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United Nations Office on Drugs and Crime

Country Review Report of The former Yugoslav Republic of Macedonia

Review by Croatia and Iceland of the implementation by
the former Yugoslav Republic of Macedonia
of articles 15 – 42 of Chapter III “Criminalization and law
enforcement” and articles 44 – 50 of Chapter IV “International
cooperation” of the United Nations Convention against
Corruption for the review cycle 2010 - 2015

I. Introduction

1. The Conference of the States Parties to the United Nations Convention against Corruption was established pursuant to article 63 of the Convention to, inter alia, promote and review the implementation of the Convention.

2. In accordance with article 63, paragraph 7, of the Convention, the Conference established at its third session, held in Doha from 9 to 13 November 2009, the Mechanism for the Review of Implementation of the Convention. The Mechanism was established also pursuant to article 4, paragraph 1, of the Convention, which states that States parties shall carry out their obligations under the Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States and of non-intervention in the domestic affairs of other States.

3. The Review Mechanism is an intergovernmental process whose overall goal is to assist States parties in implementing the Convention.

4. The review process is based on the terms of reference of the Review Mechanism.

II. Process

5. The following review of the implementation by the former Yugoslav Republic of Macedonia of the Convention is based on the completed response to the comprehensive self-assessment checklist received from the former Yugoslav Republic of Macedonia, and the supplementary information provided in accordance with paragraph 27 of the terms of reference of the Review Mechanism and the outcome of the constructive dialogue between the governmental experts from Croatia and Iceland, by means of telephone conferences and e-mail exchanges involving Mr Bojan Ernjaković from Croatia and Mr. Björn Þorvaldsson from Iceland. The staff members from the Secretariat were Ms. Chadia Afkir and Mr. Badr El Banna.

6. A country visit, agreed to by the former Yugoslav Republic of Macedonia, was conducted in Skopje from 16 to 18 September 2014. During the on-site visit, meetings were held with representatives from the Ministry of Justice (Department for International Legal Cooperation and Department for International Legal Assistance), members of the judicial authority, Public Prosecution (Basic Public Prosecution for Prosecuting Organized Crime and Corruption), Ministry of Interior, State Commission for Prevention of Corruption, Financial Intelligence Directorate, Financial Police Directorate, Customs Administration, Agency for managing confiscated property, as well as representatives from the civil society, the academic community and relevant international organizations and foreign delegations.

III. Executive summary

1. Introduction: Overview of the legal and institutional framework of the former Yugoslav Republic of Macedonia in the context of implementation of the United Nations Convention against Corruption

The former Yugoslav Republic of Macedonia signed the Convention on 18 August 2005 and ratified it on 13 April 2007. The Convention entered into force domestically on 13 May 2007.

The former Yugoslav Republic of Macedonia is a unitary State with a parliamentary type of governance. According to article 1 of its Constitution, the former Yugoslav Republic of Macedonia is a sovereign, independent, democratic and social State with its sovereignty deriving

from and belonging to its citizens. The constitutional organization of power is based on its division to legislative, executive and judicial.

The Assembly is a representative body of citizens in which the legislative power is vested. At present, it is composed of 123 representatives, directly elected for a term of four years. The mandate of a representative is terminated if he/she is sentenced for a criminal offence for which a sentence of at least five years is prescribed.

The President is elected directly for a term of five years, for a maximum of two terms. The Constitutional Court decides on the accountability of the President by a two-third majority. If acknowledged accountable, the term of the President can be terminated.

The executive power is vested in the Government. The Prime Minister and Ministers cannot be Members of Parliament. The Prime Minister enjoys immunity and the Parliament decides on his/her immunity. The office of the Prime Minister and that of a Minister is incompatible with the performance of any other public office or profession.

The judicial power is exercised by autonomous and independent Courts which rule on the basis of the Constitution, laws and international agreements ratified in accordance with the Constitution.

According to article 118 of the Constitution, “the international agreements ratified in accordance with the Constitution are part of the internal legal order and cannot be changed by the laws.”

The laws most relevant to the fight against corruption are the Criminal Code (CC); the Law on Civil Servants; the Law on management with confiscated property, proceeds and objects seized in criminal and misdemeanour procedure; the Law on criminal procedure (CP); the Law on Prevention of Corruption; the Law on Witness Protection; the Law on Public Servants and the Law on International Cooperation in Criminal Matters.

The institutions most relevant to the fight against corruption are the State Commission for Prevention of Corruption; the Public Prosecutor’s Office for Fight against Organized Crime and Corruption; the Specialized department for proceeding cases of organized crime and corruption of the First Instance Court Skopje 1; the Anti-corruption Unit of the Ministry of Interior; the Financial Police Administration of the Ministry of Finance; the Anti-corruption Department of the Public Revenue Office; and the Integrity Department of the Customs administration.

2. Chapter III: Criminalization and law enforcement

2.1. Observations on the implementation of the articles under review

Bribery and trading in influence (arts. 15, 16, 18 and 21)

Active and passive bribery of public officials are criminalized pursuant to articles 358 and 357 of the CC respectively. Both articles cover bribery of national public officials, foreign public officials as well as officials of a public international organization.

The active bribery in the private sector (art. 253-a) and the active trading in influence (art. 358-a) were introduced as new criminal acts through the amendments of the CC of 2011. Prior to these amendments, only the passive bribery in the private sector (art. 253) and the passive trading in influence (art. 359) had been criminalized. The reviewing experts found all aforementioned provisions to be in line with the Convention. However, they were not in a position to judge on the effective implementation of the provisions on the criminalization of bribery in the private sector due to lack of related cases.

Money-laundering, concealment (arts. 23 and 24)

Article 273 of the CC criminalizes money-laundering, including self-laundering, although few cases had been taken forward under this provision.

As for predicate offences to money-laundering, the former Yugoslav Republic of Macedonia has adopted an all-crime approach, covering any criminal act, committed within the national territory or abroad. Ancillary offences to money laundering, including attempt (art. 19), instigation (art. 12) and conspiracy (art. 393) are also covered pursuant to the general provisions of the CC.

The national authorities confirmed that it was sufficient to establish the criminal nature of the proceeds without the need to identify the predicate offence for a money laundering conviction.

The former Yugoslav Republic of Macedonia promised to send copies of its laws in accordance with article 23 subparagraph 2(d) of the Convention.

The concealment or continued retention of criminal proceeds is criminalized as a separate offence pursuant to article 261 of the CC, which does not prescribe a term of retention of such proceeds as an element of the incrimination.

Embezzlement, abuse of functions and illicit enrichment (arts. 17, 19, 20 and 22)

The former Yugoslav Republic of Macedonia has criminalized embezzlement, misappropriation or other diversion of property by a public official and abuse of functions in line with articles 17 and 19 of the Convention pursuant to articles 353 – 356 of the CC.

Article 355 (Defraud in the service) incriminates intentional acquiring of an unlawful property benefit of the official person for himself/herself or for another, by submitting false bills or by deceiving the authorized person in some other way to effect an unlawful payment. The type of property which may be diverted or the actual criminal act is not specified and therefore all kinds of property and diversion are covered.

Article 354 (Embezzlement in the service) and article 356 (Use of resources for personal benefit while in service) are both related to the type of property which a person can be authorized to hold/use in service or while performing duties of service (and may be physically returned).

Article 353 criminalizes the “abuse of official position and authorization”, which covers the diversion of any kind of entrusted property committed while the perpetrator uses his/her official position or authorization, by exceeding the limits of his official authorization, or by not performing his/her official duty.

Embezzlement in the private sector is addressed in articles 354 and 355 of the CC for acts committed by “a responsible person in a legal entity”. For the implementation of article 22 of the Convention, article 239 of the CC on concealment is also relevant.

The former Yugoslav Republic of Macedonia has criminalized illicit enrichment pursuant to article 359-a, introduced in 2009 to the CC. No cases have been brought forward on the basis of that article.

Obstruction of justice (art. 25)

Article 368-a of the CC criminalizes the illegal influence of witnesses and makes it a general crime punishable to imprisonment of one to three years. Although “intimidation” and “promising and giving of an undue advantage” are not specifically mentioned, those are however covered by the term “or in any other manner influencing a person”.

Article 368 of the CC criminalizes the act of preventing the collection of evidence. Although it does not reflect the wording of article 25 paragraph (a) of the Convention, the term “or makes useless” covers all kinds of interferences in the production of evidence.

Article 144 of the CC on “threatening the safety” is broad enough to cover all cases of threat, including threats directed to law enforcement officials.

Article 375 of the CC criminalizes the use of physical force, threats or intimidation to interfere with the exercise of official duties by judiciary employees.

Article 382 and 383 of the CC criminalize the use of physical force or threats against official persons including law enforcement officials.

Liability of legal persons (art. 26)

The criminal liability of legal persons is established in article 28-a of the CC and emphasized by the legal provisions for the criminal act of “Giving bribe” (art. 358, para. 5) and “Receiving reward for unlawful influence” (art. 359, para. 6). Such liability does not preclude the criminal liability of the natural persons who committed the offences.

The liability of legal persons is also recognised in civil and administrative procedures pursuant to article 70 of Law on civil procedure and article 47 of the Law on general administrative procedure.

Adequate criminal and non-criminal sanctions are provided for when the liability of a legal entity is recognized. Those sanctions include fines or other monetary penalties, and can include termination of status of the legal entity, prohibition on participating in public contracting or/and confiscation of property and property gain, and forfeiture of objects.

Participation and attempt (art. 27)

The CC contains general provisions criminalizing the participation in an offence, namely article 22 on “joint perpetration”, article 23 on “instigation” and article 24 on “assistance”.

According to article 19 of the CC, attempted crimes are criminalized when the crime is punishable by imprisonment of five years or more or when the law explicitly prescribes a sentence of an attempt of such crime.

Most of corruption offenses are punishable by imprisonment of less than five years, which leaves their attempt unpunished unless the law explicitly provides otherwise, like in article 382 of the CC on “preventing an official person in performance of an official act”, and article 375 on “coercion against a judiciary employee”.

Preparation to commit a crime is not criminalized itself, except in relation to few non corruption-related offences.

Prosecution, adjudication and sanctions; cooperation with law enforcement authorities (arts. 30 and 37)

The former Yugoslav Republic of Macedonia has adopted penalties for corruption offences that range from a fine up to ten years’ imprisonment, taking into account the gravity of the offence.

Immunities do not seem to constitute an impediment to the effective prosecution of such offences.

Prosecution follows the principle of legality.

Regarding procedures on release pending trial or appeal, the measures described in Chapter XVI of the CP are applicable to corruption offences. These include, inter alia, the prohibition to leave the temporary or permanent place of residents, an obligation for the defendant to report occasionally to a certain official person, and the temporary confiscation of a passport.

Early release is possible after having served half of the imprisonment or having served one third

of the imprisonment if special circumstances concerning the personality of the convicted evidently show that the aim of the sentence has been achieved.

A public servant may be suspended from the institution in the cases where a criminal procedure has been initiated against him/her. Furthermore, several legal provisions exist regarding the termination of employment of a convicted public officials.

The liability for a criminal offense does not exclude the disciplinary liability of the civil servant, pursuant to the Law on civil servants.

The Law on execution of sanctions provides for a number of measures to promote the reintegration of convicted offenders into society including training, counselling and employment assistance.

The national legislation provides for the possibility of plea bargaining in addition to different protection measures for collaborators to justice.

Protection of witnesses and reporting persons (arts. 32 and 33)

The former Yugoslav Republic of Macedonia has a comprehensive legal framework and a specialised Unit within the Ministry of Interior for witness protection. A wide range of protections can be provided for persons who give a statement or witness in a procedure for corruption offence, including relocation and change of identity of witnesses and their family.

The person has the right to compensation for damage that he or a member of his family may suffer owing to the statement given or appearance as a witness. Such compensation is paid with funds from the national budget. The protections also apply to victims insofar as they are witnesses.

The CP contains a range of evidentiary rules to ensure the safety of endangered witnesses, including the possibility for an examination conducted with the assistance of technical devices for transfer of picture and sound (distorting the face and the voice).

The national authorities reported on different provisions on the protection of reporting persons (Law on Prevention of Corruption; CC; Law on Labor Relations; Law on Protection from Harassment on Workplace). However, the reviewing experts noted the fact that these provisions were fragmented, as well as the absence of ad hoc whistleblower protection legislation. The former Yugoslav Republic of Macedonia indicated that amendments to the Law on Prevention of Corruption are currently being prepared in order to introduce a whistle-blower protection system and provide systematic and institutional protection of the whistle-blowers.

Freezing, seizing and confiscation; bank secrecy (arts. 31 and 40)

The CC regulates the confiscation. Article 98 provides for the confiscation of the direct and indirect proceeds of a crime, from the offender or from third parties, including value-based confiscation.

Article 98-a provides for an “enlarged confiscation” which could be applied when the property exceeds the legal incomes of the offender and originates from a crime committed within a criminal association or which is related to money laundering punished by imprisonment sentence of at least four years.

Confiscation also covers property, equipment or other instrumentalities used in or destined for use in offences.

The CP allows for a range of investigative measures available for the identification, tracing, freezing or seizure of criminal proceeds and instrumentalities.

The former Yugoslav Republic of Macedonia has a special and comprehensive Law on

management of confiscated property, proceeds and objects seized in criminal and misdemeanour proceedings. This Law establishes and Agency with a wide scope of work.

Pursuant to a request by the public prosecutor, the court may order the production and seizure of banking and commercial records. The preliminary procedure judge should decide upon the request by the public prosecutor immediately, and no later than 12 hours from the receipt of the request. In emergency cases, the public prosecutor may impose the mentioned measures without a Court order (art. 200 of the CP).

Statute of limitations; criminal record (arts. 29 and 41)

The period of limitations for criminal cases ranges from two up to 30 years, depending on the severity of the sentence prescribed for a specific crime, and starts on the day the crime was committed or the consequence occurred.

According to article 39 of the CC, previous convictions can be taken into consideration when deciding on the severity of a sentence. The governmental authorities confirmed that this provision was not limited to cases of prior domestic convictions but extend also to foreign convictions.

Jurisdiction (art. 42)

Jurisdiction over corruption offences is established in the CC, Chapter 12 (art. 116: territorial jurisdiction; art. 118: active personality jurisdiction; art. 119: passive personality jurisdiction). The former Yugoslav Republic of Macedonia also adopted additional grounds of criminal jurisdiction, other than those described in article 42 of the Convention (Art. 117: universal jurisdiction).

Consequences of acts of corruption; compensation for damage (arts. 34 and 35)

According to articles 5-a and 46 of the Law on Prevention of Corruption, legal acts resulting from corruption are null and void and any person damaged by a corruption act has a right to request damage compensation (actual damage and lost profit) from the offender.

The CP also contains provisions dealing with the rights of the victims (art. 53) and the rights of the injured party (art. 57). The victim of a crime has the right to participate in the criminal procedure for the purpose of a legal property claim for damages.

Specialized authorities and inter-agency coordination (arts. 36, 38 and 39)

The former Yugoslav Republic of Macedonia has several authorities specialized in combating corruption through law enforcement. The State Commission for Prevention of Corruption, established in 2002, can instigate an initiative for criminal prosecution of elected or appointed officials, and track and follow the assets and changes of assets of public officials.

The Public Prosecutor's Office for Organized Crime and Corruption is competent to prosecute a series of crimes. Those crimes are brought in front of the Specialized department for proceeding cases of organized crime and corruption of the First Instance Court Skopje 1.

The anti-corruption institutional framework also comprises the Anti-corruption Unit of the Ministry of Interior, the Financial Police Administration of the Ministry of Finance, the Anti-corruption Department of the Public Revenue Office, and the Integrity Department of the Customs administration.

The independence of the specialized bodies is ensured by law. Their staff is provided with

adequate trainings and resources.

A number of legal provisions mandate cooperation between public authorities and authorities responsible for investigating and prosecuting criminal offences. Public officials are legally required to report every punishable act related to corruption.

Other legal provisions mandate cooperation between the private sector, particularly financial institutions, and the State prosecution services.

Article 58 of the Law on Prevention of Corruption requires the proactive reporting, by all employees in financial institutions, of suspicious transactions related to corruption. Article 112 on the Law on banks provides that requests for documentation from State Prosecutors cannot be denied by financial institutions on the ground of confidentiality. Article 30 of the Law on prevention of money laundering and financing of terrorism establishes an obligation on financial institutions and other designated entities to report suspicious transactions to the FIU. Hotlines for reporting corruption have also been opened for public.

2.2. Successes and good practices

Overall, the following successes and good practices in implementing chapter III of the Convention are highlighted:

- The fact that different initiatives have been taken by the national authorities to encourage the cooperation with the private sector as well as with the public;*
- The fact that it is sufficient to establish the criminal nature of the proceeds, without the need to identify the predicate offence, for a money laundering conviction was positively noted by the review team as conducive to the pursuit of money laundering cases;*
- The fact that a person who has given a statement or witnessed in a procedure for corruption has the right to compensation for damage paid with funds from the national budget (art. 19 of the Law on Prevention of Corruption);*
- The possibility of enlarged confiscation;*
- The fact that the enforcement of the special measures involving confiscation of property and seizure of objects has no statute of limitation;*
- The existence of a special Law and a special Agency dealing with the administration of frozen, seized or confiscated property.*

2.3. Challenges in implementation

While noting the advanced anti-corruption legal system of the former Yugoslav Republic of Macedonia, the reviewers identified some challenges in implementation and/or grounds for further improvement and made the following remarks to be taken into account for action or consideration by the competent national authorities (depending on the mandatory or optional nature of the relevant requirements of the Convention):

- With regard to bribery in the private sector, the former Yugoslav Republic of Macedonia should consider a wider use of articles 253 (passive bribery) and 253-a (active bribery) of the CC (art. 21 of the Convention);*
- The former Yugoslav Republic of Macedonia should furnish copies of its laws criminalizing the laundering of proceeds of crime to the Secretary-General of the United Nations (art. 23, para. 2(d) of the Convention);*
- With regard to illicit enrichment, the former Yugoslav Republic of Macedonia is*

encouraged to increase the effective implementation of article 359-a of the CC (art. 21 of the Convention);

- *The former Yugoslav Republic of Macedonia may wish to extend the scope of application of the domestic provision on the criminalization of attempt to cover all corruption offences (art. 27, para. 2 of the Convention);*
- *The former Yugoslav Republic of Macedonia is encouraged to continue efforts to enact specific legislation on the protection of reporting persons (art. 33 of the Convention).*

3. Chapter IV: International cooperation

The former Yugoslav Republic of Macedonia has a comprehensive special law on international cooperation in criminal matters. However, it was difficult to assess in detail the practice of providing international legal assistance in corruption cases, due to the absence of relevant data.

3.1. Observations on the implementation of the articles under review

Extradition; transfer of sentenced persons; transfer of criminal proceedings (arts. 44, 45 and 47)

The former Yugoslav Republic of Macedonia has a two-tier extradition system in place, a regular procedure whereby the final decision is taken by the Minister of justice and a simplified procedure when the person agrees to be extradited, whereby the final decision is taken by the Judicial Council. Both are regulated in the Law on international cooperation in criminal matters (LICCM).

Requests for extradition received from a foreign State should be forwarded through diplomatic channels or directly to the Ministry of Justice which will then submit it to the competent judicial authority.

The competent judge may detain the person whose extradition is sought for a maximum period of 180 days. He may also impose another measure for securing the presence of that person. His decision may be subject to an appeal addressed to the criminal council of the Court in a period of 24 hours after the delivery of the decision.

Extradition in the absence of dual criminality is at present not possible.

Although extradition is not conditional on the existence of a treaty and could be based on the principle of reciprocity, the former Yugoslav Republic of Macedonia considers the Convention as a legal basis for extradition, provided the conditions of the LICCM are met.

Offences are extraditable if the conditions related to dual criminality and the minimum period of imprisonment are satisfied. Accordingly, most corruption offences, which are punishable by at least one year, are thus extraditable offences. Corruption offences which do not satisfy the one year imprisonment condition could be extraditable on the basis of the direct applicability of the Convention pursuant to Article 118 of the Constitution.

Criminal offences related to breach of the regulations on taxes, fees, duties and foreign exchange operations are extraditable.

The former Yugoslav Republic of Macedonia does not extradite its citizens unless it is provided otherwise in international or bilateral agreements. The possibility of submitting the case without undue delay to its competent authorities for the purpose of prosecution is introduced in the country's legislation, but the principle 'aut dedere aut judicare' is not regulated by statutory law and has never been applied.

A foreign sentence can be enforced provided that the condition of dual criminality is met and that the foreign criminal judgement is final, enforceable and has been rendered in presentia.

The former Yugoslav Republic of Macedonia is a party to the European Convention on Extradition and three of its Additional protocols, and has concluded a number of bilateral treaties on extradition, including with countries from the region (i.e. Serbia, Croatia, Monte Negro and Bosnia and Herzegovina).

None of the corruption offences is deemed as a political offence. Moreover, the former Yugoslav Republic of Macedonia does not authorize extradition based on political grounds and its legislation guarantees fair treatment to any person concerning whom an extradition request is made while proceedings are under way.

Part Two of the LICCM provides for the transfer of sentenced persons. The former Yugoslav Republic of Macedonia is also a party to the Council of Europe Convention on the Transfer of Sentenced Persons and its Additional Protocol and has signed relevant bilateral agreements (with Albania, Bosnia and Herzegovina, Monte Negro, Serbia, Slovenia and Turkey).

The LICCM (Chapter III) provides for possibility of taking over of criminal proceedings in case of dual criminality (art. 43, para. 1). The same Law also provides for possibility of transferring to a foreign State criminal proceedings for criminal offences for which a prison sentence up to ten years is foreseen (art. 47, para. 3 of the Law).

Mutual legal assistance (art. 46)

The LICCM provides for a wide range of mutual legal assistance measures. The central authority responsible and authorized to receive MLA requests and either to execute them or to transmit them to the competent authorities for execution is the Ministry of Justice – Department for international legal assistance.

An MLA request should be, as reported by the national authorities, in Macedonian and shall be sent in written. It can be received electronically or through another way of telecommunication for which a record shall be kept, and the original shall be sent through a regular mail.

The former Yugoslav Republic of Macedonia may provide assistance irrespective of the existence of a treaty. Furthermore, dual criminality is not a precondition to render assistance. MLA requests regarding physical and legal persons are treated equally.

The LICCM provides for the interrogation through video conference and through telephone conference and the former Yugoslav Republic of Macedonia has had previous relevant experience. The LICCM also clearly provides for the delivery of spontaneous information.

The former Yugoslav Republic of Macedonia would comply with a request for confidentiality, if that was not possible, it will notify the foreign requesting authorities immediately.

Bank secrecy and fiscal matters are not ground to decline an MLA request. Such a request may be denied if it is based on considerations of racial, ethnical and social affiliation or religious beliefs. The decision for rejection should be elaborated unless otherwise specified by an international agreement.

Article 17 of the LICCM stipulates the urgency of acting upon receiving the letter rogatory by the foreign competent authority.

Law enforcement cooperation; joint investigations; special investigative techniques (arts. 48, 49 and 50)

The former Yugoslav Republic of Macedonia has put in place a regulatory framework and has

concluded many bilateral agreements that provide for the international exchange of information for purposes of law enforcement.

The national law enforcement authorities have channels of communication through inter alia INTERPOL and EUROPOL. Furthermore, the national FIU is a member of the Egmont Group.

The former Yugoslav Republic of Macedonia is an observer in CARIN since July 2014. The former Yugoslav Republic of Macedonia is also a member-State of the European Partnership against Corruption (EPAC) since 2009.

The conduct of joint investigation teams is regulated in article 38 of the LICCM. The domestic competent authorities for detection and prosecution of organized crime and corruption can be part of the joint investigation teams with the foreign competent authorities. However, the former Yugoslav Republic of Macedonia did not take measures to promote the exchange of personnel and other experts, including the posting of liaison officers.

The LICCM and the CP, together with a large number of bilateral agreements on international cooperation in criminal matters to which the former Yugoslav Republic of Macedonia is a party, authorize and organize the use of special investigative techniques in matters of organized crime and corruption.

Chapter XIX of the CP provides for the special investigative measures which could be used in corruption cases including monitoring and recording of the telephone and other electronic communications, monitoring and recording of conversations with technical devices, secret access and search of computer systems, simulated offering and receiving bribes, controlled delivery and the use of undercover agents.

The former Yugoslav Republic of Macedonia established a Department for undercover operations in 2005 within the Division for organized or serious crime. This department includes a unit for under-covered police officers, a unit for interception of communications, a unit for surveillance, monitoring and documentation and a unit for protection of witnesses.

There appears to be no challenges regarding the admissibility in court of evidence derived from special investigative techniques.

3.2. Successes and good practices

Overall, the following successes and good practices in implementing chapter IV of the Convention are highlighted:

- The fact that the former Yugoslav Republic of Macedonia has a comprehensive special law on international cooperation in criminal matters with provisions on all modalities of international cooperation in criminal matters;*
- The fact that mutual legal assistance is not subject to the dual criminality requirement.*

3.3. Challenges in implementation

While noting the advanced anti-corruption legal system of Macedonia, the reviewers identified some challenges in implementation and/or grounds for further improvement and made the following remarks to be taken into account for action or consideration by the competent national authorities (depending on the mandatory or optional nature of the relevant requirements of the Convention):

- The reviewing experts highlighted the need for the former Yugoslav Republic of Macedonia to put in place and render fully operational an information system compiling in a systematic manner statistical data and information on extradition and mutual legal*

assistance cases; with a view to facilitating the monitoring and tracking of such cases and assessing the effectiveness of implementation with regard to, among others, the duration of MLA and extradition proceedings, and encouraged the national authorities to continue their efforts in this regard;

- *The former Yugoslav Republic of Macedonia should take effective measures to promote the exchange of personnel and other experts, including the posting of liaison officers;*
- *In the interest of greater legal certainty in the absence of applicable extradition treaties, the former Yugoslav Republic of Macedonia should take measures to more specifically address the *aut dedere aut judicare* principle in its domestic legislation;*
- *The former Yugoslav Republic of Macedonia may wish to consider removing the limitation contained in article 47 paragraph 3 of the LICCM, whereby the reassignment of criminal procedure may only be granted for offences for which a prison sentence of up to ten years is foreseen.*

3.4. Technical assistance needs to improve implementation of the Convention

The former Yugoslav Republic of Macedonia has indicated that the following forms of technical assistance, if available, would assist it in better implementing the articles of Chapter IV of the Convention:

- *Capacity building in the area of extradition and mutual legal assistance;*
- *Training for judges and public prosecutors on the implementation of Chapter IV of the Convention;*
- *Need for a software for collecting, keeping and processing statistical data for cases of international legal assistance;*
- *Summary of good practises/lessons learned;*
- *On-site assistance by a relevant expert;*
- *Legal advice.*

IV. Implementation of the Convention

A. Ratification of the Convention

The former Yugoslav Republic of Macedonia signed the Convention on 18 August 2005 and ratified it on 13 April 2007 pursuant to the Law on ratification of the UN Convention against corruption, adopted on 19 March 2007 and published in the Official Gazette No. 37/2007.

The Convention entered into force domestically on 13 May 2007.

There are no reservations upon any of the articles of this Convention.

Regarding the article 6 paragraph 3 of this Convention, the former Yugoslav Republic of Macedonia notified the Secretary General of United Nations that it designates the State commission for prevention of corruption and the Basic public prosecution for prosecuting organized crime and corruption as authorities that may assist other State parties in developing and implementing specific measures for prevention of corruption.

Regarding article 44 paragraph 6 item (a) of the Convention, the former Yugoslav Republic of Macedonia notified the Secretary General United nations that it will consider this Convention as a legal base for cooperation on extradition with the other State parties.

Regarding article 46 paragraph 13 of the Convention, the former Yugoslav Republic of Macedonia notified the Secretary General of United Nations that it designates the Ministry of justice - Department for international legal assistance, as central authority with responsibility and power to receive requests for mutual legal assistance and execute or transmit them to the competent authorities for execution.

Regarding article 46 paragraph 14 of the Convention, the former Yugoslav Republic of Macedonia notified the Secretary General of United Nations that the Macedonian language was the language acceptable for the requests for mutual legal assistance.

According to article 118 of the Constitution of the former Yugoslav Republic of Macedonia, “the international agreements ratified in accordance with the Constitution are part of the internal legal order and cannot be changed by the laws.”

Authorities met during the country visit further explained that international agreements duly ratified supersede national laws.

B. Legal, political and institutional system of the former Yugoslav Republic of Macedonia

The former Yugoslav Republic of Macedonia is a unitary State with a parliamentary type of governance.

According to Article 1 of its Constitution, the Republic of Macedonia is a sovereign, independent, democratic and social State with its sovereignty deriving from and belonging to its citizens. The citizens exercise their authority through democratically elected representatives, through referenda and other forms of direct expression.

Article 8 of the Constitution lays down the following fundamental constitutional values of the Republic of Macedonia: the basic human rights and freedoms as recognized in international law

and set down in the Constitution; the free expression of national identity; the rule of the division of State powers into legislative, executive and judicial; political pluralism and free, direct and democratic elections; the legal protection of property; the freedom of the market and entrepreneurship; humanism, social justice and solidarity; local self-government; proper urban and planning to promote a congenial human environment, as well as environmental protection and development and respect for the generally accepted norms of international law.

The constitutional organization of power is based on its division to legislative, executive and judicial.

I. Assembly of the Republic of Macedonia

The Assembly of the Republic of Macedonia is a representative body of citizens in which the legislative power of the Republic is vested. The Constitution of the Republic of Macedonia stipulates that the Assembly of the Republic of Macedonia is composed of 120 to 140 Representatives. At present, the Assembly is composed of 123 representatives. The representatives are elected at general, direct and free elections by a secret ballot to a term of four years. Each newly elected Assembly holds its inaugural session within 20 days from the day when the elections were held.

The manner and conditions for electing Representative at the Assembly are specified in the Electoral Code of the Republic of Macedonia. The Electoral Code also defines the incompatibility of office of Representative at the Assembly with other public offices or professions. The mandate of Representative at the Assembly is terminated if he/she is sentenced for a criminal offence for which a sentence of at least five years is prescribed. The sessions of the Assembly are public.

Matters regarding the organization and functioning of the Assembly of the Republic of Macedonia are regulated by the Constitution and the Rules of Procedure of the Assembly. The Assembly adopts and amends the Constitution, adopts laws and provides authentic interpretation of laws, approves public expenditures, adopts the national Budget and its Final Account Statement, adopts the National Spatial Plan, ratifies international agreements, decides on war and peace, makes decisions concerning any changes in the country's borders, makes decisions on joining in or leaving an alliance community of other States, issues notice of a referendum, makes decisions concerning the reserves of the Republic, sets up councils, appoints the Government of the Republic of Macedonia, appoints judges to the Constitutional Court of the Republic of Macedonia, appoints and discharges judges, elects, appoints and dismisses other holders of public and other offices determined by the Constitution law, carries out political control and supervision of the Government and other holders of public office accountable to the Assembly, proclaims amnesties, elects the Ombudsman, establishes the Council on Interethnic Relations and performs other functions determined by the Constitution.

In performing the duties within its sphere of competence, the Assembly adopts decisions, declarations, resolutions, recommendations and conclusions.

II. President of the Republic of Macedonia

The President of the Republic of Macedonia represents the Republic and is the Commander-in-Chief of the Armed Forces of Macedonia.

The President of the Republic is elected at general and direct elections, by secret ballot, for a term of five years. A person may be elected President of the Republic to a maximum of two terms.

