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NETWORK 23+

SUMMARIES OF POLICY STUDIES BY GRANTEES OF **NETWORK 23+**

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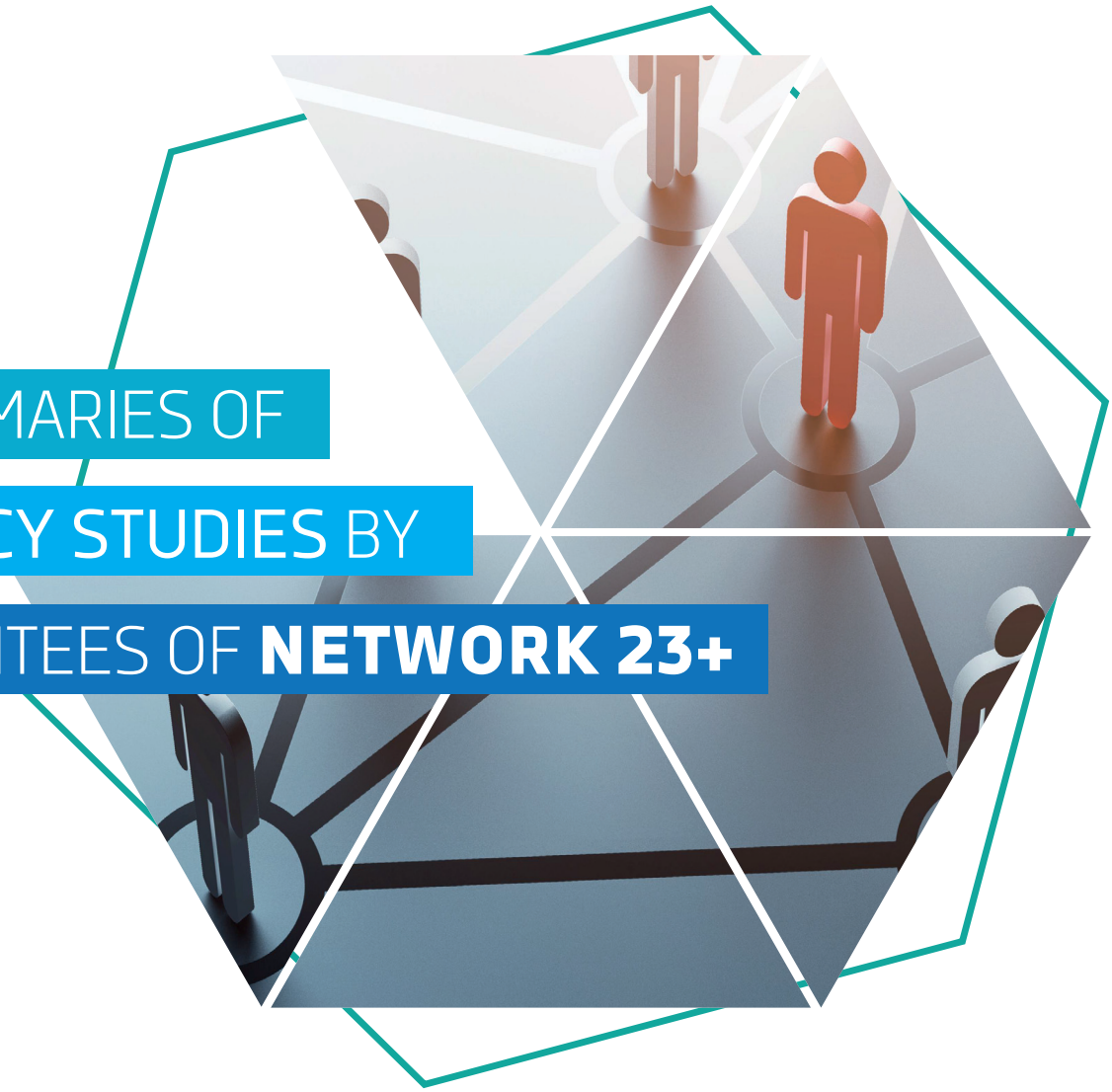

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Associacion for improving the status of women in contemporary social processes in Macedonia

"WOMEN'S ACTION"

Women›s Action | Towards the Civic Panopticon: Achieving Better Balance between Privacy Safeguarding and the Communication Monitoring Need[1]

Research goal and background

The present public policy study aims to initiate the processes of strengthening the observance of the individual right to privacy and of personal data protection within electronic communication flows in the Republic of Macedonia; the goal is to be achieved by means of presenting and advocating recommendations in terms of modifications to legislative and monitoring frameworks in accordance with relevant EU legislation and with best practices in this area on the part of EU Member States; action is to be taken towards limiting the possibility of widely spread and non-selective communication monitoring and of metadata harvesting, as well as towards setting clear boundaries with competencies in this sense among intelligence and investigation agencies.

In 2015, political «bombs» were released that demonstrated the fact that telephone communications among members of political and business elites, media representatives, and civic activists had been illegally monitored: this was the second time since Macedonia›s independence had been proclaimed (the first one having been the «Big Ear» 2000 affair) that illegal massive phone tapping had been exposed which had violated citizen privacy, personal data protection, and freedom of expression. Scandals of this type indicate grave abuses of the State communication interception system, in particular of the national Safety and Counterintelligence Agency equipment and staff. The European Commission expressed their concern over 2015 and 2016 reports on Macedonian affairs that had indicated huge-coverage electronic communication interception; in the Emergency Reform Priority document, the Commission listed serious reforms they expected the country to undertake in order to detect and implement measures to overcome deficiencies in the national legal frame regarding communication interception.

By means of the 2014 Law on Electronic Communications (ZEK), new aspects were introduced in terms of communication content monitoring and massive withholding of data on citizen communication traffic. The Law enabled the Ministry of the Interior to maintain direct and unlimited access to the contents of all electronic communications among all citizens. In addition, the Law introduced the obligation on the part of all telephone and Internet service providers to keep and maintain so-called «metadata» on all their users for a period of one calendar year. The Law›s provisions on massive data withholding were being justified as transposing Directive 2006/24/EC, which in turn got revoked by the European Court of Justice immediately following ZEK adoption. The State, however, has not yet initiated measures to overcome grave challenges imposed by that circumstance. In view of challenges identified in this regard, authors suggest several recommendations that should enable the replacement of the current State Panopticon (a system in which citizens live in fear of continuously being monitored by the State) by a newly-constructed Civic Panopticon (a system in which transparency generates accountability on the part of authorities towards the citizens. These recommendations are listed under a relevant heading in the present Study; key recommendations are briefly listed bellow.

1 http://www.merc.org.mk/Files/Write/00001/Files/Network23/studies/Kon-gragjanski-panoptikon-ramnoteza-pomegju-sledenje-na-komunikaciite-i-privatnosta_MK.pdf

Recommendations

>>>To revoke Articles 176 to 178 of the Law on Electronic Communications that proscribe metadata withholding because the European Court of Justice have annulled Directive 2006/24/EC which initially was transposed to this Law. Electronic communication metadata monitoring and review should be regulated by the Law on Communication Monitoring.

