

THE NEED FOR MONITORING COURT CASES IN THE AREA OF CORRUPTION

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THE NEED FOR MONITORING COURT CASES IN THE AREA OF CORRUPTION

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Introduction

Since the independence until present, the Republic of Macedonia, with the support of a number of countries and international organizations, is striving at building a democratic society based on the principles of rule of law and market economy. The goal of this strive is full and complete integration of the country into the European Union and NATO.

Over the past few years significant results were achieved in the area of the legislation development. The Criminal Code was amended in 2002 and 2004,¹ while the Criminal Procedure Code was amended in 2005.² The first Anti Money Laundering Law entered into force in March 2002, and the latest one in 2004. The same year the Law on Public Prosecution was adopted.³ In April 2002, the Parliament adopted the Law on Prevention of Corruption⁴ that was amended in 2006.⁵ On 12

¹ "Official gazette of the Republic of Macedonia", No. 19 of March 30, 2004

² "Official gazette of the Republic of Macedonia", No. 15 of March 7, 2005

³ "Official gazette of the Republic of Macedonia", No. 38/04 of June 17, 2004

⁴ "Official gazette of the Republic of Macedonia", No. 28/02 of April 18, 2002

⁵ "Official gazette of the Republic of Macedonia", No. 126 of December 1, 2006

November 2002, the Parliament appointed the members of the Anti Corruption Commission, which was established as an independent body. Important reforms were implemented by amending Article 17 of the Constitution of the Republic⁶, which enabled the application of special investigative measures and methods in the efforts to detect criminal activities. In addition, the Parliament adopted the Law on Interception of Communications⁷ and the Law on Amending the Law on Protection of Personal Data,⁸ while the witness protection measures were included into the Criminal Procedure Code⁹ In 2005, the Parliament adopted the constitutional amendments related to the judicial reforms¹⁰ and the important laws in this area,

⁶ "The freedom and inviolability of letters and of all other forms of communication is guaranteed. Based on a court decision only, under conditions and within a procedure established by law, may one deviate from the right to inviolability of the letters and of all other forms of communication, if this is necessary for preventing or detecting criminal offences, for conducting a criminal procedure, or when this is required by the interests of the Republic in the areas of security and defense. The law shall be enacted with a two-third majority vote of the total number of MPs. This amendment shall replace Article 17 of the Constitution of the Republic of Macedonia. "Official gazette of the Republic of Macedonia", No.84 of December 30, 2003"

⁷ "Official gazette of the Republic of Macedonia", No. 121 of November 21, 2006

⁸ "Official gazette of the Republic of Macedonia", No. 04/2002 of January 16, 2002

⁹ "Official gazette of the Republic of Macedonia", No. 15 of March 7, 2005

¹⁰ "Official gazette of the Republic of Macedonia", No. 107 of December 9, 2005

relating to the Judicial Council. In 2006 the new Law on Court Organization was adopted¹¹ The Law on Prosecutors was recently adopted.

The last progress report of the European Commission on the Republic of Macedonia stresses that the resolution of the corruption problem is a major assumption for establishing the rule of law and democracy, as well as economic development and protection of human rights. The report indicates that ".....the judiciary continues to suffer from serious deficiencies, in particular as regards lack of independence and low efficiency".¹²

In order to implement the recommendations of the European Commission, the Republic of Macedonia has ratified a number of important multilateral agreements, as follows: Council of Europe's Criminal Law Convention on Corruption/Civil Law Convention on Corruption, Strasbourg Convention (Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime), UN Convention Against Transnational Organized Crime and its Protocols, the European Convention for Protection of Personal Data etc. The most important among them was the 2003 UN Convention against Corruption – the so-called Merida Convention, ratified in March 2007.

¹¹ "Official gazette of the Republic of Macedonia", No. 60/06 of May 15, 2006

¹² Page 10, 6.11.2007 SEC 2007, Commission Staff Working Document, Republic of Macedonia 2007, Progress Report

According to the latest survey conducted by “Transparency International”, the Republic of Macedonia was ranked as 84th with 3.3 index points, unlike the previous year (2006), when the country was ranked as 105th, out of 179 countries in total.¹³ The problem of corruption within the rule of law area was indicated as one of the main factors for the low economic development, insufficient foreign investments and as a barrier for the integration into NATO.

