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# THE PUBLIC IN THE CRIMINAL PROCEDURE

**CRIMINAL PROCEDURE GUIDEBOOK FOR JOURNALISTS**

Sashe Dimovski  
Jovan Ilievski, Ph.D  
Zoran Dimitrievski

# THE PUBLIC IN THE CRIMINAL PROCEDURE

**Criminal Procedure Guidebook for Journalists**

January 2014

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## Criminal Procedure Guidebook for Journalists


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# THE PUBLIC IN THE CRIMINAL PROCEDURE

Criminal Procedure Guidebook for Journalists

### **Introduction: Why a Guidebook**

*The new Law on Criminal Procedure (LCP), being applied since 1<sup>st</sup> of December 2013, abandoned the so-far system of conducting the criminal procedure by implementing new solutions. Among other things, the new solutions refer to investigations conducted by the public prosecutor, the role of the judge in the previous procedure, the possibility of conducting shortened procedures and to the principle of making agreements between the public prosecutor and the defendant on the kind and extent of the sanction.*

*The new concept of criminal procedure largely changes the view the public have had so far on the course of investigations, on the way of conducting the main hearings in the criminal proceedings, presenting evidence and determining guilt.*

*So, the indispensable necessity for preparing a Guidebook for journalists and for the public in criminal procedures arises from this point and it can be seen as means of aid that will hugely facilitate the work of journalists who are reporting on court proceedings, writing about the functioning of the judicial power, reporting on the spot in cases where a criminal act has been committed and a crime scene investigation is ongoing, reporting on submitted regular and irregular legal remedies or following the enforcement of criminal sanctions after the effective end of the criminal procedure.*

*This Guidebook for journalists, which will be useful even for the wider public such as students, trainees, but also for citizens who will be able to get acquainted with the course of the procedures in a more simple way, comprises the main phases of the criminal procedures beginning from the investigation that is conducted now by the prosecutor, through the role of the judge in the previous procedure (former investigative judge), to the way of conducting the main hearing, presenting evidence, determining guilt, publication of the decisions and the appeal procedure.*

*Large part is dedicated to the public in the criminal procedure, being a basic motive for preparation of this Guidebook. The public, as a corrector of all processes, will accurately, properly and timely be informed by journalists about court proceedings conducted in the Macedonian courts where the public concern is stronger.*

*The Guidebook introduces the journalists to the criminal procedure step by step; it explains the phases, the competences of the prosecutor, the judge of the previous procedure, the judging judge or the judge in charge of execution of sanctions. It gives all the solutions as to where and when the public can be excluded, in proceedings concerning minors or when the personal or moral integrity of the participants in the procedure is being protected or if classified data with determined degree of secrecy are presented as evidence. According to the provisions of LCP, journalists now bear a broader responsibility in the process of reporting on cases where the prosecutor and the defendant will not reach an agreement and the case will end up in front of an investigative judge. At the same time journalists will*

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*have to pay attention to their reports not to cause any detriment to the defendant who has entered or has not entered the procedure of making an agreement with the competent public prosecutor.*

*Every trial is public, unless the matter in question is one of the above-mentioned exceptions, but even then journalists and the public can be excluded only when the Council running the debate will make a decision and announce it in front of the persons present in the courtroom and in that way everyone will be informed about the reasons leading the court to decide to close the trial to the public ex-officio ..*

*In that way all possible doubts will be avoided as to whether the public should be excluded in a certain procedure, resulting into elimination of negative reports and comments that a certain trial is secret without communicating the reasons about that.*

*Of course, this Guidebook should be at the hands of reporters reporting from the court on proceedings so that they could quickly and easily react if someone tries to deprive them from the right to follow the trials in a way opposite to the law or the court rulebook.*

*The judiciary is one of the more specific fields requiring the knowledge of legal terms, their meaning, the competence of institutions and their way of acting in a concrete case, so that the public can be offered accurate information, free of whatever imprecision which might confuse the readers/watchers/listeners.*

*In court proceedings the public represents an indispensable condition for transparency and accountability of the judiciary that leads to an increase in the confidence, and the journalists are those who create the public opinion. Therefore, the judges and the journalists are directed the ones towards the others in the realisation of the democratic objectives and values.*

*The right to freedom of expression is one of the basic human rights, being promoted by journalists in the realisation of their mission through reporting.*

*However, in certain segments of court proceedings, journalists are limited when the matter in question is classified information, protection of witnesses, cooperators of the justice, minors, which must be meticulously specified so that one could avoid a situation where they (journalists) will stand charged or be subject to a defamation and offence lawsuit in front of the civil court.*

*Therefore, this Guidebook is aimed at informing, educating and pointing out whatever can be useful in the work of journalists when it is about court proceedings, and what can or can not be presented to the public. The frequent amendments to the laws will leave room for further upgrade of this material, but however, the team who prepared this Guidebook endeavoured to encompass all the aspects of the procedure, to point out several laws, the professional codes and other rules, having only one purpose: a timely and accurate information.*

### 1. INTERNATIONAL STANDARDS

The international standards and principles on the public in court proceedings and freedom of expression have been fully incorporated in the domestic legal framework. By signing and ratifying the respective international conventions, protocols and other documents the basic principles have become part of the domestic legal order.

#### ❖ The Universal Declaration of Human Rights

Everyone is entitled to freedom of opinion and expression. This right includes the freedom of presenting a certain opinion without any interference and the freedom of requesting, receiving and providing information and ideas through any media, irrespective of the borders. <sup>1</sup>

When using one's rights and freedoms, every human being shall be subject to such limitations as defined by law, solely aimed at ensuring the recognition and respect for the rights and freedoms of the others for the purpose of satisfying the justifiable demands of the morale, public order and public welfare in one democratic society.<sup>2</sup>

#### ❖ European Convention on Human Rights

Everyone is entitled to a fair and public examination and determination of his civil rights, obligations or of the justifiability of whatever criminal accusations, within a reasonable time limit and in front of an independent and unbiased court established by law. Judgements are pronounced publicly and journalists together with the public can be excluded during the whole proceeding or during one part of the proceeding, being of interest to the morale and public order or the national security in one democratic society, or when that need arises from the interests of a minor or the protection of the private life of the parties in the dispute, or when considered as indispensable by the court since in special circumstances the publicity could prejudice the interests of the justice. <sup>3</sup>

The European Court of Human Rights especially emphasises the public character of the proceeding and considers that the element of being public represents an essential characteristic of a fair judiciary. So, it points out that: "*(...) The public character of the proceeding conducted in front of the judicial bodies indicated in Article 6(1) protects*

<sup>1</sup> Article 19, Universal Declaration of Human Rights, <http://www.un.org/en/documents/udhr/index.shtml#a19>

<sup>2</sup> Article 29, Universal Declaration of Human Rights, <http://www.un.org/en/documents/udhr/index.shtml#a19>

<sup>3</sup> Article 6(1), European Convention on Human Rights



*the parties against the eventual secret enforcement of the justice, without a public criticism and control. That also represents one of the possible ways to guarantee the confidence in the court, irrespective of whether it is a court of first instance or it is a court of higher instance. By providing visibility in the process of enforcing the justice, the public in the proceeding contributes to the fulfilment of the objective as envisaged in Article 6(1), meaning a fair trial, the realisation of whose guarantees represents one of the basic principles in any democratic society (...)*.<sup>4</sup>

Every human being is entitled to freedom of speech. This right comprises the freedom of opinion and freedom of receiving and exchanging information or ideas without any interference by the public government, irrespective of the borders.<sup>5</sup>

The media's freedom is not absolute because the misuse does not mean freedom. The delivery of information intended for media reporting has to be in accordance with the rights of the involved persons guaranteed by the European Convention on Human Rights and Freedoms, the Constitution and the law. Bearing in mind that the exercise of these freedoms brings obligations, they can be deduced to formalities, conditions, limits or penalties as prescribed by law, which is necessary in one democratic society. Among other things, it goes in favour of crime prevention, protection of the reputation or the rights of other persons, prevention of publishing confident information and in favour of maintaining the authority and independence of the judiciary.<sup>6</sup>

➤ *Limitations in Article 10 aimed at protecting the authority of the judiciary*

The loyalty obligation and the duty of discretion that has to be fulfilled by all state servants, and especially the judiciary, requires that even accurate information must be published in a moderate and decent way.<sup>7</sup>

➤ *Limitations in Article 10 in connection with Article 6*

The state must not give information that violates the presumption of innocence. When reporting, the media should consider and appropriately use the legal terms suspect, defendant, convicted person because everyone accused of a criminal act is considered as innocent for as long as his guilt has not been proven in a legal way.<sup>8</sup>

<sup>4</sup> Paragraph 21, *Preto and others against Italy* [http://hudoc.echr.coe.int/sites/eng/Pages/search.aspx#{"fulltext":\["pretto"\],"documentcollectionid2":\["GRANDCHAMBER","CHAMBER"\],"itemid":\["001-57561"\]}](http://hudoc.echr.coe.int/sites/eng/Pages/search.aspx#{)

<sup>5</sup> Article 10(1), European Convention on Human Rights

<sup>6</sup> Article 10(2), European Convention on Human Rights

<sup>7</sup> Page 93 *Kudeshkina against Russia*, European Court of Human Rights, 26 February 2009

<sup>8</sup> Article 6(2), European Convention on Human Rights

*The practice of the European Court of Human Rights points out that “(...) the freedom of expression is guaranteed by Article 10 of the Convention that includes provision of information. Article 6(2) can not stop the government from informing the public about the momentary criminal investigations, but it requires that it should be done with an indispensable discretion and attention if the presumption of innocence is to be respected (...)”.*<sup>9</sup>

### ❖ International Covenant on Civil and Political Rights

The general basis regarding the public in court proceedings should be additionally elaborated in Article 14 of the International Covenant on Civil and Political Rights according to the Universal Declaration of Human Rights. It has been upgraded in the European Convention on Human Rights and it envisages that “(...) everyone is equal in front of the courts and tribunals. Everyone has the right to have his case fairly and publicly examined by a competent, independent and unbiased court that is established by law (...). The media and the public can be excluded during the whole proceeding or during one part of the trial if that is of interest to the morale, the public order or the national security in one democratic society, or when required by the interest of the private life of the parties, or in a scope strictly indispensable in accordance with the opinion of the court in special circumstances when the public could bias the interests of the justice (...)”<sup>10</sup>.

### ❖ Recommendation Rec (2003)13<sup>11</sup> of the Committee of Ministers of the Council of Europe on the provision of information through the media in relation to criminal proceedings

The Council of Europe strives for achievement of a higher unity among the state members in relation to protection and realisation of the principles which are their own common heritage. On the basis of the fundamental rights and freedoms guaranteed by the European Convention on Human Rights and at the same time by respecting the diversity of the national legal systems in connection with criminal proceedings, the Committee of Ministers of the Council of Europe established 18 principles in its Recommendation REC (2003)13 which refer to the provision of information through the media in relation to criminal proceedings.

<sup>9</sup> European Court of Human Rights repeated this rule in the case *Alenet de Ribemont against France*, 10 February 1995. (application number 15175/89), page 38 of the verdict.

<sup>10</sup> Article 14(1), International Covenant on Civil and Political Rights, <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

<sup>11</sup> <https://wcd.coe.int/ViewDoc.jsp?id=51365>, adopted by the Committee of Ministers on 10<sup>th</sup> of July 2003.

The principles<sup>12</sup> refer to:

1. Informing the public through the media
2. Presumption of innocence
3. Accuracy of information
4. Access to information
5. Way of providing information
6. Regular provision of information during the criminal proceeding
7. Prohibition of information misuse
8. Privacy protection in context of current criminal proceedings
9. Right to correction or the right to reply
10. Protection against the influence as a result of prejudices
11. Prejudicial publicity before the start of the court proceedings
12. Admission of journalists
13. Access of journalists to the courtroom
14. Live reporting and recording in the courtroom
15. Support intended for media reporting
16. Protection of witnesses
17. Media reporting as to the enforcement of the court's sentence
18. Media reporting as to the period after the enforcement of the court's sentence

## 2. DOMESTIC LEGAL FRAMEWORK

### 2.1. Provisions being of relevance to journalists

The work-related activities of the journalists and the media are regulated in several acts, starting from the Constitution guaranteeing the freedom of expression, the exchange of information, the access to information and the prohibition of the censorship. Article 16 of the Constitution guarantees the freedom of speech, the establishment of media, but also the right to correction or reply in case the media has published inaccurate or untrue information. The operations of the electronic media

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<sup>12</sup> For more detailed information see the Annex 6 of this Guidebook

are regulated in the *Law on Establishment of the Public Enterprise Macedonian Radio Broadcasting*<sup>13</sup>. The activities of the electronic media are monitored and sanctioned by the Media Agency<sup>14</sup> which has no competence over the print media. The penal provisions envisaged in several laws are applicable to them.

The personal liability of journalists is sanctioned according to the *Law on Civil Liability regarding offence and defamation*<sup>15</sup>, which envisages the following fines that can be pronounced to journalists and the media: – a fine of up to 2 thousand euros can be pronounced to the journalist/author of the information, up to 10 thousand euros to the main editor and up to 15 thousand euros to the owner of the media house.

Therefore:

- ❖ Journalists should publish accurate and checked information in which they will not conceal essential data nor falsify documents, and they should respect the privacy of the person, unless the public interest is stronger than the private.
- ❖ The provision of information in cases such as accidents, natural disasters, wars, familiar tragedies, diseases, court proceedings has to be free of sensationalism.
- ❖ Journalists should respect the presumption of innocence principle during court proceedings and they should inform about all the sides involved in the dispute without suggesting the verdict.
- ❖ Journalists must not interview or take photos of children-victims or witnesses under the age of 16 without prior consent given by the parents or the guardians, unless that is not in accordance with the child's rights. The same refers to persons with special needs who are not able to consciously judge.
- ❖ Journalists must not speak in the language of hatred and shall not instigate violence or discrimination on whatever basis (national, religious, racial, sexual, social, linguistic or political orientation).

The protection of witnesses is regulated in the domestic legislation by the *Law on Protection of Witnesses*<sup>16</sup>. A prison sentence of at least 4 years is envisaged for

<sup>13</sup> Official Gazette of RM nb. 6/1998, 98/2000, 48/2009

<sup>14</sup> Former Broadcasting Council

<sup>15</sup> Official Gazette of RM nb. 143/2012

<sup>16</sup> Official Gazette of RM nb.38/2005, 58/2005

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a person who will disclose the identity of a protected witness; if there are grave consequences on the health of the witnesses or death, the person who has disclosed the identity shall be sentenced to a prison term of at least 8 years, at least 15 years or life imprisonment. The protection of witnesses and victims is also regulated by the Law on Criminal Procedure.<sup>17</sup>

The *Law on Classified Information*<sup>18</sup> is especially important and journalists have to be acquainted with it as they can come across classified documents which could cause problems to them in case they publish the information in such a form. The information can be classified as: internal, secret, top secret and state secret. The importance of the classified information causes problems to the journalists because their access to certain documents is made more difficult due to the classification, and as a result the owners of information, referring to this law, refuse to provide the information, not always making the comparing test “where the public interest is bigger”, which on the other hand represents an objective of the *Law on Free Access to Information of Public Character*<sup>19</sup>. This law ensures the publicity and the openness in the operations of the holders of information of public character accessible by all legal and natural persons.

In case of an insight into a court case by any person, even the Court Rulebook<sup>20</sup> envisages that all classified information should be disposed of before allowing the insight. The officers who have come across classified information are under obligation to keep the secret as determined by law.

Publication of classified information of highest degree, top secret or state secret represents a basis for a criminal liability of journalists.

Apart from these laws, the provisions of the *Law on Protection of Personal Data*<sup>21</sup> are of importance to the journalists reporting on court proceedings too. Journalists have to be careful when the matter in question is usage of photos and recordings from court proceedings so that the privacy of the defendants is not violated. The public personalities and the cases where the public interest is overwhelming are exception. The public interest must be carefully evaluated so that the data of interest to the public could be determined, irrespective of whether they are personal data or not.

When the matter in question are minors the personal data must not be published without proper protection or usage of initials; if a photo of a minor is published, then

<sup>17</sup> Articles 226-232, Law on Criminal Procedure, Official Gazette of RM nb. 150/2010, 100/2012

<sup>18</sup> Official Gazette of RM nb.9/2014, 16/2015, 113/2007, 145/2010, 80/2012

<sup>19</sup> Official Gazette of RM nb. 13/2006, 86/2008, 6/2010

<sup>20</sup> Official Gazette of RM nb.66/2013

<sup>21</sup> Official Gazette of RM nb. 7/2005, 124/2010, 135/2011

the face should be blurred and the voice distorted if it is an interview or audio-video presentation. The minors themselves cannot consent whether certain information that refers to them will be public or not. Journalists have to obtain consent for publishing personal data of minors from their parents or guardians. Even when consent has been obtained the media has to pay attention to the consequences that may arise as a result of publishing personal data of a minor.

The Law on Protection of Personal Data determines that video recording and publishing data concerning persons against whom a court proceeding or an administrative proceeding is being conducted is against the provisions of this law because in that way the presumption of innocence principle is being violated. In all cases where the public interest is huge and justified, it is recommended that the media should provide appropriate anonymisation of the persons directly involved in the ongoing proceedings, in the same way as it is done with the pronouncement of anonymised decisions<sup>22</sup> until they become effective.

During court proceedings journalists will be brought to a situation to inform about persons, participants in a criminal proceeding, who will be prevented from participating due to health reasons or data regarding their health state will be disclosed during the main hearing. Data about the health state of a certain person fall in the sensitive personal data category and hence their processing is prohibited. Data about the health of citizens and public personalities must not be published to the public. In their reports on the court proceedings, the media must refrain from giving details about diseases and they must minimise the reports to a formulation that a certain person, participant in the proceedings, has not been present in the court due to health reasons.

## 2.2. Competence of courts

### a) Basic courts

Councils composed of two judges and three juror judges judge criminal acts in courts of first instance for which a prison sentence of 15 years or life imprisonment is prescribed, whereas councils composed of one judge and two juror judges judge criminal acts for which more lenient penalties are prescribed. A single judge judges criminal acts for which a fine or imprisonment of up to five years is prescribed as a main penalty. The charts below show the real competence of the basic courts in criminal cases:

<sup>22</sup> See the Rulebook of the Ministry of Justice on the way of publishing and searching the court decisions on the web site of the court, Official Gazette of RM nb.44/2011, Annex 5 of this Guidebook

### BASIC COURTS with basic competence

Make decisions in the first instance on criminal acts and infringements:

- For criminal acts for which a prison sentence not exceeding 5 years is set as a main penalty by law, if for certain criminal acts no competence of other courts is envisaged,
- For criminal acts where a competence has been given to a court with basic competence by a special law,
- To conduct investigation or investigation activities in connection with criminal acts belonging to their own competence,
- For all kinds of infringements, except for infringements which are placed by law under the competence of a body of the state administration or organization or another body performing public authorisations,
- For appeals and complaints about proceedings for which these courts are competent

The Basic court Skopje I Skopje is a criminal court with a basic and extended competence for the territory comprising the municipalities of Centar, Karposh, Gjorche Petrov, Saraj, Kisela Voda, Aerodrom, Butel, Gazi Baba, Chair, Shuto Orizari, Chucher Sandevo, Sopsishte, Studenichani, Zelenikovo, Petrovec, Ilinden and Arachinovo. A specialised court unit is formed in this court that is in charge of trying offences in the field of organised crime and corruption on the territory of the whole state.