>>>To consider whether it is justifiable to allow communication monitoring regarding such a wide scope of criminal offenses; this consideration should be based on assessing whether specific privacy violation is proportionate to the criminal offense it relates to, and to evidence expected to be gathered by special investigation measures i.e. by communication interception.

>>>To disable direct access to communication contents on the part of State agencies i.e. competent authorities must previously notify the service operator and submit a court order allowing communication interception; even after this happens should the service operator grant these agencies access to communications between or among persons to be monitored.

>>>Each request for information monitoring should include a statement and a justification of reasoned suspicion that a criminal offence might be committed or has already been committed, and not bases for such suspicion only, that being considered a very low suspicion degree.

>>>In the procedure of granting communication monitoring approval, one more party should be included that will represent the interests of persons whose communication is to be monitored (for instance, an expert panel, a representative of the national Personal Data Protection Directorate or of the People›s Ombudsman›s office). This party should be allowed to file objections to communication monitoring requests if it holds that such an action will unjustifiably violate citizen privacy and personal data.

>>>To reconsider the justifiability of currently proscribed maximum duration of communication monitoring.

>>>To delineate by legislative means the competencies and regulations regarding criminal investigation communication monitoring from competencies and regulations regarding national security and intelligence.

>>>To strengthen the Ministry of the Interior Internal Control Department so that it can perform checks also in cases where communication monitoring authorization has been abused.

>>>In case during communication monitoring knowledge is obtained implicating the involvement of other persons in specific criminal offenses or identifying the existence of bases to criminal offenses other than those covered by the existent communication monitoring court order, another court order must be issued to authorize the continuation of communication monitoring and the usage of records of these procedures as sustainable evidence in court.

>>>To proscribe caution regarding specific personal data categories (determined in the Law on Personal Data Protection) i.e. records related to such data should be excluded or deleted during communication monitoring.

>>>To introduce the duty to inform persons affected by special investigation measures on the fact following the termination of such measures, except when it can be demonstrated that such informing will lead to criminal prosecution impairing or prejudicing.

>>>To introduce effective legal remedies to be used in cases when individuals should hold that their rights have been violated in any regard by communication monitoring procedures conducted by competent authorities. Relevant non-profit organizations should be granted legal entitlement to submit objections in such cases and represent individuals affected by communication monitoring.

>>>To strengthen legal provisions regarding the safety of data collected during communication monitoring and the destroying of such data in cases it is no longer needed for the purpose for which it has been collected.

>>>To ensure that each member of competent Parliamentary committees, accompanied by expert members of these committees, may perform unannounced check-ups during which they may access data aggregated during communication monitoring, names of persons whose communication has been monitored, and bases upon which such monitoring has been conducted. In addition, regulations should be adopted to provide for efficient conducting of the security certificate obtaining procedure for members of Parliamentary supervising comities.

>>>To introduce an additional, civic committee to supervise communication monitoring; members of this committee will be experts in the field and civic society representatives, to be appointed by the Parliament.

>>>To extend the duty to report on communication monitoring requests and orders involving courts and telecommunication operators. The Public Prosecutor Office should compile reports in this field to also include all proscribed elements including information on costs and a justification in case measures implemented have not yielded expected results; such reports are to be issued by the end of each February at latest regarding the previous calendar year. These reports will also include a review of allowed, modified, and rejected communication monitoring requests; the number of monitored criminal offense subjects; the number of requests for obtaining metadata from foreign Internet service providers; and the number of special investigation measure records destroyed.

>>>Electronic communication providers must be obliged to operation design oriented to privacy maintaining i.e. must specify their technical and organizational measures securing personal data protection as early as at the stage of their system design, rather than afterwards. Competent agencies are to perform regular operator checks in terms of access to, and processing of, communication traffic and subscriber location data.

>>>Penal provisions in this regard for competent agencies and for their responsible officials must be introduced to the Law on Communication Monitoring.

>>>A campaign should be conducted to raise citizen awareness on risks involved with their electronic communications and on their rights to privacy and personal data protection during mutual communication.

>>>Public prosecutor and judge expert and ethical levels should be strengthened; foreign aid is to be secured for the implementation of relevant standards, as well as for prosecutor and judge training and specialization in the fields of communication monitoring, privacy entitlements, and personal data protection.

ZIP Institute | Who is the Employer: the Municipality or the Political Party?[2]

Key findings and recommendations

Our research, collected data analysis, conducted interview analysis, and focus group all provide a snapshot of the current situation in terms of political interest i.e. political party motivated employments in target municipalities, on the basis of which we hereby present our recommendations. Nonetheless, we wish to stress that consideration should also be given to the fight against corruption and corruptive processes such as (a) overall politicization of the country's public administration; (b) the high unemployment rate; (c) public administration overemployment; and (d) citizen awareness of these problems.

On the basis of this research findings, we can conclude that municipal level politically motivated employment does exist. Paradoxically, this statement has been negated by municipal authorities themselves. However, this situation has been considerably improved by means of reforms introduced to the legislative framework governing public sector employment, and regulating slow reform pace and State structure centralization, which all has contributed to the slowing down of progress in this regard.

The employment procedure itself lacks flexibility, takes too long, and is excessively formal. Advantage has been given to persons having already gained certain work experience as administrative employees, primarily because they have passed the State Administrative Servant Exam.

The administration of the public employment process itself has been centralized now with the Public Administration Agency; this is a step in the right direction, yet there remains quite a room for improvements to the overall procedure.

Local self-government units are relatively small-sized systems within which it is sometimes impossible to avoid the issue of a person's general political or political party affiliation.

The ordinary citizen craves to obtain a job within the public administration due to this system's overemployment, political crises, and the public sector job stability which is why, when people try to obtain employment in this system, the additionally rely on their acquaintances and connections beyond proscribed procedures in this field.

2 This analysis is available at: http://www.merc.org.mk/Files/Write/00001/Files/Network23/studies/Koj-вработува,-општината-или-партијата.pdf

Association of Finance Officers of the Local Governments and Public Enterprises | Funding Sources, Obtained Funding Levels, and Impact Thereof upon the Judiciary [3]

Key findings and recommendations

The previously conducted analysis, findings that Project team members draw by analysing current legislation and information, and conclusions drawn from conducted discussions with the Chairman of the national Judicial Budget Council (SBS) and with chairmen of target courts throughout the country, as well as comments and suggestions given by court representatives while draft findings of the present research were being presented to debate, all point to the following summarized conclusions on situations and problems faced by courts in terms of required funding and court financial management:

1. The Republic of Macedonia›s Constitution proscribes delineation among legislative, executive, and judicial powers. However, current budgeting practices in the judiciary have been devaluating judiciary independence: judiciary budgeting has been operationally limited in spite of the fact that annual budget allocations to this area have been specifically determined. In particular, initial revenue and expenditure based assessment of State budget allocations to the judiciary is done by the Government of the Republic of Macedonia upon proposal from the Ministry of Finance. This means that, at the stage of national Budget approval for the following year. the national Parliament has no possibility at all (or has very limited possibilities) to modify Budget allocations (in this particular case, to increase i.e. authorize annual Budget allocations to the judiciary in accordance with the law). This has been one of the main reasons why annual Budget allocations to the judiciary have in the recent 4-5 years failed to reach the volume determined by the Law on Judiciary Budgeting, which has caused additional problems to courts in terms of their current operation funding, and has especially contributed to the accumulation of unpaid financial obligations due by courts on various grounds;

2. In view of the stated, the main problem faced by interviewed courts (which may be assumed to be faced by most of the country›s courts) has been the lack of funding required for unhindered conducting of current and major activities and for repayment of liabilities due on a variety of bases. All this has contributed to the accumulation of unmet liabilities which during the reporting period increased with some courts and decreased with others, yet were at no time to be neglected.

