



USAID
FROM THE AMERICAN PEOPLE

**JUDICIAL REFORM
IMPLEMENTATION PROJECT**



**THE REPUBLIC OF MACEDONIA
COURT BUDGET COUNCIL**

**STUDY FOR DETERMINING
A PERCENTAGE FROM THE
GROSS DOMESTIC PRODUCT OF THE REPUBLIC OF
MACEDONIA
FOR FINANCING OF THE JUDICIARY**

May 7th 2010

The views expressed in this publication do not necessarily reflect the views of the United States Agency for International Development or the United States Government.

CONTENTS:

1. INTRODUCTION	Error! Bookmark not defined.
1.1 Objective and subject of the study	3
1.2 Applied methodology during the designing of the study/analysis.....	3
1.3 Budgetary – financial autonomy of the judiciary.....	4
2. ANALYSIS OF THE SITUATION, PROBLEMS AND REAL NEEDS IN THE SPHERE OF BUDGETING AND FINANCING OF THE JUDICIARY	5
2.1. Funds for financing of the judiciary	7
2.1.1 Salaries and social benefits for the employees.....	9
2.1.2 Goods and services.....	9
2.1.3 Subsidies and transfers	12
2.1.4 Capital Assets.....	12
2.1.5 Optimum number of employees for normal functioning of the Judiciary	13
2.1.6 Implementation of judicial reforms (2004-2007, 2008-2010)	17
2.1.7 Donations in the Macedonian Judiciary.....	18
2.1.8 Structure of the Court Budget.....	20
2.2 Key factors in the process for obtaining and executing the budget – current experiences	21
2.2.1 Coordination and cooperation between the Judicial, Executive and Legislative branch	22
2.2.2 Preparedness of the judiciary for autonomous drafting, determining and execution of the Court Budget	24
3. OPTIMAL FINANCIAL FRAME – COMPARATIVE ANALYSIS AND CONCLUSION....	28

1. INTRODUCTION

As a response to the request by the Government of the Republic of Macedonia issued at the 118th session, held on 03.11.2009, upon the analysis of the information from the meeting of the Subcommittee for Justice, Freedom and Security between the Republic of Macedonia and the European Commission within the Committee for Stabilization and Association, the Court Budget Council designed a Study entitled “Analysis, plan and recommendations for determining a percentage from the Gross Domestic Product for financing of the Judiciary of the Republic of Macedonia”.

1.1 Objective and Subject of the Study

The Judicial authority is executed by the courts. The courts make judgments on the basis of the Constitution and the Laws and the International agreements ratified in accordance with the Constitution. The courts are autonomous and independent.

The independence and autonomy in the functioning of the judicial branch largely depends on the fulfillment of two internationally accepted standards, factors¹:

- Providing permanent and stable funding for the judicial branch, and
- Active role of the judicial branch in the process of drafting, determining and execution of the court budget, on one hand, as well as preventing influences over the judiciary by state bodies that participate in the process of determination and allocation of the funding for the judiciary, on the other hand.

The purpose of this study is:

- 1) To provide a clear and detailed overview and assessment of the situation, problems, real needs in the sphere of budgeting and financing of the judiciary;
- 2) To provide clear and founded recommendations about the manner of providing permanent, sustainable, and sufficient assets for functioning of the Judiciary as independent, impartial, efficient and autonomous branch equal among the three branches of government in the Republic of Macedonia.

1.2 Methodology applied during the designing of the study/analysis

The following scientific-research methods have been applied, among others, during the design of the study/analysis:

- Analytical method;
- Synthetic method;
- Historical method;
- Statistical – mathematical methods;
- Comparative method;
- Inductive – deductive method.

For the purpose of enhancement of the analysis with facts, rich domestic and foreign literature was consulted, and various data, which helped the completion of the created analysis, and it was thoroughly edited during the joint coordinative meetings.

¹ “UN Declaration for independence of the Judiciary”, item 33 and 34, “Fundamental principles of the UN on the independence of the judiciary”, item 7, recommendation No.12 of the Council of Europe, item 29.

1.3 Budgetary – Financial Autonomy of the Judiciary

With the passing of the Law on Court Budget in September 2003, the legislative branch, upon a proposal issued by the executive branch sets the framework for the autonomy of judicial branch of government on equal basis with the other two branches.

The judicial branch began its budgetary independence on January 1st 2004, with the entering into force of the Law on Court Budget, with a debt transferred from the previous year in the amount of 46 million denars, approved budget of 1.113.413.000 denars and 33 budget users.

Today, six years later, the budget of the judicial branch has 36 budget users, staff trained for drafting, determining and executing of the budget, and a budget in the amount of 1.775.594.000 denars.

The key issue to be underlined is that in situation of predetermined budget, since the day the Law on Court Budget entered force, on January 1st 2004, more than 25 laws have been adopted or amended and implemented which directly or indirectly affects the normal functioning of the courts. They are implemented by the judicial branch within the framework of the current annual budgets, which have not been increased with additional assets to cover for the expenses related to the new mandates, which the courts were legally obligated to implement.

Non-existence of a court budget. The Law on Court Budget regulates the procedure for designing, determining and executing of the court budget, as well as the establishment and the functioning of the Court Budget Council for financing of the judicial branch in RM.

With the provision of the Law on Budgets² it is regulated that: “the Budget of the Republic of Macedonia is an act that plans the annual revenues and other inflows and approved funding and includes the central budget and the budgets of the funds” while the budget users are the first line users from the area of legislative, executive and judicial branch, etc.

Although the Constitution stipulates the separation of the judicial and executive branch of government, the process of determining the budget for the judiciary subjugates this independence by introducing budgetary limitations of the court budget, designated by the Government.

The Government prepares initial assessments of the revenues and expenditures – through the Ministry of Finance and determines budgetary limitations, due to which, the Parliament has been approving funding for the judiciary lower than the necessary and requested level.

Supporting the efforts for budgetary limitations and dimensioning of public expenditures, the issue whether this affects the independence of the judiciary still remains open. In order to overcome this dilemma, it is necessary to define a certain percentage from the gross domestic product for the court budget, as it will be discussed below.

By doing so, another big barrier would be overcome, which actually is disruption of the independence of the judicial branch, primarily, through the limitations imposed by the executive branch, and this would de facto lead to the provision of the constitutional separation of the judiciary from the executive branch.

² Official Gazette of RM, No. 64/05, 4/08, 103/08, 156/09

Taking into consideration that with the provisions from the Law on Budgets, the term court budget is not mentioned in any segment, and the fact that the funding planned in the budget of RM for 2010 is represented in part 29010 – “judicial branch”, composed of two programs, “Court Administration” and “Academy for Training of Judges and Public Prosecutors” and the fact that there isn’t a special law for execution of the court budget, it was concluded that de facto there is no separate court budget for the judicial branch in the real sense of the meaning of the word, i.e., the term budget.

2. ANALYSIS OF THE CONDITIONS, PROBLEMS AND REAL NEEDS IN THE SPHERE OF BUDGETING AND FINANCING OF THE JUDICIARY

Regarding the budget of RM, the judicial branch is a first line budget user, which contains 36 single budget users-beneficiaries within its structure³.

The judicial authority is exercised by the Supreme Court of RM, the Administrative Court, the appellate courts and basic courts established with the Law on Courts. The courts in the Republic of Macedonia are autonomous and independent state bodies which make judgments based on the Constitution and the laws and international agreements ratified in accordance with the Constitution and ensure the implementation of the law and protection of the human rights and freedoms⁴. The Judicial Council of RM is an institution which selects the judges and in accordance with the constitutional amendments and it guarantees the independence and autonomy of the judicial branch. The Academy for Training of Judges and Public Prosecutors is an institution of a public character which organizes and conducts initial and continuous training for the candidate judges, judges and the professional and administrative technical employees of the court administration, with the purpose of providing highly proficient and professional court administration.

³ See chart No. 1 – Overview of individual users of the budgetary user judicial branch and Academy for Training of Judges and Public Prosecutors.

⁴ Law on Courts (Official Gazette of RM, No. 58/06)

