

EFFICIENT MONITORING AND EVALUATION OF JUDICIAL REFORM AS A WAY TO SPEED UP ACHIEVING THE EU STANDARDS

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Abstract: Judicial Reform in the Republic of Serbia got a new context by opening Chapter 23 in accession negotiations with the EU in mid-2016. In that moment Serbia took over the obligation to implement the detailed Action Plan in order to strengthen its normative and institutional capacities and ensure the rule of law. Having in mind that judiciary has the crucial role in that process, the dynamics and quality of its reform in previous period should be considered as the one of indicators of Serbian readiness to meet EU standards in this field. Establishment of the efficient and sustainable mechanisms for monitoring and evaluation of reform activities enabling continuous and timely prepared data on reform results as a solid ground for taking corrective measures in order to speed up and improve quality of the reform process. The significant progress has been made in this regard through appointment of special temporary expert bodies in charge for reform monitoring and evaluation. The initial steps was made through the work of the NJRS 2013-2018 Implementation Commission but more visible progress could be found in results of the Council for implementation of the Action Plan for Chapter 23 established by the end of 2015. For the first time, detailed data on reform results are quarterly publicly available in Serbian and English. However, among others, sustainability of the achieved dynamics and quality of the process remains an issue, especially having in mind austerity measures that prevent the Government from long term engagement of high quality staff.

Keywords: judiciary, reform, monitoring and evaluation, EU standards, accession negotiations.

THE PLACE OF MONITORING AND EVALUATION IN JUDICIAL REFORM

The sentence “when you actually don’t want to resolve some problem, you should establish a working group to deal with it”, became a well-known in Western Balkan countries. Forced to approach to the public sector reform strategically, leaders in the Region, unaccustomed on long term planning, were faced with the obligation not just to plan but also to measure the reform progress. One of the biggest challenges was (and still is) how to efficiently and objectively assess the achievements made in judicial reform. There are two issues of the key importance for monitoring and evaluation (hereinafter: M&E) of the judicial reform progress. The first of all timely established and efficient monitoring mechanism that might be in several forms:

- appointment of special monitoring body;
- delegation of monitoring competences to one or more institutions of state or,
- contracting external audit experts.

Anyhow, the very existence of the monitoring mechanism does not imply the reliable data on reform progress. The existence of precise quantitative and qualitative indicators, as well as their appropriate combination make the basis for measuring, not only the degree of implementation of a particular document for public policy, but also the effects or impact of its implementation.

In addition to what have been already said, the continuity is also important element of the efficient monitoring system. The continuity, *inter alia*, reflects a political will and support to judicial reform and could be seen from the perspective of providing sufficient financial and administrative support to relevant monitoring mechanisms, but also through the active participation of the high-ranked state officials in its work.

MONITORING AND EVALUATION OF JUDICIAL REFORM IN SERBIA-RECENT EXPERIENCES

The first, even a partially, successful attempt of strategic approach to judicial reform in Serbia was made more than ten years ago when had started preparation for the development of the National Judicial Reform Strategy for the validity period from 2006 to 2011 (hereinafter: NJRS 2006-2011)¹. The NJRS 2006-2011 was developed under the World Bank project through inclusive and transparent consultative process. During the process of consultations, all courts, public prosecutors, advocacy chambers, law faculties, other ministries and all other relevant

¹ National Judicial Reform Strategy for the period 2006-2011 (“Official Gazette RS”, no. 44/06), available on: [http://www.mdftjss.org.rs/archive//file/resources/National_Judicial_Reform_Strategy_\(April_2006\).pdf](http://www.mdftjss.org.rs/archive//file/resources/National_Judicial_Reform_Strategy_(April_2006).pdf), last accessed on March 10th 2017)