3. The lack of funding and delays in liability payments have often caused forced payment orders that have sometimes even blocked court bank accounts. During the debate, court representatives underlined that some of these liabilities had become obsolete and had therefore been written off;

4. Major layouts were effectuated in most of the courts when funds were engaged from State Budget allocations to the Ministry of Justice or from a World Bank loan. Nonetheless, officials at both the SBS and selected (interviewed) courts stressed the lack of funding needed for major layouts, which has usually been covered by donations from various institutions. Some courts have the possibility to access donations but have been facing problems because they do not possess property ownership certificates required, among other documents, for them to apply for a donation.

5. In the judicial field, the Law on Case Flow Management has been adopted. Case management need and possibilities were assessed to have been insufficiently stressed, the issue implying case flow planning, coordination, and organization, as well as case processing checks. If a court is not in a position to justify the amount of funding it requests by the volume of its caseload, it will not be eligible to receive the funding needed. This is why courts are becoming increasingly aware of the importance of advance determining of overall case volume and of individual costs by cases, depending on case type and complexity. Some courts have already determined costs involved with certain court cases, others are in the intensive process of determining such costs, and yet others are currently not able to determine individual case costs due to various reasons (mentioned throughout the present Report);

3 http://www.merc.org.mk/Files/Write/00001/Files/Network23/studies/AFO_Izvestaj-za-finansiranje-na-sudovite.pdf

6. Court-drafted reports do not follow any standards and rather modestly explain various situations and problems encountered in court operation. No correspondence may be established in these reports between the number of court decisions adopted and the amount of funding used to that purpose. Court representatives that attended the presentation of the Draft Report stressed the need to increase the number of training sessions on report compiling procedures by courts to competent institutions, on public information procedures, on the procedure of compiling a budget allocation request for the court etc., in order to unify court procedures and reports;

7. Moreover, reports submitted to SBS by courts contain only numbers stated by budgeting items and lack any comprehensive comparative analysis of costs made versus costs forecast, as well as any analysis of factors leading to debt accumulation, and accumulated debt servicing plans. Such analyses are not compiled because no court has requested an analysis to be made, but also because adequate staff for such tasks have been lacking;

8. On the basis of a discussion held with the SBS Chairman, it was concluded that there is no economic and financial justification for the existence and operation of as many as 27 primary courts in the country, a fact that requires reconsideration of the need for any further operation of courts in some settlements, and the replacement of such courts by court procedures scheduled in advance or by local court offices;

9. SBS analyses have shown that the number of judges is too high. This particularly goes to the number of judges at some courts in more distant parts of the country, where there has been evident disproportion between the number of court cases and the number of judges. This situation has gravely pressured State budget allocations to the judiciary (of which some 85 to 90 percent has on average been spent for salaries and for salary-related deductions in this field), which is why courts are afterwards left with relatively small amounts to finance their current activities and investment activities i.e. outlays. On the other hand, courts keep stressing the lack of administrative staff, especially of expert associates, typists, and managing officers, a lack which causes them big hindrances (stalls and delays) in case effectuation;

10. Analyses of court balance statements, of answers they provided in their questionnaire forms, and of the discussion held with representatives of the Judicial Budget Council, all support the overall finding that at least 0.5 percent of national Budget funds must be allocated annually in order to fund national judiciary activities. On the other hand, analysis confirmed that annual budget funding disposed by the national judiciary (the judicial budget) hovered between 0.3988% and 0.2891% of the total GDP figure in 2010 and 2017 respectively. This further led to the conclusion that it is the non-compliance with the legally proscribed allocation of 0.8 percent of the national Budget that has been the major cause of financial problems in court operation, and especially in terms of failure by courts to meet their due liabilities;

11. No harmonization exists among budget allocation requests on the part of courts as budgeting items on appellate level. The research team holds this fact to indicate possible lack of harmonization in budget funding allocation which in turn probably causes some courts to fail to receive requested funding or allocated budget funds to be re-allocated from one court to another without there being any insight whatsoever to the (non)justifiability of (non)effectuation of initially allocated funding and to needs in terms of meeting accumulated liabilities on the part of some courts. Actually, some courts complain that, within this budget funding re-allocation on appellate area level, they have not been consulted on their needs and problems for the solving of which previously allocated funds were needed; in some cases, these amounts even have to be increased from the initially determined level. On the other hand, some courts hold such appellate area budget allocation request harmonization to be completely unnecessary. And finally, court representatives stressed that, in order to perform such harmonization, they need to maintain adequate expert staff, with expertise primarily in the field of economics, which has been rather insufficient, some courts even not having an economist employed;

12. In direct connection with the above mentioned problem is the one some courts emphasize: the SBS approves by means of budgeting allocation only 50% of funding requested, without performing any analysis on whether there is realistic grounding for such funding to be requested or not; the Council also fails to consult in this regard affected courts. What is more, these courts have not even been notified on any alterations in this sense and therefore are not informed on reasons for any reducing and have not received any guideline to help them plan funding needed in the future. Under such circumstances, court budget funding allocation is done according to budget funding requests submitted by court units as beneficiaries; these requests are compiled according to the previous year budgeting adjusted to the funding ceiling received from the SBS or from the Ministry of Finance. This procedure of budgeting fund calculation fails to provide for efficient operation based upon need planning or for a just funding allocation; namely, some courts receive less funding than required (due to increased workloads), and others receive more funds than they actually need;

13. The current budgeting system, due to its lack of funding priority specification and of detailed analysis on the reasons for inadequate budgeting execution, fails to provide for quality budget funding management. This item budgeting system does not yield a comprehensive picture of the needs involved and does not enable funding to be planned for a period of three successive years (as is proscribed by law);

14. Courts pay any court procedure costs in procedures involving other bodies or agencies. Once procedures are completed, however, refunding is done to the State budget, and not to court budgets, a fact which leads to court expenditure level increasing.

15. Courts and the SBS are not sufficiently staffed and trained for financial management operations. Their job scheme planning does foresee the setting up of a financial and material operation department in the job position structure; yet, according to descriptions of this department›s tasks, it only performs budget sheet compiling and financial accounting operations, yet no financial management and control as well. Financial management and control require that detailed planning and analysis be introduced of court financial operation and financial resource usage, and that appropriate and stable funding sources be secured for the judiciary. However, as has been previously pointed out, quality planning and analysis in this regard also requires sufficient and expert staff which is currently quite lacking in courts.

