CAN ONE MONITOR THE REALIZATION OF GOAL

16.3.

AND TO WHICH EXTENT ARE RULE OF LAW AND EQUAL ACCESS TO JUSTICE FOR ALL PROMOTED IN R. MACEDONIA?

KEY FINDINGS

Generally, one can conclude that our country is lagging behind the fulfillment of undertaken commitments, that is, the country has taken no steps to implement the sustainable development goals, including the access to justice for vulnerable groups of citizens. On one hand, the Government has made no efforts to inform the relevant stakeholders and to include them in the goals implementation and monitoring process. On the other hand, there is insufficiently available public data on the implementation of the goals in the country. The Government has neither initiated a process for drafting a plan on goals implementation, nor taken steps to balance and integrate the economic, social and environmental development in its policies. There is no allocation of appropriate financial, human and technical resources to achieve the goals, among others, the goal aimed at justice for all. In respect of access to justice, vulnerable groups of citizens are neglected and are confronted with serious barriers in their access to justice and resolution of their legal matters.

In respect of those deficiencies, it would be necessary to intensify the implementation process of the sustainable developmental goals in future in the country. To that end, all relevant stakeholders need to be mobilized, that is, to initiate a process of drafting the plan for implementation of goals. One has to pay special attention to the sub-goal 16.3, i.e. take into consideration the special needs and problems of vulnerable groups of citizens in their access to justice.

The document below presents the key findings from the analysis of collected data based on the set list of indicators for monitoring the implementation of sub-goal 16.3 – The rule of law at the national and international levels and equal access to justice for all, for each of the respective indicators[1].

1 Except indicator 8, as the respective findings are sated under indicator 1.

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INDICATOR

INDICATOR 1

PROPORTION OF INDIVIDUALS THAT HAD EXPERIENCE WITH COURT PROCEEDINGS IN THE PAST 12 MONTHS AND HAD ACCESS TO FORMAL, INFORMAL, ALTERNATIVE OR TRADITIONAL DISPUTE RESOLUTION MECHANISMS AND CONSIDER THEM AS FAIR

CIVIL PROCEEDINGS

Given the obtained data, one can conclude that the number of instituted proceedings (not necessarily disputes) before the Basic Court Skopje 2, in the period from 2012 to 2016, is on the continuous increase, however, no additional information is available about the structure of individuals who initiated proceedings, if needed, that is, whether they exercised the right to be exempted from the proceedings costs and whether and to which extent the citizens exercised their right to interpreter during proceedings.

It is recommended that courts in R.Macedonia establish a system for keeping records on the number of initiated disputes in the respective courts, separately from other proceedings before the courts and make the data available for each year, respectively. Courts should also provide respective data on the number of submitted and approved requests for exemption from proceedings costs and make them publicly available for each year separately. The State Statistical Office should introduce an integrated system for collecting, processing and publishing data on the number and type of initiated proceedings and other relevant parameters to monitor the access to justice in civil proceedings.

CRIMINAL PROCEEDINGS

In the period from 2012-2015, the number of reported perpetrators of crimes in R.Macedonia ranges from 15.012 to 16.113, which declined to 11.866 in 2016. Even though the number of reported and convicted perpetrators reduced in 2016, one can notice the highest proportion of convicted persons, which accounts for 87,6% of all defendants. Also, there is a continuous decline in the number of instituted criminal proceedings before the Basic Court Skopje 1 Skopje. The number of initiated proceedings in 2016 is twice lower than in 2012. No information is available on the gender and age structure of defendants and injured parties, and whether if needed, they exercised the right to free defense and representation, and whether and to which extent they exercised the right to interpreter during criminal proceedings.

It is recommended that Macedonian courts establish a system for keeping records on the number of initiated cases in each of the courts, disaggregated by authorized plaintiff and to make them publicly available for each year respectively. It is necessary that courts in R.Macedonia establish a system for keeping records of the structure of defendants and injured parties disaggregated by gender, age, region and other parameters of relevance to measure the access to justice for diverse groups of citizens. Also, courts should provide data on the number of submitted and approved requests for provision of defense for poor people and to make the data publicly available for each year respectively. The State Statistical Office should introduce an integrated system for collecting, processing and publishing data on injured parties in criminal proceedings, as well as their number, gender, age and other relevant parameters to measure the access to justice in criminal proceedings.

