



Republic of Macedonia

MINISTRY OF JUSTICE

STRATEGY
on the Reform of the Judicial System
with Annexes

Skopje, November 2004

PART ONE: INTRODUCTORY NOTES

I. INTRODUCTION

Significant developments have been achieved since the independence and the sovereignty of the Republic of Macedonia and the adoption of the Constitution in 1991. At the same time the process of transition of Macedonia towards an economically developed, modern, democratic state governed by the rule of law encountered certain weaknesses. Hence the need to intensify the reforms in all of the segments of societal life. To that end, the Government of the Republic of Macedonia has identified the need to reform the judicial system as a strategic priority. The goals and the short-term and medium-term instruments for accomplishing them have been determined within the framework of the reform. In addition, the reform of the judicial and legal system of the Republic of Macedonia also stems from the ratification of the Stabilisation and Association Agreement with the European Union.

The reform of the judicial system needs to be seen as a part of a well-synchronised complementary reform project that encompasses: the reform of the executive branch and the public administration, as well as the reform of local self-government in line with the economic reform.

Especially important is the fact that the reform of the judicial system cannot happen without institutional stability, de-partisanship and without increasing the capacity of the State to perform public functions starting from the regulatory function and all the way to the supervisory function, accompanied by economic development, civil society development and public democratic control over the execution of public functions. Consequently, the reform of the judicial system must be in line with the legislative amendments, as well as with the creation of organisational, substantial and human resource prerequisites to efficiently perform the executive and administration duties.

The Strategy is essentially a summary of synchronised measures and actions directed towards eliminating unfavourable situations and initiating a new development phase. Ultimately, the Strategy implies political consensus and a will to make changes, which assumes a shift in the relationship of the key political players in the political decision-making process to address societal confrontations generating crisis in society and raising their reform orientation and capacity for changes.

The two key areas underpinning judicial reform are strengthening its independence and increasing its efficiency. Accomplishing judicial independence that will ensure fully impartial court decisions is a complex issue that very much influences the performance of other institutions in the administration of justice. Comparative experience indicates various ways of accomplishing such objectives. Nevertheless, the success of the judicial reforms depends upon the level of development of the judicial and the broader political system, the readiness and the expectations, and above all, the efficiency of the institutions implementing the reform.

The weakness identified in the judicial system in the Republic of Macedonia, along with the directions of the future reforms and the specific actions are based upon numerous national and international analyses of the sector, comparative experience from countries with stable political systems, and, above all, on international

standards stemming from relevant international documents. The conclusions and directions of the future reforms stem from the work of the Judicial Reform Council, series of public debates and round tables on the draft Strategy, as well as the opinions and suggestions of the judicial institutions in the Republic of Macedonia, including the expert opinions of several relevant international organisations.

II. NEED FOR A STRATEGY, ITS OBJECTIVES AND IMPLEMENTATION INSTRUMENTS

1. The analyses on the functioning of the judiciary in the Republic of Macedonia up to date identify a significant number of *weaknesses in the system* pertaining to:

- **Slow procedures and inaccessibility of justice;**
- **Difficult and prolonged execution of final decisions;**
- **Overburdened courts with minor cases;**
- **Unorganised case management;**
- **Obsolete it equipment and insufficient use of it;**
- **Lack of detailed criteria for financing courts and the public prosecution;**
- **Insufficient coordination between the supreme court, state judicial council and the ministry of justice;**
- **Insufficiently skilled human resources, in professional and ethical terms;**
- **Poor economic situation;**
- **The constitutional and legal solutions for selection of judges and appointment of public prosecutors enable political influences;**
- **The lack of a continuous education system for judges, public prosecutors and other staff of the judiciary and the public prosecution;**
- **Cases of incompetence and unconscientious behaviour and corruption;**
- **Underdeveloped public relations.**

The nature of such weaknesses of the judicial system demand complex, complementary and dynamic measures and actions, conceived within the framework of a comprehensive strategy for the reform of the judicial system instead of partial solutions.

2. EU and NATO membership of the Republic of Macedonia is made conditional upon the existence of operational democratic institutions and the rule of law; hence the efficient and independent functioning of the judiciary is one of the most important attributes. These requirements are explicitly laid down in the Copenhagen criteria of the European Union, underpinning stable institutions and ensuring democracy, rule of law, protection of human rights and the rights of the communities.

By signing the Stabilisation and Association Agreement with the EU, the Republic of Macedonia is obliged, *inter alia*, to reform its legal system and harmonise its legislation with EU law, as well as reform the position of its judiciary with regard to the other two branches and ensure efficient functioning. Consequently, the National

Programme for Approximation of Legislation with that of the EU and the Action Plan for its implementation is an activity envisaged to approximate the Macedonian legal system with the *acquis communautaire*. Accordingly, the significance of Chapter VII of the Stabilisation and Association Agreement – Justice and Home Affairs - covers the actions that need to be undertaken in the field of justice.

Fulfilling the obligations stemming from the ratification of the Stabilisation and Association Agreement with the EU is motivated by the need of the Macedonian judicial system to prepare itself to function as part of the European justice system, i.e., the system of the Member-States of the single European legal area.