partners, international organizations and CSOs were consulted. Numerous public discussions were organized. Consultation process lasted for almost a year. After adoption of the Action plan for implementation of the NJRS (2006-2011), a monitoring mechanism was established for its implementation. The overall objective of the Strategy was to regain the public trust in the judicial system of the Republic of Serbia by establishing the rule of law and legal certainty. The key principles of the Strategy were: independent, transparent, accountable and efficient judicial system. The Strategy was primarily devoted to the reform of the Serbia's court system. It also addressed, to a limited extent, other parts of the justice system: the Ministry of Justice (hereinafter: MoJ), the prosecutorial and penal systems, the law faculties, and independent judicial professions. The responsibility for the implementation of the goals and activities envisaged in the Judicial Reform Strategy and Action Plan was entrusted to the 10 member Strategy Implementation Commission (hereinafter: SIC) consisted of representatives of all relevant stakeholders.² On the basis of the nominations, the Government appointed the Commission's members for renewable two-year terms. The mandate of the SIC was included, among others, forming various working groups in charge of the implementation of individual Strategy principles and goals. The MoJ, the High Judicial Council (hereinafter: HJC) and the National Assembly Judiciary Committee were overseeing the reforms presented the Strategy and providing guidance and direction to the Commission on particular aspects of Strategy implementation. The Commission was supported by the Strategy Implementation Secretariat in charge of: Preparation of draft recommendations and decisions on the basis of the working groups' reports; Coordination of the operations of working groups for the implementation of basic Strategy goals; Collecting statistical data needed for the strategic decision making; Providing comparative analyses and international recommendations necessary to be implemented in the legal system of the Republic of Serbia, for the purpose of harmonization of the legislation for EU integration. The Secretariat was obliged to brief the Minister of Justice and the Chairman of the HJC every three months on implementation progress and pending issues in writing. Every six months the Secretariat had the obligation to inform the Prime Minister and the Parliament in writing on progress achieved and pending issues. Annually, the Secretariat was submitting a reports to the National Assembly on the Strategy's implementation. The initial idea of the NJRS 2006-2011 was to integrate the Secretariat staff in the Administrative Office upon its establishment.

² The Commission included representatives of all relevant judicial institutions. The Ministry of Justice representative nominated by the Minister; the Supreme Court representative nominated by the Supreme Court President; the representative of the National Assembly Judiciary Committee nominated by the Committee Chairman; the Public Prosecutor's Office representative nominated by the Republic Prosecutor; the Judges Association representative nominated by the Managing Board; the Prosecutor's Association nominated by the Managing Board; the representative of the Bar nominated by the Managing Board of the Bar Association of Serbia; the representative of the Judicial Training Centre nominated by the Managing Board; the representative of Belgrade University Law Faculty nominated by the Dean. Apart from the representatives of the judiciary institutions, the Ministry of Finance had one representative in the Commission to serve as a link and guarantor of the sustainability of the Strategy implementation in accordance with the budgetary capacity of the Republic of Serbia.

The NJRS 2006-2011 M&E set up was deficient in many ways. The roles of the judicial institutions and the SIC were not clearly defined with regard of the NJRS 2006-2011 implementation and oversight under implementation. It doesn't seem logical to have the special body in charge of the NJRS implementation and two institutions in charge of monitoring. The more meaningful would to have the all relevant stakeholders in charge to implement the Strategy and the SIC to monitor and measure the progress. The situation was even a more complicated having in mind that the Secretariat was also in charge of various important tasks that exceeded administrative support. In addition to this, the whole process lacked in continuity and political support to the real reform. All of abovementioned has resulted in lack of analytical base for the new five-year strategic document.

The adoption of the National Judicial Reform Strategy for the period 2013-2018³ (hereinafter: NJRS 2013-2018) was a great opportunity to establish an efficient M&E based on lessons learned through the implementation of the NJRS 2006-2011. Nine months long consultative process conducted by working group established by MoJ and supported by World Bank experts preceded the adoption of the NJRS 2013-2018. The work on the Strategy has been organized in two models: plenary sessions of the working group (30-40 representatives of all relevant stakeholders) and sessions of the five working subgroups established to discuss various issues (independence, competence, efficiency, ICT). The first draft was sent to EC for opinion and several round tables were organized to discuss it. The second draft included suggestions received during the public debate and from the EC. The Draft was subsequently sent to the Government for adoption. The final step was the adoption of the NJRS 2013-2018 by the National Assembly. For the purpose of efficient implementation of the NJRS 2013-2018 the accompanying Action Plan was adopted⁴. The Action Plan includes list of activities for implementation of each strategic guideline from the NJRS as well as identification of subjects in charge for the implementation, but also deadlines/timeframes, budget resources and indicators. The Strategy Implementation Commission (hereinafter: SIC) was appointed as a temporary working body of the Government to monitor NJRS 2013-2018 implementation. The SIC includes 15 representatives (and fifteen deputy members),⁵ of all relevant stakeholders and holds monthly meetings to discuss the most important issues relevant for reform implementation. All subjects