¹³ A1 TV - press conference of the NGO "Zero corruption - Transparency", 27.09.2007

Project: Assessment of the need for developing program for monitoring corruption-related court procedures in the Republic of Macedonia

Working methodology

Goal and objectives of the project

The goal of the project was to assess the state response in the fight against corruption through:

- Defining the criminal offences associated with corruption and incorporated in the legislation and case law
- Identifying different forms of corruption in practice;
- Collecting empirical materials to serve as productive basis for further monitoring the criminal cases associated with corruption; and
- Raising the public awareness up to the level of a state determination to prosecute criminal cases associated with corruption.

Two determinants were set while determining the monitoring methodology. Based on these determinants, the criminal offences in the area of corruption were analyzed as follows:

- Determining how widespread and voluminous this type of criminality is; and

- Improving the methodology of detecting this type of criminality, considering the latter's highly "dark numbers".

A special instrument (questionnaire) was developed for this purpose, based on which the situation with the criminal offences in the area of corruption, processed in the courts of first instance and in the public prosecutor's offices of the Republic of Macedonia, was supposed to be determined.

Notwithstanding our multiple interventions, the Public Prosecutor's Office of Macedonia and the basic public prosecutor's offices did not enable the implementation of that phase of the project. Hence, the monitoring was focused on the courts all over the Republic of Macedonia, which demonstrated a particular interest in the project and in the results thereof.

Results

The monitoring data covering the period 2005 - June 2007 demonstrated that 14 out of total of 26 first instance criminal courts either now are processing or have processed cases of corruption.¹⁴

¹⁴ The deputy president of the court of first instance Skopje 1, invoking the Courts' Rules of Procedure, did not allow external individuals to have a look at files in the registry of the court. The true reason for this answer is actually the lack of staff in the court and the fact that the IT system has not been installed

The volume of cases confirmed that the gathered data could be considered sufficient for drawing relevant conclusions about the topic that is subject of the monitoring.

Court	Number of cases	Stipulation of the criminal offence in the Criminal Code
Gostivar	4	Art. 353, 247
Bitola	4	Art. 358, 353, 357, 361
Kriva Palanka	10	Art. 247, 353, 278
Kumanovo	5	Art. 357
Negotino	15	Art. 353, 357, 247
Sveti Nikole	10	Art. 353, 247, 354
Kocani	63	Art. 247, 353, 361, 354, 358
Delcevo	17	Art. 359, 353
Krusevo	4	Art. 358, 353
Struga	18	Art. 353, 361, 247, 235, 257, 354
Veles	10	Art. 247, 357, 353, 378
Stip	9	Art. 353, 378, 247
Kavadarci	18	Art. 353, 254, 247, 358
Strumica	33	Art. 361, 353, 355, 247, 279, 357, 354, 378

Based upon the Criminal Code of the Republic of Macedonia, the project established a definition,¹⁵ enabling coverage of criminal offences that are of direct corrupt nature, as well as criminal offences with corrupt elements that make indirect reference to the activities and ways of committing corruption.

yet, which is supposed to become operational as of January 1, 2008 according to the abovementioned Rules of Procedure.

¹⁵ Taken over from the project "Look from inside" of "Transparency Macedonia", 2005.

In this way, we tried to obtain comprehensiveness of the phenomenon, i.e. coverage of all forms of manifestation of the corruption-related offences, but at the same time identification of the specific and particular aspects, appearing in certain fields of the economic, legal, social, political and other relations within the society. This definition covered 24 criminal offences, included in the Criminal Code.¹⁶

Corruption represents misuse of one's own or somebody else's position or office with aim to make profit or gain advantage or a benefit for oneself over the others

We obtained data for 220 registered cases from the abovementioned 14 courts. 158 of which were resolved with the final verdict and 62 are still active. The majority of them were tried in the courts located on the Macedonia's borders with other countries: Kocani 63, Kriva Palanka 10, Delcevo 17, Struga 18, Strumica 33. It is interesting to note that no corruption case was processed before the court of first instance in Tetovo.