3. The Judicial Reform Strategy contains measures and actions for the Government and the Assembly of the Republic of Macedonia, as well as for the judiciary and the Public Prosecution directed towards setting up a new constitutional and legal framework with improved organisational, managerial, material and human resource prerequisites for the purpose of performing the main function of the judicial system: legal protection of human rights and fundamental freedoms and supporting the rule of law and legal security to secure the development of a society based on the principles of democracy, market economy, human rights and freedoms.

The general goal of the Strategy is to build a functional and efficient justice system based on European legal standards.

Individual objectives of the Strategy stemming from such a general goal have been determined by the special nature of the segments of the concept of the judicial system and the institutions thereof.

The judicial system reform encompasses: substantive law reform, procedural law reform, and structural reform. Structural reform, on the other hand, covers the relations between the specific institutions within the judicial system, including their internal organisation and competences.

The substantive law reform, which is directly related to the content of the functions of the judicial system, aims at setting up a new legal framework in line with European and international standards, a new system of legally recognised and protected values based on human freedoms and rights and other principles of democratic society and the rule of law.

The reform of judicial procedures, which contains the basic tools for performing the functions of the judiciary, aims at prompt access to justice, prompt and easy exercise of the rights and interests of citizens and legal entities, efficient crime control, and procedural guarantees for protecting human rights through the mechanisms of the justice system. One of the direct effects of the reform should increase the efficiency of the judiciary and decrease the number of pending cases.

The structural reform, which covers the institutions of the judicial system, aims at redefining the position and competences of specific bodies for the purpose of setting up efficient, stable, non-partisan, independent and accountable institutions, including the relations within the institutions based on professional, competent, ethical conduct and protection from abuse and corruption. As part of this goal, special attention is given to the strengthening of independence of the judiciary and the Public Prosecution, especially from political influence, by means of re-defining the status of the judges and public prosecutors, including the procedures for their

selection and election, the system for dismissals and promotions, and the salary system.

4. The accomplishment of the *general and specific objectives* of the Strategy is based on the following *principles*:

- **Rule of law;**
- **Separation of powers into executive, legislative and judicial;**
- **Guaranteeing independence of the judiciary and the Public Prosecution;**
- **Equitable and appropriate representation of communities in the judiciary;**
- **Protection of citizen's rights;**
- **Ensuring equal access to justice;**
- **Prompt and efficient procedures;**
- **Prevention of abuse and unconscientious acts or corruption;**
- **Adhering to the rules of professional conduct;**
- **Adopting European standards in the field of justice.**

5. The Strategy was drafted by the Ministry of Justice in compliance with the conclusions of the Government of the Republic of Macedonia, adopted following the Communication on the Need to Reform the Judicial System in the Republic of Macedonia in May 2004. The Minister of Justice established the Judiciary Reform Advisory Body composed of representatives of all relevant judicial institutions to review the Strategy and give input. In addition, the Strategy was the topic of discussion on several public debates and round tables where experts and representatives of the judiciary in broader terms had an opportunity to express their opinions, suggestions and remarks, most of which were incorporated within the final version of the Strategy.¹

The Strategy lists short-term - from one to two years, mid-term - three years, and long-term measures and actions incorporated within the Action Plan for its implementation.

Due to the fact that the long-term implementation process will require political consensus, the Strategy was also sent to the political parties of the opposition.

¹The Strategy was drafted, primarily, with the contribution of national legal experts and on the basis of the analyses of the Ministry of Justice and some international organisations. Especially important were "Study on Independent Judicial Budget", adopted by the Government of the Republic of Macedonia, "Basic Assumptions and Directions for Reforming the System of Education and Training of Judges and Public Prosecutors in the Republic of Macedonia", a document drafted by the Centre for Continuous Education, reports from the courts and the public prosecution, analysis done by Associates Consulting Group within the framework of the Justice and Home Affairs project of the European Commission, Judicial Reform Index for Macedonia prepared by ABA/CEELI, the report from the first assessment mission of justice and home affairs in the Republic of Macedonia, as well as other reports and studies of several institutions. The solutions proposed in the Strategy give directions to the judicial system reform based on several researches of the functioning of the justice system in the Republic of Macedonia. Due to the empirical nature of these researches, the instruments used were interviews with relevant stakeholders in the field of justice, as well as collecting, selecting and processing data from respective institutions. In addition, comparative studies from countries with stable political and legal systems, long tradition and high level of political culture were used to propose specific solutions to improve the judicial system of the Republic of Macedonia.

6. For the purpose of monitoring and evaluation of the measures and activities of the Strategy, the Judicial Reform Council will consider 3-monthly reports of the bodies assigned to undertake the measures specified within the Strategy, as well as to render appropriate recommendations and draft special reports on the implementation of the Strategy every six months for the attention of the Government, the Assembly, and judiciary. These reports will be made public and published.

III. STRATEGY STRUCTURE

1. Following the first, **introductory part**, the Strategy is divided into two segments pertaining to: judicial system and Public Prosecution. Annexes containing the main planned reform activities in the penitentiary system, Public Prosecution, the Bar and the Notary are attached to the Strategy.