3 National Judicial Reform Strategy for the period 2013-2018 ("Official Gazette RS", no. 57/13), available on: <http://www.vk.sud.rs/sites/default/files/attachments/Nacionalna%20strategija%20reforme%20pravosu%C4%91a%202013-2018..pdf>, last accessed on March 15th 2017).

4 Action Plan for implementation of the National Judicial Reform Strategy for the period 2013-2018, ("Official Gazette RS", br. 57/13), available on: http://www.mpravde.gov.rs/files/NSRJ_2013%20to%202018_Action%20Plan_Eng.pdf, last accessed on March 15th 2017).

5 The Strategy Implementation Commission is composed of fifteen members (and fifteen deputy members), representatives of all relevant institutions in charge of the implementation of the judicial reform: the Ministry, the Republic Public Prosecutor's Office, the Supreme Court of Cassation, the High Judicial Council, the State Prosecutorial Council, Committee on the Judiciary of the National Assembly of Serbia, a professional association of judges, a professional association of prosecutors, the Bar Association of Serbia, the Judicial Academy, a joint representative of law schools, the Ministry in charge of Finance, a joint representative of the Chamber of Bailiffs, Public Notaries and

in charge of implementation of the Strategy report quarterly on their activities related to NJRS 2013-2018 implementation. The Strategy defines the role of the SIC better than the previous one, as a “periodic working body of the Government, for the monitoring of progress and for directing and planning of future activities.” Consequently, the role of the judicial stakeholders is to implement the NJRS 2013-2018 while the SIC is in charge of monitoring and implementation. The NJRS 2013-2018 also envisages existence of the Strategy Implementation Secretariat that shall provide administrative, expert and technical support to the work of the Commission as a purely administrative body in charge of administrative, expert and technical support to the Commission.⁶ However, due to the Government’s decision that prevents from employment of additional staff, the Secretariat has never been established and the all its duties performs the MoJ staff supported by the MDTF-JSS consultants. That has never jeopardized dynamics of the reporting foreseen in the NJRS 2013-2018,⁷ but resulted in poor achievements with regard of quality of reports that are usually presented to the SIC in original form, drafted by various stakeholders. The clear methodology for reporting and evaluation of individual reports has never been adopted. After three years of implementation, there are no any statistical or qualitative data available beside individual reports of institutions. In addition to this, the AP for NJRS 2013-2018 has been amended twice: The first time in spring of 2014 in order to revise deadlines in accordance with the results of the first year of implementation. The second revision was done in 2016 in order to align its content with the Action Plan for Chapter 23 (hereinafter: AP CH. 23)

Mediators, the Serbian European Integration Office, and the Government Office for Cooperation with Civil Society.

6 The Secretariat of the Commission shall carry out the decisions and guidelines of the Commission by: Drafting updated versions of the Action Plan for Strategy implementation; Drafting proposals of recommendations and decisions based on the report of special working groups; Setting up working groups for implementation of the main Strategy objectives by coordinating their work, ensuring the continuity of cooperation with working groups which participated in the drafting of the Strategy and Action Plan; Coordinating with representatives of other bodies envisaged for implementation of relevant strategies and action plans; Considering projects financed from international resources; Assessing the cost of activities envisaged by Action Plan; Collecting and compiling statistical data relevant to strategic decision making, as well as other data serving as indicators for implementation of activities set out by the Strategy; Collecting, compiling, processing and analysing data received from all the relevant stakeholders envisaged as institutions competent for the implementation of the Strategy under the Action Plan; Drafting decisions and documents of the Commission, based on the collected and analysed data; Analysing comparative reviews and international recommendations which are to be incorporated into the legal system of the Republic of Serbia, in order to align domestic legislation in the EU integration process, and performing other duties, as ordered by the Commission or on the basis of the Rules of Procedure, which are necessary for the implementation of the Strategy.