The President of the Republic must be a national of the Republic of Macedonia. A person may be elected President of the Republic if the person is over the age of 40 on the day of election. A person cannot be elected President of the Republic if, on the day of election, he/she has not been a resident of the Republic of Macedonia for at least ten years within the last fifteen years.

The office of the President of the Republic is incompatible with the performance of other public offices, professions or a position in a political party.

The President of the Republic of Macedonia nominates a mandatory to constitute the Government of the Republic of Macedonia, appoints and recalls by decree ambassadors and other envoys of the Republic of Macedonia abroad, accepts the credentials and letters of recall of foreign diplomatic representatives, proposes two judges of the Constitutional Court, proposes two members of the Judicial Council, appoints three members the Security Council, proposes the members of the Council for Inter-Ethnic Relations, grants pardons in accordance with the law and has constitutional rights to suspend the implementation of laws.

The President of the Republic is the Commander-in-Chief of the armed forces of the Republic Macedonia and has the power to appoint and dismiss the Chief of Staff of the Army, as well as the Army generals. The President also presides over the Security Council appoints three of its members. The President also appoints and dismisses the Director of the Intelligence Agency.

The Constitutional Court decides on the accountability of the President by a two-third majority vote of all judges. If the Constitutional Court considers the president accountable for a violation, his/her mandate shall terminate in accordance with the Constitution.

III. Government of the Republic of Macedonia

The executive power is vested in the Government of the Republic of Macedonia. The Government is composed of a Prime Minister, four Deputy Prime Ministers and 19 other cabinet Ministers. The Government has 14 ministries. Autonomous bodies within the Government are the Agency of Youth and Sports, the Agency of Emigration, the Commission for Relations with Religious Communities and Groups, the Agency for Development Investments, the Centre for Crisis Management, the Protection and Rescue Directorate and the Commodity Reserve Agency. Moreover, there are other agencies working within the Government, administration organizations, as well first instance and special commissions.

The Prime Minister and Ministers cannot be Members of Parliament. The Prime Minister enjoys immunity and the Parliament decides for his/her immunity. The office of the Prime Minister and that of a Minister is incompatible with the performance of any other public office or profession.

The organisation and the mode of working of the Government are regulated by the Law on the Government of the Republic of Macedonia.

Under the Constitution, the Government of the Republic of Macedonia designs the policy of execution of laws and of other regulations of the Assembly and is accountable for their execution, proposes laws, the Budget of the Republic and other regulations to be adopted by the Assembly, proposes a Spatial Plan of the Republic, proposes decisions concerning the reserves of the Republic and takes care of their execution, adopts secondary legislation and other regulations for execution of laws, determinates principles on the internal organisation and the mode of work of the Ministries of the other administrative bodies, directs and supervises their work, provides for opinions on laws and on the other regulations submitted to the Assembly by other bodies authorised to propose laws, takes decisions on the recognition of States and governments, establishes diplomatic consular relations with other States, proposes the Chief Public Prosecutor,

appoints and dismisses holders of public and other offices determined by law and the Constitution and performs other functions determined by law and the Constitution.

IV. Judicial Power

Judicial power is exercised by courts. The courts are autonomous and independent. The courts rule on the basis of the Constitution, laws and international agreements ratified in accordance with the Constitution. Emergency courts are prohibited.

The types of courts, their jurisdiction, their establishment, abrogation, organisation and composition, as well as the procedures they follow, are regulated by the Law on Courts. The Law on Courts stipulates that the objectives and functions of the judicial power encompass an impartial application of law regardless of the position and status of the parties, protection, respect and promotion of human rights and freedoms, ensuring equality, equal opportunity, and non-discrimination on any grounds and ensuring legal security based on the rule of Law.

In the judiciary, the judicial power is exercised by First Instance Courts, the Courts of Appeal, the Administrative Court, the High Administrative Court and the Supreme Court of the Republic of Macedonia.

V. Local Self-Government

The Constitution guarantees citizens the right to local self-government. Units of local self-government are the municipalities. Municipalities are financed from their own sources of income determined by law, as well as from funds allocated by the central power. Local self-government is regulated by the Law on Local Self-Government.

The territorial division of the Republic and the area administered by each municipality are defined by the Law on Territorial Organization of the Local Self-Government in the Republic of Macedonia. According to the said Law, there are 84 municipalities in the Republic of Macedonia.

In units of local self-government, citizens, directly and through representatives, participate in decision-making processes on issues of local relevance particularly in the fields of urban planning, communal activities, culture, sport, social security and child care, pre-school education, primary education, basic health care and other fields determined by law.

VI. Electoral System

In the Republic of Macedonia, the right to vote is universal, individual and equal for all citizens. Only nationals of the Republic of Macedonia who have been registered in the Voters' List, who, on the day of election, have attained the legal age of 18 years and are fit for work, have the right to vote. There are no other limitations to the right to vote in the Republic of Macedonia, nor are any legal grounds to deprive nationals of the Republic of Macedonia of their right to vote.

A national of the Republic of Macedonia who has been pronounced an unsuspended sentence of at least 6 months of imprisonment and has still not started serving the sentence or is already serving a prison sentence for a committed criminal offence does not have the right to be elected as Representative of the Assembly, Member of a Municipal Council and Mayor. Apart from that stipulation, only nationals of the Republic of Macedonia who have a domicile in the municipality and City of Skopje, where elections take place, have the right to be elected as members of municipal councils or mayors.

The electoral model in the Republic of Macedonia is of mixed character. The President of the Republic and the Mayors of Municipalities and the City of Skopje are elected under the majority model. Members of the Assembly are elected according to a combined electoral model.

In the Parliament of the Republic of Macedonia, 123 Members of Parliament are elected, from which 120 according to proportional model, whereby the territory of the Republic of Macedonia is divided into six electoral districts (and for each electoral district 20 Members of Parliament are elected) and 3 Members of Parliament are elected according to the majority model in one round of elections of which 1 Member of Parliament from each of the three electoral districts: in Europe and Africa, in Northern and Southern America, and in Australia and Asia respectively, as determined by this Code. (Under the amendments to the Electoral Code adopted in 2011, nationals of the Republic of Macedonia who have the right to vote, but are temporarily residing and working abroad were enabled to vote at the Diplomatic Missions and Consular Posts of the Republic of Macedonia abroad).

Members of Municipal Councils and the Council of the City of Skopje are elected according the proportional model.

The procedure of filing complaints and lawsuits requesting protection of the right to vote, as deciding upon them is regulated by the Electoral Code. The body responsible for the protection of the right to vote is the State Election Commission (SEC). Judicial protection against its decisions is provided by the Administrative Court.

Elections in the Republic of Macedonia are organized by electoral bodies at three different levels. The State Election Commission is the highest electoral body, and then there are Municipal Election Commissions, i.e. the Election Commission of the City of Skopje and Electoral Boards.

The Electoral Code specifies the deadlines for holding both early and regular elections in the Republic of Macedonia. Presidential elections are held every five years (under a regular election schedule), whereas, early presidential elections are held if the constitutional and legal conditions have fulfilled. Elections for Representatives of the Assembly, Mayors of Municipalities and of the City of Skopje are held every four years (under a scheduled election cycle). Early parliamentary elections are held if the conditions provided for by the Electoral Code are fulfilled while early municipal and mayoral elections are organized if the criteria as stipulated under the on Local Self-Government and the Electoral Code are fulfilled.

VII. Associations and Foundations

The 2010 Law on Associations and Foundations and its 2011 amendments provide the legal framework for exercising the constitutional right to freedom of association.

Founders of citizens' associations are citizens of the Republic of Macedonia and legal entities registered in the Republic of Macedonia, whereby three of the minimum 5 founders, must have a registered domicile or residence, i.e. a seat on the territory of the Republic of Macedonia. Associations may also be established by minors of 15 years under a written statement of consent to be submitted by the minor's legal representative. Citizens' associations are founded at the founding assembly. At the assembly, the association's founders adopt the Articles of Association, Program and Statute of the association, electing, as well, its governing bodies.

Foundations may be established by one or more founding legal and natural entities under an establishment or by a will or legacy verified by a notary.

Foreign nationals may also be founders and members of an organization, association or foundation, having the same rights and obligations as nationals of the Republic of Macedonia. They operate in the Republic of Macedonia via subsidiaries, representative offices or any other setups of foreign organization seated on the territory of the Republic of Macedonia.

Associations and foundations are granted the status of legal entities upon being entered into the Central Register of the Republic of Macedonia.

As regards to the number of registered associations and foundations, 11.817 entities have been entered in the Register of Associations and Alliances, i.e. the Register of Foundations as having the organizational setup of associations and foundations.

The former Yugoslav Republic of Macedonia provided the following list of laws and agreements which are relevant to the review:

1. The Constitution of the Republic of Macedonia.
2. The Criminal Code (“Official Gazette of the Republic of Macedonia” Numbers: 80/99, 4/02, 43/03, 19/04, 81/05, 60/06, 73/06, 7 /08, 139/08, 114/09, 51/11, 135/11, 185/2011, 142/2012, 166/2012, 55/2013).
3. The Law on Civil Servants (“Official Gazette of the Republic of Macedonia” Numbers: 59/2000, 112/2000, 34/2001, 103/2001, 43/2002, 98/2002, 17/2003, 40/2003, 85/2003, 17/2004, 69/2004, 81/2005, 61/2006, 36/2007, 161/2008, 6/2009, 114/2009, 35/10, 167/10, 36/11, 6/12, 24/12, 15/13, 82/13, 106/13).
4. The Law on execution of sanctions (Official Gazette of the Republic of Macedonia Numbers: 2/2006, 57/2010).
5. The Law on management with confiscated property, proceeds and objects seized in criminal and misdemeanour procedure (Official Gazette of the Republic of Macedonia Numbers: 98/2008).
6. The Law on criminal procedure (Official Gazette of the Republic of Macedonia Numbers: 15/97, 44/2002, 74/2004, 83/2008, 67/2009, 150/10).
7. The Law on Prevention of Corruption (“Official Gazette of the Republic of Macedonia” Numbers: 28/2002, 46/2004, 126/2006, 10/2008, 161/2008, 145/2010).
8. The Law on Witness Protection (“Official Gazette of the Republic of Macedonia” Numbers: 38/2005 and 58/2005).
9. The Law on Public Servants (“Official Gazette of the Republic of Macedonia” Numbers 52/10, 36/11, 6/12, 24/12, 15/13, 82/13, 106/13).
10. The Law on Police (“Official Gazette of the Republic of Macedonia” Numbers 114/2006, 6/2009, 145/2012).
11. The Law on Labor Relations (“Official Gazette of the Republic of Macedonia” Numbers: 62/2005, 106/2008, 161/2008, 114/2009, 130/2009, 50/10, 52/10, 124/10, 47/11, 11/12, 39/12, 13/13, 25/13).
12. The Law on Protection from Harassment at Workplace (“Official Gazette of the Republic of Macedonia” Number 79/2013).
13. The Law on Public Prosecutors’ Offices (“Official Gazette of the Republic of Macedonia” Numbers: 150/2007, 111/2008).
14. The Law on Courts (“Official Gazette of the Republic of Macedonia” Numbers: 58/2006, 35/2008, 150/2010).
15. The Law on Public Internal Financial Control (“Official Gazette of the Republic of Macedonia” Number 90/2009).

16. The Law on Banks (“Official Gazette of the Republic of Macedonia” Numbers: 67/2007, 90/2009, 67/10, 26/13).
17. The Law on International Cooperation in Criminal Matters (“Official Gazette of the Republic of Macedonia” Number: 124/2010).
18. The Law on prevention of money laundering and proceeds of crime and financing terrorism (“Official Gazette of the Republic of Macedonia” Numbers: 4/2008, 57/2010, 35/2011, 44/2012).
19. Agreement between Republic of Macedonia and Bosnia and Herzegovina for extradition - 2006.
20. Agreement between Republic of Macedonia and Monte Negro for extradition - 2012.
21. Agreement between Republic of Macedonia and Croatia for extradition - 2012.
22. Agreement between Republic of Macedonia and Serbia for extradition - 2012.
23. Agreement for cooperation between EUROJUST and the Republic of Macedonia, ratified on 15.04.2009, in force since October 2010, in effect since 23.06.2010 - direct judicial cooperation in criminal matters, extradition, transfer and combating organized crime and terrorism, between the judicial authorities of the Republic of Macedonia and the judicial authorities of the EU member-States.
24. Strategic agreement with EUROPOL, ratified on 29.01.2008.
25. Agreement for operative and strategic cooperation with EUROPOL, ratified and entered into force in December 2011.
26. State Programme for Prevention and Repression of State Corruption and for Prevention and Reduction of Conflict of Interests with Action Plans for the period 2011 - 2015, adopted by the State Commission for Prevention of Corruption in December 2011.
27. Protocol on Cooperation for Prevention and Repression of Corruption and Conflict of Interest, of 25.12.2007, signed between the State Commission for Prevention of Corruption and 18 institutions.
28. Memorandum on Mutual Cooperation in Preventing Corruption and Conflict of Interest, of 28.12.2010, signed between the State Commission for Prevention of Corruption and 21 non-governmental organizations.
29. Memorandum on Mutual Cooperation in Preventing Corruption and Conflict of Interest in the Private Sector, of 09.12.2011, signed by 9 business association.

C. Previous assessments of anti-corruption measures

The former Yugoslav Republic of Macedonia has been previously evaluated by the Council of Europe, Group of States Against Corruption (GRECO), for the first, second, third and fourth evaluation round, and MONEYVAL. Evaluation reports and follow-up reports of MONEYVAL are from 2000, 2003, 2008 and 2014. All these reports are publicly available on the respective websites of these bodies.

D. Implementation of selected articles

A general remark about the organization of the country visit is that the reviewers commended the interdisciplinary, participatory and transparent nature of the meetings and recognized that the interlocutors were knowledgeable and responsive.

III. Criminalization and law enforcement

Article 15 Bribery of national public officials

Subparagraph (a)

Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(a) The promise, offering or giving, to a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties;

(a) Summary of information relevant to reviewing the implementation of the article

The former Yugoslav Republic of Macedonia noted that it has adopted and implemented the measures described above and referred to the following provisions:

Criminal law Article 358

(1) A person who directly or indirectly gives, promises or offers a gift or other advantage to an official, for himself or for herself or for anyone else, so that he/she performs an official action which must not be performed or does not perform an official action which must be performed, or a person who acts as intermediary in such process, shall be punished by imprisonment from one to five years.

(2) A person who directly or indirectly gives, promises or offers a gift or other advantage to an official, for himself or for herself or for anyone else, so that he/she performs an official action which must be performed or does not perform an official action which must not be performed, or a person who acts as intermediary in such process, shall be sentenced to imprisonment of one to three years.

(3) The court can release from sentence for the offence from the paragraphs (1) and (2) of this article the person who has given or promised a bribe upon request by an official and has reported it before learning that the offence has been disclosed.

(4) The provisions of paragraphs (1), (2) and (3) shall also apply when a bribe has been given or promised to a responsible person, a responsible person in a foreign legal entity, a person performing public mandates and a foreign official in connection with the offence of Article 357.

(5) If the crime stipulated in paragraph (1) is performed by a legal entity, it shall be sentenced with a fine.

(6) The given gift or property advantage shall be taken away.

The term "official person" is defined by the article 122 paragraph 4 - a to - f of the Criminal Code:

(4) An official person, when designated as an offender of a crime, shall be considered:

a) The President of the Republic of Macedonia, the appointed ambassadors and other representatives of the Republic of Macedonia abroad and persons appointed by the President of the Republic of Macedonia, an elected or appointed official in and from the Parliament of the Republic of Macedonia, in the Government of

the Republic of Macedonia, in the State administration bodies, in the courts, in the Public Prosecutor's Office, the Judicial Council of the Republic of Macedonia, the Council of Public Prosecutors of the Republic of Macedonia and in other bodies and organizations which perform certain professional, administrative or other activities within the framework of the rights and duties of the Republic, in the local self-government units, as well as persons who permanently or temporarily perform an official duty in these bodies and organizations,

b) a civil servant performing professional, normative-legal, executive, administrative-supervisory activities and administrative activities in accordance with the Constitution and a law.

c) an authorized person within a legal entity which by law or by some other enacted regulation based on a law is entrusted with performing public duties, when the duty is performed within the framework of those authorities, as well as an authorized person for representation of associations, foundations, unions and organizational types of foreign organizations, sports associations and other legal entities in the field of sports,

d) a person performing certain official duties, based on the authorization given by law or by some other enacted regulations based on a law,

e) a military person, when considering crimes in which an official person is pointed out as the offender and

f) a representative of a foreign country or an international organization in the Republic of Macedonia.

The term "responsible person" is defined by the article 122 paragraph 7 of the Criminal Code.

(7) A responsible person within a legal entity shall be considered to be a person within the legal entity, who considering his function or based on special authorization in the legal entity, is entrusted with a certain circle of matters which concern the execution of legal regulations, or regulations adopted on the basis of a law or a general act of the legal entity in the management, use and disposition of property, the management of the production or some other business venture, or other economic process and their supervision. An official person shall also be considered to be a responsible person, when this concerns crimes where a responsible person is found to be the offender, while the crimes are not foreseen in the chapter on crimes against official duty, i.e. crimes by an official person foreseen in some other chapter of this Code. When this Code specifically stipulates, a responsible person shall also be considered the person who performs a special function or an authorization or is entrusted to independent performance of certain operations within a foreign legal entity, as well as the person who is a representative of the foreign legal entity within the Republic of Macedonia.

The term "responsible person who performs activities of public interest" is defined by the article 122 paragraph 9 of the Criminal Code

(9) A person performing works of public interests shall be considered to be the person who performs functions, duties or works of public, i.e. general interest, such as: teacher, tutor, physician, social worker, journalist, notary, lawyer, or any other person who performs these works independently or within a legal entity which performs activities of public i.e. general interest, in accordance with a law.

The term "legal entity" and "foreign legal person/entity" is defined by the article 122 paragraph 6 of the Criminal Code

(6) A legal entity shall refer to: the Republic of Macedonia, units of the local self-government, political parties, public enterprises, trade companies, institutions, associations, foundations, unions and organizational types of foreign organizations, sports associations and other legal entities in the field of sports, funds, financial organizations, and other organizations specified by law and registered as legal entities and other associations and organizations being recognized the capacity of a legal entity. A foreign legal entity shall refer to: a public enterprise, institution, fund, bank, trade company or any other form of organization in accordance with the laws of a foreign country pertaining to the performance of economic, financial, banking, trade, service or other activities, with head office in another country or a branch office in the Republic of Macedonia or founded as an international association, fund, bank or institution.

The former Yugoslav Republic of Macedonia provided the following tables with statistical data:

GIVING A BRIBE - Active bribery - STATISTICS FOR 2010								
Criminal offence	Number of Criminal Charges	Requests for Enforcement of Investigation	Number of Indictments	Number of persons towards whom Judgments of First Instance have been Rendered	Number of Convicted Persons	Number of Appealed Judgements	Number of Modified judgments	Number of Final Judgments
Giving a bribe - Active bribery (Criminal Code, article 358)	9	9	9	5	5	0	0	0

GIVING A BRIBE - Active bribery - STATISTICS FOR 2011								
Criminal offence	Number of Criminal Charges	Requests for Enforcement of Investigation	Number of Indictments	Number of persons towards whom Judgments of First Instance have been Rendered	Number of Convicted Persons	Number of Appealed Judgements	Number of Modified judgments	Number of Final Judgments
Giving a bribe - Active bribery (Criminal Code, article 358)	6	3	4	5	3	1	0	3

GIVING A BRIBE - Active bribery - STATISTICS FOR 2012								
Criminal offence	Number of Criminal Charges	Requests for Enforcement of Investigation	Number of Indictments	Number of persons towards whom Judgments of First Instance have been Rendered	Number of Convicted Persons	Number of Appealed Judgements	Number of Modified judgments	Number of Final Judgments
Giving a bribe - Active bribery (Criminal Code, article 358)	10	3	7	7	5	1		2

(b) Observations on the implementation of the article

The review team was of the view that the former Yugoslav Republic of Macedonia has criminalized active bribery of national public officials, and is in line with the provision under review despite the small number of cases.

Article 15 Bribery of national public officials

Subparagraph (b)

Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(b) The solicitation or acceptance by a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.

(a) Summary of information relevant to reviewing the implementation of the article

The former Yugoslav Republic of Macedonia noted that it has adopted and implemented the measures described above and referred to the following provisions:

Criminal Code Article 357 - Receiving bribe

(1) An official who directly or indirectly asks or receives a gift or other advantage or receives a promise of a gift or other advantage for him/herself or for anyone else so as to perform within his/her official authorisation an official activity which must not be performed or fails to perform an official activity which must be performed, shall be sentenced to imprisonment of four to ten years.

(2) An official who directly or indirectly asks or receives a gift or other advantage or receives a promise of a gift or other advantage for him/herself or for anyone else as to perform within his/her official authorisation an official activity which must be performed or fails to perform official activity which must not be performed, shall be sentenced to imprisonment of one to five years.

(3) An official who, following the performance or non-performance of the official action noted in paragraphs 1 and 2, requests or takes a gift or other advantage in connection with this, shall be punished by a prison sentence of three months to three years.

(4) If a larger property gain has been obtained through the crime, the perpetrator shall be sentenced to imprisonment of at least four years.

(5) If a significant property gain has been obtained through the crime, the perpetrator shall be sentenced to imprisonment of at least five years.

(6) The sentence referred to in paragraphs 1, 2 and 3 shall be applied for a responsible person, person who performs activities of public interest, a responsible person in a foreign legal person, as well as a foreign official person if the crime has been performed with violation of his/her authorisation, in relation with the acquisition, exercise or revocation of rights determined by law or for the reason of obtaining gain or inflicting damage on someone else.

(7) The received gift or property advantage shall be taken away.

The former Yugoslav Republic of Macedonia provided the following tables with statistical data:

RECEIVING A BRIBE - Pasive bribery - STATISTICS FOR 2010								
Criminal offence	Number of Criminal Charges	Requests for Enforcement of Investigation	Number of Indictments	Number of persons to whom Judgments of First Instance have been Rendered	Number of Convicted Persons	Number of Appealed Judgements	Number of Modified judgments	Number of Final Judgments
Receiving a bribe - Pasive bribery (Criminal Code, article 357)	15	15	12	58	7	1	1	1

RECEIVING A BRIBE - Pasive bribery - STATISTICS FOR 2011								
Criminal offence	Number of Criminal Charges	Requests for Enforcement of Investigation	Number of Indictments	Number of persons to whom Judgments of First Instance have been Rendered	Number of Convicted Persons	Number of Appealed Judgements	Number of Modified judgments	Number of Final Judgments
Receiving a bribe - Pasive bribery (Criminal Code, article 357)	14	7	4	17	9	9	0	4

RECEIVING A BRIBE - Pasive bribery - STATISTICS FOR 2012								
Criminal offence	Number of Criminal Charges	Requests for Enforcement of Investigation	Number of Indictments	Number of persons to whom Judgments of First Instance have been Rendered	Number of Convicted Persons	Number of Appealed Judgements	Number of Modified judgments	Number of Final Judgments
Receiving a bribe - Pasive bribery (Criminal Code, article 357)	12	5	6	13	6	8		2

(b) Observations on the implementation of the article

The review team was of the view that the former Yugoslav Republic of Macedonia has criminalized passive bribery of national public officials, in line with the provision under review

Article 16 Bribery of foreign public officials and officials of public international organizations

Paragraph 1

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the promise, offering or giving to a foreign public official or an official of a public international organization, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties, in order to obtain or retain business or other undue advantage in relation to the conduct of international business.

(a) Summary of information relevant to reviewing the implementation of the article

The former Yugoslav Republic of Macedonia noted that it has adopted and implemented the measures described above and referred to paragraph 4 of the article 358 of the Criminal Code - Giving a bribe:

The provisions of paragraphs (1), (2) and (3) shall also apply when a bribe has been given or promised to a responsible person, a responsible person in a foreign legal entity, a person performing public mandates and a foreign official in connection with the offence of Article 357.

The term "foreign official" of this provision encompasses the "officials of foreign international organizations", considering the definition of the term "foreign official" given in the paragraph 5 of the article 122 of the Criminal Code:

Foreign official person, when he/she is considered as a perpetrator of a criminal act, is a person who in a foreign State, international organization or public institution performs some of the duties determined within the paragraph (4) items a) to d) of this article.

The former Yugoslav Republic of Macedonia further explained that although offering is not strictly mentioned in the Paragraph (4) of the article 358 of the Criminal Code, the provisions of the paragraphs (1) and (2) which directly apply to the Paragraph (4) include the act of offering:

(1) A person who directly or indirectly gives, promises or offers a gift or other advantage to an official, for himself or for herself or for anyone else, so that he/she performs an official action which must not be performed or does not perform an official action which must be performed, or a person who acts as intermediary in such process, shall be punished by imprisonment from one to five years.

(2) A person who directly or indirectly gives, promises or offers a gift or other advantage to an official, for himself or for herself or for anyone else, so that he/she performs an official action which must be performed or does not perform an official action which must not be performed, or a person who acts as intermediary in such process, shall be sentenced to imprisonment of one to three years.

Therefore the cited provision also covers the act of offering.

The former Yugoslav Republic of Macedonia explained that the statistics for the criminal act giving bribe (active bribery) for 2010, 2011 and 2012, given in the previous question, encompasses the statistics for foreign public officials (officials in the public international organizations). There are no separate statistics for the giving bribe to the foreign public officials.

(b) Observations on the implementation of the article

The review team was of the view that the former Yugoslav Republic of Macedonia has criminalized active bribery of foreign public officials and officials of public international organizations, in line with the provision under review

Article 16 Bribery of foreign public officials and officials of public international organizations

Paragraph 2

2. Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the solicitation or acceptance by a foreign public official or an official of a public international organization, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.

(a) Summary of information relevant to reviewing the implementation of the article

The former Yugoslav Republic of Macedonia noted that it has adopted and implemented the measures described above and referred to paragraph 6 of the article 357 of the Criminal Code:

(6) The sentence referred to in paragraphs (1), (2), (3), (4) and (5) of this Article shall be as well imposed on a responsible person, person performing activities of public interest, as well as a foreign official person.

The term "foreign official person" mentioned in this paragraph includes the officials of public international organizations, according to the definition of the foreign official person given in the paragraph 5 of the article 122 of the Criminal Code:

(5) A foreign official person, when designated as an offender of a crime, is considered to be the person who, in a foreign country, international organization or public institution performs some of the functions or duties stipulated in paragraph (4) points a) through f).

Criminal Code- article 122 - paragraph 4:

(4) An official person, when designated as an offender of a crime, shall be considered:

- a) The President of the Republic of Macedonia, the appointed ambassadors and other representatives of the Republic of Macedonia abroad and persons appointed by the President of the Republic of Macedonia, an elected or appointed official in and from the Parliament of the Republic of Macedonia, in the Government of the Republic of Macedonia, in the State administration bodies, in the courts, in the Public Prosecutor's Office, the Judicial Council of the Republic of Macedonia, the Council of Public Prosecutors of the Republic of Macedonia and in other bodies and organizations which perform certain professional, administrative or other activities within the framework of the rights and duties of the Republic, in the local self-government units, as well as persons who permanently or temporarily perform an official duty in these bodies and organizations,
- b) a civil servant performing professional, normative-legal, executive, administrative-supervisory activities and administrative activities in accordance with the Constitution and a law.
- c) an authorized person within a legal entity which by law or by some other enacted regulation based on a law is entrusted with performing public duties, when the duty is performed within the framework of those authorities, as well as an authorized person for representation of associations, foundations, unions and organizational types of foreign organizations, sports associations and other legal entities in the field of sports,
- d) a person performing certain official duties, based on the authorization given by law or by some other enacted regulations based on a law,
- e) a military person, when considering crimes in which an official person is pointed out as the offender and
- f) representative of a foreign State or international organization in the Republic of Macedonia.

The statistics for the criminal act of receiving a bribe (passive bribery) for 2010, 2011 and 2012, given in the previous question, encompasses the statistics for foreign public officials (officials in the public international organizations). There are no separate statistics for receiving a bribe by the foreign public officials.

(b) Observations on the implementation of the article

The review team was of the view that the former Yugoslav Republic of Macedonia has criminalized passive bribery of foreign public officials and officials of public international organizations, in line with the provision under review.

Article 17 Embezzlement, misappropriation or other diversion of property by a public official

Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally, the embezzlement, misappropriation or other diversion by a public official for his or her benefit or for the benefit of another person or entity, of any property, public or private funds or securities or any other thing of value entrusted to the public official by virtue of his or her position.

(a) Summary of information relevant to reviewing the implementation of the article

The former Yugoslav Republic of Macedonia noted that it has adopted and implemented the measures described above and referred to the following provisions:

Criminal Code Article 354- Embezzlement in the service

(1) An official person who, with the intent to acquire an unlawful property benefit for him or for another, appropriates money, securities or other movable objects that are entrusted in the service, shall be sentenced to imprisonment of six months to five years.

(2) If the offender of the crime referred to in paragraph 1 acquires a greater property benefit, shall be sentenced to imprisonment of one to ten years.

(3) If the offender of the crime referred to in paragraph 1 acquired a significant property benefit, he shall be sentenced to imprisonment of at least four years.

(4) If the offender of the crime referred to in paragraph 1 acquired a small property benefit and was directed towards acquiring such property benefit, shall be fined or sentenced to imprisonment.

(5) The sentence referred to in paragraphs (1), (2) and (3) of this Article shall also be imposed to a responsible person, a responsible person in a foreign legal entity with head office in the Republic of Macedonia or a person performing activities of public interest, if the crime is committed by exercising his special authorization or duty, as determined by law.

Criminal Code Article 355 - Defraud in the service

(1) An official person who, when performing his service, with the intent to acquire an unlawful property benefit for himself or for another, by submitting false bills or in some other way deceives the authorized person to effect an unlawful payment, shall be sentenced to imprisonment of six months to five years.

(2) If the crime referred to in paragraph 1 a larger property benefit was acquired, the offender shall be sentenced to imprisonment of one to ten years.

(3) If with the crime referred to in paragraph 1 a significant property benefit was acquired, the offender shall be sentenced to imprisonment of at least three years.

(4) The sentence referred to in paragraphs 1, 2 and 3 shall also be imposed to a responsible person, a responsible person in a foreign legal entity with head office in the Republic of Macedonia or a person performing activities of public interest, if the crime is committed by exercising his special authorization or duty.

Criminal Code Article 356 - Use of resources for personal benefit while in service

An official person who without authorization uses for personal benefit money, securities or other movable objects entrusted in the service, or gives these objects without authorization to another's use, shall be sentenced to imprisonment of three months to five years.

The former Yugoslav Republic of Macedonia further explained that Article 355 (Defraud in the service) incriminates intentional acquiring of an unlawful property benefit of the official person for himself / herself or for another (i.e. anyone else - a natural person or a legal entity), by submitting false bills or by deceiving the authorized person in some other way to effect an unlawful payment. This criminal offense is a specialized form of fraud where the person while in performing service or special authorization/duty submits forged documents or acts in a different way to mislead the (superior) authorized person. Type of property which may be diverted or the actual criminal act is not specified and therefore all kinds of property and diversion are covered under "in some other way", "deceive", "unlawful property benefit" and "effect an unlawful payment". The criminal sanctions for this offense are stricter.