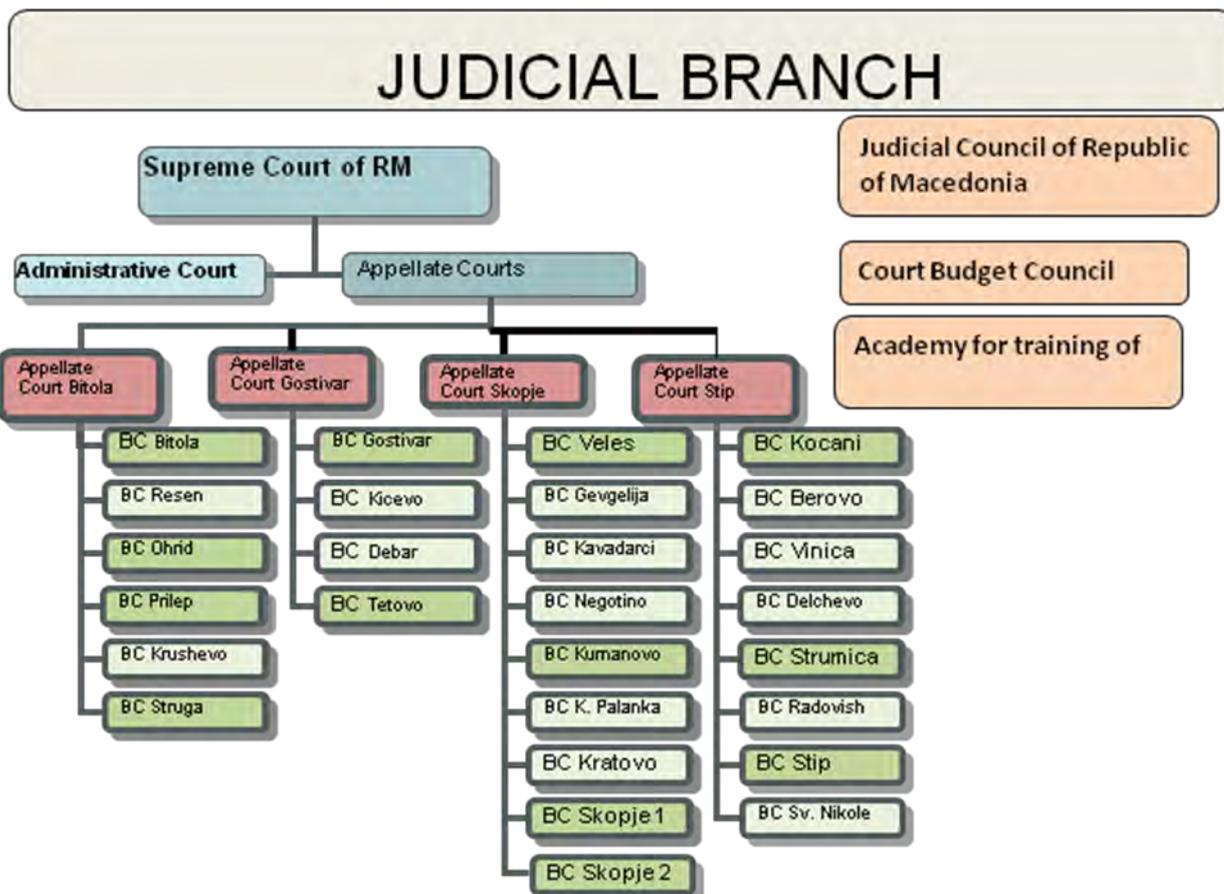


Chart No. 1: Overview of individual users of the budgetary⁵ user judicial branch and Academy for Training of Judges and Public Prosecutors

The field of operations and workload of the judiciary. The workload of the courts is defined by the number of cases pending from the previous year and the newly received, both disclosed and pending cases in the ongoing year. Bearing in mind the above mentioned definition it can be concluded that the courts face a large workload each year. The courts make huge efforts and specific activities in order to deal with the inflow. For years back, the workload of the courts has been moving approximately within the same volume. The data contained in the chart below, present the situation on 31.12.2009, when the number of pending cases from the previous 2008 is 944.260 cases, 662.747 are newly received cases in 2009, i.e., a total of 1.607.007 cases are active, out of which 651.794 cases have been disclosed in the course of 2009 and 955.213 cases are pending, which means that an inflow of 10.953 cases is not disposed.

Court	Pending	Newly received	Total number of active cases	Closed	Pending	Not disposed inflow
1	2	3	4(2+3)	5	6(4-5)	7(5-3)
Supreme Court of RM	1.340	2.610	3.950	2.827	1.123	217

⁵ The Court Budget Council is not an individual user. The goal of the chart is to present the structure of the judiciary.

Administrative Court	9.154	9.043	18.197	7.857	10.340	-1.186
Total number of cases in the Appellate Courts of RM	6.280	40.049	46.329	37.535	8.794	-2.514
Total number of the cases in the Basic Courts of RM	927.486	611.045	1.538.531	603.575	934.956	-7.470
Total number of cases in all courts	944.260	662.747	1.607.007	651.794	955.213	-10.953

Chart 1: Number of court cases in 2009 according to the report of the Supreme Court of RM

The competences and the operations of the Judicial Council of RM and the Academy for Training of Judges and Public Prosecutors are dedicated to the subject and objectives of the Judiciary of RM. In this sense, the Judicial Council of RM selected 43 judges and conducted evaluation of the total number of judges in RM, and the Academy for training of judges and public prosecutors for 2009 organized and conducted initial training for two generations of candidates for judges and public prosecutors (second generation 2008/2009 and third generation 2009/2010); total of 212 seminars with 5.768 participants took place as part of the continuous training.

2.1. Funding for Financing of the Judicial Branch

The fiscal strategy of RM for the period 2010 – 2012 defined the guidelines from the aspect of macroeconomic policy, for successful realization of the entire process of planning and executing of the budget of the Republic of Macedonia, on mid-term basis. In that context, the Government of RM defined the following, basic, strategic priorities: bringing the Macedonian economy out of the recession, gradual recovery of the economic growth and improvement of the living standard of the population, as well as continuation with the reform activities necessary for accession of RM in EU and NATO. The priorities, defined in this way, among other things, entail further strengthening of the fight against crime and corruption and respect of the rule of law, the implementation of which is directly linked to the available adequately allocated funding.

In terms of the projected expenditures of the budget of RM in the forthcoming period, a decrease in the level of public spending is expected and improvement of its structure, i.e., the consolidated budget in the forthcoming mid-term period would be around 35% of the GDP (expected GDP for 2010, 412.591 million denars⁶), by increasing the share of capital expenditures while decreasing the ongoing expenditures. In the part of expenditures allocated for salaries and social benefits, the policy for strict discipline for new employments in the public sector shall continue

⁶ Source Fiscal Strategy of RM 2010 – 2012.

The participation of the Court Budget in GDP for 2010 is 0.42%, and the approved budget per capita, compared to the projected number of the population of the Republic of Macedonia⁷, is approximately 760 denars or approximately 12,34 Euros.

The graphic overview of the total expenditures per number of inhabitants in the Republic of Macedonia for the judicial branch compared to other countries with the status from 2006 is shown on the diagram No.2.⁸

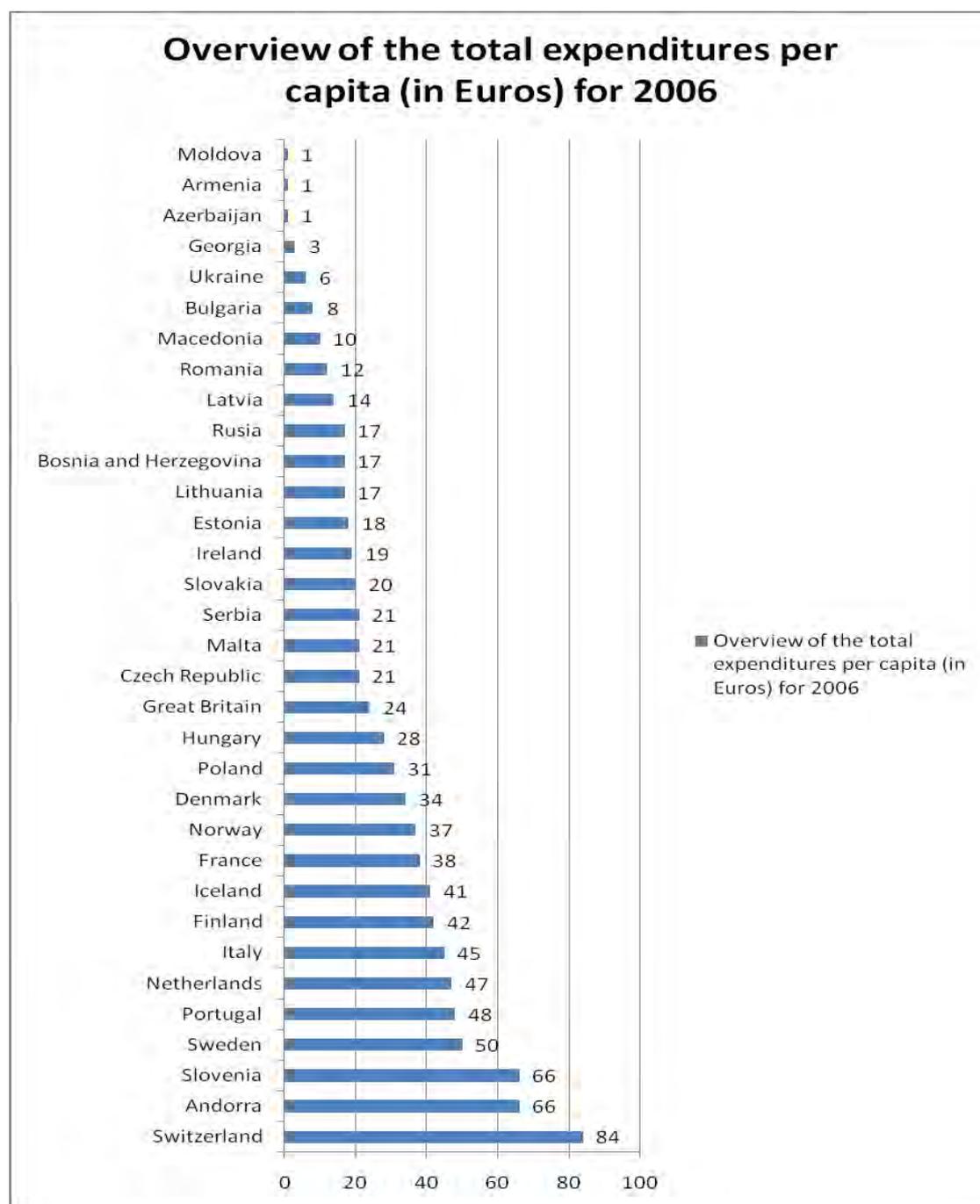


Diagram No.2: Overview of the total expenditures per capita

⁷ According to the data published by the State Statistical Office for 2008, the projected number of the population for 2008 is 2.048.619 inhabitants.

⁸ CEPEJ report - 2008 Edition (data 2006)

The indicators presented in the diagram above show that RM with the level of approved funding in 2010 is far from the approved funding for the judicial branch of the other countries as compared with the situation in 2006.

Bearing in mind the above mentioned, the analysis of the conditions, problems and real needs, we would start this study, by monitoring the functional, program, and economic classification of expenditures determined in part 29010 – judicial branch.

