



JUDICIAL REFORM IMPLEMENTATION PROJECT

Report 1

Deborah Botch

Court Budget and Financing Expert

May 12, 2010

I. Background

To assure adequate and stable funding for judicial branch of power in the Republic of Macedonia (ROM) and assure the judiciary's independence and autonomy, JRIP has supported the development and the implementation of the Budget and Finance Study and the development of a study for determining a fixed percentage of the Gross Domestic Product (GDP) for the Macedonian courts. Key to the process of implementation of the recommendations and conclusions of both studies is their implementation within the legal framework, specifically the Law on Court Budget. Accordingly, the Court Budget Council (CBC) has created a working group (WG), to analyze and prepare a proposal on the changes to the Law on Court Budget.

To support this activity, the following concepts and resources are provided in this report to consider as part of the development of specific changes and amendments to the Law on Court Budget.

The ROM Law on Court Budgets (as amended in 2006 and 2007), provides a legal framework for greater independence, fiscal responsibility, accountability, and efficiency in overall judicial branch operations. The Law on Court Budget supports financial autonomy and adequate funding levels by establishing a representative body, the Court Budget Council (CBC), within the judicial branch to oversee and coordinate budget planning and execution and capital investment. The act also designates the Court Budget as a separate part of the Budget of the Republic of Macedonia.

The Law on Court Budget also establishes an Administrative Office (AO) to carry out the policies of the CBC and to provide administrative support to the courts for budgeting and financial management. The CBC and AO have authority for the policies and procedures related to preparing and implementing the annual unified judicial branch budget for all ROM courts and the Academy for Training of Judges and Public Prosecutors. Also, to assure financial sufficiency and security for the Judiciary, Articles 8 and 15 of the Law on Court Budget authorize the President of the CBC to make formal presentations to support the Judiciary's budget at working sessions of the ROM Government and Parliament.

In spite of the Macedonia Judiciary budget process, the Court Budget Law as presently structured and carried out by the CBC and AO does not supply the funding or resources necessary for essential mandated operations of courts and the educational programs of the Academy for Training of Judges and Prosecutors. In a 2008 Budget and Finance study of the Macedonia Judiciary conducted by this consultant/expert shortcomings were found in the budget planning and execution and financial management processes and recommendations were made for improving the Judiciary's budget planning, adoption, execution and financial management processes and many of the 29 study recommendations¹ for improvements in Judiciary Budget and Financial Management have been implemented.

II. Preliminary concepts and proposals – Changes to the Law on Court Budget

To ensure continuation or adoption by the Macedonia Judiciary and Republic of Macedonia of modern budgeting practices, reflective of recommendations of the ROM Judiciary Budget and Finance Study proposals and other judicial budgeting reforms, the following concepts for revising the Law on Court Budgets are proposed for consideration.

Greater Judicial Budget Independence:

One of the primary purposes of the the Law of Court Budgets is to enable judges to independently and effectively carryout adjudicative functions and improve administrative processes and budgetary management. Standards for assuring judiciary independence and administrative efficiency, such as those issued by the American Bar Association, ⁱⁱ calls for significant control of the judicial branch over its own budget and to that end it urges a direct submission of the judicial branch budget to the funding authority. Consistent with this standard, in revising the Law on Court Budget the WG should consider adding provisions that will allow for the direct submission of the Court Budget directly to Parliament with an informational copy to being submitted to the ROM Ministry of Finance (MOF). A new section of the court budget law and revisions the national Law on Budgets that would give the MOF the opportunity to present an advisory report to Parliament on the proposed court budget also should be considered.

Budget Structure:

To enhance understanding of the court budget and improve internal court system budget management the 2008 Budget & Finance Studyⁱⁱⁱ recommended that the ROM Judiciary revise its budget program structure for summarizing and presenting the court budget request in the State Budget to reflect different court levels (appellate and basic) and the different missions of special programs. It is proposed a statement regarding a revised court budget program structure such as the one presented in the following paragraph be considered for inclusion in the Law on Court Budget.

