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4. JUSTICE AND HOME AFFAIRS

4.1. Planned and implemented activities of the Government of the Republic of Macedonia in the reporting period

4.1.1. Justice system reforms

Strengthening the independence, efficiency increase and specialization of courts in order to provide free and efficient access to justice, as well as enshrining the rule of law principle, represents the major directions and aims in the justice system reforms. An important prerequisite in this field and for the realization of the said reforms in the justice system was the very start of the work of the Judicial Council of the Republic of Macedonia (hereinafter: the Judicial Council) and the Council of the Public Prosecutors of the Republic of Macedonia (hereinafter: the Council of Prosecutors). The formation of these Councils and their independent work have created conditions for even greater political independence of the judiciary and of the prosecution, which in turn was a condition for getting a positive report of the European Commission for the progress of the Republic of Macedonia in 2009.

In 2008, the Judicial Council had 28 sessions. At these sessions, the Council, by a 2/3 majority, elected or dismissed judges, lay judges, and court presidents. In 2008 the Council elected 89 judges: 74 as judges in the basic courts and 15 as judges in the higher courts – 2 in the Supreme Court of the Republic of Macedonia, 4 in the Administrative Court, 3 in the Bitola Court of Appeals, 1 in the Court of Appeals in Gostivar and Stip, and 4 in the Skopje Court of Appeals. In the same year, the Council also elected 6 presidents of courts of different instances. In the election process of judges, the principle of equitable representation of election of judges belonging to the non-majority communities in the Republic of Macedonia, was preserved. Thus, 73.0% of the elected judges were Macedonians, 23.6% were Albanians, and 1.1% of the elected judges were Vlachs, Serbs, and Bosniaks, respectively. Of all elected judges, 57.3% were men, while 42.7% were women. In 2008, the Council determined the required number lay judges for all courts (3611 lay judges), while by the end of 2008 807 lay judges were elected.

The Judicial Council initiated in 2008 14 proceedings for unprofessional and unscrupulous execution of the office of a judge and 4 disciplinary actions. Out of 18 proceedings initiated to determine the liability of the judges in performing their job, 8 proceedings finished with the dismissal of the judges in question. In 2008 another 25 decisions were made for termination of the office of a judge: in 6 cases it was done upon the request of the judges themselves; in 15 cases it was done because the judges retired as pensioners; in 3 cases it was because of a death of a judge; and on one case it was done because the judge in question was given a new job.

From October 2008 until the end of the reporting period, the Council appointed 38 new judges and 4 new court presidents.

One of the novelties in context of promoting higher independence and professionalism of judges is the introduction of the right and obligation of the Council to initiate procedure

for evaluation of the work of the judges and of the court presidents, which stems from *the Rulebook on criteria for assessment of the work of the judges*, adopted in March 2008. During the reporting period, the Council conducted the first evaluation and grading of the work of the judges; in this context, 9 basic courts and the Skopje Court of Appeals were evaluated. After the initial data analysis, it was concluded that 80% of the judges maintain results pursuant to the criteria for quality and quantity in their work. Pursuant to *the Law on amending the law on courts budget* in January 2009, the management of the courts budget was transferred from the Supreme Court to the Judicial Council itself. This offers opportunity for better and more independent use of the budget for all courts in the country. It is noteworthy that this budget was increased for 8% in 2009 when compared to the 2008 budget. Implementation of the Law on salaries of judges further increased their autonomy.

At the start of 2008 and during the reporting period, completion was made of appointing the President of the Administrative Court and its 22 judges; full IT installations and equipping of the Court were also finished. The Administrative Court considered and decided about 3,200 cases.

Pursuant to *the Law on courts*, in the reporting period complete functionality was provided also for the Gostivar Court of Appeals, with appointed 12 judges. These judges considered and solved about 2,500 cases.

The constitution session of the Council of Prosecutors took place on 4 August 2008. At this session, election was made of its President and his Deputy; 3 working groups were also formed responsible for the addition of the bylaws.

