



Brussels, 03 September 2008

Dear Mr Janicevic,

The CCBE PECO Chairmen have examined your letter of 4 August 2008.

They comment as follows on the proposed changes to the Bar Act:

1. Provisions relating to the Bar exam

The lawyer's exam, as one of the conditions foreseen for registration in the Registry of Lawyers, has been annulled.

We understand that the Constitutional Court has passed a decision stating that the articles in the Bar Act which introduce the bar exam are in contradiction with the Constitution of the Republic.

We further understand that the Ministry of Justice in the considerations regarding the proposed amendments indicates that it is common practice in almost all Europe to enter the Bar without any examinations.

The PECO Chairmen would like to draw the FYROM Bar's attention to the CCBE Training Committee's report on the training of lawyers of 2005. The results of the questionnaire can be viewed at http://www.ccbe.eu/fileadmin/user_upload/NTCdocument/comparative_table_en1_1183977451.pdf. The report is a voluminous document but it provides very useful information. You will see that question 13 of the report is dealing with the 'entry exam' (pages 104 and following) and question 16 with the 'final exam' (before being admitted as a lawyer) (pages 153 and following). You will find enclosed a table with the responses to question 16 about the 'final exam' which clearly shows that most countries foresee a 'final exam'. Changes might have taken place since 2005 which one will need to take into consideration but we think that this can be some useful background information for your Bar Association.

The PECO Chairmen also note that the current law does not clearly state what the bar exam shall include, and that this could be remedied, but not by revoking the text of the law entirely (and abolishing the whole concept of the bar exam), but by filling the missing items in the law with some proposed amendments. Again, the CCBE table on training of lawyers might be a useful document for the FYROM Bar with regard to the structure and content of a Bar exam (see http://www.ccbe.eu/fileadmin/user_upload/NTCdocument/comparative_table_en1_1183977451.pdf).

2. Provisions relating to the 'working relation'

The provision which foresees that the right to exercise the lawyer's profession expires if one establish a working relation, has been annulled.

There is a new provision added, which foresees the establishment of a work relation as a new ground for abeyance of exercising the lawyer's profession.

We understand that the present version of the Bar Act provides that a labor contract, signed by a lawyer, leads to terminating the lawyer's activities. The Ministry proposes the annulment of this provision on the ground that if the lawyer, whose membership of the Bar has been terminated for this very reason, applies for reentering the profession, he/she will need to undergo again the whole admission procedure including the payment of an entering fee.

At the outset, the PECO Chairman would like to note that the CCBE has no position on in-house lawyers. As you may know, in some countries the work of lawyers is compatible with the work as an in-house counsel whereas in other countries this is not the case. You will find enclosed two internal and confidential documents of the CCBE of 2003 which provide information on how the various countries deal with this question. These documents are not for circulation to any third parties.

The CCBE has no information about the procedures national Bars and Law Societies apply to lawyers who wish to reenter the profession after having worked as an in-house counsel but the PECO chairmen are of the opinion that a solution should be sought by the FYROM Bar in order to respond to the Ministry's concerns which in the Ministry's views justify the proposed annulment of the provision/new proposal. The FYROM could for instance provide a special, easier procedure for lawyers who wish to re-enter the profession after having been in a 'working relation'.

3. Election of the bodies/President of the Bar

A new article is added, by which the organization of the Macedonian Bar Association and the working of its organs is foreseen, although, according to the Law on Advocacy, this should be regulated by the Statute of the Bar (namely, these changes and amendments foresee that the Assembly should be consisted of all the lawyers registered in the Registry of Lawyers; that the President of the Macedonian Bar Association is to be elected by the Assembly for a period of 2 years and that the President only participates in the work of the Governing Board, without having the right to vote.)

The PECO chairmen understand that the present law on the Bar provides that the bodies of the Bar are elected by delegates (1 delegate per 10 lawyers). The reason for the proposed amendments are that the system of electing first delegates, who in their turn will elect the bodies of the bar, lacks transparency and democracy.

As for the duration of the president's mandate, the PECO Chairmen note that there is a whole variety in EU, and therefore they are not able to provide an opinion on this particular point.

Regarding voting rights of the President on the Governing Board, the PECO chairmen note that the situation varies from country to country (the President could have a voting right or he/she could have a casting vote only, so that he or she would have a vote if there was an even vote by the members...). In Austria, for instance the President has a voting right and in the case of an equal number of votes he also has a casting right. In Bulgaria the President of the Supreme Bar Council votes like any other member of the Council. He/she has also a casting vote. In the UK (Law Society of England and Wales) the President has a voting right and a second or casting vote in the event of an equality of voting (see annex). Unfortunately, the CCBE has no information on what the current situation is in all the member countries of the CCBE. It would need to do some research if the FYROM Bar would like to receive feedback on the national rules.

4. Registration fees

Regarding the Bar registration fee, it is foreseen not to exceed two average net salaries in the Republic of Macedonia.

We understand that the current law gives the Bar Council the right to set the entrance fees (without there being any external control). The last decree of the Bar Council fixes the fee with 1600 euro.

The PECO chairmen are of the opinion that it is very important that registration fees are not set so low as to deprive the bar of its ability to function, since this would jeopardise the independence of the profession and that, for that very reason, such fees ought to be set by the Bar itself. On the other hand, if the Bar sets fees too high relative to the revenue of lawyers in a given country, it could be a barrier to entry into the profession.

You may wish to note that National Bars and Law Societies in Europe calculate registration fees on different bases.

We understand that the registration fee charged is equivalent to €1600. If that is so, then it could be considered high in comparison with other Bars. Presumably the members have voted to pay this sum to pay for services which they wish to receive, and which have been duly calculated and shown in the budget.

We hope that the above views and enclosed information is of use to the FYROM Bar Association.

The PECO Chairmen are happy to discuss this matter with the FYROM Bar, for instance on the occasion of the CCBE Plenary Session on 28/29 November 2008 (Brussels).

Kind regards,

A handwritten signature in black ink, appearing to read 'R. Wolff', with a stylized flourish at the end.

Rupert Wolff
PECO Chairman