This Judiciary requires the development of a more suitable program structure for presentation of Judicial branch goals, objective, activities and funding requirements. The current budget program structure, which consists of court operations and the Academy for Training of Judges and Public Prosecutors, does not adequately distinguish between different levels of courts, different types of case jurisdiction and different types of judicial services. A revised program structure should be adopted that reflects differences in court levels and different missions of programs. The new program structure should consist of separate program budgets for the Supreme Court and Appellate Divisions, the Administrative Court, the Basic Courts, Court Administration (including the CBC and AO), the Republic Judicial Council (RJC) and the Academy for Training of Judges and Public Prosecutors.

Inter-branch and Public Communications:

The current Law on Court Budget allows the President of the CBC to make formal presentations in support of the court budget to the government and parliament. To ensure that this important function in support of sufficient funding for the courts is carried out each year the WC may want to consider revising Articles 8 and 15 of the Law on Court Budget to require rather than allow such presentations.

The American Bar Association^{iv} encourages courts to engage in regular communication with the other branches of government, as well as with the bar, the business and civic communities, and the public concerning the administration of justice and its costs and

toward that end American Bar Association encourages courts to establish broad-based advisory bodies comprised of laypersons, lawyers and representatives of all branches of government to help courts secure the funding necessary for the delivery of judicial services^v. Given the importance of communications with the other branches of government and the public regarding funding requirements of the judiciary, the WC may want to consider adding formal language to the Law of Court Budget regarding this topic. It also may want to include a section of law that establishes an advisory committee on the court budget.

Judicial Branch Strategic Planning and Budgeting:

In September and October 2009, the Judicial Reform Implementation Project (JRIP) supported the development of the strategic plan for the judicial branch. The strategic plan was developed by the Court Budget Council (CBC) and it fulfills the legal requirements set out in the Law on Budgets.^{vi} To ensure that an ongoing process is established to for establishing strategic priorities and related budget statements and estimates, the WC may want to consider adding language in the Law on Court Budget on Strategic Planning, including sections under Articles 9 and 10 that specify strategic planning oversight as duties of the CBC and AO. This approach also is consistent with new directions being taken by American Court Systems regarding strategic planning.^{vii}

Probity and Performance

Well-developed and stable governments increasingly are incorporating financial and nonfinancial performance data, including information on outputs and outcomes, into their budget process to improve operational efficiency and better communicate the use of government resources to funding authorities and to citizens^{viii}. Most recent trends and approaches to performance budgeting in court systems are documented for judiciary courts by David Webber in a World Bank Report.^{ix} To strengthen support for the court budget and to ensure that courts demonstrate that they are operating in the best interests of the public, the Working committee should consider adding a section on performance data or specific performance data budget requirements to the Law on Court Budget.

Budget Execution and Control Flexibility

To ensure maximum flexibility by the Judiciary in the execution of the court budget changes in the Law on Court Budget (or the Law on Execution of the Court Budget) and national budget law allowing for minimal limits on the interchange of funds from one court or program to another during the fiscal year should be considered. This proposal is consistent with the ABA standard that indicates there should be a reasonable degree of flexibility to expend funds across line items and fiscal years to encourage efficiency in the administration of justice.^x

ⁱ Botch, D. (June 2008). Macedonia Judiciary Budget & Finance Study: Executive Summary, Recommendations and Action Plan.

ⁱⁱ American Bar Association (August 2004). AMERICAN BAR ASSOCIATION JUDICIAL DIVISION (see STANDING COMMITTEE ON JUDICIAL INDEPENDENCE, Black Letter Commission on State Court Funding.

ⁱⁱⁱ Botch, D. (June, 2008), p.14.

^{iv} American Bar Association (August 2004)

^v Ibid.

