
ACCEPTANCE OF EUROPEAN STANDARDS REGARDING THE RIGHT TO A FAIR TRIAL IN REPUBLIC OF MACEDONIA

Vlorë Bekteshi

LUM Jean Monnet - Bari, Italy vlora.bekteshi@gmail.com

Abstract: Among the universal rights that a citizen enjoys are the free access to justice, the right to protection and the right to legal security during a regular judicial process.

The right to a fair trial is a fundamental right, which in many cases is violated by the courts in the Republic of Macedonia. These violations, other than blocking and undermining the integrity and fundamental human rights, also violate the European Convention on Human Rights, where Article 6 of the Convention provides for the right to a fair and just judicial process. Since Republic of Macedonia claims EU accession, it is obliged to respect the fundamental rights, conventions and all international documents that are derived and are the most important source for establishing the rule of law. The protection of the rights and provisions of human rights and freedoms is guaranteed by the Constitution as the highest legal act of a given country. A country's positive legislation, except that it should be in line with the country's Constitution, also requires harmonization and acceptance of European standards and directives. Therefore, in this paper we will analyze the importance of accepting European standards for the path towards the European Union and the need for an independent judiciary.

In modern law, the possibility for a citizen to address the court, namely to achieve legitimate rights and interests, represents the possibility of guaranteeing rights. The adoption of European standards in court laws and the practical observance of court cases is a necessity since the right to a fair trial is a fundamental right which is also protected and guaranteed by the ECHR and the Constitution of the country. Although in terms of the adoption of international conventions and documents, Republic of Macedonia stands very well, it has been a compulsory necessity for national laws to be harmonized and in accordance with EU legislation. All candidate countries for EU integration were required this. Therefore, Republic of Macedonia has worked and continues to work very seriously in the full achievement and compliance of national laws with those of the EU. This road of integration is a very important process and from the aspect of adaptation and harmonization of laws, the Republic of Macedonia has worked seriously, yet it is not enough that the acceptance of these standards remains only in written form. What is missing is the practical implementation and observance of the Constitutional principles. The practical aspect of applying the rights deriving from laws and from the Constitution continues to be trepidation. The law as a whole constitutes a serious obstacle to our country, which impedes the exercise of the rule of law. There are numerous cases of violation of constitutional rights by the judiciary. Judicial proceedings are not properly developed and the violation of this right continues to be one of the most frequent violations of the judiciary.

In theory and practice, the right has two different meanings from one another. And the question is whether or not the acceptance of European standards is sufficient if these rights cannot be practically enjoyed by citizens. The justice system and the violation of fundamental rights, besides being a problem, are also a reason for the lack of trust in these institutions, and often such obstacles are not identified because citizens, even though they face problems and injustices, do not turn to the courts because they do not believe that the problems will be solved in the right manner.

Keywords: rights, harmonization, courts, fair, trial, law

1. INTRODUCTION

Integration towards the European Union is a process that continues to be complicated and which mainly requires harmonization of legislation in order to meet the standards of the EU legal system, the so-called *acquis communautaire*. Harmonization of legislation involves and requires a great institutional change where the rule of law will govern.

One of the main criteria for EU accession is the stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities [1].

International organizations that are promoting rule of law reform primarily seem to focus on judicial reform as the primary component of rule of law reform. This seems to be the case not only with the European Union but also with other international organizations.

In the European Union, the principle of rule of law is considered to be one of the main values of the EU. This is also strongly entrenched in the founding documents of the organization [2].

According to legal scholars and philosophers the definition on rule of law should emphasize the end result by considering that the rule of law should serve the society (upholding law and order, predictable and efficient judgments) [3]. And for the rule of law development practitioners, the highlight is at the institutional attributes

believed necessary (comprehensive laws, well-functioning courts, trained law enforcement agencies) for the existence of rule of law in a society [3].

The experience of previous countries during the EU accession process shows that they faced major problems regarding constitutional reforms and the application of the law enforcement practices. Rodin explains “the constitutional frameworks of EU states members have adapted to the relations of interdependence and gone through a process termed a constitutional revolution” [4] [5]. On the other hand, “the legal and constitutional systems of the applicant countries, or potential applicants, have remained more or less unchanged and thus are insensitive to the demands that are being made by European integration” [4].

As it is known, applicant countries and the EU as well as all member States sign accession agreements which are draft documents that the candidate countries are bound to follow for an all-embracing social, economic and legal transformation [6]. Accession agreements impose obligations to carry out complex and radical constitutional and legal reforms.