Article 354 (Embezzlement in the service) and article 356 (Use of resources for personal benefit while in service) are both related to the type of property which a person can be authorized to hold/use in service or while performing duties of service (and may be physically returned).

Regarding article 353 (Abuse of official position and authorization), the former Yugoslav Republic of Macedonia noted that any undue diversion of any kind of entrusted property may be

committed while the perpetrator uses his/her official position or authorization, by exceeding the limits of his official authorization, or by not performing his/her official duty.

The former Yugoslav Republic of Macedonia provided the following tables with statistical data for acting of the prosecutorial and judicial institutions upon cases of Embezzlement in the service (article 354 of the Criminal Code), Defraud in the service (article 355 of the Criminal Code) and Helping oneself in the service (article 356 of the Criminal Code):

DEFRAUD IN THE SERVICE - STATISTICS FOR 2010								
Criminal offence	Number of Criminal Charges	Requests for Enforcement of Investigation	Number of Indictments	Number of persons to whom Judgments of First Instance have been Rendered	Number of Convicted Persons	Number of Appealed Judgements	Number of Modified judgments	Number of Final Judgments
Defraud in the service (Criminal Code, article 355)	0	0	1	0	0	0	0	0

DEFRAUD IN THE SERVICE - STATISTICS FOR 2011								
Criminal offence	Number of Criminal Charges	Requests for Enforcement of Investigation	Number of Indictments	Number of persons to whom Judgments of First Instance have been Rendered	Number of Convicted Persons	Number of Appealed Judgements	Number of Modified judgments	Number of Final Judgments
Defraud in the service (Criminal Code, article 355)	1	0	0	5	3	2	0	2

DEFRAUD IN THE SERVICE - STATISTICS FOR 2012								
Criminal offence	Number of Criminal Charges	Requests for Enforcement of Investigation	Number of Indictments	Number of persons to whom Judgments of First Instance have been Rendered	Number of Convicted Persons	Number of Appealed Judgements	Number of Modified judgments	Number of Final Judgments
Defraud in the service - (Criminal Code, article 355)	2	1	1	6	6	1		

EMBEZZLEMENT IN THE SERVICE - STATISTICS FOR 2010								
Criminal offence	Number of Criminal Charges	Requests for Enforcement of Investigation	Number of Indictments	Number of persons to whom Judgments of First Instance have been Rendered	Number of Convicted Persons	Number of Appealed Judgements	Number of Modified judgments	Number of Final Judgments
Embezzlement in the service (Criminal Code, article 354)	0	0	5	3	1	0	0	1

EMBEZZLEMENT IN THE SERVICE - STATISTICS FOR 2011								
Criminal offence	Number of Criminal Charges	Requests for Enforcement of Investigation	Number of Indictments	Number of persons to whom Judgments of First Instance have been Rendered	Number of Convicted Persons	Number of Appealed Judgements	Number of Modified judgments	Number of Final Judgments
Embezzlement in the service (Criminal Code, article 354)	6	4	2	9	4	0	0	4

EMBEZZLEMENT IN THE SERVICE - STATISTICS FOR 2012								
Criminal offence	Number of Criminal Charges	Requests for Enforcement of Investigation	Number of Indictments	Number of persons to whom Judgments of First Instance have been Rendered	Number of Convicted Persons	Number of Appealed Judgements	Number of Modified judgments	Number of Final Judgments
Embezzlement in the service - (Criminal Code, article 354)	36	14	9	11	6	3		9

HELPING ONESELF IN SERVICE - STATISTICS FOR 2010								
Criminal offence	Number of Criminal Charges	Requests for Enforcement of Investigation	Number of Indictments	Number of persons to whom Judgments of First Instance have been Rendered	Number of Convicted Persons	Number of Appealed Judgements	Number of Modified judgments	Number of Final Judgments
Helping oneself in service (Criminal Code, article 356)	0	0	0	0	0	0	0	0

HELPING ONESELF IN SERVICE - STATISTICS FOR 2011								
Criminal offence	Number of Criminal Charges	Requests for Enforcement of Investigation	Number of Indictments	Number of persons to whom Judgments of First Instance have been Rendered	Number of Convicted Persons	Number of Appealed Judgements	Number of Modified judgments	Number of Final Judgments
Helping oneself in service (Criminal Code, article 356)	2	1	1	4	3	2	0	3

HELPING ONESELF IN SERVICE - STATISTICS FOR 2012								
Criminal offence	Number of Criminal Charges	Requests for Enforcement of Investigation	Number of Indictments	Number of persons to whom Judgments of First Instance have been Rendered	Number of Convicted Persons	Number of Appealed Judgements	Number of Modified judgments	Number of Final Judgments
Helping oneself in service - (Criminal Code, article 356)	4	3		1	2	2		

(b) Observations on the implementation of the article

The review team was of the view that the former Yugoslav Republic of Macedonia has criminalized embezzlement, misappropriation or other diversion of property by a public official, in line with the provision under review.

Article 18 Trading in influence

Subparagraph (a)

Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(a) The promise, offering or giving to a public official or any other person, directly or indirectly, of an undue advantage in order that the public official or the person abuse his or her real or supposed influence with a view to obtaining from an administration or public authority of the State Party an undue advantage for the original instigator of the act or for any other person;

...

(a) Summary of information relevant to reviewing the implementation of the article

The former Yugoslav Republic of Macedonia noted that it has adopted and implemented the measures described above and referred to the following provisions:

Criminal Code Article 358-a - Giving a reward for unlawful influence

(1) Whosoever directly or indirectly gives a reward, gift or another benefit or promises or offers such benefit, personal or for a third party, in order to use its real or supposed influence, official or social position or image to request, intervene, motivate or in any other manner influence the performance of a specific official activity which must be performed, or not to perform an official activity that should not be performed, shall be sentenced to imprisonment of one to three years.

(2) Whosoever directly or indirectly gives to another the reward, gift or another benefit, the promise or offer for such benefit, so that by using its real or supposed influence, official or social position or image, it requests, intervenes, motivates or in any other manner influences the performance of an official activity that otherwise should not be performed or does not perform an official duty that otherwise must be performed, shall be sentenced to imprisonment of one to five years.

(3) If the crime referred to in paragraph (2) of this Article is committed in regard to initiation and conduct of a criminal procedure against a certain person, the offender shall be sentenced to imprisonment of three to five years.

(4) Whosoever directly or indirectly gives to another a reward, gift or another benefit or promises or offers such benefit, personal or for a third party, in order to use its real or supposed influence, official or social position or image, will request, intervene, motivate or in another manner influence the responsible person, responsible person in a foreign legal entity performing activity in the Republic of Macedonia, or a person performing activities of public interest, to perform or not to perform an activity contrary to its duty, shall be fined or sentenced to imprisonment of up to three years.

(5) If the crime referred to in paragraphs (1), (2), (3) and (4) of this Article is committed upon a request of a person that shall illegally mediate, and the offender has reported it before it has been detected or before it is found out that it is detected, the offender may be acquitted from the sentence.

(6) The reward, gift or another benefit shall be seized.

The former Yugoslav Republic of Macedonia confirmed that the wording of Article 358a of the Criminal Code is sufficiently broad to cover any undue advantage as required by Article 18 of the Convention. This article incriminates direct and indirect giving, promising and offering of benefits such as gifts, rewards or other benefits and thus covers any undue advantage (in broad terms).

The former Yugoslav Republic of Macedonia noted that in the original text the Macedonian word “korist”(translated as “benefit”) is used, which means benefit or anything that a person can find useful, favourable, advantageous or beneficial or satisfying. The actual advantage of the incriminated behaviour derives from gaining any undue benefit.

The active trading in influence was introduced as a new criminal act with the amendments of the Criminal Code of 2011, on recommendation of GRECO (until then, only the passive trading in influence existed as criminal act). Therefore, there is no statistical data for it.

(b) Observations on the implementation of the article

The review team was of the view that the former Yugoslav Republic of Macedonia has criminalized active trading in influence, in line with the provision under review.

Article 18 Trading in influence

Subparagraph (b)

Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

...

(b) The solicitation or acceptance by a public official or any other person, directly or indirectly, of an undue advantage for himself or herself or for another person in order that the public official or the person abuse his or her real or supposed influence with a view to obtaining from an administration or public authority of the State Party an undue advantage.

(a) Summary of information relevant to reviewing the implementation of the article

The former Yugoslav Republic of Macedonia noted that it has adopted and implemented the measures described above and referred to the following provisions:

Criminal Code Article 359 - Accepting a reward for unlawful influence

(1) Whosoever directly or indirectly receives a reward, gift or some other benefit or promises or offers such personal benefit or benefit for a third party by abusing the real or supposed influence, official or social position and image, will request, intervene, motivate or in any other manner influence the performance of an official activity that must be performed or is not performed and should not be performed, shall be sentenced to imprisonment of one to three years.

(2) The sentence referred to in paragraph (1) of this Article shall be imposed on whosoever by abusing its real or supposed influence, official or social position and image will request, intervene, motivate or in any other manner will influence the performance of an official activity that otherwise should not be performed or not to perform an official duty that must be performed.

(3) If the crime referred to in paragraph 2 is committed in regard to initiation or conduct of a criminal procedure against certain person, the offender shall be sentenced to imprisonment of one to five years.

(4) Whosoever by abusing the real or supposed influence, official or other position, and image requests, intervenes motivates or in any other manner influences the responsible person, responsible person in a foreign legal entity performing an activity in the Republic of Macedonia or a person performing activities of public interest for a reward, gift or other benefit, or promise for such benefit, performs or does not perform an activity contrary to its duty shall be fined or sentenced to imprisonment of up to one year.

(5) If the consequence from the crime referred to in paragraph 4 is unlawful acquisition or loss of rights, or acquisition of greater property benefit or causing greater damage to another, to a domestic or a foreign legal entity, the offender shall be sentenced to imprisonment of one to five years.

(6) If the crime referred to in this Article is committed by a legal entity it shall be fined.

(7) If a reward or some other benefit is received for the mediation referred to in paragraphs 2 and 3, the offender shall be sentenced to imprisonment of one to ten years.

(8) If the crime referred to in this Article is committed by a legal entity, it shall be fined.

The former Yugoslav Republic of Macedonia provided the following tables with statistical data:

UNLAWFUL MEDIATION - STATISTICS FOR 2010								
Criminal offence	Number of Criminal Charges	Requests for Enforcement of Investigation	Number of Indictments	Number of persons to whom Judgments of First Instance have been Rendered	Number of Convicted Persons	Number of Appealed Judgements	Number of Modified judgments	Number of Final Judgments
Unlawful mediation (Criminal Code, article 359)	4	0	2	0	1	1	1	1

UNLAWFUL MEDIATION - STATISTICS FOR 2011								
Criminal offence	Number of Criminal Charges	Requests for Enforcement of Investigation	Number of Indictments	Number of persons to whom Judgments of First Instance have been Rendered	Number of Convicted Persons	Number of Appealed Judgements	Number of Modified judgments	Number of Final Judgments
Unlawful mediation (Criminal Code, article 359)	3	4	1	0	0	0	0	0

UNLAWFUL MEDIATION - STATISTICS FOR 2012								
Criminal offence	Number of Criminal Charges	Requests for Enforcement of Investigation	Number of Indictments	Number of persons to whom Judgments of First Instance have been Rendered	Number of Convicted Persons	Number of Appealed Judgements	Number of Modified judgments	Number of Final Judgments
Unlawful mediation (Criminal Code, article 359)	3	1	1	0	0	0	0	0

(b) Observations on the implementation of the article

The review team was of the view that the former Yugoslav Republic of Macedonia has criminalized passive trading in influence, in line with the provision under review.

Article 19 Abuse of Functions

Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the abuse of functions or position, that is, the performance of or failure to perform an act, in violation of laws, by a public official in the discharge of his or her functions, for the purpose of obtaining an undue advantage for himself or herself or for another person or entity.

(a) Summary of information relevant to reviewing the implementation of the article

The former Yugoslav Republic of Macedonia noted that it has adopted and implemented the measures described above and referred to the following provisions:

Article 353 - Abuse of official position and authorization

(1) 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 sentenced to imprisonment of six months to three years.

(2) If the offender of the crime referred to in paragraph 1 acquires a greater property benefit, or causes greater property damage, or violates the rights of another more severely, he shall be sentenced to imprisonment of six months to five years.

(3) If the offender of the crime referred to in paragraph 1 acquires a significant property benefit or causes a significant damage, he shall be sentenced to imprisonment of at least three years.

(4) Responsible person, responsible person in the foreign legal entity which has a representative office or performs an activity in the Republic of Macedonia or a person that performs activities of public interest, shall be sentenced with the punishments referred to in paragraphs 1, 2 and 3, in case if the crime is committed while performing his specific authorization or duty.

(5) If the crime stipulated in paragraph (1) and (4) is performed during execution of public procurements or causing damage to the finances of the Budget of the Republic of Macedonia, public funds or other State owned funds, the offender shall be sentenced to imprisonment of at least five years.

The former Yugoslav Republic of Macedonia provided the following tables with statistical data:

ABUSE OF OFFICIAL POSITION AND AUTHORIZATION - STATISTICS FOR 2010								
Criminal offence	Number of Criminal Charges	Requests for Enforcement of Investigation	Number of Indictments	Number of persons to whom Judgments of First Instance have been Rendered	Number of Convicted Persons	Number of Appealed Judgements	Number of Modified judgments	Number of Final Judgments
Abuse of official position and authorization (Criminal Code, article 353)	137	84	114	52	31	10	1	26

ABUSE OF OFFICIAL POSITION AND AUTHORIZATION - STATISTICS FOR 2011								
Criminal offence	Number of Criminal Charges	Requests for Enforcement of Investigation	Number of Indictments	Number of persons to whom Judgments of First Instance have been Rendered	Number of Convicted Persons	Number of Appealed Judgements	Number of Modified judgments	Number of Final Judgments
Abuse of official position and authorization (Criminal Code, article 353)	182	283	62	331	69	93	7	97

ABUSE OF OFFICIAL POSITION AND AUTHORIZATION - STATISTICS FOR 2012								
Criminal offence	Number of Criminal Charges	Requests for Enforcement of Investigation	Number of Indictments	Number of persons to whom Judgments of First Instance have been Rendered	Number of Convicted Persons	Number of Appealed Judgements	Number of Modified judgments	Number of Final Judgments
Absuse of official position and authorization (Criminal Code, article 353)	609	177	180	265	102	104	4	52

(b) Observations on the implementation of the article

The review team was of the view that the former Yugoslav Republic of Macedonia has criminalized abuse of functions, in line with the provision under review.

Article 20 Illicit Enrichment

Subject to its constitution and the fundamental principles of its legal system, each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, illicit enrichment, that is, a significant increase in the assets of a public official that he or she cannot reasonably explain in relation to his or her lawful income.

(a) Summary of information relevant to reviewing the implementation of the article

The former Yugoslav Republic of Macedonia noted that it has adopted and implemented the measures described above and referred to the following provisions:

Criminal Code Article 359-a - Unlawful obtaining and covering property

(1) Official person or responsible person in a public enterprise, public institution or other legal entity having at its disposal State capital, who against the legal obligation to report the material condition or its change provides false or incomplete data regarding its property or the property of the members of his family, which in significant amount exceeds his legal revenues, shall be sentenced to imprisonment of six months to five years and shall be fined.

(2) The sentence referred to in paragraph (1) of this Article shall be imposed to an official person or responsible person in a public enterprise, public institution or other legal entity having at its disposal State capital which provides false data or covers its true sources, when in legally regulated procedure it is confirmed that during the performance of its function or duty, he or a member of his family has obtained property that in significant amount exceeds its legal revenues.

(3) If the crime referred to in paragraphs (1) and (2) of this Article has been committed against a property which in greater extent exceeds its legal revenues, the offender shall be sentenced to imprisonment of one to eight years and shall be fined.

(4) For the crimes referred to in paragraphs (2) and (3) of this Article, the offender shall not be sentenced if during the procedure he gives in court acceptable explanation regarding the origin of the property.

(5) The property exceeding the legally obtained revenues by the offender, wherefore he has provided false or incomplete data or has not provided any data or covers its true sources of origin shall be confiscated, and if such confiscation is not possible, another property corresponding to its value shall be confiscated from the offender.

(6) The property referred to in paragraph (5) of this Article shall be as well confiscated from the members of the offender's family for whom it has been obtained or to whom it has been transferred, should it be obvious that they have not given counter-compensation corresponding to its value, as well as from third parties unless they prove to have given counter-compensation corresponding to the value of the object or the property.

The former Yugoslav Republic of Macedonia provided the following tables with statistical data and explained that it is relatively new criminal act, considering the fact that it is introduced with the amendments of the Criminal Code of 2009.

ILLCIT ENRICHMENT AND CONCEALMENT OF PROPERTY - STATISTICS FOR 2010								
Criminal offence	Number of Criminal Charges	Requests for Enforcement of Investigation	Number of Indictments	Number of persons to whom Judgments of First Instance have been Rendered	Number of Convicted Persons	Number of Appealed Judgements	Number of Modified judgments	Number of Final Judgments
Illicit enrichment and concealment of property (Criminal Code, article 359-a)	0	0	0	0	0	0	0	0

ILLCIT ENRICHMENT AND CONCEALMENT OF PROPERTY - STATISTICS FOR 2011								
Criminal offence	Number of Criminal Charges	Requests for Enforcement of Investigation	Number of Indictments	Number of persons to whom Judgments of First Instance have been Rendered	Number of Convicted Persons	Number of Appealed Judgements	Number of Modified judgments	Number of Final Judgments
Illicit enrichment and concealment of property (Criminal Code, article 359-a)	0	0	0	0	0	0	0	0

ILLICIT ENRICHMENT AND CONCEALMENT OF PROPERTY - STATISTICS FOR 2012								
Criminal offence	Number of Criminal Charges	Requests for Enforcement of Investigation	Number of Indictments	Number of persons to whom Judgments of First Instance have been Rendered	Number of Convicted Persons	Number of Appealed Judgements	Number of Modified judgments	Number of Final Judgments
Illicit enrichment and concealment of property (Criminal Code, article 359-a)	0	0	0	0	0	0	0	0

Besides article 359-a of the Criminal Code, the former Yugoslav Republic of Macedonia also referred to the following provisions:

Law on Prevention of Corruption

Article 36-a

(1) Unless the procedure for assessment of the assets proves that the property has been acquired and enlarged as a result of reported and taxed incomes, the Public Revenue Office shall enact a decision to levy personal income tax on such assets. The base for calculating the tax shall be the difference between the value of the property at the time when it was acquired and the proved amount of the assets for the acquiring of that property. The tax on unreported incomes shall be calculated using a tax rate of 70%.

(2) An interest shall be calculated and charged against the amount of the calculated (but unpaid) tax pursuant to the Law on Tax Procedure, calculated from the day of the enactment of the decision on taxation.

(3) A legal remedy can be lodged against the decision pursuant to the Law on Tax Procedure and the legal remedy shall not delay the collection of the tax.

(4) The tax collection in accordance with the decision of the paragraph (1) of this Article shall be performed pursuant to the provisions of the Law on Tax Procedure

(5) If it is determined that the property has been increased to a large extent, the Public Revenue Office shall file criminal charges against that person to the competent Public Prosecutors Office.

(6) For actions undertaken pursuant to paragraphs (1) and (5) of this Article the Public Revenue Office shall inform the State Commission.

The former Yugoslav Republic of Macedonia explained that illicit enrichment is established as a criminal offence Article 359-a of the Criminal Code and further measures are prescribed in the Law on Prevention of Corruption and laws regulating tax and tax procedure.

The obligation to report property and income is substantially regulated without prejudice to the presumption of innocence until proven guilty under the law.

Everyone is obliged to pay tax and to pay other public duties and to participate in discharge of public expenditure in a manner prescribed by law.

Paying tax implies prior reporting property/income. Relevant authorities regularly check the origin of the property and/or income within their competences and are competent to file criminal charges and to act within their competences in cooperation with public prosecutors. The perpetrator may be indicted under different criminal grounds depending on the case.

The Public Revenue Office of the Republic of Macedonia, acting upon Article 36 paragraph 3 of the Law on prevention of the corruption, in 2012, has carried out **28** procedures for examining the

property situation of elected and appointed public officials and in 2013 it has carried out 32 procedures of this kind.

Authorities met during the country visit further explained that illicit enrichment has been criminalized in the Criminal Code of Republic of Macedonia in 2009, with aim to harmonize with UNCAC. During the preparations of these amendments to the Criminal Code, there were discussions with the UNODC regarding the material essence of this crime – whether it is included or not.

The legal essence of this crime is connected with the Law on prevention of the corruption, which regulates the duty of the official persons to report their property situation and all increasing of their property situation during their mandate/execution of duty.

The essential action of this incrimination is giving of false or incomplete information about the property of the perpetrator or the members of his/her family, in contrary to the legal obligation for reporting the property situation and its changes. This is an action which presents braking of the imperative norms of the Law on prevention of the corruption – transparent and correct reporting the property situation of the official.

This obligation also refers to the members of the family of the officials.

Objective precondition for this incrimination is that the property (being false reported) significantly exceeds the legal incomes of the official (and family).

The act is being committed intentionally and its perpetrator is an official person/responsible person in a public enterprise, public institution or other legal entity disposing with State capital.

The criminal essence of this act is giving of false data or hiding the true origin of the property which significantly exceeds the legal incomes of the perpetrator.

The more severe form of this crime, stipulated in the paragraph 3: if the act is being committed regarding the property which in greater extent exceeds the legal incomes of the official person or his/her family.

Reversal of the burden of proof is hereby prescribed, considering the fact that the perpetrator himself/herself needs to give reasonable explanation for the origin of his/her property. If this reasonable explanation is given during the procedure, than the perpetrator will be liberated of the sanctions. As reasonable explanation can be considered giving of direct and complete evidence for the legal origin of the property or giving indirect evidence, on bases of which (with high probability that is close to certainty) the court can be assured that the property does not derive from corruption or other illegal activities of the perpetrator but from other activities, such as additional job, incomes from agriculture, activities of the “gray” economy or other.

The property which exceeds the legally obtained incomes of the perpetrator (as well as the property for which false or incomplete information has been given; for which information has not been given or origin has been hid) will be confiscated from the perpetrator (or the members of his/her family or of third persons) according to the provisions for confiscation (of articles 97 – 100 of the Criminal Code).

Authorities further explained that Article 359-a of the Criminal Code applies to all public officials, as per the definition of given to “official person” under article 122 of the same code.

Criminal Code Article 122

(4) An official person, when marked as a perpetrator of a crime, is considered to be:

a) The President of the Republic of Macedonia, the appointed Ambassadors and other representatives of the Republic of Macedonia abroad and also appointed persons by the President of the Republic of Macedonia, elected or appointed official in and by the Parliament of the Republic of Macedonia, in the Government of the Republic of Macedonia, in the State administration, courts, the Public Prosecution Office, The Judicial Council of the republic of Macedonia, the Council of Public prosecutors of the Republic of Macedonia, and other bodies and organizations conducting professional, administrative and other activities within the rights and duties of the Republic, in the local self-government units, as well as persons who permanently or temporarily conduct official duty in these bodies and organizations.

- b) a civil servant performing expert, normative-legal, executive, administrative-supervisory works and administrative works in accordance with the Constitution and the law.
- c) an authorized person within a legal entity which by law or by some other enacted regulation based on the law is entrusted with performing public authority, when the performed the duty fall within the framework of that authority.
- d) a person performing certain official duties, based on the authorization given by law or by some other enacted regulations based on the law.
- e) a military person, when considering crimes in which an official person is pointed out as the perpetrator; and
- f) a representative of a foreign country or an international organization in the Republic of Macedonia.”

(b) Observations on the implementation of the article

The former Yugoslav Republic of Macedonia has criminalized illicit enrichment pursuant to article 359-a, introduced in 2009 to the Criminal Code. No cases have been brought forward on the basis of that article.

The review team encourages the former Yugoslav Republic of Macedonia to increase the use of Article 359-a of the Criminal Code.

Article 21 Bribery in the private sector

Subparagraph (a)

Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally in the course of economic, financial or commercial activities:

(a) The promise, offering or giving, directly or indirectly, of an undue advantage to any person who directs or works, in any capacity, for a private sector entity, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting;

...

(a) Summary of information relevant to reviewing the implementation of the article

The former Yugoslav Republic of Macedonia noted that it has adopted and implemented the measures described above and referred to the following provisions:

Criminal Code Article 253-a - Unauthorized giving of gifts

(Introduced with the amendments of the Criminal Code of 2011)

(1) Whosoever directly or indirectly promises, or offers or gives to another a gift or another benefit or promises or offers such benefit, in order the latter to neglect the interests of the legal entity or natural person when concluding or extending the agreement in the performance of the economy, financial, trade, service or other economy-related activity, or when undertaking another activity, or to achieve unjustified benefit or cause a damage of a greater value to the legal entity or natural person or to a third party, shall be sentenced to imprisonment of one to five years.

(2) The sentence referred to in paragraph (1) of this Article shall be imposed on whosoever offers or gives a gift or another benefit or promises to offer such benefit to another in order to achieve unauthorized personal benefit or benefit for another in the performance of the economy, financial, trade, service or other economy-related service, or in order to cause a damage of a greater value by not concluding or not extending the agreement or by not undertaking another activity it was obliged to undertake for the benefit of the legal entity or natural person whose interests it represents.

(3) If the offender of the crime referred to in paragraphs (1) and (2) of this Article has reported the crime before it is detected or it is found out that it has been detected, may be acquitted from the sentence.

(4) The given gift or other benefit shall be seized.

The former Yugoslav Republic of Macedonia provided the following tables with statistical data and explained that it is relatively new criminal act, considering the fact that it is introduced with the amendments of the Criminal Code of 2011.

UNAUTHORIZED GIVING OF GIFTZ - STATISTICS FOR 2012								
Criminal offence	Number of Criminal Charges	Requests for Enforcement of Investigation	Number of Indictments	Number of persons to whom Judgments of First Instance have been Rendered	Number of Convicted Persons	Number of Appealed Judgements	Number of Modified judgments	Number of Final Judgments
Unauthorized giving of gifts (Criminal Code, article 253-a)	0	0	0	0	0	0	0	0

UNAUTHORIZED GIVING OF GIFTS - STATISTICS FOR 2011								
Criminal offence	Number of Criminal Charges	Requests for Enforcement of Investigation	Number of Indictments	Number of persons to whom Judgments of First Instance have been Rendered	Number of Convicted Persons	Number of Appealed Judgements	Number of Modified judgments	Number of Final Judgments
Unauthorized giving of gifts (Criminal Code, article 253-a)	0	0	0	0	0	0	0	0

(b) Observations on the implementation of the article

The review team was of the view that the former Yugoslav Republic of Macedonia has criminalized active bribery in the private sector, in line with the provision under review. However, the review team was not in a position to judge on the effective implementation of the relevant provisions due to lack of related cases.

The review team recommends the former Yugoslav Republic of Macedonia to consider increasing the use of Article 253-a of the Criminal Code to effectively criminalizing implement the provision under review.

Article 21 Bribery in the private sector

Subparagraph (b)

Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally in the course of economic, financial or commercial activities:

...

(b) The solicitation or acceptance, directly or indirectly, of an undue advantage by any person who directs or works, in any capacity, for a private sector entity, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting.

(a) Summary of information relevant to reviewing the implementation of the article

The former Yugoslav Republic of Macedonia noted that it has adopted and implemented the measures described above and referred to the following provisions:

Criminal Code Article 253 - Unauthorized acceptance of gifts

(1) Whosoever, in the performance of economy, financial, trade, service or other economy-related activity, directly or indirectly will request or accept a gift or other direct or indirect personal benefit or benefit for another party, or a promise or an offer for such benefit, in order to neglect the interest of the legal entity or natural person in the conclusion or extension of the agreement or in the undertaking of another activity, or in order to achieve unjustified benefit or cause a damage of a greater value to the legal entity or natural person or to a third party, shall be sentenced to imprisonment of one to five years.

(2) The sentence referred to in paragraph (1) of this Article shall be imposed on whosoever requests or accepts unauthorized gift or other personal benefit or benefit for a third party, or a promise for offer of such benefit in order not to conclude or extend the agreement or not to undertake another activity for the benefit of the legal entity or natural persons whose interests it represents.

(3) If the offender agrees to accept unauthorized gift or other benefit after the conclusion of the agreement or the undertaking or not undertaking another activity, it shall be fined or sentenced to imprisonment of up to three years.

(4) The received gift or other benefit shall be seized.

The former Yugoslav Republic of Macedonia provided the following tables with statistical data:

UNAUTHORIZED RECEPTION OF GIFTS - STATISTICS FOR 2010								
Criminal offence	Number of Criminal Charges	Requests for Enforcement of Investigation	Number of Indictments	Number of persons to whom Judgments of First Instance have been Rendered	Number of Convicted Persons	Number of Appealed Judgements	Number of Modified judgments	Number of Final Judgments
Unauthorized reception of gifts (Criminal Code, article 253)	0	0	0	0	0	0	0	0

UNAUTHORIZED RECEPTION OF GIFTS - STATISTICS FOR 2011								
Criminal offence	Number of Criminal Charges	Requests for Enforcement of Investigation	Number of Indictments	Number of persons to whom Judgments of First Instance have been Rendered	Number of Convicted Persons	Number of Appealed Judgements	Number of Modified judgments	Number of Final Judgments
Unauthorized reception of gifts (Criminal Code, article 253)	0	0	0	1	0	0	0	0

UNAUTHORIZED RECEPTION OF GIFTS - STATISTICS FOR 2012								
Criminal offence	Number of Criminal Charges	Requests for Enforcement of Investigation	Number of Indictments	Number of persons to whom Judgments of First Instance have been Rendered	Number of Convicted Persons	Number of Appealed Judgements	Number of Modified judgments	Number of Final Judgments
Unauthorized reception of gifts (Criminal Code, article 253)	0	0	0	0	0	0	0	0

(b) Observations on the implementation of the article

The review team was of the view that the former Yugoslav Republic of Macedonia has criminalized passive bribery in the private sector, in line with the provision under review. However, the review team was not in a position to judge on the effective implementation of the relevant provisions due to lack of related cases.

The review team recommends the former Yugoslav Republic of Macedonia to consider increasing the use of Article 253 of the Criminal Code.

Article 22 Embezzlement of property in the private sector

Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally in the course of economic, financial or commercial activities, embezzlement by a person who directs or works, in any capacity, in a private sector entity of any property, private funds or securities or any other thing of value entrusted to him or her by virtue of his or her position

(a) Summary of information relevant to reviewing the implementation of the article

The former Yugoslav Republic of Macedonia noted that it has adopted and implemented the measures described above and referred to the following articles of the Criminal Code: 354 (Embezzlement in the service), 355 (Defraud in the service) and 239 (Concealment) considering the fact that:

Potential perpetrators of the crimes of the article 354 (Embezzlement in the service) and article 355 (Defraud in the service) are responsible persons and according to the article 122 paragraph 7 of the Criminal Code ("Meaning of the terms in this code"), the term responsible person includes the responsible persons in the legal entities. According to the definition for "legal entity" stipulated in the paragraph 6 of the article 122 of the Criminal Code, no difference is made between the property of the entity (the legal entity can be in State property, private property and combined property).

Partial implementation of the article 22 of UNCAC is also achieved through the provisions of the article 239 of the Criminal Code - Concealment.