“(...) The specialised court unit is competent to try:

- criminal acts committed by a structural group of three or more persons, which has existed for a certain period and acts in order to commit one or more criminal acts for which a prison sentence of at least four years is envisaged, aimed at direct or indirect profit gain,
- criminal acts committed by a structural group or criminal organisation in the territory of the Republic of Macedonia or in other states or when the criminal act is prepared or planned in the Republic of Macedonia or another state,
- the criminal acts: misconduct of Article 353, paragraph 5, receiving bribe of significant value of Article 357 and illegal mediation of Article 359 – all of the

Criminal Code, committed by a selected or nominated functionary, an officer or a responsible person in legal person and

- the criminal acts: unauthorised production and circulation of narcotics, psychotropic substances and precursors of Article 215, paragraph 2, money laundering and other criminal act proceeds of significant value of Article 273, terrorist threatening the constitutional order and security of Article 313, offering bribe of higher value of Article 358, illegal influence on witnesses of Article 368-a, criminal affiliation of Article 394, terrorist organisation of Article 394-a, terrorism of Article 394-b, trafficking in human beings of Article 418-a, smuggling of migrants of Article 418-b, human trafficking of minors of Article 418-d and other criminal acts committed against the humanity and the international law of the Criminal Code, irrespective of the number of perpetrators. (...)”<sup>23</sup>

### b) Courts of appeal

Courts of appeal perform activities for which they are competent and they function in councils composed of five judges (for criminal acts for which a prison sentence of up to 15 years or life imprisonment is prescribed) or three judges (for criminal acts for which a more lenient penalty is prescribed). When trying in second instance, the council is composed of two judges and three juror judges. The sessions of the court councils, except for the public sessions, are held without the presence of the public. Photos can be taken at the public sessions only with consent of the President of the court.

#### BASIC COURTS with extended competence

Besides the competence as basic courts with a basic competence within the territories for which they are established, they make decisions on criminal acts too:

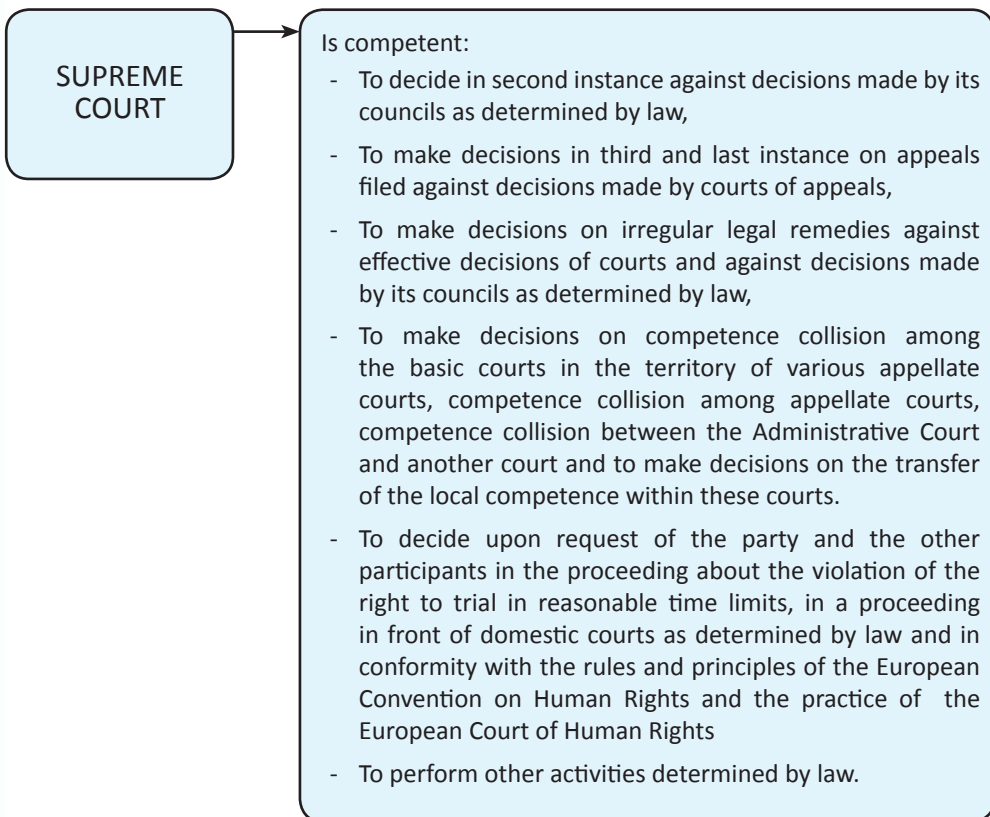
- For criminal acts for which an imprisonment of more than 5 years is envisaged by law and for criminal acts and infringements perpetrated by minors
- To conduct investigation and investigation activities in connection with criminal acts belonging to their own competence
- To act on extradition cases
- For appeals and complaints about proceedings for which they are competent
- To make decisions on actions related to international legal assistance as determined by law.

<sup>23</sup> Article 32, Law on Courts, Official Gazette of RM nb. 58/2006, 35/2008, 150/2010.



### c) Supreme Court

The Supreme Court tries in councils composed of five judges. If a request for protection of the legality has been submitted against a decision of the Supreme Court, then the Supreme Court should make a decision about it at a general session. During a general session the Supreme Court is competent to determine and review various issues in connection with the activities of the courts and the judges, the application of the law and the judicial practice. <sup>24</sup>



<sup>24</sup> Article 37, Law on Courts, Official Gazette of RM nb. 58/2006, 35/2008, 150/2010.

### 3. OVERVIEW OF THE LAW ON CRIMINAL PROCEDURE

The main objective of the Law is to enable a fair conduct of the criminal procedure that will prevent the conviction of any innocent person, whereas the perpetrator of the criminal act will be pronounced a criminal sanction under the conditions envisaged in the Criminal Code and on the basis of a legally conducted procedure.

In a very short period the Law on Criminal Procedure was a subject to many changes, not only because of the structural changes in the state government and its relation towards the citizen as a subject to the penal procedure (especially with regard to cases where the form of the punishable offence is grave), but also because of the general progress of the science and technology. The progress brings new possibilities for determining the facts in criminal procedures and it also opens legal issues as to whether their usage should be allowed. On the other hand even the globalization, as a process of forming foundations of new cultures of the humanity in XXI century, especially after the political changes caused by the collapse of the countries in the so called real socialism and the changes in their criminal laws in a broader sense of the word, led to a change in the understanding of the criminal law as an exceptionally internal affair of the national states. This situation opened the boundaries of foreign influences that were unknown until then. These influences can origin from the legal structures of the other states or even more importantly from the international criminal law as a legal branch that has become more and more important in the last fifty years and which today regulates the question of competence and procedure in front of various international penal courts.

Every state reacts differently to these occurrences. In the protection of the fundamental rights and freedoms, the penal courts as well as the penal mechanisms (for example: the national constitutional courts, the different bodies exercising control over the state and which also implement the many international agreements on human rights such as the international courts, monitoring bodies, non-governmental organisations etc.) come to answers in a different way as to the main question that refer to the objective and sense of the contemporary criminal procedure law. The question is: "in what way the criminal procedure law should prescribe the assumptions for undertaking actions and the actions' shape in the penal procedure?", - while understanding the penal procedure here as a collection of actions undertaken by various subjects in case of a probability that a certain criminal offence has been committed, being aimed at discovering and eventually punishing the perpetrator, which should be differentiated from the structure of the

legal norms of the criminal procedure law, in other words from the procedure that they regulate.

These norms are traditional in some legal systems such as the French and the English where the procedure is called a penal procedure according to which it is indispensable that the subjects undertaking the actions be determined for the purpose of establishing the best procedural arrangements for ensuring the best quality and preserving the single actions for the later course of the procedure, as well as for guaranteeing the respect for the personal and property rights of the citizens the procedure refers to. Solely in that way the legally regulated penal procedure can prevent “someone innocent to be convicted”, in other words at the same time it will enable “the pronouncement of a sentence to the perpetrator of a criminal act or another measure under the conditions envisaged by the law and on the basis of a procedure legally conducted in front of a competent court”.<sup>25</sup>

The new Law on Criminal Procedure means a new modern day law reformed in conformity with the European courses, which will have to provide a modern penal procedure in which the human rights and freedoms will be maximally safeguarded and at the same time it will be extremely efficient.

### 3.1. General rules on which the new Law on Criminal Procedure is based

One of the fundamental principles on which the new Law on Criminal Procedure is based is the **fair trial principle** in accordance with the law and the practice of the European Convention on Human Rights. The person charged with a criminal offence has the right to a fair and public trial in front of an independent and unbiased court, and in a contradictory procedure he can deny the accusations against him and propose and present evidence in his defence.

Recently, the fair procedure principle has arisen in some European continental countries as a main corner stone besides the interpretation principle used for interpretation of undetermined legal notions the legislator uses from time to time, as well as for covering legal gaps. For example: the question whether a witness has the right to have a process assistant; how one should decide over the possibility for usage of statements given by so-called hidden investigators and remaining police officers who have actively participated in the criminal activity of the group against whose members the penal procedure is conducted; how the court must react to the

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<sup>25</sup> See page. 59,60 – The History of the Public Prosecutor’s Office in Macedonia – state, role, perspectives, Jovan Ilievski, doctor paper.

objection of the defence that the procedure is being unjustifiably prolonged and the defendant is all the time in detention, and many other questions<sup>26</sup>.

The right to a fair trial<sup>27</sup> represents a fundamental human right which in its more extensive composition comprises<sup>28</sup>:

- rights in the procedure before the trial, including the right to freedom, the right the person deprived of liberty to be informed, the right to attorney, the right to communicate with the outside world, the right the defendant to be brought in front of a judge, the right the grounds on which the deprivation of liberty is based to be examined, as well as the rights in course of the deprivation of liberty,
- the right to an independent and unbiased court established by law, the right to a public and fair trial within reasonable time limits and in the framework of a proceeding regulated by law,
- the rights during the trial, in the proceeding, which include the right to material and formal defence, the right to personal attendance at the trial, the right to examine the witnesses of the accusing party and the defence, the right to complaint, the right the defendant to obtain appropriate time for preparation of the defence, more rights in the course of the examination, presumption of innocence, prohibition on retroactive application of the criminal code, ne bis in idem, as well as the right to equality in front of the court<sup>29</sup>.

**The presumption of innocence principle** constitutes a guarantee that the person charged with a criminal act shall be considered as innocent for as long as his guilt has not been determined by means of an effective court verdict. The state bodies, the means of public information and the other persons are obliged to adhere to the principle and through their public statements regarding the proceeding they must not violate the rights of the defendant and the damaged party, as well as the court independence and impartiality.

The accusatory, officiality and legality principle are especially important to the public prosecutor's office.

<sup>26</sup> Arloth, F., *Strafprozessrecht*, Munchen, 1995, 8

<sup>27</sup> the right to a fair trial/hearing – Article 6 of the European Convention on Protection of the Human Rights and Fundamental Freedoms

<sup>28</sup> Pavishich, *Criminal Law - Council of Europe*, Zagreb, 2006, 82-101

<sup>29</sup> Amnesty International On-line Fair Trials Manual

**The accusatory principle**<sup>30</sup> means that the criminal procedure can be initiated and further conducted only if a request has been filed by the authorised prosecutor and in basis he represents a dominus of the criminal procedure. Seen more closely, the acceptance of this principle enables the division of the three basic functions in the criminal procedure: the prosecution, the defence, the trial and they are given to different subjects as bearers of these functions. The subject who is entrusted with the prosecution function is called prosecutor (accuser), so that is why the principle is called accusatory. The procedure is connected with the request of the prosecutor for conducting a prosecution without which the procedure can not begin, so if the request is withdrawn the procedure will be stopped. The separation of the criminal accusation from the trial is expressed through the Latin *maxim Nemo iudex sine actore* – *No one can be a judge if there is no criminal accusation*, and the procedure can be conducted only against the person the accusation refer to and only for the criminal act that is described in the accusation. This principle originated despite the inquisitive principle and procedure in the Middle Ages, according to which the body in charge of the trial was competent for assessment of the evidence regarding the accusation and this cumulation of activities was directed towards only one organ - the court, leading this organ to endeavour to pronounce the defendant guilty while neglecting the other possibility at the same time – that the defendant is not guilty and that he can be acquitted.<sup>31</sup>

**The principle of officiality** means that the beginning of the procedure and its realisation represent an official duty of the state organs, being done in common interest, irrespective of the willingness of the person damaged as a result of the criminal offence. This principle introduces the right of the competent public prosecutor to undertake the criminal prosecution irrespective of the opinion of the damaged party, even if he is clearly against that.

According to the **principle of legality of the criminal prosecution**<sup>32</sup> and always when the legal conditions are fulfilled, the public prosecutor has the duty to undertake criminal prosecution against criminal acts being prosecuted ex officio, irrespective of whether he himself is convinced in the expedience and usefulness of the criminal prosecution in individual cases. These legal conditions are as follows: there should be enough grounds for suspicion that a criminal act has been committed, there should be enough evidence on whose basis it can be expected that a convicting

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<sup>30</sup> Article 17, Law on Criminal Procedure, Official Gazette of RM nb.150/2010, 100/2012

<sup>31</sup> See page. 74, 75 – The History of the Public Prosecutor’s Office in Macedonia – state, role, perspectives, Jovan Ilievski, doctor paper.

<sup>32</sup> Article 18, Law on Criminal Procedure, Official Gazette of RM nb.150/2010, 100/2012

verdict will be passed and there should be no obstacles to the conduct of the criminal procedure.

Exception in the application of this principle can be made only in cases when the very Law clearly envisages it. In some legal systems the public prosecutor is not obliged to follow the legality principle in his actions, but, on the contrary, he has the right to opportunity in the prosecution. This is a process rule that refers to the legally regulated prosecution performed by the public prosecutor according to which the execution of the prosecution function does not require only the existence of the defined suppositions in the law, but it also requires that the public prosecutor should assess whether it is expedient or opportunate to undertake the criminal prosecution from the state's point of view, having in mind, for example, whether the prosecution will cause unfavourable reaction among the public and similar. As previously mentioned, in the domestic procedure law the principle of opportunity is not adopted, however, the legality principle is applied. Nevertheless, there are certain exceptions to this principle allowing the public prosecutor to assess the opportunity of the criminal prosecution. In the first instance that refers to the procedure against minors, and when the perpetrators are of full age then the principle of opportunity is applied to the following cases:

- When it is determined in the Criminal Code that the perpetrator of a criminal act can be relieved of penalty by the court in case the public prosecutor considers that the very court decision is unnecessary if it does not contain a criminal sanction;
- When the Criminal Code prescribes a fine or a prison sentence of up to three years and the defendant has prevented the occurrence of harmful consequences or has made up all the damage or if the public prosecutor considers that the criminal sanction is groundless; or
- When the defendant, as a member of an organised group, gang or another criminal organisation, wilfully cooperates before or after the discovery of the crime or in the course of the criminal procedure or if his cooperation or statement is of essential significance to the criminal procedure.

**The principle of contradiction** is not particularly formulated in the law, but it arises from the right to fair trial and the procedural state of the parties in the procedure. In accordance with this principle it is incumbent on the court and other state organs participating in the criminal procedure to hear both parties involved in the criminal/

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legal dispute - *audiatur et altera pars*. That enables the parties to express their opinion about all disputable factual and legal questions being subject to discussion in front of the court and to present evidence as a support to their theses as well. The right to a contradictory procedure in the criminal cases means that the prosecution and the defence should be allowed to learn the statements and the evidence of the opposite side.<sup>33</sup> However, this right is not absolute according to the European Court of Human Rights as there can be contrary interests, for example, protection of witnesses. These reasons can be accepted and there can be a withdrawal from the right to contradictory procedure, but only when it is absolutely indispensable.<sup>34</sup>

**The principle of orality** requires that all the evidence be presented in a spoken form at the public debate in front of the court with a possibility for a contradictory debate. The orality enables the implementation of the contradiction in the debate in an easiest and most successful way; it livens up the directness and the public and contributes towards determination of the truth.

**The principle of directness** is a principle of the criminal procedure according to which the presentation of all facts and evidence required for forming a decision has to take place at a public debate in front of the court which will reach a decision in a contradictory procedure. It means that the court learns about the facts without the mediation of other organs, initially with its senses and in that way it obtains direct impressions as to all the evidence on which it will base its decision.

**The principle of publicity** is one of the basic principles on which every democratic criminal procedure is based in one legal state where the activities of all state and social organs, and accordingly the activities of the judicial organs as well, should be subject to public control. The principle of publicity at the main hearing and during the pronouncement of the judgement is raised to a level of constitutional principle. So, our Constitution follows this trend and defines that the debate in front of the courts and the pronouncement of the judgment are public; the public can be excluded only in cases determined by law.<sup>35</sup>

The right to a public trial comprises the rights to a public and spoken debate and the right to a public pronouncement of the judgment.<sup>36</sup> The right to a public debate is represented by the orality.<sup>37</sup> The public debate is the main characteristic of the

<sup>33</sup> Brandstetter v. Austria

<sup>34</sup> Rowe and Davies v. the United Kingdom

<sup>35</sup> Article 102, paragraphs 1 and 2 of the Constitution

<sup>36</sup> Public hearing and pronouncement of the judgement

<sup>37</sup> Fischer v. Austria; Dondarini v. San Marino

right to a fair trial.<sup>38</sup> The public character of the actions of the judicial institutions protects the parties against a secret application of the law without the control of the public. This way of performing enhances the confidence of the citizens in the judiciary and it also includes the parties' right to presence in front of court.<sup>39</sup> By recognising the request that the application of the law has to be visible the public contributes to the achievement of the objective for a fair procedure.<sup>40</sup> The public includes the closer public, the foreign public and the broader public, and they have to be allowed to attend the debates.<sup>41</sup>

According to the European Court of Human Rights the right to presence is essential especially in the first instance procedure during the determination of the facts. However, the same refers to the procedure of the higher court if this court determines circumstances of importance to the outcome of the procedure.<sup>42</sup> This rule guarantees the implementation of the principle of directness.<sup>43</sup> Having in mind that the European Court of Human Rights always evaluates the existence of a violation with regard to the whole procedure conducted in front of the domestic judicial institutions, the violation of not holding public trial in the first instance procedure can be corrected by holding a public debate in the procedure in front of the higher court.<sup>44</sup> On the other hand, a failure to hold a debate in front of the court of appeals, being fully competent to decide on the factual and legal questions and on the guilt, represents a violation to the request for a public trial. However, there is no need for a debate in the appeal procedure if the higher court decides only about legal issues.<sup>45</sup> The verdict has to be always announced publicly, even in cases where the public is excluded from the debate.<sup>46</sup> Nevertheless, if it is a supreme court or court of cassation of a certain state, it will be considered that the request for a public announcement of the verdict has been fulfilled by submitting the verdict to the court archives, being in that way accessible to everyone.<sup>47</sup> Accordingly, it is not enough that only the persons with legitimate interest have access to the verdict.<sup>48</sup> In the context of conducted disciplinary procedures, The European Court of Human Rights emphasises that neither the letter, nor the spirit of the Convention prevents

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<sup>38</sup> Axen v. Germany

<sup>39</sup> Ekbatani v. Sweden; Collozza v. Italy

<sup>40</sup> Axen v. Germany

<sup>41</sup> Riepan v. Austria

<sup>42</sup> Kremzow v. Austria

<sup>43</sup> Principle of immediacy

<sup>44</sup> Diennet v. France

<sup>45</sup> Ekbatani v. Sweden

<sup>46</sup> Campbell and Fell v. the United Kingdom

<sup>47</sup> Pretto et al. v. Italy

<sup>48</sup> Szücs v. Austria; Sutter v. Switzerland; Werner v. Austria



the withdrawal from the right to a public debate.<sup>49</sup> Such a withdrawal has to be done in an unequivocal way and it must not be opposite to the important public interest. This means that the withdrawal can not be made secretly.<sup>50</sup> The limitation of the right to a public trial and public announcement of the verdict is especially justifiable in cases referring to children.<sup>51</sup>

### 3.2. Systematisation of the Law on Criminal Procedure

The Law on Criminal Procedure contains 568 articles in total, which are systematised in three parts:

- first part – general provisions;
- second part – a course of the procedure, and
- third part – special procedures.