2.1.1 Salaries and Social Benefits for the Employees

Category 40 – salaries and social benefits covers the funding allocated for payment of salaries and social benefits for all the employees in the judicial branch: members of the Judicial Council of RM, judges, court administration, and other employees in the court administration, civil servants and other employees. In order to further analyze the conditions in this budget category the data below reflects the harmonization of the proposed budgetary requests of the judicial branch with the approved budgetary assets regarding this category for the previous three years:

Year	Proposed budget 40 ⁹ -	Approved budget 40	% of coverage/ harmonization
2008	1.205.675.000	1.276.736.000	105,89%
2009	1.538.400.000	1.529.005.000	99,39%
2010	1.596.126.000	1.457.077.000	91,29%

Table 2: Overview of planned and approved funding in category “40”

It is pointed out that the budgetary requests are created in accordance with the instructions of the executive branch and the current real needs / expenditures of each of the individual budget users of the Budget user – judicial branch. During the submission of the proposed budgetary request, the Court Budget Council supports it with detailed information for separate expenditure items.

It could be concluded from the data presented above that the level of harmonization of the budgetary requests for the funding in regards to salaries and social benefits for 2010 is 91,29%, or sufficient funding was not provided with the approved budget for the salaries of all the employees for all the months in the ongoing 2010, i.e., funding has not been provided for new employments in the judicial branch at all, although the judicial branch projected, supported by arguments, additional 70 new employments for 2010.

2.1.2 Goods and Services

What has been an immense burden for the judicial branch is the insufficient funding provided for item 42 – goods and services which provide for the expenditures for the daily work of the courts.

The data contained in the annex 3, Structure of realized expenditures of goods and services for 2009 per user show that the highest percentage (45.85%) of the funding from

⁹ Salaries, rent and social benefits for the employees (example for subcategory: basic salaries and social benefits, allowances for social security of the employers)

the item goods and services are used for utility services, heating and transport, then the contractual services follow with a percentage of 29.33%, the materials and fixtures and fittings with 7.83%, transport and daily expenditures with 7.16%, repairs and daily maintenance with 5.22% and other ongoing expenditures with 4.61. Such structure is shown in the graphic overviews in annex 4 out of which one can conclude that adequate structure of expenditure for normal functioning of the judicial branch has not been provided.

In terms of the structure within the frames of the types of expenditures, we will conclude that in the part of item 421 (utility services, heating and transport) up to 69.46% refer to expenditures for electricity, water supply and drainage, central heating and procurement of liquid fuels, while in the part of contractual services, the expenses for expert witness services, for expertise, legal services and temporary engagement of the necessary human resources, represent 92.17% out of the total contractual services. The participation of the item out of which licenses for maintenance and upgrading of the software programs are provided, for antivirus protection of the computer system in the judicial branch (working stations, servers etc) is insignificant and the same in absolute amount each previous year. This item is additionally burdened with funding for repairs and maintenance of the car pool which is outdated, thus becoming entirely clear that the judiciary does not possess financial means that will provide the adequate support and protection of the computer system. This became even more significant at the beginning of 2010 with the introduction of the ACCMIS System and the entry of huge amount of data into the system, as well as with the start of publishing of the court judgments on the official websites of the courts, all of which imposed the need for highest level of protection of the data entered into the system.

The continuous presence of great difference between the funding requested from the judicial branch and the ones which are approved, which in the course of the recent years moves within the scope of satisfying of only 53.43% to 75.32% of the real needs, has a direct impact on the realization of the judicial function¹⁰.

Year	Proposed Budget 42 ¹¹ - Goods and services	Approved 42	% of coverage/ harmonization
2008	276.485.000	176.000.000	63,66%
2009	440.176.000	235.202.000	53,43%
2010	351.576.000	264.794.000	75,32%

Table 3: Overview of planned and approved funding in category "42"

Namely, non-approval of sufficient funding on the basis of: defense attorney ex officio, payment for allocation of services provided by the Post Office, payment of expert witnesses for presented expertise not possessed by the court, payment of allowance for translation etc., questions the realization of the purpose for existence of the courts and thus, extremely jeopardizes the protection and respect of the human rights and freedoms.

¹⁰ Law on Courts (Official Gazette 36/95 article 3): the objectives and functions of the judiciary cover: impartial application of the law regardless of the position and role of the parties; promotion, within the judicial function, protection and respecting of the human rights and freedoms; and legal certainty and creation of conditions for existence of the courts.

¹¹ Goods and services (example for subcategory: travel and daily expenses; utility services, heating, communication and transport, fixtures and fittings, tools and other materials for repairs and ongoing maintenance, contractual services)

The continuity of the low level of approved funding for the fiscal year results, at the beginning of the current fiscal year, with functioning in conditions with previously transferred debt, and at the end of the current fiscal year, with its increase for a significant sum.

Seen from a historic point of view, the allocation of funds to the budget of the judicial branch through many rebalances made by the government, is a result of the discrepancy between the requested and approved funding.

The issue of non-spent, and returned, approved funding at the end of the current year results from the short deadline given for implementation of the public tendering procedures the duration of which, according to the experience, is not less than 6 months.

In that context, and with the purpose of pointing out the size of the burden on the budget of the judicial branch at the beginning of each year, we would present the following overview from the beginning of its functioning:

Year	Total amount of previously transferred debt	60 days after the payment is due - % of the total payments for that year
2006	104,756,000 MKD	68,61 %
2007	52,014,000 MKD	75,07 %
2008	28,613,000 MKD	53,36 %
2009	68,314,000 MKD	41,41 %

Table 4: Total amount of debts due for payment at the very beginning of the current year

Analyzing the data given above, the participation of the transferred obligations from the past years and the current year with the overdue of debt for more than 60 days after its due date of payment in the total obligations is very high. The non-paid duties note the lowest level in 2008 when with the modification and the amendments and supplementing of the budget of RM in the judicial branch it was intervened with additional assets in the amount of 60% from the basic budget. It is actually a confirmation of the conclusion that the allocation of the budget for the judicial branch for this item is not done in accordance with the objective criteria and real needs of the judicial branch.

Determining of the budget for the judicial branch for this item is not done in accordance with objective criteria and real needs for the judicial branch.

Individual but typical example, for the current year, of the above mentioned conclusion is Basic Court Skopje 1 Skopje¹² where a specialized court unit for organized crime and corruption is established competent for the territory of the whole state, in order to support the strategic objective of the Government for fight against organized crime and corruption, however additional funding was not provided in the budget for the Judicial branch for continuous and normal financing of the court.

¹² Basic Court Skopje 1 Skopje as a criminal court is formed with the Law on Courts (Official Gazette no. 58/06). The approved funding for this item do not reflect at all the range and complexity of its competence determined with the abovementioned law. By 31st March 2010 Basic Court Skopje 1 has overdue debt of 21.666.000 denars.

The reform activities that were undertaken by the judicial branch in the realization of the priorities and objectives must be undoubtedly followed by adequate and sufficient financial means allocated to the judicial branch and providing of a high level of understanding and independence from the competent ministries regarding such requests from the judicial branch.

The analysis of the data presented in table 2, table 3 and table 4 lead to the conclusion that the determined priorities and objectives of the Strategic Plan of the judicial branch¹³ have not been supported by adequate financial means from the Budget of the Republic of Macedonia, which could be especially noticed from the immense discrepancy between the proposed and approved budget, especially under the category “Goods and Services”.

2.1.3 Subsidies and Transfers

Part of the budget of the judicial branch under the category of subsidies and transfers – “46” refers to the means for payment of legally valid and enforceable decisions on the burden of the individual budget users of the judicial branch allocated for:

- Acquittals which fall under the Court budget as well as the payment obligations resulting from the current work of the courts for which the legal deadline for payment is overdue,
- Covering of the obligations related to violation of the right to trial within a reasonable time (obligation according to the Law on Courts which started with its application since 2009),
- And since the beginning of 2010 for covering the rights deriving from the employment of the employees in the judicial branch.

An Additional issue is that for 2010 compared to the previous years, despite the increase in the number of grounds according to which payment of this item is conducted¹⁴, the budget is significantly decreased compared to the previous years.

The Implementation of the foreseen judicial reforms without financial structure and support has consequences also in the area of subsidies and transfers and as a result of this, ultimately, limits the branch in the realization of its objectives and functions.

In this case, as well as with the previously elaborated categories, there is a trend of discrepancy between the funding which is requested as minimally needed by the judicial branch and the approved one.

year	Proposed budget 46 ¹⁵ - Subsidies and transfers	Approved 46	% coverage/ harmonization
2008	15.000.000	15.000.000	100%
2009	15.000.000	15.000.000	100%
2010	15.000.000	11.000.000	73,33%

Table 5: Overview of planned and approved funding in category “46”

2.1.4 Capital Assets

The assets needed for financing of the capital expenditures are defined in category 48 – capital assets, and they are allocated for construction, extension and reconstruction of court buildings and procurement of equipment for the needs of the courts. The budget of

¹³ Strategic plan for the judicial branch for 2010-12 adopted in 2009.

¹⁴ Law on Execution of Budget for 2010

¹⁵ Subsidies and transfers (example for subcategory: subsidies for public enterprises, private enterprises and subsidies for NGOs)

this item is in the amount of 50.000.000 denars for years back, and despite the fact that the computerization of the judicial branch is financed within this item. Exception is 2009 when with the starting budget 60.000.000 denars were provided and then with the modification of the budget correction was made by decreasing the amount for this item.

It has been emphasized that the computerization of the judicial branch from the funding foreseen in this item. Taking into consideration the abovementioned amount of funding in this item, high dependence of the judiciary from foreign investments is being imposed in this segment.