Part One, referring to the judicial system, underpins the importance of judicial independence and impartiality, and increases the level of efficiency. Key points that determine judicial independence are: selection, election and dismissal of judges, training of judges and financing of the judiciary. Increasing the efficiency assumes changes in several segments of the judicial system that will eliminate the causes for delays such as: weaknesses of the procedural legislation, inappropriate organisational structure of the judiciary, absence of a system for alternative resolution of disputes and the absence of a system that fully covers the judiciary with information technology.

Part Two refers to the Public Prosecutor's Office in all of its segments, stressing the need to improve its constitutional position to provide for a new way of appointing public prosecutors, and raising the level of efficiency of its basic function.

Annex 1 is devoted to the penitentiary system and it contains measures to improve the system of executing penal sanctions, with a special emphasis on alternative measures as a new type of sanctions.

Concerning the reform of the Public Attorney's Office, Annex 2 identifies the need of additional analysis to determine the measures to be undertaken to secure more efficient execution of its main function, i.e., protection of public property.

Annex 3 is dedicated to the reform of the Bar and it contains instruments to improve the status of the Bar as a public service, including professional and ethical standards, its position and cooperation with the courts and other bodies for the purpose of achieving more efficient judicial function.

The envisaged reform activities pertaining to the Notary are laid down in **Annex 4** specifying ways to improve the performance of notaries.

2. According to their contents, the measures and actions of the Strategy can be divided into: **political actions**, for the purpose of achieving political consensus for the adoption and implementation of the Strategy; **legal measures**, that refer to the adoption of the substantive, procedural and organisational legislation related to the field of judiciary; **financial measures**, that need to create the conditions for the new legislative solutions, as well as for organisational, human resources, IT, technical and other measures and actions pertaining to the level of human resources, equipment and technology for performing the functions of judiciary; **training activities** and a **media-**

plan for promoting the basic ideas, directions and measures of the Strategy **to bring in public support for its implementation.**

PART TWO: JUDICIAL SYSTEM

I. THE JUDICIAL SYSTEM OF THE REPUBLIC OF MACEDONIA: CURRENT STATE OF AFFAIRS

1. The development of the judicial system in the Republic of Macedonia after independence can be divided into two phases. The system in the first phase (1990 - 1995) functioned within the organisational and legal framework of the previous system. The second phase started with the adoption of the Law on Courts in 1995 and the other laws pertaining to the organisation of the judiciary, as well as to the substantive and procedural laws in the field of civil and criminal law.

Having adopted the Constitution in 1991, the Republic of Macedonia embarked upon a comprehensive reform of the legal system to ensure consistency and conformity with the legal system in the European Union.

According to the Constitution, the judicial power is exercised by the independent and autonomous courts. Courts judge on the basis of the Constitution, the laws and the international agreements ratified in accordance with the Constitution. The judiciary has a single organisation and extraordinary courts are prohibited. The constitutional provisions for the judiciary elaborated in the Law on Courts, adopted in 1995, that regulates the basic principles of practising judicial authority, including the organisation and the competences of the courts, their position, the rights and obligations of the judges and other matters related to the functioning of the courts and the judicial system.

The Constitution provides for judges to be elected without restriction of their term of office. Judges are elected and dismissed by the Assembly of the Republic of Macedonia upon the proposal of the Judicial Council of the Republic of Macedonia.

The Judicial Council was introduced for the first time in the Constitution of the Republic of Macedonia in 1991. The Judicial Council consists of seven members, distinguished lawyers elected by the Parliament of the Republic of Macedonia. The Judicial Council proposes to the Assembly the list of judges to be elected or dismissed, decides concerning disciplinary measures against judges; evaluates the professional and ethical performance of the judges, and proposes two judges for the Constitutional Court of the Republic of Macedonia. A significant step forward was made with the establishment of this body, in terms of affirming the independent position of the judiciary since it enabled a professional and not a political body to evaluate the most sensitive area (selection and dismissal of judges).

The Constitution and the Law on Courts also regulate other matters related to the status and the position of the judges working towards strengthening the independence of the judiciary such as prohibition for judges to hold other public functions or professions or be members of political parties; prohibition of political organisation and activity within the judiciary; immunity for judges; conditions under which judges can be dismissed or removed from the office etc.

The judicial power in the Republic of Macedonia is performed by 27 Basic courts, three Appellate courts and the Supreme Court of the Republic of Macedonia. In the period 1995-1997 the judges in all of the above listed courts were elected and the

judiciary started to work on the basis of the provisions of the new Law on Courts adopted in 1995, in compliance with the Constitutional principles.

2. In the course of 2003, the courts dealt with a total of 1.202.211 cases. Each year, the number of court case increases, the procedure for making decisions is steadily prolonged, while the number of cases where the court decision, although final, is not executed, is constantly increasing. An anomaly of the overall court system is the growing inefficiency of the basic courts, in contrast to the efficiency of the Appellate courts. The Supreme Court decides upon extra - legal remedies only in a limited number of civil, criminal and other cases, but it is also a first instance court for administrative disputes.

II. MEASURES AND ACTIVITIES TO REFORM THE JUDICIAL SYSTEM

1. Strengthening the independence of the judiciary

A. Introduction

The Constitution of the Republic of Macedonia specifies that courts are autonomous and independent (Article 98). This provision determines the commitment to define the position of the judiciary in the country in relation to other authorities and to highlight the need to consistently respect the independence of the judiciary.