Out of the total of 24 criminal offences, covered with the corruption definition, only 11 have appeared before the courts, as follows:

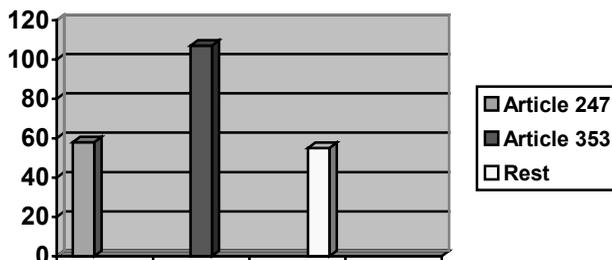
- **247 - Fraud,**
- **254 - False bankruptcy,**
- **257 - Damaging and privileging creditors,**

¹⁶ The list of criminal offences and the description thereof is given in the Annex to this brochure.

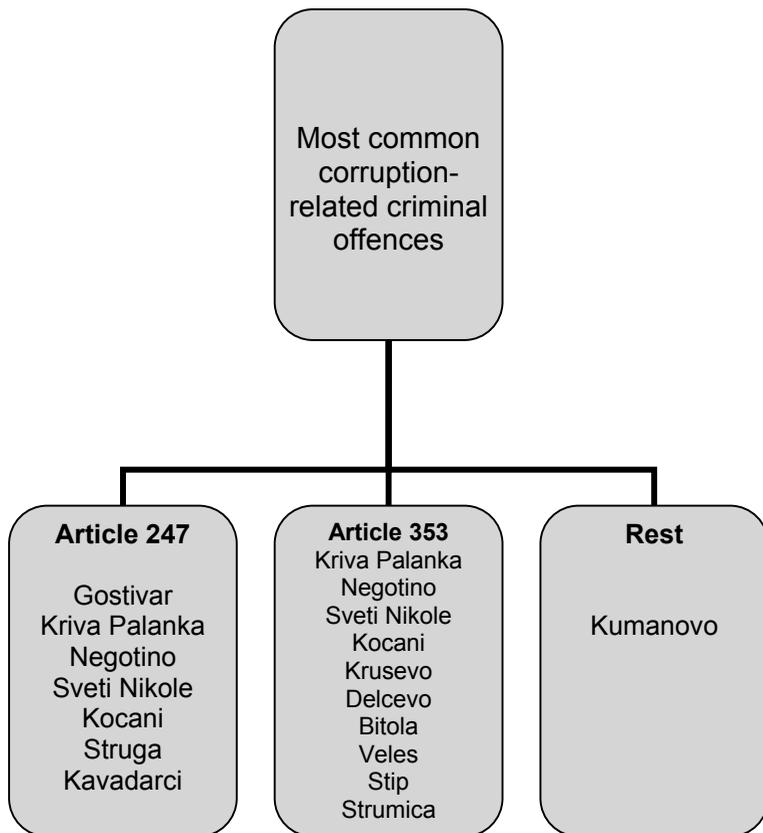
- 353 - Misuse of official position and authorization,
- 354 - Embezzlement in the service,
- 355 - Fraud in the service,
- 356 - Helping oneself in the service,
- 357 - Accepting bribe,
- 358 - Giving bribe,
- 360a-Misuse of state, official or military secret,
- 361 - Forgery of an official document.

Most common were the criminal offences referred to in Article 353 – Misuse of the Official Position and Authorization and Article 247 – Fraud.¹⁷ The most common perpetrators, implicated in these criminal offences were the police and customs officials, responsible for the supervision and control at the border crossing points.

Most common corruption-related offences from the Criminal Code



¹⁷ Illustrated in the graph below, where one can clearly notice the head start of these offences over the remaining criminal offences associated with corruption.



Within the efforts to achieve the goals of the project in terms of defining the phenomenon and detecting the forms of corruption that appear in practice in general, as well in the different areas of the society, the observers, through the trial monitoring, spotted the basic elements, as to how, with what resources, in which area and through which activities these criminal offences were committed.