The Council of Prosecutors, which is competent to make selection and appointing the public prosecutors in the country, in the reporting period elected 21 new prosecutors; this Council also verified the mandate of 159 prosecutors who had been originally appointed to this office in 2003 with a mandate of 6 years. Pursuant to the Law on public prosecution, the Council appointed also new 9 prosecutors in the newly created Basic Public Prosecutor's Office for Organized Crime and Corruption, which is competent to prosecute organized forms of crime and corruption committed on the entire territory of the state. The reporting period also noted the formation of a Higher Public Prosecutor's Office in Gostivar. The Council also appointed the Higher Public Prosecutor for the town of Gostivar and 4 his Deputies. It is to be noted here that the full implementation of the Law on public prosecution (which provides that in the near future prosecutors should conduct the investigation procedure, not the judges as it is still now) is conditioned by the changes (reforms) in the Law on criminal procedure.

Pursuant to the new Court Rules of Procedure, which entered in force on 1 January 2008, for the sake of impartiality in the election or appointment of judges, obligation was created for compulsory electronic registration of the cases in the courts and electronic distribution of the cases on basis of random picking of a judge. Strategy for Information Communication Technology in the Justice System was adopted. According to this Strategy, every judge and prosecutor, and all law clerks should get a computer and computer training. The Center for Information Technologies functionally connects all institutions of the justice system. A Law Database was formed which contains more than 6,000 laws and bylaws that were adopted in the Republic of Macedonia from 1940 until 2006. This database is accessible to all officers in the justice system.

In the reporting period, the Academy for Training of Judges and Public Prosecutors continued to implement the beginners' training¹ for 27 trainees from the second generation; at the same time, the Academy also continued the practical training of the first generation of trainees (which also involves 27 trainees) for a period of 10 months. The final examination of the first-generation candidates for judges and public prosecutors was conducted from 1 to 10 December 2008 before a commission established upon proposal of the Judicial Council (4 members), the Council of Prosecutors (2 members), and one examiner proposed by the Ministry of Justice. The examination consisted of two parts: theoretical and practical part – trial simulation and oral test in the field of civil and criminal procedures. All candidates finished successfully the training and acquired the position of eligible candidates for judges and prosecutors.

The reporting period also noted the realization of the practical training of the second generation of candidates. On the very day of 15 September 2009, the start of the 5-month training for beginners marked the commencement of the training for the third generation of candidates, which consists of 17 such candidates.

In addition to the beginners' training for candidates for judges and prosecutors, the Academy also delivers training for continuing professional specialization of officers already working in the judiciary, the prosecution, and the Ministry of Justice. To this end, in 2008 a total number of 273 trainers were engaged: 177 domestic and 96 foreign experts were hired. The Academy conducted the training for newly appointed judges for the recently created Administrative Court and the Gostivar Court of Appeals. In the 1 January – 31 December 2008 period, the Academy, on its own or in cooperation with other institutions, conducted 221 seminars or 2,289 hours on the whole. The very lack of system for management of human resources within the Ministry of Justice slowed down the realization of hiring of candidates who finished the training at the Academy: for about 50% of the total vacancies in the basic courts and about 50% of the total vacancies in the basic public prosecutor's offices; it was planned that these vacancies were to be filled by eligible candidates who underwent training at the Academy within a year upon training completion. Greater portion of the first generation candidates who passed the final examination for judges and public prosecutors were hired for these jobs, which in turn offers greater independence and impartiality in the justice system. The Academy makes efforts to change the laws by which greater statutory guarantees would be provided that formally eligible candidates indeed will be hired, i.e., selected for judges or prosecutors. In accordance with the 2009-2010 Academy program and the 2009 Annual Calendar, there has been continuation of the training on the aforementioned relevant topics and fields that are important in the application of the substantive laws and of the adjective laws, and, especially for the changes in the national and international regulations and practice.

Special accent has been placed on the changes made in the national criminal legislation, especially on the new role of the public prosecutor leading the pretrial procedure and the trial judge during the proceedings.