7 With the purpose of enabling maximum efficiency and transparency in the process of Strategy implementation, the Strategy Implementation Commission, shall submit, every three months, reports on its work to the Government. At the end of each calendar year, the Commission shall report to the National Assembly on the implementation of the Strategy. The National Assembly considers the report of the Commission and of the competent parliamentary committee, containing draft conclusions and recommendations and, based on these draft conclusions and recommendations, decides on measures required to improve the situation in this area.

MONITORING AND EVALUATION OF THE ACTION PLAN FOR CHAPTER 23 IMPLEMENTATION

Establishing the efficient and effective monitoring mechanism for the Chapter 23 in accession negotiation process with the EU was challenging on multiple levels.

The first challenge was to coordinate this mechanism with extremely complicated existed negotiation structure consisted in: the Head of the Negotiating team for Negotiations for accession of the Republic of Serbia to European Union; the Negotiating Group for Chapter 23 led by the President/Head of the negotiation group; the Coordination body for the process of accession of the Republic of Serbia to the European Union constituted by the Decision on Establishment of the Coordination Body for the Process of Accession of the Republic of Serbia to the European Union in September 2013 by the Government of the Republic of Serbia;⁸ and the Coordination body Council⁹. Expert and administrative technical support to the Coordination Body operation is provided by the European Integration Office. However, none of these bodies were capable to perform continuous and efficient M&E of the AP CH.23, having in mind the high rank of their members as well as the amount of administrative work and specific knowledge needed to prepare reports.

8 The Coordination Body shall consider the most important issues and guide the operations within the scope of the public administration in the process of accession of the Republic of Serbia to the European Union. The structure of the Coordination Body shall include: 1) Government President; 2) Government First Vice-President; 3) Government Vice-President and Minister of Labor, Employment, and Social Policy; 4) Government Vice-President and Minister of External and Internal Trade and Telecommunications; 5) Minister in charge of foreign affairs; 6) Minister in charge of the European integrations; 7) Minister in charge of finance; 8) Minister in charge of agriculture, forestry, and water management; 9) Minister in charge of environment. The European Integration Office Director and Head of the Negotiating Team for Accession of the Republic of Serbia to the European Union shall participate in activities of the Coordination Body. The Coordination Body activities shall be managed by the Government President, and he shall be replaced by the Coordination Body member assigned by the Government President. Other Government members, Director of the Republic Secretariat for Legislation and the Government Secretary-General, and the National Bank of Serbia Governor may participate in the Coordination Body activities if the topics within their jurisdiction are discussed. 8 Coordination body.

9 Coordination body Council shall perform the operations regarding current issues within the process of accession of the Republic of Serbia to the European Union, in accordance with guidelines given by the Coordination Body. The structure of the Coordination Body Council shall include: the member of the Government responsible for European integration, who is also a chairman of the Council of the Coordination body, the Director of the Office for European Integration, Head of the Negotiating Team, the heads of negotiating groups, state secretaries of the ministries whose representatives do not lead the negotiating groups, a representative of the National Bank of Serbia, Deputy Director and Coordinator for EU funds in the EU Integration Office and the representative of the Republic Secretariat for Legislation. In the event the Government member in charge of European Integration is unavailable, he shall be replaced by the Director of the Office for European Integration and Head of the Negotiating Team for negotiations on accession of the Republic of Serbia to the European Union, depending on the topic discussed. A representative of the Office for Cooperation with Civil Society shall participate in the work of the Council of Coordination Body.

