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25th CONFERENCE OF EUROPEAN MINISTERS OF JUSTICE

Sofia (9-10 October 2003)

- **INTERNATIONAL CO-OPERATION IN THE FIGHT AGAINST INTERNATIONAL TERRORISM AND IMPLEMENTATION OF THE RELEVANT INSTRUMENTS OF THE COUNCIL OF EUROPE**
- **THE RESPONSE OF THE JUSTICE SYSTEM**
 - **CIVIL AND CRIMINAL - TO TERRORISM**

Report presented by the Minister of Justice of

**“THE FORMER YUGOSLAV
REPUBLIC OF MACEDONIA”**

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The Republic of Macedonia strongly supports the global efforts aimed at combating international terrorism and is committed to full cooperation with the Council of Europe, United Nations and other international organizations.

Expressing its strong condemnation of the 9/11 attacks, the Republic of Macedonia immediately joined the call for establishing a global international anti-terror coalition and to that end we have undertaken a number of concrete activities.

The Republic of Macedonia has been implementing its efforts for resolute dealing with, and fight against terrorism by means of two parallel processes – ratification of the relevant international instruments and a full reform of its domestic legislation.

It concerns trends directed at creating an appropriate legal framework – adoption of a separate law against terrorism, changes and supplements to the existing material and trial criminal legislation, as well undertaking steps to enrich existing organizational-police measures and developing bilateral and multilateral co-operation in this area.

The first step has been to provide a legal framework for all subsequent activities.

The Government concluded that there was a need to amend the relevant legislation and in that context that a special law against terrorism should be drafted. The Law should be compatible with the European and global standards in this sphere and serve as a tool for efficient implementation of the relevant UN and Council of Europe Conventions and other documents. Subsequently, a Commission has been set up to draft this piece of legislation. The Government further concluded that Article 17 of the Macedonian Constitution should be amended as a priority, the aim of which is to provide legal basis for communications monitoring, and that a special law should be drafted to regulate the terms and procedures for communications surveillance.

In order to reinforce the efficiency of the fight against terrorism, the Government of the Republic of Macedonia has also concluded that certain provisions of the Penal Code and the Criminal Procedure Law should be amended as well.

Thus, the 1996 Criminal Code of the Republic of Macedonia, changed and supplemented in 1999, already envisaged punishment of terrorism and international terrorism, and offences related to the same. The existing Criminal Code incriminates the preparation and attempt to commit these criminal offences, concealing and aiding the perpetrator(s) of the same, association for committing the criminal offence of terrorism and terrorism-related offences, and stipulates criminal liability for being a member to such an association.

The Republic of Macedonia is working intensively on the adoption of a Law on Changing and Supplementing the Criminal Legislation. The Proposal of this Law, which envisages changes and supplements in more than 100 current articles in the Criminal Code of RM, as well as supplementing it with about twenty new articles, is expected to be adopted by the end of this year. The proposed changes, *inter alia*, foresee stricter penal policy in respect of the criminal offence of terrorism, further incriminate the creation and membership in a terrorist organization, as well as the aid (financial or other) for a terrorist organization, group, gang or other criminal organization. The relevant provisions in international documents, as well as the principles of criminal legislation in the Republic of Macedonia were taken into consideration when preparing the proposed changes.

The criminal trial legislation in the Republic of Macedonia is a limiting factor in terms of the expressed preparedness of the state to fight against terrorism and organized crime, and in respect of the implementation of international standards deriving from the accepted international conventions and recommendations. Thus, the existing trial legislation of the Republic of Macedonia does not offer a possibility to use witnesses, secret witnesses and associates of justice. Given the fact that the absence of these proving means limits the possibility for qualitative evidence which will be based on the indictments, hence the expectations for a positive result in combating terrorism and organized crime, there has been perceived a need for necessary and fundamental changes in the Criminal Procedure Code, as well as adoption of a Law on Witness Protection, which are being worked on intensively.

However, the principal legal obstacle for the introduction of special investigative measures lies in Article 17 of the Constitution of the Republic of Macedonia, which guarantees secrecy and inviolability of communications. However, the dimensions that terrorism and organized crime have reached and the knowledge that these phenomena may definitely endanger all political, democratic and economic prospects of the country, have led to a consensus between experts and the public as a whole for the creation of conditions to implement special investigative measures. To that aim, it is necessary to change the Constitution, the Criminal Procedure Code and to adopt a special Law on Surveillance of Communications, on which the Government is working intensively and is expected to be adopted by the end of this year.

The implementation of the above mentioned measures and the introduction of special investigative measure will enable to support the institutions tasked with combating terrorism, increase the efficacy of investigative judges in handling acts of terrorism, the efficacy of criminal prosecution by the public prosecution, as well as promptness of the courts in adjudicating acts of terrorism, which will enable domestic court case law to be able to observe efficient conclusion of criminal procedures from the terror and organized crime fields, but at the same time will enable the Republic of Macedonia join the countries with a compatible system for combating the most serious forms of international organized crime.

Among other things, the Ministry of Finance – the newly established Financial Police Department- and the Ministry of the Interior have the authority to freeze without delay funds and other financial assets or economic resources of persons or entities involved in terrorism-related activities and have developed administrative procedures and practice to that end.

Thereby, taking into account the Basic Guidelines for Human Rights and Fight against Terrorism of the Committee of Ministers of the Council of Europe, when implementing these measures the common denominator must be the guarantee of human and civil rights, which are actually our determination pursuant to the accepted international documents.

