

## The functioning of the judiciary in the Republic of Macedonia

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### Abstract

Issues related to the judiciary and their relations with the legislative and executive power have always been most touched and conveyed problems for solution on a constitutional level. Historically, the third governmental power, being left for a long period the most vulnerable aspect of it, has experienced the interference and infringement to its independence from the two other powers. In particular, in European democracies this lack of balance derived from the fact that the democratic principle of national sovereignty and the principle of representation, which presupposed the prevalence of the parliament, have predominated over the limitation and division of powers (Anastasi, 2004,174).

Nevertheless, there is confusion about what is really happening today in regard to the compliance with the principle of division of powers in Republic of Macedonia, or to be more exact, what is the position and the role of the third judicial government within this occurred reality, to which, unfortunately, the transition period for a democratic governing is being prolonged much too long since the fall of communism.

The constitution of Republic of Macedonia is based on the fact that a contemporary state cannot be imagined without the courts as independent institutions from the government. Courts have been and still are one of the main conditions and guaranties to democracy and civilization in general (Klimovski, 1998, 351). In these relations the courts as specific institutions of the local political power limit the apparatus of violence.

The judicial office in Republic of Macedonia should represent the basis of justice through its form and methodology, guaranteed by the constitution, for equal and unbiased protection of the human freedoms and rights of the citizens, their property and public interests; the form and methodology for determining the responsibilities of all and of each, and for imposing sanctions under the obligations deriving from the laws of this country.

**Keywords:** courts, reforms, judges, public prosecutor, justice, prosecution, independent, changes, agreement, corruption, constitution.

### Introduction

The reforms implemented so far by the Republic of Macedonia in the judiciary first and foremost had to do with the constitutional changes, then with the field of legislation, the Law on Courts, the Law on the Judicial Council, and the Law on the Public Prosecution etc. These had to do primarily with the selection and composition of the Judicial Council in R. of Macedonia, then with the appointment, supervision and the discharge of judges in all levels of the judiciary, but although these were all inalienable in the consolidation of Macedonia as a democratic and a legal state, yet they did not succeed to mitigate the political influence on the Judiciary in this country and guarantee neutrality of the courts as well as provide faster procedures. This would be in conformity with the right of the citizens for a fair trial and within a reasonable

timeframe which is an international obligation of Macedonia. This independence of the judiciary was not achieved, though the majority of the persons who constitute the Judicial Council are judges themselves elected by the judges in direct election of this authority. This is also a result of the fact that the majority of the judges in Republic of Macedonia, in exercising their profession do not meet the criteria of being professional and in dignity, as is the fine expression of Thomas Aquinas on qualities of the judges, where according to him, "Judges should be the guardians of the truth (Thomas Aquinas, cited by Andrzej Rzheplinski, 1992, 176). In the courts they need to be powerful while doing their work, similar to scientists in the field of science, hence falsehood in courts as in science represents a moral guilt.

A worth mentioning shortcoming related to the Judicial Council is that the Constitution does not define the grounds for termination of the function of a member of Judicial Council, instead it allows it to be regulated by law.

The best proof of having a lack of rule of law and the functioning of courts in Republic of Macedonia are the latest massive wiretapping made public by the opposition leader Zoran Zaev, being the greatest scandal ever to have occurred in Macedonia during its democracy. Through these wiretapping we can openly see fierce interventions from top state officials, specifically the interventions of the head of the State Secret Service and the minister of Interior Affairs over the judiciary, dealing with setting up court decisions and appointment of judges all the way to the supreme court of this country. Relying on the idea that "delayed justice is not justice" and that today most of the European constitutions and convention on human rights (article 6) guarantee "the right to a fair trial within a defined timeframe" and that this article became one of the most used articles on which rely the complaints to the European Court for Human Rights, Republic of Macedonia also underwent reforms in this view in order to have a better and more efficient legal protection (D.Gomien, D.Harris and R.Zwaak, 1996, 157). These reforms foresee the definition of the strict timeframes for performing certain actions within the court procedures. However, in this view as in many others aspects the reforms were mostly implemented within the context of the law and remain on the level of a declaration, and not a reality which changed the functioning of our courts. The improvement of such a state was neither helped out sufficiently by the Supervision Service of the RM, which was supposed to contribute much more in the acceleration of the procedures and the efficiency of the decision making process within the court procedures. Another important aspect of the protection of human rights is the reduction of court taxes to a level appropriate to the living standards of the citizens. In the Republic of Macedonia the taxes are very high and this makes the courts to be inaccessible for the individuals. Such an observation about the functioning of the courts is also held to be true by the many judicial experts in Macedonia (Renata Trenesecka – Deskoska, 2002, 164).

In regard to the efficiency of the work of the courts in the fight against crime and the violators of the law, there is also a direct relation of the prosecution and its organization in the country. Hence, the organization and the work of the courts should not be viewed separately from the organization and the work of the public prosecution in Macedonia. Despite covering the courts, the reforms also included the public prosecution, as a part of the judicial authority and in order to dim the influence of the

executive power - respectively the influence of the politics over the prosecution. These reforms were initially implemented through the constitutional changes and then through the changes in the legislation, specifically the changes within the Law on the Council of the Public Prosecutors and the Law on the Public Prosecution. The reforms had to do with: electing the Public Prosecutor in the Republic of Macedonia, establishing the Council of Public Prosecutors, defining the competences of this Council for appointing and discharging prosecutors.

