ANALYSIS OF THE QUALITY AND UNIFORMITY OF CRIMINAL LAW COURT DECISIONS

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PREFACE

This analysis was made under the EU funded project "Partnership Justitia "Regaining Citizens' Trust", implemented by the European Policy Institute and the ZENIT Association. The project aims to contribute to restoring citizens' trust in the Macedonian justice system by significantly involving civil society in fundamental judiciary reforms. The final beneficiaries of this project are the institutions in the judiciary. The purpose of this analysis is to contribute to improving the quality of court decisions in the civil cases, to improve the procedure itself, as well as to contribute to improving the uniformity of decisions in order to respond to citizens' expectations with regard to their right to a fair and just trial and access to justice.

INTRODUCTION

According to the case-law of the European Court of Human Rights (ECtHR), the safeguards enshrined in Article 6 of the European Human Rights Convention (ECHR) include the obligation of courts to provide and produce appropriate and sufficient reasoning for their decisions. The right to reasoned decisions is a key aspect of the fair procedure, upon which the ECtHR case-law rests upon and this has been founded in a number of general principles under the EHCR, which thus protect the individual against arbitrary power of institutions.[1] Hence, court decisions are to necessarily state the reasons that are sufficient in order for a court decision to be founded on them, as well as to respond to the essential aspects raised by the parties to the procedure in their legal arguments. This right is not explicitly worded in the text of Article 6 of the Convention. However, this a procedural safeguard that offers essential guarantees for all substantive rights. Reasoned decisions demonstrate and assure the parties that their case has been heard, appropriately analysed, and processed. However, reasoned decisions also contribute to enhancing the public trust in the administration of justice, also ensuring a stable ground for the proper functioning of the rule of law principle. Reasoned court decisions are particularly important considering that they contribute to gaining the public trust in fair, objective, and transparent justice, these being the pillars of a democratic society.[2]

Although in pursuance with the principle of free evaluation of evidence[3] courts have a certain margin of appreciation in choosing the evidence and arguments upon which they base their decision, yet courts are obliged to clearly elaborate and indicate the reasons for their (non)application. Therefore, the provisions of Article 6 of the ECHR cannot be understood as obligatory, and the ECtHR also does not hold the position that this obligation requires a detailed argument for each individual submission or evidence in the procedure.[4] The depth and extent of the reasoning may vary depending on the type of decision, the type of the courts' competences, but also this might vary on case-to-case bases. Hence, courts are to necessarily examine the main and key submissions of parties to the proceedings, affected both by the domestic substantive and procedural law and by the rights and freedoms guaranteed under the ECHR. The reasoning cannot be in any case be understood as recounting of the criminal law incident at hand, and of all activities undertaken in the procedure, for this would necessarily lead to extensively long court decisions. Therefore, the practice of certain courts to produce compilations of court reports/minutes of hearings held in preparation for the main hearing is quite wrong. As suggested by the ECtHR, it is necessary that court decisions are as consistent as possible and free of unnecessary details and academic explications.

1 Case Roche v. the UK No. 32555/96, § 116, October 2005, ECtHR.
2 Case Suominen v. France No. 37801/97, § 37, 1 July 2003; Tatishvili v. Russia No. 1509/02, § 58, January 2007, ECtHR.
3 Article 16 of the Law on Criminal Procedure.
4 Case Van de Hurk v. the Netherlands, § 61, no. 16034/90; 19 April 1994, ECtHR.

Legal theory describes the reasoning as an explanation of legal principles and explanations of the transparency. In connection with procedures before courts of appeal, the reasoning must be in line with and ensure efficient application of the constitutionally guaranteed concept of the "right to appeal,"[5] which in theory is explained as functional orientation. Appeal courts may offer shorter reasoning than courts of original jurisdiction, but such reasons must address or rather take into consideration the main arguments submitted by parties to the proceedings.

Judicial decisions shall be drafted in an accessible, simple, and clear language. Judges shall issue reasoned decisions, pronounced in public within a reasonable time, based on fair and public hearing.[6] Judges shall use appropriate case management methods. In pursuance with the ECtHR case-law, the reasoning must contain a specific and explicit reply to key importance arguments, submissions and claims, which are decisive for the outcome of the proceedings, i.e., for the adoption of the court decision.[7] Therefore, the ECtHR has held that by ignoring a specific, pertinent and important point of the applicant in the reasoning of their decisions, the domestic courts fall short of their obligations under Article 6.[8] Reasoned court decisions respond to issues of decisive importance for the case (Mugoša v. Montenegro), they offer detailed explanation in cases in which the law lacks clarity (Milojević v. Serbia) and in cases in which the facts of the case are not clear or consistent (Hirvisaari v. Finland, Atanasovski v. Republic of North Macedonia), take due account of the specific features of the legal system (Taxquet v. Belgium), while requiring less detailed explanation by appellate courts, provided that decisions of courts of original jurisdiction are well reasoned (Garcia Ruiz v. Spain).[9]

5 Case Hadjianastassiou v. Greece No. 12945/87, 16 December 1992, ECtHR.
6 Magna Carta of Judges, Fundamental Principles, Strasbourg, November 2010.
7 Case Boldea v. Romania, § 30, No. 19997/02, 15 February 2007 г.; Case Moreira Ferreira v. Portugal, § 84, No. 19867/12, 11 July 2017; Case Papon v. France No. 54210/00, 25 July 2002.; Case Hadjianastassiou v. Greece, No. 12945/87, 16 December 1992, ECtHR.
8 Case Nechiporuk and Yonkalo v. Ukraine, § 280, No. 42310/04, 21 April 2011 г.; Case Rostomashvili v. Georgia, § 59, No. 13185/07, 8 November 2018, Case Zhang v. Ukraine, § 73, No. 6970/15, 13 November 2018, ECtHR.
9 Мирјана Лазарова Трајковска, „Правна аргументација и образложение на пресудите", Скопје, ноември 2019 г. (Mirjana Lazarova Trajkovska, Legal arguments and reasoning of judgments, Skopje, November 2019)

QUALITY OF DECISIONS

The quality of court decisions does not depend only on the individual judge deliberating upon the case, but it is also linked to a number of external and internal factors, such as quality of the legislation, appropriate resources available to the justice system, the quality of professional remuneration of judges, professionalism of judges, their efficiency, principles of work and the manner of pursuing the proceedings.

In terms of perceptions about the quality of court decisions in the Republic of North Macedonia, those producing such decision, being part of the target group of the survey conducted in February 2019[10], answered as follows: 7.1% or 10.4% assessed the quality as insufficient, or sufficient, or more precisely a total of 17.5% or somewhat less then fifth of the judges consider that the quality of court decisions is at a low level. Significant number of judges consider that the quality of court decisions is good (42.4%), or very good (27.6%), while only 12.5% of judges assessed the quality of court decision as excellent. The same survey on this issue also covers the target groups of practicing lawyers and public prosecutors. Hence, the assessments by these participants in proceedings, and especially the assessments by practicing lawyers state that the quality of court decisions is insufficient (44.7%) or sufficient (29.2%), while large number of public prosecutors consider that the quality is good (43.7%), and almost 40% consider that the quality is sufficient or rather insufficient (27.8% and 11.9% respectively).

10 Лидија Стојкова Зафировска, Жарко Алексов, Александар Гоцо, „Прв национален извештај од матрицата на индикатори за мерење на перформансите и реформите во правосудството", Центар за правни истражувања и анализи, Скопје 2019 г. (Lidija Stojkova Zafirovska, Zarko Aleksov, Aleksandar Godzo, First National Report on the Matrix of Indicators for Measuring the Performances and Reforms of the Justice System, Centre for Legal Research and Analysis)

1.

ANALYSIS OF THE QUALITY OF CRIMINAL LAW COURT DECISIONS

Court decisions as a category of a legal document is a general term that covers any deliberation by authorities participating in the procedure, regardless of the fact whether it is a matter of a decision upon the merits of the case, or it is a matter of a decision on formal procedural matters.[11]

In criminal law, the Law on Criminal Procedure defines and envisages four types of decisions – judgment, decision, order, and penal order, i.e., a judgment issuing the penal order. Considering the fact that the judgment is exclusively a court decision deciding on the matter of the case, adopted following a main hearing held before the court, covering the entirety of the procedure as of the institution of the procedure until its completion, and thus the judgment taking due account of all evidence and arguments presented in the course of the procedure, for the requirements of this analysis only court judgments have been taken into consideration. However, in light of the fact that with specific forms of judgments, such as judgments on the basis of a draft plea agreement[12] or judgments under which upon the proposal of the public prosecutor the court issues a penal warrant[13], decisions are adopted without having a main hearing, taking into consideration in this context judgments upon admission of guilt by indicted persons, or decision on presenting evidence only relevant to meting out the sanction, the above referred to types of judgments have not been taken into consideration for the purpose of this analysis.

1.1 METHODOLOGY

Under this Analysis, a methodology for analysis of the quality of court decisions and their uniformity has been developed, based on general concepts and theory or law, logic as a science, scientific sources, professional papers and publications, legal documents and interviews conducted with legal professionals, with representatives of the academic circles and those working in the state administration.

The methodological framework is made up of indicators used to assess the quality of decisions, adopted both by courts of original jurisdiction and by appellate courts. Under the methodology, indicators are divided in three major groups, which in the context of courts of original jurisdiction cover the relevant structure and coherency of decisions, the legal logic of decisions, i.e. whether the rules of logic have been observed in the adoption of the decision and the quality of the reasoning of court decisions - ratio decidendi, starting with introducing the case and the background of the issue at hand, over to analysis of the facts of the case, the evidentiary procedure, the consistency of the reasoning and used wording – all analysed using specifically developed indicators.

11 Commentary to the Law on Criminal Procedure.
12 Article 490 of the Law on Criminal Procedure.
13 Article 499 of the Law on Criminal Procedure.

Indicators developed for appellate courts are focused on whether there are clear guidelines for courts of original jurisdiction, in case the decision is returned for a retiral, clearly stated reasons for vacating or changing a decision of the court of original jurisdiction, when the amendment to the original decision changes the decision on the sanction, whether and to what extent proper arguments have been offered in this respect, consideration of appeal claims, the reasoning of decisions with respect to all appeal claims, appropriate structure in amending or preparing a new decision, and due account of the period of time linked to the statute of limitations applicable in the considered cases.

The quantifying of these indicators was predetermined in accordance with a set forth standard for assessment, which envisages the possibility that the indicator does not apply to a specific judicial decision and that it is not applicable, and therefore it was not attached a value expressed assessment; then the mark "1" as the lowest assessment, which was allocated for an indicator, which could not be found in a court decision, and would be appropriate to be found in the specific court decision; the mark of "0" which was allocated under indicators, which are recognized as elements of a court decision, but which do not satisfy the minimum quality standards; mark of "1" applied for a recognized content appropriate for the indicator, but which is of low quality; mark of "2" applied for established content, which is appropriate for the indicator and which is allocated as an average assessment; and mark of "3" which was allocated under an indicator, under which the established content was appropriate for the indicator and which is assessed with the highest mark. The value of the indicators was derived as a result of the mark given for the indicator and the envisaged coefficient set forth in advance for each of the indicators (See Annex Addendum 1-a and Addendum 1-b), which values varied depending on the complexity and relevance of the indicator. The lowers indicators were the least complex and the least relevant indicators and vice versa. In addition, the quality index for each individual court decision is a quotient derived after the total sum of values of all applicable indicators is divided with the number of applicable indicators for which a mark has been allocated.

1.2 CHARACTERISTICS OF THE ANALYSIS SAMPLE

For the needs of this Analysis, 61 judgments adopted by courts of original jurisdiction and appellate courts in the country were considered and qualitatively assessed. More specifically 41 judgments adopted by courts of original jurisdiction, of which 15 judgments adopted by the Skopje First Instance Criminal Court, 10 adopted by the Bitola First Instance Court, and 8 each adopted by the First Instance Court in Shtip and Gostivar, as well as 20 judgments adopted by appellate courts, of which 7 judgments adopted by the Skopje Appellate Court, 5 adopted by the Bitola Appellate Court and 4 each adopted by Appellate Courts in Shtip and Gostivar. The distribution of the said cases by appellate circuits would present the following situation – 22 judgments adopted in the Skopje appellate circuit, 15 in the Bitola appellate circuit, and 12 each in the Shtip and Gostivar appellate courts, regardless of whether it is a matter of a decision by a court of original jurisdiction or by an appellate court.

The analysed court decisions date from the period from 2017 to 2020 and have been selected by random choice from the base of judgments available on the web page sud.mk, the official integral webpage of all courts in the country, managed by the Supreme Court of the Republic of North Macedonia, and from the electronic platform of legal documents - dejure.mk. In selecting the decisions, special attention was paid to the period in which the decisions were adopted, or more specifically decisions adopted in different years in the set time period were selected. Special attention was also paid to the diversity of judgments in terms of their preparation by various judges, chambers, etc.

1.3 ANALYSIS OF THE QUALITY OF COURT DECISIONS AT THE LEVEL OF APPELLATE COURT CIRCUITS

According to the Law on Courts, first instance courts, courts of appeal, the Administrative Court, the Higher Administrative Court, and the Supreme Court of the Republic of North Macedonia shall exercise the judicial power in the Republic of North Macedonia. While first instance courts are established for one or several municipalities the territory of which is defined by the Law on Courts, courts of appeal shall be established for the territory of several courts of first instance defined by the Law on Courts. Taking into consideration this organizational set-up of the judicial system, and in view of the fact that the four appellate court circuits were target for the choice of the court decisions to be analysed, in addition to analysing decisions from the specific geographical areas - Skopje, Bitola, Shtip and Gostivar, the choice of decisions adopted by appellate courts, helped indirectly analyse the work of other courts in these appellate circuits.

1.3.1 Quality of Court Decisions in the Bitola Appellate Court Circuit

The first group of indicators set forth under the methodology for assessing the quality of court decisions consists of indicators relating to the structure and coherence of court decisions. In line with the definition of indicators, the analysis was focused on the fact whether court decisions contain all required elements, the sections of which decisions consist, and whether those sections are correctly structured, whether the enacting clause is clear and concise, and whether it is logically aligned with the reasoning, or more specifically whether they are in contradiction.

The assessment of judgments adopted by courts of original jurisdiction in this appellate circuit shows that all judgments selected for assessment seen through the prism of the indicator of correct structure of the judgment, are in following with the envisaged standards, without any exception. There were only two cases in which the enacting clause of the judgment was too extensive, which is a result of identical description contained in the introductory part of the indictment. Hence, the judgment itself does fail the clarity test, not being concise instead. This is mainly owed to the too extensive description of the crime and the circumstances in which it was perpetrated, which are already described in great detail in the indictment, so repeating the identical content contributed to lack of conciseness of the judgment, i.e., its enacting clause, resulting in a mark for this indicator of 5.6, 6 being the highest mark.

None of the analysed judgments run contrary to the coherency principle, or more precisely in none of the judgments it was established that the enacting clause is logically inconsistent or in contradiction with the reasoning. Therefore, under this indicator the average mark of judgments is the highest envisaged mark of 6.

In methodological terms, the next group of indicators relates to the legal logic. In the specific case, it was examined whether there was a correct subsumption, or more specifically whether the specific facts of the case established under the judgment, by applying appropriate and applicable legal norms in the specific case, produce legal effects. In such a setting, the enacting clause would have an impact on the content of the reasoning, which must necessarily derive from and be based on the enacting clause, but it is equally important that it is also consistent with the contents of the enacting clause, or rather that the enacting clause and the reasoning are not contradictory. The reasoning of judgments is to be coherent; it is to be logically aligned, i.e., it is to offer wide encompassing arguments for the enacting clause, for the ensuing procedure, which led to the adoption of the decision, and for the rules on free court assessment in the specific case.

