

Presentation on topic “The role of woman parliamentarians, judges and prosecutors in strengthening preventive anti-corruption mechanisms - national situation and perspective” by Mrs. Aneta Arnaudovska, Director of the Academy for Judges and Public Prosecutors and Head of the Delegation of the Republic of Macedonia in GRECO

Gender and risks of corruption -are women more or less open to corruption when holding high positions?

Addressing the gender nature of corruption is very difficult. Despite a number of studies conducted on the issue of whether there is a typically male and a typically female corruption, no certain conclusions have been drawn, with only one issue not under dispute, namely that both genders are equally infectible to corruption. Taking this further, we could ask ourselves whether gender is of any significance to greater resistance to corruption, but also here we could fall into the same conclusion trap, whether the greater or lesser resistance to corruption is a result of different biological gender specificities, in a context of one social, cultural environment and tradition, where women are more prone to respecting the traditions of the home and family, of honourable and ethical behaviour. All these are slippery grounds, because we do not have at our disposal comprehensive research and analysis.

Gender equality in representation in the parliament and the judiciary

When we speak of gender and corruption in high positions –among parliamentarians, judges and prosecutors, we must first refer to the issue of gender based representations of these professions and the question of horizontal and vertical discrimination in the Republic of Macedonia.

Number of parliamentarians, parliamentary commissions, local self-government

Currently, 34.14% of parliamentarians are women (42 out of 123 members of parliament), ranking the country 23rd in the world, a ratio higher than the European average (24.3%). The last local elections in March 2013 resulted in a 30% participation of women in local councils. Two of the parliament deputy presidents are women, as are two ministers and two deputy ministers. But, it is a fact that we have never had a woman, president of the state, of the parliament or the government, or prime minister, that shows that still, the politics is reserved for men, and thus, the higher possibilities for openness to corruption.

The legal profession was in the past predominantly a male profession. One of the arguments used by the male legal world, was that women are prone to showing emotions such as happiness, disappointment, anger and rage, and because of their temper, they cannot judge objectively.

That was the past; the situation now has been tremendously changed in favour of the higher representation of women in the judiciary.

Ratio of male and female judges and prosecutors and Academy trainees

Undoubtedly, the social, economic and political conditions, globalisation, development of the mass media, unlimited access to information and computer technology have enabled women to be more autonomous in all segments of decision-making, surely gaining greater self-esteem, self-confidence and power in society.

In terms of the standards on election and promotion, on paper, women are not subject to gender-based discrimination, but still, they have not substantially reached the highest legal positions – heads of courts and prosecutor's offices, which is an example of indirect discrimination.

However, it is interesting to note that we have equal proportion in the court unit and in the special prosecutor's office for fighting organized crime and corruption.

Also, the number of woman judges in the highest courts has increased in the last few years. Also, in this period we have women heads of the highest judicial institutions in the state, including President of the Constitutional Court, President of the Judicial Council, President of the Supreme Court and Director of the Academy. The country has, however, never had a female General Public Prosecutor or a female Ombudsman.

The question of preventive mechanisms for corruption in the light of the 4th round Evaluation

During recent years, Macedonia has carried out comprehensive judicial reforms aimed at strengthening the independence, efficiency, transparency and accountability of the justice system. With the aim of strengthening the mechanisms and measures for prevention of corruption, the justice system introduced the process of assessment of judges and prosecutors, the introduction of the ACMIS (Automated Case Management Information System), which facilitates monitoring the progress of cases, thus decreasing possibilities for undue delays in proceedings and abuse of competences, both of which can result in corruptive behaviour of judges, court administration and parties; introduction of public sessions of the Judicial Council, related to complains by citizens against judges, the introduced system for statements of interests and asset declarations, as well as the improvement of the communication with the media and the general public.

Statistics for evaluation of the work of judges by gender

In essence, women judges display better results, which leads us to the conclusion that they are more diligent, partly due to the female qualities of constancy and perseverance, or ability to sit longer hours in one place, unlike their male colleagues. In my opinion, this is a result of the rationality of women, namely women judges and prosecutors make efforts to complete the bulk of their work assignments at the work place, so that they are able to devote the majority of time to their home and family obligations, which in Macedonia, still fall in their majority on the shoulders of women, and to achieve a better equilibrium between their professional

obligations, which are increasing in scope, and family obligations, as well as the need for proper social life.

