Public Policy Brief "Implementation of the Strategy for the Reform of the Justice Sector 2017-2022"

This public policy brief builds on the views expressed in the Public Policy Dialogue held on December 11, 2019 at Hotel Arka in Skopje as part of the "Partnership Justitia" project: Restoring Citizens' Confidence ", implemented by the European Policy Institute and the ZENIT Association, funded by the European Union through the Sector for Central Financing and Contracting and co-financed by the Government of the Republic of North Macedonia. The project aims to contribute to restoring citizens' confidence in the Macedonian justice sector, by significantly involving civil society in essential reforms. The final beneficiaries of this project are the institutions in the field of judiciary.

The dialogue consisted of two sessions attended by about 60 representatives from the Ministry of Justice, the Judicial Council, the Council of Public Prosecutors, judges, public prosecutors, experts in the field, civil society representatives and diplomatic missions in the Republic of North Macedonia.

Partnership Justitia: Regaining Citizens' Trust
Партнерство Јустиција: Враќање на довербата на граѓаните
Bashkëpunimi Justitia: Rifitimi i besimit të qytetarëve

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Content

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List of abbreviations

CEPEJ - European Commission for the Efficiency of Justice

EU- European Union

BPP - Basic Public Prosecution

RNM - Republic of North Macedonia

SIA - Sector for Internal Affairs

SPO - Special Public Prosecutor's Office; Public Prosecutor's Office for the prosecution of crimes

Strategy - Judicial Reform Strategy 2017 - 2022 with Action Plan

SWC - Social Works Centre

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Session 1: Judicial reforms

The first session was dedicated to judicial reforms, attended by the Minister of Justice Renata Deskoska; the President of the Judicial Council, Kiro Zdravev, and the President of the Council of Public Prosecutors, Aco Kolevski. The conference was opened by Ardita Abazi Imeri, Program Coordinator of the European Policy Institute and Deputy Director of the European Policy Institute.

Dr. Abazi Imeri, in the beginning welcomed the participants and highlighted the key outcomes of the "Partnership Justitia: Restoring citizens' confidence" project, implemented by the Institute for European Policy with the Association ZENIT. She pointed out that today's event was designed as a policy dialogue, to identify freely challenges and offer appropriate solutions and recommendations for reforms in the judicial sector and improving the quality of justice. Reforms in the judicial sector are of paramount importance in strengthening the system and thus in restoring citizens' confidence in the judiciary, which has declined in recent years.

The Minister of Justice prof. Dr. Renata Deskoska presented all the reforms that have been conducted in the justice sector in 2017. Reforms in the judiciary are visible, especially in light of the position our country used to hold in this area. Key reforms started with the adoption of the Strategy for Reforms in the Judiciary Sector 2017 - 2022 with an Action Plan (The Strategy). The Strategy was initially too ambitious in terms of the deadlines it envisaged for certain reforms and certain deadline solutions for the implementation of the Strategy. In this regard, the Action Plan was amended in order to give the right timeframe and space for a comprehensive debate on certain solutions that are proposed and implemented, since good part of the laws adopted in the field of justice are laws that require a two-third majority and are systemic ones requiring a consultation process in order to select the best solutions. Moreover, judicial reforms are complex because they require a great deal of commitment and action from all three powers in the state, the policy-making executive, the legislature and the judiciary that need to implement these laws accordingly.[1]

The largest reform efforts in the judiciary have taken place over the past two years. [2]

To this end, the Law on Courts was adopted in an inclusive drafting effort and was approved by the Venice Commission. [3]

A completely new Law on the Judicial Council was adopted.[4] The new Law on the Judicial Council[5] improved the accountability and transparency of the Judicial Council. A major

[1] Prof. Dr. Renata Deskoska, Minister of Justice
[2] Prof. Dr. Renata Deskoska, Minister of Justice
[3] Prof. Dr. Renata Deskoska, Minister of Justice
[4] Prof. Dr. Renata Deskoska, Minister of Justice
[5] Kiro Zdravev, President of the Judicial Council of the RNM

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breakthrough was made by making the Judicial Council's debate public now, and the public in the Judicial Council's sessions can only be excluded if certain legal assumptions are met, such as when it comes to protecting the person and the integrity of the judge himself, but in such a case, the President of the Judicial Council must give justified reasons for the exclusion of the public. In addition, in the election of judges, each member of the Council for the Judiciary is required to publicly defend his or her decision as to why he / she has voted for a particular judge and provide justified reasons for doing so.[6]

There are disagreements by the judiciary over the Council's own organizational set-up and discrimination regarding the election of a member of the Council from among the judges and those members elected by the Parliament.[7] Regarding the organizational set-up, the judicial professionals had some observations on the legal provision stipulating that the President of the Judicial Council is elected from among the members elected by the Assembly of the Republic of North Macedonia, saying that the Judicial Council is required to provide and guarantee the independence of the judiciary, as set forth in the Constitution and laws of the Republic of North Macedonia. They think that the current way of electing the president of the Council tends to subtly open the door to politics in the Judicial Council. There is also discrimination regarding the re-election of members of the Judicial Council. The members of the Judicial Council from among the judges do not have the right to be re-elected, ie they have to spend six years after the end of their mandate to be re-elected, while the members of the Judicial Council from among the members elected by the Assembly may be re-elected twice successively as members of the Judicial Council.[8]

In terms of the implementation, the Council for the Judiciary faces "legal obstructions" by the legislature. The term of office of two representatives of the Judicial Council expired three months ago, but the election procedure by the Assembly has not yet been completed. The term of office of one more member of the Judicial Council has expired, and in early 2020 the term of another member of the Judicial Council will expire. Due to the lack of a quorum, the Judicial Council will not be able to carry out its core responsibilities, ie to elect and dismiss judges. In this regard, the Assembly needs to elect two members of the Judicial Council as soon as possible.[9]

Although the provision of the Law on the Judicial Council[10] which made it possible to extend the right of access to the Judicial Council and for every citizen to be able to file a petition against a judge, the involvement of the Judicial Council in this segment of its jurisdiction is

[6]Kiro Zdravev, President of the Judicial Council of the RNM
[7]Kiro Zdravev, President of the Judicial Council of the RNM
[8] Ibid.
[9] Ibid.
[10] Ibid.

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immense and there is a danger that in some way the other competences provided by the Law on the Judicial Council cannot be fulfilled.[11]

In order to consistently implement the new Law on the Judicial Council, the Judicial Council started implementing several projects. Within the framework of the project "Assistance to Judiciary reforms in the Republic of North Macedonia", in the framework of the EU IPA Program, the Judicial Council is drafting the Rules of Procedure and other bylaws provided by the Law on Judicial Council, including the Regulation on ranking of candidates for the election of judges in the courts of first instance. Under the old law the ranking list was determined by the Academy for Judges and Public Prosecutors.[12] The number of judges should increase.[13]The capacity of the Academy for Judges and Prosecutors to recruit new candidates for initial training also needs to increase

The project for developing a methodology with indicators on the complexity of the cases and a special Regulation on the evaluation or grading of the judges is also being implemented. This methodology is of great importance, both in terms of determining the decision that will establish the average number of cases that judges need to handle monthly, as well as further activities of the Judicial Council in terms of reviewing the regulations on the systematization of jobs, ie of the required number of judges and court clerks. This regulation is of particular importance for the evaluation of the courts and judges, who will be evaluated based on fair and objective criteria, taking into account the complexity of the cases.[14] The new Law on Judicial Council stipulates[15] that the evaluations will be done by the judges, while the Judicial Council will only summarize the results.[16] Therefore, all judges and courts throughout the country should give their contribution to the development of this Regulation on the evaluation of judges.[17]

The new Law on Administrative Disputes, which will apply from May 2020, provides for more obligations for the Administrative Judiciary. Administrative Court will be levelled with other courts with a public hearing. [18] However, it is necessary to staff and provide adequate premises

[11] The President of the Judicial Council indicated that in 2017, petitions were filed to the Judicial Council to establish accountability against 17 judges; In 2018, against 10 judges, in 2019, until December 11, against 65 judges.

[12] Ibid.

[13] There are currently 506 judges in the Republic of North Macedonia, and according to the systematization there should be 639 judges.