When the goals of the project were being defined, it was rightly concluded that certain elements, associated with the procedural aspects of these criminal offences were especially important in order to be able to explain this type of criminality. This is in particular due to the fact that it has been empirically proven both in the criminal procedure law and in the criminal science that the manner in which the procedure is conducted, has a direct effect on whether the offenders will be held responsible for what they did, as well as on the prevention and suppression of this type of criminal behavior. What normally happens with these offences is that several years elapse from the moment of perpetration until the moment of their detection and this fact creates an opportunity for the offenders to cover up the offences, to remove the traces, and to destroy the evidence. Therefore, the way in which the procedure is conducted before the law enforcement authorities and before the court of law is of great importance. In this survey we did not have a chance to monitor the procedures and their duration, conducted by any other authority except the courts, but the conclusion remains that the procedure for this type of criminal offences is quite long and often without any due reasoning.

The following can be concluded, based on the data we obtained from our survey, in relation to the duration of the procedure:

- Six to nine months elapse on average from the moment of submission of the indictment

act until the start of the main hearing, which is too long time for preparation and analyzing the subject matter in these criminal offences.

- Adjournment of the main hearing – the most common reason for this is improper submission of the summons and other materials to the defendant and to other parties in the procedure.
- Absence of the defendant (failure to appear in court) – this is something that is of incomprehensible impertinence when it comes to this criminal offence, and the courts are not taking appropriate measures. State of illness is reported as the most common reason for not appearing in the court.
- Witnesses' failure to appear in front of the court.
- Deliberate adjournment of the hearings by the defense lawyers with the excuse that they are busy with other trials and hearings.
- Other technical and administrative obstacles leading to delays in the procedure through frequent adjournments.

The manner of conduct of the Chairman of the trial chamber or of the individual judge, the inappropriate acquaintance with the case and inadequate preparation for the hearing, the problems with regards to obtaining the necessary evidence – these are all phenomena that are often present.

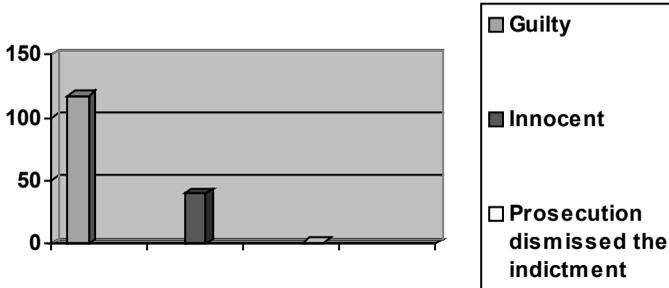
Indications of the inappropriate preparation for the hearing include, in particular, the additional submission and acceptance of evidence, decisions on additional expert investigations that usually take a lot of time, as well as the absence of experts as witnesses.

In the context of the above -mentioned, the principle of the “trial within a reasonable time” deserves adequate attention. The question follows: What is reasonable time for trials for this type of criminal offences?!

Hence, it can be freely concluded that there has been no procedure, court or judge without adjournment of the trial for these criminal offences. Postponement is also significant in view of the duration of the procedure, which usually lasts from one to nine months – something that we do not have a full explanation for.

Among the characteristics of the procedure, the outcome has a special place and importance. After observing the verdicts, reached by the courts, we have come to the conclusion that in almost 70% of the registered cases the defendant was declared to be guilty. There are minimal number of cases where the Public Prosecutor’s Office withdrew the indictment, or where the suspect of the offence was acquitted of the charges and declared innocent (out of 220 registered cases, 158 ended with a final sentence, out of which the defendant was declared innocent in only 40 cases).

Outcome of the court procedure



As regards the penalties and their severity, prison sentences ranging from 3 months to 1 year were pronounced in all cases in which the suspects of corruption-related criminal offences were declared guilty.¹⁸ Based on the records, only the court in Veles pronounced a prison sentence of over one year, whereas in the court in Kocani, where a prison sentence of over one year was also pronounced, the procedure is not finished yet.

From the records, it can be concluded that conditional sentences from one to five years of prison prevail. In addition to the abovementioned penalties, the courts have also imposed fines,

¹⁸ In the case of the most represented criminal offences stipulated in articles 247 and 353 of the Criminal Code, the sentences range within the legal limit, which is 3 and 6 months of prison, accordingly. In the majority of cases, the court has pronounced conditional sentences as follows: from 5 to 8 months of prison for the criminal offence stipulated in article 247 and from 3 to 10 months for the criminal offence stipulated in article 353.

ranging from 2.000,00 MKD to 73.000,00 MKD. There were only two cases, where the courts in Struga and Negotino translated the pecuniary penalty into daily fines (one daily fine being 10 EURO).