The first part regulates the basic procedural principles, the meaning of legal expressions and other provisions, the questions related to the subjects (the courts, the public prosecutor's office and judicial police, the victim, the damaged party, the private plaintiff, the defendant, the defence attorney and the legal aid), the issues connected with the procedural actions (submissions of documents and minutes, time limits, expenses, property-right claims, making and announcing decisions, delivery of court notifications and examination of the case files, execution of the decisions and personal data protection), the procedural measures and actions for securing persons and evidence (the measures for securing the presence of persons, measures for finding and securing persons and objects, evidence and special investigative measures).

The second part of the draft law contains provisions in relation to the course of the procedure. The procedure is consisted of the following stages:

- a previous stage which includes the pre-investigative procedure<sup>52</sup> and the investigative procedure<sup>53</sup>,
- the indictment and the evaluation of the indictment<sup>54</sup>,
- the main hearing and the verdict<sup>55</sup> and

<sup>49</sup> Albert and Le Compte v. Belgium; Le Compte, Van Leuven and De Meyere v. Belgium

<sup>50</sup> Hakansson and Sturesson v. Sweden

<sup>51</sup> B. and P. v. the United Kingdom

<sup>52</sup> Chapter XX

<sup>53</sup> Chapter XXI

<sup>54</sup> Chapter XXII

<sup>55</sup> Section C.

- a procedure with respect to the legal remedies composed of regular<sup>56</sup> and irregular legal remedies<sup>57</sup>.

The shortened procedure<sup>58</sup>, - reaching a verdict on the grounds of an agreement made between the public prosecutor and the suspect<sup>59</sup>, a process in which the defendant and the public prosecutor reach a mutually acceptable solution related to the criminal case whereupon the court<sup>60</sup> makes a decision by replacing the regular trial with an agreement resulting in time and money saving<sup>61</sup> -, the mediation procedure<sup>62</sup>, and the procedure for issuing a penal order<sup>63</sup> are regulated in section D titled as Accelerated Procedures.

The third part of the Law refers to the special procedures which regulate individual specific actions, in other words:

- the alternative measures pronouncement procedure<sup>64</sup>,
- the procedure towards legal persons<sup>65</sup>,
- the procedure for application of security measures, property and proceeds confiscation measures, measures for confiscation of objects and withdrawal of the suspended sentence<sup>66</sup>,
- The procedure for making a decision on a shorter duration of the prohibition penalty, termination of the legal consequences as a result of the judgement and deletion of the sentence<sup>67</sup>,
- the procedure for damage compensation, rehabilitation and realisation of other rights with respect to persons who have been unjustifiably and groundlessly or illegally deprived of liberty<sup>68</sup>, and
- the warrant and its issue<sup>69</sup>.

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<sup>56</sup> Chapter XXVI

<sup>57</sup> Chapter XXVII

<sup>58</sup> Chapter XXVIII

<sup>59</sup> Chapter XXIX

<sup>60</sup> definition according to Black's Law Dictionary

<sup>61</sup> Suitability of plea bargain in international criminal cases in Bosnia and Herzegovina - Ermelina Ahmetaj Hrelja, 2008.

<sup>62</sup> Chapter XXX

<sup>63</sup> Chapter XXXI

<sup>64</sup> Chapter XXXII

<sup>65</sup> Chapter XXXIII

<sup>66</sup> Chapter XXIV

<sup>67</sup> Chapter XXV

<sup>68</sup> Chapter XXVI

<sup>69</sup> Chapter XXVII

All articles have titles in the law allowing the users to orient themselves more easily in practice, and this is also important for interpretation of the legal provisions as the title expresses the objective and sense of the provision.

➤ Evidentiary means and evidentiary procedure

The Law on Criminal Procedure envisages the following as evidentiary means:

1. Statement of the defendant
2. Examination of witnesses
3. Crime scene investigation and reconstruction
4. Expertise
5. Recording and electronic evidence

According to the new procedure the parties are allowed to propose and present evidence. During the evidentiary procedure the evidence is presented according to the following order:

- evidence of the indictment,
- evidence of the defence,
- evidence of the indictment for disproving the evidence of the defence (replication),
- evidence of the defence as a reply to the disproving (rejoinder), and
- evidence that is important for weighing the criminal sanction.

During the presentation of the evidence by the prosecution or the defence, the opposite party can reply within particular procedural forms, whereas the court has very limited possibilities of action at its disposal in the course of presenting the evidence. The new Law on Criminal Procedure envisages a lot of innovations with regard to the ways of examination.<sup>70</sup> The court played an active role and performed the examination and the parties were indirectly asking questions through the court at the end of the examination according to the former practice. Now, contrary to

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<sup>70</sup> Article 388, Law on Criminal Procedure, Official Gazette of RM nb.150/2010, 100/2012.

that, the parties perform the examination and the court becomes passive pursuant to the new Law. Namely, direct examination, cross-examination and additional examination are allowed when the evidence is being presented. The direct examination is performed by the party who proposed the witness or the expert as evidence<sup>71</sup>. When the party finishes with the direct examination the opposite party will start performing a cross-examination of the witness or the expert<sup>72</sup>. The same rules we are all acquainted with apply to the direct examination (suggestive questions, questions containing the answer and similar are forbidden), whereas these rules are not applied to the cross-examination and the party here can pose questions to which the witness or the expert will give a short answer, most frequently with “yes” or “not”. The statements obtained in the investigative procedure may be used in the cross-examination or in the denial of certain allegations or as a reply to the denial. The additional examination<sup>73</sup> is again performed by the party who calls the witness or the expert and the questions posed during this examination are limited to the questions posed in the course of the examination of the opposite side. When the parties pose questions in the cross-examination and the additional examination they can be assisted by the technical advisors<sup>74</sup>.

As soon as the parties complete the examination, the president and the members of the council can pose questions to the witness or the expert.

### ➤ Abandoning the subsidiary criminal lawsuit

The new Law on Criminal Procedure abandons the subsidiary criminal lawsuit. According to this concept the public prosecutor is the sole authorised prosecutor concerning criminal acts prosecuted ex officio. The law envisages that the public prosecutor should reject the criminal charges with a decision if according to the very charges the reported act does not constitute a criminal act being prosecuted ex officio, if there is obsolescence or the act is covered by an amnesty or pardon, if there are other circumstances that exclude the prosecution or if there are no grounds of suspicion that the reported person has committed the criminal act. The reasons for rejection of the criminal charges are identical to those in the previous Law on Criminal Procedure, but the procedure following the decision-making is different. Namely, the decision on rejecting the criminal charge is delivered to the

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<sup>71</sup> Examination-in-chief

<sup>72</sup> Cross-examination

<sup>73</sup> re-examination

<sup>74</sup> Article 21, item 19 of the Law on Criminal Procedure, Official Gazette nb. 150/2010, 100/2012:” (...) 19) Technical advisors are professionals from the court’s experts register who are engaged by the parties when they need expert assistance in a certain field during the procedure. (...)”

damaged party with a notification that he can appeal it within 8 days in front of the next higher public prosecutor and the submitter of the charge is informed about the reasons for the rejection. If the appeal is not allowed or it is untimely, the higher public prosecutor shall inform the damaged party. The higher public prosecutor shall make a decision on the damaged party's appeal within 30 days of receipt. When acting on the appeal, the higher public prosecutor can confirm the decision on rejecting the criminal charge with a decision or he can accept the appeal and order the lower public prosecutor to continue the procedure.

### ➤ Agreement-making between the public prosecutor and the suspect

The new Law on Criminal Procedure contains provisions which for first time regulate the possibility for making agreements between the public prosecutor and the suspect on the kind and extent of the criminal sanction; it envisages a different status of the admission of guilt in the control phase of the indictment and of the admission made during the main hearing in the regular procedure, as well as during the hearing in the shortened procedure, which is different from before with regard to the admission the defendant could give in front of the court.<sup>75</sup> Before the start of the first examination the suspect should be informed about the right to make an agreement with the public prosecutor.<sup>76</sup>

According to the legal provisions it is explicit that the plea bargain subjects are the public prosecutor from one side and the defendant and his defence attorney from the other side. However, the negotiation subjects are only parties and by rule the very plea bargain should be done between the defence attorney and the prosecutor. In this phase the court does not participate.

### ➤ Protection of the investigation and the rights of the persons in the procedure

The unconsidered and heavy word that is publicly spoken can especially have grave consequences, and it can even be dangerous for some persons with regard to their security, as a result of taking advantage of the freedom of expression or the freedom of informing in particular. Media representatives should always be aware that no one has unlimited rights in one society, in other words the rights of everyone are mutually conditioned.

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<sup>75</sup> Buzaroska, G., Plea Bargain: Guidebook for practitioners (Gordana Buzarovska, Michael G.Karnavas, David Re), Skopje, OSCE Mission in Skopje, 2010

<sup>76</sup> Article 206, paragraph 6, Law on Criminal Procedure, Official Gazette of RM nb. 150/2010, 100/2012

In this sense

during the investigative procedure:

- It is prohibited to disclose the identity of minors
- It is prohibited to disclose the identity of protected witnesses
- All data in the investigation are secret.

Media have a legitimate interest to inform about each phase of the criminal procedure, but they should respect the reasons, as precisely defined by law, for the limited and temporarily “embargo” on the information regarding criminal acts and perpetrators in certain phases of the procedure. These measures must be justified with the interest for protection of the life and health of the people and other common welfare, whereas the criminal acts need to be solved and the perpetrators brought to justice.

It is unprofessional if the media, in their race for information and striving to be first, “run out” by publishing confident information and help the perpetrator of a criminal act avoid the apprehension or the prosecution. ” The public can only be informed about the details of some case even after the submission of the indictment and its confirmation.

#### **4. “THE PUBLIC” DURING THE PRE-INVESTIGATIVE AND INVESTIGATIVE PROCEDURE**

##### **4.1. Reports on the activities of the judicial institutions**

The public has the right to get timely information about the activities of the public prosecutor’s office and the courts. The application of criminal laws and the function of the public prosecutor’s office and the courts become visible by reporting on criminal procedures, thus ensuring the publicity and the insight into the activities of the judicial system. There is a need for adoption of recommendations for those who report, being important for strengthening the professional reporting on investigations and court proceedings. Such recommendations should find their reflection in the Code of Ethics for Journalists in the state.

The public prosecutor’s office or the judicial organs involved during the previous procedure or in the pre-investigative phase, so-called police investigation, as well

<sup>77</sup> Page. 8, Guidebook for journalists through the criminal procedure, Media Institute of Montenegro.

as during the phase of the investigative procedure, should make it possible for the journalists to obtain necessary information. The information should be in the form of announcements for the public, statements, interviews, regular update of the public prosecutor office's web page, photos, audio and video recordings. In this direction the public prosecutor's office has been actively working on preparing a Public Relations Strategy<sup>78</sup> which, among other things, envisages the establishment of a unit for public relations, appointment of responsible persons and installation of appropriate equipment, development of a program for presentation of information to the public (public announcements, statements and interviews, public appearance skills, crisis communication – damage control), development of tools for monitoring the media, the reactions and replies to false information that have been published.

The text below represents an additional consideration of the promotion of the relations between the public prosecutor's office and the media, providing a string of recommendations that could be additionally elaborated and appropriately applied in future.

### **4.2. Recommendations and proposals for ways of informing issued by the public prosecutor's office**

The information delivered by the public prosecutor's office through public announcements should be short and understandable and it should provide answers to basic questions (who, what, when, where and how).

#### ➤ Why short and understandable information?

- Short information can find place in the news, newspapers, television and radio stations, as well as in the newspaper articles.
- It is required that the understandable information be transferred in a simple and understandable way so that the journalist or the editor could first understand it, and then appropriately transfer it to the public, bearing in mind that not all journalists are jurists.
- The information from the public prosecutor's office should be announced in due time.

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<sup>78</sup> Public relations strategy of the public prosecutor's office is being prepared by a team of domestic and international experts as a part of the joint project between the Rule of Law Department within the OSCE Mission in Skopje and the Public Prosecutor's Office

The best time for forwarding the information is the morning or early afternoon hours because there is a certain procedure for information processing in the media houses. The daily newspapers close at the night hours and the main TV news are broadcasted at about 19.00-19.30 hours. If the news is to be broadcasted on the media the same day, then the information should be ready until 17.00 hours so that it can be approved by the editor, proofread or mounted, but of course, only in exclusive situations when all of this adapts to the situation. The information that will arrive at the night hours and does not bear exclusive importance will not find place in the media. When it is about exceptionally interesting questions, being of significance to the society we live in, the public prosecutor's office should address the media through a public announcement in which it will give an answer to the above mentioned questions or it should organise a press conference. The press conferences are exceptionally important even when the public prosecutor's office wants to present its activities.

**Recommendation:** The press conferences should be organised on a semi-annual or annual level and on a daily basis when there are situations being at that moment of public concern.

In the print media in particular, the completeness of the information requires a provision of photographs that very often speak more than the text or the audio/video recording, depending on which media house is in question.

**Recommendation:** In situations when there is a personality in whom the public would undoubtedly show interest and this personality is to be arrested, the public prosecutor's office will do best if it schedules a press conference during which the journalists will record and photograph the interlocutors.

### ➤ How information can be obtained from the public prosecutor's office?

Very often the journalists work on analyses, stories or events being of exceptional importance to the citizens. If one journalist works on a subject referring to a certain type of criminality such as, for example, people smuggling, prostitution or another kind of crime, he would usually call the public prosecutor's office for the purpose of finding out whether there are investigations and how many indictments exist for these acts. This will happen more and more frequently in the future as the new Law on Criminal Procedure, according to which the public prosecutor's office will conduct the investigative procedure, is already being



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applied; actually it has been applied since 1st of December 2013. Having the new competences of the public prosecutor's office into mind, the journalists will be unavoidably directed to the prosecutor's office in this phase, not as until recently to the court.

**Recommendation:** The public prosecutor's office should appoint suitable professionals who will be able to answer the journalists' questions by not endangering the eventual investigation and its secrecy.

Failure to give an appropriate statement will cause various doubts and speculations, and thus the risk of the public being wrongly informed is significantly higher. Sometimes the statement that there is an investigation against several persons is sufficient to prevent speculations about the operations of the institutions.

Prosecutor's offices can address the public even when there is no concrete event. As an example we could point out the practice of the Hague Tribunal where sessions with journalists are organised every week. During these sessions journalists can obtain answers being of interest to the public. In that way the problems referring to the capacity of personnel in the prosecutor's office or the technical capacity can be given public airing. The speculations about the activities are prevented by frequent informing, whereas the public prosecutor's office is getting its work closer to the ordinary citizen.

**Recommendation:** The chief or other assigned persons from the public prosecutor's office should give their consent to participate in interviews or to be guests to informative broadcasts. It will be best if they obtain in advance the questions to which they should answer. Avoiding the media would lead the public prosecutors to an unpleasant situation, causing the journalists to wait for them when they leave a meeting, the court and even when they live their homes.

Public prosecutors should conduct themselves strictly professionally towards the journalists. A friendship between a journalist and a public prosecutor is only possible when the camera or the Dictaphone is turned off. Journalists frequently use their friendship with public prosecutors and many times they stress that in newspaper reports or contributions. In addition, journalists have people – "insiders" in prosecutor's offices providing them with information. Sometimes this information can be useful for the journalist, however, it is always incumbent on him to check

whether the information is true because these persons have various motives to give certain information and very often they can be malicious.

The chief (managing) public prosecutors should prevent the provision of information which is of interest to the performance of that institution or when it is a matter of secret documents. If a journalist has received a document by using his “installations” in the public prosecutor’s office, the journalist should not be blamed, but the persons working in that institution should be checked. Nevertheless, publishing the information received in this way should be seriously considered and checked and the journalist should decide whether he will publish it or not. It is known that the legally received information can not be disputed in front of courts in case there are court proceedings, but the situation with illegally received information is different.

Receiving the indictment as soon as it has been confirmed by the court in the phase of evaluation of the bill of indictment, being an obligatory phase according to the new Law on Criminal Procedure, is highly important for the objective reporting. After the confirmation of the bill of indictment, the indictment is necessary for the journalist to understand what the defendant is charged with and to get a full picture of certain events. No objective reporting can be performed in the absence of a bill of indictment or indictment proposal. The anonymised bill of indictment or indictment proposal, when the personal data, the names of the witnesses are crossed and similar, still represents a bill of indictment and can provide information about what the defendant has committed, in other words what he has been charged with by the prosecutor's office.

**Recommendation:** Following the confirmation, the bill of indictment should be accessible upon request submitted by the journalists.

The public prosecutor’s office should regularly update its internet page, in other words it should regularly provide data about its activities, contrary to what is often done in practice the updates of the web page to be performed on semi annual, annual or multi-annual basis.

In addition to journalists, scientific professionals, international organisations, non-governmental organisations and even ordinary citizens are interested in the activities of the public prosecutor’s office too. The public prosecutor’s office should treat even them by respecting the above-mentioned principles.

### ➤ Communication skills and methodology of the prosecutor's office and the media

This question should be examined through:

- Internal communication,
- External communication,
- Everyday cooperation with the media,
- Information dissemination speed.
- Internet accessibility of materials,
- Relations with other judicial institutions and criminal prosecution organs,
- Difficulties and problems, and
- Guidelines on future cooperation.