ALTERNATIVE DISPUTE RESOLUTION MECHANISMS

Generally, one can conclude that alternative dispute resolution mechanisms are still not recognized as an option to improve access to justice, especially for marginalized communities. The fact that there is no obligation for mediation in most of the cases contributes to having citizens who exercise their rights only before the court. Also, lack of promotion and knowledge about advantages of alternative dispute resolution mechanisms contributes to the low number of out-of-court resolved disputes.

Alternative dispute resolution mechanisms as well as benefits of informal ways of resolving citizens' legal matters need to be better promoted. Extending the legal grounds for mandatory mediation for natural persons and capacity building for mediators may significantly improve the access to justice, especially for marginalized communities.

FAIRNESS OF PROCEEDINGS

Measuring the fairness of proceedings is quite complex and requires that several important aspects of the access to justice are thoroughly analyzed. Available data show that citizens' trust in the judicial system as well as degree of satisfaction from services in the judicial system are not measured in a regular and systematized manner, and the satisfaction of judges, prosecutors, attorneys and parties in the proceedings is only occasionally assessed. Nevertheless, the analyses of such assessments are not available to be able to measure citizens' trust and satisfaction from services in the judicial system.

Therefore, it is recommended that data by several parameters is collected in a systematized manner and that citizens and institutions are surveyed at certain intervals to measure their perception about the fairness of proceedings.

INDICATOR 2

PRISON POPULATION REMANDED IN CUSTODY, NOT YET CONVICTED

Data about the number of persons remanded in custody longer than 12 months, and not yet convicted, is missing. There is also lack of data about the persons remanded in custody disaggregated by gender, age, region and social group. Data is only available for juvenile and adult persons remanded in custody, without further information on the age structure of adult persons remanded in custody. Given the lack of information on the exact duration of custody, especially about custody longer than 6 months, one cannot state which is the average length of custody.

Therefore, it is recommended to introduce a system for keeping detailed records of the length of custody and structure of persons remanded in custody in order to be able to get a clearer picture of the applied custody policy as opposed to the length of criminal proceedings while awaiting trial. Also, there is need to keep records on all persons who were unjustifiably remanded in custody, however, were not convicted.

INDICATOR 3

PROPORTION OF CRIMINAL CASES IN WHICH DEFENDANTS HAVE NO LEGAL OR OTHER REPRESENTATIVE IN COURT

There is lack of data on the number of defense lawyers (public defenders) appointed when the defense is mandatory in proceedings, as well as about the number of submitted and approved/rejected requests to appoint a public defender to poor people at the Basic Court Skopje 1 Skopje. Therefore, there is no available data in the country about number of criminal cases when defendants had no legal or other representative in court. The analyses undertaken by civic organizations include mapping of the deficiencies in the system to provide ex officio counsel from the state budget, however, there is no data about number of citizens whose request for ex officio counsel were rejected or had no counsel for other reasons.

It is recommended that courts keep records of the number of appointed ex officio counsels and the number of requests for ex officio counsel by poor people, number of approved and rejected requests, as well as about the gender and age structure of defendants and publication of these data in monthly, quarterly and annual reports. Also, courts need to keep records on the number of defendants without defense lawyer in cases that did not meet the requirements for mandatory defense and there was no request to provide defense for poor people.

INDICATOR 4

UNMET LEGAL AID NEEDS OF THE POPULATION IN THE POOREST QUINTILE OF THE NATIONAL CONSUMPTION IN THE PAST 12 MONTHS, BY GENDER AND AGE GROUP

The Ministry of Justice and the State Statistical Office do not collect data about any unmet legal needs needs of the population. These data need to be collected at certain intervals through surveys based on previously set methodology, disaggregated by gender and age group of the population. Citizen associations conduct surveys on access to justice and unmet legal aid needs, however, they fail to provide data concerning the respective indicator. Nevertheless, based on those surveys, one can conclude that poor and marginalized groups of citizens (drug users and sexual workers) have unmet legal aid needs, in particular, concerning legal problems deriving from poverty and marginalized status. Both surveys show that poor and marginalized citizens rarely attempt to solve their legal problems, often because of lack of funds or distrust that institutions would resolve the problem.