[14]Kiro Zdravev, President of the Judicial Council

[15] Pursuant to section 81, paragraph 3 of the Code of Judicial Council, it is envisaged that committees composed of five members of the state appellate courts, that is, the higher court, shall meet the qualifying criteria for evaluating the work of a judge.

[16]Kiro Zdravev, President of the Judicial Council

[17] Olja Ristova, Judge, and Kiro Zdravev, President of the Judicial Council

[18] Prof. Dr. Renata Deskoska, Minister of Justice

for the Administrative Judiciary, especially in view of the new legal provisions.[19] A procedure is underway to provide a new building for the Administrative Court. [20]

A new Misdemeanor Law[21] was adopted and other laws are currently being harmonized with this law. Changes have been made regarding the enforcement that are expected to provide social justice, while notaries have abolished court fees for certain proceedings. The Ministry of Justice has drafted a new law on the Academy for Judges and Public Prosecutors, which is currently in Parliamentary procedure, but the law has been blocked by the opposition with over nine hundred amendments. A new Law on Free Legal Aid was also adopted, which expands the scope of persons who may seek free legal aid. The Ministry of Justice also prepared new draft laws, ie draft law on management of cases in courts, draft law on international private law, draft law on criminal procedure, draft law on payment of compensation to victims of crime violence and the drafting of a new Law on Children's Justice is underway. In the area of civil law, a draft Law on Obligations is being drafted, and the Minister of Justice underlined that they expect a longer inclusive process of debates on these amendments as it is a fundamental law that regulates daily relations among citizens. In the area of civil procedural law, a working group is being set up to amend the Law on Litigation Procedure.[22]

Despite the fact that a new Law on the Public Prosecutor's Office has been drafted, there is still no consensus in the Parliament over the adoption of this law. [23] This law inter alia regulates the transfer of cases from the Special Public Prosecutor's Office to the regular prosecution office. The Minister emphasized that transitional provisions are problematic, which should regulate the transfer of all proceedings from the SPO to the regular Public Prosecutor's Office.[24] The good practices established by the Special Prosecutor's Office in terms of human resources and by the Public Prosecution for Organized Crime and Corruption need to be maintained, bearing in mind that until now this prosecution has not undergone any changes, nor reforms.[25] As a good practice, the financial independence correlated with capacities and the further course of reforms should provide mechanisms to ensure such financial independence for both the judiciary and the public prosecution.[26]

The new Draft Law on the Council of Public Prosecutors has not yet been adopted. The proposed changes refer to the part of adding certain competences to the Council, ie the Council shall decide upon the filed complaints for disciplinary responsibility of its members. This

[19] Lidija Kanachkovic, Judge of the Higher Administrative Court,
[20] Prof. Dr. Renata Deskoska, Minister of Justice
[21] Prof. Dr. Renata Deskoska, Minister of Justice
[22] Prof. Dr. Renata Deskoska, Minister of Justice
[23] Prof. Dr. Renata Deskoska, Minister of Justice
[24] Ibid.
[25] Natali Petrovska, Executive Director of the "Coalition All for Fair Trials"
[26] Lence Ristovska, public prosecutor

amendment is intended to increase the responsibility of the members of the Council during the performance of their function, be more active and perform their duties properly and lawfully. Moreover, a new jurisdiction is added empowering the Council to take a decision on a member of the Council of Public Prosecutors to conduct an immediate inspection of the work of the public prosecutors.[27] The draft law provides for increased publicity in the council's work. A new chapter is also introduced, which negotiates the dismissal procedure of a council member. A chapter regulating the procedure for excluding a member of the Council from the work of the Council of Public Prosecutors is also introduced. Changes in the manner of election and voting of a council member.[28]

In addition to all the important amendments to the laws and the adoption of the new laws, which are extremely important for the European future of our country, proper implementation is extremely important. Following the completion of the reform with the adoption of the new laws and amendments, the restoration of citizens' confidence in the judiciary and the public prosecution should be followed by more serious efforts by all stakeholders including the Judicial Council and the Council of Public Prosecutors and certainly the judges and prosecutors for consistent implementation of the laws and improving the quality of justice.[29] The integrity of judges and public prosecutors is important in this regard. Every judge should stand behind his or her decision in order to enable the enforcement of the law ant to promote and make justice visible.[30]

Substantial debate is needed on the vetting or re-evaluation of judges and public prosecutors to prevent serious consequences from this process on the course of reforms and efficiency of the judiciary that has been achieved. There is a need to define a specific direction and proposal for that reform, i.e. which direction, how and with what methodology the process of vetting or re-evaluation will be carried out, what would the consequences of the current efficiency of the judiciary and whether the judiciary can be reformed on its own? The new Law on Courts foresees [31] as grounds for a more serious disciplinary violation, the refusal of a judge to submit a statement of assets and interests under the law or if the information contained in the statement is largely untrue. This entitles the Judicial Council in coordination with the State Commission for the Prevention of Corruption to dismiss corrupt judges.[32]

[27]Mr Kolevski emphasized that this is not in fact a new competence of the Council of Public Prosecutors and that this is something that the Council applied most often in cases where a complaint or a petition was lodged by citizens and a council member in order to verify the findings.
[28] Aco Kolevski, President of the Council of Public Prosecutors
[29] Prof. Dr. Renata Deskoska, Minister of Justice
[30] Antoaneta Dimovska, judge
[31] Law amending and suplementing the Law on Courts.
[32] Prof. Dr. Renata Deskoska, Minister of Justice

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I think that the Judicial Council, ie the Judicial Budget Council of the Judicial Council, has done a great deal in terms of improving the material status of the judges. Negotiations are under way with the Government to increase the salary coefficients.[33]

Recommendations:

- Rapid election of two members of the Judicial Council by the Assembly of the Republic of Northern Macedonia.
- When drafting the Regulation on the Evaluation of Judges by the Judicial Council, all judges and courts in the country should give their contribution
- Increasing the number of judges and public prosecutors and improving the facility housing the Academy of Judges and Public Prosecutors.
- Improving the facilities and staffing of the Administrative Court and the Higher Administrative Court.
- Continuation of inclusion practices and increasing inclusiveness in the establishment of working groups for the drafting of Laws and increased debate and suggestions on specific solutions of exceptional importance to citizens (Criminal Procedure Code, Obligation Law, Law on Litigation Procedure).
- It is necessary to adopt the new Law on Public Prosecutor's Office which will regulate the continuation of all proceedings by the SPO in the regular Public Prosecutor's Office and to adopt the amendments to the Law on the Council of Public Prosecutors.
- The good practices established by the Special Prosecutor's Office in terms of human resources and by the Public Prosecution for Organized Crime and Corruption need to be maintained.
- Increased financial independence of the judiciary and public prosecution.
- In addition to all the important amendments to the laws and the adoption of the new laws, which are extremely important for the European future of our country, the new proper implementation by all key stakeholders is extremely important.
- Substantial debate is needed on the vetting or re-evaluation of judges and public prosecutors to prevent serious consequences from this process on the course of reforms and efficiency of the judiciary that has been achieved.

Session 2: Criminal law, civil law and mediation

The second session of the dialogue was dedicated to the reforms in the penitentiary, civil law and mediation, reforms that are extremely important for the citizens. The speakers at this session were Lazar Nanev, associate professor and judge at the Kavadarci Basic Court; Olja Ristova, judge at the Basic Criminal Court; Antoaneta Dimovska, judge at the Basic Civil Court and Radica Lazareska Gerovska, State Counselor at the Ministry of Justice. Finally, Aleksander

[33]Kiro Zdravev, President of the Judicial Council

Nikolov, Executive Director of the ZENIT Association presented the preliminary results of the Survey of Court Beneficiaries and the activities being implemented within this project. The session was moderated by Iva Conevska, Project Manager and Researcher at the European Policy Institute.