Article 354 - Embezzlement in the service

- (1) An official person who, with the intent to acquire an unlawful property benefit for him or for another, appropriates money, securities or other movable objects that are entrusted in the service, shall be sentenced to imprisonment of six months to five years.
- (2) If the offender of the crime referred to in paragraph 1 acquires a greater property benefit, shall be sentenced to imprisonment of one to ten years.
- (3) If the offender of the crime referred to in paragraph 1 acquired a significant property benefit, he shall be sentenced to imprisonment of at least four years.
- (4) If the offender of the crime referred to in paragraph 1 acquired a small property benefit and was directed towards acquiring such property benefit, shall be fined or sentenced to imprisonment.
- (5) The sentence referred to in paragraphs (1), (2) and (3) of this Article shall also be imposed to a responsible person, a responsible person in a legal entity with head office in the Republic of Macedonia or a person performing activities of public interest, if the crime is committed by exercising his special authorization or duty, as determined by law.

Article 355 - Defraud in the service

- (1) An official person who, when performing his service, with the intent to acquire an unlawful property benefit for himself or for another, by submitting false bills or in some other way deceives the authorized person to effect an unlawful payment, shall be sentenced to imprisonment of six months to five years.
- (2) If the crime referred to in paragraph 1 a larger property benefit was acquired, the offender shall be sentenced to imprisonment of one to ten years.
- (3) If with the crime referred to in paragraph 1 a significant property benefit was acquired, the offender shall be sentenced to imprisonment of at least three years.
- (4) The sentence referred to in paragraphs 1, 2 and 3 shall also be imposed to a responsible person, a responsible person in a legal entity with head office in the Republic of Macedonia or a person performing activities of public interest, if the crime is committed by exercising his special authorization or duty, as determined by law.

Article 122- Meaning of the terms in this code

- (7) A responsible person within a legal entity shall be considered to be a person within the legal entity, who considering his function or based on special authorization in the legal entity, is entrusted with a certain circle of matters which concern the execution of legal regulations, or regulations adopted on the basis of a law or a general act of the legal entity in the management, use and disposition of property, the management of the

production or some other business venture, or other economic process and their supervision. An official person shall also be considered to be a responsible person, when this concerns crimes where a responsible person is found to be the offender, while the crimes are not foreseen in the chapter on crimes against official duty, i.e. crimes by an official person foreseen in some other chapter of this Code. When this Code specifically stipulates, a responsible person shall also be considered the person who performs a special function or an authorization or is entrusted to independent performance of certain operations within a foreign legal entity, as well as the person who is a representative of the foreign legal entity within the Republic of Macedonia.

(6) A legal entity shall refer to: the Republic of Macedonia, units of the local self-government, political parties, public enterprises, trade companies, institutions, associations, foundations, unions and organizational types of foreign organizations, sports associations and other legal entities in the field of sports, funds, financial organizations, and other organizations specified by law and registered as legal entities and other associations and organizations being recognized the capacity of a legal entity. A foreign legal entity shall refer to: a public enterprise, institution, fund, bank, trade company or any other form of organization in accordance with the laws of a foreign country pertaining to the performance of economic, financial, banking, trade, service or other activities, with head office in another country or a branch office in the Republic of Macedonia or founded as an international association, fund, bank or institution.

Article 239 - Concealment

(1) Whosoever unlawfully appropriates another's movable property that was entrusted to him shall be fined or sentenced to imprisonment of up to three years.

(2) If the value of the concealed objects is minor and the offender has aimed to appropriate objects of such value, he shall be fined or sentenced to imprisonment of up to one year.

(3) If the crime referred to in paragraphs 1 and 2 is committed by a guardian, or a person within a legal entity being entrusted the objects in regard to his work, shall be sentenced to imprisonment of three months to five years.

(4) If the value of the concealed objects is significant, or the objects are goods under temporary protection or cultural heritage, the offender shall be sentenced to imprisonment of one to five years.

(5) Whosoever unlawfully appropriates another's movable property, which he has found or acquired by accident, shall be fined or sentenced to imprisonment of up to one year.

(6) For the crimes referred to in paragraphs 2 and 5, prosecution shall be undertaken upon a private lawsuit, and for paragraphs 1, 3 and 4 upon a proposal.

The former Yugoslav Republic of Macedonia provided the following tables with statistical data:

DEFRAUD IN THE SERVICE - STATISTICS FOR 2010								
Criminal offence	Number of Criminal Charges	Requests for Enforcement of Investigation	Number of Indictments	Number of persons to whom Judgments of First Instance have been Rendered	Number of Convicted Persons	Number of Appealed Judgements	Number of Modified judgments	Number of Final Judgments
Defraud in the service (Criminal Code, article 355)	0	0	1	0	0	0	0	0

DEFRAUD IN THE SERVICE - STATISTICS FOR 2011								
Criminal offence	Number of Criminal Charges	Requests for Enforcement of Investigation	Number of Indictments	Number of persons to whom Judgments of First Instance have been Rendered	Number of Convicted Persons	Number of Appealed Judgements	Number of Modified judgments	Number of Final Judgments
Defraud in the service(Criminal Code, article 355)	1	0	0	5	3	2	0	2

DEFRAUD IN THE SERVICE - STATISTICS FOR 2012								
Criminal offence	Number of Criminal Charges	Requests for Enforcement of Investigation	Number of Indictments	Number of persons to whom Judgments of First Instance have been Rendered	Number of Convicted Persons	Number of Appealed Judgements	Number of Modified judgments	Number of Final Judgments
Defraud in the service - (Criminal Code, article 355)	2	1	1	6	6	1		

EMBEZZLEMENT IN THE SERVICE - STATISTICS FOR 2010								
Criminal offence	Number of Criminal Charges	Requests for Enforcement of Investigation	Number of Indictments	Number of persons to whom Judgments of First Instance have been Rendered	Number of Convicted Persons	Number of Appealed Judgements	Number of Modified judgments	Number of Final Judgments
Embezzlement in the service (Criminal Code, article 354)	0	0	5	3	1	0	0	1

EMBEZZLEMENT IN THE SERVICE - STATISTICS FOR 2011								
Criminal offence	Number of Criminal Charges	Requests for Enforcement of Investigation	Number of Indictments	Number of persons to whom Judgments of First Instance have been Rendered	Number of Convicted Persons	Number of Appealed Judgements	Number of Modified judgments	Number of Final Judgments
Embezzlement in the service (Criminal Code, article 354)	6	4	2	9	4	0	0	4

EMBEZZLEMENT IN THE SERVICE - STATISTICS FOR 2012								
Criminal offence	Number of Criminal Charges	Requests for Enforcement of Investigation	Number of Indictments	Number of persons to whom Judgments of First Instance have been Rendered	Number of Convicted Persons	Number of Appealed Judgements	Number of Modified judgments	Number of Final Judgments
Embezzlement in the service - (Criminal Code, article 354)	36	14	9	11	6	3	9	

(b) Observations on the implementation of the article

Embezzlement in the private sector is addressed through the application of Articles 354 and 355 of the Criminal Code to “a responsible person in a legal entity”. Partial implementation of the article 22 of UNCAC is also achieved through the provisions of the article 239 of the Criminal Code on Concealment.

Article 23 Laundering of proceeds of crime

Subparagraphs 1 (a) and 1 (b) (i)

1. Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

- (a) (i) *The conversion or transfer of property, knowing that such property is the proceeds of crime, for the purpose of concealing or disguising the illicit origin of the property or of helping any person who is involved in the commission of the predicate offence to evade the legal consequences of his or her action;*

(a) (ii) *The concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to property, knowing that such property is the proceeds of crime;*

(b) *Subject to the basic concepts of its legal system:*

(i) *The acquisition, possession or use of property, knowing, at the time of receipt, that such property is the proceeds of crime;*

(a) Summary of information relevant to reviewing the implementation of the article

The former Yugoslav Republic of Macedonia noted that it has adopted and implemented the measures described above and referred to the following provisions:

Article 273- Money laundering and other proceeds of crimes

- (1) The person who will put into circulation, receive, take, replace or change money or other property which is acquired by crime or for which he/she knows that it is acquired by crime, or by converting, changing or transferring or otherwise conceal its location, movement or ownership, shall be sentenced with imprisonment from one to ten years.
- (2) The sentence from paragraph (1) under this Article shall be applied to person who owns, buys, receives from another person or otherwise acquires or uses property or objects for which he/she knows that originated from crime or by forging documents, failure to report facts or otherwise, and conceal that they originate from such source, or conceal its location, movement and ownership.
- (3) If the crime under paragraphs 1 and 2 is committed in banking, financial or other economic activities or by splitting a transaction avoids the obligation to report in the cases determined by law, the perpetrator shall be sentenced with imprisonment for at least three years.
- (4) The person who will commit the crime under paragraphs 1, 2 and 3, and has been obliged and could have known that the money, property or other proceeds of crime are acquired by crime, shall be punished with fine or imprisonment up to three years.
- (5) The person who will commit the crime under 1, 2 and 3 as a member of a group or other organization that deals with money laundering, illegal acquisition of property or other proceeds of crime, or with the help of foreign banks, financial institutions or persons, shall be sentenced to imprisonment for at least five years.
- (6) The official, person responsible in a bank, insurance company, company that deals with games of chance, exchange office, stock exchange or other financial institution, lawyer, except when acting as a defense lawyer, notary public or other person who performs public authorizations or activities of public interest, who will allow or permit transaction or business relationship contrary to their legal obligation or will execute a transaction contrary to the prohibition imposed by a competent body or temporary measure determined by court, or will not report a money laundering, property or property gain, for which he/she found out during the performance of his/her function or duty, shall be sentenced to imprisonment for at least five years.
- (7) An official, person responsible in a bank or other financial institution, or person who performs activities of public interest, and who pursuant to a law is authorized entity for undertaking measures and activities to prevent money laundering and other proceeds of crime, who without authorization will reveal data to a client or unauthorized person regarding the proceeding for examining suspicious transactions or undertaking other measures and activities to prevent money laundering, shall be sentenced to imprisonment from three months to five years.
- (8) If the crime is committed from cupidity or to use data abroad, the perpetrator shall be sentenced to imprisonment for at least one year.
- (9) If the crime from paragraph (7) under this Article is committed negligently, the perpetrator shall be punished with fine or imprisonment up to three years.

- (10) If there are factual or legal barriers for determining the previous crime and prosecution of the perpetrator, the existence of such crime shall be determined on the basis of factual circumstances of the case and the existence of reasonable doubt that the property is acquired by such crime.
- (11) The awareness of the perpetrator, i.e. the obligation and opportunity to know that the property is acquired by crime may be determined on the basis of the objective factual circumstances of the case.
- (12) If the crime under this Article is committed by legal person, it shall be punished with fine.
- (13) The proceeds of crime shall be seized, and if the seizing is not possible, some other property which corresponds to its value shall be seized from the perpetrator.

The former Yugoslav Republic of Macedonia provided the following tables with statistical data:

Money laundering and other incomes from crime- STATISTICS FOR 2010								
Criminal offence	Number of Criminal Charges	Requests for Enforcement of Investigation	Number of Indictments	Number of persons to whom Judgments of First Instance have been Rendered	Number of Convicted Persons	Number of Appealed Judgements	Number of Modified judgments	Number of Final Judgments
Money laundering and other incomes from crime (Criminal Code, article 273)	10	7	6	0	6	0	0	0

MONEY LAUNDERING AND OTHER INCOMES FROM CRIME - STATISTICS FOR 2011								
Criminal offence	Number of Criminal Charges	Requests for Enforcement of Investigation	Number of Indictments	Number of persons to whom Judgments of First Instance have been Rendered	Number of Convicted Persons	Number of Appealed Judgements	Number of Modified judgments	Number of Final Judgments
Money laundering and other incomes from crime (Criminal Code, article 273)	7	14	0	0	0	0	0	0

MONEY LAUNDERING AND OTHER INCOMES FROM CRIME - STATISTICS FOR 2012								
Criminal offence	Number of Criminal Charges	Requests for Enforcement of Investigation	Number of Indictments	Number of persons to whom Judgments of First Instance have been Rendered	Number of Convicted Persons	Number of Appealed Judgements	Number of Modified judgments	Number of Final Judgments
Money laundering and other incomes from crime (Criminal Code, article 273)	12	3	4	0	4	4		2

(b) Observations on the implementation of the article

The former Yugoslav Republic of Macedonia has criminalized money laundering, in line with the provision under review, although few cases had been taken forward under this domestic provision.

Article 23 Laundering of proceeds of crime

Subparagraph 1 (b) (ii)

1. Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(b) Subject to the basic concepts of its legal system:

(ii) Participation in, association with or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the offences established in accordance with this article.

(a) Summary of information relevant to reviewing the implementation of the article

The former Yugoslav Republic of Macedonia noted that it has adopted and implemented the measures described above and referred to the following provisions:

- Participation and abetting in order to commit a crime are criminalized under article 22 of the Criminal Code,
- Association with somebody in order to commit an offence of laundering of money and other proceeds of crime is criminalized under paragraph (5) of the article 273,
- Attempt to commit a crime is criminalized under article 19 of the Criminal Code,
- Conspiracy to commit a crime is criminalized under article 393 of the Criminal Code,

- Aiding in order to commit a crime criminalized under article 24 of the Criminal Code, and
- Counselling in order to commit a crime is criminalized under article 23 of the Criminal Code.

Criminal Code Article 22 - Joint perpetration

If two or several persons, by participation in an act of perpetration or with any other significant contribution towards the performance of the crime, commit jointly a crime, each one of them shall be punished with the punishment that is prescribed for that crime.

Criminal Code Article 273 - Money laundering and other income from crimes

(5) The person who will commit the crime under 1, 2 and 3 as a member of a group or other organization that deals with money laundering, illegal acquisition of property or other proceeds of crime, or with the help of foreign banks, financial institutions or persons, shall be sentenced to imprisonment for at least five years.

Criminal Code Article 19 - Attempt

(1) Whosoever premeditatedly initiates committing of a crime, and fails to complete it, shall be sentenced for an attempted crime which according to a law may be pronounced a sentence -imprisonment of five years or more, and for another attempted crime only when the law explicitly prescribes sentenced of an attempt as well.

(2) The offender shall be sentenced for an attempt within the limits of the sentence prescribed for the crime, and possibly sentenced more leniently.

Criminal Code Article 24 - Assistance

(1) Whosoever premeditatedly assist in the perpetration of a crime shall be punished as if he had committed the crime himself, but he may be punished more leniently.

(2) Assistance to perpetrating a crime shall be especially considered: giving advice or instructions how to commit a crime, making available to the offender means for committing the crime, removal of obstacles for committing the crime, as well as promising in advance to cover the criminal act of the offender, of the means of committing the crime, the traces of the crime or the items obtained through a crime.

Criminal Code Article 23 - Instigation

(1) Whosoever premeditatedly instigates another to committing a crime, shall be punished as if he had perpetrated the crime himself.

(2) Whosoever premeditatedly instigates another to commit a crime, for which a sentence of five years of imprisonment or a more severe sentence could be pronounced according to a law, and there is not even an attempt of this crime, shall be punished as for an attempted crime.

Criminal Code Article 393 - Conspiracy

(1) A person who conspires with another to commit a crime, for which a punishment of imprisonment of three years or more may be pronounced, shall be punished with a fine, or with imprisonment of up to one year.

(2) The sentence stipulated in paragraph 1 shall be also imposed to one that will agree to a crime for which imprisonment of four years or more severe sentence is provided.

Authorities met during the country visit confirmed that Article 19 of the Criminal Code related to the attempt, as well as Article 393 related to conspiracy, are applicable to money laundering offences which are sentenced with imprisonment from one to ten years.

(b) Observations on the implementation of the article

Ancillary offences to money laundering are adequately covered in the national legislation. However, no examples of implementation were available.

Article 23 Laundering of proceeds of crime

Subparagraph 2

2. For purposes of implementing or applying paragraph 1 of this article:

(a) Each State Party shall seek to apply paragraph 1 of this article to the widest range of predicate offences;

(b) Each State Party shall include as predicate offences at a minimum a comprehensive range of criminal offences established in accordance with this Convention;

(c) For the purposes of subparagraph (b) above, predicate offences shall include offences committed both within and outside the jurisdiction of the State Party in question. However, offences committed outside the jurisdiction of a State Party shall constitute predicate offences only when the relevant conduct is a criminal offence under the domestic law of the State where it is committed and would be a criminal offence under the domestic law of the State Party implementing or applying this article had it been committed there;

(a) Summary of information relevant to reviewing the implementation of the article

The former Yugoslav Republic of Macedonia noted that it has adopted and implemented the measures described above and further explained that the criminal act of laundering of money and other proceeds of crime, according to its legal formulation in the article 273 paragraph 1 of the Criminal Code, is not connected with the predicative criminal act but it refers to the property obtained through a crime, which means that it refers to all the criminal acts as predicate offences.

With the amendments of the Criminal Code of 2011, an extension of the application of the criminal legislation was introduced for everyone who in a foreign country commits some of the criminal act of the articles 357 to 359-a of the Criminal Code (receiving bribe, giving bribe, unlawful mediation, illicit enrichment and concealment of property):

Criminal Code Article 117- Application of the criminal legislature to certain crimes committed abroad

The criminal legislature is applicable to whosoever commits a crime referred to in: Article 268 of this Code, if the forgery concerns domestic currency and the criminal acts as referred to in Articles 305 through 326, 357 through 359-a and 403 through 422 of this Code.

Authorities met during the country visit confirmed that it's not a precondition that the predicate offence happens in the former Yugoslav Republic of Macedonia to be able to prosecute related money laundering offence.

(b) Observations on the implementation of the article

The former Yugoslav Republic of Macedonia has adopted an all-crime approach to money laundering's predicate offences, covering not only UNCAC offences but also any other criminal act, committed within the national territory or abroad.

(c) Successes and good practices

The fact that it is sufficient to establish the criminal nature of the proceeds, without the need to identify the predicate offence, for a money laundering conviction was positively noted by the review team as conducive to the pursuit of money laundering cases.

Article 23 Laundering of proceeds of crime

Subparagraph 2 (d)

2. For purposes of implementing or applying paragraph 1 of this article:

(d) Each State Party shall furnish copies of its laws that give effect to this article and of any subsequent changes to such laws or a description thereof to the Secretary-General of the United Nations;

(a) Summary of information relevant to reviewing the implementation of the article

The former Yugoslav Republic of Macedonia reported that it has not furnished copies of its laws to the Secretary-General of the United Nations as prescribed above and that copies of the relevant laws will be sent.

(b) Observations on the implementation of the article

The reviewers recommend the former Yugoslav Republic of Macedonia to comply with the provision under review as soon as possible by sending the aforementioned laws to the Chief, Treaty Section, Office of Legal Affairs, Room M-13002, United Nations, 380 Madison Ave, New York, NY 10017 and copy the Secretary of the Conference of the States Parties to the United Nations Convention against Corruption, Corruption and Economic Crime Branch, United Nations Office on Drugs and Crime, Vienna International Centre, P.O. Box 500, 1400 Vienna, Austria (uncac.cop@unodc.org).

Article 23 Laundering of proceeds of crime

Subparagraph 2 (e)

2. For purposes of implementing or applying paragraph 1 of this article:

(e) If required by fundamental principles of the domestic law of a State Party, it may be provided that the offences set forth in paragraph 1 of this article do not apply to the persons who committed the predicate offence.

(a) Summary of information relevant to reviewing the implementation of the article

Authorities met during the country visit confirmed that Article 273 of the Criminal Code applies to the persons who committed the predicate offence and hence criminalizes self-laundering.

(b) Observations on the implementation of the article

The provision under review is adequately covered in the national legislation, although no examples of implementation were provided.

Article 24 Concealment

Without prejudice to the provisions of article 23 of this Convention, each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally after the commission of any of the offences established in accordance with this Convention without having participated in such offences, the concealment or continued retention of property when the person involved knows that such property is the result of any of the offences established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

The former Yugoslav Republic of Macedonia noted that it has adopted and implemented the measures described above and referred to the following provisions:

Criminal Code Article 261 - Covering up

(1) Whosoever buys, receives as lien, or in some other way procures, covers up or passes an object or property knowing to be acquired through a crime, or something that was received for this by selling or exchanging, shall be fined or sentenced to imprisonment of up to three years.

(2) Whosoever commits the crime referred to in paragraph 1 and who could have known that the object or the property has been acquired through a crime, shall be fined or sentenced to imprisonment of up to one year.

(3) If the value of the object or of the property referred to in paragraph 1 and 2 is significant or the object or property is a good under temporary protection or cultural heritage or device or other object of significant importance for the security of people and property and the safety of the public transport or object of public plants, the offender shall be sentenced to imprisonment of three to eight years.

(4) If the crime referred to in this Article is committed by a legal entity, it shall be fined. (5) The objects referred to in paragraphs 1, 2 and 3 shall be seized.

The former Yugoslav Republic of Macedonia also confirmed the criminalization of continued retention of property when the person involved knew that such property was the result of any of the offences established in accordance with this Convention.

Article 261 of the Criminal Code does not prescribe a term of holding or retention of such property as an element of the incrimination. Moreover, this offence is not covered under Article 262 of the Criminal Code (Effective repentance) which provides that “The court may acquit from punishment the offender of the crimes from articles 235, 239, 240, 241, 242, 243, 244, 245, 246, 248 and 255, if he has returned the object, has indemnified the damages, or in some other way has removed the harmful consequences from the crime, before finding out that he was discovered”.

In other words, the Court shall not acquit from punishment the offender of this criminal offence (Concealment) if the perpetrator returned the property.

(b) Observations on the implementation of the article

The former Yugoslav Republic of Macedonia has criminalized concealment, in line with the provision under review, although no examples of implementation were provided.

Article 25 Obstruction of Justice

Subparagraph (a)

Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(a) The use of physical force, threats or intimidation or the promise, offering or giving of an undue advantage to induce false testimony or to interfere in the giving of testimony or the production of evidence in a proceeding in relation to the commission of offences established in accordance with this Convention;

(a) Summary of information relevant to reviewing the implementation of the article

The former Yugoslav Republic of Macedonia noted that it has adopted and implemented the measures described above and referred to the following provisions:

Criminal Code Article 368-a- Illegal influence on witnesses

(1) Whosoever, by threat to attack the human life or body or property of a greater extent, by offering bribe, by hindering or in any other manner influencing a person to appear or not to appear as a witness in a court or administrative procedure, or if the person is called as a witness to give or not to give a statement in certain sense, shall be sentenced to imprisonment of one to three years.

(2) The sentence stipulated in paragraph 1 shall also be imposed to whosoever, as revenge for the statement given by the person called as a witness or a person close to him, revokes some right, maltreats or causes physical injury to said persons.

(3) If especially severe consequences occurred for the defendant in a criminal procedure or the witness or a person close to him suffered severe bodily injury, the offender shall be sentenced to imprisonment of one to ten years.

Criminal Code Article 368 - Preventing the collection of evidence

(1) A person who with the intention of preventing or hindering the collection of evidence, hides, destroys, damages or makes useless, partially or completely, another's document or object that is serves as evidence, shall be punished with a fine, or with imprisonment of up to one year.

Authorities met during the country visit further explained that although “intimidation” and “promising and giving of an undue advantage” are not specifically mentioned in the wording of the cited provision of the Criminal code, those are however covered by the term “or in any other manner influencing a person”. Moreover the term “or makes useless” mentioned in article 368 covers all kinds of interferences in the production of evidence.

(b) Observations on the implementation of the article

The provision under review is adequately covered in the national legislation, although no examples of implementation were provided.

Article 25 Obstruction of Justice

Subparagraph (b)

Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(b) The use of physical force, threats or intimidation to interfere with the exercise of official duties by a justice or law enforcement official in relation to the commission of offences established in accordance with this Convention. Nothing in this subparagraph shall prejudice the right of States Parties to have legislation that protects other categories of public official.

(a) Summary of information relevant to reviewing the implementation of the article

The former Yugoslav Republic of Macedonia noted that it has adopted and implemented the measures described above and referred to the following provisions:

Criminal Code Article 375 - Coercion against a judiciary employee

- (1) Whosoever by force or by serious threat coerces a judge, a lay judge, a public prosecutor, an ombudsman or their deputy, to do, not to do, or to endure something, shall be fined or sentenced to imprisonment of up to three years.
- (2) If during the commission of the crime the persons from paragraph 1 or their close related persons have suffered a bodily injury, the offender shall be sentenced to imprisonment of one to three years.
- (3) If during the commission of the crime the persons from paragraph 1 or their close related persons, have suffered a severe bodily injury the offender shall be sentenced to imprisonment of one to ten years.
- (4) The attempt of the crimes stipulated in paragraph 1, 2 and 3 is punishable.

Criminal Code Article 382 - Preventing an official person in performance of an official act

- (1) Whosoever by force or serious threat to directly attack the life or body prevents an official person in the performance of his official action or forces him to perform the official action, shall be fined or sentenced to imprisonment of up to three years.
- (2) If during the commission of the crime referred to in paragraph 1 the offender has offended or maltreated the official person or caused him bodily injuries, or threatened him with the use of a weapon, he shall be sentenced to imprisonment of three months to three years.
- (3) Whosoever commits the crime referred to in paragraphs 1 and 2 against an official person or a person who assists in performing activities in the field of public security or the protection of the constitutional system of the Republic of Macedonia, in regard to preventing or revealing a crime, capturing offender of a crime, maintaining the public order and peace, or guarding a person deprived of freedom, shall be sentenced to imprisonment of six months to five years.
- (4) The attempt of a crime referred to in paragraphs 1 and 2 is punishable.
- (5) If the offender of a crime referred to in paragraphs 1, 2 and 3 was provoked by unlawful or rude behaviour of the official person or the person that assists, he may be acquitted from punishment.

Criminal Code Article 383 - Attack upon an official person, when performing security activities

- (1) Whosoever attacks or seriously threatens to attack an official person or a person that assists him in the performance of activities in the field of public safety or protection of the constitutional system of the Republic of Macedonia, in regard to preventing or discovering a crime, capturing offender of a crime, maintaining the public peace and order, or guarding a person that was deprived of freedom, shall be fined or sentenced to imprisonment of up to three years.
- (2) If during the commission of the crime referred to in paragraph 1, the offender threatens by using a weapon or some other dangerous tool, maltreats or insults the official person or the person who assists, or causes bodily injury, he shall be sentenced to imprisonment of six months to five years.
- (3) If during the commission of the crime referred to in paragraph 1, the official person or the person who assists him suffer a serious bodily injury, the offender shall be sentenced to imprisonment of one to ten years.
- (4) If the offender of the crime referred to in paragraphs 1 and 2 was provoked by the unlawful or rude behaviour of the official person or the person that assists, he may be acquitted from punishment.

Criminal Code Article 144 - Threatening the safety

(1) Whosoever threatens the safety of another, by serious threat to attack his life or body or life or body to a person closely related to him, shall be fined or sentenced to imprisonment of six months.

(3) The sentence stipulated in paragraph 2 shall be imposed on the person that commits the crime stipulated in paragraph 1 against an official person while performing the duty, or against several persons.

Criminal Code Article 368 - Prevention of substantiating

(1) Whosoever with the intent to prevent or hinder the substantiating, hides, destroys, damages or makes useless, partially or completely, another's document or object that serves as evidence, shall be fined or sentenced to imprisonment of up to one year.

(2) The sentence referred to in paragraph 1 shall also be imposed to whosoever, with the same intent, removes, destroys, damages, shifts or moves a boundary marker, land-measurement or other sign, regarding ownership, or some other right based on immovable or the right to use water, or to whosoever with the same intent falsely sets up such a sign.

(b) Observations on the implementation of the article

Article 375 of the Criminal Code adequately criminalizes the use of physical force, threats or intimidation to interfere with the exercise of official duties by judiciary employees.

Article 144 of the Criminal Code is broad enough to cover all cases of threat, including threats directed to law enforcement officials.

Article 382 and 383 of the Criminal Code criminalize the use of physical force or threats against official persons in the performance of their official duties. National authorities confirmed that law enforcement officials are covered by both articles pursuant to the definition of article 122 of the Criminal Code.

Article 26 Liability of legal persons

Paragraphs 1 and 2

1. Each State Party shall adopt such measures as may be necessary, consistent with its legal principles, to establish the liability of legal persons for participation in the offences established in accordance with this Convention.

2. Subject to the legal principles of the State Party, the liability of legal persons may be criminal, civil or administrative.

(a) Summary of information relevant to reviewing the implementation of the article

The liability of legal entities is applicable for all criminal acts in accordance with the article 28-a of the Criminal Code which is a general provision. It is also applicable for the criminal acts of articles 353, 357, 358 and 359 of the Criminal Code in accordance with the article 28-a of the Criminal Code and article 68 of the Law on Prevention of Corruption.

The liability of legal entities is emphasized by the legal provisions for the criminal act of Giving bribe (article 358, paragraph 5) and Receiving reward for unlawful influence (article 359, paragraph 6).

Criminal Code Article 28-a - Conditions for criminal liability of a legal entity

(1) In the cases determined by law, the legal entity shall be liable for the crime committed by a responsible person within the legal entity, on behalf, for the account and for the benefit of the legal entity.

(2) The legal entity shall be liable as well for a crime committed by its employee or by a representative of the legal entity, wherefore a significant property benefit has been acquired or significant damage has been caused to another, if:

- 1) the execution of a conclusion, order or other decision or approval of a governing body, managing body or supervising body is considered commission of a crime or
- 2) the commission of the crime resulted from omitting the obligatory supervision of the governing body, managing body or supervising body or
- 3) the governing body, managing body or supervising body has not prevented the crime, or has concealed it or has not reported it before initiating a criminal procedure against the offender.

(3) Under the conditions of paragraphs (1) and (2) of this Article, criminally liable shall be all the legal entities with the exception of the State.

(4) The units of the local self-government shall be only liable for crimes committed apart from their public authorizations.

(5) Under the conditions of paragraphs (1) and (2) of this Article, foreign legal entity shall be criminally liable if the crime has been committed on the territory of the Republic of Macedonia, regardless whether it has its own head or branch office performing the activity on its territory.

Criminal Code Article 358 - Giving bribe

(5) If the crime stipulated in paragraph 1 is committed by a legal entity, it shall be fined.

Criminal Code Article 359 - Accepting a reward for unlawful influence

(6) If the crime referred to in this Article is committed by a legal entity it shall be fined.

There is also liability of legal persons in civil and administrative procedures:

Law on civil procedure (Official Gazette No. 7/2011)

Article 70

(1) Party in the procedure can be any physical and legal person.

Law on general administrative procedure (Official Gazette No. 38/2005)

Article 47

(1) Party in the administrative procedure can be any physical and legal person.

(b) Observations on the implementation of the article

The former Yugoslav Republic of Macedonia recognizes the criminal liability of legal persons in Article 28-a of the Criminal Code. This liability is emphasized by the legal provisions for the criminal act of "Giving bribe" (article 358, paragraph 5) and "Receiving reward for unlawful influence" (article 359, paragraph 6).

The liability of legal persons is also recognised in civil and administrative procedures pursuant to Article 70 of Law on civil procedure and Article 47 of the Law on general administrative procedure.

Article 26 Liability of legal persons

Paragraph 3

3. Such liability shall be without prejudice to the criminal liability of the natural persons who have committed the offences.

(a) Summary of information relevant to reviewing the implementation of the article

This provision of UNCAC is implemented in the article 28 - b of the Criminal Code:

Criminal Code Article 28-b - Limitations of legal entity's liability

(1) The liability of the legal entity does not exclude the criminal liability of a physical person as perpetrator of the criminal act.

