic growth. However, the economic and legal reforms in the process of transformation brought several lessons for the Macedonian legal system. The structural reforms of the judiciary did not always provide operational independence from the Ministry of Justice. For instance, the Minister of Justice is a member without a right to vote of the Macedonian Judicial Council, an independent body that among other functions elects and dismisses judges and presidents of courts. There are permanent reforms in this field, but still there is a significant influence of the executive over the judiciary.

The lawmaking needs to be followed with better implementation of the laws and their enforcement. The resources need to be focused on this important issue since the real impact of laws can be evaluated upon their proper implementation. This is a permanent remark in the Progress reports (now Reports) by the EU for the country. Laws or regulations that

face poor enforcement or no enforcement at all may not provide expected benefit to business or individuals. The so-called implementation gap is still present, and the institutional reforms should pay more attention to this long-term objective.

Most of the trainings for efficiency, independence and accountability of judges have been arranged with donor assistance such as the EU, World Bank, or bilateral assistant agencies. Even the policy evaluation nowadays has been provided through these mechanisms of foreign assistance. Donor preferences and tendencies to reform the domestic legal and judicial system have significant impact and reflect the concept of more developed countries, considering the local needs and specific characteristics. However, fast and frequent changes in legislation and regulations through a closed and nontransparent legislative drafting process in many cases have left the users of the new laws confused and judges incapable of effectively interpreting and applying them.

Taken into a broad context, the legal and judicial reform, and its impact over the economic development, we may conclude that without the rule of law, economic growth and poverty reduction can be neither sustainable nor equitable in the Republic of North Macedonia.

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