The children's justice system is established by the Juvenile Justice Law, upgraded by the Law on Children's Justice still faces poor material conditions, lack of primary education and systematic resocialization of children deprived of their liberty, and raises serious concerns and imposes the need to invest efforts to further strengthen the rights of the child. The Strategy concludes that there is still a non-compliance with the new Law on Children's Justice with the new Law on Criminal Procedure and Misdemeanor Law and the EU Directives. Therefore, it is stated that amendments to the Law on Children's Justice are needed in order to align it with other laws and EU Directives, to strengthen the protection of child victims of criminal offenses, to introduce procedural provisions regarding the course of the trial, to facilitate access to child victims - legal counsel and advocacy and the establishment of a Child Victim Compensation Fund.[34]

The amendments must also strengthen the mechanisms for the prevention of child abuse at the local and central level, as well as the institutional, material and functional strengthening of the State Council for the Prevention of Child Delinquency.[35]

To this end, a working group has been set up at the Ministry of Justice to prepare a draft law on children's justice.[36] In addition to the establishment of a working group on the preparation of a new Law on Children's Justice, supported by UNICEF, national experts prepared a list of 32 indicators to monitor the implementation of the Law on Children's Justice and the needs of the State Council for Child Delinquency collected by 63 institutions in the justice system for children, including 8 IAS, 30 CSWs, 12 Extended Jurisdiction Courts, 12 BPOs and one BPO for prosecution of organized crime and corruption crimes. The statistical data obtained through the indicators are statistically processed and are part of the Annual Report of the State Council for Child Delinquency adopted by the Assembly of RNM.[37]

Implementation of the Criminal Procedure Code is still a challenge.[38] The biggest problem in the criminal procedure is the failure of the public prosecution to submit evidence to the defense at the very beginning of the procedure. The law on criminal procedure stipulates an obligation to provide inspection during the investigation by the public prosecutor. The same provision is interpreted as significantly restricting the rights of the defense during criminal proceedings. This interpretation causes problems in the procedure itself and often due to the need for proper defense

[34] Lazar Nanev, associate professor and judge at the Basic Court in Kavadarci.
[35] Ibid.
[36] Lazar Nanev, associate professor and judge at the Basic Court in Kavadarci.
[37] Ibid.
[38] Olja Ristova, judge at the Basic Criminal Court.

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preparation the main hearing is postponed. Material resources[39] in public prosecution offices need to be improved in order to make the handing of evidence easier.

The institute plea bargaining is also a challenge.[40] Originally it was designed to be used in up to 90 per cent of the proceedings, where there is solid and undisputed evidence presented by the public prosecutor's office. According to the Basic Criminal Court statistics for 2017 and 2018, showed that only 10% of the proceedings ended with plea bargaining, and all others were referred to the courts. One of the reasons given by public prosecutors for not applying this institute to offenses with sentences of up to 5 years of prison is that they are not legally bound to find the defendant. There are situations in which the defendant first learns of the procedure when he is first summoned by the court. This should be rectified by stipulating in the provisions regulating the shortened procedure in the Criminal Procedure Code and for more serious crimes, that the defendant must be informed by the public prosecution that a lawsuit is filed against him in order to enable him to adequately prepare his defense. [41] Legal changes are also needed regarding the recording of the court hearings without the obligation to prepare minutes. Minutes should be allowed under certain conditions when requested by the party. This will speed up the conduct of the main hearing.[42]

The management of court procedures needs to be improved. The procedures are often delayed. It is necessary to increase the activity of the Judicial Council in this regard.[43]Better electronic connection among institutions[44] is needed and deliveries should be made by e-mail.[45]It is also necessary to strengthen the court management, where the presidents of the courts should be more involved in supervising the conduct of the presidents of the departments and to check whether they act upon the requests and needs of the judges. It is also necessary to hire a large number of professional staff to improve the quality of the work of judges, and to regularly upgrade the ACCMIS system.[46]

The law on the type and amount of criminal sanctions has been repealed as inapplicable. However, we see a disparity in the sentences of judges in criminal proceedings. It is therefore recommended to adopt a guideline with criteria and parameters for the harmonization of the case law on the determination of the type and amount of the criminal sanction.[47]

[39] Example purchase of a photocopier and scanner.
[40] Olja Ristova, judge at the Basic Criminal Court.
[41] Olja Ristova, judge at the Basic Criminal Court.
[42] Ibid.
[43] Olja Ristova, judge at the Basic Criminal Court.
[44] Courts, Public Prosecutor's Offices, MOI.
[45] Olja Ristova, judge at the Basic Criminal Court.
[46] Ibid.
[4747] Ibid.

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The Law on Probation has been adopted since 2011, but the probation service is not used sufficiently by judges. This law is extremely important to determine the type and amount of punishment. Therefore, intensive training of judges on the application of the Probation Law is recommended as co-operation with the probation service enables a proper individual approach to the punishment for each convicted person.[48] It is necessary to amend the provisions of the protective supervision of the Criminal Code in order to increase the type of measures to be imposed by the court in order to reduce the number of returnees. The measures prescribed by the Criminal Law are not sufficient, as there are many different situations and the range of measures needs to be increased.[49]

In the area of civil law, the Law on Litigation Procedure needs to be amended regarding the expertise. The amendments to the 2010 Law on Litigation Procedure, when amending Chapter XXVII in the field of evidence inspection and expertise, were supposed to accelerate court proceedings. However, most of the cases end up with super expertise, but there are other phases of the proceeding that do not take place so quickly.[50]

Problems also arise with small value litigations under the current legal provisions. According to the current legislation, small value litigation in both the litigation and the commercial disputes, are litigations related to monetary claims that do not exceed 600,000.00 denars. It is inconceivable that this amount be the same for both commercial disputes and regular litigation, given the financial power of the citizens, this litigation can never be of little value.[51] Secondly, these amendments allowed an appeal to the factual situation that leveled this litigation in full with the regular litigation, while the provision stipulating that a preparatory hearing shall not be held and a main hearing shall be immediately scheduled, which led to a very confusing proceeding.[52]

In the area of civil substantive law, before the start of the codification of the civil law, which is a long term process, the major problem at the moment is the mismatch of substantive laws that treat the same problem from different aspects. A detailed analysis of the laws by groups is necessary to determine the inconsistencies.[53]

The third attempt to fully revive the concept of mediation[54] was made with the preparation of a new draft law on mediation, which is currently stuck in parliamentary procedure. This Draft Law, as well as the Mediation Law of 2013, implemented the 2008 Directive. However, the law drafted in the Ministry of Justice followed guidelines set by the European Commission for the Efficiency of Justice (CEPEJ) on the development of mediation, as well as European Parliment

[48] Ibid.
[49] Ibid.
[50] Antoaneta Dimovska, judge at the Basic Civil Court.
[51] Ibid.
[52] Ibid.
[53] Ibid.
[54] Radica Llazareska Gerovska, State Counselor at the Ministry of Justice

recommendations. Moreover, efforts were been made to track necessary changes in other laws[55] to promote the concept of mediation. It is necessary to revise the provisions in the draft law on mediation referring to the Mediation Board. First of all, the Mediation Board has in practice proven too cumbersome and complex to perform its functions.[56]

In addition to the amendments, other measures are needed to improve the mediation concept.[57] To increase use of mediation under the Law on Children's Justice more budgetary funds are needed, especially given that mediation means less expenses for the parties, but also establishes a situation where you do not have the feeling of a losing party. In this regard, the prosecutor's office at the time when creating its budget should have an estimate of the number of cases involving precisely children.

In July 2019, in cooperation with the Chamber of Mediators, the Government of the Republic of North Macedonia adopted a Conclusion obliging all state bodies, institutions, state-owned enterprises, as well as the units of local self-government, before initiating court proceedings, to try to resolve disputes through mediation.[58]

In 2017, 2018, 2019 there were approximately 1464 mediation cases. Out of these cases 1111 were settled with agreements, or 75%. Efforts should be made to make compulsory mediation efforts available in labor disputes,[59] child justice disputes, insurance disputes, and consumer disputes. [60]

Developing laws requires the participation of judges, public prosecutors and other practitioners who face inconsistent legal solutions in practice and also the contribution of experts. Consultations on draft laws should not be done after the legal provisions are drafted.[61]

Recommendations:

Law on Children's Justice

1. Consistent adherence to the principle of the best interest of the child.
2. Alignment with recently adopted EU Directives concerning procedural safeguards for children suspected or accused in criminal proceedings
3. Strengthen the protection of child victims of crime, including measures for rehabilitation and intensified education of children.