(b) Observations on the implementation of the article

The criminal liability of legal persons does not preclude the criminal liability of the natural persons who committed the offences.

The provision under review is adequately covered in the national legislation, although no examples of implementation were provided.

Article 26 Liability of legal persons

Paragraph 4

4. Each State Party shall, in particular, ensure that legal persons held liable in accordance with this article are subject to effective, proportionate and dissuasive criminal or non-criminal sanctions, including monetary sanctions.

(a) Summary of information relevant to reviewing the implementation of the article

The head 6 of the Criminal Code ("Sentencing of legal persons") is dedicated to the sanctions of the legal entities which commit criminal acts:

Sanctioning a legal entity

Article 96-a - Main sentence

- (1) For crimes committed by legal entities, the main sentence is monetary fine.
- (2) The monetary fine shall be applied in an amount which may not be less than 100.000 nor more than 30 million denars.
- (3) For crimes committed for self-interest as well as for crimes committed for benefit or for crimes which cause a more substantial damage, one may prescribe a fine for twice the maximum amount of this sentence or proportional to the damage caused or the benefit obtained, but not more than 10 times their amount.

Article 96-b - Auxiliary sentences

Under conditions specified in this law, the competent court, in case it determines that the legal entity has abused its activity and there is a threat of repeating the crime in future, the Court may determine one or several auxiliary sentences:

- 1) prohibition against obtaining permit, license, concession, authorization or any other right prescribed by a special law;
- 2) prohibition against participation in public bids, assigning public procurement agreements and contracts for public- private partnership;
- 3) prohibition against establishment of new legal entities;
- 4) prohibition against use of subsidies and other favourable credits;
- 5) revoking of permit, license, concession, authorization or any other right prescribed by a special law;
- 6) temporary prohibition against performance of certain activity; 7) permanent prohibition against performance of certain activity; 8) termination of the status of legal entity.

Article 96-c - Conditions for pronouncing auxiliary sentences

(1) The Court may pronounce the sentences specified in article 96-b, item 1 to 4 of this law together with a fine, if the Court considers that the pronouncement of one or more auxiliary sentences corresponds to the severity of the committed crime and that shall prevent the legal entity to commit such acts in future.

(2) The Court shall determine the duration of the sentences under paragraph (1) of this Article, which shall not be less than one, nor more than five years.

(3) The Court shall pronounce revoking a permit, license, concession, authorization or any other right determined by a special law and a fine, if the circumstances of the crime show that the obtained permit, license, concession, authorization or any other right has been abused for the crime to be committed.

(4) The court shall determine temporary ban against performance of activity in duration from one to three years along with a fine, if during the performance of the activity of the legal entity a crime has been committed for which a physical person would be subject to a fine or imprisonment of up to three years, and the manner in which the crime was committed shows there is a threat that the same or similar crime may be committed.

(5) The court shall determine permanent ban against performance of a specific activity out of all activities performed by the legal entity and a fine, if a crime has been committed for which a physical person would be subject to imprisonment of at least three years, and the manner in which the crime was committed shows there is a threat that the same or similar crime may be committed.

(6) The court shall also determine the sentence under paragraph (5) of this Article in case of a crime where there is a final verdict against the legal entity on temporary ban to perform activity. (7) The court shall determine termination of the status of the legal entity and a fine, if a crime has been committed for which a physical person would be subject to imprisonment of at least five years, and the manner in which the crime was committed shows there is a threat that the same or similar crime may be committed. (8) The court shall also determine the sentence under paragraph (7) of this law on in case of a crime where there is a final verdict against the legal entity on permanent ban to perform specific activity.

(9) The sentence temporary or permanent ban to perform specific activity and termination of the status of the legal entity cannot be pronounced for a legal entity established by law, and for a political party.

(10) Based on a final verdict that determines a sentence termination of the status of the legal entity, the competent court shall initiate a lawful procedure for liquidation of the legal entity, within 30 days from the day the verdict enters into force.

Article 96-d - Registering and Deleting of Sentences

(1) The main and auxiliary sentences of Articles 96-a and 96-b of this law are filed electronically in the Register for Sentences for Crimes Committed by Legal Entities which is maintained by the Central Registry of the Republic of Macedonia.

(2) The main sentence of Article 96-a of this law shall be deleted by virtue of office from the abovementioned register three years from the day when the sentence was served or from the day the sentence expired.

(3) The auxiliary sentences of Article 96-b items 1 to 6 of this law shall be deleted by virtue of office from the abovementioned register after the expiry of the period for which they were pronounced.

(4) Access to records from the Central Registry is provided pursuant to Article 106 of this law.

Article 96-e - Publication of a valid court decision

(1) Upon request of the damaged party, the Court, upon burden of the convicted person, may decide the valid court decision to be published, or part thereof, in the Official Gazette of the Republic of Macedonia and two daily newspapers, one of which is in the language of the members of the communities which are non-majority in the Republic of Macedonia.

(2) Upon request of the legal entity that has been exonerated or a legal entity for whom the procedure has been interrupted with a valid court decision, the court shall decide the decision or part thereof to be published, upon burden of the Judicial Council, in the "Official Gazette of the Republic of Macedonia" or two daily newspapers, one of which is in the language of the members of the communities which are non-majority in the Republic of Macedonia..

Article 96-f - Imposition of a sentence

(1) When imposing a sentence, the Court shall take into consideration the balance sheet and the income statement of the legal entity, the type of activity, the nature and severity of the committed crime.

(2) If the Court determines a fine for two or more concurrent crimes, the sole fine may not reach the sum of the individual fines, nor may exceed the statutory maximum of the fine prescribed for the legal entity.

Article 96-g - Imposition of a Fine

(1) For crimes for which a fine or imprisonment of up to three years is imposed, the legal entity shall be subject to a 500 000 MKD fine or, if the crime has been committed from self-interest or which resulted in a damage of great proportions, the maximum fine shall be up to twice the cost of the damage caused or the benefit gained.

(2) For crimes for which imprisonment of at least three years is imposed, the legal entity shall be subject to a fine of up to one million denars or, if the crime has been committed from self-interest or which resulted in a damage of great proportions, the maximum fine shall be up to five times the cost of the damage caused or the benefit gained.

(3) For crimes for which imprisonment of at least five years is imposed, the legal entity shall be subject to a fine of one million denars or, if the crime has been committed from self-interest or which resulted in a damage of great proportions, the maximum fine shall be up to ten times the cost of the damage caused or the benefit gained.

Article 96-h - Reduction of fines

The Court may impose upon the legal entity a fine that is less than the one prescribed in Article 96-f of this law, if:

1. the law provides reduced sentences;
2. the law provides a possibility for release without penalty, but the court will not release the legal entity without penalty;
3. the court determines that there are particularly mitigating circumstances and even with a reduced sentence the court can accomplish the objective of the sanction.

Article 96-i - Limitation of reduction of fines

(1) When the conditions for reduction of fine specified in Article 96-g of this law, the court shall reduce the sentence within the following limitations:

1. for a crime for which the legal entity may be subject to a fine of up to 500 000 MKD or up to twice the amount of the gained benefit or the damage caused, a reduced fine of up to 100 000 MKD may be imposed;
2. for a crime for which the legal entity may be subject to a fine of up to one million denars or up to five times the amount of the gained benefit or the damage caused, a reduced fine of up to 200 000 MKD or twice the cost of the damage caused or the benefit gained may be imposed;
3. for a crime for which the legal entity may be subject to a fine of at least one million denars or up to ten times the amount of the gained benefit or the damage caused, a reduced fine of up to 300 000 MKD or five times the cost of the damage caused or the benefit gained may be imposed.

(2) If the court is authorized to release the legal entity from penalty, the court may reduce the penalty, regardless of the limitations provided for in paragraph (1) of this Article to the minimum amount of the fine.

Article 96-j - Exempt from payment of a fine

The legal entity may be relieved from payment of a fine, if the responsible person with the legal entity, the managing body or the administering body or the supervisory body, after the crime is committed, voluntarily report the perpetrator of the crime or return the proceeds or remove the caused damages or in any other way compensate the harmful effect of the criminal act.

Article 96-k - Execution of the fine

(1) If the convicted legal entity fails to pay the fine within the period determined by the court, which may not be less than 15 days nor more than 30 days from the day the verdict becomes final, the verdict shall be forcefully executed.

(2) If the fine cannot be executed from the assets of the legal entity, due to the fact that the legal entity does not possess assets or ceased to exist before execution of the sentence, the fine shall be collected from its legal successor, and if there is no legal successor it shall be collected from the assets of the founder or founders of the legal entity, proportionally to their share, i.e., in cases regulated by law, for trade companies the fine shall be collected from the assets of the stockholders, i.e., cofounders, proportionally to their share.

(3) The fine for foreign legal entities shall be executed from the assets confiscated in the Republic of Macedonia or, when applying an international agreement ratified according to the Constitution of the Republic of Macedonia, from the assets abroad.

Article 96-l - Conditional postponement of the execution of the fine

(1) The Court may impose conditional postponement of the execution of the fine and the sentences which prescribe prohibition against obtaining permit, license, concession, authorization or any other right prescribed by a special law for a period of one to three years, in case of a crime subject to a fine or imprisonment of up to three years, if the legal entity provides guarantee for execution of the fine in case of termination of the conditional sentence.

(2) The conditional postponement shall be revoked if within the period of supervision a new crime is committed, if a formerly committed crime is discovered or if the legal entity does not provide a guarantee for payment of the fine within the timeframe determined by the court.

(3) The suspended sentence may be revoked during the period of supervision, and if the legal entity commits another crime during that period, which is determined with a verdict after the expiry of period of supervision, the suspended sentence may be revoked at the latest within one year from the day when the period of supervision expired.

Article 96-m - Confiscation of property and property gain and forfeiture of objects

(1) The provisions from articles 97 to 100 from this Law shall apply to confiscation of property and property gain obtained from criminal acts by a legal entity.

(2) If property or property gain cannot be confiscated from the legal entity, due to the fact that it ceased to exist before performing the confiscation, then the legal successor, i.e. successors, or if there are no legal successors, the founder or founders of the legal entity, i.e., the stockholders or cofounders in case of a trade company, as determined by law, shall be obliged to jointly pay an amount corresponding to the obtained property gain.

(3) The provisions of article 101-a of this Law shall apply to confiscation of objects from the legal entity.

Article 96-n - Special provisions for statute of limitations for criminal prosecution and execution of sentence

(1) The criminal prosecution of a legal entity cannot be initiated in the following cases:

- 1) three years after a crime was committed which is subject to a fine or imprisonment of up to three years;
- 2) five years after a crime was committed which is subject to imprisonment of more than three years and
- 3) ten years after a crime was committed which is subject to imprisonment of more than five years.

(2) The statute of limitations for execution of fine and the sanction of revoking of permit, license, concession, authorization or any other right prescribed by a special law shall be applicable three years after the verdict that prescribes these sentences enters into force.

(3) The statute of limitations for execution of sentences prescribing prohibitions shall be applicable after the expiry of the period for which they have been pronounced.

(4) The provisions of Articles 107 through Article 112 of this Law shall apply to the termination and the course of the statute of limitations for criminal prosecution and the course and termination of the statute of limitations for execution of fine and the auxiliary sentences.

Regarding sanctions, reference was made to the table under Paragraph 2 of Article 27 on participation and attempt.

The former Yugoslav Republic of Macedonia provided the following statistics:

- One legal entity was indicted in 2010 (the case is currently in investigative procedure).
- In 2011, 2 criminal charges were filed against legal entities (currently the cases are in pretrial procedure) and 1 sanction against a legal entity was imposed.
- 40 sanctions were imposed against legal entities in 2012.
- In 2013, 3 criminal charges were filed against legal entities (currently the cases are in pretrial procedure).
- Final standing judgments were rendered in 2011 against 2 legal entities.

(b) Observations on the implementation of the article

The former Yugoslav Republic of Macedonia provides for adequate sanctions that can be imposed on legal persons. The provision under review is adequately covered in the national legislation.

Article 27 Participation and attempt

Paragraph 1

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, participation in any capacity such as an accomplice, assistant or instigator in an offence established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

The participation in any capacity (accomplice, assistant, and instigator) in order to commit crimes established under UNCAC is implemented pursuant to articles 22, 23 and 24 of the Criminal Code.

Criminal Code Article 22 - Joint perpetration

If two or several persons, by participation in an act of perpetration or with any other significant contribution towards the performance of the crime, commit jointly a crime, each one of them shall be punished with the punishment that is prescribed for that crime.

Criminal Code Article 23 - Instigation

(1) Whosoever premeditatedly instigates another to committing a crime, shall be punished as if he had perpetrated the crime himself.

(2) Whosoever premeditatedly instigates another to commit a crime, for which a sentence of five years of imprisonment or a more severe sentence could be pronounced according to a law, and there is not even an attempt of this crime, shall be punished as for an attempted crime.

Criminal Code Article 24 - Assistance

(1) Whosoever premeditatedly assist in the perpetration of a crime shall be punished as if he had committed the crime himself, but he may be punished more leniently.

(2) Assistance to perpetrating a crime shall be especially considered: giving advice or instructions how to commit a crime, making available to the offender means for committing the crime, removal of obstacles for committing the crime, as well as promising in advance to cover the criminal act of the offender, of the means of committing the crime, the traces of the crime or the items obtained through a crime.

(b) Observations on the implementation of the article

The Criminal Code contains general provisions criminalizing the participation in an offence, namely Article 22 on “joint perpetration”, Article 23 on “instigation” and Article 24 on “assistance”.

The provision under review is adequately covered in the national legislation, although no examples of implementation were provided.

Article 27 Participation and attempt

Paragraph 2

2. Each State Party may adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, any attempt to commit an offence established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

The attempt to commit offences established under UNCAC is covered in article 19 of the Criminal Code:

Criminal Code Article 19 - Attempt

(1) Whosoever premeditatedly initiates committing of a crime, and fails to complete it, shall be sentenced for an attempted crime which according to a law may be pronounced a sentence -imprisonment of five years or more, and for another attempted crime only when the law explicitly prescribes sentenced of an attempt as well.

(2) The offender shall be sentenced for an attempt within the limits of the sentence prescribed for the crime, and possibly sentenced more leniently.

Table of criminal acts - sanctions- statute of limitations - liability of legal persons		
Crimes	Sanction	Statute of limitations
Misuse of official position and authorization (Criminal Code, article 353 para.1)	imprisonment of 6 months up to 3 years	3 years
Misuse of official position and authorization (Criminal Code, article 353 para. 2)	imprisonment of 6 months up to 5 years	5 years
Misuse of official position and authorization (Criminal Code, article 353 para. 3)	imprisonment of at least 3 years	20 years
Misuse of official position and authorization (Criminal Code, article 353 para. 4)	related to para. 1-imprisonment of 6 months up to 3 years; related to para. 2 - imprisonment of 6 months up to 5 years; related to para. 3 - imprisonment of at least 3 years	See above. And for legal entities: related to para. 1 - 3 years; related to para. 2 - 5 years; related to para. 3 - 10 years
Misuse of official position and authorization - Criminal Code, article 353 para. 5 - related to public procurements	imprisonment of at least 5 years	20 years
Embezzlement in the service (Criminal Code, article 354 para.1)	imprisonment of 6 months up to 5 years	5 years
Embezzlement in the service (Criminal Code, article 354 para.2)	imprisonment of 1 up to 10 years	10 years

Embezzlement in the service (Criminal Code, article 354 para.3)	imprisonment of at least 4 years	20 years
Embezzlement in the service (Criminal Code, article 354 para.4)	a fine or imprisonment of up to 1 year	2 years
Embezzlement in the service (Criminal Code, article 354 para.5)	related to para. 1-imprisonment of 6 months up to 5 years; related to para. 2 - imprisonment of 1 up to 10 years; related to para. 3 - imprisonment of at least 4 years	See above. And for legal entities: related to para. 1 - 5 years; related to para. 2 - 10 years; related to para. 3 - 10 years
Defraud in the service (Criminal Code, article 355 para. 1)	imprisonment of 6 months up to 5 years	5 years
Defraud in the service (Criminal Code, article 355 para. 2)	imprisonment of 1 up to 10 years	10 years
Defraud in the service (Criminal Code, article 355 para. 3)	imprisonment of at least 3 years	20 years
Defraud in the service (Criminal Code, article 355 para. 4)	related to para. 1-imprisonment of 6 months up to 5 years; related to para. 2 - imprisonment of 1 up to 10 years; related to para. 3 - imprisonment of at least 3 years	See above. And for legal entities: related to para. 1- 5 years; related to para. 2 - 10 years; related to para. 3 - 10 years
Helping oneself in the service (Criminal Code, article 356)	imprisonment of 3 months up to 5 years	5 years
Giving a bribe - Active bribery (Criminal Code, article 358 para. 1)	imprisonment of 1 up to 5 years	5 years
Giving a bribe - Active bribery (Criminal Code, article 358 para. 2)	imprisonment of 1 up to 3 years	3 years
Giving a bribe - Active bribery (Criminal Code, article 358 para. 4)	related to para. 1- imprisonment of 1 up to 5 years; related to para. 2 - imprisonment of 1 up to 3 years;	See above. And for legal entities: related to para. 1- 5 years; related to para. 2 - 3 years;
Giving a bribe - Active bribery (Criminal Code, article 358 para. 5)	a fine	2 years
Receiving a bribe - Passive bribery (Criminal Code, article 357 para. 1)	imprisonment of 4 up to 10 years	10 years

Receiving a bribe - Passive bribery (Criminal Code, article 357 para. 2)	imprisonment of 1 up to 5 years	5 years
Receiving a bribe - Passive bribery (Criminal Code, article 357 para. 3)	imprisonment of 3 months up to 3 years	3 years
Receiving a bribe - Passive bribery (Criminal Code, article 357 para. 4)	imprisonment of at least 4 years	20 years
Receiving a bribe - Passive bribery (Criminal Code, article 357 para. 5)	imprisonment of at least 5 years	20 years
Receiving a bribe - Passive bribery (Criminal Code, article 357 para. 6)	related to para. 1- imprisonment of 4 up to 10 years; related to para. 2 - imprisonment of 1 up to 5 years; related to para. 3 - imprisonment of 3 months up to 3 years; related to para. 4 - imprisonment of at least 4 years; related to para. 5- imprisonment of at least 5 years;	See above. And for legal entities: related to para. 1- 10 years; related to para. 2 - 5 years; related to para. 3 - 3 years; related to para. 4 - 10 years; related to para. 5- 10 years;
Giving award for unlawful mediation (Criminal Code, article 358-a para. 1)	imprisonment of 1 up to 3 years	3 years
Giving award for unlawful mediation (Criminal Code, article 358-a para. 2)	imprisonment of 1 up to 5 years	5 years
Giving award for unlawful mediation (Criminal Code, article 358-a para. 3)	imprisonment of 3 up to 5 years	5 years
Giving award for unlawful mediation (Criminal Code, article 358-a para. 4)	a fine or imprisonment of up to 3 years	3 years
Receiving award for unlawful mediation (Criminal Code, article 359 para.1)	imprisonment of 1 up to 3 years	3 years
Receiving award for unlawful mediation (Criminal Code, article 359 para.2)	imprisonment of 1 up to 3 years	3 years
Receiving award for unlawful mediation (Criminal Code, article 359 para.3)	imprisonment of 1 up to 5 years	5 years
Receiving award for unlawful mediation (Criminal Code, article 359 para.4)	a fine or imprisonment up to 1 year	2 years
Receiving award for unlawful mediation (Criminal Code, article 359 para.5)	imprisonment of 1 up to 5 years	5 years
Receiving award for unlawful mediation (Criminal Code, article 359 para. 6)	a fine	2 years
Receiving award for unlawful mediation (Criminal Code, article 359 para.7)	imprisonment of 1 up to 10 years	10 years

Receiving award for unlawful mediation (Criminal Code, article 359 para.8)	a fine	2 years
Falsifying (Counterfeit) an official document (Criminal Code, article 361)	imprisonment of 3 months up to 5 years	5 years
Unlawful collection and payment (Criminal Code, article 362)	fine or imprisonment of up to 3 years	3 years
Money laundering and other income from crimes (Criminal Code, article 273 para.1)	imprisonment of 1 up to 10 years	10 years
Money laundering and other income from crimes (Criminal Code, article 273 para.2)	imprisonment of 1 up to 10 years	10 years
Money laundering and other income from crimes (Criminal Code, article 273 para.3)	imprisonment of at least 3 years	20 years
Money laundering and other income from crimes (Criminal Code, article 273 para.4)	a fine or imprisonment of up to 3 years	3 years
Money laundering and other income from crimes (Criminal Code, article 273 para.5)	imprisonment of at least 5 years.	20 years
Money laundering and other income from crimes (Criminal Code, article 273 para.6)	imprisonment of at least 5 years.	20 years
Money laundering and other income from crimes (Criminal Code, article 273 para.7)	imprisonment of 3 months up to 5 years	5 years
Money laundering and other income from crimes (Criminal Code, article 273 para.8)	imprisonment of at least 1 year	20 years
Money laundering and other income from crimes (Criminal Code, article 273 para.9)	a fine or imprisonment of up to 3 years	3 years
Money laundering and other income from crimes (Criminal Code, article 273 para.12)	a fine	2 years
Unauthorized reception of gifts (Criminal Code, article 253 para.1)	imprisonment of 1 up to 5 years.	5 years
Unauthorized reception of gifts (Criminal Code, article 253 para.2)	imprisonment of 1 up to 5 years.	5 years
Unauthorized reception of gifts (Criminal Code, article 253 para.3)	a fine or imprisonment of up to 3 years	3 years
Unauthorized reception of gifts (Criminal Code, article 253 para.4)	imprisonment of 1 up to 5 years	5 years
Unauthorized reception of gifts (Criminal Code, article 253 para.5)	imprisonment of 1 up to 5 years	5 years
Unauthorized reception of gifts (Criminal Code, article 253 para.6)	a fine	2 years

Unauthorized giving of gifts (Criminal Code, article 253-a para. 1)	imprisonment of 1 up to 5 years	5 years
Unauthorized giving of gifts (Criminal Code, article 253-a para. 2)	imprisonment of 1 up to 5 years	5 years
Unauthorized giving of gifts (Criminal Code, article 253-a para. 4)	imprisonment of 1 up to 5 years	5 years
Unauthorized giving of gifts (Criminal Code, article 253-a para. 5)	imprisonment of 1 up to 5 years	5 years
Unauthorized giving of gifts (Criminal Code, article 253-a para. 6)	a fine	2 years
Misuse of the voting right (Criminal Code, article 162 para. 1)	imprisonment of at least 5 years	20 years
Misuse of the voting right (Criminal Code, article 162 para. 2)	imprisonment of at least 5 years	20 years
Misuse of the voting right (Criminal Code, article 162 para. 3)	a fine or imprisonment of up to 1 year.	2 years
Misuse of the voting right (Criminal Code, article 162 para. 4)	a fine	2 years
Unprincipled operation within the service (Criminal Code, article 353-c para.1)	imprisonment of 3 months up to 3 years	3 years
Unprincipled operation within the service (Criminal Code, article 353-c para.2)	imprisonment of 6 months up to 5 years	5 years
Unprincipled operation within the service (Criminal Code, article 353-c para.3)	imprisonment of at least 3 years	20 years
Unprincipled operation within the service (Criminal Code, article 353-c para.4)	related to para. 1- imprisonment of 3 months up to 3 years; related to para. 2 - imprisonment of 6 months up to 5 years; related to para. 3 - imprisonment of at least 3 years;	See above. And for legal entities: related to para. 1- 3 years; related to para. 2 - 5 years; related to para. 3 - 10 years;
Unprincipled operation within the service (Criminal Code, article 353-c para.5)	imprisonment of 6 months up to 3 years and a fine	3 years
Unprincipled operation within the service (Criminal Code, article 353-c para.6)	imprisonment of 6 months up to 2 years and a fine	3 years
Insurance fraud (Criminal Code, article 250 para. 1)	a fine or imprisonment up to 3 years.	3 years

Insurance fraud (Criminal Code, article 250 para. 2)	a fine or imprisonment up to 3 years.	3 years
Insurance fraud (Criminal Code, article 250 para. 4)	a fine	2 years
Fraud to the detriment of the funds of the European Community (Criminal Code, article 249-a para. 1)	imprisonment of 6 months up to 5 years	5 years
Fraud to the detriment of the funds of the European Community (Criminal Code, article 249-a para. 2)	imprisonment of 6 months up to 5 years	5 years
Fraud to the detriment of the funds of the European Community (Criminal Code, article 249-a para. 3)	imprisonment of 6 months up to 5 years	5 years
Fraud to the detriment of the funds of the European Community (Criminal Code, article 249-a para. 4)	a fine	2 years
Illicit performance of authorised auditor (Criminal Code, article 275-b para. 1)	a fine and imprisonment of up to 5 years.	5 years
Illicit performance of authorised auditor (Criminal Code, article 275-b para. 2)	a fine and imprisonment of 1 up to 5 years	5 years
Illicit performance of authorised auditor (Criminal Code, article 275-b para. 3)	imprisonment of 1 up to 10 years	10 years
Illicit performance of authorised auditor (Criminal Code, article 275-b para. 4)	a fine	2 years
Abuse of an open call procedure, awarding of public procurement contract or public-private partnership (Criminal Code, article 275-c para.1)	a fine or imprisonment up to 3 years	3 years
Abuse of an open call procedure, awarding of public procurement contract or public-private partnership (Criminal Code, article 275-c para.2)	imprisonment of at least 4 years	20 years
Abuse of an open call procedure, awarding of public procurement contract or public-private partnership (Criminal Code, article 275-c para.3)	imprisonment of at least 5 years	20 years

Abuse of an open call procedure, awarding of public procurement contract or public-private partnership (Criminal Code, article 275-c para.4)	a fine	2 years
Illicit enrichment and concealment of property (Criminal Code, article 359-a para. 1)	imprisonment of 6 months up to 5 years and a fine	5 years
Illicit enrichment and concealment of property (Criminal Code, article 359-a para. 2)	imprisonment of 6 months up to 5 years and a fine	5 years
Illicit enrichment and concealment of property (Criminal Code, article 359-a para. 3)	imprisonment of 1 up to 8 years and a fine	10 years

(b) Observations on the implementation of the article

According to article 19 of the Criminal Code, attempted crimes are criminalized in the former Yugoslav Republic of Macedonia when the crime is punishable by imprisonment of five years or more or when the law explicitly prescribes a sentence of an attempt of such crime.

Most of UNCAC offenses are punishable in the former Yugoslav Republic of Macedonia for an imprisonment period of less than five years, which makes their attempt not criminalized unless the law explicitly provides otherwise, like the case of Article 382 of the Criminal Code on Preventing an official person in performance of an official act, and Article 375 on Coercion against a judiciary employee.

Although the provision under review is of an optional nature, the former Yugoslav Republic of Macedonia may wish to extend the scope of application of the domestic provision on the criminalization of attempt to cover all UNCAC offenses.

Article 27 Participation and attempt

Paragraph 3

3. Each State Party may adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, the preparation for an offence established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

Preparatory acts of an offence are covered in article 18 of the Criminal Code:

Criminal Code Article 18 - Preparation

(1) He who shall premeditatedly prepare the commission of a crime, shall be sentenced only when explicitly so determined by law.

(2) The preparation of a crime may be determined by law as a special crime, or a law may prescribe punishment for preparing certain crime.

(3) When the law prescribes punishment for the preparation of a certain crime, the preparation may consist of procurement or adaptation of means for the perpetration of a crime, of removing obstacles for committing the crime, of concluding agreements, planning or organizing together with other offenders of a crime, as well as of other activities that create conditions for direct commission of the crime, and which do not represent an action of perpetration.

Authorities further explained that a general determination of the criminal legislation of the Republic of Macedonia is the principal impunity of preparatory acts (modern liberal concept); however, preparation is prescribed with a general provision in order to distinguish attempt from preparation and to limit the sphere of penalization relied on arbitrary interpretation (of the judge deciding) on borderline acts (preparatory acts - acts of attempt).

The Macedonian legislation as other modern legislations recognizes exceptions from the principal impunity of preparatory acts: in cases of endangered constitutional order, in cases when the preparatory acts are dangerous to protected legal goods (article 395 - Manufacture and acquisition of weapons and means intended for committing a crime), in cases of organized crime and terrorism when the preparatory acts are *delictum sui generis* (Article 313- Terrorist endangerment of the constitutional order and security, article 393 – Agreement (Conspiracy) to commit a crime, article 394 – Criminal Association, article 394-a – Terrorist organisation, article 394-c – Financing terrorism).

(b) Observations on the implementation of the article

As confirmed in its answer, Preparation to commit a crime is not criminalized in itself in the former Yugoslav Republic of Macedonia except regarding a number of offences which are not related to UNCAC.

Article 29 Statute of limitations

Each State Party shall, where appropriate, establish under its domestic law a long statute of limitations period in which to commence proceedings for any offence established in accordance with this Convention and establish a longer statute of limitations period or provide for the suspension of the statute of limitations where the alleged offender has evaded the administration of justice.

(a) Summary of information relevant to reviewing the implementation of the article

The statute of limitations is regulated within the provisions of the article 107 and 108 of the Criminal Code:

Criminal Code Article 107 - Barring of criminal prosecution

(1) Unless otherwise determined by this Code, criminal prosecution may not be undertaken when the following expires:

- 1) 30 years from the commission of the crime, for which according to the law, a life imprisonment may be pronounced,
- 2) 20 years from the commission of the crime, for which according to the law, imprisonment of more than ten years may be pronounced,
- 3) ten years from the commission of the crime, for which according to the law, imprisonment of more than five years may be pronounced,
- 4) five years from the commission of the crime, for which according to the law, imprisonment of more than three years may be pronounced,
- 5) three years from the commission of the crime, for which according to the law, imprisonment of more than one year may be pronounced and
- 6) two years from the commission of the crime, for which according to the law, imprisonment of one year or a fine may be pronounced.

(2) If several sentences are prescribed for a crime, the time barring is determined according to the most severe prescribed sentence.

Criminal Code Article 108 - Course and cessation of the time barring of the criminal prosecution

(1) The obsolescence of the criminal prosecution starts on the day the crime was committed or the consequence occurred. If a crime is committed to a child the obsolescence of the criminal prosecution starts on the day of his/hers (the child's) adulthood.

(2) The obsolescence does not run at the time when, according to the law, the prosecution may not begin or continue.

(3) The obsolescence is interrupted by each process action that is undertaken in order to prosecute the offender because of the committed crime.

(4) The obsolescence is interrupted also when the offender, at the time while this time period of obsolescence is still going on, commits an equally severe or more severe crime.

(5) For each interruption, the obsolescence starts to run again from the beginning.

(6) The time barring of the criminal prosecution comes into effect in any case when twice the time requested according to a law for time barring of criminal prosecution elapses.

Criminal Code Article 96-n - Special provisions for statute of limitations for criminal prosecution and execution of sentence

(1) The criminal prosecution of a legal entity cannot be initiated in the following cases:

1) three years after a crime was committed which is subject to a fine or imprisonment of up to three years;

2) five years after a crime was committed which is subject to imprisonment of more than three years and

3) ten years after a crime was committed which is subject to imprisonment of more than five years.

(2) The statute of limitations for execution of fine and the sanction of revoking of permit, license, concession, authorization or any other right prescribed by a special law shall be applicable three years after the verdict that prescribes these sentences enters into force.

(3) The statute of limitations for execution of sentences prescribing prohibitions shall be applicable after the expiry of the period for which they have been pronounced.