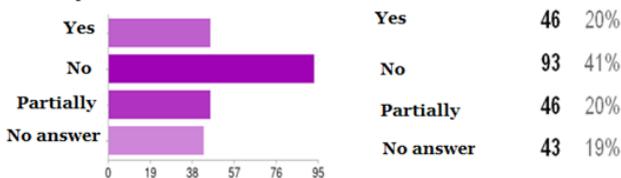
The essential change was the establishment of the Council of Prosecutors. This institution appears for the first time in the political system of the Republic of Macedonia, and its establishment follows the model of the Judicial Council of the Prosecutors which represents an independent body in charge of guaranteeing the independence of the prosecution in general.

According to the model of the judicial Council, the Prosecution Council elects and discharges the public prosecutors, puts the position of the public prosecutor to rest, decides on the irresponsible and insentient performance from the public prosecutor, supervises the work of the prosecutors in harmony with the evaluation based on the Law on Public Prosecutors, decides on suspending the public prosecutors, acts upon the complaints and appeals of the citizens on the work of the prosecutors. All these competences given to the Prosecution Council aimed at ensuring an independent and professional function of the public prosecution. However, the public prosecution, alongside with the courts, has failed to keep immune from political pressures in the exercise of its activity. As a confirmation to this is also the fact that one of the criteria from the reached agreement of June 2<sup>nd</sup>, 2015 between the political leaders of the position and the opposition for solving the political crisis in the country is the replacement of the Public Prosecutor of the Republic of Macedonia, it being one of the conditions for Macedonia to organize early free and democratic elections. On the other hand, this institution has been accused by the opposition for selective approach to crime investigation cases, continuously being inclined toward the governing party in the country. As a result of this method of functioning and of the loss of trust in the objectivity of its work, as well as the need for investigating all the suspected cases for corruption and organized crime in the Republic of Macedonia disclosed through the wire tapings published in 2015, the Final Agreement July 15<sup>th</sup>, 2015 between the political leaders was decided that one of the points in this agreement to be the establishment of a special public prosecutor, with compliance from both position and opposition parties in order to end the institutional crisis in the country.

That the reforms in the judiciary field until now were mostly done in a formal and a declarative way and not realistically, and that they didn't bring the desired results is also proved through a survey, organized and carried out through a research project in relation to how the citizens perceive the reforms within the judiciary.

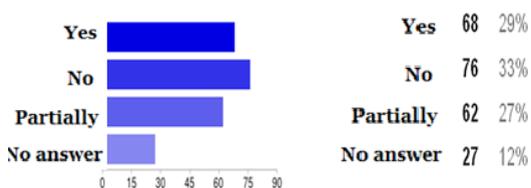
Out of the total number of the respondents 55% of them are facing some legal or other procedure with the court, whereas 45% of them have not had any direct contact with the courts. Asked about their trust in the courts of the country, only 20% responded with a **Yes**, while 41% answered **No**, and 20% answered **partially**, whereas 19% said they had **no answer**. The following is the illustration of the survey:

**6. Do you trust the courts in Macedonia ?**



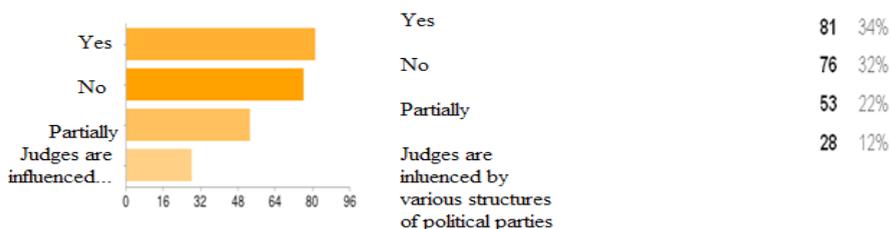
On the question: Are the courts in Macedonia transparent in their decision making? Only 29 % answered **Yes**, while 33% answered **No**, 27 % answered **Partially** and 12 % had **no answer**.