2. IMPORTANCE OF EU LEGISLATIVE AND STANDARDS

The European Union has established demanding legislative standards regarding the judicial system in terms of its functioning as an independent, transparent, accountable and self-governing branch of government. The protection of the rule of law and human rights are the basis upon which these standards are established.

The European legislation contains extensive provisions and measures, which explicitly recognize and guarantee the right to effective access to justice, and thereby to a fair trial.

The standards, activities and measures in terms of laws are regulated by the European Union legislation and this is a model, which consists of some criteria for all the candidate members pretending to be a part of European Union family. The Republic of Macedonia as a member with candidate status for membership in EU legislation, has a lot of obligations in many spheres and within this also is the standardization of EU legislation with the Macedonian law.

Acceptance of European standards poses great importance for Integration and it is a catalyst for the accession process towards the EU. Macedonia as a candidate country for EU will necessarily have to standardize and harmonize national laws based on European standards in areas where this is required, especially in the field of judiciary and fundamental human rights, including the right to a fair trial. Harmonization involves the establishment of rules of EU law in national law, in specific procedure and the methods of harmonization. One of the criteria for European integration process is the harmonization of the national legislation with the EU law [4].

Harmonization of the laws and the new approach for the improvement and building of the justice system are the first step toward EU membership. This has the specifics and complexes to be achieved with the aim of further progress and fulfillment of criteria toward state progress and the integration in the EU. Adoption of European democratic standards foreseen by the EU directives before accession is essential and a compulsory provision, therefore the advancement and improvement of national laws will be considered. International standardization and harmonization is an uncompromising condition for the Republic of Macedonia.

The term “harmonization” means the adaption of national law with the *acquis communautaire*, which include: the rights and obligation of member States, principles and political objectives set by the founding treaties, secondary law adopted by the institutions, international agreements concluded between member States within the competence of the EU, the case of the European Court of Justice, framework decisions and other legal acts adopted in the second and third pillars of the EU [7].

Despite the fact that according to the European Commission’s Report on the Progress of the Republic of Macedonia and the recommendations issued by UN human rights bodies, there is still a need to fully harmonize the law on the Prevention of and Protection against Discrimination with the European legislation and to promote certain rights. Sexual orientation and gender as well as identity, are becoming more visible and better protected [8].

The right for non-discrimination and equality is enshrined in Article 9 of the Constitution of the Republic of Macedonia which contains provisions on fundamental right and freedoms: “Citizens of the Republic of Macedonia are equal in their freedoms and rights, regardless of sex, race, color of skin, national and social origin, political and religious belief, property and social status”.

Proceeding against this form of violation of rights may also be instituted before regular courts. Courts may also work on cases, which have been previously processed by any of the two independent state institutions. The Constitutional Court is the national judicial institution of the highest instance in which, according to Article 9 of the Constitution, all citizens can apply in cases where they have been the subject of discrimination. Thus, Articles 3 to 6 of the Law on Courts, *inter alia*, envisage that the goals and functions of the judicial are to ensure equality, non-discrimination on any grounds and legal security based on the rule of law. Everyone has the right to equal access to justice in order to protect their rights and legally founded interest.

Court independence as an important postulate for the realization of the rights is pertinent in many international documents, including the Universal Declaration of Human Rights and the International Convention on Civil and Political Rights. Article 10 of the Universal Declaration of Human Rights.

“Everyone has a completely equal right to a fair and public trial before an independent and an impartial tribunal that will decide on one’s rights and obligations and the merits of every criminal charge against one.”

Article 14 of the International Convention on Civil and Political Rights defines that: “(1) All people are equal before the court. Every person is entitled for his case to be treated fairly and publicly before a competent, independent and impartial tribunal, installed by the deciding law, or on the basis of a criminal charge raised against that person, for a civil suit and civil rights claim that face”

The issue on the courts’ independence is also defined in the European Convention on Human Rights where Article 6 of the Convention provides for the right to a fair trial. (1) In the determination of one’s civil rights and obligations or of any criminal charge against one, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. The verdict shall be announced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties require so, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

3. THE PROCESS OF TRANSPOSITION OF EU LEGISLATION ON NATIONAL LAW

The accession process of the Republic of Macedonia for EU membership started more than a decade ago: In 2003, at the Thessaloniki European Council Summit, Macedonia was identified as a potential candidate for EU membership. The official application for membership followed in March 2004 [9], which resulted in granting the country the candidate status in December 2005. On the basis of the conditions set by the Stabilisation and Association Process as well as the newly identified priority areas for action, in 2006 the Council adopted the Accession Partnership for Macedonia. The Partnership serves as a strategic framework in that it outlines the “principles, priorities and conditions” for accession [10]. On account of respective reform assessments, in October 2009 the European Commission issued a recommendation on starting accession negotiations with Macedonia. This step represents the initiation of “a process that involves the adoption of established EU law, preparations to be in a position to properly apply and enforce it and implementation of judicial, administrative, economic and other reforms necessary for the country to meet the conditions for joining, known as accession criteria” [11].