In some way the criminal prosecution organs and the judicial institutions forward information or news about the case activities to the media every day. Consequently, the existence of a well-regulated internal communication is required within the institution, as well as established procedures for communicating with the media. The lack of orderliness in the internal and external communication can have a negative impact on the cooperation with the media, thus creating an impression and negative image of the very institution in the public. As a result, these institutions must pay attention particularly to the communication process with the citizens, the media representatives and with other institutions as well.

### ➤ What should be done in the public prosecutor's office in future?

- ❖ One should establish the function public relations officer, translator, and officer in charge of preparing and maintaining the web site and engage accompanying members depending on the need for execution of a certain task.
- ❖ Internal communication
  - The communication within the institution represents a pre-condition for a good external communication.

- Inside the institution the communication channels should be defined, conformed and efficient.
- The rule "the case must not suffer" is of importance and so all situations that could occur in practice and cause a difficult communication should be anticipated, - solutions should be envisaged for preventing that from happening.

The following is required to be included in the framework of the internal communication:

- Officer in charge of public relations
- Public prosecutor who acts on the concrete case or his assistant, and
- Head of department of the public prosecutor's office the question refers to.

In this process attention should be paid not to include more persons than necessary as this can only complicate the process and slow down the way of communication. In practice it might be most appropriate if the persons in charge of the public relations compose the text of the announcement, the information or the answers to the journalists' questions, and then the other officers will give eventual suggestions and consent as to the final text. Within the arrangement of the internal procedure, it is recommendable that the person who will replace the person in charge of the public relations in case of work disability or absence be specified in advance. Most questions posed by journalists, media or citizens can be answered within 48 hours if the question does not require the provision of some extensive statistics or data. Despite the fact that the legal time limit for delivery of the information is much longer, the provision of the answer should not be prolonged if there are no grounds for that.

Having this in mind, the internal communication in the public prosecutor's office:

- should not refer only to questions of journalists or citizens,
- the public relations appointee should prepare everyday analyses intended for the print media and should submit an overview of the daily and weekly newspapers to the employees of these media.
- upon request of other employees, the public relations appointee collects and submits copies of articles and features in which the public prosecutors or the employees of the public prosecutor's offices are interested.

### ❖ External communication

In the process of providing the media with information or in the process of giving statements on television or radio one should make sure that the information is correctly formed and useful. The statement time of one interlocutor in the TV features is about 30 seconds. The situation is similar on the radio news too. More extensive information can be given in specialised programs regarding a particular subject. It would be recommendable that the information about the activities of the public prosecutor's office be delivered to most of the media via email. It is important that the regional coverage be taken into account as well as the interest of foreign media in certain information or subjects.

### ❖ Web page and email

It is necessary that the institutions nominate a web editor's unit composed of employees who will take care of creating and putting contents on the web page of the institution. The authorised public relations officials, the IT sector professionals, the legal associates and other persons whose work sphere is connected with presentation of content on the web page should be included in the operations of the web editor's unit.

Communication through the web page- The web page of the institution needs to be updated everyday. Data about the public prosecutor's office as well as data about the departments and cases should be available on the web page. Apart from basic data and information about the institution, the following should be published on the web site:

- Information about submitted indictments,
- Information about deprivation of liberty, hearings, as well as detention proposals,
- Information about filed appeals and other procedural steps being of interest to the public and media (continuation of detention and similar),
- Photo-gallery (gallery containing photos of certain events, conferences and similar),
- Other materials, if it is considered that it would be of use to get the citizens acquainted therewith (annual reports and similar).

The existence of an updated web page enables the professional public and the students to have an easier access to information and documents. Also, persons who need materials in the field of the penal-material and procedural law (laws, professional papers of public prosecutors, indictments, verdicts and similar) will have an easier access to documents. By means of the electronic mail and the contacts indicated on the web page the public prosecutor's office can reach many important witnesses immigrated throughout the world or it can receive anonymous reports of criminal acts.

### ❖ Information dissemination improvement techniques and methods

- When sending information to media it is useful that a photo of certain event be sent too,
- A good and impressive photo can increase the rating of the news in the media,
- If there is possibility it would be fine to invite TV cameramen to record a certain event,
- The "dry" information, without a TV recording, is neither interesting for journalists, nor for editors and the public.

### ❖ Agreement and coordination

The agreement, the mutual understanding, the respect and coordination of the obligations constitute key elements for a good cooperation between journalists and criminal prosecution organs – mainly the public prosecutor's office. Planning the activities and the mutual communication is of essential significance to the improvement of the cooperation.

### ❖ Relations with partner institutions

The relations with partner institutions and law enforcement agencies are important for the purpose of:

- Conducting joint actions,
- Coordinating the activities in the process of informing the public within the joint actions

- Efficiently and in due time informing the public within the operational activities on cases, and
- Undertaking coordinated and high-quality actions for informing the public in various segments.

### ❖ Difficulties and problems

Very often there can be difficulties in the cooperation as a result of:

- Short time limits for application of the procedure on the one hand and information distribution on the other;
- Lack of basic information connected with the event;
- Free days or weekend days

The establishment of the methodology for undertaking urgent actions and the way of acting in problematic situations is important with a view to avoiding the possible problems. Key elements for a good cooperation between the prosecutor's office and the media are:

- Understanding the nature of the activities as one of the most essential elements for a good communication,
- Institutional representatives have to take into account that the media often operate on a daily basis, being contrary to the way of operating of the classical administration,
- Media representatives have to consider that the public prosecutor's office is not a press editorial board; it has its own communication rules, as well as a subordination chain of making decisions and acting.

### ❖ Future cooperation guidelines

The improvement of the future cooperation requires:

- Using new technologies (mobile internet, cameras etc.),

- Delivery of richer contents with the information (photos, video clips),
- Coordination of the everyday cooperation through modern means of communication.

### ➤ What information can and should be delivered to the media?

- Information about submitted indictments,
- Information about deprivation of liberty and searches executed upon court order,
- Information about appeals submitted against decisions of first instance courts,
- Information about participation of the public prosecutor and other persons in important procedural activities (exhumation, crime scene investigation and similar),
- Information about participation of public prosecutors in professional meetings, trainings and visits to the local communities, as well as
- All other information that can provide the public with an image where the prosecutor's office is depicted as an institution being positively engaged and performing well.

### ➤ What information must not and should not be delivered to media?

- One should avoid disclosing information from the investigation,
- Whether a legal or natural person is under investigation in a case being processed by the public prosecutor's office,
- Whether some person has a status of being a suspect, and
- When and how certain activities of unveiling criminal acts or perpetrators will be undertaken.

If the essential elements of a certain criminal act are fulfilled by publishing information that is inaccessible to the public, the journalist who has published that information might be prosecuted for that criminal act. In all other cases it is about journalism ethics which



should be on a highest level, especially at times of dealing with information (irrespective of whether it is in favour of the defendant/the damaged party) of this kind.

## 5. STEP BY STEP THROUGH THE MAIN HEARING

### 5.1 Indictment control

This is an obligatory phase, irrespective of whether the defendant and his defence attorney have challenged the bill of indictment or not. The bill of indictment evaluation judge performs the control on the bill of indictment submitted for criminal acts for which a prison sentence of up to 10 years is prescribed, whereas the Bill of Indictment Evaluation Council composed of three judges performs the control for criminal acts for which a prison sentence of more than 10 years is prescribed. The judge or the bill of indictment evaluation council can not act as judges judging in the same case.

### 5.2. Public

#### ➤ Informing the public

Every court issues information at a public and visible place every day about the case number, the judge, the date, the hour and the courtroom where the hearing takes place

At least once a year every court informs the public about the court's performance and the performance of the judges.

The parties and other participants in the ongoing proceeding must not provide information and evaluation of the course, the conduct and the outcome of the procedure if the court has previously forbidden giving such information.

#### ➤ The court and the public relations

A public relations office is obligatorily formed in the courts according to the Court Rulebook. Upon submission of a request by a concerned person, the office provides him with an anonymised copy of the ineffective decision or with a copy of the effective decision published on the web page of the court in accordance to the law.

By paying attention to the interests of the proceedings, the privacy and security of the participants in the proceedings, the president, the judges and the court officials

ensure the necessary conditions for publicity of the activities of the court, for appropriate admission of the media, for the topical information and for conducting the proceedings in the court. Apart from the video-notice board, the time, place and the case that is judged are published at a visible place in front of the premises where the trial takes place. As to the trials in which the public is hugely interested, the court administration provides premises for admission of a larger number of persons, and upon the order of the president of the court the court council holds the trial in the premises provided.

For the purpose of open and objective public informing about the activities of the court through the means of public informing, the president of the court or a person responsible for public relations, appointed by the president of the court, provides information about the court's activities or about the course of the proceedings related to a concrete case. The president of the court and the person in charge of public relations provide information to the public by paying heed not to prejudice the reputation, the honour and dignity of the person, as well as the independence and autonomy of the court.

The authorised court officials, the president of the council, the single judge or the council acting on the case shall timely deliver the data requested by the president of the court or the person in charge of public relations. The data contained in the information have to be accurate. Classified information with a respective degree of secrecy shall not be announced in accordance with the law.

The judges and the court officials who express their opinion in a written or spoken form, in their name and in front of media about legal, social and other issues in connection with individual cases from the court practice, are obliged to stress out that they express their own opinion.

### ➤ The public during the main hearing

By rule the main hearing is public and every person of legal age can attend it. This attendance is not conditioned by proving the existence of some kind of relation with the defendant, the damaged party or the other participants in the criminal procedure, or by proving the existence of professional or personal interests for following the court process. Journalists-reporters and citizens can attend the public hearings in the courts without obligation first to obtain a court permit. The court provides the conditions for their presence and work.

### ➤ Exclusion of the public

From the opening of the session until the end of the main hearing the Council (the judging council) can any time

- ex officio
- upon a proposal of the parties or the damaged party

exclude the public from one part of the main hearing or from the whole hearing if that is required due to safeguarding a state, military, official or important business secret, keeping the public order, protection of the private life of the defendant, the witness or the damaged party, protection of the safety of the witness or the victim and/or protection of the interests of the minor. The nature and seriousness of the criminal act, the circumstances under which the very act has been committed, as well as the existence of other specific circumstances (age, a special witness status, the way of collection of evidential material and similar) can be indicative that the public will be excluded during the main hearing. However, only the judging council can decide to exclude the public with a decision that has to be elaborated and publicly announced - earliest during the session phase.

Practically this means that LCP does not offer the possibility of excluding the public from the main hearing a priori through a public announcement or by issuing an announcement with such content on the official web site of the court before the day of the trial or before the beginning of the session on the day when the main hearing has been scheduled.

### ➤ Who is not encompassed with the decision on excluding the public

The exclusion of the public does not refer to the parties, the damaged party, their legal representatives and authorised persons, as well as to the defence attorney, except for cases determined by law.

### ➤ Decision on excluding the public

The judging council decides to exclude the public with a decision that has to be explained and publicly announced.

### ➤ Sanction due to an illegal decision on excluding the public

The exclusion of the public contrary to the Law represents an essential violation to the provisions of the criminal procedure. The higher court should pay attention to such a violation if it is stressed in the appeal.

### ➤ Maintaining the order in the courtroom

All persons present in the courtroom are obliged to respect the order in the courtroom and to adhere to the instructions given by the president which are in function of maintaining the order. The judging council can order the removal of persons from the session when they participate in the main hearing as audience and continue to disturb the main hearing process after being warned. The removal of these persons from the courtroom represents a sanctioning measure for courtroom order disrespect. It is directed towards a concrete person not adhering to the court orders and in no way this decision means exclusion of the public from the main hearing.

In function of unhindered realisation of the main hearing and maintenance of the order in the courtroom, the president of the council can

- Limit the number of persons participating in the main hearing in the capacity of audience which depends on the spatial possibilities of the courtroom and the assessment of the possible security implications. This is aimed at creating conditions for a regular course of the hearing and preventing a contact and verbal communication between the public and the participants in the criminal proceeding.

### ➤ Movie shooting and television recording of the main hearing

Movie shooting and television recording can be performed in the courtroom upon approval by the president of the Supreme Court, obtained at least five days before the day of holding the main hearing. However, despite this approval the judging council can decide some particular parts of the main hearing not to be recorded. The judging council has a discretionary right to disallow the recording of council members and the recording of some of the participants in the procedure upon their request. From a practical, but before all technical aspect, the way of photographing and recording in the criminal procedure, reproducing the records and the process of informing are elaborated in detail in the Court Rulebook.

# THE PUBLIC IN THE CRIMINAL PROCEDURE

## Criminal Procedure Guidebook for Journalists

So, it is indicated that any visual (video) and audio recording, provision of information and photographing in the criminal procedure and any public presentation (reproduction) of the recordings shall be performed upon approval by the president of the Supreme Court, after a previously obtained opinion by the president of the council, the judges, as envisaged by law.

### ➤ Recording and taking photos in the court building

ny recording and photographing in the court building outside the trial can be performed upon approval by the president of the court being in charge of the building.

### ➤ Recording and photographing approval in the criminal procedure

On the basis of a written approval request the president of the Supreme Court issues approval for recording or photographing in a concrete criminal case.

1. What is the time limit for submitting the request?  
The request has to be submitted within 5 days before the scheduled time of the hearing.
2. What if the time limit of 5 days has been neglected?  
The untimely request will not be rejected if the reasons for the delay are justified.
3. The content of the request

The request contains:

- indication of the case number for which an approval is being requested;
- name of the public medium (the media house);
- names and composition of the reporting teams (the cameraman, the photographer, the assistant and others);
- description of the technical equipment that is going to be brought in the courtroom and the planned way of following the process (video, audio, photo and other);
- details about the time when a scheduled trial will be recorded or details about the time when some participant in the procedure will be recorded outside the trial within the court building.

### ➤ Criteria

When reaching a decision on issuing an approval for recording and photographing, one shall take into account the interest and the confidence of the public, the nature of the case, the interest of the procedure, the privacy and the security of the participants in the court proceedings. The process of recording and photographing is carried out under the supervision of the judge or the president of the council in a way that ensures the unhindered course of the court proceeding, the order in the courtroom and respect for the dignity of the court.

### ➤ Termination or limitation of recording and photographing

The Court Rulebook prescribes that any recording and photographing in the court can be terminated or limited:

- upon a request submitted by the parties and with a decision of the court, at whatever time;
- if the public has been excluded from one part of the proceeding with a decision or as a result of a particular procedural action because of existence of legal reasons;
- if it is requested by the witness / damaged party when he testifies;
- If the court finds out that some participant in the procedure could be exposed to danger, damage or if an obstacle might be caused to the application of the legal measures of compulsion, or if it is required because of the nature of the evidence (hearing protected witnesses, minors and other).

### ➤ Spatial and technical conditions for recording and photographing

Approval issuing to the media for following the trial means providing an appropriate courtroom. In accordance with the Court Rulebook the courtroom should have a special area for the media teams and observers, being fenced-in or marked differently, with a separate entrance if possible. The journalists and the observers inform the court of their intention to attend the proceeding for the purpose of finding a place in the reserved courtroom area. The court officer or the member of the court police takes care that the persons, who have approval, reach their reserved places, as well as the journalists and the observers for whose presence a special approval is not required.

# THE PUBLIC IN THE CRIMINAL PROCEDURE

## Criminal Procedure Guidebook for Journalists

Upon the order of the judge, the court official or the member of the court police, the journalist shall show his press card/journalist legitimation and give the name of the media house for which he reports. Priority must not be given to any media house when issuing the approval or when finding place for the journalists in the reserved courtroom area.

The media house that has submitted an approval for following a trial can be allowed to bring one video or TV-camera, one audio system and two photo-cameras (having two objectives at most) and each of these devices can be used by one person.

### ➤ Unhindered course of the court procedure

According to the Court Rulebook the cameramen and the photo-reporters must not move while they are filming, they must not make movements, nor take positions that can result in distraction of the attention or disturbance of the order in the courtroom. The microphones and the relevant equipment should be previously installed at the place specified by the judge. The microphones have to be fitted with a switch-off button so that they can be temporarily turned off. The video and other equipment (mobile phones, computers) must not produce effects distracting the attention. The equipment can not be taken into or out of the courtroom without an approval issued by the judge or the president of the council.

In accordance with the Court Rulebook, the court can define the way of operating and reporting of an internal television in a closed system for the purpose of providing free access to video and audio recordings (images, sound, and voice). If the provision of copies means material expenses to the court, then the expenses will be covered by the person requesting the approval.

### ➤ Photographing or recording in the court and public presentation

Any photographing or recording in the court and any public presentation of the filmed material can be performed on the basis of a previously obtained written approval from the president of the court. Any photographing and video recording performed in a building outside the course of a court proceeding is approved by the president being in charge of the building where the court premises are located. The president of the council or the judge approves any photographing during a trial and any publication of the photographs. The public interestedness, the interests of the procedure, the privacy and security of the participants in the proceeding shall be taken into account in the process of issuing the approval for photographing and recording.

As soon as the approval has been obtained, any photographing and recording in the courtroom should be performed under the directions of the president of the council and the judges, in a way that the unhindered course of the trial and courtroom order remain ensured.

### 5.3. Main hearing

#### ➤ Opening of the session

The president of the council opens the session and announces the main hearing case and the composition of the council. Then, he should confirm the presence of all persons invited and in case they are not present he should check whether the invitations have been delivered to them and whether they have justified their absence or not.

#### ➤ Beginning of the main hearing

As soon as the president of the council determines that all legal assumptions for holding the main hearing have been fulfilled, in other words that there are no procedural obstacles to holding the session, the very session shall begin with introductory speeches of the parties, meaning that the conception of beginning the main session by reading the indictment is abandoned.

#### ➤ Introductory speeches

The main hearing begins by holding introductory speeches. The plaintiff speaks first, and then the defence attorney and the defendant should follow. The defendant has the right not to give an introductory speech.

In their introductory speeches the parties can express themselves about the decisive facts they intend to prove, elaborate the evidence they are going to present and specify the legal issues they will debate. Facts about a former conviction of the defendant must not be presented in the speeches. Actually, by means of the introductory speeches both sides introduce the attendants in the courtroom to their own case theory and announce the evidentiary material which will be presented within the evidentiary procedure.

#### ➤ Declaration of guilt of the defendant

Following the introductory speeches, the president of the judging council should ask the defendant if he understands what he is accused of and then he shall inform



him about his rights during the main hearing. Afterwards, the president of the council shall ask how the defendant pleads (guilty or not guilty) in relation to all the criminal acts of the indictment.

### 1. If the defendant admits the guilt during the main hearing

After the admission of guilt made by the defendant it is incumbent on the president of the council to check whether the admission is voluntary, whether the defendant is aware of the legal consequences of the admission of guilt, of the consequences in connection with the property-legal claim and whether he is aware of the criminal procedure expenses.

After the execution of these actions only the evidence that refers to the sanction decision shall be presented. In such a case the state of facts can not be a reason for an appeal, in other words the defendant can not lodge an appeal because of a wrongly determined factual state.

### 2. If the defendant pleads not guilty

If the defendant pleads not guilty of all items in the indictment, the parties shall start presenting their evidence within the evidentiary procedure. In such a situation the factual state of the case is actually disputed by denying the indictment. Afterwards, the parties should present all the evidentiary material - the evidence connected with the criminal act and guilt as well as the evidence that has an impact on the determination of the kind and extent of criminal sanction.