[55] Law on Obligations, Law on Civil Procedure, Law on Children's Justice.
[56] Radica Llazareska Gerovska, State Counselor at the Ministry of Justice
[57] Ibid.
[58] Ibid.
[59] Over 1300 cases of mediation-related cases are in the sphere of employment relations.
[60] Radica Llazareska Gerovska, State Counselor at the Ministry of Justice
[61] Vladimir Tufegdzic, judge at the Basic Criminal Court.

4. Introduction of procedural provisions regarding the course of the trial - the dilemma between main hearing or trial?
5. To facilitate the access of child victims to legal counsel and representation.
6. Establishment of the Fund for Compensation of Child Victims.
7. Strengthening the mechanisms for the prevention of child abuse at the local and central level, and the institutional, material and functional strengthening of the State Council for the prevention of child abuse.
8. Adjust the basic principles.
9. Promoting restorative justice-mediation and other forms of circumvention of litigation.
10. Normative regulation of the behavior and role of social protection centers.
11. Changes in the material part of the institutions where children serve their sanctions.
12. Normative regulation of Free Legal Aid - ie the compensation of lawyers before the CSW and the police.
13. Entering procedural provisions regarding the course of the verbal hearing.
14. Reexamination of provisions containing restorative elements to overcome the perceived problems that prevent their more frequent application.
15. Adjusting the procedures undertaken by the CSW and strengthening its powers to enforce sanctions.
16. Promoting the Rights of Child Victims.
17. Reviewing the provisions regarding the jurisdiction to execute sanctions.
18. Introducing provisions regarding the institutional set-up of the CEF.
19. Facilitating the indemnification procedure.
20. Functional strengthening of the State Council and mechanisms for the prevention of child abuse.
21. It is necessary to transpose the relevant EU directives.

Criminal Procedure Law

1. It is recommended to introduce a practice whereby the public prosecutor will be required to submit all evidence to the defense at the very beginning of the proceedings. Although this obligation does not derive from the Criminal Procedure Code, it derives from international agreements ratified and signed by the Republic of North Macedonia which are an integral part of domestic law.

2. It is advisable to proceed with a plea bargain whenever the prosecution has solid evidence in the case.

3. Amendment of the provisions of the Criminal Procedure Code regarding the summary proceedings for the compulsory notification of the defendant when the investigation is initiated or the evidence is collected.

4. Legal changes are also needed regarding the recording of the court hearings without the obligation to prepare minutes.
5. Strengthening the capacity of the courts by employing many professional staff to improve the quality of judges' work.
6. Tracking and detecting key issues that delay court hearings to prepare an appropriate training program for judges on case management to increase their efficiency.
7. Strengthening the management of the courts in order to ensure a proper distribution of judges and judicial services by departments in order to increase efficiency in handling cases.
8. Regularly upgrading the ACCMIS system according to the daily needs of all its users.
9. The members of the Judicial Council shall be in constant communication with the judges of the courts in order to properly establish the problems faced by judges affecting the evaluation of their work.

Criminal Code

1. It is recommended to develop a Settlement Guideline on the type and amount of criminal sanction to achieve a uniform judicial practice of the courts, and improve the data entry in the ACCMIS to obtain data on the average sentence imposed for a particular crime.
2. It is recommended to adopt a guideline with criteria and parameters for the harmonization of the case law on the determination of the type and amount of the criminal sanction.
3. Intensive training of judges on the application of the Probation Law as co-operation with the probation service enables a proper individual approach to the sanction for each defendant.
4. Amendment of the provisions on protective supervision in the Criminal Code in order to increase the type of measures that the court will impose in order to reduce the number of recidivists.

Civil Procedure Code

1. In the field of civil law, amendments are required to the Law on Litigation Procedure in the area of expert testimony and disputes of minor value.
2. Reviewing deadlines in the Law on Litigation Procedure in order to improve the quality of court decisions.

Civil Material Legislation

1. Before starting the codification of the civil law, it is necessary to analyze in detail the laws by groups in order to overcome the inconsistencies of the substantive laws that treat the same problem from different aspects.

Mediation

1. Adoption of a new Law on Mediation by the Parliament of the Republic of North Macedonia.
2. Reviewing the decisions regarding the Mediation Board.
3. Introduction of compulsory mediation in labor disputes, child justice disputes, insurance disputes, and consumer disputes.
4. Execution of the conclusion of the Government of the Republic of North Macedonia obliging all state bodies, institutions, state-owned enterprises and units of local self-government, before initiating court proceedings, to try to resolve disputes through mediation.

ANNEX 1

Prof. Dr. Lazar Nanev, judge at the Basic Court in Kavadarci

Faculty of Law - Shtip

Skopje, 11.12.2019

The Public Policy Dialogue "Implementation of the Strategy for the Reform of the Judiciary Sector 2017-2022"

1. CONCEPT OF THE LAW ON CHILDREN'S JUSTICE - ADVANTAGES, WEAKNESSES AND KEY CHALLENGES

1. 1. Concept of the Law on Children's Justice

The Law on Children's Justice 2013 (Official Gazette of RM no. 148/2013) rounds up the system of children's justice, established by the previous Law on Juvenile Justice. Its adoption was preceded by an analysis of the former law and its practical application, which indicated the need for numerous interventions, in addition to the established weaknesses in the application of its provisions. To a large extent, innovations in the law are meant to meet the requirement for its further alignment with international norms and standards, in the substantive and terminological sense (the law operates only with the term "child" instead of the former term "juvenile"), as well as with the changes made in the meantime in the domestic legislation related to certain provisions thereof, in particular the adoption of the new 2010 LCP.

The law promotes the principles on which former decisions were based, developing new categories of children in conflict with the law and children at-risk in line with international standards. It is particularly important to expand the category of "at-risk children" as a condition that includes lighter offenses, for which a fine or punishment of three years of imprisonment is provided, in line with the "Riyadh Rules" (ext. *Int.Rev.of Crim.Policy* 49 / 50.12). The meaning and purpose of its extension is to define measures of early protection and preventive intervention for children at social risk, before committing or perpetrating a lighter offense, but also avoiding formal action in this case and application of the measures provided for by law. The term at-risk generally covers situations in which children are endangered and require non-punitive measures to protect their health, education and assistance. Such measures may be aimed at the child and then

appear as protection and assistance of him or her or of his or her family and other environment (educational institutions), for their activation as safeguards for the protection and education of the child. The risk can be created by factors related to the child itself (the child's mental health), the child's relationship with the family (dysfunctional family, bullying, begging, etc.), or the socio-economic conditions surrounding the child (poverty, etc.). . The "Riyadh Rules" build on the notion that young people should have an active role and partnership with society in their socialization and cannot be regarded as mere objects of socialization or control. Prevention is not only about removing the negative factors, but also about promoting the rights and well-being of the child. State intervention should be set at three levels. The first is that of primary prevention, which contains measures and policies aimed at the general population. The second is the level of secondary prevention, which aims at identifying “at-risk children”, such as specialized agencies tasked with preventing the actions characterized as criminal offenses and are carried out in six stages: problem identification (social workers, teachers, police in contact with parents, etc.); locating the problem (in an environment where such danger exists); identification of children (gathering information on at-risk juvenile groups); setting a time frame for action (coordinated by multiple structures, educators, etc.); program monitoring; and follow-up to avoid repetition. Tertiary prevention includes measures for individual cases and is aimed at reducing recidivism. The category of "at-risk children" knows no age: a child of any age can be in danger, whereby the state's clear obligations for assistance and care to safeguard its health and proper care must be ensured.

"Child in conflict with the law" means a child over the age of fourteen whose action in an objective sense constitutes a breach of a penal law prohibition, for which a prison sentence of up to three years is provided (not "prescribed") and who under certain conditions may be sentenced to an educational or other measure.

The internal differentiation of this term from the previous "child at risk" has a quantitative and qualitative aspect. The first concerns the age limit (14 years), above which children are "in conflict with the law". The second, essentially, without which this distinction would make no sense, covers the conditions for the application of educational and other measures of "children in conflict with the law" in formal court proceedings.