According to the pronounced sentences, one would say that the courts in the Republic of Macedonia, when it comes to penalization of the corruption-related criminal offences, do not have a uniform penal policy, given that the structure of the penalties is very heterogeneous. The pronounced sentences should certainly be brought into direct correlation with the type and severity of the criminal offence that is to reflect, *inter alia*, with the amount of the acquired pecuniary or other benefit, but also with the characteristics of the offender. The social context in which the corruption-related criminal offence takes place is not of less significance either.

In the last phase of the proceedings for the corruption-related criminal offences observed before the courts of first instance in Macedonia, the conclusion that can be drawn is that in the majority of the cases, the convicted person did not appeal the first instance sentence. Out of the 158 final sentences, appeal was filed in only 64 cases, 37 whereof were rejected by the courts of second instance.

As for the reasons for rejection of the appeals (whether they come under substantive law or

procedural law), the survey did not manage to detect them. However, the above numbers indicate that in the cases, when the guilt of the suspect was proven, the courts of first instance had been successful in presenting evidence and proving the guilt of the defendants. The number of the cases, where the court of second instance annulled the first instance verdict and returned the case for a new trial, as well as the number of the cases, where the court of second instance corrected the sentence in direction of increasing it, is very low.

Conclusions

By monitoring and analyzing the corruption-related criminal offences in the Republic of Macedonia, this research project enabled to shed light on several problems, starting from the detection of this type of criminality, via prosecution up to the phase of reaching the verdict. With the view to further monitor and ascertain the capacity and the willingness of the judiciary to cope with the corruption-related cases, as well as to make a contribution in the direction of the implementation of the European Commission's recommendations, the main goal of the project for the next year shall be **to establish a Program of monitoring of court cases in the area of corruption in the Republic of Macedonia**. The analyses to result from these observations will give answers to the questions that came up in the project so far:

- How does the new organization and jurisdiction of the courts affect the processing of this type of criminality, taking into account that the new Law on the Courts provides that departments for organized crime be established under the courts with extended jurisdiction;

- Establishing a methodology that will enable objective fact-finding, associated with corruption-related criminal offences in the activities of all law enforcement authorities;
- Specifying the characteristics in the study of the corruption-related criminal offences;
- Defining the profile of the perpetrators of corruption-related criminal offences. The new phase of the project will have to cover this aspect in greater depth, which will indirectly address the social environments in which corruption-related criminal offences occur;
- Specifying the reasons for procedural delays with aim to obtain objective and verified answers;
- Analyzing the manner and the methods of work of the judges as well as their competence and professional responsibility; and
- Studying the penal policy of the courts in more detail through the structure of the criminal offences committed, sentences pronounced, the contexts and relations in which they take place and the characteristics of the offenders.

ANNEX

List of criminal offences under the Criminal Code that come under the definition of corruption

Article 162 - Bribery at elections and voting

A person who offers, gives or promises a present or some other personal benefit to a person with voting right, with the intention of attracting this person to perform or not to perform the voting right, or to perform it in a certain sense, shall be punished with a fine, or with imprisonment of up to three years.

This punishment also applies to a person with voting right who requests for himself a present or some other benefit, whereas the third paragraph of this article provides for a fine if the offence is committed by a legal entity.

Article 247 - Fraud

A person, who with the intention of attaining unlawful property gains for himself or for another defrauds another by false presentation or by covering up facts, or keeps him under defraud and herewith induces him to do or not to do something which causes damage to his own or another's

property, shall be punished with a fine, or with imprisonment of up to three years.

If the damage is of a small value, and the offender wanted to attain such a value, he shall be punished with a fine, or with imprisonment of up to one year.

If the damage is of a large value, the offender shall be punished with imprisonment of three months to five years. If the damage exceeds a significant value, the offender shall be punished with imprisonment of one to ten years.

A person who committed the crime referred to in paragraph 1 only with the intention of damaging another shall be punished with a fine, or with imprisonment of up to one year.