^{vi} Republic of Macedonia, General Secretariat. (February 2007) *Manual for Strategic Planning*

^{vii} Botch D. (2003) *Court System Strategic Planning*. Encyclopedia of Public Administration and Public Policy.

viii Teresa Curristine, (2005). Performance Information in the Budget Process: Results of the OECD 2005 Questionnaire. OECD Journal on Budgeting Vol. 5,2.

ix Weber, David (2008), “*Good Budgeting Better Justice: Modern Budgeting Practices for the Judicial Sector*“, The World Bank, available at:
http://siteresources.worldbank.org/INTLAWJUSTICE/Resources/LDWP3_BudgetPractices.pdf.

x American Bar Association (August 2004), p.8.

Report 2

Deborah Botch

Court Budget and Financing Expert

May 14, 2010

Key ROM and RM Judiciary Laws - Budget process

Along with the Law on Court Budget several ROM laws and CBC Acts impact on the process, policies and procedures for planning and implementation of the Judiciary’s budget. The key laws governing budgeting and fiscal management process include:

- Law on Budgets
- Law on Enforcing the Budget of the Republic
- Law on Courts
- Law on Judicial Council
- Law on Court Budget
- Law on Court Fees
- Law on State Audit
- Republic of Macedonia Law on Internal Audit of Public Sector
- CBC Internal Act for Controls in the Enforcement of the Court Budget

Also relevant is the annual law on implementation of the budget. (see LAW ON IMPLEMENTATION OF THE BUDGET OF THE REPUBLIC OF MACEDONIA FOR 2010).

As the WC develops draft the proposal for changes in the court budget law members may want to consider relevant sections of related laws to ensure that these other laws are harmonized with the proposed changes to the Law on court Budget.

**AMENDMENTS AND CHANGES TO THE LAW ON COURT BUDGET
(NOVEMBER 2010)**

**Republic of Macedonia
MINISTRY OF JUSTICE**

**LAW
FOR CHANGING AND AMENDING THE
LAW ON COURT BUDGET**

November 2010

LAW ON COURT BUDGET

(Integrated text)

GENERAL PROVISION

Article 1

This Law regulates the procedure for drafting, adoption, and execution of the Court Budget and the establishment of the Court Budget Council.

The court budget provides stable, long-term, balanced and appropriate financing of the judicial power in order to secure its constitutional and legal independence and autonomy.

~~By means of~~ The Court Budget is financing the courts, Judicial Council of the Republic of Macedonia and the Academy for Training of Judges and Public Prosecutors (hereinafter: unit users).

Article 2

The Court Budget presents the annual estimate of the revenues and expenditures of the unit users, determined by the Assembly of the Republic of Macedonia and is designated for their financing.

The Court Budget is a part of the Budget of the Republic of Macedonia, it is a separate part designated as "Judicial Power."

REVENUES AND EXPENDITURES OF THE COURT BUDGET

Article 3

The revenues of the Court Budget are funds allocated by the Budget of the Republic of Macedonia, donations and individual incomes (deposits, rents and similar) of the unit users.

Article 4

A part of the funds designated as "Judicial Power" within the Budget of the Republic of Macedonia necessary for normal operations of the unit users is determined in the amount of at least 0.8 % of the Gross domestic product, in compliance with the criteria set forth by the Court Budget Council, based on the fiscal policy and main parameters for evaluating incomes and expenditures.

If a rebalance of the Budget of the Republic of Macedonia takes place, the finances allocated for financing the judicial power cannot be reduced.

The funds from the part entitled "Judicial Power" are allocated to the unit users by the Court Budget Council.

Separate fund for unpredicted situations is established within the court budget, as permanent and current reserve which cannot be higher than 2% of the current expenditures of the court budget.

These funds for unpredicted situations and activities are determined for covering expenditures in case of force major, natural disasters and other activities which can not be foreseen at the time of preparation of the budget.

While allocating the funds from paragraph 1 of this Article, at least 2,5 % shall be mandatory allocated for the professional training of judges, court administration, civil servants, court police and other -employees in the courts.