The Law on Children's Justice develops and specifies the conditions for the dejuridification and flexibility of the treatment of children, in accordance with their orientation towards the rights and well-being of the child, giving wide discretionary powers to the bodies involved in the proceedings. The idea of "diversion" of the treatment of the "child in conflict with the law" from formal litigation to informal measures of community assistance and care can be an appropriate means in the interest of the child. Alternative treatment has become a fundamental principle of the modern juvenile justice system to the extent that the application of judicial institutional or similar measures is restricted to cases where the protection of society requires their treatment in a formal court procedure. "Diversion" of the treatment of a minor to extrajudicial treatment always

presupposes the child's behavior having the hallmarks of a criminal offense and his or her consent and active participation in the application of other measures consisting either of litigation alternatives or of institutional treatment alternatives. The fundamental requirement remains that the application of alternative, out-of-court treatment complies with its rights and formal guarantees, such as the right to a defense and fair and equitable treatment (cf. more widely *Int.Rev.of Crim.Policy* 49/50). , 17).

Central to the development of the new concept of justice for children is the system of sanctions. Along with abandoning the concept of guilt and punishment as a just retribution for the crime committed, the system of sanctions in the Law on Children's Justice has fully incorporated within itself the idea of restorative justice, c.*Walter*, 760). The difference between retributive and restorative justice - the first as the dominant principle of criminal law for adult offenders, the second relevant to the child justice system, consists primarily in the different relations between individual entities: the former is reduced to a two-way relationship between the state and the offender, in which the offender is in interaction with the state, while the latter involves a three-way relationship between the offender, the victim and the state, in which the state is only an intermediary in the settlement process between the offender and the victim. Further, retributive justice means an abstract settlement of the crime committed with a sentence pronounced as just settlement: justice is satisfied in a metaphysical, general way, the crime is settled, but this does not restore the former state. Restorative justice, on the other hand, is a reinstatement of the victim's former status and rights through a specific activity of the perpetrator aimed at the victim itself. While retributive justice comes down to the question of how to punish the offender, restorative justice is occupied with the question of how to restore the well-being of the child, victim and community.

In contrast to retributive justice, which focuses on the past (reconciliation with the crime committed), restorative justice is future-oriented: special prevention and resocialization of the offender, satisfaction of the injured in the form of compensation for damage and meeting the needs of the community for preventing crimes.

A retributive sanction does not resolve the underlying conflict between the offender and the plaintiff and may be the source of new conflicts, especially if mutual hostility between them continues. On the contrary, restorative justice is oriented towards conflict resolution, by reconciliation and compensation of damage, or by the application of another sanction that is acceptable to all (community work, etc.).

Mediation is the most explicit expression of the principle of restorative justice in the Law on Children's Justice: the judge or public prosecutor does not adjudicate and sanction, but mediates in the dispute between the child and his or her family and the plaintiff party, seeking the best possible solution that will satisfy the interests of all parties.

The acceptance of the idea of restorative justice as a guiding principle of children's justice faces reasonable warnings of respect for basic state legal guarantees (c.*Jessberger / Kress*, 846): the children's justice system should be harmonized with the principles of the rule of law, the freedoms and rights of the child and the need for effective protection of society from crime. Therefore, the Law on Children's Justice regulates the court and out-of-court proceedings against children, starting with the recognition of their special rights and their protection which takes precedence over the principle of efficiency of treatment. Also, emphasizing the child's interest and the need for his or her socialization as a primary objective of the sanctions system erases the distinction between material-legal and procedural-legal solutions. The procedure initiated on an action envisaged as a criminal offense may also end with a procedural solution, such as conciliation, conditional postponement of the proceeding, etc. Moreover, certain sanctions, such as enhanced surveillance measures, are envisaged as continuous "treatment" with the juvenile, which includes the supervisory authority, so that the personal element of the sanction is reduced to the requirement to fulfill certain orders, contacts with that authority, etc.

The main sanctions in the system of sanctions are educational measures that are imposed on a child in conflict with the law; only by way of exception, a child between the age of 16 and 18 accused of a criminal offense may be sanctioned or issued an alternative measure; a child that has committed a misdemeanor may be issued misdemeanor sanctions; security measures are imposed on a child under the conditions determined by the CC and this law; confiscation of property and proceeds of crime provided by law as criminal offenses and child offenses shall be carried out in accordance with the general conditions laid down in the CC (art. 34). The sanctions provided for in this law have different content, which determines the manner of their execution, but are the only thing that makes them different from similar sanctions in criminal law. It is defined as providing for their education, re-education and proper development (art. 35). Hence, the punishment of children is different in its meaning and purpose from that of adult offenders: its sole purpose is special prevention and reeducation, so that its execution is deprived of all the retributive elements which are attributes of punishment.

The unity of purpose of all the sanctions gives further content to the principle of individualization (art. 36) as a guiding principle in the selection and weighing of sanctions: they imply broad powers of the judge to choose, besides the consideration of the circumstances surrounding the person, the severity of the action and the consequences, mainly of the need for education, re-education and development, in order to provide and protect the child's main interest; thereby, a fine or a heavier sanction is imposed only if it is not justified to impose a lighter sanction and with the obligation of the judge to specifically explain the reasons for imposing a heavier sanction.

In the Children's justice, the principles of individualization, special prevention and de-penalization as priorities make meaningless and inapplicable the special rules provided for in the criminal law with the infamous Law on the Selection and Measurement of Sentence.

In spite of the reduction of the penalties into a single system of preventive sanctions, the issue of their consistency or inconsistency with the basic concept on which the child justice model is based remains an area needing further improvement of the children's justice system. According to the Law on Children's Justice (Art. 50), a child "criminally liable" over 16 years of age may be punished (penalties are: child custody, fine, prohibition of driving a motor vehicle and expulsion of a foreigner from the country) only if due to the grave consequences of the offense and the high level of criminal responsibility it would not be justified to impose an educational measure (under Article 51, a condition of imprisonment for children is a "high degree of criminal liability"). These solutions, which are a remnant of considering child offenders as "petty criminals", are obviously a mix of two ideas: the re-education function of child sanctions, on the one hand, and the punishment that is based on the offender's guilt. Such confusion cannot but affect the dual nature of punishment (*Schaffstein*, 461): the function of punishment is both the re-education of the juvenile, as other educational measures, and the just retribution for the offense. Many authors, especially those in the theoretical field who favor treatment rather than punishment, find that this dualism of irreconcilable ideas justifies the abandonment of punishment, which damages the child's personality and development and appears to be a direct cause of recidivism. *Heuyer*, 274).

Solutions referring to the "criminal liability" of a child over the age of 16 leave other questions open, such as whether the court should establish the existence of guilt at all times when the child is at odds with the law or only when he/she commits a more serious offense. And does that mean that in light offenses the court should not establish punitive liability, which makes it possible that the offense was not committed with intent, or negligence, when the law punishes negligence? The latter question implies the following: if the court finds that there is no intent or negligence, can it apply any sanction at all? If one accepts the thesis that guilt is only found in more serious offenses, the possibility of applying disciplinary measures, regardless of whether the child is at fault for the offense committed (based on ad absurdum), would suppose the application of an institute measure, for example, and in the ordinary case, where a legally relevant consequence is caused without negligence on the part of the offender. Therefore, the court should establish all the elements of the child's subjective attitude in conflict to the law at the age of 16 in relation to his or her offense in each case of initiation of proceedings.

When it establishes guilt (deliberate or negligent, if the negligence is punishable) for the commission of a more serious offense, the court may also impose a prison sentence on children provided other conditions are met; in other instances it is sufficient to establish the existence of such a subjective attitude of the child towards the offense, which, in addition to the intent or negligence as a psychological attitude to the action and its consequence, manifests its inappropriateness, educational neglect or deviant development.

The Law on Children's Justice takes over all previous decisions concerning the younger adult, which is a border category between children and adult offenders.

Although that category is alien to the meaning, functions and goals of the children's justice system, its association with special treatment of children with the possibility of imposing educational measures is good because it thus opens a wider breakthrough to the principles of individualization and resocialization, rather than retribution in the area of the general penal system.

