

North Macedonia / Macédoine du Nord

1. What are the general official measures taken for reacting to and implementing the decisions of international courts and treaty monitoring bodies?

- The general official measures that are being taken in our country, for implementing the decisions of international courts are enactment of laws which prescribe obligation for the judges and prosecutors, in concrete cases, to directly apply the final and executive decisions of the European Court of Human Rights, the International Criminal Court and other courts, whose authority is acknowledged by our country. This obligation is prescribed in the Law on courts and the new Law on Public Prosecutor Office that was enacted by the Parliament on 16th of February 2020, and it will be enforced on 30th of June 2020. In practise, the decisions of the international courts are mandatory and the courts and the Prosecutor Office are bind to apply them.

2. Based on your answer to the 1st question, what are the measures taken particularly for the practical independence of the prosecution services and individual prosecutors? Can you give examples?

- Regarding the independence of the Prosecutor Office and individual prosecutors, it is significant to mention the enactment of the new Law on Public Prosecutor Office on 16th of February 2020, that will come into force on 30th of June 2020. With this new law, the status, the independence and the responsibility of the public prosecutors are strengthen, also firmer criterias for appointment, grading and promotion of the prosecutors are prescribed, as well as more precise mechanisms for disciplinary responsibility. On other hand, bigger measures for protection and security of the public prosecutors are prescribed, higher budget and more significant role of the Public Prosecutor Office for securing the needed budget, as well as increasement of the capacities and the resources. Also, this law prescribes an obligation for the public prosecutors, when practising their authority, to mandatory apply the standpoints of the final decisions of the European Court of Human Rights. With this Law, also the status of the cases of the Special Prosecutors Office is regulated, having in mind that the mandate of this Office ended.

3. Are these measures reflected in the law or in the prosecution policy or debate?

- These new regulations, particulary the new Law on Public Prosecutor Office is considered to be a significant step forward, towards strengthening the independence of the public prosecutors.

4. If yes, then were there any changes in the prosecution system as a consequence of such measures?

- Having in mind that the new Law on Public Prosecutor Office will come into force in 4 months, the changes in the prosecution system, will be a subject of an additional analysis.

5. Are there also national decisions of the Supreme or Constitutional Courts, or any other highest judicial body at national level, dealing with the question of independence of prosecutors?

For questions connected with the constitutionality and the legality of the work of the Public Prosecutor Office, The Public Prosecutor of RNM, can submite an initiative to the Constitutional Court. On the other hand the Supreme Court acts upon extraordinary legal

remedies against legally-binding decisions of the courts, and also establishes general standpoints and general legal opinions on questions that are important for securing unified implementation of the laws by the courts. In this framework, they can also decide on matters that are in relation with the independence of the public prosecutors. Last year, at the end of January, the Supreme Court of RNM, acted upon an initiative of a defense lawyer and established a general legal opinion, on a general session of the supreme judges, that had an impact of the work and the authorization of the public prosecutors from the Special Prosecutor's Office (Public prosecutors Office for prosecuting crimes that are connected and that arise from the content of the illegal phone tapping). According to this general legal opinion of the Supreme Court, the Special Prosecutor's Office was not permitted to submit new indictments to the court, after the expiration of 18 months, from receiving the materials of the illegal phone tapping. This was considered to be a limited interpretation of the Law on the Special Prosecutor's Office, that prescribed a period of 18 months for the special public prosecutors to finish their investigations and eventually submit indictments, counting from the day of receiving the materials of the illegal phone tapping, but also from the day of receiving the cases from the other Prosecutor offices. With this decision, the authorization of the special public prosecutors was disputed, and it could be considered as a decision that had an impact of the independence of the prosecutors. With the new Law on the Public Prosecutor Office, this unfavourable situation is resolved. The validity of the Law on the Special Prosecutor's Office ended, and all cases that were previously carried out by the Special Prosecutor Office are handed over to the Public Prosecutor of the RNM, and assigned to other prosecutor offices. The special deadline of 18 months for finishing investigations, prescribed in the Law on the Special Prosecutor's Office, does not apply. According to the Code of criminal procedure this is considered to be an inclusive, not preclusive period for finishing investigations, having in mind the statute of limitation, for criminal prosecution.