(4) The provisions of Articles 107 through Article 112 of this Law shall apply to the termination and the course of the statute of limitations for criminal prosecution and the course and termination of the statute of limitations for execution of fine and the auxiliary sentences.

Criminal Code Article 112 - No obsolescence for the crimes of genocide and war crimes

The criminal prosecution and the execution of punishment do not become obsolete for crimes foreseen in articles 403 to 407-b and 416-a, as well as for crimes for which no obsolescence is foreseen with ratified international conventions.

Regarding the statute of limitation's periods, reference was made to the table under Paragraph 2 of Article 27 on participation and attempt.

(b) Observations on the implementation of the article

According to Article 107 of the Criminal Code, the period of limitations for criminal cases ranges from two up to 30 years, depending on the severity of the sentence prescribed for a specific crime, and starts on the day the crime was committed or the consequence occurred.

The provision under review is adequately covered in the national legislation.

Article 30 Prosecution, adjudication and sanctions

Paragraph 1

1. Each State Party shall make the commission of an offence established in accordance with this Convention liable to sanctions that take into account the gravity of that offence.

(a) Summary of information relevant to reviewing the implementation of the article

Regarding the applicable penalties for UNCAC offences, reference was made to the table under Paragraph 2 of Article 27 on participation and attempt.

Criminal Code Article 39 - General rules to mete out a sentence

(1) The court shall mete out a sentence to the offender within the limits prescribed for that crime by law, bearing in mind the criminal liability of the offender, the gravity of the crime and the purposes of the punishment.

(2) Hereby, the court shall consider all the circumstances affecting the decrease or increase of the sentence (alleviating or aggravating circumstances), and especially: the level of criminal liability, the motives for the perpetrated crime, the extent of jeopardizing or damage to the protected goods, the circumstances under which the crime was committed, the contribution of the victim in commission of the crime, the previous life of the offender, his personal circumstances and his behaviour after the committed crime, as well as other circumstances that concern the personality of the offender.

(3) When the court metes out the sentence it shall especially consider the total effect of the sentence to the offender, its consequences to the personality and needs of re-socialization of the offender.

(4) When the court metes out the sentence to the offender for the recidive crime, it shall especially consider whether the previous crime is of the same kind as the new crime, whether the crimes were committed with the same motives and how much time passed since the previous sentence, respectively since the served or forgiven sentence.

(5) When the court metes out the sentence it shall especially consider whether the crime has been committed against a person or group of persons or property, directly or indirectly, because of his or their national and social background, political and religious belief, material and social condition, sex, race or colour of the skin.

(6) When meting out a fine, the court shall also consider the property state of the offender, herewith considering his other incomes, his property and his family obligations.

(b) Observations on the implementation of the article

The former Yugoslav Republic of Macedonia has adopted penalties for UNCAC offences that range from a fine up to ten years' imprisonment, taking into account the gravity of the offence. The provision under review is adequately covered in law.

Article 30 Prosecution, adjudication and sanctions

Paragraph 2

2. Each State Party shall take such measures as may be necessary to establish or maintain, in accordance with its legal system and constitutional principles, an appropriate balance between any immunities or jurisdictional privileges accorded to its public officials for the performance of their functions and the possibility, when necessary, of effectively investigating, prosecuting and adjudicating offences established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

The immunity in the former Yugoslav Republic of Macedonia is limited (functional) and as such, it is intended to provide independence, respect of laws and professionalism in the work of the public officials who enjoy it:

- The members of the Parliament (article 64 of the Constitution);
- The President of the State (article 83 of the Constitution);
- The Prime Minister and the ministers in the Government (article 89 of the Constitution);
- The judges (article 100 of the Constitution);

- The members of the State Judicial Council (article 104 of the Constitution);
- The Public Prosecutor of the Republic of Macedonia (article 107 of the Constitution) and
- The judges of the Constitutional Court (article 111 of the Constitution).

Constitution of the Republic of Macedonia Article 64

Representatives enjoy immunity. A Representative cannot be held to have committed a criminal offence or be detained owing to views he/she has expressed or to the way he/she has voted in the Assembly. A Representative cannot be detained without the approval of the Assembly unless found committing a criminal offence for which a prison sentence of at least five years is prescribed. The Assembly can decide to invoke immunity for a Representative without his/her request, should it be necessary for the performance of the representative's office. Representatives may not be called up for duties in the Armed Forces during the course of their term of office. A Representative is entitled to remuneration determined by law.

Article 83

The duty of the President of the Republic is incompatible with the performance of any other public office, profession or appointment in a political party. The President of the Republic is granted immunity. The Constitutional Court decides by a two-thirds majority vote of the total number of judges on any case for withholding immunity and approving of detention for the President of the Republic.

Article 89

The Government is composed of a prime Minister and Ministers. The Prime Minister and the Ministers cannot be Representatives in the Assembly. The Prime Minister, and Ministers are granted immunity. The Government decides on their immunity. The Prime Minister, Deputy Prime Ministers and Ministers cannot be called up for duties in the Armed Forces. The office of Prime Minister or Minister is incompatible with any other public office or profession. The organization and mode of working of the Government are regulated by law.

Article 100

Judges are granted immunity. The Assembly decides on the immunity of judges. The performance of a judge's office is incompatible with other public office, profession or membership in a political party. Political organization and activity in the judiciary is prohibited.

Article 104

The State Judicial Council is composed of seven members. The Assembly elects the members of the Council. The members of the Council are elected from the ranks of outstanding members of the legal profession for a term of six years with the right to one re-election. Members of the Republican Judicial Council are granted immunity. The Assembly decides on their immunity. The office of a member of the Republican Judicial Council is incompatible with the performance of other public offices, professions or membership in political parties.

Article 107

The Public Prosecutor is granted immunity. The Assembly decides on his/her immunity. The office of the Public Prosecutor is incompatible with the performance of any other public office, profession or membership in a political party.

Article 111

The office of judge of the Constitutional Court is incompatible with the performance of other public office, profession or membership in a political party. Judges of the Constitutional Court are granted immunity. The Constitutional Court decides on their immunity. Judges of the Constitutional Court cannot be called up for duties in the Armed Forces. The office of a judge of the Constitutional Court ceases when the incumbent resigns. A judge of the Constitutional Court shall be discharged from office if sentenced for a criminal offence to unconditional imprisonment of a minimum of six months, or if he/she permanently loses the capability of performing his/her office, as determined by the Constitutional Court.

AMENDMENT XXIII

1. The Prime Minister is granted immunity. The Assembly decides on his or her immunity.
2. This amendment replaces paragraph 3 of Article 89 of the Constitution of the Republic of Macedonia.

AMENDMENT XXIX

1. The Judicial Council of the Republic of Macedonia - elects and dismisses judges and lay judges;
 - determines the termination of a judge's office; - elects and dismisses Presidents of Courts;
 - monitors and assesses the work of the judges
 - decides on the disciplinary accountability of judges; - has the right to revoke the immunity of judges;
 - proposes two judges for the Constitutional Court of the Republic of Macedonia from among the judges; and
 - performs other duties stipulated by law.

On the election of judges, lay judges and court presidents, equitable representation of citizens belonging to all communities shall be observed. The Council shall submit an annual report for its work to the Assembly of the Republic of Macedonia in form, content and manner determined by law.

2. This amendment replaces Article 105 of the Constitution of the Republic of Macedonia and deletes line 15 of paragraph 1, Article 68 of the Constitution of the Republic of Macedonia.

Also, the issue of immunity is addressed by the following laws:

Law on Courts (article 65), law on Judicial Council (article 62, article 63), Law on Government of the Republic of Macedonia (article 14) and Law on the members of the Parliament (article 17).

Law on Courts Article 65

- (1) The judges shall enjoy immunity in exercising their judicial function.
- (2) A judge cannot be held criminally liable for expressed opinion and decision made while delivering court decisions.
- (3) A judge may not be detained without the approval of the Judicial Council of the Republic of Macedonia, unless found perpetrating a crime that is sanctioned by a penalty of imprisonment of at least five years.
- (4) The revocation of the judicial immunity of judges shall be decided on by the Judicial Council of the Republic of Macedonia.
- (5) The procedure for deciding on the revocation of the immunity of a judge shall be urgent.

Law on judicial Council Article 62- Revoking the immunity of a judge

The Council shall decide on revoking the immunity of a judge, in cases regulated by law, on the session of the Council with a two-thirds majority of votes.

Article 63 - Deciding on a request for detention

The request for approving the detention of a judge, i.e. the notification that a judge has been detained shall be decided on by the Council on its session.

Following the notification of the detention of a judge who has not called upon their immunity, the Council may decide to apply immunity to the judge if they assess that this is necessary for exercising the judicial office.

If the Council does not approve detention, the judge shall be released immediately.

The procedure where the Council decides on revoking the immunity of the judge shall be urgent and it shall be conducted within 3 days from the delivery of the request, i.e. notification for detention.

Law on Government of the Republic of Macedonia Article 14

The President of the Government and the Ministers enjoy immunity as same as the members of the Parliament of the Republic of Macedonia. The Government decides for their immunity.

Law on the members of the Parliament Article 17

The member of the Parliament enjoys immunity during his/her mandate.

The member of the Parliament cannot be detained without approval of the Parliament, unless if he/she was caught during execution of a crime which is punishable with a prison sentence of at least 5 years.

The procedure for application of the immunity is regulated by the Rulebook of the Parliament.

RULES OF PROCEDURE OF THE PARLIAMENT OF THE REPUBLIC OF MACEDONIA IMMUNITY OF THE MEMBERS OF THE ASSEMBLY

Article 53

(1) The member of the assembly shall be entitled to immunity from the day of verification until the day of the end of the mandate.

(2) A request for approval of detention of a member of the assembly shall be submitted to the president of the assembly by an authorised body. If the request has not been submitted by an authorised body, the president of the assembly informs the body thereof.

(3) The authorised body shall submit to the president of the assembly the information of the detention of a member of the assembly when caught in a criminal act for which a jail sentence of at least five (5) years is envisaged.

(4) The authorised body informs the president of the assembly of the detention of a member of the assembly even when he/she have not referred to the immunity.

(5) The president of the assembly shall immediately submit the request for detention, i.e. information about a detention of a member of the assembly, to the committee on procedural and mandate and immunity related issues. The committee shall be obliged to review the request, i.e. information, and submit a report to the president of the assembly within two (2) days.

(6) The committee shall inform about its session the member of the assembly to whom the request refers, as well.

Article 54

(1) On the basis of the report of the committee on procedural and mandate and immunity related issues, the assembly shall in three (3) days at the latest decide on the detention request.

(2) Following the information on the detention of a member of the assembly who has not referred to his/her immunity, the assembly may decide that the immunity be applied over such member, if that is deemed necessary for the performance of the function member of the assembly.

Article 55

The provisions of these rules of procedure with regard to the immunity of the members of the assembly respectively apply to the immunity of the president of the government.

The former Yugoslav Republic of Macedonia further explained that with the amendment XXIII, the ministers in the Government do not enjoy immunity anymore and they are criminally liable. This means that they can be investigated and prosecuted for corruption offences.

As regard to the Prime Minister, according to the Rules of Procedure of the Parliament of the Republic of Macedonia (Article 55), the provisions for the immunity of the members of the Parliament apply also for the Prime Minister.

Authorities met during the country visit noted that immunity only prevents from detaining the accused official, without preventing investigations or prosecutions.

The former Yugoslav Republic of Macedonia provided the following case example:

The Parliament was required to decide to lift the immunity so that the court may perform custody. The Commission for the mandate-immunity issues of the Parliament adopted a Decision to lift the immunity from this person.

In August 2007, criminal procedure was initiated in front of the Criminal Court Skopje 1, against a Member of the Parliament of Republic of Macedonia for the criminal act of misuse of official duty and authorization (of the article 353 of the Criminal code). The crime was committed in 2001, while the perpetrator was Minister for defense in the Government of Republic of Macedonia.

(b) Observations on the implementation of the article

Based on the information provided to the review team and discussed during the country visit, immunities in the former Yugoslav Republic of Macedonia do not seem to constitute an impediment to the effective prosecution of UNCAC offences. The review team considers the provision under review to be adequately implemented.

Article 30 Prosecution, adjudication and sanctions

Paragraph 3

3. Each State Party shall endeavour to ensure that any discretionary legal powers under its domestic law relating to the prosecution of persons for offences established in accordance with this Convention are exercised to maximize the effectiveness of law enforcement measures in respect of those offences and with due regard to the need to deter the commission of such offences.

(a) Summary of information relevant to reviewing the implementation of the article

In the legal system of the Republic of Macedonia, regarding the criminal prosecution for crimes which are prosecuted by official duty, the principle of legality is applied.

The Law on public prosecution explicitly stipulates the principle of legality:

Article 2

The Public Prosecutor's Office shall be the unique and independent State institution that prosecutes perpetrators of crimes and other punishable acts sanctioned by law and perform other duties as stipulated by law.

Article 3

The Public Prosecutor's Office shall perform its functions on the basis of and within the frames provided by the Constitution, the laws and the International Treaties ratified in accordance with the Constitution of the Republic of Macedonia.

Basic process law for the Public Prosecution Office is the Law on criminal procedure. The principle of legality, also, very clear comes out of this law:

Article 18

The principle of legality of the criminal prosecution

The public prosecutor shall be obliged to initiate criminal prosecution if there is evidence that a crime, which is prosecuted ex-officio, has been committed, unless stipulated otherwise in this Law.

The principle of legality is the basic legal principle of the undertaking of criminal prosecution. According to the above cited provisions, the public prosecutor has no right of his/her own disposition not to undertake criminal prosecution, when the conditions prescribed by the relevant laws are fulfilled.

However, there are some exceptions to this principle, stipulated in the law on criminal procedure:

Article 42 - Waiving of prosecution rights by the public prosecutor

In certain cases as determined by law, the public prosecutor may waive the criminal prosecution until the completion of the criminal procedure.

Article 43 - Conditional postponement of the criminal prosecution

- (1) In agreement with the injured party, the public prosecutor, with a decision, may postpone the criminal prosecution for a criminal offense that entails a prison sentence of up to three years, if the suspect is willing to behave according to the instructions given by the public prosecutor and fulfill certain obligations that would reduce or eliminate the harmful consequences from the criminal offense, put an end to the disturbances that have resulted from the criminal offense, i.e. influence is exerted in order to reintegrate the suspect. Such obligations may include the following:
 - 1) Obviating or compensating for the damages;
 - 2) Returning any items that have been taken away;
 - 3) Making a monetary contribution in favor to the Budget of Republic of Macedonia or to some other institution with a public authority or for humanitarian purposes;
 - 4) Fulfilling any obligations regarding subsistence;
 - 5) Undergoing treatment for any addictions;
 - 6) Undergoing psychosocial therapy in order to eliminate any violent behavior;
 - 7) Prohibited visits or contacts with the victims of the crime as well as with third parties as determined by the public prosecutor for a period that shall not exceed six months;
 - 8) Community work in a duration of 40-120 hours; or
 - 9) When the conditions for release are met as a result of damage compensation as determined by the Criminal Code.
- (2) With regards to the obligations as referred to in paragraph 1, items 1, 2, 3, 4, 7, 8 and 9 of this article, if the suspect has fulfilled his or her obligation in a period not longer than six months, i.e. he or she observed the ban, the public prosecutor shall enact a decision, thus not criminally prosecuting the suspect for the criminal offense referred to in paragraph 1 of this Article.
- (3) With regards to the obligations as referred to in paragraph 1, items 5 and 6 of this Article, the public prosecutor shall determine the duration of the conditional postponement in consultation with a specialized institution for treatment of addictions, i.e. with the competent center for social work. The duration of the conditional postponement shall not be longer than one year.
- (4) If the perpetrator has started, but not completed the imposed obligations in the prescribed deadline, the public prosecutor shall file an application for initiation of a summary procedure, also taking into account the portion of the obligations that has been completed.

The provisions of the articles 42 and 43 of the Law on criminal procedure are hence exceptions to the principle of legality but only in the cases and under conditions determined within these (above mentioned) legal provisions. The principle of legality does not mean discretionary and unlimited right of the public prosecutors to waive or postpone criminal prosecution.

Despite that, these exceptions come out from the procedural laws but there are also exceptions stipulated in the material law.

One of them is determined for the criminal act "Giving bribes", stipulated under paragraph 3 of article 358 of the Criminal code:

Article 358 paragraph 3 – Criminal Code

- (3) The offender from items 1 and 2, 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.

Similar cases of acquitting of punishment are also determined for other criminal acts and they are not always obligatory exceptions from the principle of legality. In such cases, the exceptions to the principle of legality refers only for the acquitting of punishment by the court. The public prosecutor may also refer to the article 44 of the Law on criminal procedure (cited above) and acquit from the criminal prosecution. He will then make exception of the principle of legality. But however, that is only possibility and an option for the public prosecutor and not an obligation.

In practice, there is application of all the above mentioned legal provisions for exceptions of the principle of legality but they are used very restrictively, always having in mind whether the concrete cases fulfil the criteria for their application.

Moreover, the principle of legality is also stipulated in the Law on courts and the Law on public prosecution:

Law on courts (Official Gazette No 58/2006, 35/2008, 150/2010)

Article 2

- (1) The courts conduct trials and base their decisions on the Constitution, the laws and the international treaties ratified in accordance with the Constitution.

Law on public prosecution (Official Gazette No 150/2007, 111/208, 100/2011)

Article 3

The Public Prosecution Office shall perform its functions on the basis of the Constitution and laws and international treaties ratified in accordance with the Constitution.

(b) Observations on the implementation of the article

The former Yugoslav Republic of Macedonia has a system of mandatory prosecution. The general rule is the legality and not the opportunity of prosecutions. The public prosecutor has no right of his/her own disposition not to undertake criminal prosecution, when the conditions prescribed by the relevant laws are fulfilled.

The provision under review is hence implemented.

Article 30 Prosecution, adjudication and sanctions

Paragraph 4

4. In the case of offences established in accordance with this Convention, each State Party shall take appropriate measures, in accordance with its domestic law and with due regard to the rights of the defence, to seek to ensure that conditions imposed in connection with decisions on release pending trial or appeal take into consideration the need to ensure the presence of the defendant at subsequent criminal proceedings.

(a) Summary of information relevant to reviewing the implementation of the article

The measures to ensure presence of the defendant at the criminal proceeding are determined and detailed in the frames of the Chapter 16 of the Law on criminal procedure (Official Gazette of the Republic of Macedonia No. 150/2010). The whole chapter is devoted to this issue but the main articles are the following:

Chapter XVI

MEASURES TO ENSURE THE PRESENCE OF PERSONS AND UNOBSTRUCTED CONDUCTION OF THE CRIMINAL PROCEDURE

1. Common provision

Article 144

Measures to ensure the presence of the defendant

(1) The measures that may be taken against the defendant in order to ensure the defendant's presence and an unobstructed conduction of the criminal procedure shall be the summons, precautionary measures, guarantee, bringing in, deprivation of liberty, holding, transient detention, house detention and detention.

(2) When deciding which of the above mentioned measures is to be applied, the competent entity shall adhere to the conditions established for the implementation of separate measures, making sure not to apply a more severe measure, if the same goal can be achieved with a more lenient. The court may simultaneously impose several of the measures referred to in paragraph 1 of this Article against the defendant, except when it imposes the detention measure.

- (3) These measures shall be cancelled ex-officio when the legal conditions for the application of such measures cease to exist, i.e. shall be replaced with another measure when the conditions for that are met.
- (4) When the defendant is not adhering to the prescribed measure for ensuring the presence, the court may prescribe another measure for ensuring the presence.
- (5) The defendant shall have the right to inform his or her family or another close person about the eventual arrest, deprivation of liberty and holding.

3. Precautionary measures

Article 146

Types of precautionary measures

(1) For the purpose of fulfilling the goal referred to in Article 144, paragraph 1 of this Law, the court may impose some of the following precautionary measures:

- 1) prohibition to leave the temporary or permanent place of residence;
- 2) an obligation for the defendant to report occasionally to a certain official person or to the competent State authority;
- 3) temporary confiscation of a passport or another document for crossing of the State border, i.e. prohibition of their issuance;
- 4) temporary confiscation of a driver's license or a prohibition for issuing one;
- 5) prohibition to visit a certain location or area;
- 6) prohibition to approach or establish, that is maintain contacts or relations with certain persons; and
- 7) prohibition to undertake certain working activities that are linked to the criminal offense.

(2) The precautionary measures may last as long as there is a need for them, and until the judgment enters into full effect at the latest.

(3) The court, ex-officio, every two months shall review whether the precautionary measure needs to be extended and it may be cancelled even before the deadline referred to in paragraph 2 of this article, if the need has ceased to exist or if there are no more legal grounds for the precautionary measure.

(4) The precautionary measures shall not be used to limit the defendant's right of unobstructed communication with his or her defence counsel.

(5) During the investigation, upon proposal by the public prosecutor, it shall be the judge of the preliminary procedure who establishes the precautionary measures, and this shall be done by the court responsible for the procedure after the indictment has entered into legal force and until the enforceability of the judgment.

(6) The parties shall have a right to appeal against the decision for establishment or cancellation of precautionary measures within a period of three days. The Trial Chamber referred to in Article 25, paragraph 5 of this Law shall rule on the appeal for a decision brought by the judge of the preliminary procedure or an individual judge, and the appeal against a decision brought by the Trial Chamber shall be ruled on by the Chamber of the immediate higher court.

The right of defendant during the court procedure is regulated by the article 71 of the Law on criminal procedure. It refers to the whole judicial procedure and to all its phases.

Also, the articles 74 and 75 of the Criminal Code stipulate the right of compulsory defence.

Article 71 - Right to a defence counsel

(1) Any person who has been suspected or accused of a criminal offense shall have the right to a defence counsel throughout the duration of the criminal procedure against him or her.

(2) Prior to the initial examination or any other action for which such an obligation is provided for in this Law, the accused shall have to be advised of his or her right to a defence council of his or her choice, with whom the person may consult in private, who may also be present during his or her examination.

(3) The defence counsel for the defendant may also be provided by his or her legal representative, marital i.e. illegitimate spouse, blood relative of first degree, foster parent, an adopted child, brother, sister and bread winner, unless the accused is explicitly against it.

(4) Only a licensed attorney may act as a counsel for the defence.

(5) For crimes that entail a prison sentence of at least ten years, the defence counsel shall be an attorney with at least five years of working experience, following the passing of the bar exam.

(6) The defence counsel is obliged to submit a letter of attorney to the body before which the procedure is conducted. The defendant may also verbally accredit his or her counsel on record, before the body that conducts the procedure.

Article 74 - Compulsory defence with a defence counsel and ex-officio defence counsel

- (1) If the accused is dumb, deaf or incapable to defend himself or herself successfully or if a criminal procedure is conducted against him or her for a crime, which, according to the law, entails a sentence of life imprisonment, then the person shall have a defence counsel as of his or her first questioning.
- (2) The defendant shall have a counsel during the detention period, if detention has been imposed against him or her.
- (3) After an indictment has been raised for a crime for which a prison sentence of ten years or a more severe sentence is proscribed in the law, the accused shall have a counsel at the time of the delivery of the indictment.
- (4) The accused shall have a defence counsel during the procedure of negotiation and bargaining with the public prosecutor on the guilty plea.
- (5) The defendant who is being tried in his or her absence shall have a defence counsel assigned immediately after the decision for a trial in absence has been brought.
- (6) If the accused, in the cases of compulsory defence as referred to in the previous paragraphs of this Article, does not provide a counsel himself, the President of the Court shall assign a defence counsel ex officio for the further duration of the criminal procedure until the final legally valid verdict. When the accused has been assigned a counsel ex officio after the indictment has been raised, the accused shall be informed accordingly together with the act of delivery of the indictment.

Article 75 -Defence of indigent persons

- (1) When the conditions for mandatory defence are not met, upon his or her motion, the defendant may be assigned counsel, if, taking his or her financial situation into consideration, it is deemed that the defendant cannot bear the expenses of the defence, when required for the purpose of the interest of justice and specifically due to the severity of the crime and complexity of the case. In the motion, the defendant can indicate the preferred attorney from the list of defence counsels of the appropriate legal community.
- (2) The judge of the preliminary procedure i.e. the Presiding Judge of the Trial Chamber shall rule on the motion as referred to in paragraph 1 of this Article, and the defence counsel shall be appointed by the President of the Court.
- (3) The defence expenses as referred to in paragraph 1 of this Article shall be covered by the State Budget of the Republic of Macedonia.

The former Yugoslav Republic of Macedonia provided the following case example:

Case “LEPAK”

An organized group was discovered committing criminal acts related to smuggling merchandise from Bulgaria and Greece to Macedonia. Members of the group were employees of the Customs Administration from the office at the Border crossing “Novo Selo”. The group was organized and headed by the Head of the Office of the Customs Administration at the Border crossing “Novo Selo”.

With the use of special investigative measures evidence was provided against 14 members of the criminal group out of who 7 persons were customs administration officers. The members of the group managed to acquire illicit property benefit in the amount of several million Macedonian denars.

For provided transportation, individuals and entities of merchandise paid the transporters 2 Euros per kilogram merchandise mainly in cash. Some of the payments were transferred from individuals to transaction accounts. The members of the criminal association, who were providing transportation services, after each completed transportation, transferred a certain amount of acquired funds to the organizers of the association – Customs administration officers employed at the office at the border crossing. The suspected Head of the Customs Administration office undertook activities of abuse of his official position and authorization such as order for issuing false customs certificates for payment of import duties in order to conceal crime committed by members of the criminal association.

Crimes committed: Criminal Association, Abuse of official position and authorization, Trafficking, Forging official document (articles 394 353, 278 and 361 and of the Criminal Code)

Pre-investigation started on 30.06.2013

Order starting the investigative procedure issued on 07.03.2014 against 14 persons

pre-trial detention served 3 persons: 07.03.2014 - 16.05.2014

On 16.05.2014 the measure was changed with bail (a guarantee)

pre-trial detention served

10 persons (since 07.03.2014):

One person unavailable to law-enforcement authorities

Proposal for plea bargaining approved: First Instance Judgment Court of First Instance Skopje I Skopje

-03.06.2014 (Plea bargaining) 13 convicted persons –

Prison sentences:

1 person -3 years

1 person-2 years and seven months,

1 person-1 year and seven month

1 person -1 year,

1 person-8 months,

2 person-7 months,

6 persons-6 months

Case started on 30.06.2013

Case completed on 03.06.2014

(b) Observations on the implementation of the article

Chapter XVI of the Law on Criminal Procedure Code are applicable to UNCAC offences. These include, inter alia, the prohibition to leave the temporary or permanent place of residents, an obligation for the defendant to report occasionally to a certain official person, and the temporary confiscation of a passport.

The provision under review is adequately implemented, both in law and in practice.

Article 30 Prosecution, adjudication and sanctions

Paragraph 5

5. Each State Party shall take into account the gravity of the offences concerned when considering the eventuality of early release or parole of persons convicted of such offences.

(a) Summary of information relevant to reviewing the implementation of the article

The probationary discharge of condemned persons is regulated with the article 36 paragraph 2 and 3 of the Criminal Code.

Criminal Code Article 36 - Probationary discharge

(2) The convicted, having served half of the imprisonment, can be released on probation.

(3) As an exception, a convicted who has served one third of an imprisonment may also be released on probation, under the conditions referred to in paragraph 1, and if special circumstances concerning the personality of the convicted evidently show that the aim of the sentence has been achieved.

Criminal Code Article 39 - General rules to mete out punishment

(1) The court shall mete out a punishment to the offender within the limits prescribed by law for that crime, having in mind the criminal responsibility of the offender, the weight of the crime and the aims of the punishment.

(2) Hereby, the court shall have in mind all the circumstances that have influence upon decreasing or increasing the punishment (extenuating or aggravating circumstances), and especially: the level of criminal responsibility, the motives for the perpetrated crime, the extent of endangerment or damage to the protected goods, the circumstances under which the crime was committed, the contribution of the victim in the perpetration of the crime, the previous life of the offender, his personal circumstances and his behavior after the perpetrated crime, as well as other circumstances that concern the personality of the offender.

(3) When the court meets the punishment it shall especially have in mind the total effect of the punishment to the offender, its consequences to the personality and needs of re-socialization of the offender.

(4) When the court metes out the punishment to the offender for the committed crime, perpetrated in repetition, it shall especially have in mind whether the previous crime is of the same kind as the new crime, whether the crimes were committed with the same motives and how much time passed since the previous sentence, respectively since the punishment was served or was forgiven.

(5) While meting out the sentence, the court shall particularly take into consideration if the crime was committed against a person or group of persons or property, directly or indirectly, due to his or their national and social background, political and religious belief, wealth and social position, gender, race or color of skin.

(6) When it metes out a fine, the court shall have in mind also the state of wealth of the offender, herewith considering his other incomes, his property and his family obligations.

Law on execution of sanctions (Official Gazette 2/2006)

Article 192 - Bases for releasing the convicted persons

The convicted persons shall be released from serving a sentence after they have served the entire sentence, as well as upon the decision of competent body for pardoning of the remaining part of the sentence, or under the decision for parole or when there is a decision from the institution's director on premature release from serving the sentence.

Article 201

The parole of the convicted person shall be decided by the court having passed the verdict in first instance, in a council composed of three judges who shall decide beyond the main hearing.

Article 202

(1) Before deciding on the parole, the first instance court shall request a data, from the institution and the institution's official persons and the convicted person may be interrogated about the circumstances pertaining the convict's personality, his behaviour during the serving of sentence, carrying out of his labour duties and about other circumstances, under which it may be concluded whether the aim of punishment was achieved and especially whether the convicted person is likely to commit further criminal acts in future.

Constitution of the Republic of Macedonia

Article 13

A person indicted for an offense shall be considered innocent until his/her guilt is established by a legally valid court verdict.

A person unlawfully detained, apprehended or convicted has a right to legal redress and other rights determined by law.

Besides the relevant legal provisions cited above, regarding this provision of UNCAC it is essential to explain that the offences established in accordance with UNCAC are defined as criminal offences in the Criminal Code of the Republic of Macedonia, as already explained above. There are prison sentences (and fines) stipulated for all the perpetrators of these crimes.

Authorities met during the country visit further explained that decisions on the early release take automatically into account the gravity of the offences since such release is only possible after serving half or one third of the imprisonment period which has been previously decided based on the gravity of the offence.

(b) Observations on the implementation of the article

In light of the explanation provided, the review team is satisfied that that the former Yugoslav Republic of Macedonia legislation adequately covers the provision under review, although no related statistics or examples of implementation were available.

Article 30 Prosecution, adjudication and sanctions

Paragraph 6

6. Each State Party, to the extent consistent with the fundamental principles of its legal system, shall consider establishing procedures through which a public official accused of an offence established in accordance with this Convention may, where appropriate, be removed, suspended or reassigned by the appropriate authority, bearing in mind respect for the principle of the presumption of innocence.

(a) Summary of information relevant to reviewing the implementation of the article

The former Yugoslav Republic of Macedonia made a reference to the following provisions:

Law on public servants (Official Gazette No 52/10, 36/11, 6/12, 24/2012, 15/13, 82/13 и 106/13, 132/2014)

Article 50

- (1) The public servant may be suspended from the institution based on a decision of the head of the institution.
- (2) The public servant may be suspended from the institution in the cases where a criminal procedure has been initiated against him/her for a criminal offense committed at work or related to the work or where a disciplinary procedure for a disciplinary offense has been initiated, and the violation or the non-performance are of such nature that his/her presence in the institution during the procedure is to have harmful effect on the public service, that is, it is to prevent or thwart the establishment of his/her liability for the disciplinary offense.
- (3) The suspension referred to in paragraph (2) of this Article shall last until the adoption of a final decision in the disciplinary procedure.
- (4) For the duration of the suspension, the public servant shall be entitled to a salary in the amount of 50% of the salary that he/she has received in the preceding month.

