



SIGMA

Support for Improvement in Governance and Management

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**FORMER YUGOSLAV REPUBLIC
OF MACEDONIA
DEMOCRACY AND THE RULE OF LAW
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Democracy and the Rule of Law

The economic situation and consequent fiscal difficulties will have a negative impact on the timing and feasibility of PAR actions. The authorities may rely more heavily on donor funds to pursue PAR activities, thus making donor co-ordination even more necessary.

The social and political role of the law is not fully understood. Frequently, public sector institutions disregard legal provisions or binding procedures as they see fit. Complaints are widespread that administrative authorities ignore Administrative Court rulings or obligatory decisions of other administrative bodies. It is up to the top level of the state to ensure that actions of the executive are in conformity with the principle of legality.

The common, deeper reason for the major deficiencies is the lack of respect towards the law and towards democratic institutions, whether they be parliament, the executive or the judiciary, or civil society and its organisations. This is a matter of democratic and legal culture. Therefore it is questionable whether imported time pressures and benchmark-thinking are very helpful. A cultural context cannot be changed by “ticking boxes” but can only develop in a long-term process.

It is too early to assess the effectiveness of the Commission on Verification of the Facts (Lustration Commission) in implementing the Law on Lustration. Experience in other countries indicates that unless such processes are truly professional and impartial, they may be unduly instrumentalised for political purposes. The weakness of the rule of law and of institutions in general suggests that the risks are real.

Constitution

Based on the principles and provisions laid down in the Constitution, the general administrative legal framework in place in Macedonia contains, formally, many of the instruments that guarantee the principle of legality in decision-making. The Ohrid Agreement introduces an overlay of group rights, which depart from the common European understanding of democracy based on individual rights and creates additional complications in professionalising and modernising the governance system.

Parliament

The Parliament of Macedonia plays the role of an accessory in the political decision-making process rather than functioning as the democratically legitimate legislator. Strengthening the capacity of parliament is required so that the Assembly can fulfil its constitutional tasks, especially substantive participation in the legislative process and the effective control of the executive. The existing parliamentary Rules of Procedure should be amended to ensure the transparency of parliament’s work and decisions.

Positive developments are noticed in the area of transparency and ethics with the adoption of legislation on asset declaration and on the prevention of conflicts of interest. However, there are inconsistencies in implementation. The Law on the Prevention of Corruption should also be amended to introduce more credible enforcement mechanisms.

Government

Overall, the Macedonian policy-making and co-ordination system has the design characteristics and much of the human capacity required to produce good policy. In practice, however, the system is under-utilised. Due to over-politicisation of the policy process, policy decisions often by-pass good processes and procedures, and accordingly the policy system as a whole is under-performing.

The central structure for co-ordinating EU affairs (SEA) is not well-designed and far from fully staffed. The consistency has improved between the Annual Work Programme, the NPAA, ministries’ Strategic Plans and the budget, which ensures that EU issues are better incorporated into the policy system. However, concerns remain regarding the sustained capacity and robustness of the

Macedonian policy-making and co-ordination system in coping with the volume of work that accession negotiations (and eventual EU membership) will generate.

The quality of legislation is still insufficient. In particular, but not only, the excessive number of laws produced in a short period must be seen as evidence of a lack of concern for legal quality. The (time) pressures connected to the EU accession process are counterproductive to the elaboration of good-quality legislation and an indication of weak ownership. The speed of legislative activities displayed by the newly elected parliament in July and August 2008 was unique. In these two months no less than 172 laws were adopted, 50 of which were completely new laws. At one of its sessions in August, 52 laws were adopted. The laws were adopted under the “urgent procedure” and most of them (around 140) were proposed by the caretaker government that was acting in the period between the dissolution of parliament on 12 April and the election of the new government on 26 July. The government justified the use of this parliamentary procedure with the argument that most of these laws were needed for the EU integration process. This experience closely resembles the Romanian experience, which was conducive to a weak understanding of the newly adopted legislation, thereby further undermining the social role of the law.

Public Administration

The Macedonian authorities have made progress in reforming the public finance management system since May 2008. The key changes during the past year were the revision of the Law on Budgets and the drafting of the PIFC Law (sent to the government in May 2009). Both laws provide a better quality expenditure management, but many of the new procedures still have to be tested in practice; it is not clear how far public servants’ managerial environment, culture and skills are up to the challenges required by the new legislation.

The situation of the civil service has worsened over the year. The legislator has continued to fragment the public service system by creating unnecessary parallel subsystems for single public sector bodies. General problems require general solutions instead of case-by-case solutions that damage the overall coherence of the state system. The legal and regulatory framework for integrity in the professional civil service should be reviewed and enhanced, and the Civil Servants Agency should be empowered to play a more active role in this regard. The Agency should be placed under the responsibility of the government, not the parliament.

Some donor-driven reforms (for instance in expenditure management or PIFC) are too ambitious, sometimes overlapping, and pay little consideration to the country’s implementation capacities.

Macedonia has participated in all steps of the creation of ReSPA since 2006 and has signed and ratified the international agreement.

Judiciary

The Administrative Court needs to be fully staffed, equipped and sufficiently financed in order to be able to fulfil its tasks satisfactorily. Full jurisdiction on facts and law, mandatory oral hearings, and reformatory instead of only cassation competence would be necessary to improve both the effectiveness and the efficiency of judicial control of administrative actions. Further reforms are needed in order to strengthen the legal protection of citizens against administrative actions.

Anti-corruption Policy

A number of measures have been adopted by the government to increase transparency in public administration. The adoption of necessary and appropriate legislation should not hide the fact that in some areas integrity in the public sector still needs to be improved. The major reason for this need is the gap between the existing regulatory framework and its implementation.

The adoption of the State Programme for Prevention and Repression of Conflicts of Interest represents a step forward in the reinforcement of public sector integrity. However, the implementation of the Programme is in need of improvement. The State Commission for the Prevention of Corruption (SCPC) is not seen to be a front-row actor in the fight against corruption, especially given its staffing difficulties. Filling vacant positions would be a very first measure in strengthening the SCPC's capacity.

One sensitive area is the system of financing political parties, where the lack of transparency has been a source of suspicion of corruption. However, it is expected that the amendments introduced in the Electoral Code of October 2008 could lead to an improvement of the situation.