#### ➤ Evidentiary procedure

The evidence is presented according to the following order within the evidentiary procedure:

- evidence of the indictment and evidence connected with a property-legal claim
- evidence of the defence
- evidence of the indictment for disproving the evidence of the defence and
- evidence of the defence as an answer to the disproving
- It is noticeable that the court does not present evidence ex officio during the criminal procedure which is a reflection of its new role in the accusatory model of the procedure. Now the court is an independent and impartial arbiter in the

criminal procedure in which the parties play the main role and bear the load of proving. Exception to this is the so called "super expertise", in other words when there are two non-harmonic and contrary expert opinions – expertises, the court can order a third one, - so called "super expertise".

More correctly, the court might order a super expertise, upon a proposal made by the parties or ex officio, for the purpose of dealing with the contradictions in the findings and opinions of expert or professional persons. This super expertise is determined electronically by applying the rule of random selection from the experts register, in the presence of both parties, in other words the authorised plaintiff and the defence attorney.

### ➤ Ways of examination

According to the determined order of presenting the evidence and the authorisation that arises from the provisions of LCP with respect to the parties, the court does not present so called verbal evidence, in other words it does not examine the witnesses, the experts and the technical advisors. This means that the parties themselves examine the witnesses, the experts and the technical advisors, being proposed by them as evidence in the criminal procedure. In this context and with regard to this evidence the LCP prescribes:

Direct, cross and additional examination is allowed in the process of presenting the evidence (verbal). The direct examination is performed by the party who has proposed the witness, the expert or the technical advisor. Questions that suggest the answer within the direct examination are not allowed by rule. The cross examination is performed by the opposite side. That is a right, not an obligation since the witness, the expert or the technical advisors are introduced as evidence through the direct examination, whereas the cross examination represents an allowable tool for disputing and discrediting the statement made. The party that has proposed the witness, the expert or the technical advisor can perform additional examination that comes after the cross examination.

### ➤ The role of the court in the examination

As soon as the parties finish the examination, the president and the members of the council can pose questions to the persons examined (witness, expert and technical advisor). This legal authorisation of the court, in accordance with its new role in the process, should be understood as posing questions in function of making things more precise, clearer, elucidating given answers, and as posing questions about relevant themes in the same direction as well.

### ➤ Objecting to a question or to an answer

According to the legal provisions and the implemented evidentiary rules the court shall make a decision on an objection raised to a question posed or to an answer given by one of the parties. The public prosecutor, the private plaintiff and the defence attorney of the defendant should solve all eventual remarks or disagreements by raising appropriate objections in the examination process.

Illustratively, it means that they lose the possibility of "hibernation" in the examination process by not posing any question in order to check, elucidate, supplement or better explain the given statement, followed by "an extensive" elaboration of their disagreement with the statement given by the person examined, most often in the style "...I fully object to the statement of this witness because this statement is false, biased, given for the purpose of helping the..."

Now only the defendant has the privilege of making remarks with regard to the statements provided by the persons examined.

### ➤ Examination of an adversary witness

Upon a proposal of the party who proposed the witness, the president of the council shall allow a cross examination if the witness can not be considered any longer as a witness of the proposing party due to his statement given at the main hearing.

### ➤ Examination of the defendant only upon the proposal of the defence

The examination of the defendant as a mandatory phase preceding the evidentiary procedure and consequently the mandatory removal of all co-defendants from the courtroom, being characteristic of the dominantly inquisitorial model of the criminal procedure, is now past.

According to the new LCP the defendant can be examined only upon a proposal of his defence. In case there are co-defendants, they shall stay in the courtroom and have the possibility of posing questions.

### ➤ Evidentiary procedure supplementation

After the completion of the evidentiary procedure, the parties and the damaged party can give proposals for supplementing the evidentiary procedure with new circumstances that have arisen during the main hearing.

If there are no proposals for supplementation of the evidentiary procedure or if the proposal is rejected, the president of the council shall announce that the evidentiary procedure is completed.

### ➤ Closing statement

After the completion of the evidentiary procedure, the court shall invite the plaintiff, the damaged party, the defence attorney and the defendant to give their closing statements.

### ➤ Completing the main hearing

After the provision of the closing statements the president of the council shall declare that the main hearing is completed; the judging council shall withdraw so that its members can advise themselves and vote for the purpose of reaching a verdict.

### ➤ Passing the verdict

A verdict shall be reached if the court has not found out during the advising process that there is a need for opening main hearing because of supplementing the procedure or elucidating certain questions. The verdict is passed and announced publicly “in the name of the citizens of the Republic of Macedonia”.

### ➤ Announcing a verdict

When the court passes a verdict the president of the judging council shall announce it immediately. If the court can not pass the verdict the same day after the completion of the main hearing, it shall postpone the announcement of the verdict to a date not exceeding three days from the day of the postponement and it shall define the time and place of announcing the verdict.

In spite of the fact that the public can be excluded from the main hearing, the court always reads the dispositive part of the verdict at a public session. The council should decide whether and for how long the public will be excluded during the announcement of the reasons for the verdict. All present shall listen to the reading of the dispositive part of the verdict while standing.

### ➤ Preparation of a written verdict and delivery of the verdict

The announced verdict has to be prepared in a written form within 15 days of the announcement, and in complex cases within 60 days; the time limits can not be overrun.

### ➤ Renouncing the right of appeal

The defendant can renounce the right of appeal only if he has received the verdict.

EXCEPTION: The defendant can renounce the right to file an appeal to the higher court immediately after the announcement of the verdict.

When (the condition):

- The plaintiff and the damaged party have renounced the right of appeal on all grounds, and at the same time
- if the verdict does not contain a prison sentence

### ➤ Renouncing a filed appeal

Until the court of second instance reaches a decision, the defendant can renounce an already filed appeal. The defendant can renounce the appeal filed by his defence attorney, his spouse or partner, relative, adopter, adoptee, brother, sister and by his provider.

It should be made clear that the defence attorney or the persons who have the right to file an appeal in favour of the defendant (spouse or partner, relative, adopter, adoptee, brother, sister and provider) can not withdraw the already filed appeal in his favour without his consent. Only the defendant has a legal opportunity to withdraw an appeal that has been lodged to his benefit by another person for as long as the court of second instance has not made a decision. The defendant can do that with a statement, written request or by informing the higher court during the public hearing. This conception that comes from the legal provisions, which is also built-in in the court practice, is aimed at protecting the defendant and his guaranteed right to defence and in that context at preventing possible misuses. The plaintiff and the damaged party also enjoy the right to renounce and withdraw an appeal. Renouncing and withdrawing appeals can not be cancelled.

## 6. ACCELERATED PROCEDURES

### 6.1. Shortened procedure

#### ➤ Acts subject to a shortened procedure

The statistical data show that more than 80% of all criminal cases processed in the courts refer to criminal acts for which the law prescribes a fine or a prison sentence

of up to five years. Precisely because of this the new LCP extends the scope of criminal acts that will be comprised by the shortened procedure conducted in the courts of first instance. It is aimed at processing a larger number of criminal acts within the shortened procedure whose main characteristic is a reduced formalisation and shorter time limits for undertaking procedural actions, but as well as a possibility of directing the parties to a mediation procedure by the court. So, the criminal acts for which a fine or a prison sentence of up to five years is prescribed will be judged in the shortened procedure.

### ➤ Initiation of a shortened procedure

The criminal procedure is initiated on the basis of the bill of indictment of the public prosecutor or on the basis of a personal legal action. The concept of a bill of indictment and indictment proposal of a damaged party as a plaintiff (subsidiary indictment) is abandoned. Practically, this means that the damaged party can not appear in the capacity of authorised plaintiff in the regular and shortened procedure, thus being unable to obtain a status of a party in the criminal procedure.

### ➤ Detention order

A detention can be ordered in the shortened procedure against a person for whom there is a justified suspicion that he has committed a criminal act, if:

- 1) he hides or if the confirmation of his identity is not possible or if there are other circumstances being a sign that he might flee and
- 2) If the matter in question is a criminal act committed against the public order or the morale and the particular circumstances justify the concerns that the suspect will re-commit the criminal act or that he might commit the criminal act he threatens to commit.

### ➤ Who can propose the measure detention

Only the public prosecutor can propose detention in the shortened procedure. The private plaintiff does not have the right to propose detention.

### ➤ Who orders the detention

The judge of the previous procedure can order a detention before the submission of an indictment proposal, whereas the competent single-judge can order a detention after submission of an indictment proposal.

### ➤ Duration of the detention

The detention can not last more than eight days before submitting an indictment proposal and the criminal council decides about the appeal filed against the detention decision.

From the submission of the indictment proposal until the completion of the main hearing the detention can not exceed 60 days. When the defendant is in detention it is incumbent on the court to act with an extreme urgency.

### ➤ Reception of indictment by the court

When the court receives the indictment proposal or when a person initiates a private legal action, the judge first should check whether the court is competent and whether there are conditions for rejecting the indictment proposal or the private legal action.

If the judge does not make a decision on declaring the court as incompetent or on rejecting the indictment proposal / the private legal action, then a main hearing shall be scheduled.

### ➤ Reconciliation hearing

Before scheduling the main hearing with regard to criminal acts which are in the jurisdiction of the single-judge and prosecuted via a private legal action, the single-judge can invite only the private plaintiff and the defendant to visit the court on a certain day for the purpose of elucidating the matters, if he considers that it is appropriate for a faster completion of the procedure. Apart from the invitation, the defendant shall be provided with a copy of the private legal action.

During this hearing the single-judge can make a proposal for directing the private plaintiff and the defendant to a mediation procedure if there is consent from both sides. If the parties agree to be directed to a mediation procedure, the single-judge shall make a decision on directing the parties to mediation and the acting on the case should continue pursuant to the provisions of LCP referring to the mediation procedure.

### ➤ If the parties do not accept mediation or if they do not reconcile

If the parties do not agree to be directed to mediation and if they do not reconcile or if there is no withdrawal of the private legal action during the reconciliation hearing, the judge shall take statements from the parties and shall call them to submit their own proposals with respect to collection of evidence.

### ➤ Scheduling the main hearing

If the single-judge considers that there are no conditions for rejecting the lawsuit, he shall immediately and by rule schedule a main hearing and inform the parties about that. The single-judge can immediately open the main hearing and after the presentation of evidence he can make a decision with respect to the private legal action. The private plaintiff and the defendant will be in particular informed about this by means of the invitation delivered to them.

### ➤ Persons who should be invited to the main hearing

The judge should invite the defendant and his defence attorney, the plaintiff, the damaged party and his legal representatives and authorised persons, the witnesses, the experts and the interpreter to the main hearing.

### ➤ Conditions for holding the main hearing

The main hearing is held in the presence of the public prosecutor or the private plaintiff and the defendant. If the defendant fails to come to the main hearing, although he has been orderly invited or the invitation can not reach him because he obviously avoids to accept it, the court might decide to hold the main hearing in his absence for criminal acts for which the law prescribes a fine or a prison sentence of up to three years. The defendant's attendance during the main hearing is obligatory for the remaining criminal acts that are processed through a shortened procedure.

### ➤ Course of the main hearing

Contrary to the regular criminal procedure where the main hearing starts by holding introductory speeches, the main hearing in the shortened procedure starts by presenting the content of the indictment, followed by the pleading of the defendant with regard to the criminal act - whether he pleads guilty or not guilty. In case the defendant pleads not guilty of the criminal act indicated in the indictment, the judge shall initiate the evidentiary procedure and first the evidence proposed



by the authorised plaintiff should be presented and then the evidence proposed by the defence.

If during the main hearing the defendant gives a statement admitting the guilt and the single-judge considers that the statement has been given voluntarily, that the defendant is aware of the legal consequences of admitting the guilt and of the consequences connected with the property-legal claim and criminal procedure expenses, then only the evidence referring to the sanctioning decision shall be presented in the evidentiary procedure.

Practically this means that the admission of guilt made during the main hearing does not evoke a plea bargain procedure, it just provides a possibility for shortening the evidentiary procedure.

### ➤ Passing a verdict

After concluding the main hearing the court shall immediately pass the verdict and announce it with its essential reasons. The verdict has to be prepared in a written form within 8 days of the announcement. The verdict can be appealed within 8 days of the delivery of its transcript.

### ➤ Notification about a session of the court of second instance

When the court of second instance makes a decision on an appeal filed against a verdict passed through the shortened procedure by a court of first instance, both parties shall be notified about the session of the council of the court of second instance only if the president of the council or the council considers that the presence of the parties will benefit the elucidation of the matters. If the matter in question is a criminal act processed upon a request of the public prosecutor, the president of the council shall deliver the documentation before holding the session to the public prosecutor who can file a written proposal within eight days.

## **6.2. Reaching a verdict on the basis of an agreement between the public prosecutor and the suspect**

### ➤ Contracted justice

The plea bargain, a typical Anglo-Saxon principle being adjusted to the European judicial practice, found a place in the new LCP which contains provisions regulating for the first time in the Macedonian procedural-penal legislation the possibility of

making an agreement between the public prosecutor and the suspect on the kind and the extent of the criminal sanction.

### ➤ Submission of an agreement proposal- until when?

For as long as an indictment has not been submitted, the public prosecutor and the defendant can file an agreement proposal requesting that the judge of the previous procedure apply a criminal sanction, determined by kind and extent, within the legally determined limits for the concrete criminal act, but not under the penalty mitigation limits determined by the Criminal Code.

The first possibility of negotiating the kind and extent of the criminal sanction between the suspect and the public prosecutor can be considered in the investigation phase, in other words before the submission of the indictment. Initiative for such negotiations can come from the public prosecutor (most often at the moment when he informs the suspect that he has finished the investigative procedure against him, when he presents the evidentiary material obtained in the investigation or when he calls the suspect for questioning before the end of the investigation) as well as from the suspect if, in consultation with his defence attorney, he considers that negotiating a plea is in his best interest. Due to the need for a balance in the negotiating power of both sides in the negotiation process, the suspect is not required to admit the guilt of the criminal act that he negotiates.

In the indictment control phase the suspect has the second and also the last possibility of negotiation with the public prosecutor as to the kind and extent of the criminal sanction, but in this case the admission of guilt in the criminal act represents a condition for initiation of the plea bargain procedure.

The plea-bargaining is done between the competent public prosecutor and the suspect in presence of his defence attorney.

### ➤ Subject to plea-bargaining

The kind and extent of a criminal sanction, proposed in the agreement proposal, shall be subject to a plea bargain. In addition, a property-legal claim filed by a damaged party can be subject to a plea bargain if the suspect has given consent.

It is worth noting that the public prosecutor and the suspect can not negotiate the legal qualification of the criminal act.

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### ➤ Participation of the defence attorney of the suspect in the plea bargain

The suspect must have a defence attorney from the beginning of the plea bargain procedure. The suspect selects a defence attorney according to his choice. If he has not selected a defence attorney himself, the president of the competent court shall appoint a defence attorney to him ex officio.

### ➤ Non-participation of the court in the plea bargain

The judge of the previous procedure must not participate in the plea bargain procedure that is conducted between the public prosecutor and the suspect and his defence attorney. As clearly prescribed in LCP, the court is prohibited from participating in the plea bargain for the purpose of preventing the court from biasing the parties and the defence attorney in whatever way in relation to the decision whether they should enter the plea bargain procedure or not, as well as in relation to the selection of the kind and extent of criminal sanction. In this way the role of dominus litis of the public prosecutor during the investigative procedure is emphasised.

By not participating in the plea bargain procedure the judge preserves his impartiality as an arbiter who evaluates the submitted proposal agreement on the basis of evidence collected by the prosecution service. It is useful that the judge does not have an insight into the plea bargain procedure because in that way the judge will not have any information about the negotiation process that precedes the concluded proposal agreement, and also in that way he will not be acquainted with the discussions the prosecutor had with the defence attorney. This emphasises the role of the court in the second phase of the plea bargain procedure that includes evaluation of the proposal agreement.

### ➤ Acting on the proposal agreement

Within three days after receiving the proposal agreement, the judge of the previous procedure shall schedule a hearing for evaluating the proposal agreement. The judge shall invite the submitters of the proposal agreement and it is incumbent on him to check whether the proposal agreement has been voluntarily submitted, whether the suspect is aware of the legal consequences by accepting it, and of the consequences related to the property-legal claim and the criminal procedure expenses. The judge of the previous procedure shall inform the public prosecutor, the suspect and his defence attorney that they have the right to renounce the

proposal agreement until a decision is made, as well as that accepting the proposal agreement is considered as renouncing the right to appeal against the verdict reached on the basis of the proposal agreement.

### ➤ Rejecting the proposal agreement

If the judge of the previous procedure determines that the evidence collected about the facts, being important for selecting and weighing the criminal sanction, does not justify the pronouncement of the proposed criminal sanction or if he determines that the public prosecutor, the suspect and his defence attorney have submitted at the hearing a request for determination of a criminal sanction that is different from the sanction contained in the proposal agreement, he shall make a decision on rejecting the proposal agreement and deliver the case files to the public prosecutor. In such a case the minutes of the hearing held and the proposal agreement can not be used in the further course of the procedure.

### ➤ A verdict reached on the basis of a proposal agreement

If the judge of the previous procedure accepts the proposal agreement, he shall pass a verdict in which the criminal sanction must not be different from the criminal sanction contained in the proposal agreement. The verdict contains the elements of a convicting verdict; it shall be announced immediately and prepared in a written form within three days of its announcement. The verdict shall be delivered with no delay to the public prosecutor, the suspect and his defence attorney. A copy of the verdict is delivered without a delay to the damaged party, who in case of being unsatisfied with the decision on the kind and extent of the property-legal claim can realise his right in a litigation procedure.

### ➤ The plea bargain from aspect of the public

Without any exception, the plea bargain procedure between the public prosecutor and the suspect is conducted in absence of the public. Every piece of information disclosing concrete data connected with a certain plea bargain procedure between a public prosecutor and a suspect can result in prejudices in case of a plea bargain failure; in the further acting when the case will be processed in the court, during the indictment control or during the main hearing, the members in charge of evaluating the bill of indictment or later the members of the court council can have prejudices against the suspect and can see him as criminally liable since he previously has accepted to negotiate the kind and extent of the criminal sanction.

This can be expressed in situations where information regarding the plea bargain procedure, applied in the control phase of the indictment, is disclosed to the public as it is known that a condition for initiating such a procedure is a previous admission of guilt in the criminal act made by the suspect.

Briefly:

- The competent public prosecutor and the suspect participate *in the first phase*: discussing, negotiating, coming to an agreement, defining the obligatory elements of the proposal agreement and its signing. **From this process the court and the public are entirely excluded.**
- The judge is included in *the second phase* when the proposal agreement is evaluated, but however, **the public remains excluded** from the hearing when the proposal agreement is evaluated.

If the plea bargain procedure ends successfully, meaning that the court has accepted the proposal agreement and reached a verdict, the court shall make the verdict **available to the public** as it has a character of being effective

### 6.3. Mediation procedure

This is another of the so called shortened procedures enabling the parties to attempt to settle their discrepancies and disputable issues outside the court and with the intervention of a mediator with regard to criminal acts for which the prosecution is initiated by submitting a private lawsuit. In that way they will avoid the main hearing as a most complex, longest and as a consequence of that most expensive phase in the acting in front of the court of first instance.