Such defined criteria for establishment whether this indicator has been fulfilled require description relating to the factual claims of parties to the proceedings relating to the specific factual situation in which the crime was perpetrated, the procedure of submitting and presenting evidence, as well as relevant selection and categorization between necessary and contested facts and the evaluation of evidence in the course of the procedure.

The analysis of judgments from this appellate circuit indicates that predominant number of judgments lack relevant explanation of legal rules, which is necessary in order that together with the facts of the case the sentence or the enacting clause could be defined. The principle defined under the methodology of having a link between the small and the large premise, i.e., the process of evaluating the evidence from which the small premise drives, or more precisely the legal qualification of facts or establishing the facts of the case, along with the legal norms, their links, establishing the contents of and the interpretation or the higher premise cannot be identified in its entirety in the analysed judgments. Based on this established situation, according to this indicator this appellate circuit has been given the average mark of 6.9, out of the highest mark of 9.

The last and most extensive set of indicators set forth under the methodology for assessment of the quality is related to the quality of the reasoning of court decisions or to the ratio decidendi. The complexity of this group of indicators requires introduction and explanation of the background of the issue to be deliberated, the activities that the court has undertaken in hearing the case, presentation and application of relevant legal norms and principles and provisions contained in secondary legislation, establishing the facts of the case and description of substantive facts, and application of legal principles. Furthermore, activities undertaken in the evidentiary procedure in the context of further explanation of the decision through the prism of (ir)relevant facts and establishing whether the facts at hand are of such nature and quality so that they can be in line with the provisions of the substantive law and produce legal consequences. The assessment and the explanation of opposing arguments, i.e., arguments of the party that has lost the case, by establishing the relation between the facts of the case with the substantive law, according to which the indicted person is prosecuted, as an important element of the judgment, is an integral part of this methodological approach, being accompanied with clarity and consistency of the presented reasoning, which is supported with relevant linguistic and grammatical correctness, which are all of exceptional importance for the quality of court decisions.

The analysis of judgments from the Bitola appellate circuit shows that the introductory paragraphs of the reasoning are featured with a solid quality in introducing the issue of deliberation and the same due attention is paid to the explanation of activities undertaken by the court and by the parties to the proceedings. Seen through this indicator, judgments adopted in this appellate circuit are evaluated with the highest mark of 6. The reasoning of judgments indicates a systematic and chronological presentation of all undertaken activities, as well as a description of facts and circumstances, which thus gives a clear picture of the essential elements of the case concerned.

In general, individual paragraphs of the reasoning form thematic units and present a clear picture of individual issues elaborated in the judgment. However, some of the judgments contain narratives, which link several issues in a single paragraph, which is thus too extensive and covers various details of the procedure. Therefore, the average mark under this indicator is 5.6, out the highest mark of 6. In the context of a correct and complete establishment of the facts of the case it is unacceptable to elaborate upon groups of evidence to which necessary attention could not be paid in order to select relevant facts upon which the judgment itself could be based.

Perhaps one of the key indicators under the methodology, which is of exceptional importance for the correct administration of justice, and for the perception developed later in this respect is the indicator requiring "presentation and application of relevant legal norms and principles and provisions of secondary legislation." This indicator implies that the reasoning of the judgment needs to explain the legal norm for each issue, as well as the characteristics of the crime prosecuted, and the type of violation of the law. An additional condition for fulfilling the high level of quality of judgments is the eventual reference to domestic case-law or to the case-law of the European Court of Human Rights. In the context of this indicator, judgments from this appellate circuit have the average mark of 4.8, the highest mark being 6. As regards this indicator, only 40% of considered judgments from the Bitola appellate circuit have the highest mark, while the rest 60% of the cases are of average quality. Judgments having the highest mark elaborate in detail the crime, its characteristics and predicate offence and what is protected with the relevant legal norm.

The next indicator covers analysis of facts in terms of their link to the legal norm, or whether the nature of presented facts is in the context of what has been established and which is a condition to be fulfilled under substantive law, in order to be able to produce certain legal consequence. However, it also includes the processing and assessment of evidence, its relevance in the specific case in order to establish the facts of the case, all in the context of individual assessment of evidence. Judgments considered under this indicator have the mark of 2.5, the highest mark being 3, because in some of the judgments there are situations in which not all proposed and presented evidence is covered, or in which there is no reasoning about a number of potentially important pieces of evidence, such as expert witness statements, or it has been noticed that in the reasoning of the judgment there is reference to evidence, which has been omitted and explained previously.

In the context of paying due attention in all individual cases to submissions and claims of the party that has lost the case, something that can be noticed in the course of consideration and assessment of opposing arguments is that it can be established that judgments from this appellate circuit have the mark of 5.7, the highest mark being 6. This assessment is supported by the fact that in a minor number of decisions there has been no minimal effort established to offer arguments and reasoning as to why some of the responses of the defence have not been taken into consideration, and this has not been supported with the substantive law.

The clarity and consistency of the reasoning have relatively good marks, considering that the allocated mark is 2.3, the highest mark being 3. Judgments assessed with a lower mark under this indicator have a confusing and insufficiently concise explanation, account of verbal evidence, instead of their summary presentation, copying the final statements of the parties to proceedings, i.e., recounting of statements of witnesses in the procedure, and similar.

The linguistic and grammatical correctness of the text of court decisions is not at the required level. Court decisions are understandable for laypersons, they contain relatively short paragraphs and clear sentences, but they contain grammatical and spelling mistakes, and there is evidence of using the local dialect. Hence the mark 2, the highest mark being 3.

5 appellate court judgments were considered from this appellate circuit, which initially does allow for establishing an independent and credible assessment of the quality of appellate court decisions in this appellate circuit. Therefore, the assessment of these decisions, and of decisions of the other appellate courts does not per se indicate the level of quality. However, considered together and complementary with decisions of courts of original jurisdiction they help create a picture of the overall level of quality of decisions in a given appellate circuit, regardless of the fact whether it is a matter of decisions of courts of original jurisdiction or of appellate courts.

With a view to assessing these decisions 11 indicators have been developed, of which only three are overlapping, i.e., are identical to those set forth for courts of original jurisdiction, such as the legal syllogism in subsumption, clarity, and consistency of reasoning and linguistic and grammatical correctness of the text of the decision. The remaining eight indicators are related to the quality of the reasoning of appellate court decisions, such as clear guidelines issued by the Appellate Court to the first instance court in cases in which the decision is to be reconsidered; clearly stated reasons for vacating or amending decisions of first instance courts; whether there is an explanation in case the scope or duration of the ordered sanctions changes, and whether this is clearly explained, with specific arguments for the reasons for such a decision; whether there is a response to the appeal claims; lack of repetition of identical facts of the case established by the first instance court; in case of amending a judgment, whether the decision has all substantive features of a judgment, as the first instance judgment; arguments about the appeal claims and due attention paid to the period for statute of limitations.

The average mark for the legal logic or syllogism of these judgments is 7.9, the highest mark being 9, which is mainly owed to the fact that in only two out of five judgments the legal rules have been fully considered, correctly established, and elaborated. A feature emerging under this indicator is that the court has the practice of stating only the legal qualification, without going into its explanation. On the other hand, it can be noted that in all decisions there are conclusions about the relevant facts, as well as their selection and interpretation.

In terms of clarity and consistency of second instance decisions, these decisions are assessed with the highest mark for this indicator – 3, while under the category of linguistic and grammatical correctness of the text of court decisions, the given mark is 2.4, with the highest mark being 3, which is largely owed to the use of the local dialect in the wording and writing of the judgment and to the presence of technical and spelling mistakes.

Clear and precise guidelines for further activities to be undertaken by first instance courts in cases of vacating or reversal of decisions, are indicators that cannot be applied in all of the judgments, considering that these indicators could be used in the assessment of only two judgments. It is exactly the lack of an appropriate sample that could be used to make a credible conclusion prevents making an appropriate assessment of decisions under this indicator. However, it is worth noting that in these two cases in which decisions were vacated or a retrial was ordered, the highest mark of 6 was given considering that the second instance court has given clear and specific guidelines for the further activities of the lower instance court in retrying the case. The next indicator is linked to the previously referred to situation, i.e., the indicator showing whether in cases in which the decision of the first instance court is vacated or amended, judgments of the appellate court refer to clearly stated reasons for such a decision. Despite the fact that in this context too there was a small number of judgments assessed, the assessed judgments were marked with the highest mark of 6.

The change of the scope or the duration of the sanction by the higher instance court is expected to be accompanied with relevant reasoning and supporting arguments for such a decision. Analysed decisions, which contain this indicator have been the same as previously referred to cases assessed with the highest mark of 6. In these cases, the court offered an explanation for the different decisions, basing it on the different perception of aggravating circumstances, especially circumstances relating to the manner of and the situation in which the crime has been committed.

Taking into consideration that the higher ranking court has the obligation to offer reasoning for its decision, the reasoning must contain two elements: a) assessment of the chamber of the second instance court regarding the appeal claims of different parties that have filed an appeal and b) statement explaining which violations the second instance court considered *ex officio*[14]. Consequently while considering the appeal claims in the proceedings, higher ranking courts have the obligation to offer an answer to the claims, which after all has been the issue of consideration according to the methodology. Under this indicator, the Bitola Appellate Court was assessed with a mark of 6 out of 6, with the conclusion that the appeal claims, which have been processed have been thoroughly considered and supported with relevant reasoning.

14 Commentary to the Law on Criminal Procedure.

In light of the fact that the selection of judgments from this appellate circuit consists of only two judgments, on which the indicator for amending previous decisions is applicable, and furthermore considering that both judgments amend the duration or the choice of the sanction, the assessment under this indicator could not be considered as entirely relevant. This is especially owed to the fact that court did not engage in establishing the facts of the case, or in a detailed analysis of already presented evidence regarding the facts of this case, or in explaining identically the relevant substantive law, as for any first instance court decision, making instead an analysis only of pieces of evidence, which are relevant for the type or for the duration of the sanction.

The last indicator under the methodology for assessment of the quality of second instance court judgments covers the issue whether and to what extent the court takes into consideration the periods for statute of limitations for criminal prosecution for the crime at hand and which is considered in the proceedings. The assessment to be made under this category requires a complex operation considering that in addition to the basic component- how much time has passed, one has to add into the calculation the complexity of the case in terms of evidence material, securing evidence, submitting, and presenting evidence, and the serious character of the crime prosecuted. On the basis of all of the above, the moderate assessment in line with these parameters that have an impact on the duration of the procedure result in the mark of 4.4, with 6 being the highest mark.

In light of the quality assessment, based on all defined indicators, the quality index for this appellate circuit is 4.6.

CONCLUSION AND RECOMMENDATIONS

ПCorrect structure of judgments, as well as complete harmonization with the envisaged standards regarding the structure of a judgment, is the feature that has been established while evaluating the judgments in the Bitola appellate circuit. Judgments have logical relation and link with the sentence and the reasoning, they are compact, not contradictory, and they are fully and completely in line with the coherency principle.

The quality of introductory parts referring to the specific issue of consideration, and the appropriate attention paid to the actions of the parties to the proceedings confirms that judgments contain systematic and chronological narration of undertaken activities, as well as description of facts and circumstances offering thus a clear picture of the essential elements of the cases processed. Albeit in insignificant numbers, it has been also established that there has been processing of groups of pieces of evidence, to which not enough attention could be paid, in order to be able to select the relevant facts upon which the decision itself could be based, which is not acceptable in terms of arguments for the evidence. In addition, there has been over-dimensioning of individual units, i.e., paragraphs which are to elaborate upon different segments of the facts of the

case or related evidence. This is not the general impression deriving from all analysed judgments. However, the individual perception of the work of certain judges in any case is indeed important and could contribute to overcoming such practices and to their gradual elimination.

The most problematic feature established during the assessment of judgments is the fact that insufficient attention has been paid to legal norms related to each specific issue, as well as to the characteristics of the crime prosecuted, and to the type of violation of the law. 60% of judgments in this appellate circuit have been assessed with an average quality, when it comes to explanation of legal norms, the crime, the theoretical elaboration of the predicate offence, its characteristics, and the subject of protection. Eventual references to the domestic case-law or to the case-law of the European Court of Human Rights would indeed contribute to the higher level of quality of judgments. Consequently, it would be of special importance to reach a certain degree of solid harmonization of the work of individual judges, who would argument in detail and would explain both the procedural and the substantive norms, thus rejecting or accepting the thesis of the prosecution and the work of judges who do not pay any particular attention to these aspects.

In the context of legal logic, decisions of the Appellate Court point to the existence of a practice according to which the court states only the legal qualification, without going into any explanations, while on the other hand in all decisions the court takes notes of conclusions about relevant facts, their selection, and their interpretation.

It is of paramount importance that judgments cover all submitted and presented evidence, and to offer proper reasoning in this respect. In this appellate circuit, it has been concluded that albeit in small numbers, courts have not completely fulfilled the criteria under these parameters and therefore the processing and evaluation of evidence, its relevance for the specific case with a view to establishing the facts of the case, all with the purpose of making an individual assessment of evidence, is at a lower level of quality.

It is also important to avoid the relatively insignificantly present practice of lack of argument-based explanation when addressing the claims of the defence. It is of exceptional importance that courts pay due attention to support their positions with the substantive law, particularly when it comes to rejecting claims by the party that has lost the case. The same applies to the practice of copying identical statements of witnesses in the procedure, i.e., copying statements from minutes, which creates the picture of insufficiently clear and concise paragraphs of the decisions. It is exactly this lower assessed clarity and conciseness of some of the judgments of first instance courts that has been compensated with a higher assessment of these features when it comes to decisions of the Appellate Court.

A notable feature of decisions coming from this appellate circuit is the fact that they lack sufficient level of linguistic and grammatical correctness. The wording used in the judgments contains elements of the local dialect, identical to the dialect used in the city of Bitola, and there are spelling mistakes, as well as deviations from the correct Macedonian language spelling.

The processing of first instance decisions by higher ranking courts, especially in terms of amending the duration or type of sanction, or in terms of giving instructions for retrial by lower instance courts or in cases of decisions on the merits of the case is fully in line with provisions envisaged in the Law on Criminal Procedure. The only remark could be linked to the insufficient attention that this court pays to the fact how much time has passed, in the context of the principle of statute of limitations for criminal prosecution. Hence the recommendation that it is necessary that the second instance court work more efficiently, especially when processing criminal cases in which there is a high probability that the statute of limitation would apply.

1.3.2 Quality of Court Decisions in the Gostivar Appellate Circuit

The evaluation of judgments in this appellate circuit, as in the previous case, covered the introductory indicators set forth under the methodology for assessment of the quality of court decisions, which relate to the structure and coherence of court decisions. These indicators were analysed through the prism of correct structure of decisions, their content, i.e., whether they contain the required elements, their clarity, the conciseness of the sentence and the logical alignment with the reasoning, i.e., the lack of mutual contradictoriness.

The analysed judgments in this appellate circuit, i.e., decisions of first instance courts lead to the conclusion that less than 40% of judgments, three judgments in this specific case, considering that the number of decisions is small and is not sufficient to be set up as a representative sample, are not sufficiently clear and concise. This conclusion is not based on drastically lower marks given under these indicators, indicating instead average quality in fulfilling some of the indicators. Thus, the mark of 2.9, with 3 being the highest mark, has been given for the structure of court decisions, i.e., whether the structure covers all required elements, while the mark of 5.25, with 6 being the highest mark, has been given for the clarity, i.e., conciseness of court decisions.