ИСИЕ
ИНСТИТУТ ЗА СТРАТЕШКИ ИСТРАЖУВАЊА И ЕДУКАЦИЈА

Institute for Strategic Research and Education | Will There Be «Whistleblowers» at Universities? Implications of the Law on Whistleblower Protection and Corruption Prevention in the Republic of Macedonia›s Higher Education System[4]

Key findings

On the basis of a research done on implications of enacting the Law on Whistleblower Protection for preventing corruption in the higher education system of the country, we have come to several conclusions:

>>> The student poll showed corruption to be still very much present in the higher education. No major change was noted in trends regarding higher education corruption in comparison with similar data obtained during the 2012 research.

>>> On the basis of answers to questions on the status of higher education corruption, we found that **student** answers in terms of experiences differ from those in terms of student perceptions in this regard. In particular, the smallest was the number of student respondents that indicated their having been corruption victims during studies (36 respondents in total i.e. only 7%) whereas only 12 stated they had been corruption victims at some point. On the other hand, the number of student respondents stating they have eyewitnessed a form of corruption or have heard of a corruption attempt is quite higher and amounts to 12% or 47%, respectively.

>>> Although more than half of all student respondents hold there is corruption at universities, with 7% of them claiming to have been corruption victims, no corruption cases have been reported at universities, which indicates that no current mechanisms function to prevent corruption in the higher education system.

>>> The most common practice to which student react are cases when the student is forced to buy a textbook in order to pass an exam or to get a higher grade.

>>> Of student respondents, 78% state they would not report a corruption act because they are afraid to do so or have concluded that this reporting on their side will not change anything and will not be acted upon by anybody, which leads to the conclusion that students lack trust in institutions responsible for corruption prevention or reporting.

>>> Quite a small number of future law workers in the country (some 10%) are aware that there is a Law on Whistleblower Protection in force.

>>> In addition to not being informed on the existence of this Law and on the area it regulates, law faculty students mostly lack information on whether the education institution they study at has appointed a staff member in charge of receiving whistleblower reports and, if so, who that person is. The survey revealed students to have greatest trust in deans, student ombudsman officers, the press, and the university rector (in that order), as in levels to which they may report suspicion or knowledge of a corruption act committed.

>>> Lectures at faculties are the most appropriate medium to present the contents of the Law on Whistleblower Protection and to discuss the possibilities it offers; also, there is a possibility of additional information via websites or faculty social media accounts, as well as by organizing various panel discussions and public debates.

>>> Like students, university **staff** members are also not familiar with the existence of the Law on Whistleblower Protection and with the possibilities it offers in terms of corruption prevention in the higher education system.

>>> Staff members at faculties and universities generally agree that they would report any reasonable suspicion or knowledge of a committed criminal offense if they could use reporting mechanisms foreseen in the Law on Whistleblower Protection. In this regard, most of the respondents prefer to report such cases in written form, over oral reporting i.e. personal statement to the records.

4 http://www.merc.org.mk/Files/Write/00001/Files/Network23/studies/2017-ISIE-Policy-Study-Will-there-be-%E2%80%98Whistleblowers%E2%80%99-at-the-Universities.pdf

>>> It is concluded that deans, as managing officers at faculties, enjoy relative trust as an instance to which whistleblower reports can be submitted (87 percent of respondents stated this trust).

>>> An overall conclusion is that law faculty staff maintain a medium level of trust towards all managing officer categories (rector, provost, dean, deputy dean, institute director, department head, faculty secretary) as persons in charge of receiving whistleblower reports.

>>> Law faculty staff indicate low levels of trust in institutions in charge of external reporting according to the Law on Whistleblower Protection (the Ministry of the Interior, the Primary Public Prosecutor›s Office, the State Corruption Prevention Commission), an exception being the People›s Ombudsman›s Office.

>>> The attitude prevailing among respondents is that the Law on Whistleblower Protection, which guarantees protection of reporting individuals («whistleblowers»), will encourage students to report corruption acts more frequently, yet that this Law fails to offer safe and efficient protection i.e. fails to prevent the exposing of the identify of the person to report corruption in the higher education system.

Recommendations

In view of the above stated, we have compiled the following recommendations to key stakeholders:

To the Parliament of the Republic of Macedonia:

1. To reformulate Article 2, paragraph 3, item 6, of the Law on Whistleblower Protection. More specific and clear identification is required of persons mentioned here that may appear as whistleblowers;

2. To modify the Law on Whistleblower Protection in line with the recommendations from the Venice Commission in terms of mechanisms promoting the enactment of this Law;

3. To develop a more adequate assessment of the need for legislation adoption, especially in cases where institutions and legislative solutions specific for the Anglo-Saxon legal system are incorporated to the Macedonian system of legislation.

4. To improve the overall environment needed for legislation adherence and enactment in the country.

To universities:

1. In line with the Law, universities need to appoint officials in charge of receiving whistleblower reports; these officials need to be available and their names need to be publicly known;

2. Universities should draft brief information brochures describing what corruption is and how it can be reported; these need to be distributed among students at the beginning of each academic year and should be published at university and faculty websites.

3. University staff training should also include contents related to whistleblower protection and protected insider reporting.

4. The possibility should be considered of adopting a university level whistleblower protection policy document.

5. The above mentioned survey showed that students must buy certain textbooks if they are to pass some exams, this being the predominant type of corruption at universities; this is why universities need to find a sustainable and acceptable solution to this problem.

6. Universities need to publish annual reports on reported corruption cases and on actions taken following reporting. This will promote trust and will encourage students to report cases of abuse in this regard.

7. University teaching staff need to include corruption-related contents in their curricula, especially in terms of the whistleblower protection legal framework and alternative models.

8. Expert discussions, roundtables and public debates should be organized and open to participation, to encourage involvement of law studies students as well, where participants will be educated on current legal solutions and on implications of the enactment thereof, which in turn will additionally strengthen trust in the whistleblower protection institution.

To student organizations/the Student Ombudsman Office:

1. A more proactive role should be played in terms of student right protection, and dialogue should be initiated among students and faculties on corruption-related issues.
2. A mechanism is to be established to inform students and offer them assistance in cases of abuse.
3. By public opening of this topic, student trust is to be built in institutions they have at their disposal.

Coalition «All for Fair Trials» | Monitoring the Implementation of International Standards for Fair Trial at the Skopje I and Skopje II Primary Courts[5]

Reasearch goal and coverage

Increasing public trust in the national legislative system and problems identified in judicial system functioning have imposed the need to continuously monitor the implementation of international standards in the field of fair trial in the operation of primary courts Skopje I and Skopje II.

This project primarily aims at increasing public trust in the legislative system and the courts by means of court system problem identifying, at the same time highlighting the need of legal and institutional reforms by which greater adherence will be secured of fair trial standards in the work of national courts, and the public will be better informed on fair trial standards.