#### ➤ Consent provided by the parties as a condition for mediation

Within the reconciliation hearing and when the criminal act is prosecuted upon filing a private legal action, the single-judge can propose resolution of the dispute in front of a mediator. If the parties give their consent within the time limit set, the single-judge shall direct them to mediation, whereas if they are not consentient the single-judge shall schedule the main hearing in conformity to the shortened procedure provisions and the procedure will continue.

### ➤ Selection of a mediator

Within three days of the given consent, the parties shall select one or more mediators from the Mediators Name Book on the basis of a mutual agreement and they shall inform the single-judge about their choice.

### ➤ Application of the mediation procedure until an agreement is made

The mediator communicates with the parties together or separately. The presence of the parties during the mediation procedure is obligatory. Before the start of the mediation procedure, it is incumbent on the mediator to acquaint the parties with the principles, the rules and the expenses of the procedure

### ➤ Successful mediation-terminating the procedure

The mediation procedure can successfully end by signing a written agreement. In such a case the signed written agreement shall be delivered with no delay to the competent court. When the parties completely fulfil the obligations undertaken by signing the written agreement and when they inform the court of that by presenting relative evidence in that direction, the single-judge shall make a decision on terminating the procedure.

### ➤ Unsuccessful mediation – scheduling the main hearing

The mediation procedure can fail as a result of several reasons. The single-judge should be informed about the unsuccessful mediation and after that he shall schedule the main hearing and the procedure with regard to the private legal action should continue in accordance with the shortened procedure provisions.

## 6.4. Procedure for issuing a penal order

### ➤ Can someone be convicted without appearing in the court at all?

Yes, the court of first instance can reach a convicting verdict without scheduling or holding a main hearing, practically without inviting the defendant and providing him with the possibility of presenting his defence.

### ➤ When?

When the criminal acts are in the competence of a single-judge and when there is

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sufficient evidence, the public prosecutor can submit a proposal for issuing a penal order. Such a proposal can be made by the private plaintiff too.

### ➤ Proposing criminal sanctions or measures

By means of the proposal for issuing a penal order, the public prosecutor proposes the pronouncement of one or more of the following criminal sanctions or measures to the court:

- 1) a monetary penalty ranging from 10 to 100 daily fines;
- 2) a suspended sentence with a determined prison sentence of up to three months or fine;
- 3) prohibition from driving a motor vehicle of up to two years and
- 4) confiscation of property and proceeds acquired through criminal activity and confiscation of objects.

### ➤ If the court does not accept the proposal

If the single-judge considers that the data given in the proposal for issuing a penal order do not provide a basis for issuing a penal order or according to these data one can expect a pronouncement of a criminal sanction or measure being different from the one proposed by the public prosecutor, the single-judge shall schedule a main hearing pursuant to the shortened procedure provisions as soon as he receives the indictment proposal. This practically means that the submission of the proposal for issuing a penal order will be considered as a submission of an indictment proposal.

### ➤ If the court accepts the proposal

If the single-judge accepts this proposal, he shall issue a penal order accompanied by a verdict in which only the evidence justifying the penal order issue will be given and the same verdict shall be delivered to the defendant with an advice that he has the right to appeal it within eight days of receipt. If the defendant has not used the right to appeal this verdict, the very verdict shall become effective and suitable for execution.

Practically, by means of this procedure the defendant can be effectively convicted of lighter criminal acts without his presence in the courtroom and without going

through a contradictory procedure in which he could present his defence and dispute the allegations indicated in the indictment. However, the court of first instance is not competent to pronounce an effective prison sentence in this procedure.

### ➤ Right to file a complaint

If the defendant himself or through a defence attorney has used his legal right to file a complaint in due time, the court of first instance shall schedule a main hearing without considering whether the complaint is based or not. In such a case the procedure shall continue in accordance with the shortened procedural rules.

The complaint in this procedure practically has no character of legal means whose basis should be subject to evaluation by the court; it represents particular initiative or a signal that the defendant does not agree with the “accelerated processing”.

### ➤ What about the already reached verdict?

By scheduling the main hearing it is considered that the court decision on issuing a penal order has not been made at all and that no verdict has been reached.

## 7. EXECUTION OF SANCTIONS

### ➤ *Law on Execution of Sanctions*

The Law on Execution of Sanctions<sup>79</sup> regulates the issue concerning the way of executing sanctions and the procedure for execution of sanctions (penalties, alternative measures, security measures and correctional measures) that can be pronounced for committed criminal acts.

### ➤ *When does the defendant obtains the status of a convict*

The defendant obtains a status of a convict when it has been determined with an effective verdict that he is criminally liable for a certain criminal act. In the criminal procedure the decisions are made in the form of a verdict, decision and order. A verdict can be passed only by the court, whereas other organs participating in the criminal procedure can make decisions and orders too. However, in accordance with

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<sup>79</sup> Official Gazette of RM nb. 2/2006, 57/2010, 170/2013



the legality principle<sup>80</sup>, only a competent court can pronounce a criminal sanction to a perpetrator of a criminal act through a procedure conducted according to the Law on Criminal Procedure.

### ➤ *Execution of criminal sanctions*

The criminal sanctions shall be executed when a decision with which a sanction has been pronounced becomes effective and when there are no legal obstacles to its execution.

### ➤ *When does the decision is effective and executable*

The verdict and the decision become effective when there is no possibility anymore of disputing them with a legal remedy - appeal or when no appeal is allowed.

From aspect of execution of the pronounced sanction, the effective decision shall be executed when its delivery has been completed and when there are no legal obstacles to the execution. If no appeal has been filed or if the parties deny or renounce the appeal, the decision shall be executable as soon as the appeal time limit ends or from the day of denying or renouncing the appeal filed.

### ➤ *Execution of sanctions before the decision becomes effective*

Individual sanctions can be executed before the day the sanctioning decision becomes effective only when determined by law.

### ➤ *Competent court for execution of sanctions*

Competent court for execution of sanctions is the court whose jurisdictional boundaries comprise the place of residence or the place of stay of the convict. In case the court of first instance is not competent to execute the sanction, it should submit a certified copy of the decision accompanied with an enforceability certificate to the court (or another organ – depending on the kind of the decision) being competent for the execution. According to the Law on Execution of Sanctions the court of first instance shall do that immediately and not later than three days from the day the decision becomes executable.

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<sup>80</sup> Article 3, paragraph 2, Law on Criminal Procedure, Official Gazette of RM nb. 150/2010, 100/2012

### ➤ *Penitentiary and correction institutions*

The prison sentence and the correctional measure - direction to a correctional centre - are executed in penitentiary and correctional institutions.

The penitentiary institutions can be penitentiary centres and prisons. Penitentiary institutions are: the Penitentiary Centre Idrizovo with an open department in Veles, Penitentiary Centre Stip, Penitentiary Centre Struga – of open kind, Bitola Prison, Gevgelija Prison, Kumanovo Prison with an open department in Kriva Palanka, Ohrid Prison, Prilep Prison, Skopje Prison, Strumica Prison and Tetovo Prison.

Correctional institutions for execution of the correctional measure direction to a correctional centre are the following correctional centres: the Correctional Centre Tetovo and the Correctional Centre Skopje.

The Minister of Justice performs the distribution of the detainees in the detention departments of the penitentiary institutions, the convicts and the sentenced minors in the penitentiary and correctional institutions with a general act.

The convicted minors obligatorily serve the juvenile prison sentence in a special institution for juveniles. Individual categories of minors can serve the correctional measure in special departments of correctional centres. Persons under the age of majority are accommodated according to gender in separate centres; they can also be accommodated in a single centre, but separately.

### ➤ *Judge in charge of execution of sanctions*

Judges in charge of execution of sanctions are introduced to all basic courts. The judge in charge of execution of sanctions protects the rights of the convicts, supervises the legality of the procedure for execution of sanctions and ensures the equality of the convicts in front of the law. Immediately after receiving the decision, it is incumbent on the judge in charge of execution of sanctions to approach the execution of the sanctions by undertaking the legally determined actions and measures.

The judge in charge of execution of sanctions undertakes activities and makes decisions:

- on directing the convicts to serve the prison sentence;
- on postponing the prison sentence;
- about termination of serving a prison sentence and withdrawing the termination of serving a prison sentence;
- on calculating the penalty if the competent court has not made an appropriate decision;
- on penalty execution obsolescence or stopping the execution of the penalty due to death of the convicted person; he informs the competent court so that an appropriate decision could be made;
- about cooperation with competent social work centres regarding the post-penal aid and the execution of alternative measures on substituting fines with prison;
- about payment of fines by instalments and
- about other matters prescribed by law.

### ➤ *Acting on executing the prison sentence*

The judge in charge of execution of sanctions is competent organ for undertaking the necessary activities aimed at executing the prison sentence according to the place of residence or place of stay of the convicted person. If the place of residence or place of stay of the convicted person is unknown, the court that has passed the first instance decision is authorised to direct the convicted person to serve the prison sentence. If the place of residence or place of stay is unknown or if the convicted person is unavailable, the court that has reached the first instance decision should request the Ministry of Interior Affairs to locate him and to immediately inform the court about his address.

The procedure for directing convicted persons is urgent.

The court that has reached the first instance decision shall deliver all the data about the convicted person, together with the execution decision, to the basic court in charge of execution of sanctions. The above-mentioned data are collected during the procedure and are of importance to the execution of the prison sentence. After the receipt of the execution decision and not later than eight days of the receipt, the judge in charge of execution of sanctions shall immediately undertake the necessary actions aimed at enforcing the prison sentence.

### ➤ *Directional act*

The convicted person is called to start serving his prison sentence by a hand delivery of a directional act instructing him about when he should present himself in a certain institution. The directional act warns the convicted person that if he does not present himself in the institution on the given day, he will be brought by force and he will have to pay the expenses of his bringing-in. The day of reporting to the institution is set by giving the person 8 days at least and 13 days at most starting from the day he receives the directional act.

### ➤ *Notifying the institution and data delivery*

By delivering the directional act to the convicted person, the judge in charge of execution of sanctions at the same time informs the institution about the day when the convicted person should present himself and delivers a copy of the effective and enforceable verdict with which the sentence has been pronounced, a criminal records statement, as well as other data available to him with regard to the personality of the convicted person.

What if the convicted person does not report to the institution?

If the convicted person does not present himself on the specified day of executing the prison sentence according to the Directional Act, the institution shall with no delay inform the judge in charge of execution of sanctions about that.

### ➤ *Ordering the arrest of the convicted person and warrant*

In case the convicted person does not present himself to start serving the prison sentence on the defined day, the judge in charge of execution of sanctions shall file an arrest order for the convicted person to the Ministry of Interior Affairs; in case the convicted person hides or has fled, the judge shall also request the Ministry of Interior Affairs to issue a warrant aimed at locating and bringing the convicted person to the institution where the prison sentence should be executed.

### ➤ *Postponement of the start of executing a prison sentence*

In accordance with the Law<sup>81</sup>, the start of serving the prison sentence of a convicted person can be postponed upon his request, if:

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<sup>81</sup> Article 89, Law on Execution of Sanctions, Official Gazette of RM nb. 2/2006, 57/2010, 170/2013

1. he has been hospitalised because of a serious acute disease or addictions;
2. death or serious disease has occurred within the nearer family of the convicted person;
3. the postponement is necessary for the purpose of executing and completing urgent agricultural and seasonal works or works that resulted from natural disasters, or works as a result of another disaster, in situations in which the family of the convicted person does not have at its disposal sufficient workforce;
4. the convicted person is obliged to execute a certain work activity that he has already started executing, and if a more significant damage could result from failure to complete that work activity;
5. the postponement is needed so that he can complete a school year or take the exams for which he has been preparing;
6. he has been convicted together with his spouse or other members of the joint family, or if some of them are serving the sentence and by directing this person to serve the sentence the existence of the old, sick and minor members of the family would be endangered, or the normal economic activities of the family would be called into question.
7. a woman has been convicted whose child is not older than one year or if she is pregnant and the period until childbirth is less than three months and
8. it is necessary that the convicted person do the children upbringing during a certain period or he must care for disabled persons as obliged according to the opinion of the social protection organs of the municipality in whose territory the children or these persons have a place of residence or temporarily stay.

### ➤ *Primary postponement condition and practical implications*

It is worth noticing that the primary condition that must be fulfilled by a convicted person so that he can request postponement of enforcement of prison sentence is his liberty, in other words he must not have started serving the prison sentence.

From practical aspect this condition, imposed by the provisions of the Law on Execution of Sanctions, cannot be fulfilled by all categories of convicted persons

and their right to request postponement of the prison sentence for a certain time period is legally limited.

As an illustration, when there is a convicting verdict that prolongs the detention measure against a detainee until the day he should start serving the prison sentence, in other words until the prison sentence becomes effective, the detainee will get a status of a convicted person and he shall be immediately taken from the detention institution to an institution intended for prison sentence serving (prison), of course, with a directional act and the accompanying documentation and after the delivery of the effective decision. Imposed by the above-mentioned condition, the same applies to convicted persons who will submit a postponement request despite the fact that they have already started serving the prison sentence according to the given directional act, no matter whether wilfully or upon the issue and realisation of a warrant.

Simply, the court shall reject any postponement request submitted by a convicted person who is already serving his prison sentence in any institution on the basis of an effective and enforceable decision.

### ➤ *Postponement at the beginning of the prison sentence execution*

The execution of a prison sentence can be postponed:

- while the disease, in other words the medical treatment lasts, if the postponement is requested because the convicted person has been hospitalised as a result of a more serious acute disease or addictions.

Because of the specificity of the cause (hospitalisation due to a more serious acute disease or addictions), the law allows submission of a request for postponement at the start of the prison sentence executability. The request can be filed by his spouse, relative, adopter, adoptee, brother, sister and a provider. Every 30 days the convicted person, whose prison sentence has been postponed on this basis, shall deliver a credible proof for his health state.

- not longer than three months, if the postponement is requested due to death or serious disease that has occurred within the nearer family of the convicted person; if the postponement is necessary for the purpose of executing and completing urgent agricultural and seasonal works or works

as a result of natural disasters, or works as a result of another disaster, in situations in which the family of the convicted person does not have at its disposal sufficient workforce; if the postponement is requested because the convicted person is obliged to execute a certain work activity that he has already started executing, and if more significant damage would result from failure to complete that work activity; and if it is necessary that the convicted person do the children upbringing during a certain period or if he needs to care for disabled persons as obliged according to the opinion of the social protection organs of the municipality in whose territory the children or these persons have a place of residence or temporarily stay.

- until the end of the school year if the postponement is needed so that he can complete the school year or
- six months if the postponement is needed so that he can take an exam for which he has been preparing;
- not longer than six months if a person has been convicted together with his spouse or other members of the joint family, or if some of them are serving the sentence and by directing this person to serve the sentence the existence of the old, sick and minor members of the family would be endangered, or the normal economic activities of the family would be called into question;
- until the child reaches the age of 1 year, if a woman has been convicted whose child is not older than one year or if she is pregnant and the period until childbirth is less than three months

### ➤ *Postponement request*

The request for postponing the start of a prison sentence execution shall be submitted within three days of receipt of the directional act. If the reasons for postponement of Article 89, paragraph (1), items 1 and 2 of the Law on Execution of Sanctions (hospitalisation as a result of a more serious acute disease or addictions and death or a serious disease in the closer family of the convicted person) occur after that time limit, then the request can be submitted until the day when the convicted person should present himself to start serving the prison sentence.

### ➤ *Credible evidence in favour of the postponement request*

The postponement request should be enclosed with credible evidence of the reasons that justify the postponement.

### ➤ *Who makes a decision on the postponement request*

The judge in charge of execution of sanctions makes a decision on the request for postponement of the start of the prison sentence execution. It is incumbent on him to make a decision within three days of receipt of the request. Before reaching a decision, he can review all the circumstances indicated in the request.

### ➤ *Suspensive effect of the request*

The start of executing the sentence shall be postponed until a decision is reached.

### ➤ *Right to appeal*

The decision made with regard to the request for postponement of the start of the prison sentence execution can be appealed by the convicted person and the competent public prosecutor in front of the criminal council of the court in charge of executing the sanction and within three days of receipt of the first instance decision.

### ➤ *Suspensive effect of the appeal*

The appeal postpones the execution of the sentence. It is incumbent on the Criminal Council to make a decision with regard to the appeal within three days of receipt of the appeal.

### ➤ *Irregular legal remedies and postponing the execution of the prison sentence*

A decision on postponement of the start of the prison sentence execution can be made by the competent court in charge of making a decision upon request for repeating a criminal procedure filed in favour of a convicted person, upon request for irregular examination of an effective verdict and upon request for substitution of a prison sentence with a fine, under conditions envisaged by law.



### ➤ *Illicit postponement request*

The judge in charge of execution of sanctions shall reject any request for postponement of the start of execution of the sentence as illicit if it has been re-submitted on the same basis (reasons) of Article 89 of the Law on Execution of Sanctions. The re-submitted request does not postpone the start of execution of the sentence.

### ➤ *Termination of serving the prison sentence*

Due to a medical treatment and upon request of the convicted person or upon a proposal made by the director of the institution, on the basis of an opinion issued by the medical prison service and upon a previous opinion of the competent public prosecutor, the judge in charge of execution of sanctions can order termination of the prison sentence, being served by the convicted person, for a period not longer than 30 days when there are no conditions for application of a medical treatment in the institution; otherwise the institution shall direct the convicted person to an appropriate health institution. In addition, a copy of the decision shall be delivered to the competent public prosecutor.

The convicted person who has been allowed to temporarily stop serving the prison sentence due to a medical treatment is under obligation to submit a certificate about his health to the judge in charge of execution of sanctions every month. If it has been determined that there are no reasons for terminating the sentence, the judge in charge of execution of sanctions shall withdraw the decision on approving the termination of the prison sentence.

The competent public prosecutor can make a proposal for withdrawal of the decision. With the proposal the public prosecutor can request that the judge in charge of execution of sanctions order independent medical examinations of the convicted person.

The convicted person and the public prosecutor have the right to appeal the decision made with regard to the request for terminating the prison sentence in front of the criminal council of the court that is competent to execute the sanction.

### ➤ *Termination of up to 30 days*

As a result of the reasons indicated in Article 89 of the Law on Execution of Sanctions, the director of the institution in charge of execution of sanctions can make a decision on terminating a prison sentence, being served by a convicted person, for a period

not longer than 30 days. Within three days of receipt of the decision the convicted person has the right to lodge an appeal against the decision made by the director of the institution to the Minister of Justice.

The time passed under termination of the sentence shall not be calculated as a served prison sentence.

If after the expiry of the termination of the sentence the convicted person does not present himself to further serve the sentence, the institution shall immediately inform the judge in charge of execution of sanctions, and he shall undertake legal measures for bringing the convicted person to continue serving the prison sentence. Even the competent court can determine termination of a prison sentence of a convicted person when it makes a decision on some of the irregular legal means filed by the parties in the criminal procedure.