Statistics in regard to the gender dimension are of interest, especially in regard to the number of cases of non-reporting of interests and non-submission of property statements by judges and prosecutors and to violation of regulations governing this area.

A conclusion lends it itself in that women are more disciplined in regard to meeting their legal obligations in the area of asset declarations but not in the submitting the statements of interests. So we can not conclude that woman are more dedicated towards fulfilling their legal obligations, even though some statistics indicate that women are more prone to regular payment of loan instalments.

Can women in high positions be victims to corruption?

No specific credible conclusions are available that more women are victims to corruption than men. The disproportional influence of corruption on women is a fact, especially in underdeveloped countries. The type of corruption they can be subject to usually pertains to the most basic services, such as health and education, marriage, divorce, child custody, areas where the greatest risk of corruption exist.

Needless to say, there are fewer possibilities for women to be victims to corruption in highly developed democratic countries, especially if there is equal representation in all three branches of government, and if they have equal opportunities for enter in the profession, and into promotion in the career, and equal access to decision and policy making.

It is a fact that, the higher the education level of women and greater their social and material assurance and integration in decision making process in all segments of life, the lesser chances are for them to be victim to corruption. In their ambition to reach higher positions and career advancement or obtain other benefits and privileges, women make themselves decision whether to engage in corruption; they are not dependent or in a situation of need. Corruption can have the form of offering bribe in various kinds, in the form of providing material and non-material services of diverse kinds, presentation of gifts, adoption of decision in favour of lobbyists or business groups and individuals, who then impact state policies, trading in influence, nepotism, offering return favours, with of course the most dangerous, one being political corruption, when certain judicial decisions are made with career advancement in mind. In such a situation, the women in these positions cannot be depicted as classical victims, because they consent to the situation of giving a bribe for the purpose of achieving a desired goal. In such a case, it appears that the higher the position of women, the less vulnerable they are to corruption, but more likely to corrupt themselves.

The important question is, whether women in high positions feel that what they are doing is corruption; here the social, cultural and political environment in the country do matter, as do the upbringing and tradition. There are opinions, among colleagues, that a small free facelift intervention, an airplane ticket received from some agency, a free lunch or a weekend in a hotel, favourable credit terms or a perfume for Women's Day or New Year are not

corruption. This is where the role of the Academy is especially significant, in training judges and prosecutors on the code of ethics and its established principles, in transmitting and translating them into everyday examples, through tests of behaviour in diverse situations of possible conflict of interests and different types of corruption, occurring in practice. These cases indicate, that we need to work on changing attitudes towards the different types of corruption and moving away from old habits and behaviour. Psychological tests and test of integrity have been introduced as a novelty in the entrance examination for the new generation of academy trainees.

The role of women in high positions in activities towards strengthening preventive mechanisms for reducing gender based corruption

Women in legislative and judicial positions have a bigger responsibility to ensure that gender based corruption is minimized.

The Parliamentary Commission for Equal Opportunities for Women and Men (CEO) was established in 2006 in accordance with the Law on Equal Opportunities for Women and Men. There are men and women MP's, in this commission, highlighting the gender awareness. The activities of this Commission are focused on intervening in the areas where women are most vulnerable and most likely to become victims, but not as regard corruption.

A female MP was the initiator for the establishment of this Commission and for the adoption of the said law and also of the Law on Mobbing. Respecting the contribution also of male MPs, it is nevertheless a fact that these all these initiatives were instigated by women parliamentarians, with many years of experience in working towards improvement of the social, material and societal position of women.

The achievements of this developed gender machinery are improved regulations and established system for combating family violence; on harassment and mobbing; on employers' treatment of pregnant women; enhanced measures for support to women entrepreneurs; and for support to rural women, health care programmes, improved regulation on protection of children from abuse and neglect etc. The future measures **are** economic strengthening of women, fight against stereotypes and prejudice.

This is complemented by the Government programs for increasing opportunities for employment, business start-up credits, improvement of the participation of women in decision making and access to senior positions, greater material and social security, all of this aimed at decreasing the threat of women being victims to corruption. There are not a gender based programmes for prevention of corruption.