Adoption was made of *the Law on amending the law on notary service*.² The main intention was to eliminate certain weaknesses that were contained in the former laws, to strengthen the security of legal relations and so to raise the responsibility of the public

¹ The training started on 15 September 2008 and was scheduled to last for 5 months.

² 'Official Gazette of the Republic of Macedonia' No. 86/08.

notary to report cases of corruption (prevention of abuse and illegal transfer of denationalized land, as it was in the court processed cases 'Sheepfold 1' and 'Sheepfold 2'). In the reporting period, there was continuation of the reform of the penitentiary system in order to improve the conditions in the prisons and to bring about more efficient execution of the sanctions that are still below the level of international standards. Several reconstructions are being made in most of the prisons, in order to improve the conditions for the stay of the convicts, such as: the 'Idrizovo' prison in Skopje, then other prisons located in Skopje, Kumanovo, Tetovo, Strumica, etc.

The Strategy on the reform of the criminal law has been adopted in order to have its harmonization of the law of the EU. It is to be noted that such reforms are made with rather slow pace. Agreement on cooperation with the EUROJUST was also signed and then ratified in April 2009. Ratification was also made of the Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters, and of the Hague Convention on Taking Evidence Abroad in Civil and Commercial Matters; this will allow improvement of the law provisions in the international judicial cooperation.

Law amending the Law on enforcement³ was also adopted. The amending law is intended to correct certain legal inconsistencies. In this context, the number of enforcement agents was increased from 61 to 132. They are distributed in 11 regions in the country.

The Law on Mediation started to be implemented in this reporting period.

The expert analysis of the conditions pinpoints to the need to introduce higher controlling and supervision function over the enforcement agents, the notaries public, and the mediators as such.

The enactment of the Law on Juvenile Justice was postponed from January 2009 to June 2009. This postponement was the result of the need to redefine the competence of the court chambers for administering justice to minors. The deadline for the establishment and start of the work of the State Council for the Prevention of Juvenile Delinquency was also postponed. The establishment of this council was provided for also by the respective law.

4.1.2. Activities by the Ministry of Justice in combating corruption

Priority of the Government (including the Ministry of Justice and the Interior Ministry) is zero tolerance for corruptive activities. It is to be noted that the inter-ministerial cooperation in combating organized crime and corruption happens more frequently and is reaching a more satisfactory level when compared to the past.

The Law on Surveillance of Communications, the Law on Conflict of Interest, and amendments to the Criminal Code (on confiscation of property and assets), the Law on management of confiscated property, property gains and items seized in criminal or misdemeanor procedure provide good legal basis in combating this type of crime. The Agency for Management of Confiscated property was established and in mid 2009 started its operation.

The current Macedonian legislation contains most of the recommendations made by CoE GRECO (Group of States against Corruption), but the recommendation that relates to revocation of the immunity of the MPs.

³ 'Official Gazette of the Republic of Macedonia' No. 08/08.

Basic Public Prosecutor's Office for Organized Crime and Corruption was established with powers to prosecute organized forms of crime and corruption in the entire territory of the state. In greater part of the reporting period, the State Commission for Prevention of Corruption was exposed to constant criticism by the opposition parties due to the assessment that the actions undertaken by this Commission are selective and biased in favor of the officials of the ruling government coalition, which, according to the opposition parties, took part in criminal activities and that the Commission does not follow and act upon the reports and recommendations made by the State Audit Office. It is to be noted that in the reporting period, the basic courts have sentenced former senior government officials to prison sentences, including a former PM, deputy PM, and a mayor.

The Government Action Plan for Combating Corruption in the 2007-2011 Period has identified the concrete problems and relevant measures and activities that ought to be made by different ministries, administrative bodies, and other authorities, in order to attain a rather comprehensive approach in combating corruption.