The project was carried out on local level, by monitoring fair trial standard implementation in the work of the Skopje I and Skopje II primary courts. Analysis focused on the operation of these two primary courts, in particular regarding international fair trial standard application, with monitoring model being the surveying of a selected sample of 80 court cases (60 criminal and 20 civil), with the aim of determining the level of international fair trial standard application during court procedures.

The methodology used by the Coalition to collect data from these cases needed for the present analysis included two methods: 1) monitoring court procedures in their course; and 2) using systematized questionnaires to which data is entered once monitoring is completed.

Within court procedure monitoring done in the Primary Courts Skopje I and Skopje II jurisdiction area, 97 court procedures were subject to monitoring, of which 74 criminal cases and 23 civil cases, or 120 criminal court hearings and 35 civil court hearings. This number of cases ran beyond the originally foreseen, and the goal was to obtain more comprehensive data to be subject to processing. The intention was to determine the extent to which international fair and just trial standards are observed in the operation of the two biggest courts in the country.

Criminal procedures

During criminal procedure monitoring, observers were able to monitor cases in various categories; this monitoring mostly covered procedures for cases in the categories of "grand theft", "illegal manufacturing and trafficking of narcotics, psychotropic substances, and precursors", "fraud", and "human trafficking".

Civil procedures

With civil procedures at the Skopje 2 Primary Court in Skopje, previously specifically selected cases were monitored in accordance with bases thereof. As civil law deals with a huge variety of bases for action, court cases were monitored to which bases were "ownership", "discrimination", and "defamation and insult" in which, according to us, in view of the specific nature of bases, there should be greatest extent of application of fair and just standard application.

5 http://www.merc.org.mk/Files/Write/00001/Files/Network23/studies/Megunarodni-standardi_fer-i-pravicno-sudenje.pdf

Court procedure analysis was done by evaluating parametres determined by the European Court of Human Rights and the European Council of Human Rights in terms of the system of rights whereby a criminal procedure is determined to be fair and just or not i.e. by means of fair procedure principle evaluation. In this regard, specific elements of the fair procedure principle were analysed in the following order: independence and objectivity; timelines – reasonable duration of the procedure; public openness; presumption of innocence; equality of arms; respecting defence minimum rights (as fast as possible notification of the defence attorney on the nature and the bases of the charge; leaving sufficient time and possibility for defence preparation; possibility offered to the defendant to defend themselves personally or be defended by a defence attorney/ to personally or via an attorney investigate witnesses; translator aid free of charge) and right to appeal.

Conclusions obtained

On the basis of monitoring taken and data obtained, we may conclude that time available for court procedure monitoring was too short for any clearcut conclusions to be deduced in terms of overall implementation of all fair trial standards.

The fact remains that, when engaged in monitoring, observers found court procedures advanced to various stages: some were at the very beginning, some at the stage of evidence exposition, and some at conclusion, hence there is no continuity required to be able to determine with certainty whether a procedure has succeeded or failed, from its beginning to its end, to consistently observe standards in question. On the other hand, we might provide a more detailed insight, depending on the stage of the specific procedure, in order to determine whether a principle or an entitlement contained in these standards has been observed in it or not.

>>>On the basis of data collected, we can draw the solid conclusion that courts in general perform their functions with objectivity and professionalism, as in cases monitored there was no judge exemption request on this basis.

>>>In terms of reasonable procedure duration, we may conclude on the basis of data collected that monitoring process duration was too short to determine whether a procedure takes too long or not, especially in view of the fact that a criminal court procedure on average lasts for some six months, and a civil one for about a year. On the other hand, statistical data is lacking on requests to protect the entitlement to reasonable court duration (these are submitted to the Supreme Court of the Republic of Macedonia) which is why we were not able to determine how often this right is violated, how this mechanism functions when it comes to determining compensation of non-material damage in case this right has been violated, etc..

>>>In terms of standards related to the «equality of arms» principle, observers have not detected circumstances indicating non-adherence to this principle; on the contrary, this principle has been found to be greatly adhered to in criminal procedures, especially in terms of providing equal possibilities to both parties in a procedure for evidence proposing. The only issue that may be potentially specific is the problem of evidence finding and securing during an earlier stage of a procedure i.e. during the investigation conducting stage; it is in this connection that later on, during main hearings, certain proposed evidence fails to be detected or exposed to the court.

>>>The public openness of court procedures is one of the major guarantees for fair acting on the part of courts. When court procedures are open to the public, conclusions may be drawn in terms of court efficiency, which enables perception of the court itself as equal protector of the rights of all subjects in criminal procedures maintained in court. Depending on the way this principle is looked at, one may draw double and contradictory conclusions. In particular, if public openness is understood as trials being closed in terms of physical restriction of persons not being directly affected by procedures (with the exception of trials at which the public is determined to be excluded due to legal reasons), it may be concluded that the public is granted quite significant access to trials. However, if openness to the public is determined by transparency of data on the basis of which the public obtains knowledge of some court procedures, inconsistencies may be detected, especially in terms of the lack of correspondence between data being published on court websites or data being officially obtained, and the situation «in the field», but also in terms of absolute non-transparency of data on trial time and venue, which should be clearly available next to courtrooms.

>>>In terms of defendant rights, on the basis of data obtained it can be concluded that courts very often merely enumerate defendant rights without ensuring that the defendant does understand what these rights are and is capable of exercising such rights during the criminal procedure. This being said, we hold such bad court practices have to be eliminated and practices have to be introduced of complete, comprehensive, and understandable explanation on the part of the court to the defendant, of reasons due to which the defendant has been brought to court. In terms of defence attorney presence in criminal procedures, data collected suggests that a certain percent of defendants did not have their defendant attorneys (in particular, 32 defendants observed), which brings into question the possibility given to these persons to independently determine the truth and to achieve justice for everyone including themselves.

As for the right to legal aid free of charge, previous report›s comments in this regard apply to this year as well: courts need to take much greater care in determining whether possibilities exist for a party to enjoy legal aid free of charge. The right to a translator/interpreter during court procedures is yet another aspect being part of defendant rights. Legal solutions in this regard have already been proscribed in the Criminal Procedure Law (ZKP) (covering defendants and procedure parties) and in the Litigation Procedure Law (ZPP) (for procedure parties); however, in spite of legal solutions proscribed, monitoring data processed suggests that this right has been absolutely observed in criminal procedures, but not in civil procedures as well.

>>>It may be concluded that the right to appeal i.e. the right to complain about court decisions published to be effectuated is not given full respectance in both court types (criminal and civil). In criminal courts, court decisions were not publicly announced in as much as 20 percent of cases observed; as to civil procedures, trials as such take longer, so observers were not able to monitor procedures from the beginning to the end, and the number of recorded completed cases was too small for observers to draw relevant data on the percentage of court decisions not publicly announced. When it comes to informing procedure parties on their entitlement to appeal, the conclusion is that as much as 34 % of defendant parties in criminal cases are not informed accordingly. It needs to be borne in mind, however, that this data is obtained from observed hearings only, in cases courts publicly adopted and announced court decisions following main hearing closure.