Law on working relations (Official gazette No 145/2014)

Article 83 - Removal from work until decision for dismissal and termination of the working agreement

Upon an assessment of the employer, by written decision of the authorized person by the employer, the employee is removed from work with compensation of 50% of the salary for the previous month, until the decision is brought for dismissal and termination of the working agreement, if

- (4) a criminal procedure is initiated against the employee for a criminal act committed at work or related to the work

Law on customs administration (Official Gazette of Republic of Macedonia No 53/2011, 43/2014)

Suspension

Article 56

- (1) Suspension is temporary removal from work of a Customs officer for reasons laid down in this Article and for as long as the reason for the removal exists.
At the end of such period, the Customs officer resumes his/her position in the Customs Administration, except if termination of employment is proclaimed by Dismissal, in accordance with the provisions of Article 55 of this Law.
- (2) The Customs officer may be suspended if there is reasonable ground to suspect that he/she has taken advantage of his/her work position in the Customs Administration and the suspension shall end on completion of the disciplinary procedure.
- (3) The Customs officer shall be suspended if he/she is placed in custody, from the first day in custody and during the whole period of custody. If the criminal procedure started against him/her is not completed, the suspension shall terminate on completion of the criminal procedure and/or the disciplinary procedure, if started for the same act.
- (4) During the suspension period the Customs officer is entitled to receive compensation of 60% of his/her basic salary. In case of reinstatement, the Customs officer is entitled to compensation up to 100% of the basic salary.
- (5) The Director states in writing the decision for suspension or reinstatement of the Customs officer.
- (6) The Customs officer may submit an appeal against the decision referred to in paragraph (5) of this Article through the Customs Administration to the Administration Agency within 8 days of the date of communication of the decision.
- (7) The Customs Administration has an obligation to deliver the appeal along with the additional documents to the Administration Agency, in a period of 7 days of the day of receiving of the appeal. The appeal shall not withhold the execution of the decision.
- (8) After the appeal of the paragraph (6) of this article has been delivered, the Administration Agency shall issue a Decision in a period of 15 days of the day of receiving the appeal along with the other documents of the case.

(9) When the Decision of the paragraph (8) of this article has not been issued or when the customs officer is not satisfied with the Decision issued upon the appeal, he/she has a right to initiate dispute before the competent court in a period of 15 days of the day of receiving the Decision or the next day after the deadline for issuing of the Decision.

Law on Public Revenue Office (Official Gazette No 43/2014)

Article 44

The working agreement of the tax official can be terminated for the reason of braking of the working order and discipline or for the reason of failing to fulfill the obligations determined by law, collective agreement, the rules and regulations of the Public Revenue Office, the act of systematization in the PRO or the working agreement, if:

- he/she misuses his/her official authorizations,
- if he/she behaves in opposite to the Code of behavior.

Article 45

In the cases of braking of the working order and discipline or failure to fulfill the obligations determined by this law, one of the following disciplinary measures shall be applied to the tax official:

- written reprimand,
- fine, in amount not bigger than 15% of the last monthly net-salary of the tax official, in a period of six months and
- termination of the working agreement.

Also, there are this kind of provisions in other laws, such as the Law on financial police and others.

The former Yugoslav Republic of Macedonia provided the following statistical data of the Customs Administration for suspensions of customs officers:

- 2011: 5 Decisions for suspension,
- 2012: 3 Decisions for suspension,
- 2013: 1 Decision for suspension and
- 2014 (until October): 11 Decisions for suspension.

(b) Observations on the implementation of the article

The review team considers the provision under review to be implemented.

Article 30 Prosecution, adjudication and sanctions

Paragraph 7

7. Where warranted by the gravity of the offence, each State Party, to the extent consistent with the fundamental principles of its legal system, shall consider establishing procedures for the disqualification, by court order or any other appropriate means, for a period of time determined by its domestic law, of persons convicted of offences established in accordance with this Convention from:

(a) Holding public office; and

(b) Holding office in an enterprise owned in whole or in part by the State.

(a) Summary of information relevant to reviewing the implementation of the article

The former Yugoslav Republic of Macedonia made a reference to Article 362 - b of the Criminal Code (introduced with the amendments of the code of 2009) on compulsory pronouncement of the sentence "prohibition to perform a profession, activity or duties" for the crimes specified in articles 357, 358 and 359 (Giving bribe, Receiving bribe and Unlawful mediation), noting that those articles also refer to the legal entities independently of their property - State owned - in whole or in part and private legal entities.

Criminal Code Article 362-b - Compulsory pronouncement of the sentence prohibition to perform a profession, activity or duty

Under the conditions prescribed in Article 38-b of this code, for the crimes specified in Articles 357, 358 and 359, the Court shall determine a sentence for the perpetrator prohibition to perform profession, activity or duty for a period of one to ten years.

The former Yugoslav Republic of Macedonia further explained that according to the meaning of the term “public official” as determined within Article 2 of UNCAC, and the definition of the term “official person” when marked as a perpetrator of crime, given in the Article 122 of the Criminal Code, the relevant provisions in the national legislation of the Republic of Macedonia are stipulated in the following regulations: Law on civil servants, Law on public servants, Law on the parliament, Law on prevention of corruption and the Rules of procedure of the Assembly of the Republic of Macedonia.

Law on public servants (Official Gazette of the Republic of Macedonia No. 52/10, 36/11, 6/12, 24/12, 15/13 и 82/13, 106/2013)

1. Disciplinary liability

Article 39

(1) The public servant shall be disciplinary liable for violation of the working discipline, non-performance, unconscientious, and untimely performance of the activities and the tasks.

(2) The liability for a committed criminal offense, that is, a misdemeanour shall not exclude the disciplinary liability of the public servant.

(1) In the case of disciplinary irregularity or disciplinary offense, one of the following disciplinary measures may be imposed on the public servant based on a decision:

- 1) a public reprimand;
- 2) a fine in the amount of 20%, that is, 30% of the monthly net salary paid in the last month before the violation of the official duties has been committed; and
- 3) termination of the employment.

Article 41

(1) In the case of disciplinary irregularity or disciplinary offense, one of the following disciplinary measures may be imposed on the public servant based on a decision:

- 1) a public reprimand;
- 2) a fine in the amount of 20%, that is, 30% of the monthly net salary paid in the last month before the violation of the official duties has been committed; and
- 3) termination of the employment.

(2) The severity of the disciplinary irregularity or offense, their consequences, the degree of liability of the public servant, the circumstances under which the disciplinary irregularity or offense has been committed, his/her previous behavior and performance of the activities and the tasks, as well as other mitigating and aggravating circumstances, shall be taken into account when imposing the disciplinary measures referred to in paragraph (1) of this Article.

Article 44

(1) A disciplinary offense shall be:

- 1) non-performance or unconscientious, untimely, indecent, or negligent performance of the activities and the tasks;
- 2) wearing or placing party symbols in the office;
- 3) refusing to provide or providing incorrect data to the State bodies, legal entities and citizens, if the provision of data is prescribed by law;
- 4) illegal management of funds;
- 5) refusing to perform the activities and the tasks of the job he/she is assigned to or refusing orders given by the head of the institution;
- 6) not taking or partially taking the prescribed security measures for protection of the entrusted assets;
- 7) causing major material damage;
- 8) repeating a disciplinary irregularity;
- 9) receiving gifts or other benefits contrary to law;
- 10) abuse of the status or breach of the authorizations in the execution of the tasks;
- 11) abuse of the sick leave;
- 12) disclosure of classified information with a degree of confidentiality determined in accordance with law;
- 13) taking in, use and working under the influence of alcohol or narcotics;
- 14) non-compliance with the regulations on disease protection, safety at work, fire, explosion, harmful effects of poisons and other hazardous substances and breach of the regulations on environmental protection;
- 15) creating a conflict between the personal financial interest and the position and status of a public servant;
- 16) offensive or violent behavior;
- 17) unjustified refusal to participate in the election bodies; and

18) preventing the elections and voting, breach of the voting right, breach of the voters' freedom of choice, electoral bribery, breach of the secrecy of voting, destruction of electoral documents, electoral fraud committed by the public servant as a member of an electoral body.

(2) The following disciplinary measure shall be imposed for the disciplinary offenses referred to in paragraph (1) of this Article:

- a fine in the amount of 30% of the monthly net salary paid to the public servant in the month before the disciplinary offense has been committed, in duration of one to six months and
- termination of employment, if there are harmful consequences for the institution and if, in the disciplinary procedure, no mitigating circumstances have been found for the public servant that committed the offense.

Law on the Parliament of the Republic of Macedonia (Official Gazette of the Republic of Macedonia No. 28/2002, 46/2004, 126/2006, 10/2008 и 161/2008, 145/2010)

Article 6

(1) The mandate of the MP shall terminate before its expiration if:

2) The MP is convicted of a criminal act for which at least five years of imprisonment is envisaged;

Law on prevention of the corruption (Official Gazette of the Republic of Macedonia No. 28/2002, 46/2004, 126/2006, 10/2008 и 161/2008, 145/2010)

Jurisdiction

Article 49

(1) The State Commission shall have the following spheres of competence:

“ ... - brings an initiative to conduct a proceeding before the competent bodies to discharge, replace, criminally prosecute or apply other measures of responsibility to elected or appointed civil servants, officials or responsible persons in public enterprises and other juridical persons managing State capital; ...”

Rules of procedure of the Assembly of the Republic of Macedonia* (consolidated text)

5. Interpellation

Article 45

(1) An interpellation may be raised by at least five (5) members of the assembly for the work of any public official, the government and each member of the government separately, as well as for issues related to the work of the State bodies.

(2) The interpellation motion shall be submitted in writing, signed by all the members of the assembly submitting it and it shall contain explanatory notes.

(3) The interpellation motion shall be submitted to the president of the assembly, who forwards it to the person it is addressed to and to the members of the assembly.

Article 46

the person who is the subject of the interpellation shall be entitled to submit a written answer to the president of the assembly within 15 days from the day of receiving the interpellation.

Article 47

(1) The interpellation motion shall be put on the agenda on the first consecutive session of the assembly, after the expiration of fifteen days from the submission of the answer to the members of the assembly.

(2) If the answer is not submitted within the time frame determined in article 46 of these rules of procedure, the interpellation motion shall be put on the agenda on the first consecutive assembly session.

Article 48

(1) One of the members of the assembly who have submitted the interpellation motion shall be entitled to give an explanation of the interpellation, in duration of 20 minutes.

(2) The person that is the subject of the interpellation motion shall be invited at the session and shall be entitled to explain his/her answer or give a verbal answer to the interpellation, in duration of 20 minutes.

Article 49

(1) The debate on the interpellation shall last no more than one (1) working day, until the exhaustion of the applicants for the floor, and it shall be decided at latest at 24:00.

(2) The members of the assembly shall inform the president of the assembly of their participation in the debate on the interpellation motion 24 hours prior to holding of the session.

(3) The order of members of the assembly by parliamentary groups and members who are not organized in parliamentary groups and who shall participate in the debate, shall be determined by the president of the assembly in agreement with coordinators of parliamentary groups, in such a manner 2 v.s. 1, benefiting the mps belonging to the opposition political groups and the mps of the opposition that are not organized in political group

(4) If the assembly endorses the interpellation, it adopts a conclusion containing the position of the assembly in reference to the contents of the interpellation.

Article 50

Members of the assembly having submitted the interpellation motion may withdraw it only prior to the beginning of the debate.

Article 51

The debate on the interpellation shall be interrupted if:

- a question of confidence in the government is raised;
- the government resigns;
- the president of the government proposes to dismiss the government member who is the subject of the interpellation, and
- the public official resigns.

6. Concealing confidential information

Article 52

(1) Members of the assembly shall be obliged to conceal the State, official, military and business confidential information (secret).

(2) A secret is considered to be the information that a member of the assembly shall learn of at the assembly session or at a session of the working body, in reference to an issue discussed without the presence of the public.

(3) A secret shall also be considered all the materials that are delivered to the assembly and the working bodies, marked as such by the proponent of the material.

(4) The methods of handling and storing of the materials considered a secret, shall be determined with a separate act, passed by the president of the assembly.

(b) Observations on the implementation of the article

The provision under review is adequately covered in the former Yugoslav Republic of Macedonia's legislation, although no related statistics or examples of implementation were available.

Article 30 Prosecution, adjudication and sanctions

Paragraph 8

8. Paragraph 1 of this article shall be without prejudice to the exercise of disciplinary powers by the competent authorities against civil servants.

(a) Summary of information relevant to reviewing the implementation of the article

This provision of UNCAC is implemented in the Law on civil servants (Official Gazette of the Republic of Macedonia No. 59/2000, 112/2000, 34/2001, 103/2001, 43/2002, 98/2002, 17/2003, 40/2003, 85/2003, 17/2004, 69/2004, 81/2005, 61/2006, 36/2007, 161/2008, 6/2009, 114/2009, 35/10, 167/10, 36/11, 6/12, 24/12, 15/13 и 82/13), in the head 5 - Liability of civil servants, which introduces two types of liability: disciplinary and material liability.

Law on civil servants – (consolidated text)

V. liability of civil servants

Article 63

The civil servant shall be personally liable for performance of the official tasks.

1. Disciplinary liability

Article 64

(1) The civil servant, except the secretary, shall be disciplinary liable in case of violation of his/her professional duties.

(2) The liability for a criminal offense shall not exclude the disciplinary liability of the civil servant.

Article 65

- (1) The civil servant shall be disciplinary liable for a disciplinary irregularity and disciplinary offense.
- (2) Any minor, insignificant violation of the official duties, that is, minor violation of the reputation of the service or of the civil servant shall be considered as disciplinary irregularity, in terms of paragraph (1) of this Article.
- (3) Any major, significant violation of the official duties, that is, major violation of the reputation of the service or of the civil servant shall be considered as disciplinary offence, in terms of paragraph (1) of this Article.

Article 66

(1) In the case of violation of the official duties, one of the following disciplinary measures may be taken against the civil servant based on a decision:

- 1) public reprimand;
- 2) a fine in the amount of 20% that is 30% of the monthly net salary paid in the last month before the violation of the official duties has been committed;
- 3) reassignment to a job in immediate lower position; and
- 4) termination of employment.

(2) The seriousness of the violation of the official duties, the consequences of such violation, the degree of liability of the civil servant, the circumstances under which the violation has been committed, his/her previous behavior and performance of the works, as well as other mitigating and aggravating circumstances shall be taken into account when taking the disciplinary measures referred to in paragraph (1) of this Article.

Article 67

(1) The following shall constitute disciplinary irregularities:

- 1) failure to come to work in the determined time and leaving work before the closing hours despite the warning by the immediate superior civil servant;
- 2) disorderly maintenance of official documents and data;
- 3) unexcused absence from work of up to 2 working days during one calendar year;
- 4) failure to wear tags with the name, if such an obligation exists;
- 5) unexcused failure to notify within 24 hours one's immediate superior officer, or the head of the body referred to in Article 3 paragraph (2) of this Law, about one's inability to come to work;
- 6) refusal to attend the professional training or development to which the civil servant has been directed.

(2) For a disciplinary irregularity, a public reprimand may be given or a fine may be imposed for a period ranging from one month to three months in the amount of 10% of the monthly net salary paid in the last month before the disciplinary irregularity was committed.

Article 68

(1) The following shall constitute a disciplinary offence:

- 1) failure to perform or conscienceless, impolite, untimely or negligent performance of official duties;
- 2) expressing and advocating personal political beliefs when performing official tasks;
- 3) refusing to provide or providing incorrect data to the State bodies, legal entities and to citizens, if the provision of data is prescribed by law;
- 4) illegal management of funds;
- 5) refusing to perform the official tasks pertaining to the job he/she is assigned to or refusing orders given by the minister, or the head of the body referred to in Article 3 paragraph (2), or by a managerial civil servant;
- 6) non-compliance with the regulation referred to in Article 34 paragraph (2) of this Law;
- 7) failing to undertake or undertaking partially the prescribed security measures for protection of the entrusted assets;
- 8) causing major material damage;
- 9) repeating a disciplinary irregularity;
- 10) receiving gifts or other benefits;
- 11) abusing the status or overstepping the authority when performing official tasks;
- 12) abusing sick leave;
- 13) disclosing classified information that have a degree of confidentiality prescribed in line with law;
- 14) bringing or using alcohol or narcotics or working under their influence;
- 15) failure to comply with the regulations on protection from diseases, on industrial safety, protection from fire, explosion, hazardous influence of poisons and other dangerous materials and violation of the regulation on environmental protection;
- 16) putting personal financial interests in conflict with the position and status of a civil servant;
- 17) insulting or violent behaviour;
- 18) unjustified refusal to participate in election bodies;
- 19) prevention of elections and voting, violation of the election right, violation of

(2) The following measures shall be imposed for the disciplinary offences listed in paragraph (1) of this Article: a fine ranging from 10% to 30% of the monthly net salary paid to the civil servant in the month before the disciplinary offence was committed, for a period ranging from one to six months; reassignment to a job within a lower position for a period ranging from six months to one year, after which period the civil servant shall return to the job within the position he/she occupied before the disciplinary measure was imposed, and termination of employment, in cases when there are damaging consequences for the body and when no extenuating circumstances for the civil servant who committed the offence have been found.

(3) A measure of termination of employment shall be imposed in case of the disciplinary offenses of paragraph (1) of this Article.

Article 68-a

The sum of the fines for disciplinary irregularity or offence imposed on a civil servant in one month shall not exceed 30% of his/her total net salary for that month.

Article 69

(1) The disciplinary measures against the civil servant related to disciplinary irregularity shall be decided upon by the Secretary or the head of the body where no Secretary is appointed, following a written report prepared by the immediate superior civil servant.

(2) As an exception to the rule, in the bodies referred to in Article 3 paragraph (2) of this Law where there are no managerial civil servants, the written report shall be submitted by a managerial servant or the head of the body.

(3) Before the measure is imposed, the civil servant shall be informed in writing about the allegations made against him/her, and he/she shall have an opportunity to reply to the report referred to in paragraph (1) of this Article.

Article 70

(1) Within eight days following the submission of a proposal for initiation of a disciplinary measure, the secretary or the head of the body of Article 3 (2) of this Article in which no secretary is appointed shall set up a Commission for Conducting Disciplinary Procedures in case of disciplinary offenses (hereinafter: Commission).

(2) The Commission of paragraph (1) of this Article shall consist of three members, as follows: one civil servant with managerial powers, one civil servant at a position within the same group of positions as the civil servant against whom the disciplinary procedure is under way, and one member from the Agency. The Commission members shall have deputies.

(3) As an exception, in the bodies of Article 3 (2) of this Law in which there are no civil servants with managerial powers, the Commission of paragraph (1) of this Article shall be consisted of two civil servants from that body and one member coming from the Agency.

(4) Following the completion of the disciplinary procedure, the Commission of paragraph (1) of this Article shall propose an adequate disciplinary measure to the Secretary or official in charge of the body of Article 3 (2) of this Law in which no secretary is appointed.

(5) In case the Commission of paragraph (1) of this Article finds that the civil servant is not liable or that there are no conditions for adopting a decision to impose a disciplinary measure, it shall propose to the secretary or the official in charge of the body referred to in Article 3 (2) of this Law in which no secretary is appointed to reject the proposal or to terminate the procedure.

(6) On the basis of the Commission proposal, the secretary or the official in charge of the body referred to in Article 3 (2) of this Law in which no secretary is appointed shall adopt a decision to impose a disciplinary measure or to reject the proposal or to terminate the procedure.

(7) The decision to impose a disciplinary measure shall be handed over to the civil servant in person, as a rule at the premises of the body of Article 3 (2) where the civil servant works, or to their home or residence address, from which the latter go to work every day.

(8) In case the civil servant may not be found at the home or residence address or in case he/she refuses to be served, the latter shall be published on the notice board at the body of Article 3 (2) of this Law. Three days following the publication of the decision on the notice boards, the latter shall be deemed served.

(9) Disciplinary procedures shall be completed within 60 days as from the date of the decision to set up the Commission of paragraph (1) of this Article.

(10) Disciplinary procedures against civil servants against disciplinary offences referred to in Article 68 (1) items 18 and 19 of this Law shall be completed within 15 days as from the date of the decision to set up the Commission of paragraph (1) of this Article.

Article 71

(1) Any civil servant or other person shall, in line with the law, be entitled to the right to submit an initiative for commencement of a disciplinary procedure against a civil servant; such initiatives shall be elaborated.

(2) Initiatives for commencement of a disciplinary procedure against a civil servant on the basis of a disciplinary offence referred to in Article 68 (1) items 18 and 19 of this Law shall be submitted by the State Election Committee.

(3) A proposal for commencement of a disciplinary procedure against a civil servant shall be put forward by the immediate superior civil servant or the civil servant with managerial powers or the officer in charge of the body of Article 3 (2) of this Law in which no secretary is appointed.”

(4) The proposal of paragraph (3) of this Article shall be submitted to the civil servant and the trade union whose member the latter is, at the body of Article 3 (2) of this Law.

Article 71-a

A disciplinary procedure may not be initiated if one month has passed since the day when the immediate managerial civil servant or the managerial servant, or the head of the body referred to in Article 3 paragraph (2) of this Law where no Secretary is appointed, found out about the violation of official duty.

Article 71-b

A disciplinary procedure may not be initiated if three months have passed since the day when the violation of official duty was committed.

Article 71-v

As an exception to the rule, the deadlines referred to in articles 92 and 93 of this Law shall apply to disciplinary procedures initiated following the findings of an internal audit.

Article 71-g

If the violation of official duties also entails criminal liability, the disciplinary procedure to establish the liability of the civil servant shall become statute barred two years after the day the violation is discovered.

Article 72

(1)The civil servant may be suspended from the body referred to in Article 3 paragraph (2) of this Law on the basis of a decision made by the minister, or the head of the body, at a proposal put forward by the immediate managerial civil servant, or the managerial servant or the head of the body referred to in Article 3 paragraph (2) of this Law where no Secretary is appointed, who submitted the proposal to initiate a disciplinary procedure.

(2)The civil servant may be suspended from the body referred to in Article 3 paragraph (2) of this Law in cases when he/she is subject to an ongoing criminal procedure for crimes committed at work or related to his/her work or if a disciplinary procedure for a disciplinary offence has been initiated, the nature of the offence being such that his/her presence in the body during the course of the procedure would damage the service or impede or prevent the establishment of his/her liability for the disciplinary offence.

(3)The suspension referred to in paragraph (2) of this Article shall be in effect until an executive decision is adopted.

Article 73

The civil servant shall be entitled to appeal to the Agency against the decision referred to in Article 81 paragraph (6) and Article 87 paragraph (1) of this Law within 8 days of the day of receipt of the decision.

Article 73-a

The Agency shall, by means of a regulation, define the details of the manner in which the disciplinary procedure for establishing a disciplinary offence is to be conducted.

(b) Observations on the implementation of the article

The liability for a criminal offense does not exclude the disciplinary liability of the civil servant, pursuant to the Law on civil servants.

The provision under review is adequately covered in the former Yugoslav Republic of Macedonia's legislation.

Article 30 Prosecution, adjudication and sanctions

Paragraph 10

10. States Parties shall endeavour to promote the reintegration into society of persons convicted of offences established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

This provision of UNCAC is implemented in the Law on execution of sanctions (Official Gazette of the Republic of Macedonia No. 2/2006, 57/2010), in the Chapter 13 - Help for the convicted persons after their releasing from the institution - Articles 207, 208 and 209.

Law on execution of sanctions Chapter XIII Article 207 - Help for the convicted persons after their releasing from the institution

(1) The help after releasing the convicted person shall be a number of measures and actions which are applied for better socialisation of the convicted persons in their life at freedom and it is consisted of: providing an accommodation and food, health treatment, counselling about the choice of accommodation and stay, arranging his family relations, finding an employment, completing of his started vocational training, providing him with money for covering the essential needs, as well as other forms of help and support.

(2) Three months before releasing the convicted person needing a help after being on freedom, the institution shall inform the Centre for Social Welfare as determined according to the convict's permanent residence i.e. his temporary residence, about the day when he should be released and it shall indicate the type of the help which he needs especially for his successful inclusion in the life at freedom.

Article 208

If the convicted person doesn't have his own clothes, underwear or shoes nor the funds to provide them, the institution shall provide him with such articles free of charge.

Article 209

(1) After releasing from the institution, the convicted person can request help and support from the Judge for execution of sanctions.

(2) The Judge for execution of sanctions shall cooperate with the Centre for Social Welfare and can issue a written order for taking the necessary measures referred to in paragraph 1 of Article 207 of this Law.

(b) Observations on the implementation of the article

The Law on execution of sanctions provides for a number of measures to promote the reintegration of convicted offenders into society including training, counselling and employment assistance.

The provision under review is adequately covered in the former Yugoslav Republic of Macedonia's legislation, although no statistics nor case example were given to confirm that these measures are working effectively in practice.

Article 31 Freezing, seizure and confiscation

Subparagraph 1 (a)

1. Each State Party shall take, to the greatest extent possible within its domestic legal system, such measures as may be necessary to enable confiscation of:

(a) Proceeds of crime derived from offences established in accordance with this Convention or property the value of which corresponds to that of such proceeds;

(a) Summary of information relevant to reviewing the implementation of the article

This provision of UNCAC is implemented in the article 98 of the Criminal Code.

Criminal Code Article 98 - Manner of confiscating

(1) The indirect and direct property benefit obtained with a crime and consisting of money, movables or immovables of certain value, as well as any other ownership, property or active, material or non-material rights shall be confiscated from the offender, and if their confiscation is not possible other property corresponding to the value of the obtained benefit shall be confiscated from the offender.

(2) The indirect and direct property benefit shall be as well confiscated from third parties wherefore it has been obtained by committing the crime.

(3) The property benefit referred to in paragraph (1) shall be as well confiscated from members of the offender's family to whom it has been transferred, should it be obvious that they have not provided any compensation corresponding to the value of the obtained property benefit, or from third parties unless they prove that they have given counter-compensation for the object or the property which corresponds the value of the obtained property benefit.

(4) The objects declared as cultural heritage and natural rarities, as well as those to which the damaged party is personally attached, shall be confiscated from third parties, regardless of whether these objects have been transferred to the third parties with or without an appropriate compensation.

(5) The confiscated goods are returned to the damaged party, and if there is no damaged party, they become the State property.

(6) If during the criminal procedure, the damaged person is adjudged a property and legal claim, the court shall pronounce confiscation of property benefit in case if this exceeds the amount of this claim.

Article 98-a - Enlarged confiscation

(1) The property obtained in the time period, determined by the court according to the case's circumstances which shall not be longer than five years before the commission of the crime, prior to the conviction, when based on all the circumstances the court is well asserted that the property exceeds the legal incomes of the offender and originates from such crime, shall be confiscated from the offender of a crime committed within a criminal association wherefore a property benefit for which an imprisonment sentence of at least four years is prescribed, as well as a crime in relation with the terrorism referred to in Article 313, 394-a, 394-b, 394-c and 419 of this Code for which an imprisonment sentence of minimum five years or more has been prescribed or which is related to a money laundering crime wherefore an imprisonment sentence of at least four years is prescribed.

(2) The property referred to in paragraph (1) of this Article shall be as well confiscated from third parties for which it has been obtained by committing the crime.

(3) The property referred to in paragraph (1) of this Article shall be as well confiscated from members of the offender's family to which it has been transferred should it be obvious that they have not provided counter-compensation corresponding to its value, or from third parties unless they prove that they have provided counter-compensation for the object or the property, corresponding to their value.

Barring of enforcement of secondary punishments and safety measures, alternative measures, confiscation of property and seizing of objects

Article 110

(1) The barring of the enforcement of a fine as a secondary sentence becomes effective after two years from the day the verdict ordering that sentence has become legally valid.

(2) The barring of the enforcement of the safety measures – compulsory psychiatric treatment and custody in a health institution, unconfined psychiatric treatment and compulsory treatment of alcoholics and drug-addicts, shall become effective after five years as of the day the decision imposing those measures becomes legally valid.

(3) The time barring of the enforcement of the sentence involving prohibition to perform a profession, activity or duty, the prohibition to operate a motor vehicle and the temporary expulsion of a foreign person from the country, becomes effective upon expiration of the time period stipulated in those sentences.

(4) Barring of the alternative measures involving a community work and house arrest shall become effective after two years as of the day the verdict ordering those measures becomes legally valid.

(5) The enforcement of the special measures involving confiscation of property and seizure of objects does not reach a time-barred status.

(b) Observations on the implementation of the article

Article 98 of the Criminal Code provides for the confiscation of the direct and indirect proceeds of a crime, from the offender or from third parties, including value-based confiscation.

Article 98-a provides for an enlarged confiscation which could be applied when the property exceeds the legal incomes of the offender and originates from a crime committed within a

criminal association or which is related to a money laundering wherefore an imprisonment sentence of at least four years is prescribed.

The provision under review is adequately implemented.

(c) Successes and good practices

The review team positively noted the following measures adopted in this respect by the former Yugoslav Republic of Macedonia:

- Provisions related to the enlarged confiscation.
- The fact that the enforcement of the special measures involving confiscation of property and seizure of objects has no statute of limitation.

Article 31 Freezing, seizure and confiscation

Subparagraph 1 (b)

1. Each State Party shall take, to the greatest extent possible within its domestic legal system, such measures as may be necessary to enable confiscation of:

(b) Property, equipment or other instrumentalities used in or destined for use in offences established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

This provision of UNCAC is implemented in the article 100-a of the Criminal Code on Conditions for seizure of objects.

Criminal Code Article 100-a -Conditions for seizure of objects

- (1) Nobody can keep or adopt the objects that have occurred through a commission of a crime.
- (2) Objects that were intended or have been used to commit a crime shall be confiscated from the offender, regardless of whether they belong to the offender or to a third party, if this is required by the interest of general safety, health of the people or moral reasons.
- (3) The objects used or intended to be used to commit a crime may be confiscated if there is a threat that they may be used to commit another crime. Objects, which are the property of a third party, shall not be confiscated, except if the third party knew, could have known and was obliged to know that these objects have been used or were intended to be used to commit a crime.
- (4) The court shall adopt a decision to confiscate the objects within the framework of a procedure specified by law in the case when, due to factual or legal obstacles, it is impossible to conduct the criminal procedure with respect to the offender of the crime.
- (5) The application of this measure does not interfere with the right of third parties to compensation of damages from the offender of the crime.
- (6) Under the conditions stipulated in ratified international agreements, the objects may be returned to another country.

(b) Observations on the implementation of the article

Confiscation covers property, equipment or other instrumentalities used in or destined for use in offences.

The provision under review is adequately covered in the former Yugoslav Republic of Macedonia's legislation.

Article 31 Freezing, seizure and confiscation

Paragraph 2

2. Each State Party shall take such measures as may be necessary to enable the identification, tracing, freezing or seizure of any item referred to in paragraph 1 of this article for the purpose of eventual confiscation.

(a) Summary of information relevant to reviewing the implementation of the article

This provision of UNCAC is implemented in the Article 202 of the law on criminal procedure (Official Gazette of the Republic of Macedonia No. 150/2010).