The independent position of the judiciary is reflected in the constitutional principle according to which courts work only on the basis of the Constitution, the laws, and international agreements ratified in accordance with the Constitution. The court is strictly related to the principle of legality. Such a principle protects judges from any kind of influence and external pressures from the other types of power in the course of making decisions. Judicial independence is also related to internal relations within the judiciary itself (in relation to higher courts, and to judges and the President within the same court).

So far, the independence of judges and courts was, allegedly, secured through the selection of judges (proposal or election by an independent body defined by the Constitution), tenure and immunity for judges, their irremovability and immobility, and salaries that provide for secure, autonomous and independent social status. Practice, however, showed that judicial independence is especially threatened by two aspects: the manner of election and dismissal of judges and the financial dependence of the judiciary, including the necessary funds required to perform their function.

B. Training

According to the Law on Courts, judges have a right and obligation to continuously improve their professional knowledge in the course of performing the function of a judge. In addition, education and training of human resources within the judiciary is the responsibility of justice administration. The Law on Courts provides for 2% of the funds allocated to the judiciary to be spent on training of judges. The prevailing opinion, however, is that such provisions are too general and hence the difficulties in their implementation.

After independence, the forms of professional training of judges were mainly delivered by the Centre for Continuous Education. The Centre for Continuous

Education (CCE) was established in March 1999 within the framework of the Association of Judges of the Republic of Macedonia to continue the activities of the Education Committee, and primarily focus on continuous training and professional education of judges, clerks and court administration staff.

For the purpose of providing preconditions for expert, conscientious and independent performance of judges, the following short- and mid-term actions will be undertaken to create a system of initial training and system of continuous training of judges:

a) The reorganisation of the Centre for Continuous Education into a public institution - School for training judges and public prosecutors - whose main activity would be to provide:

- **initial training of candidates for judges and public prosecutors; and**
- **continuous training of judges, public prosecutors and other staff employed in the courts and the public prosecution.**

b) The training curriculum will be developed by the Board of the School for Training Judges and Public Prosecutors, composed of representatives from the Supreme Court of the Republic of Macedonia, the Public Prosecutor's Office of the Republic of Macedonia, the Ministry of Justice, the Judicial Council of the Republic of Macedonia, the Public Prosecutor's Council, the Association of Judges, the Association of Public Prosecutors and other relevant higher education institutions.

C. Selection, appointment, and dismissal of judges

Judges are **elected** by the Assembly of the Republic of Macedonia upon the proposal of the Judicial Council. Constitutional amendments provide for fair representation of the communities within the Judicial Council.

The requirements for candidate-judges are regulated by the Law on Courts, while the Judicial Council develops the criteria on the basis of which the proposals are made.

Certain deficiencies of the judge selection system, however, have surfaced. Political party influence and pressure, non-compliance with the criteria when making proposals and in some cases rejections of the proposals of the Judicial Council by the Assembly of the Republic of Macedonia proved to be the greatest problems in this process.

In addition, the absence of a selection and (initial) training system for judges before they start performing this function led to certain performance problems. The Law on State Exam has contributed to this predicament since the exam has not been adjusted to contemporary needs and standards of the judge profession.

The following will be undertaken in the mid-term to overcome such a situation and to enhance judicial independence:

a) Constitutional amendments related to the procedures for electing judges.

b) Re-definition of the position, competence, and composition of the Judicial Council of the Republic of Macedonia; The Judicial Council shall be

composed predominantly by judges, directly elected by all judges, while the other members of the Judicial Council shall be elected by the Assembly of the Republic of Macedonia bearing in mind the principle of equal representation of members of the communities;

c) The selection of candidate-judges shall be performed on the basis of an entry exam for the School for Judges, followed by a period of initial training and final examination, bearing in mind equal representation of members of the communities.

d) Successful completion of initial training will result with a final examination followed by judge-appointment by the Judicial Council.

e) Introducing a merit career system. The Judicial Council shall appoint the judges in higher courts as well as court presidents.

f) Adopting objective criteria for accountability of judges and clarifying the part that refers to disciplinary responsibility of judges and their immunity.

g) Establishing a Supervisory Body composed of exclusively judges and determining mechanisms for supervising the performance of the judges without prejudice to the court decision made.

D. Financing of the judiciary

The development of the judiciary in the Republic of Macedonia, in terms of financing, went through two stages. In the first stage, until 2003, the judiciary was completely dependent for funds from the executive power. The second stage started with the adoption of the Law on Judicial Budget in 2003, which introduced several changes to the system of financing. Namely, the procedure of developing and adopting the Budget of the Republic of Macedonia includes an appropriation for the judiciary, and a new system of independent disposal of the funds allocated thereof. Actually, even this law does not bring about any significant changes in terms of coming up with the necessary amount for decentralised disbursement of funds with previously defined objective financing criteria. This is merely redistribution of funds specified "from the top", although the immediate disposal of the funds has been delegated to the judiciary.

Consequently, the previous rather unfavourable conditions of financial limitations remain to hinder the efficiency of the judiciary. To overcome this problem, it is necessary to undertake the following short-term and mid-term actions:

a) Strengthen and improve the financing of courts on the basis of previously defined objective criteria.

b) Another important component of judicial financing is the adoption of regulations on salaries of judges since salaries are an important element for the independence of the judiciary.