Gender-responsive anti-corruption reforms need to take place in a broader policy context that strives towards gender equality. The danger here is the claim that only women in parliament or in government can make an impact towards strengthening preventive mechanisms in the fight against corruption. As regards preventive mechanisms, parliamentarians in our country-could participate in initiatives for: awareness campaigns; distribution of information, especially in local and rural communities, about possible risks of corruption in different sectors; training programmes on possible forms of corruption, especially when women

request services from public or private services; prevention of illegal work and signing blanket contracts, especially, during pregnancy, when in need of care and treatment of small children, and as applicants for different medical, educational or social services; all with the goal of intensifying the resistance towards corruption. Practice has shown cases of most pronounced forms of discrimination and violation of the rights of women, which we can read about in the daily newspaper, most often in the form of seeking material and non-material / sexual services, blackmailing in regard to age, looks, pregnancy, etc. These issues are linked to gender-based discrimination, such as mobbing and sexual harassment, but they can certainly generate corruption.

In our society women judges rarely take part in different forms of social activities, such as civil society activities and charity actions or work to improve women's as well as human rights as a whole. The same excuse as ever abounds – loads of work on complicated and difficult cases in an effort to achieve a balance between fulfilling professional and family duties.

Whether woman judges should be more sensitive towards woman as victims (regardless it is a case of a family violence, sexual abuse, or corruption)

Some believe that when women conduct a trial, there is a greater level of intuitiveness – informal legal practices and actions, like negotiation, equalisation, giving prominence to values like compassion, solidarity and sympathy.

Undoubtedly, women judges contribute towards the protection of gender equality, but this certainly does not imply that men judges are unappreciative.

The issue arises out of whether in dealing with family violence and in other cases when a woman is a victim of crime, there is a feminine approach in the response to inflicting pain. This can be quite dangerous, since it can lead down a wrong path, so to speak, whereas bringing a feminist way of hearing witnesses, exhibiting proof, assessing the evidences and passing the decision, in which case judges themselves will generate discrimination.

However, the judge is not a robot; he/she is influenced by all external and internal factors. In the decision making process for women judges, one cannot exclude the effect of elements such as moral, patriarchal attitudes, marital status, her position in the family, the attitude towards the issue of abortion, infidelity, social and financial background, political affiliation and social viewpoints as a whole, the judge's system of values – but in the end these must not influence the judge's impartiality and objectivity so that he/she can avoid becoming a discrimination factor. Yet, I believe that the woman judge in Macedonia cannot be abstracted from the patriarchal mentality that exists here, with special prevalence in smaller communities.

The conclusion lies in the fact that the increased number of women judges is significant from the aspect of democratic legitimacy, but still this is insufficient to conclude that gender perspective exists when solving court cases. Women's problems in the disputes, however, are evaluated based on real facts and evidences.

It is dangerous when such situations bring about revanchism, and especially dangerous is the misuse of women's power within the criminal procedure for cases when the victim is a female (rape, domestic violence, etc.), when the woman judge can violate the human rights and produce discrimination herself.

The basic article in human rights protection is, Article 6 of the European Convention on Human Rights (ECHR), states that every individual has the right to a fair trial, including the right to a public hearing before an independent and impartial tribunal within a reasonable time.

Concerning the duties regarding judges' and public prosecutors' behaviour and conduct, the Code of Ethics states that they should act impartially and refrain from expressing any emotions towards litigation parties, even if there is a pretext, nor to join associations promoting discrimination based on sex, race, religion or national background.

Women judges and prosecutors, pursuant to domestic laws and international standards on impartiality of the judiciary, may not display any partiality during trial, when they have in front of them a woman either as a defendant, or as a victim. Therefore, we need to separate the judicial, from the social dimension of the judicial function. The judge or the prosecutor, regardless whether a man or a woman, must nevertheless show sensibility for the situations when the woman is a victim, also a victim of corruption, if the situation has a gender dimension which cause the woman to be in a situation of vulnerability to corruption, including pregnancy, motherhood, insufficient access to information or lack of education, especially in rural, traditional and poor communities. This might entail informing victims of corruption or referral to counselling, with the aim of helping them address a social problem, improve their material and social situation, and making them less vulnerable to corruption or how to compensate the damage. They might provide information on rights during proceedings, costs or duration of proceedings, possibilities for their exposure to corruption by the administration for "speedier" completion of their case, or by the attorneys at law who often tell the parties that half of the money is "reserved" for the judge, as well as instruction on the possibilities for reporting corruption, with due care devoted to the protection of whistle-blowers. The judge and the prosecutor need to, necessarily, take care not to violate both parties' rights and the principle of independence and equality of arms.

