



- PROJECT:** Contribution towards a functional and effective court system;
Segment 3: access to court decisions
- REALISATION:** Judges Association of Republic of Macedonia with a financial support and in cooperation with the OSCE-Spillover Monitor Mission to Skopje and the Foundation – Institute Open Society Macedonia
- EVENT:** Roundtables for access to court decisions, that were held on the 3rd of November 2008 in Stip for the judges from the area that is covered by the Appellate Courts Bitola and Stip and on the 4th of November 2008 in Skopje for the judges from the area that is covered by the Appellate Courts Skopje and Gostivar
- PRESENTERS:** Margarita Caca Nikolovska- former judge in the European Court for Human Rights in Strasbourg; Helena Jaderblom-judge, President of the Administrative appellate Court in Stockholm; Dr. Lazar Nanev, president of the Basic Court – Kavadarci; Janko Nikolovski – President of the Commission for protection of the right of access to information of public character
- SUBJECT:** Views, conclusions and recommendations

ACCESS TO COURT DECISIONS

Introduction

The primary goal of the third segment of the project “Contribution towards functional and effective court system” that was titled as “Access to court decisions” is to prepare conclusions and recommendations for an unified approach of the courts in the application of the Law for free access to information of public character, especially to the part dedicated to the distribution of court decisions.

From perspective of the content the two roundtables that were held in Skopje and Stip covered several segments: publicity in the court proceedings and broadcasting the court decisions in perspective of article 6 from the European Convention for Human Rights and the practice of the European Court in Strasbourg; the publicity and the access to court decisions in the domestic legal system with practical examples of the application of the Law for free access to information by the courts, the possible legal obstacles in the Law for Courts, the Criminal Procedure law, the law on civil procedure, the Court Rulebook, other laws and other legal acts; comparative overview of the access to court decisions in the Swedish legal system in the focus of the modalities of availability of the decisions to the public, the limitations, the positive and the negative implications; as well as the role of the Commission for protection of the right of access to information of public character as a second instance body that makes the decisions upon these type of requests.

The roundtables offered an opportunity for more than 70 judges and expert assistants from the basic, appellate and the Supreme Court, but also for the guests: from the Association of Public Prosecutors of Republic of Macedonia, the mass media, the Ministry of Justice, the Commission for protection of the right of access to information of public character, the Directorate for protection of personal data, , to exchange experiences in regard to the manner of acting upon the requests for access to information, and also to share their views and remarks in regard to this issue.

A portion of the participants from the court cast believe that there is a direct barrier in the domestic laws and regulations that do not allow access to the court decisions to be given to each and every interested citizen, because they consider that this sort of action will lead to a violation of the right for protection of privacy and personal data. Also it was discussed that the right of presumption of innocence will be questioned if a delivery of a not finalized or confirmed court verdict is requested by individuals that have no legal interest.

Having in mind the presentations of the domestic and foreign experts and the entire discussion during the course of the two roundtables, the following conclusions and recommendations rounded up this segment of the project.

Conclusions and recommendations:

- ❖ The European Court for Human Rights (ECtHR) applies the principle of an autonomous interpretation of the European Convention for Human Rights (ECHR)
- ❖ Having in mind the practice of the European Court for Human Rights, the right to a fair trial, from article 6 from the European Convention on Human Rights covers not only the publicity during the court proceedings (except the exclusions prescribed with the ECHR) but also public pronouncement of the verdicts or their availability. The public nature of the proceedings helps to ensure a fair trial by protecting the litigant against arbitrary decisions and enabling society to control the administration of justice. Combined with the public pronouncement of the judgment, the public nature of the hearings serves to ensure that the public is duly informed, notably by the press and that the legal process is publicly observable. It should consequently contribute to ensuring confidence in the administration of justice.

The European Court for Human Rights considers that in each case the form of publicity that should be given to the “verdict” under the domestic law of the respondent State must be assessed in the light of the special features of the proceedings in question and by reference to the object and the purpose of Article 6, paragraph 1 from the European Convention for Human Rights.