Legal logic, being an essential element of a court decision, has been considered by establishing whether the subsumption has done correctly and whether the facts of the case established in judgments, by applying legal norms applicable for the specific case produce legal effects. The enacting clause is of central importance for the contents of

the reasoning, which must derive from and be based on the enacting clause. It is also important that the reasoning be consistent with the contents of the sentencing part, i.e., that they are not contradictory. It is presumed that the reasoning of judgments is coherent and logically aligned, accompanied with comprehensive arguments regarding the enacting clause of the judgment, as well as regarding the procedure for adoption of the judgment and the rules for free court assessment in the specific case.

The methodology and the point allocation for this indicator envisage that the highest mark is 9. However, in this case the given mark is 5.1. This is owed to a great extent to the lack of relevant explanation of legal rules, then to the inappropriate assessment of evidence submitted and presented in course of the procedure, as well as to deficiencies in the conclusions deriving from relevant facts, which instead of presenting an individual unit, are based on copy-pasted statements of parties.

The assessment of judgments from this aspect covered description regarding the claims of parties about the facts of the case, i.e., about specific factual circumstances, which gave rise to the criminal law situation, the process of submitting and presenting evidence, but also making a difference between necessary and disputed facts and the assessment of evidence in the course of the procedure.

The ratio decidendi considered based on the quality of the reasoning of court decisions covered the background of the issue considered and processed, its presentation, then presenting and applying relevant legal norms and principles and provisions of secondary legislation, establishing the facts of the case and the evidentiary procedure, evaluation of opposing arguments, clarity and conciseness of the reasoning, as well as linguistic and grammatical correctness of the text of court decisions.

In terms of explanation of the background of the issue, or more precisely whether in the introductory paragraphs of the decision, or in the reasoning of the court decision, the court offers proper introduction to the issue and chronological order of undertaken activities by the court regarding the received, considered submissions and the course of the hearings has been assessed with the highest mark of 6. This is owed to the fact that the court has paid due attention to fulfilling the criteria under this indicator.

In the context of the indicator relating to the relevant description of facts and circumstances, which are to explain the essence of the case, and whether each issue is considered in a separate paragraph according to the free assessment of the court, and whether there are references to (ir)relevant facts, this appellate circuit has been given the mark of 5.1, with 6 being the highest mark. The lower mark under this indicator is owed to the impression created by too long paragraphs in judgments, which often cover several issues, while they are presented as single unit in the judgment, only because they are linked to the statement of one witness, regardless of the fact that the witness addresses a number of issues in his/her statement.

The worst assessed indicator in this appellate circuit, according to the methodology for assessment of the quality of court decisions, is the indicator relating to the explanation of the legal norm linked to each issue, of the characteristics of the crime, the type of violation and the eventual references to the domestic case-law, i.e., to the case-law of the ECtHR. The lowest marked court decision does not contain reasoned legal norms, lacks characteristics of the crime, its predicate offence, the type of violations and what is subject of protection, and there no references to any case-law. Most often judgments contain description of the actions, which are established to constitute the predicate offence, or one can find wording such as "Based on such established facts, the Court finds that the actions of the indicted person X.Y. contain the legal features of the crime of FRAUD, under Article 247, paragraph 1 of the Criminal Code, and therefore the court found him guilty and sentenced him to effective prison sentence as described in the enacting clause of this judgment." or "Considering such established fact of the case, the court found with certainty that the actions of the person indicted contain the essential elements of the crime of stealing electricity, heat or natural gas, under Article 235-b of the Criminal Code". This does not represent fulfilment of the relevant standards for description of the crime, and its characteristics according to the theory, delineating and analysing the elements and predicate offence, the subject of protection and type of violation. The general mark given under this indicator is 0.6, with 6 being the highest mark.

When assessing the relevance of evidence, as well as whether there is detailed explanation as to why certain pieces of evidence are considered as irrelevant, and the evaluation and analysis of each piece of evidence individually and not as a single unit, this appellate circuit has been given the mark of 2.7, with 3 being the highest mark. The fact that the highest mark has not been given is owed to the lack of explanation in a number of judgments as to why some of the evidence that has been taken into consideration is viewed as relevant, and instead of an explanation such evidence has been copy-pasted without being elaborated.

The indicator relating to the consideration and evaluation of opposing arguments, or more precisely arguments of the party that has lost the case, could not be assessed because almost all of the randomly selected publicly available judgments were judgments in cases in which the person indicted is tried in abstentia, and therefore is not able to submit evidence, or a defence lawyer has been appointed in the case ex officio, who has not submitted any evidence.

The clarity and consistency of the reasoning and not burdening the reasoning with unnecessary details, copy-pasted minutes, and narrations-statements by witnesses, based on evaluated judgments were marked with 2.2., with 3 being the highest mark. This is owed to the narrative nature of the evidence, especially the verbal evidence, then to the lack of summarized explanation of evidence and to the fact that the text about the evidence has been copy-pasted from minutes presented in the course of the procedure.

When it comes to the linguistic and grammatical correctness of the text, the mark 2 has been given (the highest mark being 3), due to lack of grammatically correct sentences and on the basis of presence of spelling mistakes.

Second instance judgments in this appellate circuit identically as in the previous case have been considered through the prism of the 11 indicators set forth under the methodology, which cover issues such as legal syllogism in the subsumption, and relevant structure of the reasoning.

The analysis of the legal logic, i.e., syllogism, has produced the mark of 7.5, with 9 being the highest mark. This is mainly owed to the fact that half of the considered judgments have not established or elaborated the legal rules. Such judgments only eventually state the legal qualification, but when it comes to the rest of the required parameters, which are covered by this indicator, there are conclusions about which are relevant facts, their selection and interpretation.

In terms of clarity and consistency of second instance judgments, they have been marked with the highest mark for this indicator – 3, while under the category of linguistic and grammatical correctness of the text of court decisions, these judgments have been marked with 2.5, with 3 being the highest mark, because these judgments have technical and spelling mistakes.

The indicator for providing precise and clear instructions by the higher to the lower ranked court, in case of vacating and returning the first instance judgment to the first instance court for a retrial, has been evaluated based only on one judgment. Hence, the mark under this indicator, though the highest one, cannot be considered as relevant.

The indicator relating to the assessment of the instructions given by the higher ranked court in cases of vacating or amending of a decision of the first instance court, as in the previous case has been evaluated based only on one judgment and again the highest mark has been given.

There have been no cases of change of the scope or duration of the sanction in the evaluated judgments and therefore this indicator has not been assessed for this appellate circuit.

The assessment by the chamber of the second instance court of the appeal claims, and the establishment of violations that the second instance court would eventually take note of and would assess ex officio, as well as the individual consideration of the appeal claims in the procedure are a legal obligation for each judge deliberating in appellate procedures. Hence, the judgments of the Gostivar Appellate Court have been assessed by applying the relevant criteria and have been marked with the highest defined mark under this indicator.

Taking into consideration categories such as time, complexity of the case, in the context of evidence material and in the context of presenting evidence and the serious character of the crime prosecuted and the number of indicted persons in a given case, the last indicator under the methodology for evaluation of the quality of second instance judgments, which relates to the extent to which the court takes into consideration the period for statute of limitations for criminal prosecution in the criminal case at hand, has been marked with 5.5, 6 being the highest mark.

In light of the quality assessment under all defined indicators, the quality index for this appellate circuit is 4.2.

CONCLUSION AND RECOMMENDATIONS

Lack of clarity and conciseness, as well as deficiencies in the structure of the judgments have been established in some of the analysed decisions in the Gostivar appellate circuit, in the context of first instance court decisions. The appellate court decisions are to a great extent clear and consistent. Therefore, first instance courts in this appellate circuit must pay much more attention to the coherency of decisions, then they must make them more understandable and logically aligned with the reasoning. In respect of some of the decisions it has been established that they lack explanation or reasoning of the legal issues, and this applies both to decisions of first instance courts and to decisions of the Appellate Court.

A positive practice can be noted of relevant explanation of the background of the issue at hand, as well as of the chronology of activities undertaken by the court and by the parties to the procedure. However, judgments in this appellate circuit lack relevant explanation of the legal rules, as they do not contain appropriate description of the evaluation of evidence submitted and presented in the course of the procedure, and instead of being presented in an individual unit, the text of judgments in this context is based on copy/pasted statements of the parties to the case.

The oversized volume of contents of paragraphs in judgments is indicated by circumstances, which lead to the conclusion that the court has the practice of elaborating a number of issues in a single paragraph, i.e., unit, only because these issues are related to the statement of one witness. However, considering the fact that the court is to offer individualized arguments on each issue and piece of evidence, it is necessary to change this practice.

The explanation of the legal norm for each issue, as well as of the characteristics of the crime, the type of violation, and eventual references to the domestic case-law, or the case-law of the ECtHR in judgments in this appellate circuit have been given the lowest marks, compared to other appellate circuits. Therefore, courts in this appellate circuit need to be informed about the practice in other appellate circuits, especially taking into consideration that such an approach is in line with defined standards of processing cases.

The lack of explanation in some of the judgments as to why some of the pieces of evidence have not been supported by arguments, or the lack of reasoning why certain pieces of evidence have not been taken into consideration as relevant, being instead just copy/pasted without any reasoning is a contravention of the principle according to which the court is under the obligation to assess every piece of evidence individually, and in relation to other evidence and based on such an evaluation to come to the conclusion whether a certain fact will be considered as proven or not and whether the judgment will be based on such a piece of evidence, It has been also established that there is a lack of a summarized explanation of evidence taking into consideration that the text in this context is mainly copy/pasted from minutes made in the course of the procedure.

It is necessary that the court pays particular attention to the required linguistic and grammatical correctness of the text, considering the noted lack of grammatically correct sentences, as well as printing and spelling errors.

The work of the second instance court in line with its competence, in the context of giving precise and clear instructions to lower instance courts, in cases of vacating or returning judgments for retrial, or in cases of eventual amendments to a first instance court judgment has been given relatively high marks and is also in accordance with the provisions stipulated under the Law on Criminal Procedure. Similarly, the work of the appellate court when processing appeals, or more precisely when evaluating the appeal claims and the overall appellate procedure is in line with defined criteria. The same applies to the timeliness and keeping the deadlines by the court, considering the possibility for the statute of limitations principle to start operating for criminal prosecution.

1.3.3 Quality of Court Decisions in the Skopje Appellate Circuit

The first set of indicators set forth under the methodology for assessment of the quality of court decisions consists of criteria relating to the structure and coherency of court decisions. Under the evaluation of judgments against defined criteria, there has been an analysis made whether court decisions contain all required elements and whether they are correctly structured, then whether the sentencing parts of the judgments are concise, and whether they are logically aligned with the reasoning i.e., that they are not contradictory.

In respect of all judgments, without any exceptions, selected for evaluation from the Skopje appellate circuit, i.e., judgments of the Skopje First Instance Criminal Court, seen through the prism of these indicators, it has been established that in drafting their decisions courts abide by the envisaged standards. Namely, there has been only one case in which deficiencies have been established in the sentencing section, too long

sentencing part, which is a result of placing an identical description from the introductory parts of the indictment in the sentencing part and therefore it can be concluded that even this judgment fulfils the clarity standard, lacking only conciseness. In the specific case, obviously led by the necessary objective identity of the judgment and of the indictment, following the too long description of the crime and circumstances contained in the indictment, the court contributed to the lack of conciseness of the judgment in the enacting clause.

None of the considered judgments lack coherency, i.e., in none of the judgments there has been a situation in which the enacting clause has not been logically aligned with the reasoning, nor there has been any contradiction between these two parts.

The next set of indicators relates to the legal logic or more precisely the issue analysed under this set of indicators is whether the subsumption has been done correctly or whether the specific facts of the case established in the judgments with the implementation of legal norms applicable in specific case produce legal effects. In such a case, the enacting clause of the judgment would have an impact on the reasoning, which must necessarily derive from and be based on the enacting clause, but it is equally important that the reasoning is consistent with the contents of enacting clause, i.e., that the two sections do not run contrary to each other. The reasoning of the judgment needs to be coherent and logically aligned, i.e., there must be wide-encompassing arguments for the enacting clause, for the procedure of adoption of the decision and for the rules of free judicial evaluation of the specific case.

In assessing judgments in this context, the following has been taken into consideration: the description of factual claims of parties to the procedure regarding specific facts that have given rise to the criminal law situation, the process of submitting and presenting evidence, selecting necessary from disputable facts and evaluation of evidence in the course of the procedure.

The analysis of judgments from the Skopje appellate circuit leads to the conclusion that significant number of judgments lack relevant reasoning of legal rules, which together with the facts of the case could help define the enacting clause of the judgment. In this specific case, the link between the small and larger premise, or more precisely the process of evaluating the evidence from which the small premise derives, i.e., the legal qualification of facts or establishing the facts of the case, and the selection of legal norms, establishing the reference links between them and the interpretation or the large premise, as set up under the methodology, could not be fully identified. Consequently, under this indicator the Skopje appellate circuit has been given the average mark of 6.8, 9 being the highest mark.

The last set of indicators, which is the most voluminous one under the methodology for assessment of the quality, relates to the quality of the reasoning of court decisions, i.e., to ratio decidendi. This set of indicators covers the explanation of the background of the

issue considered by the court, its representation, and the representation and application of relevant legal norms and principles and provisions of secondary legislation, establishing the facts of the case, the evidentiary procedure, the consideration and evaluation of opposing arguments, or the arguments of the party that has lost the case, the clarity and consistency of the reasoning, and the linguistic and grammatical correctness of the text of the court decision.

Under this methodological approach for analysis considered judgments from this appellate circuit without exception have a solid quality under 4 out of 7 indicators. The introductory paragraphs of the reasoning without any deficiencies and with a solid quality introduce the issue at hand, and at the same time appropriate attention is paid to actions undertaken by the court and by the parties to the procedure. Therefore, judgments of the Skopje appellate circuit are assessed with the highest mark of 6. It has been established that judgments are logically and systematically aligned and contain description of facts and circumstances, which explain the essence of the case. The thematic units are completed in separate paragraphs, thus giving a clear picture of all individual issues elaborated under the judgment. In the procedure for elaboration of evidence, there has been due attention paid to selecting relevant evidence, with a view to contributing to establishing the facts of the case. They are subject of relevant reasoning, especially those that are considered as irrelevant, and which have not been of importance and would have no impact in terms of adopting a different decision. The evaluation and analysis of evidence has been done in a way according to which each piece of evidence has been individually considered and evaluated, and there has been no grouping of evidence and their joint general explanation noted. Considering that there is high level of fulfilment of this set of indicators, the mark given under this set of indicators is 6, or the highest mark.

As regards the issue of whether in all individual cases there has been sufficient attention paid to statements and claims of the party that has lost the case, the analysis and evaluation of opposing arguments lead to the conclusion that judgments in the Skopje appellate circuit can be assessed with the mark of 3.8, 6 being the highest mark. This is mainly owed to the fact that in some of the lower marked judgments in the context of this indicators, courts put on record that the claims of the party who has lost the case have also been taken in consideration. However, there is no substantive reasoning as to why some claims have not been taken into consideration. The practice revels the fact that in cases in which the authorized plaintiff is the Public Prosecutor's Office, in cases in which an exonerating or dismissing judgment has been adopted, it can be noted that judgments contain arguments providing support for the decision with reasoning and explanation of the substantive law as regards why the claims of the prosecution have not been taken into consideration. In other cases, in which there are convicting judgments, there are no supporting arguments with respect to the substantive law as to why the arguments of the defence have not been taken into consideration.