The procedures for establishing the existence of circumstances relevant to the imposition of a measure against a child at risk or a sanction for a child in conflict with the law are governed by the observance of the fundamental principles referred to in international child rights documents: procedural guarantees, mandatory right to defense and representation, specialization and competence of the body applying the measure or imposing the sanction and respecting and protecting the child's personality in any form of treatment by the competent authority; situations, deinstitutionalization of treatment and the shorter duration of the institutional measures involving deprivation of liberty of a child used as a last resort.

The complex set of provisions for the protection of child victims of crime and violence and of child witnesses in criminal proceedings proves its integral approach, which rests on the view that the categories of children in conflict with the law and children at risk combine the idea that victimological and protective element is about children who need and have the right to protection, assistance and care from society, which when provided ensure prosperous future. The provisions of the Law on Children's Justice therefore guarantee the rights of these two categories and their treatment in criminal proceedings. In addition to the special guarantees of the child victim who has been damaged in the procedure, the Law regulates his or her special rights of due process protection in certain types of criminal offenses or when special care and protection is required by using special procedural measures of protection and urgency of the procedure. (art. 146-150). It is of particular importance that the Law defines the right of a child victim to a criminal offense or misdemeanor of violence or other act of violence (conflict, violent demonstrations, etc.), compensation from a special fund in the Ministry of Justice, if indemnification cannot be performed by the perpetrator (art. 151-152). This imperative provision imposes an obligation to provide such a fund within the budget of the Ministry of Justice, although it is not provided, represents grounds for filing a lawsuit for compensation of damage against the State.

The protection of children as victims and witnesses in criminal proceedings is ensured in accordance with the provisions of the Criminal Procedure Code and the Law on Witness Protection and by applying special measures to protect the child's psycho-physical integrity as needed.

In a prevention and protection-oriented system such as the children's justice system developed by the Law on Children's Justice, it is logical to incorporate the extremely important segment of child abuse prevention. It is elaborated in the law (part six) as a legislative framework for the state's obligations to organize a system of prevention, through appropriate bodies of the State Council and municipal prevention councils. By doing so, the state joins the good practices of developed countries in forming such bodies as a form of involvement of the wider society and

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science in the formulation of criminal policy goals, means and instruments for the suppression of child abuse.

1.2. Judicial Reform Strategy 2017-2022

The children's justice system was established by the Juvenile Justice Law, upgraded to the Law on Children's Justice, but following problems still remain:

- bad material conditions,

- lack of primary education and systematic resocialization of children deprived of liberty, indicating serious concern and the need for efforts to further strengthen the rights of the child.

The strategy concludes that there is still a non-compliance with the new Law on Children with the new Law on Criminal Procedure and the EU Directives.

Therefore, it is stated that amendments to the Law on Children's Justice are needed, in the light of:

- its harmonization with other laws and EU directives,

- strengthening the protection of child victims of crime,

- entering procedural provisions regarding the course of the main hearing.

- facilitating the access of child victims to legal counsel and representation.

- establishment of a Fund for Compensation of Child Victims.

The amendments must also strengthen the mechanisms for the prevention of child abuse at the local and central level, as well as the institutional, material and functional strengthening of the State Council for the prevention of child abuse.

1.3. Indicators for monitoring the implementation of the Law on Children's Justice

Supported by UNICEF, national experts prepared a list of 32 indicators to monitor the implementation of the Law on Children's Justice and the needs of the State Council for Children. criminal offenses collected by 63 institutions in the justice system for children, including 8 IAS, 30 CSWs, 12 Extended Jurisdiction Courts, 12 BPOs and one BPO for prosecution of organized crime and corruption crimes.

The statistical data obtained through the indicators are statistically processed and are part of the Annual Report of the State Council for Child Delinquency adopted by the Assembly of RNM.

1.4. Indicators for monitoring the situation of child victims of crime

The national authority uses a list of 43 indicators, and the data is collected from 222 institutions in the children's justice system from 30 centers for social work, 8 internal affairs sectors including 38 police stations, 133 educational institutions (primary and secondary schools)), Center for Public Health - Skopje, 22 Basic Public Prosecutor's Offices in the Republic of North Macedonia and one Basic Public Prosecutor's Office for Prosecution of Organized Crime and Corruption Offenses and 27 Basic Courts.

The data obtained through the indicators in each area are individually processed statistically by the members of the National Body, and represent the Annual Report adopted by the Government of the RNM.

1.5. Comparative analysis - proposals for amending the law on children's justice.

For this reason and following the comments coming from the expert public, primarily from practitioners, national experts working for a long time on the children's justice system have identified the need to amend this law, which is set out in the Action Plan for the Implementation of the Reform Strategy of the judicial sector 2017-2022.

The amendments aim at:

1. Consistent adherence to the principle of the best interest of the child.

2. Alignment with recently adopted EU Directives concerning procedural safeguards for children suspected or accused in criminal proceedings

3. Strengthening the protection of child victims of crime, including measures for rehabilitation and intensified education of children.

4. Introduction of procedural provisions regarding the course of the trial - the dilemma between main hearing or trial?

5. Facilitating the access of child victims to legal counsel and representation.

6. Establishment of the Fund for Compensation of Child Victims.

7. Strengthening the mechanisms for the prevention of child abuse at the local and central level, as well as the institutional, material and functional strengthening of the State Council for the prevention of child abuse.

8. Adjusting the basic principles.

9. Promoting restorative justice-mediation and other forms of circumvention of litigation.

10. Normative regulation of the behavior and role of social protection centers.

11. Changing the material part of the institutions where children serve their sanctions .

12. Normative regulation of Free Legal Aid - ie the compensation of lawyers before the CSW and the police.

13. Entering procedural provisions regarding the course of the verbal hearing.

14. Reexamination of provisions containing restorative elements to overcome the perceived problems that prevent their more frequent application.

15. Adjusting the procedures undertaken by the CSW and strengthening its powers to enforce sanctions.

16. Promoting the Rights of Child Victims.

17. Reviewing the provisions regarding the jurisdiction to execute sanctions.

18. Introducing provisions regarding the institutional set-up of the CEF.

19. Facilitating the indemnification procedure.

20. Functional strengthening of the State Council and mechanisms for the prevention of child abuse.

It is also necessary to transpose the relevant EU directives:

- European Parliament Directive EU 2016/800 on the procedural guarantees of children suspected or accused in criminal proceedings, including the directives referred to in this Directive;
- Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA
- Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty
- Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings
- Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings
- Directive (EU) 2016/343 of the European Parliament and of the Council of 9 March 2016 on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings
- Directive (EU) 2016/1919 of the European Parliament and of the Council of 26 October 2016 on legal aid for suspects and accused persons in criminal proceedings and for requested persons in European arrest warrant proceedings

ANNEX 2

Olja Ristova, MA
Judge at the Basic Criminal Court Skopje 11.12.2019

Criminal Procedure Law

10. It is recommended to introduce a practice whereby the public prosecutor will be required to submit all evidence to the defense at the very beginning of the proceedings. Although this obligation does not derive from the Criminal Procedure Code, it derives from

international agreements ratified and signed by the Republic of North Macedonia which are an integral part of domestic law.

11. It is advisable to approach a plea bargain whenever the prosecution has solid evidence in the case.
12. Amendment of the provisions of the Code of Criminal Procedure in the part of summary proceedings for the compulsory notification of the defendant when the investigation is initiated or the evidence is collected.
13. Legal changes are also needed regarding the recording of the court hearings without the obligation to prepare minutes.
14. Strengthening the capacity of the courts by employing a large number of professional staff to improve the quality of judges' work.
15. Tracking and detecting key issues that delay court hearings as bases for training of judges on case management in order to increase their efficiency.
16. Strengthening the management of the courts in order to ensure a proper distribution of judges and judicial services by departments to increase efficiency in case handling.
17. Regularly upgrading the ACCMIS system according to the daily needs of all its users.
18. The members of the Judicial Council shall be in constant communication with the judges of the courts for which they are competent in order to properly ascertain the problems of the judges affecting the evaluation of their work.
19. It is recommended to reevaluate the work of judges and public prosecutors, rather than vetting, which will cover all judicial / prosecutorial experience and would be carried out by expert and independent persons who are undoubtedly knowledgeable about how judges and public prosecutors act.