Article 248 - Defrauding buyers

A person who, with the intention of defrauding buyers, releases for trade products with a label in which data is entered that does not correspond to the contents, type, origin or quality of the product, or releases for trade products that according to their weight or quality do not correspond to what normally is assumed for these products, or products without a label about the contents, type, origin or quality of the product, when this mark is prescribed, shall be punished with a fine, or with imprisonment of up to three years. If the offence referred to in paragraph 1 is committed by a legal entity, the latter shall be punished with a fine.

Article 253 - Unauthorized reception of gifts

A person who, by representing the property interests of some legal entity, requests or receives a reward, gift or some other benefit, in order to conclude or not to conclude an agreement, or to perform or not to perform some other action to the detriment of the legal entity, thus causing a larger property loss to the legal entity, shall be punished with a fine, or with imprisonment of one to three years.

Article 254 - False bankruptcy

A person who, with the intention of avoiding an obligation to pay, causes a bankruptcy by an apparent selling of property or a part of it, by transferring funds to other current accounts, by giving up without indemnity or selling at an extremely low value, by concluding false agreements about debt or acknowledging untruthful claims, by covering up, destroying, changing or maintaining business books in a manner so that his true state of wealth cannot be determined, shall be punished with imprisonment of one to five years and with a fine.

Article 255 - Causing bankruptcy by unscrupulous operation

A person who knows that he himself or another as debtor is incapable of payment, and who causes a bankruptcy by unreasonable spending and selling

objects and rights at an excessively low price, by excessive getting into debt, by undertaking excessive obligations, by concluding or renewing contracts with persons who are incapable of payment, by omitting to collect claims, or in some other way violating his duties in controlling the property or in managing the affairs, shall be punished with imprisonment of three months to three years.

Article 256 - Misuse of the bankruptcy procedure

A creditor, member of a board of creditors, or a bankruptcy administrator, who for himself or for another, receives a property gain or a promise of property gain, in order to pass or not to pass a decision in a certain sense, or in some other way damages at least one creditor in the procedure for forced settlement or bankruptcy, shall be punished with a fine, or with imprisonment of up to three years.

This punishment shall also apply to a person who gives or promises property gain to a creditor, member of the board of creditors, or bankruptcy administrator, in order to realize the crime from paragraph 1. If the offence referred to in paragraph 1 is committed by a legal entity, the latter shall be punished with a fine.

Article 257 - Damaging or privileging creditors

A responsible person who, knowing that the legal entity has become incapable of payment, by paying out a debt or in some other way intentionally puts some creditor in a more privileged position, herewith damaging the other creditors, shall be punished with a fine, or with imprisonment of up to three years.

A responsible person who, knowing that the legal entity has become incapable of payment, and with the intention of tricking or damaging the creditors, acknowledges a false claim, puts together a false contract, or by some other deceitful action damages the creditors, shall be punished with imprisonment of six months to five years.

If because of the crime referred to in paragraphs 1 and 2, property damage of a large extent was caused, or because of which the legal entity fell into bankruptcy, the offender shall be punished with imprisonment of one to ten years.

Article 273 - Laundering money and other proceeds from crime

This offence is committed by a person who releases in circulation, accepts, takes over, exchanges or breaks into small change money that he acquired through a punishable action or for which he knows was acquired through a punishable action, or by means of conversion or other form of transfer

covers up that it originates from such sources or covers up its location, flow or ownership.

Also punishable are the sale, giving as a gift or the release for another type of trade property or objects of high value acquired through a punishable action; the purchase, accepting as a pledge or otherwise acquiring, concealing or circulating property or objects for which the person knows were acquired by committing a punishable action or by falsifying documents; covering up that they originate from such sources or covering up their location, flow or ownership by failing to report facts or otherwise.

The code also criminalizes: (i) the perpetration of the offence by an official person, a responsible person in a bank, insurance company, company involved in organization of games of chance, exchange office, stock exchange or another financial institution, lawyer (except when acting as a defense lawyer), notary public or another person carrying out public authorizations or activities of public interest, who enables or fails to report laundering of money, assets or property gain, of which he found out while doing his job or performing a duty, as well as (ii) the perpetration of this offence by a legal person.

The envisaged prison sentence ranges from one to ten years. If the criminal offence was committed by a person as a member of a group, gang or another association involved in laundering money and other property gain, the envisaged prison sentence is

minimum five years. In case of committing this crime, the money and other direct and indirect property gain shall be confiscated, and if confiscation is not possible because they were transferred abroad, other property of the offender that corresponds to their value shall be confiscated.