The most concerning deficiency or lack of quality against defined indicators of judgments from this appellate circuit is related to the "representation and application of relevant legal norms and principles and provisions of secondary legislation." This indicator requires that the reasoning of judgments explain the legal norm applicable for each issue, as well as the characteristics of the crime prosecuted, as well as the type of violation of the law. An additional condition for fulfilment of the high level of quality of judgments is the eventual reference to domestic case-law or the case-law of the European Court of Human Rights. Under this indicator, judgments of the Skopje appellate circuit were given the mark 3, with 6 being the highest mark. Only three of the 15 considered judgments of first instance courts have the highest mark under these indicators, while six judgments were given an average mark, two minimum marks, while four judgments do not satisfy the minimum quality standards in this context. Judgments given the highest mark elaborate in detail the crime, its characteristics and predicate offence, and what is subject of protection. Judgments which do not satisfy the minimum quality standards, or have a very low mark, meaning that they fulfil only the minimum standards only state which crime is considered and that the actions of the person indicted mean that the predicate offence has been perpetrated, without going into or without making the link between the specific unlawful activities undertaken by the indicted person with the elements of the predicate offence of the crime. The most frequent wording used in this context in judgments is the following: "Based on such established facts of the case, the court found that the activities of the indicted person X.Y. contain all predicate elements of the crime XX under Article XXX of the Criminal Code and therefore found the person guilty and punished him/her in accordance with the law."

Judgments from this appellate circuit have been assessed with good marks to a great extent against the indicator related to clarity and consistency of the reasoning, with the exception of two judgments in which the statements of witnesses and of the parties to the procedure (final statements) are fully copy/pasted and their contents seem identical to the minutes, since the statements have neither been explained nor the key points have been made. In addition, they have not been recounted or paraphrased in an appropriate manner acceptable for a legal reasoning. It is exactly these two judgments that have contributed to lowering the mark under this indicator from the highest mark of 3 to 2.6.

The linguistic and grammatical correctness of the text of court decisions in this appellate circuit is at an exceptionally high level. Judgments are easily understandable for laypersons, they contain relatively short paragraphs, with clear sentences. They are grammatically correct; they use the standardized literary language and do not contain technical or spelling errors. Hence, under this indicator judgments in this appellate circuit were given the highest mark under this indicator – 3.

When analysing second instance judgments, 11 specific indicators were taken into consideration, of which only three overlap, or are identical with those envisaged for first instance judgments, such as the legal syllogism in the context of subsumption, clarity, and consistency of the reasoning and linguistic and grammatical correctness of the text of the decision. The other eight criteria are related to the quality of reasoning contained in second instance court decisions, such as clear instructions, which the appellate court issues to first instance courts in an eventual case of returning the decision for a retrial; the clearly stated reasons for vacating or for amending a judgment of the first instance court; whether there is a reasoning in case of change of the scope or duration of the sanction; all accompanied with proper reasoning and specific arguments regarding the reasons for such a decision; then whether the appeal claims have been addressed and answered; lack of replicating identical facts of the case established by the first instance court; in case of amendments to a judgment, it is necessary that the judgment has all required substantive features of a judgment, as the first instance judgment; arguments regarding the appeal claims and due attention paid to the periods for statute of limitations.

When analysing judgments in the context of legal logic or syllogism, judgments prepared by the Skopje Appellate Court were given the mark 6, 9 being the highest mark. This is mainly owed to the fact that in none of the considered judgments the legal rules have been established or elaborated. It has been noted that judgments only state the legal qualification, but as different from this, it can be noted that all judgments contain conclusions about relevant facts, their choice, and their interpretation.

In the context of clarity and conciseness of second instance judgments, such judgments were given the highest mark under this indicator – 3, while under the category of linguistic and grammatical correctness of the text of court judgments the mark of 2.4 was given, 3 being the highest mark, which is to a great extent owed exclusively to technical and spelling errors.

Although it is not applicable as a set of indicators to all judgments, precise and clear instructions by the higher ranked to the lower ranked court, in cases of vacating or returning the first instance judgment to the first instance court for retrial, this set of criteria was assessed in the case of only judgment. Due to this fact, the assessment cannot be considered a relevant, since there is no relevant sample of judgments the analysis of which could produce a relevant evaluation. However, considering that a similar practice can be noticed in other appellate circuits, it is worth noting that in such cases the court uses a particularly generalized stereotypical sentence "In the course of the retrial, the first instance court is to eliminate the established violation of the substantive provisions governing the criminal procedure in a manner that facilitates that at the newly scheduled main hearing, after all legal preconditions will have been fulfilled for scheduling the main hearing, all submitted evidence will be presented, and based on which the court shall establish all decisive facts in the case and depending on what has

been established, by correctly applying the substantive law, the court shall adopt a just and lawful court decision", with such generally worded sentence not giving a clear picture of the higher ranked court's instructions.

In cases of vacating or amending a decision of the first instance court, judgments of the Skopje Appellate Court clearly indicate the reasons for such a decision, and therefore the mark given under this indicator is 5.2, 6 being the highest mark.

In cases of change of the scope or duration of the sanction, the court in general offers reasons why it has modified the sanction, however very often this is standardized reasoning, for example that it is a matter of a frequently committed crime and therefore the frequency of committing the crime in a given period has had an impact on such a decision or that the same mitigating or aggravating circumstances have been differently evaluated. Therefore, the mark under this indicator is 4.5, 6 being the highest mark.

The obligation to consider all appeal claims in the procedure and later to offer proper arguments in the second instance judgment is a condition for a quality decision, which after all has been the matter considered under the methodology. Under this indicator, the Skopje Appellate Court was marked with 5.3, 6 being the highest mark, because there have been judgments noted, which have not considered the appeal claims of the defence.

Considering that the choice of judgments from this appellate court circuit consists only of one judgment to which the indicator relating to amending a first instance decision applies, the assessment given should not be considered as relevant, in the absence of a representative sample.

The last indicator under the methodology for assessment of the quality of second instance judgments is related to whether and to what extent the court takes into due consideration the periods for statute of limitations for criminal prosecution of the specific crime at hand considered in the case. The assessment under this indicator requires a complex endeavour, if one takes into consideration that in addition to the basic component of the period of time that has elapsed, it is necessary to add to the calculation the complexity of the case in terms of evidence materials, securing evidence, submitting, and presenting evidence, then the serious nature of the crime prosecuted. Based on all the above referred, the modest evaluation of all these parameters that could have na impact on the duration of the procedure results in the mark of 4.6, 6 being the highest mark.

Taking into consideration the assessment of the quality against all defined criteria the quality index for this appellate circuit is 4.4.

CONCLUSION AND RECOMMENDATIONS

Judgments in the Skopje appellate circuit do not deviate at all from the envisaged standards for appropriate structure and coherency or the standards for the enacting clause being logically aligned with the reasoning and that these two sections should not run contrary to each other.

The analysis has shown lack of appropriate explanation of the legal rules, which together with the facts of the case could facilitate defining the enacting clause. The established facts of the case in correlation with the choice of legal norms, their reference links, establishing the content and interpretation, as defined under the methodology could not be found in all judgments. In general terms, this is a deficiency noted in judgments of all appellate circuits and requires that it be adequately addressed in order that this inappropriate practice could be overcome.

The quality of reasoning and of the introductory issues, as well as the choice of relevant evidence and its individual evaluation all with a view to correctly establishing the facts of the case, as well as future reasoning, especially in relation to facts considered irrelevant or which are of no significance, or which could have very little impact on the decision adopted are at a high level.

An area which requires improvement of the work of courts from this appellate circuit is the insufficiently paid attention to the statements and arguments of the party that has lost the case and the evaluation of opposing arguments. Namely, it is evident that these statements have been taken into consideration, but one cannot notice any substantive explanation why some of them have not been taken into consideration. It is necessary to pay equal attention both to cases in which the authorized plaintiff in the procedure is the Public Prosecutor's Office, and in which an exonerating or dismissing judgment has been adopted and thus arguments are taken note of and supported with reasoned explanation of the substantive law, as to why the claims of the prosecution have not been taken into consideration, and to other cases in which convicting judgments have been adopted in which there are no arguments offered in support of a reasoned explanation of the substantive law.

In terms of application and representation of relevant legal norms and principles and provisions of secondary legislation almost third of the judgments in the Skopje appellate circuit do not satisfy the minimum quality standards. Judgments, which do not satisfy the minimum standards do not elaborate in detail the crime, its characteristics and predicate offence and what is protected. In such judgments one can only find the Article of the law referring to the crime at hand and that the actions of the indicted person amount to perpetration of the predicate offence. Based on such established situation, this appellate circuit too needs to necessarily pay greater attention to offering full and appropriate arguments about the crime, the issue of dispute, and establishing proper

links with the unlawful actions of the indicted person, being also necessary to introduce the element of theoretical value of the decision itself, so it can be utilized in the future and be referenced to as good case-law.

Judgments in this appellate circuit are featured with high level of clarity and consistency, as well as with linguistic and grammatical correctness of the text of court decisions.

1.3.4 Quality of Court Decisions in the Shtip Appellate Circuit

In accordance with the methodology for assessment of the quality of court decisions, in this appellate circuit a total number of 12 judgments were analysed, 8 of which of the Shtip First Instance Court, with a department in Probishtip, and four judgments of the Shtip Appellate Court. The marks according to the first group of indicators relating to the proper structure and coherency of court decisions in this appellate circuit, the presence of all required parts, as well as the correct structure and clear and concise enacting clauses, which are logically aligned with the reasoning, point to a high-level quality of judgments. Hence in light of the above stated the highest marks have been given, i.e., 3 and 6 respectively.

The correctly done subsumption, or more precisely whether the facts of the case established under the judgments along with the implementation of legal norms applicable to the specific case produce legal effects is the next indicator according to which court decisions have been evaluated. It was considered whether the enacting clause has had na impact on the contents of the reasoning, being necessary that the elements are linked, and they supplement each other and not run contrary to each other, facilitating thus the consistency of decisions. While considering the judgments, it was established that as other first instance courts, this first instance court too does not pay sufficient attention to the legal rules, which along with the facts of the case should help formulate the enacting clause. In such circumstances, the average mark for this indicator is 6.4, 9 being the highest mark. The remaining part relating to the evaluation of evidence, as well as conclusions about relevant facts, their selection and interpretation, coherency of the reasoning and of arguments are all at a satisfactory level.

The third and most complex set of indicators is related to the quality of reasoning of court decisions, i.e., to the ratio decidendi. The background and the representation of the issue to be deliberated, the application of relevant legal norms and principles and provisions of secondary legislation, and the entire process leading to the establishment of the facts of the case, over to the evidentiary procedure, evaluation of opposing arguments and the clarity and consistency of the reasoning are the key parameters using which indicators in this set are evaluated.

The appropriate and understandable introduction to the issue considered, as well as the chronology of actions described in the reasoning contained in the judgments in this appellate circuit have been given the highest mark of 6. Facts and circumstances have been described, which clearly show the essential elements of issues, and due attention has been paid that each issue is structured in an appropriate and separate paragraph.

The worst evaluated indicator in this appellate circuit, in following with the methodological approach as in other appellate circuits, is the presentation and application of relevant legal norms and principles and provision of secondary legislation. The average mark for this indicator is 1.5, 6 being the highest mark, and this is owed to the practice of using generic sentences in which only personal data about the indicted person and about the crime is changed. For example: "Based on such established facts of the situation, the court established that the actions of the indicted person X.Y. from X. have all the predicate elements of the crime of severe theft, under Article 236, paragraph 1, subparagraph 1 referring to Article 19 of the Criminal Code and therefore the court found the indicted person guilty of this crime and sentenced the person as stated in the enacting clause of the judgment." In principle, this is all that the court has stated about the crime, without going into elaboration about the type of crime, its characteristics and predicate offence, the actions of perpetration, what is protected, or the type of violation.

The relevance of evidence, its detailed explanation, and arguments why some pieces of evidence are treated as irrelevant, as well as the evaluation of evidence by applying the individual approach for each piece of evidence was assessed using the indicator relating to the facts of the case and to the evidentiary procedure. In terms of this indicator, the average mark is 2.4, 3 being the highest mark, which in principle could not be considered as a bad quality of the work of courts in the context of this section of judgments.

When considering and evaluating and then explaining all evidence, the court has the obligation not only to take into consideration evidence presented by the party that has lost the case, but also to offer proper arguments in this respect. More precisely, the court has the obligation to offer answers why such arguments have not been taken into consideration as relevant and support such a position with reference to the substantive law applicable in the given context. Considering that out of the total number of judgments, half of them or 50% are judgments related to a procedure in which the indicted person was tried in abstentia, the court was not able to consider the opposing arguments due to the simple reason that the defence counsel appointed ex officio did not submit any evidence or any relevant claims or arguments supporting the theory of the defence in the given case. However, when it comes to the remaining part of the judgments, or the other 50% of the judgments, the court has been given the highest mark of 6. Judgments show that the court has paid appropriate attention to the arguments of the defence and has provided ample space for their reasoning.

The last two indicators are related to clarity and consistency of the reasoning of judgments, as well as to the linguistic and grammatical correctness of the text of court decisions. The first indicator is marked with 2.6, 3 being the highest mark, considering noted deficiencies in relation to the conciseness of the reasoning, copy/pasted statements of witnesses in the procedure and the difficulty to follow the narrative of some of the statements. The second and last indicator for evaluation of judgments of first instance courts is related to whether the text of the judgment can be easily understood; whether paragraphs and sentences are clear, and whether the codified literary language and spelling is used, and whether there are technical mistakes. The mark given under this indicator is 2.75, 3 being the highest mark. The highest mark was not given due to the presence of spelling and orthography errors, as well as due to grammatical and spelling mistakes.

Second instance judgments of this appellate circuit, the same as judgments in other appellate circuits were considered using indicators which require legal syllogism in the course of the subsumption (legal logic) and quality in the reasoning of the decision – ratio decidendi.

The quality of decisions in terms of legal logic was given the mark of 8.25, 9 being the highest mark, due to the lack of reference to legal rules in one of the analysed decisions. The other judgments contain the required parameters under this indicator, and they contain conclusions about relevant facts, as well as about their selection and interpretation.

The clarity and consistency of second instance judgments were given the highest mark for this indicator – 3, in this appellate circuit. The same applies to the category of linguistic and grammatical correctness of the text of court decisions.

The indicator relating to providing clear and precise instructions by the higher-ranking court to the lower ranking court, in cases in which the first instance judgment is vacated to returned to the first instance court for a retrial was not considered because in none of the randomly selected judgments the appeal court decided to vacate and return the case for retrial by the first instance court. On the other hand, the indicator relating to the evaluation of instructions by the higher-ranking court in cases of vacating or amending the first instance court judgment was assessed only with respect to one judgment and was given the highest mark -3.

In evaluated judgments there were no cases of change of the scope or duration of the sanction and therefore this indicator was not evaluated for this appellate circuit.

Considering individually each of the appeal claims in the procedure, in its second instance decision the court has the obligation to respond to each of those claims and this was analysed against the methodology. Under this indicator, the Shtip Appellate Court was given the highest mark – 6, based on the conclusion that the appeal claims processed have been fully covered and appropriate reasoning has been offered in this context.

The evaluation of the chamber of the second instance court regarding the presented appeal claims, and the establishment of violations that the second instance court would eventually take note of ex officio, as well as the individual consideration of appeal claims in the procedure are a legal obligation for each judge deliberating a case in the second instance. Accordingly, judgments of the Shtip Appellate Court were evaluated using relevant indicators and were given the highest mark under these indicators.

The methodological approach to second instance decisions requires that in cases of amendments to a decision adopted by a first instance court, the court decision of the appellate court must have all the features in terms of establishing the facts of the case, analysis of evidence, reference to substantive law and reasoning, as for any other first instance court decision. After having checked whether this indicator is measurable in the judgments, it was established that that the said indicator could be applied in only one judgment and following the analysis of the specific decision, in this context it was given the mark of 4, 6 being the highest mark. This is mainly owed to the insufficient attention paid to the legal norm, i.e., to the predicate offence of the crime and its elements.