**7. Are the courts in Macedonia transparent in their decision making?**



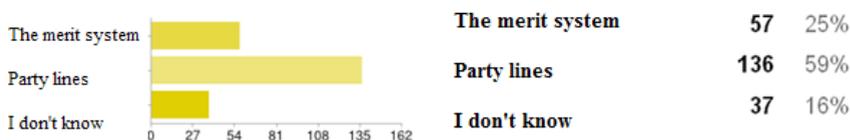
On the question: Does Macedonia respect international norms and standards in the judiciary, including the impartiality of the judges and the respect to the right of the presumption of innocence? the answer of the citizens is as follows:

**8. Does Macedonia respect international norms and standards in the judiciary, including the impartiality of the judges and the respect to the right of the presumption of innocence?**



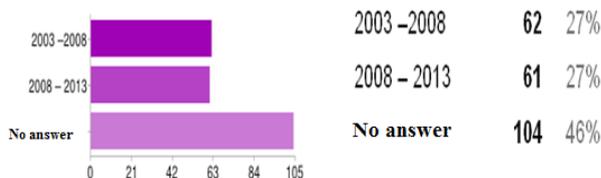
On the question: Are the judges in Macedonia elected based on the merit system or through political influence? The answer is as follows:

**10. According to you, the judges in Macedonia are elected based on:**



We also received quite interesting answers when we asked the citizens: During which period the courts have been most efficient, 2003 – 2008, or 2008 – 2013? In this case we are receiving identical results – same answers for both periods, implying that the courts have not risen at all their efficiency and transparency when dealing with faster processing of the judicial cases. This is how the citizens responded to this question:

**12. According to you, the courts in the processing of cases have been more efficient during the period:**



The data from the survey of citizens show that in the judicial system in Macedonia, the process of reforms is moving so slowly that it can hardly be noticed by the citizens of this country; the strong political influence continues to be present, as well as corruption and nepotism and this undermines one of the main pillars of the judicial system – the authentic function of the courts in the country.

Thus, the reforms should be extended and implemented in a way that they create judicial mechanisms for judges in order to protect them from the political influence. In this respect, “the judge is the iron key and a precondition for implementing the rule of law” (J. Chevalier, cited by Dominique Turpin, 1992, 160).

There should be a strict control over their work, both internally and externally, respectively by competent authorities that perform the control over them. This is the only way to complete respect towards the European norms and laws, respectively the harmonization of legislation with the EU would result in a positive effect on the reality of Macedonia.

The reforms and modernization of the Macedonian judicial system still remains one of the most important issues which should be paid special attention to in order to increase the efficiency in the performance of functions, dealing with crime prevention and establishment of legal order in this state.

Another issue of concern still remains the way the judges are being elected, in particular the role of the Academy for Training Judges and Public Prosecutors in the process of electing judges for the basic courts. This carries the risk of creating a judicial oligarchy, while greatly facilitating corruption in these institutions.

Transparency and the rationale of the decision on the selection of judges by the judicial council should further ensure and guarantee that they be selected from among the best candidates who meet the requirements of a professional and dignified judge according to the system of meritocracy.

The reforms should also be extended to the level of the judicial system’s administration, in order to increase the ethics within the court employees, to completely eliminate the phenomenon of bureaucracy and invest more in the professionalism of the

administrative officials by making sure that the personnel policies are based on the compliance of the legal criteria.

An effective judicial system in Macedonia can be achieved only if the country is built under a democratic constitutional system, because only through such a system we can form independent courts by providing independent judicial processes as one of the basic preconditions of the constitutionality and legality of the democratic order in the Republic of Macedonia.

In fact, the judicial function in the country should represent the activities of the state which will enable and ensure the legal protection and the implementation of the rule of law in practice in an even more efficient way than until now.

## References

- Anastasi, A. (2004). *E drejta kushtetuese*, Tirana.
- Aquinas, Th. (1972). *Social Virtues related to justice*. Veritas 1972, Qu.110.4.5. London.
- Chevallier, J. (1992). *L'Etat de droit, Montchrestien*. Clefs.
- Gomien, D. Harris, D. Zwaak, R. (1996). *Law and Practice of the European Convention of Human Rights and the European Social Charter*. Strasbourg.
- Klimovski, S. (1998). *Ustavni politicki sistem*, Skopje.
- Turpin, D. (1992). *The Constitutional Law*, Paris.
- Maksuti, M. (February 2013). *Investigative project (including a survey on 250 citizens), conducted with the students of the Department of Journalism within the Faculty of Law at the University of Tetova*. Tetovo.
- Rzheplinski, A. (1992). *The principles of independence of the judiciary and its statutory applications in Poland*, from (ed.) I Andrzej Rzheplinski in "International Conference on Human Rights and Freedom in New Constitution in Central and Eastern Europe" Warsaw.
- Treneseka – Deskoska, R. (2002). *Sudska Zashita na Covekovite Prava*, Skopje.
- Law on Public Prosecution, Article 2*, Official Gazette Official. (2007) Skopje.
- Law on Public Prosecution, No.150/2007*, Official Gazette (12.12.2007). Skopje.
- Law on the Council of the Public Prosecutors of Republic of Macedonia. No.150/2007*, Official Gazette (12.12.2007). Skopje.
- Law on the Council of the Public Prosecutors*, Official Gazette, (2007). Skopje.
- Law on the Council of the Public Prosecutors*. Skopje.
- The Agreement (of July 15<sup>th</sup> 2015), *between the political leaders in Macedonia, for ending the political crisis, mediated by the EU Commissioner Joachim Han*, Skopje.
- The Agreement between the political leaders in Macedonia, mediated by the EU Commissioner Joachim Han (June 2015). *Report of Pribe by the European Commission on resolving the political crisis in Macedonia*, Skopje.