Article 5

The expenditures of the Court Budget comprise the following:

1. Daily expenditures for;

- salaries and compensation for the members of the Judicial Council of the Republic of Macedonia, judges, and the Director of the Academy for Training of Judges and Public Prosecutors;
- salaries and compensation for the court administration, court police and other employees at the courts, as well as the civil servants in the Judicial Council of the Republic of Macedonia and the Academy for Training of Judges and Public Prosecutors
- Goods and services for the operation of the unit users
- Expenditures incurred in proceedings, except for expenses for damage compensation of persons unjustifiably convicted and unjustifiably deprived from freedom; and
- Subsidies and transfers

Formatted: Body Text Indent, Indent: Left: 1", First line: 0", Line spacing: single, Widow/Orphan control, Adjust space between Latin and Asian text, Adjust space between Asian text and numbers, Tab stops: 3.05", Left

2. Capital expenditures for:

- purchasing of capital assets for unit users;
- investment maintenance of the facilities and equipment of the unit users

COURT BUDGET COUNCIL

Article 6

A Court Budget Council is established for performance of activities related to the court budget.

The Court Budget Council performs all the affairs set forth by this Law, Book of Rules of the Court Budget Council, and other acts.

Article 7

The Court Budget Council consists of a president and ten members.

The President of the Court Budget Council is the President of the Judicial Council of the Republic of Macedonia. In his absence, his deputy is the president of the Supreme Court of the Republic of Macedonia

The members of the Court Budget Council are:

- Minister of Justice
- President of the Supreme Court of the Republic of Macedonia;
- President of the Administrative Court Skopje

- Presidents of the Appellate Court in Skopje, Appellate Court in Stip,
- Appellate Court in Bitola and Appellate Court in Gostivar;
- two presidents of basic courts following the order foreseen by the Law on the Courts, out of which one president from the courts with extended jurisdiction, following the rotation system, with two year mandate and
- Director of the Academy for Training of Judges and Public Prosecutors.

The Minister of Finance is present at the Court Budget Council sessions at which the budget proposal for the judiciary is determined, without a right to participate in the decision making

Representatives from the Ministry of Finance will also participate in the work of the Court Budget Council, but without a right to participate in the decision making.

Formatted: Justified, Indent: Left: 0", First line: 0"

Article 8

The Court Budget Council works in sessions. The sessions of the Court Budget Council are convened and chaired by the President of the Court Budget Council.

The Court Budget Council passes the decisions by the majority of the votes of the total number of members.

The head of the Administrative Office of the Court Budget Council participates at the sessions of the Court Budget Council of the Republic of Macedonia without a right to vote.

The President of the Court Budget Council presents the part of the funds earmarked for the "Judicial Power" in the Budget of the Republic of Macedonia at the session of the Government when the Proposal for the Budget of the Republic of Macedonia is adopted and before all working bodies, and at the session of the Assembly when the Budget of the Republic of Macedonia is adopted.

Article 9

The Court Budget Council has duties as follows:

- set the criteria and methodology for the preparation of the Court Budget;
- determines the allocation of the funds from the Court Budget to all the unit users and undertakes duly execution of the Court Budget;
- approves the funds for new employments in the unit users within the framework of the fixed court budget of the amount designated for the payment of salaries;
- appoints the internal auditor;
- enacts the Book of Rules of the Court Budget Council and other internal acts and establishes supporting bodies;
- prepares annual report for execution of the Court Budget;
- makes reallocation of the funds defined in the part "Judicial power" and can authorize the President of the Court Budget Council to reallocate the funds earmarked for the judicial

power, up to a certain amount:

- Implements centralized procedures for public procurements

- exercises other affairs foreseen by Law.

ADMINISTRATIVE OFFICE

Article 10

The professional and administrative affairs of the Court Budget Council are carried out by the Administrative Office of the Court Budget Council.

The Administrative Office is set up as an internal organizational unit of the Court Budget Council of the Republic of Macedonia.