Article 275 - Fraud in working with securities and shares

In this article, fraud is considered committed if during an operation of taking over a joint stock company or releasing in circulation securities or shares and other documentation relating to the securities or shares, one falsely presents with untrue, incomplete or biased information the financial situation of the legal entity that is releasing the securities or shares in circulation, the data regarding loss or gain, its financial operations or other data concerning the operation of that legal entity which has an influence upon their value on the market, and herewith induces one or more persons to buy or sell these shares or other securities. The envisaged penalty is a fine or imprisonment of up to three years.

One paragraph added to this article relates to the responsible person in a legal entity, person with special authorizations or another employee in the legal entity who acquires in his work confidential or other insider information that are important for the operations of the legal entity and for the value of the securities or shares, and conveys this information in

an unauthorized manner to a third person who, based on this information, acquires by buying or selling the securities or shares of the legal entity a significant property gain for himself or for someone else, for which the punishment is imprisonment from one to five years.

If with the crime the offender acquired for him or for another significant property gain, or caused significant property damage to another, or herewith damaged a number of people, he shall be punished with imprisonment of one to ten years. If the offence is committed by a legal entity, the latter shall be punished with a fine.

Article 281 - Disclosing and unauthorized acquisition of a business secret

Disclosing of a business secret belongs to the criminal offences against public finance, payment operations and the economy. A person who unauthorized tells, hands over or in some other way makes available to another person data which by law has been declared to be a business secret, as well as a person who acquires such data with the intention of handing it over to another unauthorized, shall be punished with imprisonment of one to five years.

The second paragraph of this article provides for imprisonment of three months to three years for a person who through the disclosing of this data

caused or could have caused serious harmful consequences.

The third paragraph provides that if the disclosing, respectively the acquisition of the data was done with the purpose of carrying them abroad, or if the offender has received a bribe, he shall be punished with imprisonment of one to ten years.

Article 353 - Misuse of official position and authorization

This is the first article in the chapter of criminal offences against official position, stipulating that an official person who, by using his official position or authorization, by exceeding the limits of his official authorization, or by not performing his official duty, acquires for himself or for another some kind of benefit, or causes damage to another, shall be punished with imprisonment of six months to three years.

The following paragraphs provide for imprisonment of six months to five years if the perpetration of the crime brought a larger property gain, as well as imprisonment of one to ten years if the crime brought a significant property gain.

Moreover, with the 2004 amendments, an additional paragraph added to this article criminalizes the perpetration of this offence when carrying out public procurements or when it is done to the detriment of the state budget, public funds or other state assets,

for which imprisonment of minimum four years is provided.

Article 354 - Embezzlement in the service

This article stipulates that an official person who, with the intention of acquiring unlawful property gain for himself or for another, usurps money, securities or other movable objects that are entrusted in the service, shall be punished with imprisonment of six months to five years. The next two paragraphs provide for penalties for acquisition of a larger i.e. significant property gain, respectively, whereas the fourth paragraph provides for a milder penalty, which is a fine or imprisonment of up to one year if the perpetrator of the crime acquired a small property gain, and if he wanted to acquire such a property gain.

Article 355 - Fraud in the service

An official person who, when performing his service, with the intention to acquire an unlawful property gain for himself or for another, by submitting false invoices or in some other way, deceives the authorized person to effect an unlawful payment, shall be held responsible for this criminal offence. The punishment for this offence is imprisonment of six months to five years. This punishment also applies to a responsible person, responsible person in a foreign legal entity that resides or runs a business in the Republic of Macedonia, or a person performing activities of public interest if the offence

was committed while discharging a special duty or authorization.

Article 356 - Helping oneself in the service

An official person who without authorization helps himself to money, securities or other movable objects entrusted in the service, or he gives these objects without authorization to another to help himself, shall be punished with imprisonment of three months to five years.

Article 357 - Accepting bribe

This article, which directly relates to corruption, stipulates that an official person who requests or receives a present or some other benefit, or receives a promise for a present or some other benefit, in order to perform an official act within the framework of his own official authorization which he should not perform, or not to perform an official act which he otherwise must do, shall be punished with imprisonment of one to ten years.