### ➤ *Discharge of convicted persons from serving the sentence*

Convicted persons are discharged from serving the sentence when they finish serving the sentence, by being pardoned with an act of a competent body after serving some prison time, with a parole decision or with a decision made by the director of the institution on early discharge from serving the sentence.

### ➤ *Discharge after having served the sentence*

A convicted person shall be discharged from serving the sentence from the institution on a day and at hours when his prison sentence expires. If the last day of his prison term is Sunday or a holiday, the convicted person shall be discharged the preceding day.

### ➤ *Discharge from serving the sentence due to pardoning*

A convicted person shall be discharged from serving the sentence from the institution on that day when by means of an amnesty or pardon act, adopted by a competent authority, he is released from further serving the prison sentence.

### ➤ *Discharge on the basis of a parole*

A convicted person shall be released on the day that is set in the parole decision as a release day.

### ➤ *General parole conditions*

A convicted person can be released from serving the prison sentence only if he does not commit another criminal act until the expiry of his pronounced sentence, if he has corrected himself in a way that it can be reasonably expected that he will conduct himself well at liberty, and especially that he will not be committing criminal acts. In the process of evaluation whether the convicted person will be paroled, one shall take into account his deportment while he has been serving the sentence, the execution of the working obligations with respect to his work ability and other circumstances which show that the penalty objective has been attained.

Only a convicted person who has served one half of his prison sentence can be discharged on parole.

With some exceptions, a convict who has served one third of his prison sentence can be discharged on parole under the above-mentioned conditions, and if special circumstances referring to the personality of the convicted person obviously show that the objective of the penalty has been attained.

### ➤ *Parole for persons sentenced to life imprisonment*

A convict who has been sentenced to life imprisonment can not be discharged before having served at least 15 years prison time.

### ➤ *Parole with a protective supervision*

The court can set a protective supervision on a convicted person who has been released on parole. The protective supervision consists of special measures for assistance, care, observation or protection implemented by the social work organ.

### ➤ *Parole regarding minors serving the juvenile prison sentence*

A minor can be paroled from a juvenile prison if he has served one third of the prison sentence, but not before he serves one year and if it can be justifiably expected, according to the achieved results in the correction, that he will conduct well at liberty, that he will continue his work and education and that he will not commit criminal acts in future. During the parole period the court might order the protective supervision measure.

### ➤ *Parole procedure*

#### a. Parole request and parole proposal

Under conditions determined by law, a parole request can be filed by a convicted person or his spouse, relative, adopter, adoptee, brother, sister and provider. The director of the institution can file a parole proposal for release of convicted persons on the basis of a parole.

#### b. Parole decision

The court that reached the verdict in the first instance procedure and in a council composed of three judges makes a decision on the parole with regard to a convicted person outside a main hearing (criminal council).

Before making a decision on the parole, the court of first instance shall request data from the institution and also it can hear the convicted person and request the opinion of the judge in charge of execution of sanctions, as well as the opinion of the officers in the institution with respect to the circumstances that refer to the personality of the convicted person, his conduct in the prison, the execution of the work obligations and other circumstances that can lead to conclusion that the penalty objective has been achieved and especially that the convicted person will not commit criminal acts in future.

The release day of the convict shall be indicated in the parole decision in which it is necessary that the appeal time limit is taken into account. The decision with which the court grants the parole should be delivered to the convicted person, the member of the family if the member has submitted the parole request, the institution in which the convicted person serves the sentence, the competent public prosecutor and to the regional branch of the Ministry of Interior Affairs according to place of residence or place of stay of the convicted person. Protective supervision consisted of special aid, care, observation or protection measures applied by a social organ can be authorised by the court in the decision granting the parole.

The decision made with respect to the parole request or the parole proposal can be appealed by the convicted person or the competent public prosecutor within eight days in front of the higher court. A representative of the institution where the convicted person serves the prison sentence represents the proposal of the director of the institution.

### c. Another parole request/proposal submission

A parole request or a parole proposal can be re-submitted again after six months for a prison sentence of over one year and after three months for a prison sentence of up to one year from the effective decision with which the previous request of the convicted person or the proposal of the director is rejected.

### d. Discharge with a decision of the director of the institution

The director of the institution can discharge a convicted person even before the expiry of the sentence if he has served at least three quarters of the prison or if he has not obtained a conditional release for a period not longer than 30 days for a prison sentence of up to one year, for a period not longer than 90 days for a prison sentence of up to five years and for a period not longer than 120 days for a prison sentence of over five years. The director of the institution determines the criteria for early discharge of a convicted person before the expiry of the prison sentence by way of a general act.

#### ➤ *Execution of the juvenile prison sentence*

Minors who are not older than 23 years of age serve the juvenile prison sentence in special institutions intended for serving the juvenile prison sentence, separately from adults. Male minors have to be accommodated separately from female minors. They can be joined within educational, social and entertainment programs or professional training programs.

After reaching the age of 23 years, persons who are sentenced to juvenile prison serve the sentence according to the distribution act which distributes the convicted and minor persons in penitentiary and correctional institutions. Primary school teaching and other kinds of professional training for minors can be organised in the juvenile institution depending on the conditions and the institution's possibilities. If there are no conditions for teaching in the institution, the minors can attend classes in the headquarters of the institution for minors.

#### ➤ *Acting in the process of executing a fine*

The procedure for collection of a fine, imposed on a natural person, shall be initiated

ex officio by the court of first instance that has pronounced the fine. If the convicted person does not have a place of residence or place of stay in the region of the basic court where it exercises its jurisdiction, then, the very court shall deliver the effective fine collection decision to the court according to the place of residence or place of stay of the convicted person.

A forced collection is performed if the convicted person fails to pay the fine within the defined period. The convicted person reimburses the expenses resulting from the forced collection of a fine. Before approaching the forced collection, the judge in charge of execution of sanctions delivers a notice to the convicted person informing him that he should pay the fine within 15 days of receipt of the notice. If the convicted person fails to pay the fine within the defined time limit, enforced collection shall be approached pursuant to law. If the enforced collection fails, the fine shall be substituted with a prison sentence.

The convicted person can pay the fine in instalments in case he can not pay it at once, however, the payment time limit can not exceed two years with a possibility of prolonging the time limit by additional three months. If the convicted person is not paying the instalments in due time, the court shall withdraw its decision on payment by instalments and shall collect the fine at a time or by substituting the fine with a prison sentence (substitute prison).

### ➤ *Execution of other sanctions prescribed for committed criminal acts*

The Law on Execution of Sanctions regulates in detail the procedure for execution of the other above-mentioned sanctions that are pronounced for criminal acts.

## 8. FINAL NOTES

As a whole, the media have an important role in one democratic society or more concretely in relation to the judicial system. The perception in the society of the quality of justice is strongly influenced by the media, especially in connection with the functioning of the judicial system. The transparency in the court activities, as well as the publicity of the court proceedings are of essential significance to the realisation of the right to a fair trial. The increased interest of the public and the media in relation to court proceedings unavoidably results in a need for delivery of objective and timely information to the media. It is of fundamental significance

in one democratic society that the courts enjoy the public trust.<sup>82</sup> The publicity of the proceeding is one of the basic means with which the trust in the courts can be maintained.<sup>83</sup>

Journalists have the right to obtain all the necessary information aimed at objectively informing the public about various issues connected with the operations of the judicial system. When researching and reporting, every journalist should respect and adhere to the duty of discretion in connection with current cases, as well as to the limitations determined in the domestic laws being in conformity with the international standards.

Media and all other participants in the court proceeding should respect the basic principles such as presumption of innocence and the right to a fair trial, the right to a private life of the persons concerned, as well as the impartiality principle.

The media coverage of cases, in which there is an ongoing investigation or the cases are in investigation phase, can have an impact and put pressure on the judges, the juror judges and the public prosecutors acting in the concrete case. Therefore, it is of exceptional importance that the journalists possess professional skills, highly ethical standards and restraint in making premature comments on current cases.

On the other hand, judges and public prosecutors should have appropriate knowledge when contacting the media; they must have relevant guidelines or a code of good practices with regard to their relations with the media<sup>84</sup>, thus helping the media transfer accurate information about the activities of the court and its decisions.

Judges and prosecutors play specific roles in the judicial system. Certain codes of ethics require the judges to refrain from making public comments on current cases, in other words to refrain from making statements that might cast doubts in the eyes of the public in relation to their impartiality<sup>85</sup>, which is also aimed at ensuring the presumption of innocence. Public prosecutors should be careful when they make comments on the procedure or the verdict. Of course, they will express their disagreement with a court decision by filing a regular or irregular legal remedy.

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<sup>82</sup> Regarding this question see the decision of the European Court of Human Rights, *Olujich against Croatia* (request nb. 22330/05)

<sup>83</sup> Two documents deal with this issue within the Council of Europe:

Recommendation REC (2013) 13 on the provision of information through the media in relation to criminal proceedings, and  
b) Opinion number 7 on Justice and Society (2005) of the Consultative Council of European Judges.

<sup>84</sup> Opinion nb.7 of the Consultative Council of European Judges on Justice and Society, paragraph 39 (2005).

<sup>85</sup> Opinion nb.3 of the Consultative Council of European Judges on Ethics and Responsibility of Judges, paragraph 40 (2003).

### **ANNEX 1:**

#### **Terms in the Law on Criminal Procedure**

**A suspect** is a person against whom a previous procedure is being conducted.

**A defendant** is a person against whom a bill of indictment has been confirmed, an indictment proposal for application of the security measure has been submitted, a private legal action has been filed or a proposal for issuing a penal order has been submitted.

**A Convicted person** is someone who has been found to be criminally responsible for a certain criminal act according to an effective verdict.

The term **defendant** is used as a general term for a suspect, defendant and convicted person.

**A victim** of a criminal act is every person who has suffered damage, including physical and mental injury, emotive suffering, material loss or another violation or endangerment of his rights and interests as a result of a committed criminal act.

Apart from the victim, another person can be a **damaged party** in case his personal or property right has been violated or endangered by a criminal act; he can participate in the criminal procedure by joining the criminal procedure or for the purpose of realising a property - legal claim.

**A private plaintiff** is a person who has filed a private legal action (private lawsuit) for the purpose of prosecuting criminal acts that are prosecuted on the basis of a private legal action.

**A prosecutor** is the public prosecutor and the private plaintiff.

The prosecutor and the defendant are **parties**.

**Judicial police** are the police officers of the Ministry of Interior Affairs, the members of the financial Police and the officials of the Customs Administration who are authorised to be at the disposal of the public prosecutor's office for discovering and prosecuting criminal acts and for conducting the criminal procedure.



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The term **police** is used in this law as a general term for the members of the judicial police in sense of this law and the police officers in sense of the Law on the Police, as well as the members of the military police.

**A judge of the previous procedure** is a judge who during the previous procedure decides about the freedoms and the rights of a defendant in cases that are prescribed by the Constitution of the Republic of Macedonia, by law and international agreements ratified in accordance with the Constitution of the Republic of Macedonia, and about other matters determined by this law.

**Direct examination** is examination of the witness and the expert performed by the party, in other words by the defendant who has proposed the witness or the expert.

**Cross examination** is examination of a witness or expert performed by the opposite party.

**Suspicion grounds** are information that can be considered as evidence of a committed criminal act on the basis of the forensic knowledge and experience.

**Reasonable suspicion** is a higher level of suspicion based on collected evidence which directs to a conclusion that a particular person has committed a criminal act.

**Inspection** of persons, vehicles, luggage and premises represents an authorisation which is limited, on the basis of this or another law, to the outside examination of clothes and other objects and luggage through the organs of sight, hearing and smell; it does not comprise actions such as opening, unpacking and similar where one tries an invisible thing to make visible.

**Search** is a detailed examination of a person, home and other premises on the basis of a court order.

**Recording** means visual-audio recording, visual recording or audio recording.

**Technical advisors** are professionals from the court experts register. They can be engaged during the procedure by the parties when they need expert assistance in a certain field.

### **ANNEX 2:**

#### **Conduct rules in the Basic Court Skopje | Skopje<sup>86</sup>**

1. Visitors shall be warned that they are entering a court building and that they should follow the appropriate conduct standards. Everyone who does not respect the court rules or does not adhere to the conduct standards shall be removed from the court building.
2. No persons under the age of 18 years are allowed to enter the court building, unless they have a court permission or court order or they are in the presence of an adult person or there is an approval issued by the court administration.
3. Visitors attending the main hearing shall be admitted in the area intended for the public. The president of the court can order the removal of a person from the visitors area if he interrupts the hearing or if he disrupts the order in the courtroom.
4. Visitors have to stand up when the judge enters the courtroom.
5. Visitors should remain quiet during the main hearing and they should adhere to the instructions provided by the court police.
6. During the main hearing the court forbids any conversation among the visitors, strong noise, offensive and aggressive conduct or whatever activity which disturbs the unhindered functioning of the court.
7. It is obligatory for persons entering the court to be properly dressed. Clothes considered as provocative, disturbing or clothes that have offensive signs or images are forbidden.
8. When entering the courtroom, visitors are prohibited from bringing mobile phones, laptops PDA cameras or whatever audio and video recording/processing devices. These devices should be left in the lockers that are installed for that purpose.
9. Audio and video recording or taking pictures is strongly prohibited if performed in the building without a permission issued by the court administration. The court police is authorised to confiscate or/or erase unauthorised recordings.

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<sup>86</sup> This does not represent an official document. This document has informative purposes only.

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10. Drinking, eating, smoking or use of narcotics is no allowed in the court building.
11. Visitors must not leave any luggage or personal stuff without supervision. Visitors who have excessive or unusual luggage might not be allowed to enter. The court is not responsible for any lost, damaged or stolen personal stuff of visitors while they are in the court premises.
12. The court police can order evacuation of persons present in the court building at whatever time. Please follow and adhere to their instructions.

### **ANNEX 3:**

#### **CODE OF ETHICS OF THE ASSOCIATION OF JOURNALISTS OF MACEDONIA**

##### CONDUCT PRINCIPLES:

The freedom of media is inviolable right.

The basic task of journalists is to respect the truth and the right of the public to be informed in accordance with Article 16 of the Constitution of the Republic of Macedonia.

Journalists have a role to transfer information, ideas and opinions and they have the right to comment. By respecting the ethical values and the professional standards in the transfer of information, journalists shall be honest, objective and truthful.

Journalists have the right and duty to endeavour to prevent any censorship and distortion of the news.

Keeping to their role in the democracy and civil society building, journalists shall protect the human rights, the dignity and the freedom, they shall respect the pluralism of the ideas and opinions, and they shall contribute to the strengthening of the legal state and control exercised over the government and other subjects in the public life.

##### ON THE BASIS OF THESE PRINCIPLES AND ETHICAL VALUES:

1. Journalists have the right to freely access all information sources that are of public interest.

The journalist should publish accurate and checked information and he shall neither conceal essential data, nor falsify documents.

If the information can not be confirmed or the information is just an assumption or speculation, the journalist should inform about that, and then he should publish the information.

The accuracy of the information should be checked as much as possible.

2. If the journalist has been prevented from reaching the requested information, he has the right to inform the public about that.

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3. The journalist should endeavour to ensure that a correction, refutation and replies are published if it has been determined that the information is inaccurate.
4. The journalist shall indicate the source of the information, but if the source demands to remain anonymous, the journalist shall protect him.
5. The journalist shall respect the laws in the state and he shall not publish nor conceal anything that is opposite to the public interest.
6. The journalist must not use the media for publishing or concealing information aimed at gaining personal profit. The bribe, the corruption and the extortion are unconnectable with the journalistic profession.

Advertising and other commercial motives have to be prevented from having an impact on the freedom of informing.

There should be a distinction between the advertisement and the journalistic text together with the illustration.

7. The journalist shall respect the privacy of the person, unless that is contrary to the public interest. It is incumbent on the journalist to respect the personal pain and grief.
8. The way of informing in accidents, natural disasters, wars, family tragedies, diseases, court proceedings has to be free from sensationalism.

In the court proceedings the journalist should respect the presumption of innocence principle, to report on all sides involved in the dispute and not to suggest the verdict.

9. The journalist must not interview or photograph children under the age of 16 years without approval of their parents or guardians, unless it is in accordance with the rights of the child.

The same applies to persons with special needs who are not able to conscientiously judge.

10. The journalist shall not conscientiously create nor process information that endangers the human rights or freedoms; he shall neither speak in the language of hatred nor instigate violence and discrimination on whatever grounds (national, religious, racial, gender, social, lingual, sexual orientation, political...).

11. The journalist shall adhere to the generally accepted social standards of decency and respect for ethnical, cultural and religious diversity in Macedonia.

12. Plagiarism is unacceptable.

Quotations must not be used without stressing the source or the author.

13. The journalist should make a distinction between facts and opinions, between news and comments.

14. Reporting on political processes, especially on elections, should be unbiased and balanced.

The journalist must ensure a professional distance from the political subjects.

15. The journalist must foster the culture of speech and ethics.

Incongruous communication with the public is unconnectable with the journalistic profession.

16. The journalist shall safeguard the reputation and the decency of his profession, he shall instigate the mutual solidarity and diversity of opinions and he shall not use his medium for dealing with other persons, including his colleagues.

17. The journalist has the right to reject a work task if the task is contrary to the principles of this Code.

### FINAL PROVISIONS:

Journalists working in conformity with this Code enjoy the support of their own media house and the support of their professional organisation.

In accordance with the laws of the Republic of Macedonia, journalists shall accept the court in relation to the profession only from their colleagues and they shall be resilient to political and another influence.

The Council of Honour of the Association of Journalists of Macedonia cares for the compliance with the Code principles.

### **ANNEX 4:**

#### **Articles of the Court Rulebook<sup>87</sup> referring to public relations.**

##### **Article 353**

By paying attention to the interests of the proceedings, the privacy and the security of the participants in the proceedings, it is incumbent on the president, the judges and the court officials to ensure the necessary conditions for publicity of the activities of the court, for appropriate access of the media with regard to the topical information and the proceedings conducted in the court.

The time, place and the case being judged are published at a visible place every day in front of the premises where the trial takes place.

As to trials in which the public is hugely interested, the court administration shall provide premises for admission of a larger number of persons. Upon the order of the president of the court, the court council holds the trial in the premises provided for that purpose.

##### **Article 354**

The president of the court or the judge authorised by him provides information to the media in connection with the activities of the court. The information about a concrete case shall be provided by the judge acting on that case with consent of the president.

The data contained in the information have to be accurate. Those data being classified information with a respective degree of secrecy shall not be announced in accordance with the law.

Informative services should be formed or a judge should be assigned in the Supreme Court of the Republic of Macedonia, the Administrative Court, the appellate courts and in the basic courts with higher number of judges so that the public can be openly and objectively informed about the activities of the court.

When getting in touch with the public and the media, all the possible means of modern communication shall be used according to the material possibilities of the court.

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<sup>87</sup> Official Gazette of RM nb.66/2013

### Article 355

Judges and court officials who express their opinion in a written or spoken form, in their name and in front of media about legal, social and other issues in connection with individual cases from the court practice, are obliged to clearly stress that they express or elaborate their own opinion.