Year	Proposed budget 48 ¹⁶ - Assets	Approved 48	% coverage/ harmonisation
2008	54.000.000	51.000.000	94,44%
2009	200.000.000	61.000.000	30,5%
2010	62.000.000	54.000.000	87,1%

Table 6: Overview of planned and approved funding in category "48"

On the other hand, it is necessary to be emphasized that one of the key qualitative changes in the structure of the budget of the Republic of Macedonia, mid-term, is the increase of the expenditures for capital investments, i.e., the level of public investments is planned to be 4,9% out of the total expenditures for 2010, 15,2% in 2011 and 15,4% for 2012.

Opposite to the national efforts, the reforms are planned to be supported through the project of World Bank for implementation of the reforms in the legal and judicial system and institutional support. Such approach does not provide sustainability of the existing resources in this domain of the provided budgetary assets under this category.

2.1.5 Optimum Number of Employees for Normal Functioning of the Judicial Branch

The volume, quality and level of development of the human resources and their potential questions the functioning, independence and efficiency of the judicial branch, as well as the level of trust in the judicial branch in our society. Bearing in mind the fact that the judicial function is the main pillar in providing and protection of justice, human rights and freedoms, providing of adequate conditions from all aspects for its continuous realization, it is defined as priority of the Court Budget Council.

Determining the number of needed judicial posts is within the competence of the Judicial Council of RM, and the Court Service Council of the court administration gives consent for the acts for internal organization and systematization in the courts of the court administration employees.

According to the data received from the Judicial Council, the total number of judges on a state level is 696 judges, while as of 01.01.2010 93% of the judicial posts have been filled in, i.e., 648 judges.

The manner of organization and systematization of the working posts, the number of employees in the court service and their structure has been regulated with an internal act for organization and systematization of the working posts in the adequate court. With the application of the Law on Court Service, the Court Service Council adopted the rulebooks for systematization of the working posts for all the employees in the court service in all the

¹⁶ Assets (example for subcategory: capital expenditures, capital buildings; purchase of furniture, vehicles, equipment and machines, etc.),

courts according to the previously adopted guidelines and recommendations for defining and dimensioning of the number of working posts per court.

The number of the employees and their structure of qualification, above all, depends on the competences and type of the relevant court, as well as the inherited historic conditions. For the needs of this study analysis has been done and ratio has been determined of the total number of planned positions with the total number of employees in the judicial branch as of 01.01.2009 and 01.01.2010.

The analysis below in the text shows that the judicial branch constantly faces the lack of:

- necessary judicial personnel,
- Necessary managerial, professional and administrative – technical personnel which directly supports the judges and realization of their function (legal assistants, typists, heads of departments, couriers, etc.)

- professional personnel in the area of public relations, human resources, public internal financial control, strategic planning etc., i.e., personnel that is not directly related to the judicial function, but its necessity is imposed as a necessity by the contemporary mainstreams of functioning of the institutions¹⁷.

The data given above a clearly structured in the following table:

	<u>Filled in</u> working posts in the Judicial branch on 31. 12. 2009	<u>Foreseen posts</u> with the systematization for employment in the judicial branch on 31. 12. 2009	Percentage of the judicial posts that have been filled in the systematization per categories:
Total	2912 working posts	4 406 working posts	66,09 %.
Judges	648	696	93%
Members of the Judicial Council	15	15	100%
Managerial court officers			
Qualified court officers	463 employees	1093	42.36%
Administrative – technical personnel	1.458	1.997	73%

Table 7: Overview of the filled in and foreseen working posts for the employees in the court service with the systematization

¹⁷ It is pointed out that the strategic objective of the Judicial branch for transparency in the work (publishing of the judgments on the web pages of the courts, publishing of information of public interest and presenting the work of the courts etc., is realized with the existing personnel, which do not have the necessary professional knowledge. The resources used in such way do not provide long-term sustainability of the objectives.

It could be also determined that the average number of employees per judge is 3.49 employees, i.e., 2.96 employees from the pool of professional and administrative employees (the ones that directly support the judges).

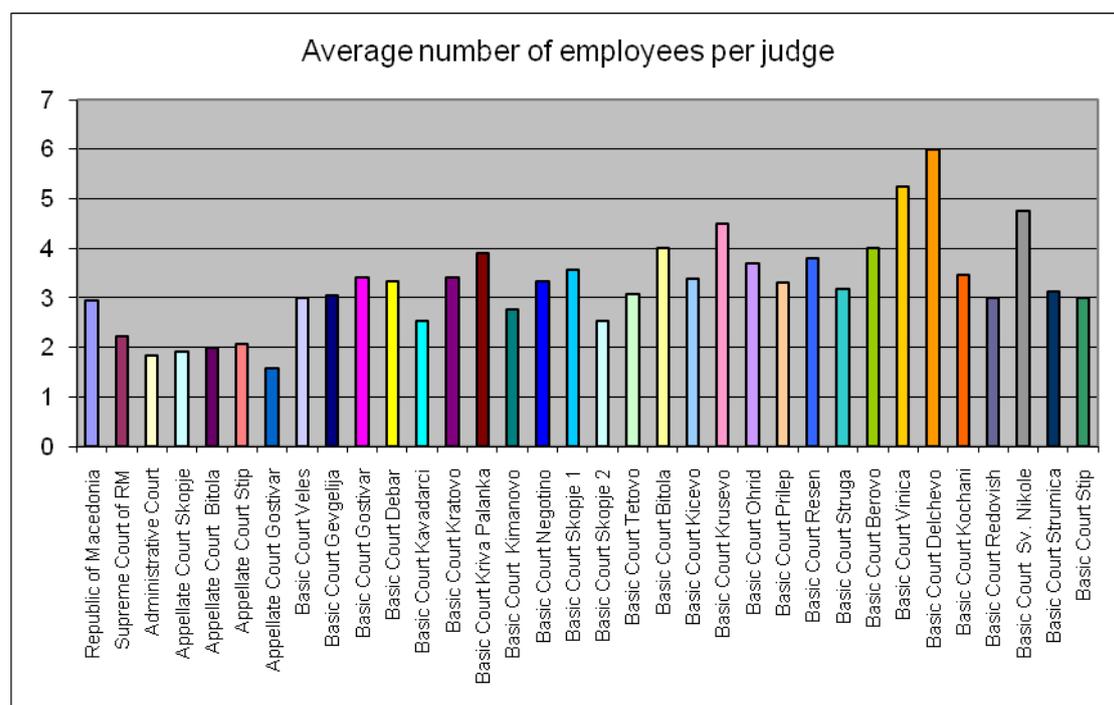


Diagram no. 3 – Average number of employees per judge for 2009

Such situation of planned and employed legal assistants and administrative-technical officers, compared to the number of planned and employed judges, gives the answer to the question for the number of planned and employed operational employees and the administrative-technical employees per judge. That is, from the comparison of the planned number of judges and planned number of operational employees and administrative technical employees, it is planned one judge to be supported by 4.5 employees, while the factual situation of employed judges and employed operational employees and administrative technical employees is 2.96 employees per judge.

The following data and analysis further supports the need for increase in the number of employees, in various groups in different percentage.

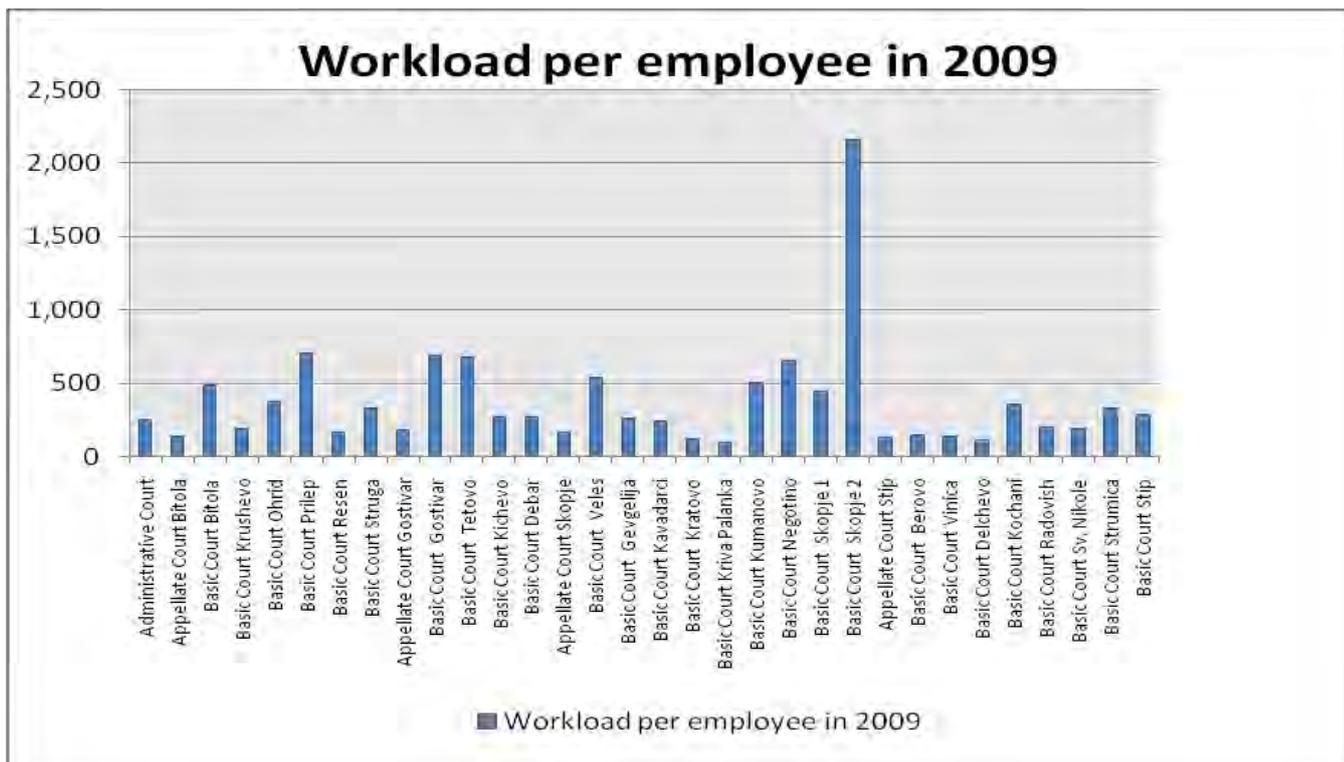


Diagram no.4 – Average number of cases per employee in the judicial branch

Quite noticeable is the situation of unequal burden of the employees in certain courts in regards to the number of court cases is a result of the lack of insight into the situation with the staffing in the courts by the Ministry of Finance as competent ministry for approval of each employment in the judicial branch.