Criminal Code

1. It is recommended to adopt a guideline for the alignment of the case law on the determination of the type and amount of the criminal sanction.
2. Intensive training of judges on the application of the Probation Law as co-operation with the probation service enables a proper individual approach to the sanction for each defendant.
3. Amendment of the provisions on protective supervision in the Criminal Code in order to increase the type of measures that the court will impose in order to reduce the number of recidivists.

ANNEX 3

Antoaneta Dimovska, judge at the Basic Civil Court.

Civil Law Reform

Selection of judges with integrity, credibility and knowledge.

This is the first prerequisite for any reform of the judiciary, without such a thing there is no quality in the judiciary and everything else that will be proposed is meaningless. But the fact is that there are many judges who are dedicated to their work and throughout this period have resisted to various influences and attempts to be discredited.

Having regard to the case law since the independence of the Republic of North Macedonia so far, the following may be concluded:

The Courts of Associated Labor which were in charge of labor disputes were abolished, with a major reform in 1996 with the abolition of the District Commercial Courts and the Commercial Court of the Republic of Macedonia. This reform established the following basic courts: courts of first instance, the Courts of Appeal Skopje, Bitola, Stip and the Supreme Court. The Administrative Court and the Higher Administrative Court and the Court of Appeal in Gostivar were established later.

All of this contributed to the delay in processing cases, though for objective reasons, it also turned out that the reform itself was not supported by a staffing and technical equipment that further affected the delay. Namely, the overall jurisdiction of the first instance proceedings was transferred to the Basic Courts, without being staffed or technically equipped.

This continued to this day.

1. Courts are not technically equipped and staffed to comply with their legal obligations.

2. Amendments to the Law on Civil Procedure.

The Law on Civil Procedure made the audio recording of hearings mandatory. However, the courts are not fully technically equipped and the existing equipment in most of the courtrooms

is malfunctioning and inadequate. This is because the equipment itself is not designed to work for so many working hours and with such a capacity as it does.

The 2005 Civil Procedure Act was a law that made positive progress in terms of speeding up proceedings and abandoning the investigative principle but did not interfere with the court's obligation to properly establish the factual situation.

With the 2010, 2011, and 2005 amendments to the LCP, the law has undergone changes that have not improved its quality, according to all civil law professionals, has led to a decline in the quality of justice.

The reasons for this are the following changes:

The expert examination, in accordance with the amendments to the 2010 Law on Civil Procedure in Article 235, paragraph 1, establishes that the court will give expertise as evidence, if the party accompanies the lawsuit with the expert finding and opinion.

Such a statutory provision is completely contrary to all the provisions concerning the evidence, the stage for proposing it and contrary to the whole purpose for which this evidence is produced.

Namely, the expertise evidence used to be presented in accordance with Article 235, when expert knowledge was not available to the court to establish or dismiss a fact. This legal provision fully expresses the essence of the expert evidence. The amendment of Article 235, paragraph 1, completely changed the substance and meaning of the expert evidence.

First, when submitting a lawsuit, the party "needs to know" which facts will and will not be disputed for the defendant. So for example, in the case of a claim for damages, the plaintiff would have to draw up a traffic expert report as he could not know whether the defendant would dispute the blame for the accident although it may not have been at all disputed before the claim was filed. The defendant shall, on the other hand, furnish an expert opinion in response to the complaint or the court within the meaning of Article 235 2 2 shall order an expert witness in writing if it considers that there are likely facts or circumstances for which it cannot obtain the expert finding and opinion.

Let's start from the very essence of what expertise means. Experts are a means of evidence, and expertise is a function (activity, job, task) of the expert. An expert is a person who has expert knowledge in a particular area that the court does not possess. Expertise ends with a finding and an opinion, but it doesn't always have to be that way. Namely, it can be a complex expertise, so one expert can present a finding, that is, to determine the facts, and another expert can present an opinion.

According to the law, the court evaluates each evidence individually and all the evidence

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together, which means that the court can establish a different factual situation than the one presented by the expert, using the actual expertise. For example, the expert described in detail a person's movement, what action he/she took at a certain point, but erroneously concluded that the defendant was guilty of a car accident because the action he/she took was contrary to the law. Specifically, the defendant was driving at a permitted speed, responding in a timely manner to the traffic accident, but was currently under the influence of alcohol and this made the expert conclude that the defendant was guilty of the accident.

Let's get back to the specific topic. Why the current legal solution regarding the expert witness is at odds with its very essence. Because expert opinion is required when the court has no knowledge of a particular area, and the current legal remedy means that the party has to assume which facts the court will not be able to establish without expert opinion. Abandoning this definition in the law does not change the essence of the expertise. It remains the same, but the law completely overrides it.

On the other hand, the obligation of the parties to submit an expert opinion on the lawsuit, ie the response to the lawsuit from the beginning puts this evidence in a different position from the other evidence that may be offered at the preparatory hearing. It contradicts the very essence of the preparatory hearing in which precisely the disputed facts are discussed and for which the parties propose evidence. If, at a preliminary hearing between the parties, it is agreed that a fact is not disputed, then the expert opinion submitted in the lawsuit to establish that fact is absolutely unnecessary.

The statutory decision under Article 235 2 2 of the LCP if the party is likely to have facts or circumstances that do not enable it to obtain the expert finding and opinion, the court shall order the expertise in writing, bringing the expert evidence in "an unequal position."

Specifically, when one party delivers an expert opinion, he or she gives directions on the facts to be established, whereas if the court orders the expert opinion, the court will always give the expert the circumstances under which the expert opinion should be drawn up. In its order, of course, the court will always be able to ask the expert for a finding and opinion also on the circumstances which the court considers that should be established. This already calls into question the principle of equality of arms.

The impartiality of the expert who draws forensic expertise at the request of the client will always be questioned, unlike the expertise ordered by the court. Of course, many will say that the expert's integrity plays the most important role, but court practice denies this. Every day we come across expert report that are diametrically opposed. It can be concluded therefore that most of the expert reports are at the wish of the parties and that ta supra expertise is prepared in almost every case. When it says that the expert report is prepared to comply with the party, it does not mean that the party insists for the report to contain facts which will benefit the plaintiff or the defendant depending on who requested the expert opinion. Namely, the expert somehow "naturally" concludes that this is how the expertise should be prepared. This is again confirmed by the fact that there are diametrically opposed expert reports about the same factual situation. Of course many will say that the expert only gave his opinion because this is how he sees things, but this is

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simply not the case. The need for so many expert supra reports points to the above conclusion that lately there has been a lack of professional staff able to produce quality expert reports. However, both judges and lawyers we discussed this issue with, were unanimous Expert reports are prepared to satisfy the party that asked for it.

The court's failure to provide guidance on the circumstances to the expert preparing the expertise may bring to a situation in which expert "might be the ones to reach the verdict". Let us take again the expertise. Almost without exception, any expertise in which the expert makes a contribution to each of the participants in a traffic accident finishes with the conclusion on the share of each party in the accident. Even if the other party submits an expert report that identifies identical traffic failures, the conclusion differs from the given percentage. This is the least speaking inadmissible. One cannot ignore the fact that even when the judges would order an expertise some of them insisted that the experts determine the percentage as well, which would also mean that they would take the decision. This, however, does not justify the existing legal provision.

Submitting an expert opinion with the lawsuit or with response to the lawsuit does not eliminate the cases in which the expert should be excluded, as in many cases the expert is unaware of the existence of reasons that may lead to his exclusion. This would be all avoided if the court ordered the expertise.

Issues with expertise in general

It is necessary to mention some expertise issues that have existed in court practice for years, irrespective of whether the expertise was prepared or ordered by the court or the party.

The first problem is the non-detection of the disputed issues in terms of whether they are disputed as a factual or legal issue.

Experts are often asked to answer legal questions, which is not only inadmissible, but also against the law.

It happens that the court asks whether the plaintiff has the right to "own something", "whether the defendant owes anything" or other. This is almost a rule when the parties submit their own expert opinion. The judge seems to be replaced by the expert.