### Article 356

Journalists-reporters can attend the public hearings in the litigation procedure and the public hearings in the criminal procedure without being obliged first to obtain a court permit. It is incumbent on the court to provide conditions for their presence and work.

Any visual (video) and audio (sound) recording, any reporting and photographing during court proceedings can be performed upon approval by the president of the court, with a previously obtained opinion from the judge and the authorised prosecutor in the criminal procedure and with a written consent of the parties in the litigation procedure.

However, if the party in the procedure is a state functionary or officer, representative of the local government or a person performing another public duty, he is not required to have a written consent to do any recording or photographing.

Any recording and photographing in the court building might be performed outside the trial upon approval by the president of the court being in charge of the building.

### Article 357

The president of the court issues a recording or photographing approval on the basis of a filed written request. The request has to be submitted on a form issued by the court administration within five days after the scheduled hearing. The untimely request shall not be rejected if the reasons for the delay are justified. The request contains:

- name of the public medium (the media house);



- names and composition of the reporting team (the cameraman, the photographer, the assistant and others);
- description of the technical equipment that is going to be brought in the courtroom and the planned way of following the process (video, audio, photo and other);
- details about the time when a precisely specified trial will be recorded or details about the time when a participant in the procedure will be recorded in the court building outside the trial.

### **Article 358**

When reaching a decision on issuing recording and photographing approval, one shall take into account the interest and the confidence of the public, the nature of the case, the interest of the procedure, the privacy and the security of the participants in the proceeding.

Any recording and photographing shall take place under the supervision of the judge or the president of the council in a way that the course of the proceeding will stay unhindered and the order in the courtroom and the dignity of the court preserved.

Any recording and photographing in the court can be stopped or limited:

- upon request of the parties and with a court decision at whatever time;
- if the public is excluded with a court decision from one part of the proceeding or from a certain procedural action because there are legal reasons for that;
- if the witness-damaged party in the criminal act requires that while he testifies;
- If the court finds out that some participant in the procedure could be exposed to danger, prejudice or if an obstacle might be caused to the application of the legal measures of compulsion, or if that is required as a result of the nature of the evidence (hearing protected witnesses, minors and other).

### Article 359

Approval issuing to the media for following a trial means providing an appropriate courtroom.

The courtroom shall have a special area for media teams and observers, being fenced-in or marked differently, with a separate entrance if possible. Journalists and observers should inform the court of their intention to attend the court proceeding for the purpose of finding a seat in the reserved courtroom area.

The court officer takes care that the persons, who have been issued an approval by the president, reach their reserved seats, as well as the journalists and the observers for whose presence no approval is required.

Upon request of the judge or the court officer, the journalist should present his press card/journalist legitimation and tell the name of the media house for which he is reporting.

Giving unfair priority to one media house in the process of issuing approvals or placing the journalists in the reserved courtroom area is forbidden.

The media house, which has submitted a request for following a trial, can be allowed to bring one video recording device or TV-camera, one audio system and two photo-cameras (having two objectives at most) and each of these devices shall be used by one person.

### Article 360

Cameras and photo-reporters must not move while filming; they must not make movements, nor take positions resulting in distraction of the attention or disturbance of the order in the courtroom.

The microphones and the relevant equipment should be previously installed at the place specified by the judge. All microphones have to be fitted with a switch-off button so that they can be temporarily turned off.

The video/photo recording equipment and the other equipment (mobile phones, computers) must not produce effects which distract the attention. The equipment can not be taken into or out of the courtroom while the court is in session.

### **Article 361**

The court can define the way of operating and reporting of an internal television in a closed system for the purpose of providing free access to video and audio recordings (images, sound, and voice).

If the provision of copies means material expenses to the court, then the expenses shall be covered by the person requesting the approval.

### **Article 362**

Any photographing and recording in the court as well as any public presentation of the filmed material can be performed on the basis of a previously obtained written approval from the president of the court.

Any photographing and video recording done in a building outside the course of the court proceedings shall be approved by the president who is in charge of the building where the court premises are located.

### **Article 363**

Any video and audio recording of the main hearing in the criminal procedure and any public presentation (reproduction) of the recording, done in cases that are not envisaged by the Law on Criminal Procedure, shall be performed upon approval by the president of the Supreme Court of the Republic of Macedonia, after a previously obtained opinion from the president of the council and the judges, and with consent of the parties.

Any video and audio recording done at the main hearing in a litigation procedure and any public presentation of the recorded material shall be approved by the president of the court after a previously obtained opinion from the council, the president of the council, the judges and with consent of the parties.

Any photographing done during the court proceedings and any public presentation of the photographs shall be approved by the president of the council and the judge on the basis of a previously obtained consent from the parties and other participants in the proceeding.

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In the process of approving any photographing or recording, one shall take into account the interestedness of the public, the interests of the procedure, the privacy and the security of the participants in the procedure.

Any photographing and recording in the courtroom shall be performed under the instructions of the president of the council and the judges by ensuring unhindered course of the trial and by preserving the order in the courtroom.

### **ANNEX 5:**

#### **Guidelines of the Ministry of Justice on the Way of Publishing and Searching court decisions on the website of the court**

##### **MINISTRY OF JUSTICE**

On the basis of Article 10, paragraph (6) of the Law on Managing the Movement of Objects in the Courts (“Official Gazette of the Republic of Macedonia” nb. 171/10), the Minister of Justice, has adopted the following

##### **GUIDELINESS**

##### **ON THE WAY OF PUBLISHING AND SEARCHING COURT DECISIONS ON THE WEB SITE OF THE COURT**

##### **Article 1**

These guidelines regulate the way of publishing and searching court decisions on the web site of the court.

##### **Article 2**

In the process of publishing effective court decisions on the web site of the court where the names and surnames of the parties and the name of the legal person have been made known, the following data shall be anonymised:

- the address of the place of residence or the place of stay, or the headquarters of the parties, and other participants in the procedure;
- the date and place of birth of the parties and the other participants in the proceeding;
- the identity card number, passport number, driving license number and other personal documents’ numbers of the parties and other participants in the proceeding;
- the insurance policy number, the vehicle registration plate number;
- the e-mail addresses of the parties and other participants in the proceeding;

- the personal identification number of the citizen or the unique identification entry number of the subject
- the name and surname and other personal data of the witness, expert, interpreter, social worker, psychologist, pedagogue, defectologist, the doctor and similar.

In the process of publishing court decisions of paragraph 1 of this Article, the names and surnames of judges, public prosecutors, state attorneys, legal representatives, defence attorneys and proxies shall be published.

### Article 3

Ineffective court decisions are published on the web site of the court by fully anonymising the personal data of the participants in the proceeding, except for the names and surnames of judges, public prosecutors, state attorneys and legal representatives of the parties.

### Article 4

Anonymisation of personal data of Articles 2 and 3 of these Guidelines is performed by replacing or omitting data in the court decision as follows:

#### 1. Anonymisation of name and surname

a). The name and surname are anonymised by replacing them with initials obtained from the capital letters and after each capital letter a stop is added;

Example: Petar Petrovski is replaced with: P. P.

b). If a same court decision contains several persons with same initials, the anonymisation is performed as follows:

- the name of the first person is replaced with an initial followed by a stop, whereas the surname is replaced with an initial and the ordinary number 1 is added;
- with the second, third or the names of the next persons the name is replaced with an initial followed by a stop, whereas the surname is replaced with an initial followed by a stop and the ordinary number that comes next is added.

Example: Krste Krstevski, Kocho Kochovski and Kire Kostovski should be replaced with K. K. 1, K. K. 2 and K. K. 3

### 2. Anonymisation of names of legal persons

– The name of the legal person (trading company) is anonymised by replacing the name of the trading company with a capital letter followed by a stop and then capital letters describing the form of the trading company are added: If a public enterprise or another kind of legal person is indicated in the text of a court decision, the data regarding the legal form of that legal person should not be anonymised.

Example: "Skopje" SPLLC should be replaced with S. SPLLC,

Public Enterprise "Waterworks and Sewerage" is replaced with Public Enterprise W.S.

### 3. Anonymisation of names of state administration organs, administrative organisations, institutions and local-self government units as well.

– Names of organs of the state administration, administrative organisations, institutions as well as self-government units are anonymised by replacing their names with only one word that signifies the legal form of the subject. If the name contains words with quotation marks, these words should be replaced with the initials of the starting capital letters followed by a stop, and the quotation marks are omitted.

Example: Ministry of Justice should be replaced with Ministry,

State Statistical Office is replaced with Office,

Primary School "Goce Delchev" is replaced with School G.D.

### 4. Anonymisation of addresses and places of birth

– Names of states, cities and places of birth are anonymised by replacing the name of the city with the initial capital letters followed by a stop. The remaining part of the address such as the street and the number are omitted. If in the court decision there are same initial letters of states, cities or places, every new initial letter should be incremented by the ordinary number 1.

Example: St. “Dimitrie Chuposki ” nb. 9, Skopje, Republic of Macedonia should be replaced with S.R.M.

St. “522” nb.1, Demir Hisar, Republic of Macedonia should be replaced with D.H.R.M.

### 5. Anonymisation of emails and web pages

- a). Electronic mails and web pages are anonymised by replacing them with three full stops.

Example: email: pertre\_petrevski@live.com should be replaced with email... and the web site www.pravda.gov.mk with www...

6. Anonymisation of the personal identification number of the citizen, identity card number, passport number, driving license and the remaining personal documents' numbers, as well as the insurance policy number, vehicle registration plate number and anonymisation of the date of birth.

– The personal identification number of the citizen, the identity card number, passport, driving license and the remaining personal documents' numbers, as well as the insurance policy number, vehicle registration plate number and the date of birth are anonymised by replacing them with three full stops.

Example: The identity card number 98765 is replaced with the identity card number...

The vehicle registration plate number Sk-2584 OS is replaced with the vehicle registration place number...

The date of birth 1.1.2035 is replaced with the date of birth...

## Article 5

Effective court decisions published on the web site of the court can be searched according to:



- kind of case,
- case number,
- case basis,
- name and surname of the prosecutor, the defendant or the convicted person,
- month and year of passing the verdict and
- a submitted key word that is defined in the nomenclature,

### **Article 6**

Ineffective court decisions published on the web site of the court are searched according to:

- kind of case,
- case number,
- case basis,
- month and year of passing the verdict and
- a submitted key word that is defined in the nomenclature,

### **Article 7**

These Guidelines shall enter into force on the eight day of their publication in the “Official Gazette of the Republic of Macedonia”

Nb. 01-887/5  
4<sup>th</sup> of April 2011  
Skopje

Minister of Justice  
**Mihajlo Manevski**

### **ANNEX 6:**

COUNCIL OF EUROPE

COMMITTEE OF MINISTERS

#### **Reccomendation Rec (2003)13**

**of the Committee of Ministers to member states on the provision**

**of information through the media in relation to criminal proceedings**

(Adopted by the Committee of Ministers on 10 July 2003 at the 848<sup>th</sup> meeting of the Ministers's Deputies )

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

Considering that the aim of the Council of Europe is to achieve greater unity between its members for the purpose of safeguarding and realising the ideals and principles which are their common heritage;

Recalling the commitment of the member states to the fundamental right to freedom of expression and information as guaranteed by Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter "the Convention"), which constitutes one of the essential foundations of a democratic society and one of the basic conditions for its progress and for the development of every individual;

Recalling that the media have the right to inform the public due to the right of the public to receive information, including information on matters of public concern, under Article 10 of the Convention, and that they have a professional duty to do so;

Recalling that the rights to presumption of innocence, to a fair trial and to respect for private and family life under Articles 6 and 8 of the Convention constitute fundamental requirements which must be respected in any democratic society;

Stressing the importance of media reporting in informing the public on criminal proceedings, making the deterrent function of criminal law visible as well as in ensuring public scrutiny of the functioning of the criminal justice system;

Considering the possibly conflicting interests protected by Articles 6, 8 and 10 of the Convention and the necessity to balance these rights in view of the facts of every individual case, with due regard to the supervisory role of the European Court of Human Rights in ensuring the observance of the commitments under the Convention;

Recalling, furthermore, the right of the media and journalists to create professional associations, as guaranteed by the right to freedom of association under Article 11 of the Convention, which is a basis for self-regulation in the media field;

Aware of the many initiatives taken by the media and journalists in Europe to promote the responsible exercise of journalism, either through self-regulation or in co-operation with the state through co-regulatory frameworks;

Desirous to enhance an informed debate on the protection of the rights and interests at stake in the context of media reporting relating to criminal proceedings, and to foster good practice throughout Europe while ensuring access of the media to criminal proceedings;

Recalling its Resolution (74) 26 on the right of reply – position of the individual in relation to the press, its Recommendation No. R (85) 11 on the position of the victim in the framework of criminal law and procedure, its Recommendation No. R (97) 13 concerning the intimidation of witnesses and the rights of the defence, and its Recommendation No. R (97) 21 on the media and the promotion of a culture of tolerance;

Stressing the importance of protecting journalists' sources of information in the context of criminal proceedings, in accordance with its Recommendation No. R (2000) 7 on the right of journalists not to disclose their sources of information;

Bearing in mind Resolution No. 2 on journalistic freedoms and human rights adopted at the 4th European Ministerial Conference on Mass Media Policy (Prague, December 1994) as well as the Declaration on a media policy for tomorrow adopted at the 6th European Ministerial Conference on Mass Media Policy (Cracow, June 2000);

Recalling that this recommendation does not intend to limit the standards

already in force in member states which aim to protect freedom of expression,

Recommends, while acknowledging the diversity of national legal systems concerning criminal procedure, that the governments of member states:

1. take or reinforce, as the case may be, all measures which they consider necessary with a view to the implementation of the principles appended to this recommendation, within the limits of their respective constitutional provisions
2. disseminate widely this recommendation and its appended principles, where appropriate accompanied by a translation, and
3. bring them in particular to the attention of judicial authorities and police services as well as to make them available to representative organisations of lawyers and media professionals.

### **APPENDIX to Recommendation Rec (2003)13**

#### ***Principles concerning the provision of information through the media in relation to criminal proceedings***

##### *Principle 1- Information of the public via the media*

The public must be able to receive information about the activities of judicial authorities and police services through the media. Therefore, journalists must be able to freely report and comment on the functioning of the criminal justice system, subject only to the limitations provided for under the following principles.

##### *Principle 2- Presumption of innocence*

Respect for the principle of the presumption of innocence is an integral part of the right to a fair trial. Accordingly, opinions and information relating to on-going criminal proceedings should only be communicated or disseminated through the media where this does not prejudice the presumption of innocence of the suspect or accused.

##### *Principle 3- Accuracy of information*

Judicial authorities and police services should provide to the media only verified

information or information which is based on reasonable assumptions. In the latter case, this should be clearly indicated to the media.

### Principle 4- *Access to information*

When journalists have lawfully obtained information in the context of on-going criminal proceedings from judicial authorities or police services, those authorities and services should make available such information, without discrimination, to all journalists who make or have made the same request.

### Principle 5- *Ways of providing information to the media*

When judicial authorities and police services themselves have decided to provide information to the media in the context of on-going criminal proceedings, such information should be provided on a non-discriminatory basis and, wherever possible, through press releases, press conferences by authorised officers or similar authorised means.

### Principle 6- *Regular information during criminal proceedings*

In the context of criminal proceedings of public interest or other criminal proceedings which have gained the particular attention of the public, judicial authorities and police services should inform the media about their essential acts, so long as this does not prejudice the secrecy of investigations and police inquiries or delay or impede the outcome of the proceedings. In cases of criminal proceedings which continue for a long period, this information should be provided regularly.

### Principle 7- *Prohibition of the exploitation of information*

Judicial authorities and police services should not exploit information about on-going criminal proceedings for commercial purposes or purposes other than those relevant to the enforcement of the law.

### Principle 8- *Protection of privacy in the context of on-going criminal proceedings*

The provision of information about suspects accused or convicted persons or other parties to criminal proceedings should respect their right to protection of privacy in accordance with Article 8 of the Convention. Particular protection should be given to parties who are minors or other vulnerable persons, as well as to victims, to witnesses and to the families of suspects, accused and convicted. In all cases,

particular consideration should be given to the harmful effect which the disclosure of information enabling their identification may have on the persons referred to in this Principle.

### Principle 9- *Right of correction or right of reply*

Without prejudice to the availability of other remedies, everyone who has been the subject of incorrect or defamatory media reports in the context of criminal proceedings should have a right of correction or reply, as the case may be, against the media concerned. A right of correction should also be available with respect to press releases containing incorrect information which have been issued by judicial authorities or police services.

### Principle 10- *Prevention of prejudicial influence*

In the context of criminal proceedings, particularly those involving juries, judicial authorities and police services should abstain from publicly providing information which bears a risk of substantial prejudice to the fairness of the proceedings.

### Principle 11- *Prejudicial pre-trial publicity*

Where the accused can show that the provision of information is highly likely to result, or has resulted, in a breach of his or her right to a fair trial, he or she should have an effective legal remedy.

### Principle 12- *Admission of journalists*

Journalists should be admitted to public court hearings and public pronouncements of judgements without discrimination and without prior accreditation requirements. They should not be excluded from court hearings, unless and as far as the public is excluded in accordance with Article 6 of the Convention.

### Principle 13- *Access of journalists to courtrooms*

The competent authorities should, unless it is clearly impracticable, provide in courtrooms a number of seats for journalists which is sufficient in accordance with the demand, without excluding the presence of the public as such.

### Principle 14- *Live reporting and recordings in courtrooms*

Live reporting or recordings by the media in court rooms should not be possible unless and as far as expressly permitted by law or the competent judicial authorities. Such reporting should be authorised only where it does not bear a serious risk of undue influence on victims, witnesses, parties to criminal proceedings, juries or judges.

### Principle 15- *Support for media reporting*

Announcements of scheduled hearings, indictments or charges and other information of relevance to legal reporting should be made available to journalists upon simple request by the competent authorities in due time, unless impracticable. Journalists should be allowed, on a non-discriminatory basis, to make or receive copies of publicly pronounced judgments. They should have the possibility to disseminate or communicate these judgments to the public.

### Principle 16- *Protection of witnesses*

The identity of witnesses should not be disclosed, unless a witness has given his or her prior consent, the identification of a witness is of public concern, or the testimony has already been given in public. The identity of witnesses should never be disclosed where this endangers their lives or security. Due respect shall be paid to protection programmes for witnesses, especially in criminal proceedings against organised crime or crime within the family.

### Principle 17- *Media reporting on the enforcement of court sentences*

Journalists should be permitted to have contacts with persons serving court sentences in prisons, as far as this does not prejudice the fair administration of justice, the rights of prisoners and prison officers or the security of a prison.

### Principle 18- *Media reporting after the end of court sentences*

In order not to prejudice the re-integration into society of persons who have served court sentences, the right to protection of privacy under Article 8 of the Convention should include the right to protect the identity of these persons in connection with their prior offence after the end of their court sentences, unless they have expressly consented to the disclosure of their identity or they and their prior offence are of public concern again or have become of public concern again.