When specifying the amounts of the salaries, the Project will, to the greatest extent possible, refer to the principles of relevant international documents, the level and jurisdiction of specific courts, and the types of cases dealt with by the judges.

2. Human Resources and Representation of the Communities within the Courts in the Republic of Macedonia

The total number of employees in the courts in the Republic of Macedonia is 2145, of which: 641 are judges, 212 senior court counsellors, court counsellors, law clerks and court apprentices, 650 are court administrative staff and 642 are typists. In 2002, contracts for a definite time period were concluded with 271 law clerks and apprentices. Due to the backlog, there is a need for these people to remain in the courts.

The following actions will be undertaken to overcome this situation:

a) A Human Resource Study will be developed. The study will take into account the legislative and organisational changes, assess the future needs, and develop criteria and timetable of activities thereof.

b) The amendments of the Law on Courts will provide for equitable representation of persons belonging to all communities without distorting the criteria specified by law. For the purpose of applying this provision and to enable members of minority communities to use their mother tongue in court procedures (envisaged with the amendments of procedural laws), a needs assessment was developed for recruitment of interpreters and typists - members of the communities in the courts of the Republic of Macedonia, along with financial projections.

The implementation of the provisions on use of language in court procedures by employing appropriate staff will be treated as a priority. In addition, the implementation of constitutional and other legal provisions related to equal representation of members of the communities in courts will be an ongoing activity. The funds for the new recruitment and other costs related to the enforcement of the legal provisions on use of languages of the members of the communities in court procedures will be secured in the court budget on the basis of the needs assessment and the financial projections thereof.

At the same time, bearing in mind the current state of affairs concerning the representation of the persons belonging to the communities as holders of the judicial office, the need for on-going training and education of candidate-judges from the communities and their recruitment and appointment as judges is imposed as a priority.

c) For the purpose of overcoming the serious problem of the functioning of *Judicial Police* i.e. inadequate equipment, an analysis will be developed to assess the needs for equipment, arms and other means, including funds to be provided from the court budget as additional financing.

In addition, a training programme for Court Police officers will be developed.

d) Senior court counsellors, counsellors, law clerks, apprentices, managerial and administration staff, and other court staff will be exempt from the scope of the Law on Civil Servants.

3. Increasing court efficiency

A. Changes in the Organisational Position and Competence of the Courts in the Republic of Macedonia

Statistical data on the operation of courts in recent years reveal major deficiencies in terms of the number and management of cases. On the one hand, the backlog of cases from certain areas, mainly misdemeanour, administrative disputes, and executive civil cases, is increasing, while, on the other hand, the disproportion of the number of cases in general in various courts is also increasing.

These problems have been imposing the need for relevant legislative changes related to court organisation and competencies:

a) **Establishing a dual system of first instance competence by introducing higher courts to deal with cases from the field of organised crime, corruption and major criminal offences, civil disputes worth more than a specified value and commercial disputes.**

In addition, the amendments will terminate several courts with "limited jurisdiction" and transform them into court departments on the basis of analysis proving that there is no need for such courts to function as separate courts.

b) **To deal with cases more efficiently, specialised departments should be created at first- and second instance courts.**

Therefore, legislative amendments will provide for the internal re-organisation of the courts. Specialised departments will be established to deal with matters such as: organised crime, corruption and severe criminal offences; civil disputes above specific values; administrative, commercial and labor disputes; misdemeanour cases; and juvenile justice.

c) **Administrative disputes** are one of the "bottle-necks" of the judiciary, with an annual inflow of approximately 3000 cases. The Supreme Court of the Republic of Macedonia resolves only 2000 of them. The concept of the Supreme Court of the Republic of Macedonia dealing with first-instance competence is a residue from the previous system as is the view that administrative acts of the executive can be subject of review by the highest instance court only.

For the purpose of overcoming such deficiencies with far-fetched implications for judicial protection of human rights violated by administrative acts, a new Law on Administrative Disputes will be drafted that will transfer this competence to another first-instance court (one of the newly established higher courts).

d) The biggest "bottleneck" in the operation of Basic courts is **misdemeanour cases**. On annual basis, 150,000-200,000 cases are filed, while the courts manage to resolve 50% of the processed cases. Most of the misdemeanour cases become obsolete and this questions the usefulness of maintaining procedures for such cases.

To overcome this exceptionally acute problem, short-term and mid-term measures will be undertaken.

A short-term measure is the adoption of a new Law on Misdemeanour providing for preliminary ruling of on-the-spot sanctions and mediation and settlement reached between the body competent to initiate a misdemeanour procedure and the given perpetrator, which will decrease the pressure on the courts to deal with misdemeanour procedures.

A mid-term solution is to amend the Constitutional provisions that provide for exclusive court jurisdiction over misdemeanours as a type of punitive actions. **The new constitutional solution will give jurisdiction to the administrative bodies in resolving minor offences in the field of traffic, customs, financial and commercial matters, but also specify certain constitutional and legal mechanisms for court protection of citizens against illegal acts of administrative bodies. In this context, an initiative to amend the Constitution will be raised. Following the constitutional amendments, a new Law on Misdemeanours will be proposed to regulate the overall issue and action on the part of the administrative bodies and the courts.**

All the laws containing misdemeanour provisions will need to be revised. To this end, a special analysis of legal provisions and the application thereof will be developed.

e) The registration of commercial undertakings will be exempt from court competence.