It is recommended that the Ministry of Justice, in cooperation with courts and State Statistical Office collect annual data on unmet legal aid needs of the population in the poorest quintile. In addition to collecting data from citizens directly, data need to be collected from courts about the exercising of the so-called right of a poor in the Law on Litigations and Law on Criminal Procedure and exemption from payment of court fees, disaggregated by gender, ethnicity and age of requesting parties. To collect relevant and comprehensive data about this indicator, the Ministry of Justice needs to also include data on exercising the right to free legal aid, number of rejected requests for free legal aid to poor citizens, disaggregated by gender, ethnicity and age.

INDICATOR 5

PROPORTION OF CHILDREN IN CUSTODY PER 100.000 CHILD POPULATION

Most accurate data on the number of children in custody on annual level can be found in the annual publication "Perpetrators of crimes "of the State Statistical Office, while the Directorate for execution of sanctions may provide only partial data because the situation of children in custody is presented on quarterly basis. Data about the overall child population is available from the MAKSTAT database, so the number of children in custody is calculated per 100.000 child population.

It is recommended that the State Statistical Office publishes the number of children in custody per 100.000 children in its publication "Perpetrators of crime". Also, the Directorate for execution of sanctions is recommended to publish the reports on regular basis and to improve the data collection process, and such reports to include the total number of children, length of custody, age, gender and ethnic structure of children remanded in custody and data about institutions where children are remanded in custody.

INDICATOR 6

PROPORTION OF THE LEGAL SECTOR BUDGET ALLOCATED TO FREE LEGAL AID PROVISION

There is no public cumulative data on budgets of the judiciary and the court system and legal aid budget, and therefore, the reports of the CoE on the efficiency of the judiciary and quality of justice were used. Given the published data, one can conclude that the court system budget is far below the stipulated budget by law, hence, the overall budget for the judiciary. Free legal aid budget to allow access to justice for poor people remains unchanged year after year and is exceptionally low, that is, allocated funds account for less than 1% of the total judiciary budget.

There is need to introduce a system with measurable and cumulative indicators of the judiciary, court system and legal aid budgets to ensure continuous monitoring of access to justice for individuals who cannot afford it.

INDICATOR 7

AVERAGE TIME FOR CIVIC DISPUTE RESOLUTION

No data are kept on the average length of civil disputes in Macedonia. However, data are kept on the average length of disputes at each court and all different types of courts, respectively. Available data on the average length of proceedings show significant increase in the last two years (2017 и 2018). There is a fourfold increase in the average length of court proceedings in some of the courts compared to the previous year, which is indicative of major delay in court proceedings. Having analysed the data from the Basic Court 2, one can conclude that civil proceedings take month and a half to five months unlike proceedings in other basic courts and all courts in the country, in general. It is worrisome that deadlines for urgent protection of women suffering from domestic violence are not respected when interim measures are imposed (judges imposed protection measures within the foreseen legal deadline in 57% of cases), while the average length of criminal proceedings for domestic violence until final judgment is 717 days. In 2017, the average time for case resolution in all courts is highest, that is, 340 days.

It is recommended to regularly keep data on the length of proceedings, by type of proceedings by separate courts and judges to monitor efficiency, but primarily for timely and efficient legal protection.

INDICATOR 9[2]

PROPORTION OF CITIZENS WHO TRUST THE INSTITUTIONS

Institutions do not measure the citizens' trust in institutions, which is the foundation of their legitimacy and provides for uninterrupted exercising of their rights. Public polls on citizens' trust in institutions are not undertaken on regular basis and available data exist only as result of civic organization surveys and regular EU surveys, such as the standard Eurobarometer conducted twice a year. Data on institutional trust vary based on the source of data. In 2017, the police was second ranked in terms of citizens' trust (55%), and the trust in another survey undertaken in the same year accounts for 34%. Unlike the police, citizens have less trust in the judiciary, that is 23%.

It is recommended that the situation in this sphere is regularly monitored and continuous measures are taken to increase citizens' trust, being the precondition to request aid and access justice.