The last indicator for determining the quality of second instance judgments is related to the issue whether appellate courts pay attention to the period for statute of limitations in cases tried. This indicator was considered both in terms of periods elapsing in the course of the procedure, and in terms of complexity of the analysed case, especially taking into consideration the scope and the weight of the evidence material, as well as the seriousness of the crime, i.e., the object of protection. Although it is difficult to quantify in numbers the activities of a court in the context of these parameters, after careful consideration of cases in this appellate circuit, the mark given under this indicator was 4, 6 being the highest mark.

Taking into consideration the assessment of the quality by applying all defined criteria, the quality index for this appellate circuit is 4.4.

CONCLUSION AND RECOMMENDATIONS

Decisions in this appeal circuit have the appropriate structure and coherency, as well as clear and concise enacting clause, which is logically aligned with the reasoning. However, as in the case of other first instance courts, first instance courts in this appellate circuit, as well do not pay sufficient attention to the legal rules, which along with the facts of the case should help draft the enacting clause.

The reasoning in judgments provides appropriate and understandable introduction to the issue subject of consideration, as well as chronology of events, and courts take due care that each issue is carefully structured and elaborated in an appropriate separate paragraph.

The application of relevant legal norms and principles and provisions of secondary legislation is persistent problem in this appellate circuit too, and there has been a practice noticed of using generic sentences in which personal data about the person indicted and about the crime are just added, without appropriate individualization.

There is no appropriate practice regarding the detailed reasoning, and arguments supporting the (ir)relevance of some of the pieces of evidence by applying an individualized approach, which reduces the quality of court decisions. Therefore, it is necessary that a practice is developed according to which the court will pay due attention to each piece of evidence individually and as related to other evidence and will provide relevant reasoning in terms of the evidentiary value and the relevance of the evidence in a given case.

As different from other courts, in this court there is a positive practice of considering all opposing arguments of the party that has lost the case, and ample room is provided for reasoning about such arguments.

Concise reasoning and the practice of replicating statements by witnesses by copy-pasting them from minutes into the judgment is an area where there is room for improvement in this appellate circuit. However, there is also room for improvement when it comes to the language, or wording, spelling rules, in terms of orthography, grammar, and technical mistakes. However, such deficiencies and remarks apply only to first instance courts in this appellate circuit, not to the Appellate Court itself.

In the context of the work of the second instance court, considered by applying the indicators under the methodology, it can be concluded that the court works appropriately, in line with its mandate defined by procedural laws.

The quality of consideration of appeal claims in the procedure is at a solid level, and the same applies to instructions given by higher instance courts in cases in which the decision has been vacated and returned for retrial to the lower instance court.

In the context of the second instance court deciding on the merits of the case, there has been unsatisfactory standards established in terms of the structure and reasoning of legal norms, i.e., the predicate offence of the crime and its elements. In the context of deciding upon the merits, judgments of higher-ranking courts, the same as judgments of lower courts, need to contain all elements and the entire structure of a judgment. Furthermore, it is of special importance to pay sufficient attention to legal norms upon which the judgment is based, as well as to their proper explanation.

In relation to due attention paid by the second instance court to the period for statute of limitations in cases it processes, it must be concluded that it is necessary that courts work more efficiently in order to reduce the risks of the principle of statute of limitations starting to operate for criminal prosecution.

1.4 ANALYSIS OF THE QUALITY OF COURT DECISIONS AT THE NATIONAL LEVEL

1.4.1 Quantitative Analysis

The quality index determined for court decisions in the four appellate circuits is an assessment based on indices of quality of all analysed court decisions at the level of appellate circuits, regardless of whether it is a matter of first instance or second instance decisions, which is then divided by the number of analysed court decisions.

Based on this defined principle of evaluating, each of the decisions in the specific appellate circuits was evaluated based on applicable indicators set forth under methodology. The highest mark, i.e., quality index stipulated under the methodology approach is 5.4 taking into consideration the fulfilment of indicators by first instance and by appellate courts. Therefore, judgments of the Bitola appellate circuit were given the average mark of 4.6, which is the highest mark given compared to all four appellate circuits. Furthermore, judgments in the Gostivar appellate circuit were given the average mark of 4.2, which the lowest mark compared to other appellate circuits. In addition, judgments in the appellate circuits of Skopje and Shtip were given the mark of 4.4. When the sum of these quality indices from various appellate circuits is totalled and then divided with their number, the national level mark is produced which is 4.4.

1.4.2 Qualitative Analysis

Taking into consideration the conclusions regarding all four appellate circuits, it can be established that at the national level the decisions of competent courts predominantly have the correct structure and are furthermore fully aligned with the envisaged standards about the elements that a judgment should have. They have clear and concise enacting clauses, which are logically aligned with the reasoning and make a coherent and harmonized unity. The partial and insufficient clarity and conciseness, and structure of judgments are features of first instance court judgments in the Gostivar appellate circuit.

Perhaps one of the more substantive parts of the decisions – legal logic- or appropriate reasoning of legal rules, which along with the facts of the case facilitates the definition of the enacting clause is a real challenge at the national level. This especially, if one takes into consideration the need that the established factual situation, as correlated to the selection of legal norms, their referencing, determining the content and their interpretation, as required, must be found in all judgments. The full respect for logical

rules for adoption of decisions require to determine whether under the court decisions the subsumption has been done correctly, i.e., whether the concrete facts of the case, along with the application of legal norms produce legal effects. Based on this theoretical - methodological approach, at the national level it could be concluded that courts do not pay sufficient attention to more substantive reasoning and determining the legal norms in the judgments. The legal norm in question is closer to a presumed and generally accepted thesis that does not need to be explained in detail, in order that by way syllogism, the two key postulates could be linked, after which the conclusion could be made.

The quality of reasoning in judgments at the national level is at a relatively good level, if one takes into consideration the choice of relevant evidence and individual evaluation of evidence with a view to correctly establishing the facts of the case, as well as the further reasoning, especially reasoning about evidence considered as irrelevant and evidence that has not been of significance or could not have an impact in terms of adopting a different decision. In general terms, the reasoning in judgments provides appropriate and comprehensible introduction to the issues considered, as well as a systematic and chronological narration about all undertaken activities, and description of facts and circumstances, which paint a clear picture about essential issues of cases processed.

On the other hand, although it is envisaged that the dynamic or paragraphs follow the concept of one legal issue - one paragraph, which should be clear and concise, consisting of clear and optimally understandable sentences, this cannot be established as a generally positive feature in all appellate circuits, and therefore, it cannot be established at the national level. This is owed to the fact that there is still the persisting practice of over-dimensioning individual units -paragraphs, which should elaborate upon different segments of the facts of the case or evidence related to facts. The established deficiencies in this respect demand a change of individual practices in certain circuits and gradual elimination of such a practice in order to raise the level of quality of prepared reasoning and to greatly facilitate navigating through the narrative provided in judgments.

Albeit in smaller numbers, yet it has been established that some of the judgments at the national level lack detailed reasoning, as well as arguments about the (ir)relevance of evidence, by applying an induvial approach to each piece of evidence. To a certain extent this diminishes the level of quality of court decisions. There has been lack established of detailed reasoning about the question why some of the evidence is not supported by arguments, or why there is no reasoning as to why some evidence has not been taken into consideration as relevant evidence. This is a deviation from principles under which the court has the duty to conscientiously evaluate all evidence individually and in the context of all evidence, and then based on such evidence the court can make a conclusion whether certain facts will be considered as a proven fact or not and whether the judgment will be based on such established evidence. In addition, this is linked to the practice established in some of the judgments according to which the entire content of

statements of witnesses taken in minutes in the course of the procedure is replicated in the judgment, as well as the practice of making groups of evidence which are analysed in their entirety and not individually. These situations emphasize the need for consistent respect for provisions of procedural laws, according to which the court shall pay due attention to each individual piece of evidence and shall consider it not only individually, but also as part of the overall body of evidence, and the court is to provide appropriate reasoning about the evidentiary value of evidence and the relevance for the case at hand. In the context of the veracity and lawfulness of a judgment, it is exceptionally important that the judgment covers all submitted and presented evidence, and that there is a relevant reasoning in this respect.

The reasoning section of court decisions also covers the evidentiary procedure, i.e., the opposing arguments of the party that has lost the case. Furthermore, this is an aspect in respect of which, as seen in judgments in most of the appellate circuits, it is necessary to undertake measures to improve the situation. The established deficiency consists of lack of substantive reasoning for not taking into consideration the opposing arguments. In such situations, it is necessary to pay the same attention to arguments of all and how they are supported with the substantive law, regardless of the fact which party to the proceedings has tabled the arguments, whether this is the prosecution or the defence.

One of the essential problems noticed while conducing this research is the lack of the practice of providing appropriate or in some cases any explanation of the legal norms related to each issue of contention. In addition, there is the problematic fact that courts rarely pay attention to the detailed elaboration of the crime, its characteristics and predicate offence, as well as what is protected. A significant number of such judgments only make reference to the article of the relevant law stating the crime in question, and there is brief text making the link with the actions of the person indicted, which constitute perpetration of the predicate offence. The level of quality of judgments would indeed be raised if there were references made to the domestic case-law or to the case-law of the European Court of Human Rights and this has been noted in only one of all 62 analysed judgments. Accordingly, it would be of essential importance to reach a solid degree of harmonization in the work of individual judges, who provide detailed and reasoned arguments in respect of procedural and substantive norms, in support of or in dismissing the thesis of the prosecution. In addition, complete and appropriate arguments in respect of the crime, the issue of contention, as well as linking it to the unlawful actions, and enriching the decisions by introducing the element of theoretical aspects, could ultimately result in the judgment being utilized in the future and be referenced as an example of good practice. This would also help avoid generic type of sentences, which are changed only by inserting the personal data about the person indicated and about the crime, without having the required individualization, and such generic types of sentences can be found in abundance in the examined judgments.

The initial impression about court decisions at the national level is that they do not possess the satisfactory level of linguistic and grammatical correctness. In wording or in drafting the judgment the local dialect is used, characteristic for some parts of the country, and there have been deficiencies noted in the application of the rules of the Macedonian language orthography. Of course, this general impression does not apply to all appellate circuits, or to all judgments, with the Skopje appellate circuit being the exemption in this context, as well as the decisions of the second instance courts. However, a common feature of all judgments is the urgent need to pay proper attention to this issue and to thus minimize the risk of making spelling and technical errors in drafting the decisions.

RECOMMENDATIONS

The programmes of the Academy for Judges and Public Prosecutors, which relate to continual professional advancement of justice system professionals, need to focus more on, and should envisage mandatory trainings for correct and structured reasoning of court judgments. Taking into consideration the conclusions of the TAIEX peer review mission that "Programs for continuous training are generally theoretical and academic. There are not many real workshops for acquiring practical skills."[15] ne cannot escape the conclusions that practical skills of judges are not at the satisfactory level, especially in terms of appropriate structuring of decisions. Therefore, it is necessary that programmes include a component that would help practicing judges upgrade their knowledge, and that could help advance the quality of drafting court decisions.

The lack of staff at courts, especially judges in line with the job positions envisaged under documents for systematization of jobs at the level of first instance courts inevitably leads to a situation in which appointed judges face the challenge of managing to reach the envisaged quota of completed cases. The disproportional caseload vis-à-vis the active number of judges or the number of practicing judges results in diminished quality of decisions, especially if one takes into consideration the period within which it is expected that a case is completed, and then the ensuing decision which is to be based on all set forth criteria and principles with respect to the reasoning, the expected high level in the application and argumentation with respect to the substantive law, then the relevant support with the theoretical legal considerations, and finally the expected application of the domestic case-law and the case-law of the ECtHR. In light of the above stated it is necessary that following a relevant assessment of the lack of human resources, or more precisely judges, the Judicial Council of the Republic of North Macedonia implement a process of appointment of judges in order to be able to facilitate to a certain degree indirectly the quality of work of judges, including the technical aspects of drafting court judgments.

In the course of consultative processes of their collegiate bodies, first instance courts in the country need to dedicate more attention to consideration of potential problems with respect to the quality of court decisions and establish a uniform practice of work when it comes to this technical aspect of their work and thus advance the quality of drafting court judgments.

In the course of the consultative meeting held with representatives of courts of all instances, there were recommendations and conclusions made with respect to the advancement of the quality of court judgments, and one of the issues necessarily to be dealt with in this respect is related to the need of raising the quality of court judgments in all appellate circuits in the country. In addition, there was focus placed on the need to carefully follow the envisaged standards regarding the structure of decisions, while minimizing the possibilities for impacting the creativity of judges, other issues of impor-

15 TAIEX Peer Review on Judicial Training for Judges and Prosecutors in the former Yugoslav Republic of Macedonia, Mission timeframe: from 23/04/2018 to 26/04/2018, Authors of the report: Judge Lennart Johansson and Judge Dragomir Yordanov.

tance in this regard being proper arguments and relevance of evidence and referencing the domestic and the international case-law. At the said meeting, special attention was paid to the obligation of judges not to deviate from the necessary objective identity of the judgment and of the indictment. Hence, if the too long description of the crimes and circumstances in indictments is followed this will inevitably lead to lack of conciseness of the judgment. Therefore, it was concluded that it is necessary to improve and advance the drafting of the introductory parts of indictments considering that this is the only in which courts could raise the quality of their own decisions.

In light of the above stated it was proposed to draft guidelines for drafting judgments, which would offer advice about the structure of the judgments (enacting clause, reasoning, focus on required elements, including application of case-law), especially taking into consideration different types of judgments that are adopted by courts – judgments following admission of guilt, convicting judgments, exonerating, or dismissing judgments. In addition, when it comes to convicting judgments, which are envisaged to prescribe some type of sanction, there should be clear criteria established with respect to the determination of the punishment based on submitted evidence and meting out the sentence, in which respect risk assessment reports would be taken into consideration, as well as the final assessment of the probation service.

With a view to raising the level of quality of court decisions, there was a recommendation drafted that there should be judges-mentors designated. These would be experienced judges, having long year service in the judiciary and presumably vast knowledge, and who would have the exclusive mandate to oversee and mentor younger colleagues. Judges-mentors would continually transfer their knowledge and experience and would serve as a control mechanism for the quality of work of younger judges.

The role of the Academy for Judges and Public Prosecutors (AJPP) was emphasized as very important in terms of improving the quality of judgments, considering that the Academy delivers initial and continual trainings. It was underscored that it is necessary to change the approach to and the manner of delivering trainings since the present modus operandi is obsolete and burdened with theory, as different from the practice future judges and public prosecutors need. The change in the approach should cover high percentage (80-90%) of the curriculum and the focus should be on practical trainings, moot courts that would be continually organized and drafting court judgments in specific cases. The trainings should be delivered by experienced trainers, that would have the required teaching skills so that they could successfully transfer their knowledge, as well as by judges/prosecutors, and legal professionals, these constituting the driving force in the drafting of decisions.

There was also a recommendation for the Ministry of Justice which is the in-line ministry and has a special role in terms of allocating sufficient funds for employment, not only of judges and prosecutors, but also of legal professionals, and it is of course of great impor-

tance for the appropriate provision of sufficient human resources in the justice system. Thus, in the last years there has been inflow of candidates for judges and public prosecutors at the AJPP, who in the foreseeable future would help fill in the vacant places for these two categories of professionals and proportionate to this the outflow of administrative staff and legal professionals would be compensated for with professionals that would continue working in these two institutions. Therefore, it is of special importance to plan the required number of professional staff carefully and appropriately for the justice system, as well as the allocation of proper funds from the budget for this purpose.

UNIFORMITY OF COURT DECISIONS - CASE STUDY

The Macedonian justice system envisages that the Supreme Court of the Republic of North Macedonia is the highest court in the country, providing uniformity in the implementation of laws by courts. In pursuance with the mandate and role that the highest-ranking court in the country has, it can be concluded that this Court has the permanent duty of advancing the case-law, or more specifically of ensuring harmonious application of laws by courts.