Multikultura | Free Legal Aid – Challenges and Solutions[6]

Research goal and coverage

Within the Free Legal Aid Project, the Multikultura Association drafted the present analysis to identify challenges encountered with free legal aid providing, and to issue recommendations for status improvements.

The Free Legal Aid analysis focused on the application of the Free Legal Aid Law following its adoption in 2016, and on comparing data contained in relevant Ministry of Justice reports and in the reports of other organizations active in the field of free legal aid providing.

The present analysis covered the period between January 1 and December 31, 2016.

We tried to obtain detailed analysis of the enactment of the Free Legal Aid Law and statistical data in this area by means of citizen polls and of interviews conducted with experts in the legal aid field. The poll covered 500 respondents living in Tetovo, of which 51% female, and 49% male. In addition, respondents belonged to three age groups: 31% aged 16 to 25, 46% aged 26 to 35, and 23% aged beyond 36.

In addition, we talked to four associations registered in the country and authorized, among other things, to provide free legal aid: CRJUZ, ROMA SOS, NRC Kumanovo, and the Macedonian Association of Young Lawyers.

In addition, Multikultura association staff talked to officials at the Ministry of Justice Tetovo local office. The goal was to obtain a realistic picture on the number of free legal aid (BPP) applications submitted in total, and on how many of these had been granted or rejected.

The present analysis offers detailed data in several fields: total number of FLA applications submitted; number of FLA applications submitted by regions; whether there is any variation in terms of the number of FLA application numbers among towns; how many FLA applications were accepted versus how many were rejected; to which legal issues were FLA applications related; whether qualifying for FLA was easy or not; whether persons whose FLA applications had been rejected had any possibility to resort to legal remedies; what are the procedures of FLA operation funding; etc..

Conclusions

Eight years have passed since the adoption of the Free Legal Aid Law, and seven and a half years since its enactment; nonetheless, we are still facing the same primary problems encountered at the very beginning. This Law enactment can still not be said to have fully taken place.

The following are conclusions on the enforcement of the Free Legal Aid Law:

>>>It has been 8 years since the Law was adopted, and the number of free legal aid applications is still bellow 1000, that happening in a society in which 25% of the population are unemployed persons or persons requiring social aid.

>>>Norms proscribed in the Law tend to lead to confusion; they lack clarity in certain aspects, and no additional explanation is offered in such cases.

>>>Free legal aid applications are not numerous, and are mostly rejected due to various reasons, sometimes not grounded at all.

>>>The number of free legal aid associations has slightly increased since the time the Law was adopted (some 10 are registered in the whole country); these associations receive no State support whatsoever to cover costs generated during initial legal aid providing, which is perhaps one of the reasons why most of the associations are not registered as free legal aid providers.

6 http://www.merc.org.mk/Files/Write/00001/Files/Network23/studies/Besplatna-pravna-pomosh-Multikultura.pdf

>>>As mentioned above, funding in this area should not be decreased as is now the case, but should be used to other purposes within the free legal aid field.

>>>It has been seven years since the Free Legal Aid Law was enacted, and citizen awareness of its existence remains low; the Ministry of Justice fail to promote it to the level necessary though the Law itself proscribes that the Ministry are obliged to update relevant data on their website once in six months; last data in the Registry of Legal Workers on attorneys providing free legal aid is data from 2012, when there were 214 such attorneys.

Recommendations

1. The scope is to be extended of legal issues for which free legal aid may be granted, and requirements must be made more accessible to be met by persons applying for free legal aid.

2. Citizen legal needs are to be fully reflected in the scope of the new Free Legal Aid Law, in order to provide for equal access to justice. Issues eligible for free legal aid should not be enumerated taxatively and should not be exclusive, but should cover all legal issues and problems faced by citizens. In addition, in order to cover all citizens in need of free legal aid, relaxing of requirements is needed to be met by citizens in order to obtain free legal aid.

3. The right to free legal aid should include relevant costs as well.

4. In terms of costs involved, recent practice has shown the need for the free legal aid entitlement to cover all costs resulting from legal procedures for which free legal aid is granted.

5. The free legal aid coverage needs to be extended, and funding is to be organized for the operation of associations in this field. Previous free legal aid that is granted to citizens by authorized associations and by local offices of the Ministry of Justice (according to schemes obtained in legal systems subject to comparative analysis) should, in addition to legal advice and free legal aid application filing, include the drafting of simple files in administrative procedures. Advance funding or issuing financial grants to free legal aid associations is the best mechanism to provide for their sustainability and efficient operation.

6. Decision making on whether to accept or reject free legal aid applications needs to be decentralized.

7. Decentralization is of key importance when it comes to meeting tight deadlines; in addition, adding several instances to the whole procedure will provide for greater citizen legal security.

8. The Free Legal Aid Law must be harmonized with other legislation pieces to which it is related. This Law is part of the Republic of Macedonia›s legislation system and can be fully implemented only if it is harmonized with all country›s material and process legislation pieces. Among others, it is closely related to the Litigation Procedure Law, the Criminal Procedure Law, and the Notarial Practice Law.

9. An autonomous body is to be set up to monitor and evaluate the implementation of the Free Legal Aid act.

10. A key element to be included in the scope of the new Free Legal Aid Law is the establishing of an independent body to guarantee equal access to justice on the part of all citizens, to adopt second instance decisions following appeals, and to have also other competencies covered by the Law and mentioned bellow.

Open the Windows | Accessibility and Inclusiveness of Courts in Macedonia[7]

Research goal and coverage

This research is aimed an offering an overview of the current status in terms of accessibility and inclusiveness of Macedonian courts when providing services to impaired citizens, by means of the following:

>>>data on court facility physical accessibility;

>>>data on the accessibility of court services and of information courts issue during operation; and

>>>data on the level of preparedness on the part of court staff members to work and provide services with citizens living with various types of impairment.

The research was combined by character as a quantitative/qualitative approach was used to gather data needed.

For quantitative data obtaining, the survey method was used, in particular an instrument called Questionnaire on Macedonian Court Accessibility and Inclusiveness. Where a court had a staff member appointed to work with disabled citizens, this person was sent a copy of the questionnaire to fill in; if there was no such staff member at a court, upon that court's recommendation, a copy of the questionnaire was sent to an appropriate contact staff member.

Some data was collected also by means of a field survey based on the application of two methods: semi-structured interviews, and observation. This field survey yielded deeper and more detailed knowledge on court accessibility, and also served as a possibility to check data obtained by means of questionnaires. This particularly applied to self-evaluation on the part of courts regarding their service accessibility. During field work, the instrument used was the Guide for Interviewing and Observation in Court Visits.

Three associates were outsourced for the field survey; these were persons with various impairment types, including hearing and eyesight impairment.

The case study method was also used during this research

Conclusions

The following conclusions are based on findings obtained from the survey and from field visits to courts throughout Macedonia.