Disputed issues are identified by the court in the preparatory hearing. The court is bound to encourage the parties to disclose all decisive facts and to propose evidence to establish them. This means that the preparatory hearing must not be reduced to merely keeping the lawsuit and to the response to the lawsuit, but all aspects of the dispute must be substantially discussed. This requires good preparation by the court, but also by the parties or their proxies. At this stage, legal issues should also be raised, that will affect the presentation of evidence.

Super expertise as a legal solution

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Super expertise is also problematic as a legal solution. Pursuant to Article 246 paragraph 2 of the LLP, when the experts' findings disagree substantially, or the finding of one or more experts is unclear, incomplete or inconsistent in itself or with examined circumstances, and those deficiencies cannot be eliminated by re-examination of the expert witnesses, the court may order a super-expertise within the time limits specified in Article 245 paragraph 1 of the CPC.

The application of this provision means that the court can, but does not, order a super-report. First, there is inconsistency in the legal terminology itself because in the cases referred to in Article 235 paragraph 2 the law operates with the term "shall order", and in this case it says "shall determine". Such inconsistency in the use of terminology does not cause a problem as much as the inaccuracy of the provision itself, saying that "the court may order a super expertise".

The question arises as to how the court can decide to order an expertise or not if the expertise is ordered when the findings do not substantially comply, or the findings of one or more expert witnesses are unclear, incomplete or contradict internally or with examined circumstances, and those deficiencies cannot be eliminated by re-examining the experts. Does this mean that the court can accept some of the expert evidence as evidence from which legally relevant facts can be established, because it is prepared based on reliable facts and evidence, etc., and the other expert report was not prepared in the same way. However, practice shows that in 100% of cases where the expert findings do not substantially agree, the court orders the super expertise. Even more, the parties themselves who have submitted the expert opinion propose that the court should not attempt to reconcile them because they know in advance that the expert witnesses will not comply. In fact, every judge knows this from personal experience.

The super expertise raises the same questions as the expertise ordered by a court as per Article 235 Ʒ 2 of the CCP, ie whether the super expertise brings us into a situation in which the court asks the expert to express himself also on the circumstances the court considers he should. Of course, the court when ordering the supra-expertise, may ask the expert to give a statement on other circumstances, besides those of the parties. The law does not prohibit it, and the court is obliged to take care of all disputed issues, and in this particular case the court has no expert knowledge about.

We are now back to the beginning where the court may still order an expert opinion and "seek the truth", under certain assumptions. The parties should submit two expert opinions with findings that are not substantially in agreement, or the finding of one or more expert witnesses is unclear, incomplete or inconsistent in itself or with the circumstances examined, and these deficiencies cannot be eliminated by re-examining the experts.

The inspection as a problematic legal solution

The foregoing almost fully applies to the inspection. Article 212 of the LLP stipulates that inspections are undertaken only upon the motion of a party when the establishment of a fact or clarification of a circumstance requires the immediate observation of the court. The inspection may also be performed with the participation of expert witnesses provided by the party who proposed the inspection.

What does this specifically mean?

That the party is the one that knows whether the court needs direct note, which is absurd, and even worse the party is the one that knows whether besides the direct note the court needs the help of an expert.

Regardless of whether the investigative principle has been abandoned, the inspection is an evidence that the court must decide whether to present it with or without the presence of an expert. This is for the simple reason that only the court knows whether it needs direct note or not.

Certainly, the party may also propose an inspection, and the court will decide whether it is needed, and this is for the sole reason that the court is the only one that knows if it is needed or not.

Reasons for amending the Law on Litigation Procedure in the area of expertise

Anyone who has practiced the Law on Litigation Procedure daily knows that the amendments to the 2010 Law on Litigation Procedure when the Chapter XXVII was amended in the field of evidence inspection and expertise knows that this amendment seeks to accelerate litigation.

Has this been achieved?

Absolutely not. Most of the cases end up with super expertise, but there are other phases of the procedure that do not take place so quickly. When a defendant receives a complaint accompanied with an expertise, he usually refers immediately to an expert for the preparation of an expert opinion and in almost 100% of the cases the time limit set by the court for filing a complaint is not sufficient to respond to the expert complaint. The defendant will then file a response to the claim and evidence that he has approached the expert to produce an expert opinion but has not been prepared because of the lack of time. The court being bound by the deadlines stipulated in Article 271 of the LLP is obliged to schedule a preparatory hearing within 8 days and to hold it within 50 days from the date of scheduling. This means that the court and the parties know in advance that it is likely that the expert opinion will be delivered shortly before the preparatory hearings or at the preparatory hearing itself, which of course leads to the adjournment.

Upon receipt of the expert report submitted by the defendant, the plaintiff will give the observations the same as the defendant to the expertise submitted by the plaintiff. Once the expertise of the defendant is received, the observations will be made, and the plaintiff will give a statement. The statement often means consultation with the expert who has produced the expert report, which does not imply that he will follow the deadlines in which the court schedules the hearings, which in turn leads to a new adjournment.

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Once the objections are made, the court will make an attempt to reconcile the experts in a hearing or written testimony. The court will decide to hold a hearing or not, depending on the timely submission of their statement to the objections.

In the end, if the experts keep to their original findings and opinions, the court may order a supra-report which as said before, occurs almost without exception. At least four preparatory hearings will be postponed due to the expertise.

If the court orders the expertise, it will be done at the first preparatory hearing. This is because the parties to the preparatory hearing will state which facts are disputed by the court by asking questions and by encouraging the parties to present all the decisive facts and to offer evidence to determine which facts are disputed and for which the court does not have the necessary knowledge, so expertise will be required.

Problems also arise with small value disputes under the current legal provisions:

According to the current law, small value litigation in both the litigation and the commercial disputes, are disputes related to monetary claims that do not exceed 600,000.00 denars.

It is inconceivable that this amount be the same for both commercial disputes and regular litigation, given the financial power of the citizens, this dispute can never be of little value. I know personally that the changes made in 2005 to the value of the small value dispute as stated by the Ministry of Justice were following the World Bank's suggestion to speed up proceedings. This makes this amendment both unnecessary and unjustified. Nowhere in Europe the amount of EUR 10,000 does not constitute an amount which qualifies the dispute as a dispute of minor value.

Secondly, these amendments allowed an appeal to the factual situation that leveled this litigation in full with the regular litigation, while the provision stipulating that a preparatory hearing shall not be held and a main hearing shall be immediately scheduled, led to a very confusing procedure.

Section on Court Payment Order and Notary Payment Order:

The amendments to the Notary Law corrected the decision by which the creditor could submit a proposal for issuing a notary payment order solely through an attorney-in-law, but the unconstitutional decision was not corrected fully according to which the debtor who continues to be under obligation to file an objection against a notary public payment order through an attorney-in-law.

The chapter dealing with the complaint against a notary payment order has not yet been sufficiently elaborated and there is a mismatch in the Public Notary Law regarding the delivery with the Law on Litigation Procedure.

3. Material law

Given that the process of litigation law codification has begun, which is a very extensive and protracted process, continuous efforts need to be made to track all the changes in laws, otherwise there will be no effect and the whole process will be further delayed. At this point, a bigger issue is the mismatch of the material laws that treat the same problem from different aspects. A detailed analysis of the laws by groups is necessary to determine the inconsistencies.

4. Following the case law of the European Court of Human Rights

Continuous training for all judges on the EJC case law as a source of law. Mandatory inclusion of all judges working in civil matters. Training for lecturers who work in the Academy for Judges and Prosecutors in relation to the ECJ case law.

This is all just a starting point for civil law reforms. Only when we start with the implementation seriously, we will be able to see how much we really need to change. However, the will to reform and start is very important, and I personally think we have the will, but we only need to make the choice of people who will lead the reform in which all of us who are part of the justice system will actively participate. It is our duty and it should not be an object of discussion.

Implementing any reform is a difficult process that requires a lot of work and dedication. In addition to that, these reforms are not only necessary, but this is the only condition to become a country that we as citizens want to have. It is no less important to note that reforms must be carried out simultaneously in the field of human resources, material and technical equipment, procedural laws, material laws, because any other approach will not be a reform.