It could be concluded from the presented data that the situation on 01.01.2010 on the level of the Republic of Macedonia is that one judge is supported by 2.9 employees, which is 66.67% of the planned ratio judge/employee.

The determined situation points out to the fact that the factual number of employees in the court administration which supports the work of the judges does not meet the needs, and has a direct impact on the level of timely execution of the work.

The two conclusions reflect the lack of insight into the situation with the staffing in the courts by the Ministry of Finance

The conducted comparisons of the court staff with the number of judges; number of cases per courts in the Republic of Macedonia and the situations with the other European countries, show that the number of the court staff per judge is far lower. Namely, if we concluded that on the level of the Republic of Macedonia the average number of employees ranges around 2.96 employees per judge, in the European countries the number ranges from 7 to 12 employees per judge, and in some cases up to 25 or 30 persons, which clearly point to the low number of staff that supports the judges.

The above mentioned conclusions could be also supported with the conducted analysis of received cases for processing per number of judges and disclosed cases.

It is necessary to be mentioned for the needs of this study that in the previous years, despite the existence of an independent court budget and the competence of the Court Budget Council for employment of the court administration, as well as the modification of various laws which directly affect the competence of the courts, the employment was strictly conducted in accordance with the Law on execution of budget, i.e., only by

previously provided approval for provided funding by the Ministry of Finance. Approvals were provided only for the working posts which were vacant on permanent basis (retirement, termination of employment due to various grounds etc.). Since 2007 with the realization of the NPAA Program for approximation of the Macedonian legislation with the EU legislation additional employments were realized in order to strengthen the professional capacities of the court administration. The largest part of the employments in accordance with the NPAA Program were foreseen for filling out the working posts in the newly established courts (Appellate Court Gostivar, the Administrative Court, the Academy for Training of Judges and Public Prosecutors, the Judicial Council of RM, in accordance with its new competencies), and the part which referred to the other courts was intended for filling out the positions of court administrators, IT staff and law clerks, which in fact does not support the strategic development of the judiciary, since it's success depends on the managerial court employees.

2.1.6 Implementation of the Judicial Reforms (2004-2007, 2008-2010)

The objective of the strategy for reform of the judicial system 2004 – 2007 is to create a judicial system that would guarantee the respect and protection of the human rights and freedoms, strengthening the autonomy and independence of the judicial branch, providing a free and efficient access to justice and engraving the rule of law principle as a basis for a stable democratic system.

With that purpose the judicial branch, as the initial and ultimate implementer of the reform, has implemented in the recent years a number of legal solutions which are key for functioning of the system. A large number of them were new and part of them refer to changes and amendments of the existing ones.¹⁸

However, despite the fact that the implementation of the reform by itself trigger and include financial implications, the experience in implementation of all the reforms in the judicial branch so far points to the absence of mutual harmonization of implemented and foreseen reforms and provided financial means for them, i.e., a large gap between provided and necessary means.

In addition we list few examples which confirm this:

Law on Courts¹⁹. With the adoption of the Law on Courts a new organizational structure was imposed to the judiciary in the Republic of Macedonia. Two courts were established and started their work: The Appellate Court Gostivar and the Administrative Court; reorganization of the courts was realized, during which the Basic Court Skopje 1 was transferred into a criminal court (later, a specialized court department for organized crime and corruption was established, competent for the territory of the whole country), Basic Court Skopje 2 was transferred into a civil court; the new framework of basic courts with basic and extended jurisdiction was set. This essential reform of the judicial system was not followed at all with adequate fiscal implications i.e. financial means for ongoing work and capital investments.

The following data are presented in the context of the conclusion:

¹⁸ Law on Courts, Law on Judicial Council, new Court Book of Rules, Law on Salaries for Judges, Law on Salaries for the Members of the Judicial Council, Law on Administrative Disputes, Law on Enforcement, modifications and amendments of the Law on Criminal Procedure, Law on Free Access to Information of a Public Character, Law on Court Service, Law on Civil Procedure, etc.

¹⁹ Official Gazette 58/06

Year	Basic Budget of RM			Budget Judicial branch			Percentage of participation of the judicial budget in the budget of RM
	Basic Budget	Revenues from bodies	Total budget of RM	Basic Budget judicial branch	Respective revenues of the courts	Total budget of the judicial branch	
2003			50,932,000			1,012,532	1.99
2004	66,666,000	1,917,989	68,583,989	1,150,641	68,724	1,219,365	1.78
2005	66,538,469	1,896,733	68,435,202	1,171,457	63,718	1,235,175	1.80
2006*	116,809,659	1,642,080	118,451,739	1,292,061	63,818	1,355,879	1.14
2007*	115,026,887	1,633,496	116,660,383	1,283,176	64,200	1,347,376	1.15
2008			134,279,812	1,518,736	76,672	1,595,408	1.19
2009			172,971,092	1,840,207	9,611	1,849,818	1.07
2010			161,838,801	1,772,594	3,000	1,775,594	1.10

Table 8: Overview of the movement of court budget in the budget of RM

Law on Court Service²⁰. With the initiation of the implementation of the Law on Court Service, part of the competences that were previously carried out by the Agency for Civil Servants were transferred within the competence of a newly established body the Court Service Council and the Administrative Office of the Court Service Council, but that did not mean providing additional funding for the judicial branch. It is pointed out that a new body is established with this law and a department for its support is foreseen without previously foreseeing any financial structure for their functioning. The Court Service Council executes its competences on the burden of individual budget users of the Judicial Branch depending on where the members come from. In addition, we would point out that the necessary budget for normal functioning of this body for 2010 is 2.103.550 denars.

Court Book of Rules²¹. Crucial change, foreseen with the Court Book of Rules, in the functioning of the judiciary is also electronic management of the data through the Automated Court Case Management Information System. The reform here is implemented, as it was mentioned previously, without fiscal implications.

2.1.7 Donations in the Macedonian Judiciary

Despite the emphasized significance of the place and role of the judicial branch in the realization of the strategic goals of the Republic of Macedonia for membership in the Euro-Atlantic Associations, significant direct donor activity in financing the judicial branch has not been noticed in the previous period.

The most significant support of the judicial branch from the aspect of modernization of the judiciary and support of the judicial reform implementation has been given by the USAID Projects in continuity within the period from 2003 to present times. 18.9 million dollars

²⁰ Official Gazette 98/08

²¹ Official Gazette 71/07

have been directly injected into the judicial branch for continuous, permanent, sustainable and transparent application of the law by an independent, autonomous, effective and efficient judicial branch, key for implementation of equal treatment and respecting of the basic human rights, attracting foreign investments and promoting further development of the private sector.

The direct donations and USAID support which follows the course of events from the very initiation to implementation of the reform laws, court management (court facilities, case flow management, software solutions, hardware equipment, additional staff at the very place of implementation of activities, defined in the legislative framework...), and the trainings conducted for the Macedonian Judiciary were implemented with the following goal:

- To developed a more effective and independent segment of government;
- To resolve disputes in a way which is timely, consistent and legally abiding and to reduce the backlog of cases;
- To function in a more transparent, more open and more responsible way; and
- To develop capacities and mechanisms for improvement of the court organization, practice and performance, in the context of meeting the needs of the citizens of Macedonia for timely and consistent protection of their rights.

In this way a significant intervention was made to provide the necessary means which are considered to be a direct support of the court budget.

Part of the necessary funding, especially in terms of refurbishment of the court buildings and providing of necessary working conditions within the court buildings in accordance with the generally accepted standards for capacities of the court facilities are provided through the Project for Legal and Judicial Implementation that was realized by the Ministry of Justice as credit arrangement from the World Bank, for the period 2006-2011, with a total budget (loan) in the amount of 12 million Euros.

The Academy for Judges and Public Prosecutors started working in 2006, with the goal to conduct initial and continuous training for the judges and public prosecutors and for the employees in the court administration. The past experience has shown significant dependence of the Academy on foreign donations for the purpose of strengthening the capacity of the Academy and for realization of part of the continuous training, especially for the trainings in the area of fight against organized crime and acquiring comparative experiences trough foreign experts. In the future it is necessary to increase the budget of the Academy in order to enhance the capacities of the institution and for its sustainability, with the end goal the Academy not to depend on the foreign donation, but to consider them only as additional source of financing.

The European Union supported the Academy from its founding with 1.1 million Euros technical assistance realized through the CARDS Program. One of the most significant partners is the Monitoring mission of OSCE in Skopje, which has spent around 84.000 Euros only for training of the judges and prosecutors in the area of criminal cases. Further on, the project for further strengthening of the capacities of the Academy of judges and public prosecutors within IPA 2008, is just about to start, with funds in the amount of 986.500 dollars.

The establishment of the Administrative Court is also considerably supported by the International Community through IPA 2007.

The direct input from donations in the judiciary, for several years in a row since the

autonomy of the Judicial budget in the amount of 27.000.000 Euros is somewhat lower from the budget of the judicial branch for 2010.