When it comes to the activity internationally, it is important to mention that the Republic of Macedonia actively participates in all regional and international initiatives for combating terrorism and, *inter alia*, participated in the work of the Multidisciplinary Group on International Action against Terrorism (GMT), as well as in the work of the expert committees for special investigative means related to acts of terrorism (PC-TI) and witness protection (PC-PW).

The Republic of Macedonia is a party to the following international instruments for the fight against terrorism: the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, International Convention against the Taking of Hostages, Convention on Offences and Certain Other Acts Committed on Board Aircraft, Convention for the Suppression of Unlawful Seizure of Aircraft, Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, Convention on the Physical Protection of Nuclear Material, Protocol on the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention on the Marking of Plastic Explosives for the Purpose of Detection.

The Republic of Macedonia is preparing to ratify the International Convention for the Suppression of Terrorist Bombings, the International Convention for the Suppression of the Financing of Terrorism, as well as the European Convention for the Suppression of Terrorism and its Protocol by the end of this year.

In respect of extradition, the Constitution of the Republic of Macedonia envisages that a citizen of the Republic of Macedonia may not be extradited to another state. A foreigner may not be extradited for a political criminal offence whereby, under the Constitution, the acts of terrorism are not considered to be political criminal offences.

Thus, the criminal offence of terrorism and other terror-related offences are ranked among the offences for which extradition is carried out, given that in the extradition agreements mentioned all criminal offences for which under the law of both states deprivation of liberty is defined as penalty are envisaged to be offences for which extradition is carried out. Given the serious nature of these offences, the criminal legislation of the Republic of Macedonia foresees a prison term of different period for all forms of these serious criminal offences.

The procedure for international legal assistance and extradition procedure is regulated in the Criminal Procedure Law which stipulates that the procedure for international legal assistance and extradition procedure should be carried out in accordance with the procedure set forth in the Criminal Procedure Law, but restrictively, i.e. only in cases where something else is not envisaged with an international agreement, or in cases where something different is not envisaged with a bilateral agreement with another State.

The Republic of Macedonia ratified the European Convention on Extradition and its two Additional Protocols; the European Convention on Mutual Legal Assistance in Criminal Matters and its two Additional Protocols, and the Convention on the Transfer of Sentences Persons and the First Additional Protocol to the Convention.

In this context, it must be underlined that the domestic legislation is not yet fully harmonized with the international instruments in this field, which is to be done with the proposed amendments to the Criminal Procedure Law.

It seems that the so far experiences to a large extent have justified the belief of the progressive world that the best guarantee for the protection against terrorism as an attack against life, peace and security, democratic values and political stability is an efficient court system of the penal justice. The most effective preventive mechanism that may dissuade the potential perpetrators from committing such crimes is only the serious threat

against all perpetrators of terrorist and similar crimes that they will face, whenever that is, objectively, unbiased, justly and equally justice.

Hence, the role of the judiciary, its efficacy, as well as the consistent and right implementation of the legislation by all institutions in the state, in the clearing of the criminal terrain and in the area of prevention in respect of potential holders of the threat against security are of crucial significance.

The trends in national, regional and global frameworks point to a rise in terrorism. Very often the reason for that is diagnosed with the conclusion that detection, prosecution and sentencing of criminal offences and their perpetrators have failed. But that is simplification of reality. We are aware that rise in terrorism and organized crime cannot be stopped only by police actions, by repressive campaign and short-term measures of increased efficacy of the prosecution authorities and justice bodies. What is necessary are all-inclusive, well planned and coordinated long-term, international and regional activities which, *inter alia*, will be directed towards the detection and elimination of the reasons for such criminal phenomena, not with a view to justifying terrorism as a criminal activity, but aiming at suppressing it better.

In this respect, I consider that it is most important to mobilize all potentials available in combating terrorism, whereby certainly one has to have in mind that experiences warn of, and point to the unusual resistance that terrorism manifests in terms of the traditional methods of the fight against it which, especially when limited nationally, as a rule, do not yield the results expected.

It is undoubtedly necessary to combat jointly the threat against global peace and security, economic development and political stability, which must be based on the principles of international law, since terrorism is a global threat with global effects.

International cooperation in the field of anti-terror activities, including regional cooperation, has progressed visibly, but it is crucial that the international community continue the efforts in this direction.

Given that terrorism leads to destruction of human solidarity, endangering of democracy and freedom of living, loss of trust in the institutions of the system, a number of international acts have been adopted to date in the field of suppressing terrorism.

However, much more can be done so that the citizens will feel safer and more secure. This, certainly, may be achieved only by means of strong international cooperation directed at creating an ambience of “zero” tolerance for terrorism and the acts related to it. Taking into consideration the increasing tendency of terrorism, it seems that it is necessary to adopt as soon as possible comprehensive international instruments removing the obstacles for a more successful fight against terrorism.

Welcoming the idea to adopt a comprehensive European convention committed to the fight against terrorism, I hope that the 25th European Conference of Ministers of Justice will stir, rationally direct and efficiently unite our individual efforts in combating terrorism, and will elevate to a more qualitative level the cooperation between the states in Europe, which seem united in their condemnation of all acts of terror, as criminal and unjustified, irrespective of their motives, goals and manifested forms.

The unreserved support for the adoption of such a Convention at the level of the Council of Europe will be our most modest, but lasting contribution in the fight against terrorism and in the name of, and in the interest of justice, freedom and peace as universal values of civilization.