2 Индикатор 8 е обработен во индикатор 1

INDICATOR 10

V-DEM JUSTICE INDICATORS (VARIETIES OF DEMOCRACY)

It is worrisome that the situation concerning the **equality before the law and individual freedoms** shows no improvement. On the contrary, there is continuous deteriorating trend in this field in the period from 2007 to 2017. Impartiality of public administration, non-transparent adoption of laws and limited access to justice, especially for women, are singled out as basic problems in this area. Data in the respective period are indicative of a downward trend in the **public administration impartiality**. The score of 2,56 in 2007 is followed by a downward trend up to the lowest score of 1,62 in 2013, and then increased to 2,47 in 2017. One can also notice a deteriorating situation concerning the access to justice, whereby women are in less favourable position, i.e. there are more restrictions in terms of access **to justice** compared to men. Namely, the scores for access to justice for women in the period from 2007 to 2017 range from 2,34 (lowest) to 2,74 (highest), whereas the scores for access to justice for men range from 2,52 to 3,02. There is no improvement either concerning the **degree of transparency**, or the degree to which laws are enforced for a period longer than 10 years. There is certain regression trend in this area in the period from 2007 (with score of 3,06) until 2015, with score of 2,25. One can notice improvement in the last two years, that is score of 2,44 in 2016, and 3,03 in 2017, however, the situation did not improve compared to the previous ten-year period. It is worrisome that the situation concerning the **freedom of expression** did not improve in the respective period. To the contrary, there is a deteriorating trend from 2007 (score-0,79) until 2015 (0,58), followed by an increase to 0,76 in 2017. In respect of **limiting the influence of the executive branch**, there is a worrying trend towards disrespect for the Constitution and court decisions by the executive branch, i.e. decline in the judicial independence and the extent of control by the legislative over the executive branch.

To tackle the respective problems, the following should be undertaken by the state: enforcement of special measures aimed at reduced employment through political parties and increased impartiality of public servants; establishment of mechanism (system) to measure the civil servants' performance; adoption of law that stipulates an obligation for mandatory public outreach and inclusion of the population in the decision-making processes; adoption of special measures to improve access to justice for all, with special focus on women. In this context, the state should adopt affirmative measures to promote the status of women in all areas of social life, including the labour market, right to ownership of property and economic activities. The state should give due attention to enhancing the freedom of media, as well as the freedom of academic and cultural expression. Further, the constitutional provisions on the separation of power need to be respected and smooth implementation of foreseen legal mechanisms for control over the executive branch.

INDICATOR 11

DECEASED DETAINEES

There is no public data on the number of deceased detainees. The only available data from the annual reports of the Directorate for execution of sanctions include the number and cause of death in deceased detainees. The number of deceased detainees insignificantly varies year after year (in 2012- 8, in 2013 - 12, in 2014 and 2015 - 13 deceased detainees, in 2016 - 11 and in 2017 - 13). Natural death is the most common cause of death. Despite the lack of specific data on the number of deceased detainees, the situation in the penitentiary institutions is indicative of serious problems, such as overcrowding, substandard residential conditions and dysfunctional health care system, which may contribute to deteriorated health and lethal consequences for detainees.

Therefore, it is indispensable that the state collects the respective data as well as about any situation that leads to such consequences.

INDICATOR 12

PROPORTION OF PERSONS WHO REPORT CRIMES AND INDICATOR 13 NUMBER OF JUDGEMENTS BY TYPE OF CRIME – CRIMINALITY AND VICTIM AND PERPETRATOR CHARACTERISTICS

The Public Prosecution Office keeps records on the proportion of individuals who report crimes. In the last two reports published by this institution, citizens are second ranked based on their proportion in reporting crimes. In 2015, 12,2% of criminal charges were brought by citizens, and 11,2% in 2017. Unlike the Public Prosecution Office, the Ministry of the Interior has no available data on the number of charges brought by citizens. On the other hand, it is of utmost importance that the ministry disposes of exhaustive data in terms of the situation in several categories of crimes, perpetrators of crimes, as well as their characteristics. Data on perpetrators of crimes and their characteristics are also part of the statistics that the State Statistical Office keeps on regular basis and publishes on its web site. Except for the existing exhaustive data on perpetrators of crimes, competent institutions (MOI and PPO) and SSO keep no data on the victims of crimes and victims of violent crimes which is very important for monitoring of trends and situations in respect of victimology, victims' rights and their access to justice.

It is recommended that competent institutions keep statistics on reported crimes depending whether charges were brought by citizens or other state agencies. In addition, statistics should be kept on victims of crimes, victims of violent crimes by type of crime and year, as well as data about their characteristics, in parallel to the statistics on perpetrators of crimes.

Analysis prepared by:

Financially supported by:
Foundation Open Society-Macedonia