The analysis of the structure for the purpose of the donations shows a high level of dependence of the judicial branch from donations in the process of court modernization and judicial reforms implementation. However, one should point out the fact that the orientation of the donors is directed towards long-term activities and they are not present in financing of the ongoing activities, because their standpoint is that sufficient funding for those needs should be provided within the court budget.

2.1.8 Structure of the Court Budget

The structure of the court budget is of key importance for explaining the level of modernization of the judicial branch as well as comparing it with the structure of the court budgets of other countries.

The structure of the court budget of RM is defined by the Ministry of Finance, above all, by defining of the funding for salaries and other budgetary items, and then by a complete allocation of the budget in categories and sub budgetary items. The Judicial branch in the past period had almost no possibilities for more significant impacts in regards to the structure.

The analysis of the expenditures per account groups provides the information that the largest part of the expenses (which vary between 81,39% and 84,06%) are foreseen for salaries and social benefits, and then there are expenditures foreseen for goods and services (which vary between 11,59% and 14,94%), the capital expenditures are on a very low level (2,95% to 3,36%). Such structure is not compatible with the contemporary European trends (the data are shown below in the text) where the item foreseen for salaries is much lower than the one in the Macedonian Judiciary.

If the IT level of the Judicial branch of RM is taken into consideration ²² one can determine the huge dependence of the Macedonian judiciary from donations in this part, and that serious efforts will have to be made for improvement in the structure precisely in this context, by decreasing the participation of the category – salaries, of course within an adequate time-related dynamics. This should not in any case be interpreted in an opposite connotation to the previously pointed out need of additional employments in accordance with the adopted systematizations regarding which, additional explanation will follow below in the text.

Such structure of the expenditures points to the conclusion that sufficient funding is not allocated for covering of the expenses related to goods and services and capital expenditures, since the largest part of the anyhow limited funding are foreseen for the construction facilities (their daily maintenance), while funding for purchasing of machines and equipment are almost not foreseen at all.

With the provisions of article 5 of the Law on Court Budget, data are provided for some of the expenses according to the economic classification, during which with the performed insight into the structure of the planned expenses for 2010 in the part of the judicial branch funding is planned in the amount of 11.000.000 denars for subsidies and transfers, as well as expenses which have not been determined as expenses in the Law on Court Budget.

This type of expenses prescribed in accordance with the economic classification is

²² The purchasing and maintenance is foreseen in the categories for goods and services and capital investments.

not contained in the provision of article 5 in the Law on Court Budget, thus imposing the need or reexamination of the provisions from article 5 from the above mentioned law and revising of the expenses according to the economic classification, which are expenses that will be included in the budget of the judicial branch. Harmonization is needed, i.e., acceptance of the budgetary requirements from the courts and the Academy, by providing the full funding for the planned expenses and thus providing continuous functioning of the judicial branch.

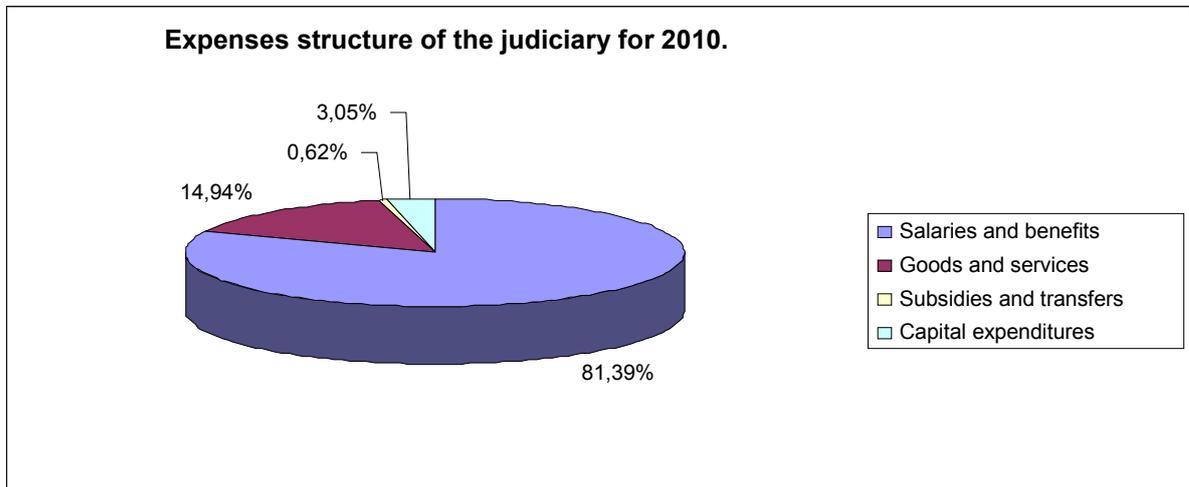


Diagram No.5 Structure of the expenses for the judicial branch for 2010

The comparative data taken from the CEPEJ²³ report for 2008 shows a quite different structure of the court budgets on a European level such as:

Salaries	65 %
Other expenses	15 %
Court expenses	8 %
Court Buildings	6 %
Investments	7 %
Computerization	3 %
Training	1 %

Table 9: Overview of the court budget structure in EU Member States

It should be noticed that there are countries (The Netherlands, Ireland, Austria, Denmark, Montenegro, Norway and Romania) where the computerization part participates with a percentage of over 5 %.

2.2 Key factors in the Process for Providing and Executing the Budget – Past Experiences

The Court Budget Council considers the following as key factors in the process of providing and executing the budget:

- Coordination and cooperation between the judicial, executive and legislative government,
- Preparedness of the judicial branch independently to design, determine and execute the judicial budget

²³ European court systems 2008 with data from 2006 – European Committee for Court Efficiency

2.2.1 Coordination and cooperation between the judicial, executive and legislative branch of government

The budget is one of the most powerful tools used by any branch of government. Any significant government policy must be supported by financial resources from the budget. So, the functioning of the judicial branch as one of the three²⁴ branches of government in the Republic of Macedonia must be followed by adequate funding from the budget of the Republic of Macedonia.

The court budget is annual assessment of the revenues and expenses of the judicial branch and the Academy of Judges and Public Prosecutors, which is determined by the Assembly of the Republic of Macedonia and it is planned for financing of the Judicial branch and the Academy of Judges and Public Prosecutors²⁵.

The above given definition of the court budget directs to the fact that it should satisfy the total needs of the judicial branch and the Academy of Judges and Public Prosecutors. However, is that really the case in reality?

The financing of the judicial branch is regulated by the Law on Court Budget. The budgeting process starts with the adoption of the mid-term fiscal strategy for the duration of three years, which is adopted by the end of May at its latest, while at the same time, during this time the Government of RM determines the maximum approved amounts of funding for financing of the individual budget users from the budget of RM.

The key issues of coordination of the judicial and the other branches of government are the defining of the maximum determined limits for each budget user, including the judicial branch, as well as harmonizing the funding for the judicial branch from the draft budget of RM between the President of the Court Budget Council and the Minister of Finance.

The past experience shows that the projections of the Ministry of Finance divert from the real needs of the judicial branch, i.e., the maximum limit has never been projected on the level needed for the judicial branch. Coordination in this segment of budgetary process with the Ministry of Finance almost does not exist from the aspect of explanation to the basis on which the maximum limit of the judicial branch has been defined. The judicial branch during each budget cycle is surprised by the draft projection of the Ministry of Finance, and despite all the efforts it does not succeed to impose itself with its requirements, although they are objective and justified.

However, such practice, despite the fact that the principle of maintaining formal meetings between the Minister and the President of the Judicial Council is preserved, there are still no tangible results in the context of satisfying the demands of the Judicial Branch.

Determination of the maximum determined amounts of funding for financing of the judicial branch is done without considering the real needs of the judicial branch, which has far reaching consequences for its normal functioning.

Insufficient coordination, and we would also say that the subsidiary character of the judicial branch to the executive branch could be seen through:

²⁴ Legislative, Executive and Judicial branch

²⁵ Article 2 from the Law on modification and amendments of the law on court budget ("Official gazette of the Republic of Macedonia 37/2006)

- **Formal approvals for employments.** the judicial branch as a budget user is not excluded with the Law on Execution of Budget from the obligation to ask for formal approvals for employment of new staff, although funding is foreseen in its budget for that purpose. Although it is considered that the process is of a formal nature, there is still a very subtle control by the Ministry of Finance, and the consequences were mostly manifested with the application of the new Law on Courts and disproportionate employment in the courts with different jurisdiction levels. It is certain that such procedure on the other hand postpones the employment procedure, and causes a feeling of limitation of the autonomy of the judiciary.
- **Intervention with rebalances.** The fact that the budgets of the judicial branch are approved (adopted) at a lower level than the planned (which is on a real basis), and due to the lack of funding every year the executive branch intervenes with additional funding in a form of rebalance/s of the budget, it presents the insufficient coordination between these two branches. Unfortunately, the period in which the rebalances are being done, does not give sufficient elements for realization of activities and projects for which implementation of tendering procedures is needed, or on the other hand, funding is provided with a delay, thus the realization is followed by numerous problems.
- **Reallocation of funding.** The request for approval of reallocation of funding from the already approved budget, from one to another item, within the same category is an indicator more for the superior positioning of the executive branch over the judicial branch. The requests come forth due to different reasons (for instance, inconsistency of the planned dynamics of spending with the determined plan). Not receiving or delayed receiving of reallocation causes unnecessary delays and certain activities which appear incidentally are realized with delays.
- **Negative aspects from the savings in the court budget.** On the other hand, the analysis of Court Budget Management in the past years shows that all efforts of the judicial branch for realizing savings in certain items in order to intervene in the priority items has an ultimately negative effect on the next budget year.