In parallel, an addition challenge was to coordinate the new mechanism with the various currently existing mechanisms for monitoring of the national strategic documents in the fields covered by the Chapter 23 (Judiciary, Anticorruption and Fundamental rights). Having in mind the very nature of the Action Plan for Chapter 23¹⁰ (hereinafter: AP CH.23) that is an overarching strategic document, the Government of the Republic of Serbia established the Council for the implementation of the Action Plan for Chapter 23 (hereinafter: Council) on 11th December 2015, as a special working body of the Government for the expert support to the Negotiating Group for Chapter 23. Expert support provided by the Council to the Negotiating Group for Chapter 23, includes: Adoption of reports on the implementation of the Action Plan; Submission of an initiative for the update of the Action Plan to the President of the Negotiation group for Chapter 23; Coordination with representatives of other bodies responsible for the implementation of relevant strategies and action plans; Analysis of collected and compiled statistical data necessary for making strategic decisions, as well as other data determined as indicators for the implementation of the Action Plan; Initiates collection, compilation, processing and analysis of data from all bodies determined as responsible authorities for specific activities set in the Action Plan, for the purpose of preparing reports on implementation of the Action plan; The Council's role is to monitor the implementation of the activities envisaged in the Action Plan on a daily basis, anticipate and instigate early warning mechanism in case of delays and other problems in the implementation of the Action Plan and coordinate the reporting process.¹¹

Having in mind lessons learned from the NJRS 2013-2018 implementation, in order to prepare the effective functioning of the monitoring mechanism, the Council organized a pilot reporting cycle in the end of 2015, in order to identify potential problems in the reporting process. The Council subsequently organized training for focal points from all institutions responsible for implementation of the AP CH.23, focusing in particular on the conclusions arising from the pilot reporting. For the purposes of the first reporting cycle, following the training session, the Council developed and delivered to all institutions the following documents: Guidelines for development of the reports, forms for reporting in Serbian and English, as well as the final text of the Action Plan for CH.23 which was adopted by the RS Government on 27th April 2016. There have been four rounds of reporting organized so far and two public presentations of the reports

10 Action Plan for Chapter 23, available on: <http://mpravde.gov.rs/files/Action%20plan%20Ch%2023.pdf>, last accessed on March 17th 2017.

11 The Council shall submit monthly reports on the implementation of the Action Plan to the Head of the Negotiating team for negotiations for accession of the Republic of Serbia to European Union, President of the Negotiating Group on Chapter 23 and the Coordination Body Council. In cooperation with the Office for European Integration, the Council shall submit quarterly reports on the implementation of the Action Plan to the Coordination Body and the Committee for European Integration of the National Assembly, 6 monthly reports will be submitted to the European Commission, as well as an annual report examined and approved by the National Assembly.

for the representatives of state institutions, the media, civil society and international organizations. Reports of the Council are made in Serbian and English and include the following: 1. Detailed report on implementation of the activities due for the reporting cycle; 2. Action plan for CH.23 with a special column including brief description of the status of implementation; 3. Statistical review of the status of implementation of the Action plan for CH.23 on several levels (implementation of the activities in entire Chapter, implementation of the activities in each Subchapter, implementation of the activities per each institution). The all reports are also available on the web page of the MoJ. Additionally, the Council continues to use the mechanisms of cooperation with civil society that produced the great results during the screening process and the process of drafting the Action plan and organizes bi-annual meetings with the National Convent for accession to EU in order to review current problems and methods to improve the implementation of the Action plan activities.

RELATION BETWEEN NJRS 2013-2018 AND AP CH.23 MONITORING MECHANISMS

The adoption of the AP CH.23 and establishment of the Council for the AP CH.23 has opened two issues regarding the relation between the NJRS 2013-2018 and the AP CH.23. The first one was connected to the content of the both documents, while the other tackles the need to coordinate the monitoring mechanisms for measuring the progress in their implementation. When it comes to the alignment of the NJRS 2013-2018 and the AP CH.23 content, the main idea of the AP NJRS 2013-2018 revision done in 2016 upon European Commission's request was to align its content with the AP CH.23. The methodology that had been used for revision includes: removing activities completed from the adoption of the AP NJRS to adoption of the AP CH. 23; removing activities that appear in both documents; alignment of timeframes, and sources of budgeting. This solution has enabled rationalization of HR and time usage as well as avoidance of gaps and overlaps in reporting and monitoring. The revised AP for NJRS 2013-2018 has kept only approx. 20% of the initial content. The consequences of this exist also at the M&E level, having in mind that the M&E mechanism developed for the purpose of the accession negotiation CH.23 is more advanced.