The Supreme Court ensures uniformity in the application of laws by adopting, i.e., issuing general positions, principal legal opinions on certain legal issues, which are then binding for the chambers of the Supreme Court of the Republic of North Macedonia or have an impact on or are binding for the lower ranking courts in the country with a view to advancing the case-law, i.e., the uniformed application of laws. By issuing principal legal opinions, adopted at its general sessions, as the highest court in the country, the Supreme Court makes its contribution to resolving important legal issues in connection with which this Court not only elaborates upon the legal provisions in question, but it also considers and elaborates upon the spirit of the law in the specific context, the principle, as well as the values that these provisions protect in the interest of protecting human rights, the equality of citizens before the law and the legal security of the legal order.

This Court has a special department following the case-law, the main goal of which is to harmonize and follow the case-law in the country with a view to ensuring uniformity in the application of laws and ensuring equality of citizens and their equality before the law, which is yet another "filter" in checking the harmonization of the case-law.

The Supreme Court in the country has evidently great importance and role in ensuring consistent case-law, and thus in protecting human rights and freedoms, then ensuring equality before the law, as well as legal security. However, there is also the fact that not all legal issues are or could be the subject of harmonization by the Supreme Court of the Republic of North Macedonia, and there are initiatives for harmonization in specific areas. This is exactly the reason why for the needs of the second part of this analysis, when evaluating the uniformity, a different approach was applied, i.e., the case study method was applied. Namely, in the criminal law area, the Supreme Court covers issues, which according to the guidelines set forth under the methodology applied to prepare this analysis would not result in a large representative sample that would reflect the application of a uniformed practice throughout the courts, the judgments of which were analysed. Therefore, a different aspect had to be introduced in the analysis, under which the harmonization or uniformity of court decisions was evaluated and analysed in line with an overarching issue for which there was a sufficient number of decisions adopted by different courts, first instance and second instance courts, and this is the issue or rather the principle of *Non bis in idem*.

INTRODUCTORY REMARKS

The *Non bis in idem* principle is a general principle in criminal law and is part of many legal systems, and in some of them it has been codified at the level of a constitutional category. Furthermore, this principle has been established as an individual right under international human rights protection mechanisms.

This principle consists of two components which reflect its essence: *Nemo debet bis vexari pro una et eadem causa*- No-one shall be tried or punished twice in regard to the same event; and *Nemo debet bis puniri pro uno delicto*- No shall be punished twice for the same offense. In some countries, this principle is limited exclusively to the possibility for double jeopardy, i.e., protection against double jeopardy. There are various explanations for the application of this principle. The prohibition ensuing from this principle protects citizens against the unlimited right of the state to punish them *(ius puniendi)* and ensures at the same time respect for the rule that each adjudicated case is regarded as the truth *(res judicata pro veritata habetur)*, which provides for the legitimacy of the legal system in a country.[16] Therefore, the most important features and reasons for the principle, as applied in different countries, are that that this principle implies protection of fundamental rights and freedoms, protection of individuals against abuse by the state, it ensures justice, fairness, proportionality, legal security, procedural efficiency and respect for *res judicata*.

In the Republic of North Macedonia, the principle of *Non bis in idem* has been incorporated as a constitutional principle and is set forth under Article 14, paragraph 2 of the Constitution, which stipulates that "No person may be tried in a court of law for an offence for which he/she has already been tried and for which a legally valid court verdict has already been brought." The further protection and application of this principle is set forth under substantive and procedural laws in the criminal law area. Namely, Article 7 of the Law on Criminal Procedure envisages prohibition of being tried or punished twice for the same matter: "No person may be tried or punished again for a crime for which the person has already been tried and for which a legally valid court decision has been already adopted.", while in Article 101, paragraph 1. a 3 of the Law on Misdemeanours the legislator has envisaged that "The misdemeanour trial court shall issue a decision staying the procedure in case: a criminal procedure has been instituted for the same offence until the completion of the criminal procedure" or it shall dismiss the misdemeanour charges against the person in case the person has already been punished for a crime with identical features.

In addition to these domestic law provisions one should consider international law provisions, such as those envisaged in Article 4 of Protocol No. 7 to the ECHR, according to which "No one shall be liable to be tried or punished again in criminal proceedings

16 John A. E. Vervaele, The transnational Non bis in idem principle in the EU Mutual recognition and equivalent protection of human rights, Utreht Law Review.

under the jurisdiction of the same State for an offence for which he has already been finally acquitted or convicted in accordance with the law and penal procedure of that State (...)" In order that this principle produce legal effects it is necessary that there is a court decision under which the person is discharged or convicted for the same legal matter at the moment when again a criminal procedure is instituted against the person or a criminal sanction is meted out.[17]

In the legal system of North Macedonia punishable offences are delineated and divided into two categories: crimes and minor offences or misdemeanours. Crimes are perceived as more serious and are sanctioned under criminal law, while misdemeanours are identified in theory as less grievous or less dangerous offences and are regulated under misdemeanour law. A specific feature for these seemingly identical categories is the fact that in addition to having identical concepts and structure in respect of some of them there is evident overlapping of the predicate offences of certain crimes and misdemeanours.

This is exactly the reason for the ECtHR to make such a difference between the two types of offences and in the application of this principle when it comes to these two categories of punishable offences. Namely, in the case of Zolotukhin v. Russia[18] the Grand Chamber of the ECtHR set up the basis for this difference, or for establishing the identity of the offence. In this case, the starting point is the "material identity" of the offence, which implies the prohibition for a person to be prosecuted or sanctioned for an offence based on the same facts and circumstances as the offence for which the person has already been tried or punished. Another case in this context is the case of Maresti v. Croatia[19], in which the person was initially convicted of a minor offence, and then for a crime for the same event (physical attack against a person) and consequently the Court established that it was a matter of the same offence *(idem)* and that the criminal sanction would be repetition of the punishment *(bis)*.

One of the leading cases in the case-law of the ECtHR, under which individual criteria have been established for determining whether there is a violation of the *Non bis in idem* principle is the case of Engel and others v. the Netherlands[20] in which it has been established that in cases in which the two proceedings instituted against a person are criminal law proceedings, according to the applicable law of the country, and additional criteria are applied such as the "nature" of the offence and the level of severity of the meted out sanction, then there is violation of this principle. Based on these additional criteria, the case-law of the ECtHR has numerous cases in which in respect of administrative, minor offense proceedings and other types of proceedings it has been established that the principle of *Non bis in idem* applies, when there is a collision between such proceedings and the criminal proceedings.

17 Проф. д-р Гордан Калајџиев и др. Коментар на Законот за кривична постапка – Скопје, 2018. (Professor Gordan Kalajdziev,Ph.D. et al., Commentary to the Law on Criminal Procedure- Skopje, 2018)
18 Case Zolotukhin v. Russia, application No. 14939/03.
19 Case Maresti v. Croatia, application No. 55759/07.
20 Case Engel and others v. the Netherlands, application Nos. 5100/71; 5101/71; 5102/71; 5354/72; 5370/72.

In light of the partial lack of uniformity in the work of first instance courts in the Republic of North Macedonia and especially when it is a matter of principles envisaged in domestic law and in international law, this study will analyse the application of the *Non bis in idem* principle by considering ten court judgments, one of which is a reference judgment, in terms of the uniformity principle. More precisely, the analysis of the cases will attempt to establish how first instance and appellate courts in the Republic of North Macedonia deal with this principle, whether there are differences in the case-law and to what these differences are owed.

FACTS OF CASES

1.1. Under a judgment III K. No. 1746/1 dated 5 September 2018 of the Skopje First Instance Criminal Court (at that time Skopje I First Instance Court, Skopje), the indictment against the indicted person has been dismissed in accordance with Article 402, paragraph 1, sub-paragraph 5 of the Law on Criminal Procedure, referring to Article 4 of Protocol No. 7 to the European Convention for the Protection of Human Rights and Fundamental Freedoms, considering the fact that the indicted person has already been convicted under a legally valid judgment for the same offence.

Namely, in this case the damaged party instituted a private criminal lawsuit against the indicted person, blaming the person that without any reason or cause the indicted person approached the damaged party behind his back and started choking him on the neck, then started hitting him with fists on his head, after which due to the strong blows the damaged party fell on the ground and hit the concrete with the right side of his body, while the person indicted continued hitting him with his right leg on the body, after which the damaged party wanting to escape started going to the exit of the playground; however, the indicted person caught up with him and hit him with his right leg on his side, at the same time shouting offensive words and threats against his life, incurring thus bodily injuries such as contusions on his head, neck and back, blows to his forearms, scratches on the skin on his back and right forearm and strong stress reaction Dg.Contusio capitis, coll et dorsi, contusion antebraclii, bill.Excoriafionescutis dorsi et antebrodivi dex, F 43 acute stress reaction".[21] The above described actions by the person indicted are considered to amount to perpetration of the crime of "Bodily injury", under Article 130, paragraph 1 of the Criminal Code.

The reason for dismissal of the indictment in this specific case is the fact that there was already a minor offense – misdemeanour procedure completed No. 11 PRK J 1056/17J, and a legally valid judgment was already adopted on 10 April 2018, under which the person charged was found guilty of a misdemeanour against the public peace and order,

21 Judgment III K. no. 1746/17, dated 5 September 2008 of the Skopje First Instance Criminal Court.

under Article 12, paragraph 1 of the Law on Misdemeanours against the Public Peace and Order and the person charged was already punished with a misdemeanour sanction – a fine in the amount of EUR 400 in countervalue of MKD 24,400.

2.Under judgment V K. No. 1828/15 dated 10 July 2020 of the Skopje First Instance Criminal Court, the indictment against the indicted person was dismissed in pursuance with Article 402, paragraph 1, subparagraph 5 of the Law on Criminal Procedure, because there was already a judgment adopted on the merits in the case, under which all charges against the person were dismissed.

Namely, following a private criminal lawsuit, the person indicted was accused that "following a brief altercation about parking a passenger motor vehicle, owned by the private plaintiff, the person charged physically attacked the plaintiff by hitting the plaintiff on the head three times with his fist, incurring thus bodily injury such as contusions on the head and also attacked the second private plaintiff, who tried to break off the fight, hitting the second private plaintiff with his fist in the head and on the left side of his face incurring thus bodily injury such as swelling on the left side of the face."[22] The above-described actions of the person indicted amount to the crime of "Bodily injury" under Article 130, paragraph 1 of the Criminal Code.

The reason for the dismissal of the indictment in this specific case is the judgment adopted by the Skopje First Instance Criminal Court 017 PRK-J-1292/15, dated 3 December 2019, under which the person indicted was acquitted of any responsibility because in the course of the misdemeanour procedure legislative amendments were adopted regarding the periods for the statute of limitations principle for institution of misdemeanour proceedings. Hence, as regards the misdemeanour that the indicted person was charged with the period of statute of limitations started operating already.

3. Under judgment KZ-270/19 dated 9 April 2019 of the Skopje Appellate Court in pursuance with Article 402, subparagraph 5 of the Law on Criminal Procedure the appeal lodged by the Veles Public Prosecutor's Office against the judgment adopted by the Veles First Instance Court, which dismissed the indictment against the crime of "Bodily injury" under Article 130, paragraph 2, referring to paragraph 1 of the Criminal Code, is dismissed because the person indicted was already convicted under a legally valid judgment adopted in a misdemeanour procedure for the same offence.

4. Under a ruling KZ-291/20 dated 22 December 2020 of the Shtip Appellate Court, the appeal lodged by the person indicted and in ex officio capacity, the judgment adopted by the Sveti Nikole First Instance Court No. K 11/20, dated 28 October 2020 was vacated and the case was returned to the first instance court for a retrial. The Court adopted such a ruling because it had established that "the person indicted had been punished both for a misdemeanour and for a crime of

22 Judgment V K. No. 1828/15 dated 10 July 2020 of the Skopje First Instance Criminal Court.

"Bodily injury", under Article 130, paragraph 1 of the Criminal Code, and thus it was made possible that the indicted person is found responsible two times, once he was held under misdemeanour responsibility and the second time he was held under criminal responsibility, but in the context of one, i.e. the same procedure, i.e. for the same actions, which were perpetrated at the same time, on the same place, against the same damaged party, and the elements of the predicate misdemeanour offence are the same as the elements of the predicate offence of the crime the person was charged with and vice versa."[23]

5.Under a judgment KZ -74/19 dated 27 February 2019 of the Gostivar Appellate Court in pursuance with Article 402, paragraph 1, subparagraph 5 of the Law on Criminal Procedure, the appeal lodged by the private applicant against the judgment of the Gostivar First Instance Court, under which the indictment for the crime "Bodily injury" under Article 130, paragraph 1 of the Criminal Code against the indicted person was dismissed, is rejected. The Court so decided because for the same event, that occurred on the same day there was already a legally valid judgment adopted by the Tetovo First Instance Court PRK-J-64/17, dated 30 May 2017, which became legally valid on 20 July 2017, for a misdemeanour punishable under Article 12, paragraph 1 of the Law on Misdemeanours against the Public Peace and Order. In light of this circumstance, then the fact that a legally valid judgment was adopted in a misdemeanour procedure for the same event, with the same facts, against the same indicted person, the Court dismissed the indictment upon a private criminal lawsuit, because it was established beyond doubt that the person indicted for the same event was discharged of any responsibility considering that the misdemeanour procedure instituted against the person indicted has a criminal law nature, within the meaning of Article 4, of Protocol No. 7 of the ECHR and the case-law of the ECtHR.

6. Under a judgment K-519/17 dated 9 November 2018 of the Bitola First Instance Court, despite the fact that there was already a legally valid judgment adopted PRK-J No. 150/17, dated 20 January 2017, finding the person indicted guilty of disrupting the public peace and order by attacking two children and was ordered a misdemeanour sanction of a fine in the amount of EUR 600, the person indicted was found guilty and was ordered an alternative measure of a suspended prison sentence of five months, which will not be executed provided that the person indicted does not commit a new crime in a period of two years. He was found guilty because "without any cause or reason he physically attacked a child; the child was leaning against his bicycle and the person indicted placed his hands on the child's neck and started choking him, after which he pushed the child and the child fell on the bicycle directly hitting his right hip, and after such actions of the person indicted, the child was afflicted with bodily injuries of contusions in the neck area and contusions in the area of the right hip. The so described actions

23 Judgment Kz-291/20 dated 22 December 2020 of the Shtip Appellate Court.

undertaken by the person indicted constitute the crime of "Bodily injury", under Article 130, paragraph 1 of the Criminal Code".[24]

The reasoning the court provides for this decision is the following: "On the other hand, the injustice under this provision, Article 12, paragraph 1 of the Law on Misdemeanours Against the Public Peace and Order does not eliminate the injustice under Article 130, paragraph 1 of the Criminal Code. This provision relates to an action which constitutes a crime of bodily injury, meaning a greater injustice compared to the misdemeanour as a punishable act and is perpetrated by a person who shall incur bodily injuries or damage the health of another person. This crime shall be established as perpetrated if the actions of the perpetrator constitute incurred bodily injury or the health of the victim has been hurt, regardless of the place where the act has been perpetrated, whether this is in a public place or not, for example at the home, at another facility... The subject of protection of this incrimination is the physical integrity of the victim, which is injured or damaged with the actions of the perpetrator. Based on such reasons it cannot be considered that because the indicted person was convicted of a misdemeanour under Article 12, paragraph 1 of the Law on Misdemeanours Against the Public Peace and Order, the indicted person cannot be also tried for the crime of "Bodily injury" under Article 130, paragraph 1 of the Criminal Code."[25]

7. Under a judgment No. K 237/16, dated 19 September 2016 of the Shtip First Instance Court, adopted upon the admission of guilt by the person indicted, the court found the person guilty and punished him with a fine of 80 (eighty) daily fines in the amount of EUR 320 in counter value of MKD 19,680.00, which fine also includes the ordered fine in the amount EUR 300 in counter value of MKD 18,450.00, under judgment of this Court No. PRK-J 21/16, dated 3 May 2016, so the indicted person is to pay the remaining amount of MKD 1,230.00. The indicted person is punished because after a brief verbal altercation, he physically attacked the private plaintiff by hutting the plaintiff with a fist in the eye and hit him three times on the body, incurring thus a bodily injury - bruise on the right eyelid, redness on the right eye and bleeding in the right eye. The Court found that these actions of the person indicted constitute the crime of "Bodily injury" under Article 130, paragraph 1 of the Criminal Code."[26]

In the specific case the Court accepted the admission of guilt by the indicted person despite the fact that the court should have paid due attention to the principle of res judicata, in this case the already adopted judgment in a misdemeanour procedure, which is part of the evidence material in the criminal judgment. In addition, the person indicted in this case did not have a defence counsel appointed, who could have provided legal advice, and ultimately protect the rights of the person indicted; this being something that the court is presumed to do in line with the court's role in the state system, so that the person could be fully informed about the rights he has in the criminal procedure and

24 Judgment K-519/17, dated 9 November 2018 of the Bitola First Instance Court.
25 Ibid.
26 Judgment K. No. 237/16, dated 19 September 2016 of the Shtip First Instance Court.

what does admission of guilt mean in this specific case. Therefore, it is not clear why, having taken into consideration the previous misdemeanour procedure, including the convicting judgment against the person indicted, the court proceeded with this stage in the proceedings and facilitated the admission of guilt, if it is taken into consideration that this type of violation is part of violations of the substantive law and makes the grounds for an appeal, and grounds for dismissing the indictment.