Namely, for the decreased items from the previous year on the basis of reallocation, the Ministry of Finance foresees decreased level of funding in the next fiscal year without taking into considerations the reasons that brought to that during the previous year and the circumstances in the current year.

- **Non-paid obligations for the judicial branch.** The judicial branch, according to the Law on Execution of the Budgets submits data to the Ministry of Finance regarding the situation with the non-paid obligations per items and their due date of payment until the 10th day of the current month, thus the executive branch has an insight on this basis at all times, and through the treasury system controls the purpose for which the funds are being spent. The situation as of 31.03.2010 regarding the obligations of the judicial branch which have not been paid is 70.000.000 denars, which causes serious problems in the normal functioning of the courts, the Judicial Council of RM and the Academy. In addition to this, there is the fact that the ones that should guarantee the rule of law, do not abide to the legal deadline for payment of the obligations and they forcefully impose to the service providers an attitude of creditors in the daily work, which can also have negative reflection over the independence of the court in the process of performing their function.

- **Fiscal strategy of RM.** The coordination is also realized through the created fiscal strategy of RM for the period 2010 – 2012 which defines the directions of the mid-term macroeconomic policy necessary for the overall process of planning and execution of the complete budget. Among other things, in the part of projected expenses of the budget of RM, decreasing of the level of public spending and improvement of its structure is expected, i.e., the consolidated budget in the forthcoming mid-term period was around 35% from the GDP with increasing of the capital expenses, while decreasing the daily expenses and regarding the expenses foreseen for payment of salaries and allowances, the policy of strict discipline for new employments in the public sector will continue. In the part of the judiciary it is planned reforms to be supported through the World Bank Project for implementation of the reforms in the legal and judicial system and institutional support.

2.2.2 Preparedness of the judicial branch for autonomous design, determination and execution of the court budget

In support to the conclusion that the judicial branch has the capacity to autonomously manage the budget is the level of its realization. In this domain besides the restrictive frame for the judicial branch in terms of the many approvals from the executive branch necessary for implementation of the minimum activities of the judiciary, it notes 99.12% of realization for 2008, and over 98% for 2009.

Key factors for the above mentioned conclusion are:

Court Budget Council. The role and competences of the Court Budget Council are regulated with the Law on the Court Budget²⁶ and the Book of Rules of the Court Budget Council. The structure of the Court Budget Council, by itself, primarily through proportionate representation of all relevant factors is a guarantee for the budgetary, supervisory, organizational and managerial preparedness of the judicial branch for complete financial autonomy.

The Court Budget Council, considering the key factors of success in the budgeting process in accordance with United Nations Development Program, Appendix 3 and The Draft Country Assessment in Accountability & Transparency Report, fully provides:

- Transparency;
- Management;
- Decentralization of the responsibilities;
- Coordination and cooperation;
- Integration;
- Flexibility;
- Discipline;
- Relation to the mid-term frame/strategy;
- Accountability and credibility, and comprehensiveness.

The persistent respecting of the budgetary process, preparation of an objective draft budget for the judicial branch, making of numerous decisions in the context of improvement of the management with the Court Budget, justification of the reallocations which are conducted in the course of the fiscal year in accordance with the priorities, transparency in the work through publishing of the annual reports and other decisions, sufficiently confirm the ability of the Court Budget Council to entirely respond to its competences.

²⁶ Official Gazette 60/03, 37/06,103/08

The high percentage of realization of the court budget which was 99.12% in 2008 also goes in favor to the above mentioned, and the analysis shows that such high percentage would have also been realized in 2009 if the Ministry of Finance approved the requests for reallocation and if all the initiated order for payment of the obligations had been realized. In order to strengthen the capacities of the members of the Court Budget Council, many trainings were conducted and several study visits have been realized as well.

The past 2 years the Court Budget Council defined the promotion of the budgeting process of the judicial branch as its activity of the highest priority in the context of designing an objective budget proposal. In 2008 a study was designed by the Court Budget Expert Ms. Debora Botch within the Judicial Reform Implementation Project for analysis of the budgetary process of the Macedonian Judiciary which contained 29 recommendations for its improvement. The Court Budget Council adopted the report and already implemented more than 85% of the recommendations.

The high degree and level of communication and coordination between the Court Budget Council and the individual budget users of the judicial branch must be noted as well in terms of agreeing on the priorities, decisions, directions of the Court Budget Council in order to provide maximum support to the individual budget users in terms of eliminating the obstacles which are of a financial nature.

The Court Budget Council is above all competent for:

- Determining criteria and methodology for designing a court budget
- Allocation of funding from the court budget to the courts and the Academy for judges and Public prosecutors
- Undertaking measures for timely execution of the court budget, i.e, setting the necessary activities/actions for execution of the budget within the frames of the entire Financial Management Cycle;
- Revising of the current execution processes, or reallocation of the funding;
- Approval of funding for new employments in the courts and the Academy for Judges and Public Prosecutors;
- Designing the annual report for execution of the court budget
- Implementation of an objective analysis regarding the strong sides and weaknesses in the process of executing the budget
- Providing of adequate recommendations for improvement of the budget
- Appointing an internal Auditor etc.

Despite the above mentioned rights, authorizations and competences of the Court Budget Council, their implementation in practice is followed by a large number of limitations by the competent bodies. The reality is that real autonomy and independence in regards to the competences is realized only in terms of allocation of the approved court budget to the individual budget users, despite the fact that CBC has shown and proven with its functioning that its level of preparedness and capacities are far greater than this basic jurisdiction.

The work of the Court Budget Council is a subject of auditing by the State Auditing Office for each previous year, from the beginning of the functioning of the Court Budget Council , during which the State Auditing Office, among the other things has concluded that: "...the financial reports of the Court Budget Council – judicial branch truly and objectively state the financial situation and the result of the financial activity in accordance with the effective legislation... and... the Court Budget Council – Judicial Branch realizes legal and purposeful use of the funding in the financial transactions which are state-related

expenses...”²⁷ We consider the entire above mentioned as a relevant recommendation for the capacities of the Court Budget Council and the high level of quality in the performance of the activities.

Administrative Office of the Court Budget Council. The functioning of the Court Budget Council is maximally supported by the Administrative Office of the Court Budget Council which, above all executes the decisions of the Court Budget Council and follows the needs of the judicial branch.

At the beginning 1 person was recruited for the realization of the activities from this area, and due to the process of permanent increase of the activities and the workload, the number of the employees is increased to 8 persons. The complexity of the activities during design, determination and execution of the court budget necessarily requires:

- Professional and comprehensive approach during the implementation of the activities,
- Permanent monitoring of the novelties in the legislation that regulates this field,
- Permanent upgrade of knowledge and participation in trainings,
- Establishment and application of a contemporary Information system,
- Respecting of the highest professional and ethic standards.

Professionally performing the working duties, the administrative service provides continuous functioning of the judicial branch. However, it is evident that due to the limited funding, the administrative office has a small number of staff, who timely complete their duties by applying a great level of sacrifice and dedication

Automated Budgetary Management System (ABMS). The preparation, management and realization of the court budget is performed through the Automated Budgetary Management System as a single integrated system based on processing of data in a real time. The ABMS system contains six modules which offer the possibility for monitoring of the activities and data related to the activities of the users periodically and precisely.

Expert teams for budget management with each individual budget users. As a very significant segment of the budgetary and financial system of the judicial branch, one must mention the existence of the management teams in each court, composed primarily of the president of the court and the court administrator, who through the numerous trainings have proven to be highly professional, dedicated and prepared to face the challenge of budgeting and financial management of their courts. As support to this statement we will quote one of the conclusions of the Court Budget Council from the report for the work of the Court Budget Council for 2009 and realization of the court budget:

„In the course of 2009 the situation in regards to the necessary and allocated financial resources for the judicial branch was extremely unfavorable. The Court Budget Council and the management of the courts were permanently focused towards the achievement of maximum effects with minimum resources, towards determining the best practices of processing the procedures and sharing them among the individual budget users of the judicial branch. Despite of the fact that the management of the courts, the presidents of the courts and court administrators, very seriously realized the part of the obligations related to financing of the courts, the lack of the resources is evident and permanent. Thus, these are not isolated cases of courts where lack of financial resources is noticed due to inefficient work, but a chronic phenomenon in all individual budget users of the judicial branch. Such situation has direct impact on the efficiency of the judicial branch and it is reflected through the unnecessary delaying of the court proceedings, because of which the judicial branch is criticized by the domestic and international public..”

²⁷ Final Report of the authorized State Auditor for the conducted audit of the financial reports for 2007 and 2008

Strategic plan of the judicial branch of RM 2010-2012. Considering the strategic priorities of the Government of the Republic of Macedonia (RM) for integration of the Republic of Macedonia into the European Union and NATO, as well as the recommendations contained in the reports of the European Commission regarding the progress of the Republic of Macedonia, in four specific programs measures and activities have been determined in order to fulfill the strategic objectives of the judiciary in the Republic of Macedonia. This strategic plan (prepared with the USAID's support) is developed with the purpose to deal with all the challenges in terms of establishing the rule of law and legal state. Representatives from the judicial branch participated in its design and many opinions, proposals and information have been built in the plan by all the representatives from the judicial branch and in wider terms. The strategic plan denotes the efforts of the judicial branch for access to justice and quality services for all the citizens of the Republic of Macedonia.