>>>Recent experiences of Macedonian courts in this regard confirm that information and knowledge are lacking on citizen impairment and accessibility concepts. Physical conditions in which court services are provided to impaired citizens are bellow the level required to meet such citizens› specific needs. This is why some services offered by courts are not available to disabled persons, with currently available services being far from sufficient.

>>>Interior access standards for buildings have not been observed by courts; persons with disabilities have limited possibilities to access and independently move through court facilities.

>>>On the basis of data collected, and in view of Article 8, item 2, of the Law on Discrimination Prevention and on Protection against Discrimination («Discrimination of persons with mental or bodily impairment shall be considered to exist also in cases where no measures have been taken to eliminate any space boundaries and to adjust infrastructure and space amenities, and to enable unhindered usage of publicly available resources or participation in public and social life»), we can conclude that disabled citizens have been facing discrimination in their entitlement to access to justice, due to the fact that no adequate conditions and accessibility have been provided for them in this regard.

7 The Report is available at: http://www.merc.org.mk/Files/Write/00001/Files/Network23/studies/Accessibility-and-Inclusiveness-of-Courts-in-Macedonia.pdf

>>>Court staff members do try and offer support to disabled citizens though they have not yet been educated and trained to recognize when a citizen is disabled and to treat such persons adequately.

>>>Courts lack statistics on the number of disabled citizens that have used their services or have been parties in court procedures. It was found during this research that no unified and systematic approach is used in this regard and that the handling of this issue has so far not been noted and raised to the level of court duties.

>>>Courts have been trying to organize accessibility to impaired hearing citizens by organizing sign language interpreters, yet no unified model exists for the providing of this service.

>>>The information accessibility concept has not been sufficiently familiar and has not been properly applied in recent court operations.

Recommendations

The following recommendations were drafted on the basis of conclusions drawn from the research and field visits:

1. Physical amenities need to be improved: accessibility standards must be taken into account during renewal of existing structures or during construction of new ones, so as to make them accessible to all citizens; disabled persons› needs in this regard need to be met in order to improve their personal independence and quality of life.

2. Capacity strengthening is needed for court staff members: this is to be done by means of training and other possibilities for learning and development, to make the staff capable of recognizing disabled citizens› needs and of adequately meeting such needs.

3. Disabled citizens› access to information needs to be improved so as to provide for their greater independence when enjoying basic rights and when meeting basic needs in this regard.

4. Reforms need to be introduced to the operation of courts to take into account disabled citizens› needs, and to support these persons in meeting such needs.

5. A uniform and systematic approach needs to be adopted in the maintaining of statistical data on disabled citizens› access to justice

Association «Centre for Strategies and Development» - PACTIS | Analysis of the Law on Deciding and Determining the Amount of the Penalty [8]

Key findings

On the basis of detailed analysis within the project "Analysis of the Law on deciding and determining the amount of the penalty", it was found that the enactment of this legislation piece will bring down the whole recent penal and judicial system. In addition, the following findings and conclusions were drawn from this analysis:

>>>This Law completely violates the principle of punishment individualization. With the existence of legally objective criteria, specified horizontal and vertical categories, the judge is not able to determine the sanction type and to allocate punishment s/he holds will be proper for the criminal offense perpetrator and will satisfy justice and punishment goals.

>>>This Law completely violates the right of each judge, guaranteed by law, to decide according to his/her free belief as a judge.

>>>The goal for which the Law was adopted (uniform penal policy generating) should have been achieved within the judiciary system, in particular at the level of the Supreme Court that should have issued views and opinions in terms of penal and correctional issues.

>>>Punishment determining may in no way be the competence of the legislature which adopts a law to set fixed boundaries that judges are merely to observe. Moreover, the establishing and operation are absurd of the Penal Policy Harmonization Committee, whose members are selected by the national Parliament, and which is to monitor courts› penal policies, if strict division of power according to the Constitution is taken into account.

>>>This Law also questions the role the judge plays in the delivery of justice as it makes the judge only announce as his/her decision something already foreseen in tables and worksheets appended to this Law.

>>>Consistent application of this Law leads to illogical outcomes in the delivery of justice process in terms of allocating harder penalties for lighter criminal offenses, and vice versa.

>>>The main goal (penal policy harmonization) of this Law fails to be achieved.

>>>This Law is especially detrimental to perpetrators of minor criminal offenses having been convicted on several occasions before, and fails to solve the problem of resocialization on the part of these persons, so that, instead of such persons being deterred from relapsing into crime, they are sentenced to three or four years of imprisonment, with «prison infection» being more than probable in such cases.

>>>This Law encourages guilt admitting as, in practice, grave criminal offense perpetrators are instructed to admit their guilt and negotiate deals with the public prosecutor in terms of their punishment extent, and are then sentenced to fewer years of imprisonment.

8 http://www.merc.org.mk/Files/Write/00001/Files/Network23/studies/PACTIS-analiza-na-Zakon-za-odmeruvanje-na-kaznata.pdf

Recommendations

1. The Law on Deciding and Determining the Amount of the Penalty must be revoked as it is contradictory to the division of power segment of the Republic of Macedonia's Constitution; with the national Criminal Code; and with the national Law on Courts, the latter clearly distinguishing court competencies. We hold that this Law must be revoked as soon as possible because it has created real chaos to the national penal and correctional system as a whole.

2. The national Criminal Code needs to be modified as soon as possible in terms of punishment extent determining and punishment alleviation, and the principle needs to be re-introduced of punishment individualization on the basis of free individual judge reasoning.

3. Criminal Code provisions relating to alleviating and aggravating circumstances need to be specified.

4. Overall revision is required of the Criminal Code segment related to the legal minimum and maximum as the scope between the two extremes is currently too wide and leaves room for manipulation.

5. Guidelines or instructions need to be adopted, to be applied by the public prosecutor when negotiating a proposed deal with the defendant, and when determining the sanction type and the punishment extent.

6. The Supreme Court must again be made in charge of penal policy harmonization, this time by means of active adoption of guiding views and opinions.

7. Engaging is also required of appellate courts that should issue own Bulletins and thereby provide guidelines in this regard to primary courts in the country.

Council for Prevention of Juvenile Delinquency – SPPMD | Analysis of the enactment of the Law on Deciding and Determining the Amount of the Penalty[9]

Key findings and recommendations

On the basis of court decisions analysed, researchers have decided to highlight certain issues detected that, according to them, and put mathematically, need to be segmented prior to brackets in order to encourage further analyses, research, and interpretations.

Tendencies detected

On the basis of data on court decisions adopted since the enactment of the Law on deciding and determining the amount of the penalty (LDDAP), and with no separate detailed analysis conducted, two obvious tendencies may be noticed:

>>>*frequent quilt admitting during main hearing* (court decision analysis has shown that defendants have admitted being guilty during main hearings in 90% of the cases analysed following the enactment of LDDAP); and

>>>frequent application of *penal order issuing procedures* by which prosecutors and judges make their job easier without ranking the merits of each case.