Judges' and public prosecutors' ethnic code – limitation based on gender or for every individual in the judicial and prosecution profession?

Hence, as public figures, judges and public prosecutors are constantly exposed to critical examination by the public, so they have to accept personal limitations, to behave in accordance with the dignity required of someone working within the judicial profession. When one considers the mentality and attitudes of our environment, this raises the question of whether the code of ethics is more restrictive for the woman judge or prosecutor. You are less likely to meet women judges and prosecutors, especially in smaller, more patriarchal communities, in restaurants sitting with attorneys at law or policemen, or in night clubs and betting houses. In the application of the code of ethics, it is especially important to regulation relations between judges and attorneys at law, especially in cases of friendship or personal or family ties, which can damage the public perception of impartiality of the judge.

That is why in a light of the 4th Round Evaluation it will be very important to analyse the influence of the gender issue on the compliance to or breach of the code of ethics, especially in regard to anticorruption issues and whether it depends of specific cultural, historical background of the state and the mentality.

The Greco initiative motivated us to proceed with the survey in this field. We started another analysis of the gender issue in criminal procedures against organized crime and corruption; there are more men than women, but more and more the latter appear as co-perpetrators of crimes – members of organised groups and not as single perpetrators. In addition, as victims in Macedonia, they are very rarely victims of organised crime and corruption, and bribe.

Following the GRECO initiative, we entered into the methodology for the statistics for monitoring corruption the gender dimension both among perpetrators and victims of criminal acts and corruption offences.

Proceedings for liability of judges

Men

acted contrary to the principles of impartiality and honesty from the Code of Judicial Ethics, disrespected the schedule of work of judges, failed to act upon the instructions of the second instance court, as a consequence of which the second instance court **quashed twice the rulings in 2 cases**, thus unduly prolonging the proceedings; signed a report that no obstacles existed for issuance of travel document to a person to whom such a report should have not been issued; held a main hearing in a case for which he had already, 13 days before, reached a decision; ailed to undertake process actions which brought about absolute barring of a number of misdemeanour cases due to statute of limitations because of the judge; inconsistencies between council decisions and the voting as presented in the Records;

non-preparation or non-delivery of ruling in the legally stipulated deadline - two judges prepared decisions upon expiry of several months after the final hearing had been held; ; one judge sustained a motion for quashing the measure retaining on remand on account of offer of guarantees, thus creating a combination of the preventive measures house arrest and acceptance of guarantees.

Women

conducted the proceeding as a single judge although it was supposed to be conducted by a Panel; decisions were deemed valid and binding although no date of receipt of rulings is available on the delivery notes; judge prepared two records for one probate case; in a number of **misdemeanour cases**, the judge had not undertaken any action from the day of receipt of the case up to the day the case became subject to barring due to the statute of limitations; **delayed** without legal grounds **the proceeding**; , failed to deploy all available legal means to carry out due delivery of documents that were to be submitted to the convicted person, thus bringing about delay in the procedure for enforcement of the sentence imprisonment; substituted the measure retaining on remand with house arrest; **54 enforceable misdemeanour cases** were not submitted for forced collection to the Public Attorney's Office; ; in **18 misdemeanour cases** the payment of the fine was postponed although the required preconditions for that had not been met; in **26 misdemeanour cases** failed to rule on the property claim and in **4 misdemeanour cases** rejected the motions for instigation of

misdemeanour proceedings, after she had previously treated the same motions as complete and had undertaken specific actions; did not recuse herself although legal grounds for that existed; failed to establish the identity despite indications by the prosecutor; held a main hearing in a case in which a decision had already been adopted; in **5 motions** for enforcement accepted proposed court settlement and halted the enforcement proceeding; allowed enforcement of pecuniary claim without the existence of credible originals of document.

Analysing the reasons for the liability of the judges, we cannot draw a conclusion pointing to gender differentiation, only the conclusion that all reasons for violations of the Law on Courts are equally represented among both genders, in cases against judges same as in cases against presidents of courts. In addition, upon dismissal, the judges became attorneys at law, both the men as well as the women.

All these issues should be the subject to comprehensive analysis and research, in order to draw some valid conclusions. It is important to begin promoting issues on gender differences, and see whether and how these are present in the judiciary.