6. Does the prosecution system in your country belong to the judiciary?

- The Public Prosecutor Office is a self-contained and unique state organ, which is considered to be a part of the judicial system.

7. Are prosecutors and prosecution services independent or autonomous from the executive and legislative branches of state power?

- The Public Prosecutor Office is a unique and self-contained state organ, that prosecute perpetrators of crimes and other punishable acts by the law and also execute other matters according to the law. According to the Constitution and the laws, the Public Prosecutor Office while acting upon its authorizations, is independent from the executive and legislative power, meaning no one is allowed to interfere in the legal, impartial and objective execution of the function of the Public Prosecutor Office. But, according to the principles of division of state power, there are certain mechanisms by which the executive and legislative power can control the work of the Public Prosecutor Office. In regards to the legislative and executive branch, the main laws regarding the functioning of the Public Prosecutor Office are enacted by the Parliament, on a proposal by the Government (The Ministry of justice). The quality of the proposed and enacted laws affect the overall functioning of the the Public Prosecutor Office. In the election of the head of the Public Prosecutor Office, crucial role play the legislative and executive power, since the Public Prosecutor of RNM is elected by the Parliament, on a proposal by the Government. The Public Prosecutor of RNM is responsible for his/her work to the Parliament and once a year he/she submits a written report to the Parliament, on the work of all prosecutor offices and for the crime situation in RNM. The Budget of the Public Prosecutor of RNM has to be coordinated with the Ministry of finance and it is voted by the Parliament. The working space, the material means, the equipment and other working conditions are secured by the Government. In the Council of Public Prosecutors there are four members, that are elected

by the Parliament. In this regards, there are certain aspects, by which the executive and legislative power, functionally influence the work of the Public Prosecutor Office.

8. Is there a Council of Prosecutors or a similar equivalent body which can be considered as a mechanism to monitor and ensure prosecutorial independence, including in the way in which the prosecution services operate?

- Yes, the Law on the Council of public prosecutors was enacted on 12 th December 2007, and since then the Council of public prosecutors has been established as a self-contained organ that secures and guaranties the independance of the public prosecutors in executing their function. The Council of public prosecutors follows the work of the public prosecutors, through the grading of their work, and among other authorizations, appoints and discharges all of the public prosecutors, accept the Public Prosecutor of RNM.

9. How many of its members are elected by their peers, and does the prosecution policy or the debate within the judiciary produce any impact on the election of the members of the Council of Prosecutors?

- From a total of 11 members, 7 members of the Council of public prosecutors are public prosecutors. The Public Prosecutor of RNM, is a member of the Council, according to the law, and the other 6 public prosecutors are elected on a direct election, by a secret vote, by all prosecutors (1 elected public prosecutor must come from an ethnic minority). In the Council of public prosecutors, the other 4 members are elected by the Parliament, from the row of eminent legal professionals (2 of them must come from an ethnic minority).

10. Who has the initiative of disciplinary proceedings?

- The public prosecutor of RNM, can initiate a disciplinary proceeding for all public prosecutors, and the chef prosecutors of the basic and higher public prosecutors, ex officio, or by a given information of a britch of law, can initiate a disciplinary procedure for public prosecutors from their office. Also a member of the Council of public prosecutors can initiate a disciplinary proceeding for a public prosecutor. The disciplinary proceeding is executed by a Commision of 5 prosecutors (one prosecutor from the Public Prosecutor Office of RNM, and four prosecutors from the Higher Prosecutor Offices). The Council of public prosecutors acts on second instance, when appeal is submitted. The disciplinary proceeding can be initiated in a period of 6 months from finding out about the committed offence, but maximum in 3 years from the day when the offence was committed.

11. Are prosecutors appointed for life or do they have to fulfil successive terms? Of how many years?

- The public prosecutors are appointed without limitation of their mandate. The Public Prosecutor of RNM is appointed for a period of 6 years, with the right for one additional mandate.