In this manner, even with the application of LDDAP, judges issue sanctions similar to those they issued before this Law was adopted. This is the only way to avoid harm that a too harsh punishment issued may cause to the defendant. Researchers believe such tendencies may be interpreted as a practical way of acting to issue sanctions that will not be considerably unjust to the defendant and will at the same time be in accordance with the merits of each case.

LDDAP impact over sanction determining

No final conclusions can be drawn on the basis of 150 court decisions issued on the LDDAP impact over punishment determining, yet researchers have decided to quote several examples of punishments determined by applying the LDDAP in which, instead of individualization being stressed, schematization may be noticed in terms of which circumstances prevail when considering the merits of the case:

>>>with the criminal offence «Theft» (CC Article 235, paragraph 1), for which a fine or up to 3 years of imprisonment have been proscribed due to previous conviction (category IV). the defendant was sentenced to 2 years and 2 months of imprisonment (24 months in total) only because aggravating circumstances prevailed;

>>>with the criminal offence «Grand Theft» (CC Article 236, paragraph 1, item 3), for which 3 to 10 years of imprisonment have been proscribed, a previously convicted (category V) defendant, instead of being sentenced to 3 years of imprisonment (in accordance with tables contained in LDDAP), was sentenced to half shorter imprisonment i.e. one year and 6 months, as alleviating circumstances had prevailed and as the procedure had been conducted upon prosecutor›s proposal, with the defendant not having been offered by the prosecutor the possibility of negotiating a deal before the prosecutor›s proposal was submitted;

>>>with an extended criminal offence «Theft» (CC Article 235, paragraph 1, cf. CC Article 45), for which a fine or imprisonment of up to 3 years is proscribed due to previous conviction (category VI), the maximum imprisonment sentence was issued (3 years› imprisonment) because aggravating circumstances had prevailed;

9 http://www.merc.org.mk/Files/Write/00001/Files/Network23/studies/Analiza_Primena-na-ZOVOVK_SPPMD-Juni-2017.pdff

>>>with two criminal offences, «Robbery» (CC Article 238, paragraph 4), and «Illegal Manufacture of Weapons» (CC Article 396, paragraph 1), due to previous conviction (category VI), a 218 months› imprisonment was issued for the first offence, and a 110 months› imprisonment for the latter, hence in accordance with Article 44 of the Criminal Code, a single punishment (14 years› imprisonment) was determined for successive criminal offences, with the defendant having admitted guilt; in particular, 30-percent punishment reducing was issued in comparison to the punishment that would have been issued had the defendant refused to admit guilt on charges;

>>>with the criminal offence «Bodily Harm» (CC Article 130, paragraph 2), with no previous conviction, the defendant was sentenced to 15 months of imprisonment;

>>>with two criminal offences «Fraud» (CC Article 247, paragraph 1), for which a fine or imprisonment of up to 3 years are proscribed, due to multiple previous conviction and the fact that aggravating circumstances had prevailed, and bearing in mind the fact that the defendant had pleaded guilty during the main hearing, the 2 years› imprisonment punishment was issued to the defendant for each of the offences, after which a single sentence was issued to the defendant of 3 years and 6 months in prison;

>>>for the criminal offence «Homicide» (CC Article 123, paragraph 2, item 2), a defendant not having been previously sentenced and having confessed guilt during the main hearing, with 1-score aggravating circumstances and 14-score alleviating circumstances, was sentenced to 9 years in prison.

Has the LDDAP goal been achieved?

LDDAP was adopted in order to harmonize the reasoning of judges during punishment determining by means of proscribed alleviating and aggravating circumstances that need to be taken into account. When analysing court verdicts in this regard, researchers detected two aspects that deserve to be separately mentioned:

Practice has not been harmonized even with LDDAP application

The court decision analysis showed that situations do exist in which, though the LDDAP was applied, various courts had determined various sanctions for the same criminal offence committed:

>>>with the criminal offence «Bodily Harm» (CC Article 130, paragraph 2), at one of the courts analysed, the defendant, who had not been previously convicted, had admitted guilt, and an alternative measure was issued to him – suspended sentence (determined 6-month imprisonment, 1-year status check period); at another court, the defendant having committed the same criminal offence and also not having been previously convicted, was sentenced to 15 months in prison;

>>>for the criminal offence «Illegal Manufacturing and Trafficking of Narcotics, Psychotropic Substances, and Precursors» (CC Article 215, paragraph 2), the primary perpetrator was sentenced to 8 months in prison at one court, and at another, an alternative measure was issued – suspended sentence (determined 10-month imprisonment, 2-year status check period).

Examples of stricter punishment policy with LDDAP

The stressing of previous convictions has led to evidently stricter punishment policy with LDDAP application:

>>>prior to LDDAP enactment, with the criminal offence «Grievous Bodily Harm» (CC Article 131, paragraph 1), an alternative measure was issued – suspended sentence of determined 6 months in prison and an 18-month status check period, whereas following LDDAP enactment, a defendant that had been primary perpetrator and had pleaded guilty during the main hearing was sentenced to 4 months in prison;

>>>prior to LDDAP enactment, with a continued criminal offence «Grand Theft» (CC Article 236, paragraph 1, item 1, cf. CC Article 45), a 1-year imprisonment sentence had been issued; following LDDAP enactment, with a continued criminal offence «Theft» (CC Article 235, paragraph 1, cf. CC Article 45), due to the defendant›s not having been previously convicted, a 3-year imprisonment sentence was issued;

>>>prior to LDDAP enactment, with a criminal offence «Grand Theft» (CC Article 236, paragraph 5), of three defendants having been previously convicted for perpetrating similar criminal offences (one of them was serving his sentence at the «Idrizovo» prison), the court sentenced two to 6-month imprisonment each, and the defendant already serving sentence in prison was sentenced to 10-month imprisonment); following LDDAP enactment, however, the defendant having received only one previous conviction was sentenced to 18-month imprisonment;

>>>prior to LDDAP enactment, with a criminal offence «Grand Theft» (CC Article 236, paragraph 1, item 1), a defendant having been convicted on several prior occasions was sentenced to one-year imprisonment; following LDDAP enactment, a defendant having received only one previous conviction was sentenced to 17 months in prison, which was actually a punishment reduced by 30 percent because the defendant had admitted guilt during the main hearing.

Examples of milder punishment policy with LDDAP

There are cases in which, by applying the LDDAP, criminal offence type and extent are determined that may be considered too mild in comparison with the previously established punishment policy. This statement can be supported by the following two examples:

>>>with the criminal offence «Rape» (CC Article 186, paragraph 1), the defendant was sentenced to imprisonment of four years only because he had not been previously convicted, was married, had completed education, and no procedure was being maintained against him for a criminal offence committed, belonged to the first vertical category according to which the imprisonment sentence may not last for more than 50 months;

>>>with the criminal offence «Multiple Homicide» (CC Article 123, paragraph 3), the defendant who had been the primary perpetrator belonged the first vertical category; in view of the absence of multiple aggravating circumstances, he was sentenced to 11 years in prison in line with the proscribed mean extent for the first vertical category i.e. imprisonment of 132 months;

>>>efforts have been made to reconcile mathematical calculation and justness during sanction determining.

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