



Organization for Security and Co-operation in Europe
Spillover Monitor
Mission to Skopje

REPORT ON EQUITABLE REPRESENTATION
IN THE JUDICIARY
IN
THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA

EXCERPT – CONCLUSIONS AND RECOMMENDATIONS

Skopje, November 2004

III. CONCLUSIONS & RECOMMENDATIONS

9. Conclusions

9.1. Non-majority communities are under-represented in the judiciary compared to the results of the 2002 census. Some remedial measures that need to be taken are in the reach of the Government, such as reform of the selection system and the structure of the appointing authority. On the other hand, some causes of the imbalance are only partly or not at all the making of the Government, such as the location of non-majority populations and the pool of available candidates for judgeship.

9.2. The objective of equitable representation of non-majority communities in the judiciary will not be achieved simply by setting a political goal and working with the procedures and laws currently in place. The shortcomings in the selection system, the non-proportional allocation of judges to basic courts, the under-representation of non-majority communities in the executive of the judiciary and the problems in generating a pool of available candidates for judgeship all require active engagement in legislation and policy reform.

9.3. Ensuring that the judiciary “reflects the multi-ethnic character of Macedonia’s society” depends upon the conception and implementation of a coordinated and multi-faceted strategy involving all three branches of government, the regular courts, the legal profession and the educational establishments.

9.4. There are no directly-applicable guidelines on the definition of “equitable representation”. The OFA and available government documents on the subject lead to the conclusion that as a long term goal equitable representation shall be understood as “proportionality”. In the short and mid term, realistic target figures set on an annual basis are a reasonable and operational tool. The competent body to identify such target figures should be the RJC, in coordination with the CBC, the Government and the presidents of the courts.

9.5. The Constitution, national law and international standards demand non-discrimination of majority applicants as well as non-majority applicants. A sensitive application of positive discrimination for non-majority applicants, while not blocking majority applicants, is necessary.

9.6. Both the current structure and composition of the RJC as a politically-appointed body, and the current design of the appointment procedure, are counter-productive to the aim of achieving equitable representation. Depolitisation of the appointing body and of the appointment procedure would improve diversity in the location of non-majority judges and increase the attractiveness of the profession in general, while changes to the composition and selection process would have a direct and positive impact on equitable representation.

9.7. There is a trend observed by Albanian applicants for judicial positions to apply for vacancies within regions with considerable Albanian population, which concentrates the pool of Albanian candidates and judges to these territories.

9.8. Even after accomplishing all the necessary technical and structural changes, there still remains the pragmatic problem of the current shortfall of sufficiently qualified non-majority applicants. The remedy for this problem is primarily in the education system.

10. Recommendations

10.1. Acknowledge that responsibility for ensuring equitable representation in the judiciary lies with the Assembly and the RJC as the competent appointing authorities.

10.2. Accept “proportional participation” based on the results of the 2002 census as the strategic goal of equitable representation in the judiciary.

10.3. Aim to achieve countrywide equitable representation, avoiding where possible a concentration of non-majority judges in areas with significant non-majority populations.

10.4. Enact a definition of non-discrimination modeled on Article 2 of EC Directive 43/2000 explicitly allowing positive discrimination to occur where it is “objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.”

10.5. Amend Article 13 of the Law on the RJC authorising the RJC to produce national and local targets for the employment of under-represented communities in the judiciary. Establish new rules of procedures for the RJC in a very technical and detailed manner and make them publicly available.

10.6. Avoid the use of inflexible quotas which guarantee a minimum of places regardless of qualifications.

10.7. Assess the reasons for the non-proportional deployment of judges to the basic courts. Investigate the options for the re-allocation of judges to the courts using the territorial jurisdiction of the courts as the basis for calculation while allowing other factors such as case-load to be taken into account.

10.8. Widen the participation of judges in the RJC so that it consists of at least 51 per cent (50 plus one) of judges elected by secret ballots from their own peers. To ensure that the proposed change in the composition of the RJC has a real impact on the selection system, the RJC should have the final appointment authority without additional confirmation by an external appointing authority such as the Assembly. Alternatively appointment by the RJC could be subject to formal confirmation by the President.

10.9. Actively encourage non-majority applicants to apply for judicial positions in general, for example through the use of focused advertising and mailing lists.

10.10. Increase transparency by the use of more objective evaluation criteria in the appointment of judges, such as professional experience and seniority; and reduce the

non-democratic influence of political parties on the nomination process. In general, the Recommendations of the Committee of Ministers of the Council of Europe No. R (94) 12 should be observed and applied in the course of all appointments.

10.11. Review the availability and quality of currently-available Macedonian-language training for non-majority undergraduates and candidates for the Bar Exam, including specialized courses in legal terminology. Continue support for TYP and consider lessons learned from this programme in state-funded language training.

10.12. Improve the quality of primary and secondary education of non-majority communities, in accordance with the principle of uniform academic programmes specified in the OFA.

10.13. Re-evaluate the effect of the quota at *Sv. Kiril i Metodij* University on enrollment of non-majority students and consider the impact the establishment of the State University in Tetovo will have on Albanian enrollment at *Sv. Kiril i Metodij* University. The goal is to ensure access of all communities to all universities and avoid the segregation of higher education in legal studies.

10.14. Instruct the Ombudsman to annually assess achievements against the target data, the activities of the Government, the RJC and other involved institutions and annually report on these to the Assembly.

10.15. Request appropriate international partner agencies to co-operate with the MoJ and the RJC in setting annual targets and monitoring the selection process. An objective assessment by an outside agency might be desired by the Government if it wished to publicly demonstrate achievements in reform of the judiciary.

10.16. The strategy to implement equitable representation should be integrated into the overall national strategy on judicial reform.