B. Simplification of procedures

The analyses of the functioning of the judiciary system in the Republic of Macedonia done up-to-date reveal the following weaknesses: **inefficient delivery of summons, slow procedures, poor management, frequent postponing of cases, and slow execution of court decisions.**

The following short-term and mid-term measures will be undertaken to overcome such problems:

a) In view of the fact that unorganised and inefficient summons is one of the basic reasons for prolonged court procedures, amendments to the **Law on Courts** will be proposed to address the issue of accountability in **case management** and the organisation of **court summons units** or engaging specialised delivery services. In concurrence with this activity, appropriate changes to the procedural laws will be proposed pertaining to the summons.

b) To accelerate penal procedures in the **Law on Criminal Procedures and the Law on Misdemeanour**, solutions based on relevant European standards will be integrated to prompt the procedure and provide for the right to a trial within a "reasonable time". The amendments address the **efficiency of the delivery of summons, eliminate the abuses of the procedural rules by the parties in the proceedings by prolonging them, shorten the deadlines, and revisit the legal remedies and the way they are decided upon.**

c) The application of the **Law on Litigation Procedure** has revealed certain deficiencies that imposes the need for further amendments and improvements in order to make the procedure faster, better organised, more efficient, and cost-effective.

To this aim, a new Law on Litigation Procedure will be proposed to achieve the following: **to determine clear positions of the court and the parties in a proceeding; to introduce more order and discipline in proceedings; and to ensure clear, precise and argumentative submissions to the courts within a certain time-limit to enable a given court to properly apply the law and reach a decision.** The amendments will also include: reviewing the notion of "substantive truth", i.e., investigation and hearing principle, and shifting the burden of proof to the parties; strengthening the principle of concerted procedures; preventing the introduction of new facts and evidence in appeal procedures; revisiting the requirements and procedures of exemption; introducing fines for abuse of authority by parties in a procedure; specifying a new way of summoning; abandoning the institute of adjournment of trial; and redefining some extra-legal remedies.

d) **The execution of civil judgments** is one of the greatest problems in the judiciary. At the end of 2003, approximately 175,000 executive general cases and 35,000 executive commercial cases were pending.

The *identified weaknesses* in the system of execution of civil verdicts such as **inappropriate legal framework; favouring the debtor to the account of the creditor (a residue from the previous system); lack of adequate registries and records; and low level of equipment, resources and staff available in the Execution Departments within the courts** will be overcome with the adoption of a new legal framework.

The new Law on Execution will considerably **reduce the bases for revoking the institutes of appeal and objection. A concept that will abandon the favourable position of the debtor will be developed along with an execution system outside the courts staffed by authorised persons licensed thereto by the Minister of Justice.**

To improve the use of certain **records and registries** in the country for the purpose of making information on debtors available to competent court authorities and relevant parties, which is necessary in the execution procedure - amendments to the Law on Central Registry, Law on Banking, Law on Cadastre, and the Law on Court Registry will be proposed.

C. Alternative Dispute Resolution

Unlike European experience and standards, the Republic of Macedonia **lacks a developed system of alternative resolution of disputes.** Out-of-court resolving disputes by the mediation institute will directly decrease the number of court cases and unburden the judiciary of unnecessary cases that could be resolved in this manner.

To achieve this goal, the Law on Mediation will be developed. The law will regulate the specific cases and various forms of mediation and reconciliation, and arbitrary disputes, as well as the legal effect of acts and decisions adopted in out-of-court procedures.

Following the adoption of the Law on Mediation, a **programme for selection and training of mediators** will be developed as well as the **exam for acquiring the title of mediator**, and the **Mediator Code of Conduct**.

D) Introducing an Information Technology System in the Courts

In order to simplify and accelerate court procedures and manage court cases more efficiently, the implementation of the Justice Information System Project will be intensified, including sub-projects related to all judicial segments as a continuation of the already implemented IT project in the courts including the computerisation of the three courts in charge of commercial company registration and of the six misdemeanour departments at basic courts in the Republic of Macedonia, as well as projects funded from the proceeds of the sale of Telecommunications Company, PHARE and CARDS programmes through which computer equipment was installed (personal computers and servers) for 60% of the judicial staff, 50% of the staff in the Public Prosecutor's Office, and 60% of the staff in penitentiary institutions in the Republic of Macedonia. The development of software applications in the courts, the Public Prosecutor's Office, the Judicial Council and in the penitentiary institutions is almost completed- and that will considerably improve the efficiency of these institutions.

In the course of 2005, additional funding will be provided through the CARDS programme and additional allocations from the court budget on the basis of a Project developed, including the **installation of equipment, software applications, training of judges, public prosecutors and other staff, as well as the recruitment of technical staff in courts to maintain the system will be completed.**

In addition, a complete network will be put in place linking the IT systems in the courts, Public Prosecution, penitentiary institutions, Ministry of Justice, Ministry of Interior, and the State Judicial Council.