Due to opening accession negotiations with the EU for the CH.23 in July 2016, the Government of the RS and the EC adopted the Common Negotiation Position¹² which includes interim benchmarks to measure reform progress. In accordance with interim benchmark No. 2, Serbian authorities are obliged to implement the NJRS 2013 – 2018 and the Action Plan ensuring full alignment with the AP CH.23. Serbia is also obliged to assess its impact at the end of 2017 and

12 Common Negotiation Position for Chapter 23, available on: <http://mpravde.gov.rs/files/Ch23%20EU%20Common%20Position.pdf>, last accessed on March 17th 2017.

takes remedial action where needed. To achieve this interim benchmark, Serbia should also ensure that recommendations from the Functional Review conducted by World Bank experts in 2014-2015 are followed up. Having in mind the comprehensive revision of the AP for NJRS 2013-2018 performed to align it with the AP CH23, which resulted in removal of more than 80% of its content in 2016, the AP CH.23 is currently the main strategic document governing judicial reform. That also means parallel existence of dual monitoring and evaluation mechanism established by the State (Strategy Implementation Commission and Council for implementation of the AP CH23) but also various shadow reports submitted by interested CSOs. The quality, consistency and availability of relevant data on reform implementation, as well as of the methodology of their collection and evaluation vary. The reports range from ad hoc reports, limited to specific issues and based on unclear methodology (usually submitted by individual CSOs), to regular but poor quality reports of SIC that do not include any way of reform evaluation; to reports of the AP CH 23 Council that are regular, detailed, including precise assessment of the AP CH23 implementation status, but limited to the EC recommendations and lacking evaluation of wider reform impact. Additionally, lack of the central statistics for judicial sector remains an issue. That's also reflected in inputs for the CEPEJ reports that are based on high-quality methodology but focused on the average values of the different judicial efficiency indicators and doesn't show specificity of particular systems.

In accordance with the AP CH.23 the Council shall pay particularly attention to ensuring that monthly reports encompass conclusions and recommendations from relevant bodies which monitor the implementation of national strategic documents (SIC, Coordination body for implementation of the National Anti-Corruption Strategy, as well as numerous bodies that supervise implementation of strategic documents in the field of fundamental rights). In parallel, the Council already has the role to, in cooperation with the European Integration Office, ensure the coordination of the reporting process, attempting to avoid overlaps or gaps due to the parallel monitoring of the same or related activities foreseen in the AP CH.23 and national strategic documents plans in specific areas, for the purpose of the rational use of resources.

FUTURE STEPS

All of the abovementioned have to further result in a streamlining the M&E processes, starting from the Impact assessment that has to be performed in 2017. The results of this Assessment should be used as an analytical base for drafting the NJRS 2019-2023. Adoption of a new NJRS is the great moment to roll out methodology used by the Council for the AP CH.23 on the new SIC or similar body in charge of M&E. Other possible solution is to avoid establishment of a new SIC and to strengthen the role of the Council for the AP CH.23 through entrusting compe-

tence for monitoring of the NJRS, too. Such an approach could significantly disburden stakeholders in the process of reporting as well as enable uniformity with regard of methodology and quality of M&E of the judicial reform in Serbia but it could also open the dispute on the role of other bodies specialized for monitoring of national strategic documents. The third possible option could be strengthening of the SIC role in way enabling it to collect data on the AP CH.23 implementation and submits reports the Council for the AP CH.23. The result with regards of utilization of resources use will be the same as for the solution two. However, all of afore mentioned solutions implies the obligation of the Government to ensure adequate budget for necessary administrative support that appeared to be the biggest problem in M&E mechanisms for all key strategic documents in the field of judicial reform so far. Periodical engagement of an external short term experts to assess reform achievements could always be supported by international donors, but sustainability of any of presented M&E models should be ensured through continuous support of mid-level civil servants trained to collect and compile relevant data on judicial reform as well as through the improvement of the M&E skills of focal points in relevant institutions to perform pre-evaluation when preparing individual reports.

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