

Violation of the criminal procedure or “double standards”

Today fourteen defendants made their court appearance, accused for victimization, brutal offence, threatening the safety or rough violence in the public and causing a sense of insecurity or terror/fear¹, in response to the summons. Among these fourteen defendants were also public office holders and former public officials.

Theoretically speaking, we find it rather confusing that the main hearing was not held today, even though it is required by law for this particular crime, instead the judge conducted a preparatory hearing in a criminal procedure initiated with the issuance of an order for investigation.

According to the Criminal Procedure Code of The Republic of Macedonia, the defendants are accused for a crime that requires summary procedure², which means that when the court receives the indictment application or the personal legal action, the judge shall initially investigate whether the court has proper jurisdiction and whether there are any reasons to reject the indictment application, i.e. the personal legal action, If the judge does not pass a decision, he or she shall set a date for the main hearing.

The fact that this requires a summary (shortened) procedure and the case is brought with indictment application³, the defendant and his defense counsel, the prosecutor and the damaged party and their legal representatives and proxies, as well as an interpreter should have been summoned to a main hearing.

The Special Public Prosecutors stated that today they expected to attend a main hearing, instead of evidentiary hearing, with intention of displaying the content of the indictment and presenting the documentary evidence. These legal actions are provided in the CPC Article 480, regarding to the Shortened/Summary Procedure, which states that – “the main hearing shall commence with a presentation of the content of the indictment application. Any main hearing that has been commenced shall be completed, if possible, without any interruptions”. The confusion between the legal reality and the judiciary interpretation is evident even in the invitations sent to the Special Public Prosecutors and the defendants, which are invitations for main hearing.

Despite the confusion and the insist of the Special Public Prosecutors, seeking explanation for today’s court actions, the Court continued with a standard procedure and applied Article 347 (2) where “The Presiding Judge of the Trial Chamber may summon the parties to appear before the court on a specific date in order to elaborate their proposals i.e. their objections in regard to any proposed evidence.” Taking into consideration this Article, based on the paragraph (1)⁴ the Presiding Judge of the Trial Chamber rejected any tendered evidence.

There were several evidence proposals from the SPP, nonetheless the court decided to uphold the objections of the defense and brought a procedural solution to reject the proposal by the SPP, for an endangered witness, and also it rejected the audio recording of phone calls as evidence and this is an evidence upon which the allegation is based, knowing the fact that any recording shall receive the

¹ Violence under the Article 386 paragraph 2 in relation with paragraph 1 in relation with Article 23 of the Criminal Code of Republic of Macedonia

² because if found guilty the defendants shall be sentenced with imprisonment of three months to three years

³ a formal written document filed by the prosecutor detailing the criminal charges against the defendant ; An alternative to an indictment, it serves to bring a defendant to trial (information)

⁴ (1) The Presiding Judge of the Trial Chamber may reject any tendered evidence

same treatment as any other item that may be used as evidence, making sure that the recording is not damaged or destroyed and its contents preserved without changing the format. When it comes to the endangered witness, our CPC provides protection of an endangered witness during the preliminary procedure and the way of proposing this witnesses is included in the Article 228, and in this particular case where the main hearing was not held (as it is required by law in a shortened procedure), The Special Public Prosecutors faced an issue because they delivered the written proposal for the special way of examination of the witness to the court in a sealed covert.

Furthermore, it is required by Law that the court shall rule on the public prosecutor's motion with a decision, within a period of 48 hours from the receipt of the motion at the latest. Today, after a short break, the court respected this legal requirement, yet the judge analyzed the evidence and the objections in isolation and after that brought a decision for approval of the public prosecutor's motion, even though an appeal against this decision of the court is not allowed⁵.

If the Court acted according the law and respected the criminal procedure, bearing in mind that this particular crime requires summarized/shortened procedure, there wouldn't be conducted a preparatory hearing, during which the court evaluated the objections of the defenders, that are in the defense's favor by not examining the endangered witness.

This sets the question whether the court made a violation of the court proceeding or the court has "double standards" when it comes to handling the indictments from the Special Public Prosecutors against the indictments from the regular Public Prosecutors Office. In a regular situation, if this case was not a high-profile case, especially a case brought by an indictment from the SPP and with imprisonment of three months to three years, undoubtedly this would be a shortened procedure without preparation for the main hearing, nor evidence evaluation. If this case was not brought by the SPP, the court would have held the main hearing, the documentary evidence would have been presented and the judge would then brought in a verdict on the matter, at hand based on his or her interpretation of the law and his or her own personal judgment.

⁵ Article 228 CPC