The completion of the process of installing information technology and software applications in the judiciary and the Public Prosecution will ensure, inter alia, electronic and more precise statistics concerning the inflow of new cases and cases pending in each body, department and employee separately.

PART THREE PUBLIC PROSECUTION

I. INTRODUCTION

The development of the public prosecutor's organisation in the Republic of Macedonia underwent three stages. The first stage was prior to the adoption of the Law on Public Prosecution in the Republic of Macedonia in 1993; the second stage, between 1993 and 2004; and the third stage, following the adoption of the new Law on Public Prosecution in June 2004.

The Public Prosecution is a unique and independent administrative body whose function and competencies are based on the provisions of Article 106 of the Constitution of the Republic of Macedonia and the provisions of the Law on Public Prosecution as well as on other laws determining its competencies.

The organisation and competencies of the Public Prosecution have a hierarchical setup on the level of Basic, Higher and Public Prosecutor of the Republic of Macedonia.

The Public Prosecution of the Republic of Macedonia includes three Higher Public Prosecutions: Higher Public Prosecution Bitola with 6 Basic Prosecutions: Bitola, Struga, Kičevo, Prilep (covering Kruševo), Ohrid and Resen; Higher Public Prosecution Skopje with 9 Basic Prosecutions: Skopje, Tetovo, Kavadarci (covering Negotino), Veles, Kriva Palanka, Kumanovo (covering Kratovo), Gostivar, Gevgelija and Debar; and Higher Prosecution Štip with 7 Basic Public Prosecutions: Štip, Kočani (covering Vinica), Strumica, Delčevo, Sveti Nikole, Radoviš and Berovo.

II. MEASURES AND ACTIONS FOR REFORMING THE PUBLIC PROSECUTION

The new Law on Public Prosecution has incorporated standards for the Public Prosecution taken from numerous international documents. Radical changes have been introduced regarding the term of the deputy-public prosecutors (tenure). The Law provides for the establishment of a department to act on organised crime and corruption cases. A new manner of financing the Public Prosecution organisation and the establishment of a Public Prosecutors' Council are also provided for in the new law.

These innovations exhaust the constitutional framework to ensure independence on the part of the Public Prosecution in relation to the executive power in performing its prosecution function.

*To implement the efforts of further strengthening the status of the Public Prosecution organisation the following **short-term and medium-term measures** will be undertaken:*

a) On the basis of a separate project, additional staff, and technical equipment will be put in the Public Prosecution, especially in the Unit for Fighting Organised Crime and Corruption.

b) The implementation of constitutional and other legal provisions related to equal representation of members of the communities in public prosecutions and appointing public prosecutors and their deputies will be an on-going activity.

c) The School for Training Judges and Public Prosecutors (see the part on the judiciary) will provide initial training as well as in-service training.

d) The Law on Salaries for Public Prosecutors and their Deputies, similar as the one for judges, will be adopted. The salaries will be in line with the categories and complexity of cases public prosecutors and their deputies handle.

e) Funding will be provided to complete the hardware and software IT procurement for the Public Prosecution. The IT system in the Public Prosecution will be linked to the court information system, and training will be provided for public prosecutors and other staff.

f) The proposed amendments to the civil procedure legislation will eliminate or reduce to exceptional cases the competencies of the Public Prosecution when it comes to civil, commercial, and other cases.

g) Constitutional amendments will be made to strengthen the autonomy and the independence of the Public Prosecution, in terms of their appointment as public prosecutors, by empowering the Public Prosecutor's Council.

ANNEX 1

THE PENITENTIARY SYSTEM

The reform of the penitentiary system in the Republic of Macedonia started with the adoption of the Law on Execution of Sanctions in 1997. The need to take further action towards improvements in this area became apparent. The current system of execution of sanctions is based on the constitutional postulates of Article 12, Paragraph 2, according to which convicted persons enjoy all freedoms and rights determined in the Constitution with the exception of the right to free movement, enabled by specified mechanisms of control and supervision in the course of serving the sentence.

The penitentiary system in the Republic of Macedonia has a particular horizontal and vertical organisational setup, being a uniform and complete system of penal institutions. Within a system set up in this way, the following entities function in a closely interrelated manner: closed, semi-open, and open penitentiary institutions offering possibilities for convicted persons to progress from one institution to another.

The following activities will be undertaken to improve the penitentiary system in the mid-term:

1. Ensuring conditions to further improve execution of sanctions in accordance with international documents pertaining to penitentiary institutions.

2. Transforming the status of penitentiary institutions as organisational units of the Ministry of Justice and the Prison Administration, and re-defining the organisational setup of the penitentiary institution network.

3. Improving the conditions in penitentiary institutions for convicted persons, as well as the technical equipment in such institutions.

4. Recruiting human resources for the penitentiary and the Prison Administration as well as and putting in practice the constitutional principle on equal representation of the communities will also be an issue.

5. Introducing a probation system in accordance with international standards and the amended penal legislation.

6. Implementation of the alternative sentencing system introduced with the Criminal Code, through establishment of the manner of their enforcement.