> 8.Under judgment KZ-149/19 dated 19 April 2019 of the Shtip Appellate Court, the appeals of the private plaintiff and of the person indicted were dismissed as unfounded, while the first instance judgment of the Kochani First Instance Court No. K 289/18, dated 19 February 2019, under which the person indicted was found guilty of the crime of "Bodily injury", under Article 130, paragraph 1 of the Criminal Code, ordering the indicted person to pay 15 daily fines, setting the value of the daily fine to EU 10, and ordering the indicted person to pay a fine of 15 daily fines in the amount of EUR 150 in counter value of 9,225.00 MKD, is confirmed.

The second instance court provided the following reasoning for its decision: "This Court dismissed such appeal claims as fully unfounded due to the following reasons: Namely, in a misdemeanour procedure, which was pursued before the Misdemeanour Commission, Misdemeanour Department K., Ministry of the Interior K. the person indicted was found guilty of the misdemeanour under Article 11 , paragraph 1 of the Law on Misdemeanours against the Public Peace and Order, in which respect the object of protection is the public peace and order of citizens in public areas, while in the concerned criminal procedure the person indicted was found guilty of the crime of "Bodily injury", under Article 130, paragraph 1 of the Criminal Code, where the object of protection is the life and body of citizens, and in which context, by undertaking actions precisely described in the enacting clause of the first instance judgment incurred bodily injuries against the plaintiff. In this specific case it cannot be considered that it is a matter of being tried two times, or being convicted two times for the same offense, as claimed by the person indicted, since taking into consideration the stated facts it is a matter of two separate procedures, one court procedure and the other procedure before a misdemeanour authority, the Commission for Misdemeanours at the Ministry of the Interior, which has a different object of protection and therefore the decision of the Commission for Misdemeanours does not constitute a legally valid verdict within the meaning of Article 7 of the Law on Criminal Procedure, which is not a court procedure, and is to protect the public peace and order of citizens in public places, while in the criminal procedure instituted upon private criminal lawsuit by the plaintiff, the physical integrity of the citizen is protected."[27]

27 Judgment KZ-149/19, dated 19 April 2019 of the Shtip Appellate Court.

9. Under a judgment KZ-148/19 dated 23 April 2019 of the Shtip Appellate Court, the appeals lodged by the persons indicted are dismissed as unfounded, and the first instance judgment of the Kochani First Instance Court finding the persons indicted for the crime of "Bodily injury" under Article 130, paragraph 1, referring to Article 22 of the Criminal Code is confirmed. Under the first instance judgment, despite the instituted misdemeanour procedure which ended with a convicting judgment, ordering the persons indicted to pay a misdemeanour fine in the amount of EUR 200 for an offence under Article 11, paragraph 1 of the Law on Misdemeanours against the Public Peace and Order, and the conclusion of the court that the concerned actions of the offence overlap with the actions stated in the private criminal lawsuit, the persons indicted were sentenced to an alternative measure of a suspended prison sentence of two months, and it was furthermore established that the ordered prison sentence shall not be executed provided that the persons indicted do not commit a new crime within one year as of the date when the judgment has become legally valid.

The reasoning of the second instance court is that "in the specific case a decision was adopted- a decision by the Commission for Misdemeanours at the Ministry of the Interior and it is not a matter of a legally valid judgment within the meaning of Article 7 of the Law on Criminal Procedure and within the meaning of Article 4 of Protocol No. 7 of the above referred to Convention for the Protection of Human Rights and Fundamental Freedoms. Such a decision was adopted by a misdemeanour body- misdemeanour procedure- Commission for Misdemeanours. Accordingly, the legal provisions of Article 7 of the Law on Criminal Procedure and of Article 4 of the Protocol No. 7 of the above referred to European Convention cannot be applied."[28]

10. Under judgment KZ-295/19 dated 17 September 2019 of the Shtip Appellate Court, the appeal lodged by the indicted person is dismissed as unfounded, while the first instance judgment of the Shtip First Instance Court under which the indicted person was found guilty of the crime "Bodily injury", under Article 130, paragraph 1 of the Criminal Code and was punished with a fine of 80 daily fines in the amount of EUR 240 in counter value of MKD 14,760.00 , despite the adopted judgment under which the indicted person was found guilty of a misdemeanour and was accordingly punished, is confirmed.

The court adopted the judgment with the following reasoning: "This Court cannot accept the submitted appeal claim that there is a violation of Article 7 of the Law on Criminal Procedure, because with respect to the misdemeanour under Article 12, paragraph 1 of the Law on Misdemeanours against the Public Peace and Order, and the crime under Article 130, paragraph 1 of the Criminal Code it is a matter of unlawful offence of different degree of objective incrimination (unlawful offence regulated as a misdemeanour, i.e., unlawful offence regulated as a crime), different manner of perpetration (physical attack in a public place compared to the misdemeanour i.e., bodily injury or damaging the health

28 Judgment KZ-148/19, dated 23 April 2019 of the Shtip Appellate Court.

due to the crime under Article 130, paragraph 1 of the Criminal Code) and different object of protection. The legally defined predicate offence of the misdemeanour under Article 12, paragraph 1 of the Law on Misdemeanours against the Public Peace and Order, protects the public peace and order, while the legally defined predicate offence under Article 130, paragraph 1 of the Criminal Code, which belongs to the group of crimes against the life and the body, has as the object of protection the physical integrity of the person. Therefore, the appeal claims for a violation of Article 7 of the Law on Criminal Procedure are unfounded because it is a matter of different unlawful offences, with a different object of protection and it is not a matter of the same crime as set forth under Article 7 of the Law on Criminal Procedure."[29]

THE LEGAL ISSUE

In the specific case, the object of assessment by courts should be whether private lawsuits instituted by the damaged parties are related to the same conduct of the person indicted, regardless of the legal qualification of this conduct, i.e., whether there is idem factum. It should be also established whether in these cases there should be double punishment or sanctioning of the person indicted for the same facts, for which two proceedings are pursued, considering the fact that the person indicted has been already convicted and punished under a legally valid judgment, i.e., whether in the specific case there are grounds to apply the Non bis in idem principle, considering the existence of the legal principle of res judicata.

Courts should answer this legal issue by elaborating and referring to provisions both of the domestic and of international law. Namely, according to Article 2, paragraph 1 of the Law on Courts, courts adjudicate and base their decisions on the Constitution, laws and international treaties ratified in accordance with the Constitution, while their protective role in the application of the law is defined in paragraph 2 of the same Article, which envisages that in the application of the law, courts shall protect human rights and freedoms.

In this context, one can add sets of provisions, both constitutional and legislative, which establish that "No person may be tried in a court of law for an offence for which he/she has already been tried and for which a legally valid court verdict has already been brought.", Article 14, paragraph 2 of the Constitution of the Republic of North Macedonia and the prohibition of double jeopardy or double punishment, according to which no person may be tried or punished for an offence for which the person has already been tried and for which a legally valid court judgment has already been adopted, Article 7 of the Law on Criminal Procedure. Therefore, it is envisaged that the court shall adopt a judgment dismissing the indictment in case the indicted person has already been convicted under

29 Judgment KZ-295/19, dated 17 September 2019 of the Shtip Appellate Court.

a legally valid judgment for the same offence, or in case for the same offence the person indicted has been discharged of the indictment or the procedure against the person has been legally stayed under a court decision – Article 402, paragraph 1, subparagraph 5 of the Law on Criminal Procedure.

Furthermore, by referring to the substantive law according to which such actions have been defined as punishable acts, the court is expected to consider Article 130, paragraph 1 of the Criminal Code, which can be found in Chapter XIV, entitled "Crimes against the life and the body", and the provisions of which stipulate that the crime under these provisions shall be considered as perpetrated by "A person who injures bodily another, or damages his health.." envisaging further that such a person shall be punished with a fine or a prison sentence of up to three years. However, at the same time there should be an explanation provided for Article 12, paragraph 1 of the Law on Misdemeanours against the Public Peace and Order, which stipulates that the misdemeanour under those provisions shall be considered perpetrated by "A person who shall attack another person in a public place and shall be fined with EUR 600 to 800 in denar counter value." It is very important to provide the elaboration for this Article as well in order to make a comparison and see that the misdemeanour of the above referred article of the Law on Misdemeanours against the Public Peace and Order has been envisaged primarily for guaranteeing and protecting the human dignity and safety and the public peace and order. However, if one takes into consideration the description of the unlawful act according to which the physical attack in a public area is punished, one can see that the parallel protection of the physical integrity of the person is not excluded and these values regularly fall within the sphere of protection envisaged under criminal law, such as the incrimination at hand under Article 130, paragraph 1 of the Criminal Code, which protects not only the private, but also and primarily the public interest. The fact that the misdemeanour is of lesser seriousness by its nature does not exclude the possibility of misdemeanours being qualified as punishable acts within the meaning of the Convention, considering that the purpose of the punishment both in criminal and in misdemeanour proceedings is punishment for perpetration of an offence and prevention of repeating the punishable act.

In light of the fact that according to Article 118 of the Constitution of the Republic of North Macedonia, international treaties ratified in accordance with the Constitution shall be an integral part of the internal legal order and may not be amended by law, which means that they produce greater legal force than laws and are directly applicable, and considering that the Republic of North Macedonia is a party to the European Convention for the Protection of Human Rights and Fundamental Freedoms, and to the Convention Protocols, in this specific case Article 4 of Protocol No. 7 to the European Convention for the Protection of Human Rights and Finnemanite Freedoms - Right not to be tried or punished twice, which envisages that "No one shall be liable to be tried or punished again in criminal proceedings under the jurisdiction of the same State for an offence for which he has already been finally acquitted or convicted in accordance with the law and penal procedure of that State" can evidently be directly applied.

In these and in similar cases, in respect of the actions undertaken by courts, and led by the "Engel criteria", established under the case of Engel and Others v. the Netherlands[30], it is necessary to consider the question: Have the two proceedings been criminal by their nature? The Non bis in idem principle can be applied in cases in which the two proceedings that have been instituted have been criminal proceedings according to the applicable law of the concerned country. However, additional criteria in this context are the "nature" or the character of the offence, then the gravity of the sentence to which the person charged could be subjected or the degree of severity of the ordered sanction. The case-law of the ECtHR recognizes many cases when even in administrative proceedings, misdemeanour proceedings and even in disciplinary proceedings the principle of Non bis in idem is applied, when such proceedings are in collision with the criminal proceedings.

Furthermore, it is important to establish whether it is matter of the same offence in the two proceedings instituted (Idem), as well as whether there have been two proceedings for the same offence (Bis). In the case of Sergey Zolotukhin v. Russia[31], the ECtHR has established that the prohibition for a second trial should be interpreted as a prohibition of prosecution or trial of the individual for the second "offence", based on facts that are essentially the same as in the first "offence", for which the person has already been convicted under a legally valid judgment. As regards the double institution of proceedings, it is necessary to establish whether such circumstances exist based on the legal status of the initial proceedings (judgment), or more precisely whether the judgment has become legally valid and final.

In the context of the application of the Non bis in idem principle and in terms of the legal status of the first judgment, it is especially important to establish whether the guarantee stipulated under Article 4, of Protocol No. 7 to the Convention becomes relevant and applicable at the start of the new criminal prosecution, when the previous exonerating or convicting judgment becomes by its legal force res judicata then it cannot be revoked and there are no further legal remedies available with respect to that judgment, regardless of the fact that the initial judgment is a misdemeanour judgment, and the later procedure instituted against the person is criminal, if it is a matter of the same criminal event and the same facts with which the person is charged are at play.

30 Case Engel and Others v. the Netherlands, application Nos. 5100/71; 5101/71; 5102/71; 5354/72; 5370/72.
31 Case Sergey Zolotukhin v. Russia [GC], application No. 14939/03.

COURT PROCEDURE - ARGUMENTS OF COURTS

BIn the first five considered cases, the courts have established or confirmed, depending on the stage of the procedure, that the facts are identical and the existence of idem factum, i.e., the courts have established that it is an indisputable fact that it is a matter of the same event that occurred at the same time and in the same place. More precisely, the perpetrator of the misdemeanour in the misdemeanour procedure is an indicted person in the criminal procedure, while the damaged person has identical capacity both in the misdemeanour and in the criminal procedure, while the location of the perpetrated acts corresponds, i.e., is the same in the first and in the second procedure. Courts have established that facts are identical also in terms of the consequences of the perpetrated act on the damaged persons, seen through the issue of object of protection and the duty for restitution, as a just compensation to the damaged party for the unlawful conduct of the perpetrator, which is also one of the goals of the legal protection that the damaged person enjoys. More specifically, the damaged party in one of the five cases in which the principle of Non bis in idem has been applied and in one of the two cases adjudicated by the first instance court, under the misdemeanour judgment the damaged party is referred to instituting a lawsuit for eventual damage claims, which evidently points to the fact that the damaged party has been given legal protection and has been given the possibility to acquire just compensation for the unlawful acts of the indicted person, which in terms of its goal is identical to the goal of the institution also of the criminal procedure. However, similarly in the second of these two first instance cases, regardless of the fact that the indictment against the person has been dismissed, the court deliberating in the criminal procedure, in line with Article 114 of the Law on Criminal Procedure, has referred the damaged party to exercise the right to damage claim, by instituting a lawsuit.

In the stage of assessing the actions of the indicted person in the misdemeanour and in the criminal proceedings, in the said five cases, courts have established that it is a matter of disruption of the public peace and order through the perpetration of the actions such as physical attack against the damaged person, which are also subject of a private criminal lawsuit, following which criminal proceedings have been instituted against incurred bodily injuries on the damaged party. The court has established that even with respect to acts such as physical attack there is identity and identical features, due to the several consequent actions undertaken by the person indicted, which are qualified as a physical attack. Thus, the court defines the physical attack in accordance with the legal description as the essential/constitutive element of the misdemeanour defined and sanctioned under Article 12 of the Law on Misdemeanours against the Public Peace and Order, and the same physical attack is subject of criminal proceedings and according to the medical certificate, which is part of the casefile, has been qualified as bodily injury. After this it has been concluded that it is a matter of inseparable unity

of facts in terms of the time, place, and manner in which the perpetration has occurred, directed towards the same object of protection – the physical integrity of citizens.