Also punishable is if the official person requests or receives a present or some other benefit after performing or not performing an official act within the framework of his official authorization.

Imprisonment of three months to ten years is provided as a punishment for the local responsible person and for an official performing activities of public interest, as well as for the responsible person

in a foreign legal entity, or for a foreign official that has inflicted damage on the Republic of Macedonia by committing the offence.

Article 358 - Giving bribe

This is another article that criminalizes corruption in a direct manner, stipulating that a person who gives or promises an official person a present or other benefit, so that he would perform an official act within the framework of his official authorization which he should not perform, or not to perform an official act which he should perform, or a person who mediates for this, shall be punished with imprisonment of six months to five years.

In addition, it is stipulated that the offender who gave bribe upon the request from the official person, and who reports this before he finds out that the crime was discovered, shall be acquitted from punishment.

This article provides for a fine if the offence was committed by a legal entity.

Article 359 - Unlawful mediation

This offence is considered committed by a person who receives a reward or some other benefit by using his official or social position and influence, in order to mediate for some official act to be executed or not, and for this he shall be punished with a fine, or with imprisonment of up to three years.

If the offence was committed in connection with initiating or carrying on a criminal procedure (litigation) against a certain person, the offender shall be punished with imprisonment of one to five years.

If a reward or some other benefit was received for the mediation, the offender shall be punished with imprisonment of one to ten years.

Article 359a – Covering up the origin of disproportionately acquired property

An official person and a responsible person in a public enterprise or institution who contrary to his legal duty to report his property situation gives false data about his revenues, or when it is determined that his property significantly exceeds his legal and reported for taxation revenues and he covers up his true sources, shall be punished with imprisonment of six months to five years and with a fine. The property that significantly exceeds his generated revenues and reported for taxation revenues for which the offender covers up the true sources shall be confiscated, and if confiscation of this property is not possible, other property of equal value shall be confiscated from the offender. The property shall also be confiscated from third parties whom it had been transferred to without an appropriate compensation.

Article 360 - Disclosing an official secret

This relates to a person who tells, hands over, or in some other manner makes available information to the public or to an unauthorized person, which represents an official secret, or acquires such information with the intention to tell or hand over to the public or to an unauthorized person. In this case, the punishment is imprisonment of three months to five years.

Article 360a – Misuse of state, official or military secret

This is an offence committed by an official person who makes use of data representing a state, official or military secret with the intention of attaining some benefit for himself or for another person or inflicting damage on someone else, which entails imprisonment of three months to five years. This punishment also applies to the one who following the termination of his service, makes use of this data with the same intention or tells them/hands them over/makes them available for use to another person.

Article 361 - Forgery of an official document

This is an offence with the perpetration of which data in official documentation is usually covered up or changed with the view to cover up wrongdoings. An official person who in an official document, book, or paper, enters untruthful information, or does not

enter some important data, or with his signature, respectively with an official stamp, verifies an official document, book or paper with untruthful contents, or with his signature, respectively an official stamp, enables the making of an official document, book or paper with untruthful contents, shall be punished with imprisonment of three months to five years.

Article 362 - Unlawful collection and payment

The last one in the chapter of criminal offences against official position is article 362, which stipulates that an official person or responsible person in a legal entity which disposes over state or social property, who collects an amount from another which this person is not obliged to pay, or collects more than this person is obliged to pay, or who during pay out or handing over of objects, pays out or hands over less than he was obliged to do, shall be punished with a fine, or with imprisonment of up to three years.

Article 368a – Influencing witnesses in an unlawful manner

This is a newly introduced article in the group of criminal offences against the judiciary. This article stipulates that a person who by using a threat of attacking on the life or body of another person or on property of large scale or by offering bribe obstructs or otherwise influences another person to appear or not to appear as a witness in a proceedings before a court of law or in an administrative procedure, or if

summoned as a witness to give or not to give a statement in a certain sense, shall be punished with imprisonment of one to three years. The other two paragraphs of this article stipulate a penalty if the person who is supposed to give a statement is bullied or physically injured and if because of the offence especially severe consequences for the defendant in the criminal procedure have appeared, or the witness or a person close to him was inflicted a severe corporal injury, for which the penalty is imprisonment from one to ten years.