

## Failing to be Accountable; Failing to Meet the Benchmark: Macedonia's Judicial Reforms

The reforms of the judicial system in Macedonia are crucial requirement for the start of the accession negotiations with the European Union (EU). This newsletter comments on the actual situation in this sector prior the 2009 EC progress report.

### Brief Overview of Reform

The authorities in Macedonia continued with the reforms in the judicial system after the 2008 EU progress report was published. On August 5<sup>th</sup> 2009 in the daily newspapers the Government published a statement for its activities in this area for the past year. According to this, 15 new laws have been passed or are in a procedure to be passed that refer to the judicial system, like the new law on Court Service, Law for Lobbying, Law for Management of Confiscated Property, Law for the Public Defender, Law on the Financing of Political Parties etc. In respect to harmonization of the existing laws with the European legislation the country had showed significant progress.

Moreover, the country has continued with its efforts to enhance the institutional capacity of the judiciary. New institutions have been set to ensure more efficient due process of law. A new court of Appeals has started to function in Gostivar, new specialized Public Prosecutor was created to deal with corruption and organized crime, the new Administrative Court has been fully functional and ten graduates from the Academy for Judges and Prosecutors have been appointed to public prosecutors. The modernization process of the courts continued and reconstruction of the courts' buildings and equipping the courts has been finished in Prilep, Tetovo, Veles, Strumica and Ohrid. This project was conducted with the help of the World Bank. Additionally the

changes in the Law of Execution, the Law on Mediation and the decision of the Ministry of Justice to lower court taxes and offer free court services to members of the lowest social layers improved the access to justice.

However, biggest deficiency in the Macedonian judicial branch remains the lack of human capital management. Although significant number of training programs for judges were conducted and the Academy is functional, still hiring and promotion of court servants (and the overall administration) is problematic. Employments and rewards on political basis still occur. The Government is expected to pass legislation dealing with this matter in mid September.

Another problematic area is the slowness of the judicial procedure. In November 2008 the analysis showed that there are 10 500 cases stuck in the system

and some of these cases are decades old. A month ago, the Minister of Justice stated that all judges that have old cases will face penalties. However, no judge faced penalty and the Judicial Council concluded that the judges perform their duties in good faith.

### Interference of the Executive Branch into the Work of the Judiciary?

Independence and impartiality are seen as areas challenging to secure in the Macedonian courts. Several events indicated problematic actions of the executive branch that could be seen as direct influence on the judiciary.

Transparency Macedonia, local NGO focused on corruption, noted in its monthly report that the government violated Article 64 of the Law on Judicial Council. According to their report "the Government reviewed the 2008 Annual Report of the Judicial Council's activities at a session held on 25 April 2009, while the issuing Opinion adopted at the meeting was dully sent to the President of the Assembly of

the Republic of Macedonia." According to the existing law, the Government should not review the Annual Report of the Judicial Council and adopt opinions based on the report.

The decision of the Prime Minister of Macedonia to call the president of the Appeal Court, Mr. Jordan Mitrovski, to discuss the reforms (as pointed in the statement of the president of the court) is a sign of a direct attempt of the executive branch to influence the judicial system. The Government response to these accusations was that the purpose of the meeting was to discuss the ongoing judicial reforms.

### Conclusion

The overall conclusion contains better-sweet remarks for the judicial reforms in Macedonia. The country successfully progressed in adoption of new legislation and invested a lot in institutional capacity. However, the judicial branch is still under tremendous political influence and faces severe corruption allegations.

Another problematic part remains the absence of an efficient human resources system that will select, discharge and penalize judges, prosecutors and defenders etc on a merit base. As consequence, the reforms introduced fail to produce full independence and fail to hold accountable those who work in the system. Thus, as the Progress Report of the EU deadline is approaching it is more evident that the report will not contain more positive judgment of the judicial system than the one contained in the 2008 Progress Report. The reforms continued, but the judicial system is still inefficient and not fully independent.

Thomas Carothers, *Promoting the Rule of Law Abroad: In Search of Knowledge*, stated that the rule of law promises to move countries past the first, relatively easy phase of political and economic liberalization to a deeper level of reform.

Anderson and Cheryl W. Gray (*Transforming Judicial Systems in Europe and Central Asia 2007*) state that the principle issue is not ensuring greater judicial independence (although de jure might exist, but de facto may not), but to ensure judicial accountability, given the ne found independence.