The court has also exerted due care to assess whether the established goal of the punishment in the misdemeanour and in the criminal proceedings are concurrent. Specifically, the indicted person will be sanctioned for the unlawful conduct of applying physical force against another person – the damaged party, by which the public peace and order have been disrupted, and the prescribed sanction – fine in the misdemeanour procedure against the perpetrator, is seen by the court as fulfilling the same goals of the punishment, both in terms of special prevention and in terms of general prevention.

Based on examined facts and circumstances and based on theory and on the case-law, both domestic and of the ECtHR, in these five cases the court assessed that in the specific case the private criminal lawsuit has been instituted regarding the same facts, i.e., facts that are essentially the same as the facts for which the misdemeanour procedure has been instituted and completed, and in which a legally valid judgment has been adopted, under which the person indicted has been found guilty and sanctioned for his unlawful conduct, or has been discharged. After having established the existence (idem factum) of identity of facts between the misdemeanour judgment and the private criminal lawsuit, after which criminal procedure has been instituted, the court decided to dismiss the indictment, basing its decisions on the Non bis in idem principle, while taking into consideration that it is a matter of already adjudicated matter (res judicata). This is because for the same facts, i.e., facts which are essentially the same, the indicated person has been already convicted and punished or exonerated from the indictment under a legally valid enforceable judgment adopted in a misdemeanour procedure, which cannot be further disputed using regular legal remedies. In this context, one can also add the situation in which there is a decision, which legally and finally completes the misdemeanour or some other penal procedure because of a reason which permanently prevents its institution or continuation (for example statute of limitations). All these circumstances represent one of the conditions for the application of the legal principle of res judicata, considering that the assessment of the application of this principle depends on the fact whether a procedure has been completed with a legally valid judgment before any authority, which according to the law has the mandate to order punishments, and such a body does not necessarily have to be a court.

Taking into consideration that the misdemeanour under Article 12, paragraph 1 of the Law on Misdemeanours against the Public Peace and Order, for which the person indicted has been found guilty and sanctioned under legally valid judgment, has been stipulated primarily for guaranteeing and protecting the human dignity and the safety and the public peace and order, and additionally envisages sanctions for physical attack in a public place, by which it does not exclude the parallel protection of the physical integrity of persons, it undoubtedly refers to and covers the incrimination set forth under Article 130, paragraph 1 of the Criminal Code, for which the perpetrator has been indicted in

a criminal procedure. In addition, in the specific case, the fact that the misdemeanour is of lesser gravity by its nature per se does not exclude its qualification as a punishable act within the meaning of the Convention, taking into consideration that certain legal systems incorporate some misdemeanours, which have criminal law elements, but are on the other hand too trivial to be covered by the criminal law and by the criminal procedure.[32]

In light if the above stated, rightfully so in the first five cases the court has established that the conduct of the person indicted, which led to lodging of a request for institution of a misdemeanour procedure and adoption of a legally valid misdemeanour judgment, under which the person charged was found guilty and punished is the same conduct described in the private criminal lawsuit, after which the later criminal procedure has been instituted. One can add to this the established situation in which the criminal procedure that has been instituted following a private criminal lawsuit against the person charged for the same event, in terms of time, place and manner of perpetration, i.e., for the same conduct of the perpetrator, in the same time period, in the same place, where the participants in the event are identical persons, who have identical capacity with the same consequences ensuing. Therefore, the court has dismissed the indictment against the person charged with the said crime.

As regards the second group of five cases, the first instance and appellate courts that worked on the cases have a completely different positions and reasoning about the applicability of this principle in criminal procedures, which have been preceded by completed misdemeanour procedures finalized with legally valid judgments.

Namely, courts in these five cases have clearly categorized punishable act, regardless of whether it is a matter of a misdemeanour or a crime, and they define them in accordance with the relevant laws. However, courts make difference in terms of the object of protection. The misdemeanour has been defined as an act of physical attack against a person, who is in a public place, in which respect the object of protection is the public peace and order in society, and in this respect, according to these judges it is not necessary that such attacks are linked with threatening the bodily health of the victims. On the contrary, the feature of the crime would be fulfilled also with an act which has not caused bodily injury or danger to the health of the victims and such act would have the features under Article 12, paragraph 1 of the Law on Misdemeanours against the Public Peace and Order. On the other hand, they establish that injustice under this provision, Article 12, paragraph 1 of the Law on Misdemeanours against the Public Peace and Order, does not eliminate the injustice under Article 130, paragraph 1 of the Criminal Code. This is because they consider that this provision relates to an act which is a crime of bodily injury, which according to them implies greater injustice compared to a misdemeanour as a punishable act and is perpetrated by a person who shall physically injure another person or who shall damage the health of another person.

32 Case Menesheva v Russia, application No. 59261/00, Case Ziliberg v Moldavia, application No. 61821/00

The court considers that this crime has been perpetrated if the acts of the perpetrator incur bodily injury or damage the health of the victims, regardless of where this has taken place, whether it is a public place or not, for example at the home, at another facility etc. In this specific case, the court considers that the object of protection of this incrimination in the physical integrity of the victims, which is damaged or threatened with the acts of the perpetrator.

In light of the above stated, the court considers that the approach according to which the person indicted would be "amnestied" from the criminal procedure, if the same person has been previously held accountable for the same matter in a misdemeanour procedure cannot be considered as appropriate. Courts add to this the "narrow" interpretation of the provisions set forth under the Convention, i.e., in Article 4 of Protocol No. 7 to the Convention, and according to such "narrow" interpretation they consider that it is a matter of prohibition of double conviction in criminal procedures, and having in mind that according to them, it is a matter of persons convicted of a misdemeanour against the public peace and order with a legal valid judgment, in which case the conviction is a result of the fact that the perpetrators have physically attacked other persons in a public place, and it is not a matter of a criminal procedure in which the perpetrators are charged for incurred bodily injury, and therefore, in line with such a position of the court, the principle of Non bis in idem cannot be applied.

In the second case of this group of cases, despite the fact that the court has the duty of taking into consideration the misdemeanour judgment under which the person charged has been found guilty and has been fined, the court has accepted the admission of guilt by the person indicted. In this case, the court has not taken into consideration the principle of res judicata, or the Non bis in idem principle and has confirmed that after the inspection of the misdemeanour case in which it has been established that the private plaintiff has reported the critical event, after which further measures have been undertaken, which have resulted in a convicting judgment by the same court, and under which the person indicted has been found guilty of a misdemeanour under Article 12, paragraph 1 of the Law on Misdemeanours of the Public Peace and order and has been fined with a fine.

In the remaining three judgments of the appellate court, this court has fully agreed with the interpretation of first instance courts with respect to the application of this principle. Thus, the court has considered as unacceptable the interpretation of the defence counsel that there is a violation of Article 7 of the Law on Criminal Procedure, because according to the court, the misdemeanour under Article 12, paragraph 1 of the Law on Misdemeanours against the Public Peace and Order and the crime under Article 130, paragraph 1 of the Criminal Code are unlawful acts with different degree of objective incrimination, different manner of perpetration (physical attack in a public place- the misdemeanour or the bodily injury or threatening the health, the crime under Article 130, paragraph 1 of the Criminal Code) and that there is a different object of protection.

The court has assumed the position that the legally defined predicate offence of the misdemeanour under Article 12, paragraph 1 of the Law on Misdemeanours against the Public Peace and Order has as the object of protection the public peace and order, while the legally defined predicate offence for the crime under Article 130, subparagraph 1 of the Criminal Code, which belongs to the group of crimes against the life and body, has as the object of protection the physical integrity of citizens.

An additional argument that the Appellate Court purports is that it could not be a matter of double trial, i.e., double conviction for the same offense, because taking into consideration the facts of the case, it is a matter of two separate procedures, one court procedure, and the other procedure instituted with a misdemeanour authority, the Commission for Misdemeanours at the Ministry of the Interior, which has different object of protection. Accordingly, the conclusion is made that the decision of the Commission for Misdemeanours does not constitute a legally valid court decision, within the meaning of Article 7 of the Law on Criminal Procedure and therefore this principle cannot be found in this case or is not applicable to this case.

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CONCLUSION

If these decisions are seen through the prism of indicators set forth for analysis of the uniformity of court decisions, it can be concluded that in respect of all these ten cases relevant aspects of certain articles can be applied, or rather they refer to the same legal matter – there has been a previous misdemeanour procedure pursued under Article 12 of the Law on Misdemeanours against the Public Peace and Order and later there has been a criminal procedure under Article 130 of the Criminal Code, or in other words there are conditions for the application of the Non bis in idem principle.

In the context of the first set of five judgments in which this principle is applied, it can be concluded that courts refer to and apply the case-law of the ECtHR, while in only one of those five court decisions there has been a reference to and application of the domestic case-law of first instance courts and of the appellate court with respect to the same issue. All five of these judgments appropriately identify the applicability of relevant articles of laws, and of international legal documents, in this case the Protocol to the Convention. In judgments in which there is a reference to a leading case, i.e., the first case which sets the further applied practice, there is reference made to a case which is part of the case-law of the ECtHR, and it is indeed the relevant case for the specific context of these five judgments.

The analysis of these ten cases leads to the conclusion that there is no similar or identical sanction for the similar or for the same violation. After all, there is not even identical practice of all courts to be seen in these ten judgments. Something that additionally emphasizes the need to harmonize the work and practice of courts, in light of the principle at hand, is the fact that within the same court, in the same appellate circuit, one cannot find a completely identical practice of work. On the contrary, it is a matter of perhaps isolated cases of work by individual judges, especially when it comes to the Shtip appellate circuit, where it has been established that the second instance court has adopted different decisions for the same matter. In this specific appellate court, there has been one positive practice noted in the work of one of the chambers that has deliberated in an appeals procedure, but also three examples of a negative practice. Of course, it is a matter of a different composition of the chamber that has decided in the positive example, as opposed to the composition of the other chamber which has been the same in the remaining three negative examples, which have been taken into consideration in developing this case study.

The established situation illustrates the fact that courts have followed not the same, but different legal logic in deciding in the ten cases. Furthermore, according to part of the judges the facts of a specific case, along with the applied legal norms produce one type of legal effects for indicted persons, while for the other judges the produced legal effects are quite different. This greatly contributes to creating legal uncertainty in the legal system for all parties to a criminal procedure.

In the context of use of appropriate parts/paragraphs for quoting, as well as in the context of techniques for quoting judgments of the ECtHR, it can be concluded that when it is a matter of quoting paragraphs, courts do not have the practice of introducing individual paragraphs from judgments themselves, instead they state the concrete positions of the ECtHR, following which they link these positions to the specific event subject of deliberation. However, when judgments make a reference to the case-law of the ECtHR, courts which have applied and introduced the case-law of the ECtHR in their judgment have made the effort to make the reference in accordance with the referencing rules, or rules for quoting the case-law of this Court.

In general terms, this established situation in the practice of courts in the Republic of North Macedonia cannot be allowed and is unacceptable. Therefore, it is necessary to adopt a position in the principle, i.e., the Supreme Court of the Republic of North Macedonia needs to issue a general legal opinion, which would help harmonize the approach and work of courts in respect of the misdemeanour, i.e., criminal sanctions in cases, which relate to the same offence; legislative intervention is also necessary, especially with respect to Article 7 of the Law on Criminal Procedure, i.e., an amendment is needed, which will envisage the prohibition of double sanctioning of the same person, when the person has already been convicted or acquitted under a legally valid court decision, and when the person has already been sanctioned or has been dismissed of any charges under a final decision of another misdemeanour authority, i.e. authority which has the mandate of issuing sanctions.

In terms of general recommendations in the context of uniformity of court decisions, after the meeting with judges from first instance and appellate courts and from the Supreme Court of the Republic of North Macedonia it can be concluded that they have the position that the improvement of the quality and uniformity of court decision would contribute to significant improvement of the entire functioning of courts in the country. This type of methodology and analysis would be an especially beneficial starting basis and could be used to assess the quality of the work of judges by the Judicial Council itself, in terms of regular assessment of the work of judges. It is exactly the production and following of case-law in a justice system that helps exercise rigorous control over the arbitrariness of judges in the area of free judicial assessment of the law and its application, being also a mechanism to control the ensuring of legal security and equality of citizens before the law. Therefore, this is also indispensable for the rule of law in a country.

There is the evident need to standardize the drafting of court decisions and their concept, which would be applicable for all. Introducing certain rules for structuring court decisions would be a positive step forward in advancing the overall work of courts. However, it is also evident that it is necessary to improve the human resources, i.e., the court and administrative staff that works in courts, and who are directly involved in the process of preparing and drafting decisions. In this respect, as recommended by experts, an issue

that needs to be addressed is the issue of eventually introducing the mechanisms of a specially designated judge at courts in charge of case-law, who would serve as a filter and would initial/approve court decisions, having first assessed whether the referencing to examples from the case-law, whether domestic case-law or international case-law, is indeed applicable in the specific cases.

The role of the Supreme Court in creating case-law, in issuing legal opinion, sentences and similar is of exceptional importance for a legal order. Therefore, it is necessary to intensify and simplifying the procedure for adoption of legal positions and opinions, a procedure which is regulated under the Rules of Procedure of this Court, being also necessary to encourage its pro-active role in the legal system, considering that demonstrating legal certainty, where there are legal gaps, which persist over the years regarding certain issues is the only way of ensuring rule of law and equal application of laws.

ANNEX

ADDENDUM 1-A: FORM FOR ANALYSIS OF THE QUALITY OF A COURT DECISION

Court Decision No. _____

Code: _____

ANALYSIS OF A FIRST INSTANCE COURT DECISION

No. of Indicator	Indicator	Mark	Coefficient	Value of indicator	Remark
1	Structure of court decision		1		
2	Enacting clause		2		
3	Coherency		2		
4	Legal syllogism in subsumption/ legal logic		3		
5	Explanation of the background of the issue		2		
6	Presentation of the case/issue		2		
7	Presentation and application of relevant legal norms and principles and provisions of secondary legislation		2		
8	Facts of the case and evidentiary procedure		1		
9	Consideration and evaluation of opposing arguments		2		
10	Clarity and consistency of the reasoning		1		
11	Linguistic and grammatical correctness of the text of the court decision		1		

Total: _____

I k= _____

Mark/general comment

ADDENDUM 1-B: FORM FOR ANALYSIS OF THE QUALITY OF A COURT DECISION

Court Decision No. _____

Code: _____

QUALITY OF A DECISION OF AN APPELLATE COURT

No. of Indicator	Indicator	Mark	Coefficient	Value of indicator	Remark
4	Legal syllogism in subsumption/ legal logic		3		
10	Clarity and consistency of the reasoning		1		
11	Linguistic and grammatical correctness of the text of the court decision		1		
12	Clear guidelines to the first instance court upon returning a decision for a retrial		2		
13	The reasons for vacating or amending the decision of the first instance court are clearly stated		2		
14	In case the scope or the duration of the sanction have been changed, this is clearly stated in the reasoning and reasons are given why the change has been made and the differences vis-à-vis the first instance court evaluation are stated		2		
15	There is a response to appeal claims		2		
16	The facts of the case are not copy-pasted from the decision of the first instance court		1		
17	When amending a decision of the first instance court, the decision of the appeal court possesses all features with respect to the establishment of the facts of the case, analysis of evidence, reference to substantive law, and reasoning, as in any other first instance court decision		2		
18	Decisions of the appellate court dismissing the appeal, contain reasoning only with respect to appeal claims, which have not been previously stated and which have not been answered in the first instance court decision		2		
19	The appellate court takes due account of the statute of limitations in the specific case, when the first instance court is to deliberate and decide upon the case		2		

Total: _____

I k= _____

Mark/general comment