12. Are the rules regarding appointment, transfer, promotion and discipline of prosecutors similar to those of judges?

- Yes, these rules are pretty much harmonized. The new Law on Public Prosecutor Office, that was brought on 16th February 2020, and will come into force on 30June 2020 is harmonized with the Law on courts, especially in the part of promotion, that previously was not harmonized. With the new Law on Public Prosecutor Office, in the part of promotion, it is prescirbed that the public prosecutors can gradually be promoted according to the career sustom (the same as the judges), meaning that in the Higher prosecutor offices can only be appointed a public prosecutor that has previously worked certain period of time in the Basic

public prosecutor office, and has been graded with high grades. Other candidates, outside the prosecutor's office, can not be appointed in the higher prosecutor offices. In first instance, in the Basic Public Prosecutors Offices and in the Basic Courts, can only be appointed candidates who besides the general required conditions, have finished the Academy for judges and public prosecutors according to the law. In establishing disciplinary responsibility, the Council of public prosecutors and the Judicial Council, have their own role. A new solution in the new Law on Public Prosecutors Office is that the Chief prosecutor of the Basic Public Prosecutor Office for prosecuting organized crime and corruption will be elected on a general direct election, by all the prosecutors. On the other hand in the Law on Judicial Council, there is a norm that prescribes that a candidate that is not appointed for a judge can submit an appeal to the Supreme Court of RNM, meaning that the decision of the Judicial Council for appointment of a judge is not coming into force immediately, which is not the case with the appointment of the public prosecutors.

13. May the government instruct the prosecution services, for instance, to prosecute or not to prosecute? Are instructions general or specific in nature? Are they given in writing? Can the prosecution challenge them?

- The Government can not give instructions to the prosecutors whether to prosecute or not. The Public Prosecutor Office is a self-contained state organ and no one can't influence the legal, impartial and objective execution of the function of the Public Prosecutor Office.

14. Are the instructions of superior prosecutors given in writing to those under their supervision? Can these instructions be challenged or refused?

- The Public Prosecutor of RNM and the Higher Public Prosecutors have the right to give explained mandatory general written directions to the lower public prosecutor offices, that concerns undertaking measures and activities for protection of basic human rights and freedoms, protection of the public interest, more efficient discovering and prosecution of crimes, submitting legal remedies and application of the law. But they can not refer to the work on a concrete case of the public prosecutors. These general directions must be obliged.

15. Which are, if any, the main initiatives in terms of training to strengthen the awareness about the de facto dimension of the prosecutorial independence?

- The main training of the public prosecutors are conducted by the Academy for judges and public prosecutors, that organizes seminars and training on different areas. A topic on this trainings are also the independence of the public prosecutors and judges, as well as the judicial practise of the European Court of Human Rights.

16. To what extent the media cover the decisions of international courts and treaty bodies as regards the practical independence of prosecutors?

- The intensity and the forms by which the media informs about the decisions of the international courts are different. Most often the internet is used as a medium, but also the decisions can be presented on a TV debate, or the news. The decisions of the European Court of Human Rights are usually treated from the point of view of the consequences for the individual and the community. Sometimes these decisions are connected to the work of the public prosecutors, for example, cases where the public prosecutors fail to conduct efficient investigation. But, this process lacks an organized, highly expert and professional debate about the decisions of the European Court of Human Rights and their impact on the legal system, as well as on the practical independence of the public prosecutors.

17. To what extent the prosecutor offices interact with the broad public as regards the decisions of international courts and treaty bodies related to the practical independence of prosecutors?

- The public prosecutors in their proceeding, have a duty to apply the law in practise thoroughly, consistently and unselectively, and these aspects of their work are subjects of the international court decisions. In our country there is a need for a higher commitment and affirmation of the practise of the European Court of Human Rights, more organized and systematic analysis of the decisions of the European Court of Human Rights, as well as initiations for a public debate, in which the public prosecutors can more actively participate.