The rule of law and reform of the judiciary are therein explicitly defined as areas of paramount importance for Macedonia’s integration path. The focus is concretely laid on “the independence of the judiciary, the improvement of its effectiveness and training of the legal professions” [12].

In accordance with this, the responsibility of the Macedonian government consists in taking the necessary legislative and political steps so as align the national law to that of the *aquis communautaire*, which represents “the body of common rights and obligations” as defined by EU [11]. Taking in consideration the existing legislative differences, the process of legislative approximation proved to be very demanding and thus required a systematic and strategic procedural programme as well as the development of a solid institutional infrastructure.

The responsibility for adoption of the European Standards lies to the Secretariat for European Affairs and the goal is to establish and maintain a consistent system for the preparation, monitoring and preservation of the overall legislative file, regarding the process and degree of harmonization

The process of legislative approximation to the European standards includes the following procedure: Analysis of the EU legislation; Analysis of the national legislation and connection with other regulation; SAA analysis and other commitments; Comparison analysis from other countries; Request for Transition for EU measures to SEA; Planning of the regulation in the National Program for adoption of the *aquis*, and announcement in the NLEKS database; Defining the planned steps and deadlines (RIA Plan).

The institutional infrastructure for the harmonization of the legislation includes the forming of a law-making group whose work will be followed by the coordinator of the Secretariat from the EU. They make detailed analysis of the measures of the EU and national laws and accordingly prepare the strategic concept for legislative harmonisation.

This whole process of analysis requires a wide-ranging consultation with various competent institutions: Consultation with the EC before being submitted to the government; Consultation with NGO’s; Consultation with Ministry of Information Society and Administration; Consultation to Secretariat for Legislation; Publication of the complete ENER legislative file. A complete legislative dossier is submitted to the SEA.

Government actions are part of the reparation process and they complete the legislative file-opinions through working groups on a technical level, government council meetings, sessions of Committees, Government

sessions, corrections and re-checking of the statement of compliance, table of concordance with Secretariat for Legislation. The procedure is finished when the legislative dossier is completed and sent to Parliament.

Parliament actions start with distribution of the law to the competent commissions (Commission for European Affairs); Work of NCEI (National Council for European Integration); harmonization of the text of the law; harmonization with the Secretariat for Legislation at the request of a competent institution, or Assembly and finally adoption by the Assembly.

Adoption and publication is done when the law is published in the Official Gazette of the Republic of Macedonia. The complete dossier after its publication is recorded on an external disk and the same one shall be submitted to the Secretariat for European Affairs.

4. CONCLUSION

For the realization of the right to a fair trial, with particular importance are the recommendations CM / REC by the Committee of Ministers on independence, efficiency and role of judges in the Council of Europe which provides for an independent judiciary as a prerequisite for the rule of law and a basis for fair trial. In order to achieve the independent judiciary, the state must build standards that will guarantee the sustainability of the judges and provide preconditions based on which each judge will be able to make fair decisions independently and without pressure.

A process is considered effective when fair decisions are taken at a given period of time by following the steps for a fair trial. The judge is obliged to ensure efficient management of the cases for which he/she is competent, while the state should provide conditions through which the judges will be given the opportunity to fulfill the obligations for the development of smooth and unobstructed processes. In this way, an independent and stable judiciary will be achieved. In order to achieve the right to a judicial order provided for in Article 6 of the European Convention on Human Rights, the necessary technical resources, such as spatial preconditions and necessary equipment, should be provided.

The alarming data regarding the violation of the right to a fair court procedure make us think how effective and professional the Constitutional Court is with its decisions. From the Bureau for Representation of the Republic of Macedonia to the European Court of Human Rights, every year are reported worrying data regarding the violation of Article 6 of the ECHR.

The biggest challenge for the Republic of Macedonia continues to be the judicial power. In the European Commission reports, the level of professionalism of the judiciary continues to be alarming and unsatisfactory. Raising the level of the judiciary is considered essential and therefore reforms and changes of positive legislation are expected in order to facilitate the Euro-Atlantic approach.

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