4.1.3. Police reforms

The Law on Police provides the legal basis for the police reforms. This Law was enacted on 11 November 2007. For its successful implementation, full redefinition of the present bylaws and drafting of new ones, coming out of this Law, were made. Furthermore, for its timely implementation, the Department for Legal and Personnel Affairs of the Ministry of the Interior drafted an Action Plan on the implementation of activities on drafting regulations. This Action Plan provides for activities implementation of the laws regulating to the work of the Ministry of the Interior in three segments, such as: a) drafting of bylaws stemming from the Law on Police; b) drafting of bylaws that stem from the process of harmonization of domestic laws with the standards and regulations of the EU; and, c) drafting of bylaws that stem from the completion of the process of police reforms.

The Department for Legal and Personnel Affairs of the Ministry of the Interior prepared all these bylaws within the deadlines as provided for in the said Action Plan. Bylaws whose adoption is planned until 30 September still remain to be adopted as such. The adoption of the most of the bylaws relating to the Law on Police, would enable singling out the Ministry of the Interior as a political body that implements the policies of the Government of the Republic of Macedonia in the field of home affairs, while the various departments and divisions of this Ministry would assume the role of creators of standards and procedures for policing, having the obligation to conduct expert and general supervision and control over the police work, as well as introduction of civil control mechanisms for the police work. Thus, conditions were created for the establishment of a multi-ethnic police by increased hiring of female police officers. Similarly, a new community policing strategy was promoted. In order to attain such community policing relationship and promoting citizens' trust in the police force, 38 commanders of police stations have been appointed, while 4 of them were replaced on request by the local municipal council pursuant to the statutory procedure. The Law on Interior was adopted in July 2009⁴. This Law introduced for the first time in the Republic of Macedonia the

⁴ 'Official Gazette of the Republic of Macedonia' No. /09.

career and merits system. This system is designed to bring about greater personnel stability and so remove the usual practice in the Ministry of the Interior, in case of change in government, to dispose of or reassign not only the senior police and Ministry officials but also the officers in the various Ministry departments on political grounds. The new Law forbids police officers to assume high-political offices in the political parties. The realization of the effects from these provisions in the said Law remains to be seen.

In the reporting period, the system of Integrated Border Management (IBM) was completed; this had a great role and impact on the visa liberalization. The signing of the Readmission Agreement and the formation of the National Coordination Center for Border Management (NCCBM) created preconditions for possible visa liberalization that is expected to be applied by the end of 2009 or in early 2010

The integrated concept for securing the borders represents inter-ministerial activity of several ministries of the Republic of Macedonia. This also implies improvement of the methodology of collecting intelligence data. The Rules of Procedure of NCCBM was adopted in 2008. It regulates: the rules on coordination and activities that are undertaken by the institutions in the IBM, the procedure on mutual information exchange among the institutions, the coordination rules on state border monitoring, as well as the standard procedure for the purpose of assessment of relevant risk in IBM. Several national and international seminars and trainings for the officers of various ministries were organized for the realization of the operation of NCCBM. According to the Rules of Procedure of NCCBM, the Duty Center of NCCBM was formed. After its staffing, the center started to operate in the premises of the Ministry of the Interior on 19 September 2008; as of 1 December 2008, the center works round the clock, under the system of 24 hours per day, and 7 days per week. The Duty Center has at its disposal: systems for photography, recording, and video surveillance, with a main task of control the flow of passengers, goods, and vehicles. The video surveillance is conducted in order to prevent, and, in case of happening, to evidence and repress cases of corruptive conduct at all border crossings in the Republic of Macedonia. The video surveillance is under the responsibility of the police officers, while the confirmation data are labeled as highly confidential. A copy of the video surveillance may be sent to a competent prosecution and investigation authority in manner provided by law, mostly by the Law on Criminal Procedure, in a sealed envelope with a special seal and with a warning that the evidence is the sole responsibility of the requester.