The strategic plan is the key to organized approach towards the realization of the key objectives of the judicial branch. As such, it demands adequate financial resources for its realization. The failure to realize the Strategic plan, based on not approved resources, directly jeopardizes the realization of the following objectives:

- Independent, impartial, efficient and autonomous judicial branch
 - Financial independence of the judicial branch
- Protection of the rights and freedoms of the citizens
 - Proceeding upon cases within a reasonable time
 - Uniformity of the judicial practice
- Professional and qualified judiciary
 - Initial training and continuous education
- Increasing of the transparency
 - Abiding to the rules of professional ethics
 - Strengthening of the public trust in the judicial branch
- Establishing and development of contemporary and automated judiciary
 - Providing quality working conditions

For the needs of this study, while consulting the numerous comparative experiences, above all, with countries which are currently in or have already completed the transition process, it can be concluded that the Macedonian judiciary is much more advanced in terms of the preconditions for acquiring full financial autonomy. If comparison is made with the contemporary European systems of financing of the judicial branch from the aspect of available capacities and transparency in the work it can be concluded that the Macedonian judiciary has all the necessary prerogatives for complete financial autonomy.

3. OPTIMAL FINANCIAL FRAME – COMPARATIVE ANALYSIS AND CONCLUSION

The budget is one of the most powerful tools which is used by every authority. Sufficient, sustainable, permanent resources in the budget guarantee and provide independence and autonomy of the judiciary.

Consulting comparative experiences and analysis of the systems for financing of the judiciary in member states of the Council of Europe, show that the share in the state budget assigned to the judiciary is between 1% and 2%, during which it is emphasized that: the budgets of the judicial systems in Portugal, Slovakia and Lithuania are 1.5% of the state budgets, while the court budgets in Romania, Poland, Slovenia and Norway are 1.5% of the state budgets and in Hungary²⁸ it is around 2% from the state budget.

Suggestive are also the data referring to Moldavia, country for which in 2007 the Council of Europe determined that the resources assigned to the judicial system are not sufficient for efficient and effective functioning of the courts and proposed between 1.5% and 2% of the state budget to be assigned to the judiciary for operational expenses and capital investments also suggest

With the budget of the Republic of Macedonia for 2010, 1.775.594.000 denars have been approved for the judicial branch which is 0.43% from the planned GDP for 2010, or compared to the total expenses of the Budget of the Republic of Macedonia this is only 1.10%.

The total requirements for necessary funding for execution of the activities of the judicial branch of the Republic of Macedonia for 2010 are determined for the amount of 2.024.722.000²⁹ denars, which compared to the total expenses in the budget of the Republic of Macedonia for 2010 is 1.25%, or compared to the planned GDP for 2010 the funding for the judicial branch is 0.49% of the GDP.

	Proposal budget of the judicial branch for 2010	Approved budget for 2010
	2.024.722.000	1.775.594.000
% from the planned GDP for 2010	0,49%	0,43%
% from the budget of RM for 2010 ³⁰	1,25%,	1,10%.

Table 10: Overview of the planned and approved funding for 2010 compared to the planned GDP and the budget of RM

The structure of the expenses and the amount of the funding contained in the budgetary request for 2010 for the judicial branch follows the following guidelines given and underlined out by the Ministry of Finance³¹:

- Planning and presenting a lower level of the necessary funding, considering the guidelines contained in the Budgetary circular for 2010 which directs to rational and efficient use of the funding;
- Decreasing of public spending and improvement of the structure of expenses (capital/daily), which is not the case for the judicial budget;

²⁸ EU Member States: Portugal (since 1986), Slovakia, Lithuania, Poland, Slovenia, Hungary (since 2004), Romania (since 2007)

²⁹ Proposed budget of the judicial branch for 2010 submitted to the Ministry of Finances.

³⁰ Budget of RM for 2010: 161.838.801.000 (Official Gazette 156/09)

³¹ Budget circular for 2010

- Preventing of employment of the planned necessary number of employees in the judicial branch for the specific year;
- Providing of external injections for support of the judicial reforms through the World Bank Project for implementation of the reforms in the legal and judicial system and institutional support, funds which are not direct revenue of the judicial budget;

The structure of the expenses and the amount of the funding contained in the budgetary request of the judicial branch and the Academy for Judges and Public Prosecutors for 2010 does not reflect the real situation of necessary funding for effective and efficient functioning of the judicial branch and the Academy for Judges and Public Prosecutors.

Neglecting the fact that the above mentioned funding contained in the budgetary request in the amount of 2.024.722.000 denars is only 1,25% of the total expenses of the Budget of the Republic of Macedonia for 2010, or compared with the planned GDP for 2010 the funding for the judicial branch is 0,49% of the GDP, they are not approved by the executive and legislative branch.

The approved budget for 2010 for the judicial branch does not provide the necessary dynamics for functioning of the judiciary. The amount does not provide sustainability of already implemented and planned reforms which have been financed so far, mostly by donations

The approved amount of funds for the Budget of the judicial branch means decreasing of already drafted proposal budget for 265.645.000 denars and it only satisfies 86,88% of the foreseen activities of this branch for 2010, which presents 0.42% of GDP for 2010.

It should be mentioned that the judicial branch for the item - paid obligations from the previous budget year, transferred non-paid obligations towards the contractors in the amount of 63.079.025 denars and non-paid obligations by the Academy for Training of Judges and Public Prosecutors in the amount of 5.234.589 denars or a total amount of non-paid obligations of 68.313.614 denars, which compared to the planned funding for daily and capital expenses for 2010 is 21,43% from the budget of category „42,- goods and services and „48,- capital investments.

The pointed out numbers indicate the conclusion that the history repeats itself, which would mean that despite the small amount of provided funding, they will be largely directed towards paying obligations from the past period and the same condition will be repeated also in the ongoing period, i.e., generation of obligations within the existing budgetary cycle and their payment in the future budgetary cycles. This is a cycle which is continuously repeated for the judicial branch in RM, from the day of its budgetary autonomy.

Taking into consideration the above mentioned data in the part of the analysis of the situations, problems and real needs in the sphere of budgeting and financing of the judicial branch that reflect the current situation, as well as the needs of the judicial branch for normal execution of the activities of the judicial branch and realization of the objectives for its existence, the comparative experiences of the member states or candidates for EU membership and certainly the results from the conducted comparative analysis of the systems for financing of the judiciary in the other member states of the Council of Europe, the Court Budget Council defined its requirement of necessary funding for normal execution of the activities of the judicial branch for the amount of 0.77% of GDP, i.e. 2% from the national budget of the Republic of Macedonia

The budget of the judicial branch which provides sufficient, sustainable and stable sources of financing is 0.77% of GDP of the Republic of Macedonia ³²

The determined amount of 0.77% of GDP of RM takes into consideration the high level of dependence of the judicial branch from the foreign donations and the trend of decreasing of the type and scope of donations³³.

With the mentioned percentage conditions are created for the ongoing and investment maintenance of the equipment in the Judiciary, and above all to the ICT systems which among other things support the Automated Court Case Management and Information System, the Automated Budget Management System and the Register for Court Employees, the functioning of the LAN and WAN networks of the judiciary, as well as the web sites and internet access of the courts. The necessary level of network and information security of all the systems is provided on permanent basis, which means providing of security of the system by using tools that would significantly improve the security of the information flow with the purpose of abiding the laws, regulations and professional IT standards. For the purpose of providing better performances of the network for the implementation of new software applications, the expenses for renting of the WAN Network for data transfer are increased.

The judicial branch with the budget defined in such way, especially in regards to employments and filling in of the vacancies, will get additional employments which are needed for providing efficient and updated judiciary. Here, above all it is referred to application of Article 101 paragraph 1 from the Law on Courts³⁴, employment of additional staff that would support the whole IT Technology in judiciary, staff composed of managerial court employees, which will be key and specialized support to the management of each court, such as the court police, necessary qualified staff for filling in the working posts from the areas of: public relations, strategic planning, human resources management etc. It is necessary to be emphasized that the judicial branch defines the creation of the policies for building the human resources capacities, attracting and keeping young and highly educated staff as a priority. This is especially important if it is taken into consideration that the judicial branch should impose itself in labor force market, in conditions of market economy, as an attractive employer which by implementing the principles of expertise and competency, offers possibilities for vocational and professional advancement and development. The budget defined in this way will enable the introduction of a career system and keeping the qualified professional staff within the judiciary, since it will stimulate the quality of work for the court administration.

The implementation of the strategic objectives and following the trend of reforms will impose a change in the structural participation of certain categories in the budget of the judicial branch in the context of increasing the funding foreseen for expenses under the category goods and services and capital investments, and decreasing of those in the category of salaries, rent and allowances.

³² This percentage of the amount of funding from the Budget of RM does not include fiscal implications of the reform activities in the Judiciary of RM.

³³ It is emphasized that the first USAID Project, USAID Court Modernization Project has a budget 13.3 million dollars, and the second one, USAID Judicial Reform Implementation Project is 5.6 million dollars.

³⁴ The Law on Courts – Article 101 paragraph 1: in the courts depending on the workload of the courts a certain number of senior court advisors, independent court advisors, court advisors, legal assistants, court interns is employed, so that each judge has at least one court employee from the previously mentioned occupations.

With the additional financial resources of the other categories, conditions will be provided for normal and continuous flow of the daily work of the courts. The additional funding does not refer to the implementation of new reform activities.

With such approach and approval of the determined funding by the Court Budget Council in the amount of 0.77% of GDP of RM, the established inconsistencies between the Constitution, the laws and the regulation for the court budget will be abandoned.

In one word, determining the above mentioned percentage from the GDP of the Republic of Macedonia will result in realistic separation of the judicial branch from the other two branches, avoiding of the budgetary limitations of the court budget, and providing a high level of autonomy in the creation of the budgetary policy and execution of the expenses of the judicial branch.

Results from permanent, sustainable and sufficient funding for financing of the judicial branch:

- The judicial branch as a strong, effective, efficient and independent segment of authority;
- High level of transparency and responsibility in the work of the judicial branch;
- Generation of economic growth and development; and
- Improved capacities of the Judiciary in the context of satisfying the needs of the citizens of Macedonia for timely and consistent protection of their rights.