- ❖ The work of the courts is public and should be transparent. A guaranty, for an independent and autonomous court system that will enjoy the trust of the citizens, is the possibility for the citizens to have an uninterrupted insight in its work that is based upon the principles of a fair trial.
- ❖ The Law on Free Access to Information of Public Character offers the legal grounds for achieving the right of free access to the court decisions. Besides the fact that so far the Commission for protection of the right for free access to information of public character, as a second instance body that decides upon the requests, until now was confirming the refusing decisions of the



courts upon these requests, in the past several months the Commission is changing its practice and is taking a stand that the court decisions are public documents that need to be available to every interested individual.

- ❖ In certain situations article 373 from the Law on Criminal Procedure¹ is interpreted restrictively, believing that the courts should give verified copy of the verdict only to the individuals that are listed in this provision and all the rest that have no legal interest can not receive a copy from the verdict. The recommendation is to abandon this type of restrictive interpretation, because these provisions are regulating the issue of the delivery of the verdicts to the interested parties and they are not tackling more widely the issue of access to court decisions. In addition to this is the experience of the neighboring countries where the totally identical provision is interpreted in the sense of this recommendation.
- ❖ Having in mind that the European Convention on Human Rights was ratified by Republic of Macedonia and represents a source of the law, it is recommended to follow the practice of the European Court for Human Rights in the area of the public pronouncement of the verdict, in accordance with which even if the verdict was delivered to the parties in the proceedings, interested individuals can have an insight of the verdict or can receive a full copy of the verdict.
- ❖ The interpretation of the term “interested party” represents a wider scope of understanding and not just an individual *that has only legal interest*. In this direction a change of article 65 from the Court rulebook², is needed, because the current formulation limits the right to access to court decisions only to individuals that have some sort of legal interest. This recommendation is in accordance with the legal solutions in regard to the obligation of publicity of the court proceedings and the public pronouncement of the verdict in the name of the citizens.
- ❖ All of this does not justify the opinions that are present in the practice that the public has no need to know the names of the judges that were handling certain cases. The need of publicity in the court proceedings in a wider sense, as it is above mentioned is a result also of the need of control by the public while administrating justice as well as the need of potential criticism in this part. With the application of the standards for publicity in this segment, the issue of privacy is neither undermined nor unable.
- ❖ If the conditions for exclusion of the public in accordance with the European Convention on Human Rights and the domestic legislation are not fulfilled, the obligation for publicity of the court proceedings and the public pronouncement of the verdicts and with this the accessibility to the decisions, does not violate the right of privacy of the parties, and does not represent a violation of the presumption of innocence if the required access is for verdict that is not finalized.
- ❖ The protection of the personal data is a segment that can be protected in a different manner and not by denying the access to the court decisions which is resulting from the need of a fair administration of justice - publicity in the court proceedings and public pronouncement of the decisions.

¹ Clarified text of the LCP, Official gazette of Republic of Macedonia number 15/2007

² Court rulebook , Official Gazette of Republic of Macedonia number 6/2007



- ❖ Article 75, paragraph 1, line 6 from the Law on Courts³ can be seen as a certain obstacle, as under incompetent and performance in bad faith of the judicial profession, among others includes also the public presentation of information and data that refers to court cases for which there is no final verdict. In order to avoid the possible misunderstandings it is needed to clarify or to modify this part of the article. The need for this can be seen in the improper interpretation of the term court decision in regard to the terms “information and data” that are not supposed to have an identical meaning.
- ❖ Until the domestic regulations are not fully compatible with the international standards, the European Convention on Human Rights through the case law of the European Court for Human Rights can and should be directly applied.
- ❖ The presented comparative European experiences show that the free access to court decisions (regardless if they are finalized or not) is not questionable. No special permit is required in order for any interested individual to obtain a copy from any court decision (except in justified exceptions that are prescribed by law).
- ❖ Following the example of the European Court for Human Rights, for the future one should consider the publicity and the availability of the proven opinions of the judges that made the decisions and these opinions to become a part of the verdict. This represents one more significant step towards the publicity of the court proceedings and the decisions making.
- ❖ The expenses for the access to the court decisions should be appropriately regulated, realistic and justified.

³ Law on Courts, Official Gazette of Republic of Macedonia number 58/2006