Article 11

The Administrative Office carries out the following tasks:

- implements the decisions of the Court Budget Council;
- elaborates the financial indicators related to the demands of the unit users and takes care of their material needs;
- drafts the Book of Rules and other internal acts, as well as criteria and methodology required for the preparation of the Court Budget and submits it to the Court Budget Council for adoption; and
- carries out other work entrusted by the Court Budget Council

DRAFTING, DETERMINING, SUBMITTING AND EXECUTING OF THE COURT BUDGET

Article 12

The drafting of the Court Budget is made on the basis of the fiscal policy and the main categories on the assessed revenues and expenditures and the budget circular determined by the Government of the Republic of Macedonia for the following budget year, and in compliance with the internal criteria and methodology determined by the Court Budget Council.

Article 13

The Court Budget Council devises a circular memo that contains the main guidelines for the drafting of the financial plan of the unit users and submits it to the unit users.

The Circular Memo of paragraph 1 of this Article contains the methodology for the drafting of the

financial plan of the users (key parameters, procedure, and deadline for the drafting of the financial plans), as well as the indicative total expenditure for every user, within which the assessment should be included, bases on types and the necessary data enclosed to the Budget.

Article 14

The unit users submit the following data to the Court Budget Council by June 1 of the current year the latest:

- estimate of the expenditures for the fiscal year, according to the expense items and smaller items;
- estimate of the expenditures for the next two fiscal years according to the expenses under categories;
- review of the expenses for the employment requisite for the carrying out of the functions of the users;
- proposals that contain future obligations or expenditures that shall be incurred over several years, including the investment projects presented individually; and
- expenses for every forthcoming year presented individually.

In addition to the data from section 1 of this Article, the users submit an explanation regarding the amount of the funds according to their positions.

The basic courts, as unit users, harmonize the data stipulated in paragraph 1 of this Article at the level of the appellate region, not later than may 15 in the current year.

Article 15

After it receives the proposals from the Article 14 from this Law, the Court Budget Council draws up a Court Budget Proposal and together with the explanation on the amounts of funds submits it to the Ministry of Finances.

Prior to the submission of the Budget Proposal of the Republic of Macedonia to the Government of the Republic of Macedonia, the Minister of Finances together with the President of the Court Budget Council shall mandatory adjust the part of the funds "Court Budget" from the Budget Proposal of the Republic of Macedonia. If an agreement has not been reached the Ministry of Finance prepares and delivers report to the Government of the Republic of Macedonia and to the Court Budget Council, and the Court Budget Council submits to the Government of the Republic of Macedonia opinion upon the report of the Ministry of Finance.

Article 16

The official who heads the unit user is responsible for the enforcement of the financial plan with the unit user.

Article 17

The Court Budget Council follows the enforcement of the financial plan. If, during the control, it is determined that irregularities and abuses by the President of the Court and by the Director of the Academy for Training of Judges and Public Prosecutors have occurred in the process of enforcement of the financial plan, the Council informs the Supreme Court of the Republic of Macedonia, the Ministry of Justice, the Republic Judicial Council, the Academy for Training of Judges and Public Prosecutors, the Ministry of Finance, and the State Bureau for Revision.

Internal auditing of the enforcement of the financial plans in the unit users are-is carried out by an internal auditor appointed by the Court Budget Council.

Article 18

Control of the enforcement of the Court Budget is performed according to the regulations from the Law on Budgets.

At least once a year the Court Budget Council is obligated to deliver report to the Ministry of Finance, Government of the Republic of Macedonia and the Assembly of the Republic of Macedonia concerning the execution of the Court Budget.

Article 19

The provisions of the Law on Budgets shall apply to the Court Budget unless otherwise stipulated with this Law.

TRANSITIONAL AND FINAL PROVISIONS

Article 20

The percentage stipulated in Article 4 paragraph 1 of this Law shall be reached by increase of the current percentage in equal increment , from the budget year .2012 until 2015 , and will reach the envisioned percentage of 0.8 of GDP, in the following manner : in 2012- of 0.5%, in 2013, 0.6%, in 2014 of 0,7% and in 2015 of 0.8%. _

Article 21

This Law comes into force on the eight day from its publication in the "Official Gazette of the Republic of Macedonia," and its application shall start on January 1, 2011.