The second database is updated by the customs officers at the checkpoints on the border crossings. This database contains all data relating to the vehicles and goods, mostly cargo trucks, as well as the documentation on the character of the goods and the situation of import, export, or transit through our state. These two subsystems, for the time being, are connected by internal software which will operate until the very moment of their full interconnection, scheduled for 2010. Corresponding data is exchanged and is to be used by several ministries, which have appointed their liaison officers to this end.⁵ International police cooperation with EUROPOL was improved. To this end, preparations are being made to sign a cooperation agreement. NCB-Interpol Skopje introduced a duty

⁵ Ministry of Finance (Customs Administration); Ministry of Health; Ministry of Agriculture, Forestry, and Water Economy; Ministry of Environment; Ministry of Foreign Affairs; Ministry of Transport and Communications; Ministry of Defense; etc.

operation center that works 24 hours per day, 7 days per week, by which one more of the standards of the MKPO-Interpol is fulfilled.

In context of improving the technical and information potential of the Ministry of the Interior, realization of the projects for upgrading the Tetra system for the regions of Skopje and Ohrid, for introduction of a video surveillance system for the buildings of the Ministry of the Interior, for replacing the current telephone lines with IP telephony, for replacing the classical telephony network with optical one (Skopje), for upgrading of the information system and increasing the level of its protection.

4.1.4. Combating organized, violent crime and corruption

Combating organized crime and corruption remains priority of the Ministry of the Interior. In April 2009, ratification was made of the Convention against Human Trafficking of the Council of Europe (CoE). The Criminal Code was amended to include provisions on obligatory confiscation of assets belonging to perpetrators of crimes related to human trafficking. The inter-ministerial cooperation in combating organized crime is conducted with adequate capacities.

185 persons were charged for human trafficking in 2008. Out of them 160 were charged for smuggling illegal migrants, while another were charged for trafficking in minors (out of them 16 were given prison sentences ranging from 3 to 8 years).

One should also notice here the disappearance of a 6-year old girl, who has not been found yet; there is also a latent possibility that she was the object of illicit human trafficking. The Ministry of the Interior has undertaken various activities in searching and finding this girl.

A case of suspicion for corruptive conduct by a larger authorized officials of the Ministry of the Interior who used to work on a Macedonian border crossing, is being processed by a court.

Police capacities in combating computer crime and computer-related crime, such as the case of abuse of credit cards, have been increased. The Council of Europe's Convention on Cybercrime had a great influence in the modernization of the Criminal Code of the Republic of Macedonia. In accordance with our applicable law, the provisions of the Convention are directly implemented in the Macedonian justice system.

In 2008, the Department for Internal Control of the Ministry of the Interior filed 67 criminal charges against 75 police officers for 70 criminal offences; 61 officers showed elements of corruptive conduct.

4.2. Overall evaluation by the expert on implemented activities for the reporting period, with possible recommendations

The commitment of the Government of the Republic of Macedonia, i.e., of its ministries and institutions in charge of implementing activities in the field of justice and security (home affairs) in the analyzed period has been constant. The functioning of the Judicial Council of the Republic of Macedonia has created conditions for greater level of depoliticization of the judiciary and its greater independence from the Government. Several new courts have been put into operation thus easing up the caseload of the Supreme Court. Still the judiciary generally speaking is not yet depoliticized; among

other things, there are certain court decisions that are subject to debates and connections between in-laws in the judiciary system, etc. What is also very important is the fact that internal controls within the Ministry of the Interior have been intensified; although these controls are yet not sufficiently reformed, still the number of cases of spectacular arrests has declined. The process of harmonization of most domestic laws in this field with the EU laws was completed. Yet one must note here the delay in the implementation of the Law on Juvenile Justice.

In order to have unimpeded implementation of the Law on Police, all planned bylaws were adopted in the foreseen deadlines; in the same period, commanders of police stations were selected and appointed in coordination between the Ministry of the Interior and the local authorities; reappointment of 4 police stations commanders was made. Furthermore, the Law on Internal Affairs was also adopted in this period, which now introduces a career and merits system. This system should create higher stability and eliminate a usual practice of many years in the Ministry of the Interior: when there is change of government, then there is also replacement or degradation not only of senior Ministry and police officials but also of civil servants in various Ministry divisions and departments, on political grounds. Nevertheless, before such Career and Merits System was introduced, many senior officials and police officers used to be degraded by being offered low-paid or junior jobs.