7. Proceeding with IT activities in penitentiary institutions.

8. Adopting a programme to improve the conditions in penitentiary institutions for convicted persons for the period 2004-2008, and procurement of the necessary equipment to modernise the working conditions and fully computerise operations.

ANNEX 2

PUBLIC ATTORNEY

Issues related to the legal protection of property rights and interests of the Republic of Macedonia as well as the institutional form of the body in charge of such protection are regulated in the Public Attorney Law from 1997. The law regulates the organisation, competencies, conditions, and procedures for appointment and dismissal of the Public Attorney and his/her deputies. The Public Attorney is organised as a service of the Government of the Republic of Macedonia that undertakes legal measures and action to protect ownership rights and interests of the Republic of Macedonia as well as other matters regulated by the law.

The Public Attorney represents the Republic of Macedonia and its administrative bodies in courts, other bodies and legal persons and in foreign courts and bodies in ownership disputes with international natural and legal persons. The Public Attorney function is performed by the Public Attorney of the Republic of Macedonia and his/her deputies appointed to cover the area of specific municipalities in the State.

The inefficient Public Attorney within the judicial system of the Republic of Macedonia proved to be rather contradictory in terms of status and functions. This expert service of the Government should be representing the State's property interests, but the State as such cannot be identified as the Government. In addition, the Public Attorney represents the interest of the social capital as well as municipal ownership that cannot be identified with the competencies of the Government and its expert services. This contradiction has had several negative consequences including the inability of the Public Attorney to represent the State ownership interests in frequent cases of abuses by the Government and its ministries. In addition, the Public Attorney takes a passive approach towards state property threatened by politically motivated decisions of the executive power.

The following measures will be undertaken to overcome the current state of affairs:

- a) The operation of the Public Attorney will be analysed for the purpose of determination of the measures which should be undertaken in order to secure a more efficient execution of the main function, the protection of ownership rights and all forms of ownership of public nature.
- b) A new Public Attorney Law will be developed that will secure overcoming of the current problems in the functioning of this institution.
- c) Compulsory education and training for holders of public attorney function will be developed. This activity will be carried out through a special programme delivered by the School for Judges and Public Prosecutors.
- d) Staffing the Public Attorney's Office and putting in practice the constitutional principle on equal representation of the communities will also be an issue.

ANNEX 3

THE BAR

In accordance with the Constitution of the Republic of Macedonia, the Bar is defined as an autonomous and independent public service that provides legal assistance and public functions in accordance with the law. The role, significance, and the function of the Bar within the legal system, especially with regard to the protection of citizens' freedoms and rights, is determined by the Constitution and the laws regulating the procedures in courts, administrative and other bodies, public services, and other legal persons.

The Constitution provides the possibility to further specify the functions of the Bar and the basic elements of its organisation to be regulated by the Bar Law. Legal provisions secure its functioning as an independent and autonomous public service that, within the framework of other institutes of the legal state, offers independent, and efficient protection of citizens' rights and freedoms determined by the Constitution and the laws. Due to the inconsistency of the Bar Law from 2002, the Constitutional Court of the Republic of Macedonia cancelled several provisions in 2003.

In view of the need to improve the status of the Bar and upgrade it to a constitutional level, and on the other hand, the necessity to improve its efficiency, competency, and accountability as public service of exceptional importance for court procedures, *the following short-term and mid-term actions will be undertaken:*

a) A new Bar Law will be drafted to consistently reflect relevant constitutional provisions, as well as international and European standards in the given field. The Law will regulate the following issues: categorisation of lawyers authorised to act in basic and appellate courts and in the Supreme Court; training necessity; status and public competencies of the lawyers; licensing system; accountability of lawyers in cases of abuse of authority in court and other procedures and the trust of the clients; Code of Conduct and self-regulation; remuneration; self-regulatory system of internal control; and other solutions in line with the legislation of European countries.

b) Current laws regulating client protection by guaranteeing compensation for damages caused by malpractice of lawyers will be developed and amended.

c) Compulsory continuous training programme in the field of *acquis communautaire* will be adopted.

d) The Bar Association will adopt a new Code of Conduct and Self-regulatory Mechanisms for application thereof.

e) In parallel to the modifications of the system of selection and education of new judges and public prosecutors, a new legal framework for adequate bar exam and training of lawyers will be developed. On the basis of the project, a long-term activity will be undertaken to amend the Bar Law and introduce the new system of selection and training of lawyers.

ANNEX 4

THE NOTARY

The public service of performing notary activities in the Republic of Macedonia was introduced with the adoption of the Law on Notary Activities from 1998. The first notaries were appointed in 1998, and the Notary Association of the Republic of Macedonia was established along with other relevant organs and bodies.

The introduction of the notary as an autonomous, expert, impartial, and independent public service had a positive impact and unburdened the courts in dealing with out-of-court affairs that became the competency of notaries. In addition, legal security increased in particular with the recognition of notary ID documents as public documents, especially in cases where a notary ID document has the power of an executive document. With the adoption of the Law on Movable Property and Rights as Collateral, the Law on Mortgage, and the amendments of the Law on Executive Procedure, the competencies of the notaries were significantly extended which also implied greater responsibility on the part of the notaries.

In line with the positive trends, **the functioning of the notary up to date will be analysed to identify the need for legislative amendments in order to further develop the notary functions.**