Law on criminal procedure Article 202 - Temporary seizure of property or objects for their safeguarding

(1) At any time in the course of the proceedings, the court may render, upon request by the public prosecutor, a temporary measure of seizure of property or objects which should be seized according to the Criminal Code, a measure for confiscation or another necessary temporary measure in order to prevent the use, transfer or managing of that property or objects.

(2) The request by the public prosecutor referred to in paragraph 1 of this Article shall contain the following:

- a short description of the criminal offence and its legal designation;
- description of the property or objects which originate from a committed crime;
- information on the person who owns that property or objects;
- evidence on which the suspicion that the property or the objects originate from a criminal offense is based, and
- reasons for the probability that the seizure of property or object shall be made especially difficult or impossible until the end of the criminal proceedings.

(3) Before the beginning and during the preliminary procedure, the preliminary procedure judge shall rule on the request by the public prosecutor as referred to in paragraph 1 of this Article, and after the indictment has been raised, by the Court that is going to hold the hearing. The preliminary procedure judge shall rule immediately on the request by the public prosecutor, and no later than within 12 hours from the receipt of the request. If the preliminary procedure judge does not accept the request by the public prosecutor, he or she shall ask the Trial Chamber referred to in Article 25, paragraph 5 to render a decision without any delay. The Trial Chamber shall render a decision within 24 from the receipt of the request.

(4) In the decision on the measures referred to in paragraph 1 of this Article, the court shall designate the value and the type of property, or object, and the time period for which it is seized.

(5) An appeal may be filed within 24 hours against the decision of the preliminary procedure judge, establishing the measures referred to in paragraph 1 of this Article. The Trial Chamber referred to Article 25, paragraph 5 shall rule on the appeal. The appeal shall not prevent the enforcement of the decision.

(6) If there is danger of procrastination, the members of the Judicial Police may temporarily seize property or objects as referred to in paragraph 1 of this Article, confiscate them or take other necessary temporary measures in order to prevent any use, transfer and managing thereof. The public prosecutor shall have to be immediately informed on the measures taken, and the measures must be approved by the preliminary procedure judge within 72 hours from the moment of their implementation.

(7) If the preliminary procedure judge does not give an approval, the undertaken measures referred to in paragraph 6 of this Article shall be stopped, and any temporarily seized property or objects shall be immediately returned to the person they were seized from.

(8) The measures referred to in paragraph 1 of this Article may last until the completion of the criminal proceedings before the first instance court at the latest.

(9) If the measures referred to in paragraph 1 of this Article are established during the preliminary procedure, they shall be cancelled ex-officio if the investigative procedure does not begin within 3 months from the day when the decision establishing them was rendered.

(10) Before the expiration of the deadlines referred to in paragraph 9 of this Article, the measures may be cancelled ex-officio by the Court or upon request by the public prosecutor, i.e. by any interested person, if it becomes evident that they are not necessary or justified in view of the severity of the crime, the financial circumstances of the person they refer to or the circumstances of the persons, whom this person is obliged by law to support and the circumstances pointing to the fact that the seizure of property or objects shall not be precluded or made especially difficult prior to the completion of the criminal proceedings.

(11) All the actions upon the property and the objects that are subject of safekeeping, and that have been undertaken upon submitting the request from paragraph 1 of this article, are of no value.

(12) The request from paragraph 1 of this article and the decision for issuing the measures prescribed in paragraph 1 of this article, will be sent without a delay in an electronic format to all the bodies that are competent for documenting the property and the objects, whose safekeeping was requested and was approved.

Authorities met during the country visit confirmed that the provision of the paragraph 1 of the article 202 of the Law on criminal procedure covers all kind of property and objects which should be seized according to the Criminal Code, which includes the proceeds of crime, property with corresponding value and property used in committing offence (article 98 and 100-a of the Criminal Code).

They have further explained that the same provision refers to "... or another necessary temporary measure ...", which covers all other necessary temporary measures, including freezing. The identification and tracing of the property to be frozen are also covered because they precede the freezing stage. It is not necessary to mention these terms in the legal provisions cited above. Their application is logic out of the context of the Law on criminal procedure and Criminal Code.

(b) Observations on the implementation of the article

The Law on Criminal Procedure allows for a range of investigative measures available for the identification, tracing, freezing or seizure of criminal proceeds and instrumentalities.

The provision under review is adequately covered in the former Yugoslav Republic of Macedonia's legislation.

Article 31 Freezing, seizure and confiscation

Paragraph 3

3. Each State Party shall adopt, in accordance with its domestic law, such legislative and other measures as may be necessary to regulate the administration by the competent authorities of frozen, seized or confiscated property covered in paragraphs 1 and 2 of this article.

(a) Summary of information relevant to reviewing the implementation of the article

This provision of UNCAC is implemented by the Law on management with confiscated property, proceeds and objects seized in criminal and misdemeanour procedure (Official Gazette of the Republic of Macedonia No. 98/2008).

Law on management of confiscated property, proceeds and objects seized in criminal and misdemeanour proceedings

I. BASIC PROVISIONS General provision

Article 1

This Law shall regulate the manner of use, treatment and management of temporarily forfeited property, proceeds and temporarily seized items, as well as forfeited property, proceeds and seized items with an effective decision in a criminal and misdemeanour proceedings, the establishment, use, treatment and management and other matter of the Agency for Management of Seized Property (hereinafter in the text "Agency"), its competencies, its administration and other issues related to its operation.

Meaning of the terms used in this Law

Article 2

Certain terms used in this Law, shall have the following meaning:

The term "seized property" shall imply to temporarily forfeited property, proceeds and temporarily seized items, as well as forfeited property, proceeds and seized items with a final judicial verdict in a criminal or misdemeanour proceedings.

The term "temporarily forfeited property, proceeds and temporarily seized items" shall imply the property proceeds and seized items, where no effective decision has been made, with respect to their final forfeiture or seizure.

The term "forfeited property, proceeds and seized items" shall imply the property, proceeds and items, which have been seized on the basis of an final judicial decision.

Principles of the Law

Article 3

The handling and management of the seized property shall be done according to the principals of legality, economy, efficiency, transparency, acting with an attention of an owner, responsibility, professionalism and agility.

Treatment of classified information

Article 4

Any information encountered by the employees of the Agency while performing their duties, shall be treated as classified information, with an appropriate degree of secrecy, pursuant to the legislation for classified information.

II. AGENCY FOR MANAGEMENT OF SEIZED PROPERTY

Status of the Agency

Article 5

The Agency is subject established by Law with rights, obligations and responsibilities determinate by this Law.

The Agency has a Statute

The Headquarter of the Agency is in Skopje.

For its work the Agency is responsible in front of the Government of the Republic of Macedonia.

Scope of work of the Agency

Article 6

The Agency shall be responsible for the following tasks:

- Management and control of the forfeited property, proceeds and seized items;

- Management and control of the temporarily forfeited property, proceeds and temporarily seized items based on a consent provided by the court, in order to protect the value of the property in accordance with this Law;
 - following a judicial decision, conducting the procedure for enforcement of forfeiture of property and proceeds;
 - safeguarding and warehousing of seized property;
 - estimation of the value of seized property;
 - maintaining records for the overall seized property;
 - sale of forfeited property, proceeds and seized items;
 - preparation of statistical, financial and other reports on seized property;
 - planning, organizing and implementation of training, for the employees at the agency and other entities, involved in the handling and management of seized property;
 - Gives an opinions in relation to this Law; and
 - Accomplish other tasks and duties determinate by law.
- Executive Board of the Agency makes the bylaw act's by which it regulates the way of evidencing the seized property.

Enactment of operation plans

Article 7

Until 1st of September in the current year, the Director of the Agency shall enact an Operation Plan for the work of the agency during the forthcoming year.

Education and training of employees

Article 8

The employees in the Agency shall have the right and obligation for education and training, in accordance with the Annual Program that is to be adopted by the Managing Board of the Agency.

Official identification

Article 9

The employees of the Agency shall have official identification, which shall be issued and revoked by the Director of the Agency.

The Managing Board of the Agency with its bylaw act shall prescribe the form and contents of the specimen official identification and the manner of its issuance and revocation.

Submission of Work Reports

Article 10

Regarding its work, the Agency shall submit an Annual Work Report to the Government of the Republic of Macedonia and a revised financial report until the month of May, 31 of the next year at the latest.

The Reports as referred to in paragraph 1 of this Article, shall be adopted by the Managing Board and afterwards they shall be submitted to the Government of the Republic of Macedonia and they shall contain information on the work of the Agency and data related to the handling and management of the forfeited property, proceeds and seized items.

Submission of Reports to the courts and the Public Prosecution Office

Article 11

Upon request by the competent court or by other authorized organ, the Agency shall be obliged to submit a progress report for the specific case.

The Agency submits quarter reports to the organs referred to in paragraph 1 of this Article on proceeding about the developments and progress made, in each individual case of forfeited property, proceeds and seized items.

III. MANAGEMENT ENTITY OF THE AGENCY

Article 12 - Bodies of the Agency

Bodies of the Agency are the Managing Board and the Director.

Article 13 - Composition of the Managing Board

The Managing Board runs the Agency.

The Executive Board is made of five members:

The members are chosen by the Ministry of Justice, the Ministry of Finance, the State Attorney, the Judicial Council of the Republic of Macedonia, the Council of Public Prosecutors of the Republic of Macedonia.

Article 14 - Appointing and dismissing the members of the Managing Board

The members of the Managing Board are being appointed and dismissed by the Government of the Republic of Macedonia for a time period of five years, without the right of a re-election.

The Managing Board chooses a president from its members on their First session. When a member of The Managing Board stops doing his/ hers duties before the end of their mandate, the Board shall appoint a new member on their position.

The Government of the Republic of Macedonia may dismiss the president or a member of the Managing Board before the end of their mandate:

- on his / hers request;
- when a violation sanction for work, profession or duty, restriction is being pronounced to an executive person in the institution;
- because of difficult long-term illness, that's preventing him in executing his obligations; -If he / she loses hers or his power of will
- if it's being determine that while executing the function by himself or with another member of the Managing Board acts contradictory to the basic causes of the law, which can be determined from the reviewers report for the level of accomplishments of the legal competence of the Agency; and
- because of unprofessional executing of the function president or member of the Managing Board on the field of material and financial work, established in the reviewer's report.

Article 15 - Competence and way of work of the Managing Board of the Agency

(1) The Managing Board of the Agency performs these matters:

- Adopts the Agency's Statute, on which the consent is given by the Government of the Republic of Macedonia.
- adopts the rulebook for work;
- approves the yearly plan and the revised financial plan of the Agency; - approves the yearly working plan and a revised financial report;
- approves the bylaw acts for caring out this law;
- approves the acts for organization and systematization of the work positions at the Agency, as well as the acts for grading and the payment system.
- other matters based on this Law and Agency statute.

(2)The Managing Board works and decides on session.

Article 16 - Director of the Agency

The Agency shall be managed by a Director.

The Director shall be appointed and dismissed by the Government of the Republic of Macedonia.

Article 17 - Nomination of the Director

A person shall be nominate as a Director, if he/she meets the general conditions provided by law, for employment in State administrative bodies, as well as the following special conditions:

- the person has to have a university degree in the field of law or economy; and
- A working experience of at least four years in the particular field, under his or her competence.
- the person has to be a citizen of the Republic of Macedonia;

Article 18 - The Mandate of the Director

The Director has a five years long mandate, with the option of re-election.

Article 19 - Discharging the Director

The Director of the Agency can be discharged before his mandate expires if:

- a) With his irregular work cause damage in the Agency's work determent according to Law;
- b) If he or she does not work according to Law, statute and the acts of the Agency, or unjustifiably does not enforce the decisions of the Managing Board or works contradictory to them.
- c) When a sanction which requires profession prohibition, duty or obligation of a person in charge in the institution is pronounced;
- d) if he / she loses hers or his power of will
- e) If one does not deliver a report accordingly to article 15 of this law, or if after the end of the time period determent in the same section does not remove the shortcomings and/or if in that time period still has lacks in the financial work.
- f) on his/her request

Article 20 - Duties of the Director

- (1) The Director of the Agency does the fallowing work: - represents the Agency;
- organizes the work and manages the professional branches of the Agency;
 - executes the decisions of the Managing Board;
 - prepares and suggests the Managing Board a yearly plan and a revised financial plan,
 - prepares and suggests the Managing Board a yearly report and a revised financial report;
 - prepares and suggests bylaw acts to the Managing Board for realizing this Law;
 - suggests and executes the acts for organization and systematization of the working positions of the Agency;
 - cares for the legal work and spending of the financial resources of the Agency; - Adopting manuals regarding the realization of labor relations; and
 - decides for other matter established by this law and the statute of the Agency.

(2) The Director of the Agency is obligated to submit a report for his work to the Managing Board of the Agency and to the Government of the Republic of Macedonia on every six months.

Article 21 - Authorization for conducting matter

The Director of the Agency may authorize an employ of the Agency to sign acts, to make decision's for certain matter and to do other work of competence to the Agency, expect for the ones that are in a exclusive competence of the Director.

The Director of the Agency may at any time take away the given authorization from section 1 of this article. The given authorization of section 1 of this article does not prevent the Director from conducting his matter.

Article 22 - Determining the internal organization

The Internal organisation of the Agency is determined accordingly to its competence by law.

Article 23 - Statute of Agency

The Agency has a Statute by which it is determined:

- the matter of competence of the Agency and the way of their performance; - the competence of the Managing Board и на Director of the agency,
- the way of selection and discharge of the Managing Board members and the Director,
- The rights, obligations and responsibilities of the employees, the international cooperation of the Agency, and
- Other matter of meaning to the work of the Agency.

IV. RELATIONS BETWEEN THE AGENCY AND OTHER BODIES

Reporting temporarily seized property to the Agency

Article 24

Following the espoused decision by any court or another body, the court or that body shall immediately inform the Agency about any temporarily seized property, proceeds or items.

The property, proceeds and items as referred to in paragraph 1 of this Article, shall be transferred into possession and care of the Agency, unless the court decides otherwise.

When transferring the property, proceeds and items, referred to in paragraph 1 of this Article, a report shall be drafted and it shall contain data on the type, quantity, condition in which they are received, the name of the person they have been seized from, as well as other relevant data about the seized property, proceeds and items.

The Managing Board of the Agency, with bylaw, shall prescribe the contents of the report, referred to in paragraph 3 of this Article.

Reporting property forfeited by an effective decision to the Agency

Article 25

Following the passing of an effective decision by the court, whereby property or proceeds are being forfeited or items are seized, the court shall be obliged to inform the Agency about it, and deliver the forfeited property, proceeds or items, unless they have been delivered to the agency earlier.

V. MANAGEMENT OF SEIZED PROPERTY

Management of seized property by the Agency

Article 26

The Agency shall manage the seized property according to the principle as befitting to the master of the house.

When Agency manages seized property, it may ask for certain tasks to be performed by specialized agencies and persons with respect to property valuation, sale of property etc.

Valuation of seized property

Article 27

After receiving the property, the Agency shall perform valuation of its market value and for that purpose; it can use the services of specialized authorized experts.

For the amount of estimated value of the property, the Agency notifies the Authorized court, Public Prosecution and State defender, other authorized body or the person from whom the property is sized.

The Public Prosecution, State Defender and other concerned party may obtain an objection for estimated value to the body that brought the decision for forfeiting the asset.

Execution of judicial decisions for seizure of property

Article 28

The Agency shall execute the decision for forfeiture of property.
When executing the court decision as referred to in paragraph 1 of this Article, the Agency may demand assistance from Law enforcement bodies, such as the Ministry of Interior.

Treatment of items of historical and artistic importance

Article 29

If the temporary seized items are of special historical, scientific or artistic value, the Agency shall entrust them to the care of an appropriate institution, competent for safekeeping of such items.

When the decision for forfeiture of the items as referred to in paragraph 1 of this Article goes into effect, without any financial compensation, they shall be entrusted to an appropriate institution, competent for safekeeping of such items, as its prescript by a specialized law.

Treatment of seized precious gems and metals

Article 30

If precious gems or metals have been temporarily seized, up to the final completion of the proceedings or the enactment of the court decision for sale, the Agency shall entrust them for safe keeping to the National Bank of the Republic of Macedonia.

When the proceedings are final and over, the National Bank of the Republic of Macedonia shall return the items, as referred to in paragraph 1 of this Article, to the Agency.

Assigning of the seized real estate

Article 31

If real estate has been seized with an effective decision, the Agency shall inform the Government of the Republic of Macedonia, which can then enact a decision for assigning of the real estate to another State body, free of charge in consonance with Law.

The Government of the Republic of Macedonia shall decide on the assignment of the real estate, as referred to in paragraph 1 of this Article, within a period of one month, from the day when it has been informed herein.

Safekeeping of temporarily seized real estate

Article 32

The Agency shall undertake all necessary measures for safekeeping and maintenance of the temporarily seized real estate.

The Agency shall bear all the expenses for safe keeping and maintenance of the property referred to in paragraph 1 of this Article.

Seized securities management

Article 33

The sale of property, seized with a final and valid court decision, which comprises of securities, shall be effectuated pursuant to the regulations that regulate the circulation and trade in securities.

Banks and authorized financial institutions manage and dispose with seized property as referred to in paragraph 1 of this article.

Procedure for sale of confiscated objects

Article 34

The sales of the forfeited objects are made by auction.

The sales of the objects are pronounced through the media at least seven days before the beginning of the auction, and through the web - page of the Agency, where a list of accurate description of the objects for sale will be submitted.

This sale can be performed by a commission established by the Agency director.

Sales under estimated value

Article 35

The forfeited objects cannot be sold under their estimated value according to Article 27 of this Law. If on the first auction the estimated price is not achieved, the Agency shall schedule a new auction on which the objects can be sold under the estimated value, but not below the estimated value lowered for one quarter of the estimated value.

Appending the price and takeover of the objects

Article 36

The buyer is obligated to append the price to the Budget of the Republic of Macedonia. The buyer becomes owner of the bought objects.

The buyer doesn't possess the rights vested by a guarantee, caused by damages made on the objects.

The prosecuted person or the person against who was been led a judicial or infringement procedure, the employees at the Agency or another person who is officially involved in the sales procedure can't be buyer of the objects.

Sale of seized property

Article 37

Based on consent for execution brought by the court or the body that brought the final decision, required by the Agency, the Government of the Republic of Macedonia brings decision for sale of seized realty.

The agency based on the decision as referred to in paragraph 1 makes a decision for sale of the property by which are determinate modus, conditions, time and place of the sale.

The Agency shall announce the decision for sale in “Official gazette of Republic of Macedonia”, at least in one daily newspaper and on a web page of the Agency.

The sale is performed within a period of time from 15 to 30 days after announcing of the decision for sale in media.

Sale made by public bidding

Article 38

The sales of a forfeited asset are made by a verbal, public bidding.

The verbal, public bidding for sales is performed by the Commission which is established by the Agency's Director.

Conditions for sales

Article 39

The Conditions for sale, besides the other data also contains:

- 1) a closer description of the confiscated asset;
- 2) the person to who's benefit is the legal and registered right for using or a registered right of homing of the confiscated (forfeited) asset, as well as the household officials;
- 3) the value of the asset determent according to article 27 of the Law;
- 4) the price by which the buyer may sale the asset;
- 5) the time period in which the buyer is obligated to give the price;
- 6) the way of sale;
- 7) the amount of the guarantee; and
- 8) the clause by which the tax is paid by the buyer.

The sales of the asset by a public bidding is made in the headquarters of the Agency

The time period in which the buyer is obligated to pay the price cannot be longer than 15 days from the day of sales.

By exception, and by a previous agreement from the Government of the Republic of Macedonia, the time person may be prolonged to the most of three months.

Submitting the guarantee

Article 40

In the public auction there can only be the two buyers who previously gave there guarantee.

The guarantee is one tenth of the established value of the forfeited asset.

The buyers whose offer is not accepted, the guarantee is being returned right after the end of the public auction.

Repetition of the public bidding

Article 41

The public bidding shall take place even when only one bidder is present.

As referred to in paragraph 1 of this Article, in a period of 30 days from previous auction, the Agency schedules new auction.

Persons that can't participate in the public bidding

Article 42

The buyers cannot be neither by auction, the employees at the Agency or other person who officially take place in the sales procedure, as well as the person against whom the procedure is conducted.

Accomplishing the public bidding

Article 43

On the first auction the asset cannot be sold under the established value according to Article 27(check) of this Law.

If the forfeited asset cannot be sold on the first public auction, the Agency shall schedule a second public auction at which the forfeited asset can be sold under the estimated value, but not under the estimated value decreased for one fourth of the estimated value.

From the first till the second auction must past at least 15 days but no more than 30 days. After establishing that the conditions for public auction exist, the president of the Commission pronounces that the adding begins.

The adding concludes after three minutes right after receiving the best offer.

After concluding the adding, the president of the Commission pronounces which buyer offered the best price and pronounces the buyer to whom the asset is being sold out to.

For selling the asset the Commission makes a record and brings out a conclusion for sale which it delivers to all of the participants of the auction.

Against the conclusion from the previous section, a law suit is allowed in a time period of 15 days after receiving the conclusion.

The delivered law suit does not stop the realization of the conclusion for the sale.

After paying the price of the asset, the Agency in a time period of three days brings out a conclusion for the made sale which is a legal base for receiving the right to own.

The Agency shall carry out the conclusion for sale of the asset, after determine the conditions for validity of the sale.

The conclusion for selling the asset is delivered to the person to whom the conclusion of the sale is delivered, to the buyer and to all of the recipients in the auction in a time period of eight days after adopting.

Laying the price

Article 44

The buyer is obligated to lay the price in the time period determined by Article 39 of this Law.

If the buyer does not lay the price in the time determined period, the Agency by a conclusion shall call the sale as invalid and will schedule a new sale.

From the given guarantee the expenses of the sale shall be compensated.

Giving the asset in a possession of the buyer

Article 45

After paying the price by the buyer, the Agency, in a time period of eight days, brings a conclusion for giving the asset in a possession of the buyer.

The conclusion is delivered to all persons to whom the conclusion for sale of the asset is delivered.

Realities that are not sold on the second bidding

Article 46

If the asset cannot be sold to the second auction the Agency shall propose to the Government of the Republic of Macedonia how to act with the forfeited asset.

Sale of the forfeited share

Article 47

After the receiving of the legally binding decision for forfeiting shares, the Agency shall write the share in the Book of Shares and the Tradesman Registry.

The sale of shares is done accordingly to the regulations for sale of moving objects accordingly to this Law.

Sales of temporarily forfeited property

Article 48

The Agency may by previous agreement by the Court make a decision for sale of the temporarily forfeited property if it is estimated that by the keeping the object the value of it is being lowered or the expenses for its keeping are high.

The temporarily forfeited property cannot be an object of sale.

Depositing funds from the sale of temporarily seized property

Article 49

The proceeds received from the sale of the temporarily seized property shall be deposited to a specific account of the Agency.

If there is a final and valid verdict for the return of the property, the owner shall be compensated by the funds as referred to in paragraph 1 of this Article.

If the funds in the account referred to in paragraph 1 are not sufficient to compensate the owner, the difference shall be provided from the reserve of the Agency Budget.

Sale of property, seized by an final court decision

Article 50

The Agency shall sell the real estate and movable property that has been seized by an effective court decision, immediately after the final decision, and the proceeds shall be allocated in the Budget of the Republic of Macedonia..

Donation of temporarily seized property to humanitarian organizations, associations of citizens and foundations

Article 51

The Agency may give certain items like food, clothing etc. to humanitarian organizations free of charge, according to the Law, and informs the Government of the Republic of Macedonia about it.

The Executive Board with a bylaw regulates the departure the temporarily forfeited asset to State institutions, communities of citizens and foundations.

Withdraw of the forfeited assets based on a final verdict

Article 52

Withdraw of the forfeited assets is possible by the Agency only with a legally binding verdict or another decision of a competent body, by a previous agreement of the Government of the Republic of Macedonia.

Financing and operational means

Article 53

The funds for the operation of the Agency shall be provided by the State Budget of the Republic of Macedonia.

VI. TREATMENT OF ITEMS OUT OF TRADE

Treatment of seized narcotic drugs, psychotropic substances and precursors

Article 54

Seized narcotic drugs, psychotropic substances and precursors are delivered to the Agency for safekeeping. If Agency don't possess requirements for safekeeping of narcotic drugs, psychotropic substances and precursors, they shall be kept by State body that possess such requirements. For this action agency compose minute.

Seized narcotic drugs, psychotropic substances and precursors, shall be kept in a separate room. The Agency shall bear all the expenses for sale and destroying of the seized narcotic drugs, psychotropic substances and precursors.

The Government of the Republic of Macedonia with ordinance regulate the standards for safekeeping, sale and destroying of the narcotic drugs, psychotropic substances and precursors. The manageable board with bylaw subscribes the form of the minute as referred to in paragraph 1 of this Article.

Selling of the forfeited drugs, psychotropic substances and precursors Article 55

Court may adopt a decision on forfeited drugs, psychotropic substances and precursors to be sold to appropriate trade associations /companies, with a special approval by an authorized organ for trading and production of drugs, in a procedure stated by the Law. In the process of forming of the Commission for selling of narcotic drugs and psychotropic substances and precursors, the Director of the Agency appoints a member from the Bureau for drugs, (an integral part of the Ministry for Health) in the Commission.

Donation of the forfeited drugs, psychotropic substances and precursors to an appropriate institution that does scientific examinations

Article 56

For the needs of education and qualification the court may adopt a decision sample of the forfeited drugs, psychotropic substances and precursors to be donated to an appropriate institution that does scientific examinations.

Destroying of the narcotic drugs, psychotropic substances and precursors

Article 57

The decision for destroying and the location of keeping the forfeited narcotic drugs, psychotropic substances and precursors brings the competent court.

The forfeited narcotic drugs, psychotropic substances and precursors are being destroyed by a Commission formed by the Minister of Justice.

The Commission of section 2 of this article is made of five members who are representatives of the court, the public prosecution office, the Ministry of Justice, the Ministry of Internal affairs and the Agency.

The destruction of the forfeited drugs, psychotropic substances and precursors is done by burning an object with a license for burning dangerous matter.

For the proceeded destruction, the Commission reports to the competent court which brought the decision for destruction.

Treatment of seized weapons, ammunition and explosive materials

Article 58

Any seized weapons, ammunition or explosive materials forfeited in a criminal or misdemeanour procedure shall be hand over to the Agency. If the Agency does not have conditions for their keeping they shall be kept at the Ministry of Internal affairs and the Ministry of Defence.

The weapons, ammunition and the explosive materials which purchasing is restricted by law, will be destroyed by the Commission of Article 57 of this law at a place that has certain conditions for the purpose.

The functioning weaponry, accordingly to law, with a prior agreement with the Government of the Republic of Macedonia may be delivered without any expenses to the judicial police, the Ministry of Internal affairs, the Ministry of Defence, the Army of the Republic of Macedonia, the Directorate for execution of sanctions, the Financial police and other Law binding bodies that have the right of caring weaponry.

The functioning weaponry, ammunition and explosive materials according to law may be sold by public auction in a procedure regulated by this law to companies or organizations that work with weapons and ammunition or to individuals who have the approval of purchasing weaponry.

Destruction of other seized property

Article 59

Seized and other property that cannot be sold because of medically, veterinary, sanitary, safety and other reasons, shall be destroyed by the Commission as referred to in Article 57 of this Law.

Seized tobacco and alcohol products, that don't possess declaration, shall be destroyed without any exceptions.

TRANSITIONAL AND FINAL PROVISIONS

Article 60

The Government of the Republic of Macedonia shall appoint the Managing Board and Director of the Agency in a period of 3 months, from the day when this Law enters into force.

Article 61

The bylaws that have been envisaged with the provisions of this Law shall be enacted within a period of six months from the day when this Law enters into force.

Article 62

The courts and the other institutions shall start informing the Agency about any temporarily seized property, six months after the establishment of the Agency.

The courts and the other institutions shall start informing the Agency about any property seized with an effective judicial decision, six months after the establishment of the Agency, if the property was not sold or assigned, and pursuant to the provisions of this Law, they shall entrust the property to be managed by the Agency.

Article 63

The Articles of other laws and bylaw acts that regulate the matter of managing the forfeited assets, the property benefits and the confiscated property in a criminal and misdemeanour proceeding shall be coordinated with the Articles of this Law by December 31, 2008.

Article 64

This Law shall enter into force on the eight day, from the date when it has been published in the "Official Gazette of the Republic of Macedonia", and shall start applying from January the 1, 2009.

(b) Observations on the implementation of the article

The former Yugoslav Republic of Macedonia has a special and comprehensive Law on management of confiscated property, proceeds and objects seized in criminal and misdemeanour proceedings. This Law establishes and Agency with a wide scope of work, which included, among other tasks, the management and control of the forfeited property, proceeds and seized items and of the temporarily forfeited property, proceeds and temporarily seized items based on a consent provided by the court, in order to protect the value of the property in accordance with this Law.

(c) Successes and good practices

The review team positively noted the existence in the former Yugoslav Republic of Macedonia of a special Law and a special Agency dealing with the administration of frozen, seized or confiscated property.

Article 31 Freezing, seizure and confiscation

Paragraphs 4, 5 and 6

4. If such proceeds of crime have been transformed or converted, in part or in full, into other property, such property shall be liable to the measures referred to in this article instead of the proceeds.

5. If such proceeds of crime have been intermingled with property acquired from legitimate sources, such property shall, without prejudice to any powers relating to freezing or seizure, be liable to confiscation up to the assessed value of the intermingled proceeds.

6. Income or other benefits derived from such proceeds of crime, from property into which such proceeds of crime have been transformed or converted or from property with which such proceeds of crime have been intermingled shall also be liable to the measures referred to in this article, in the same manner and to the same extent as proceeds of crime.

(a) Summary of information relevant to reviewing the implementation of the article

Reference was made to article 97-a - of the Criminal Code.

Criminal Code Confiscation of direct property benefit - Article 97-a

Apart from direct property gain the perpetrator shall be subject to confiscation of the indirect property gain, consisting of the following:

- 1) the property into which the proceeds of crime have been transformed or converted.
- 2) the property acquired from legitimate sources if proceeds of crime have been intermingled, fully or partially, with that property, up to the estimated value of the intermingled proceeds of crime, and
- 3) the income or other benefits derived from the proceeds of crime, from property into which such proceeds of crime have been transformed or converted or from property with which such proceeds of crime have been intermingled, contains the proceeds from a crime, up to the estimated value of the intermingled proceeds of crime.

(b) Observations on the implementation of the article

The provision under review is adequately covered in the former Yugoslav Republic of Macedonia's legislation.

Article 31 Freezing, seizure and confiscation

Paragraph 7

7. For the purpose of this article and article 55 of this Convention, each State Party shall empower its courts or other competent authorities to order that bank, financial or commercial records be made available or seized. A State Party shall not decline to act under the provisions of this paragraph on the ground of bank secrecy.

(a) Summary of information relevant to reviewing the implementation of the article

Reference was made to Article 200 - item 8 of the Law on criminal procedure (Official Gazette of the Republic of Macedonia No. 150/2010).

Law on criminal procedure - Article 200

Handling information constituting a bank secret, property in a bank safe-deposit box, monitoring of payment operations and accounts transactions and temporary suspension of the performance of certain financial transactions

(1) If there is a grounded suspicion that a certain person receives, holds, transfers or otherwise manages crime proceeds on his or her bank account, and if the proceeds are important for the investigative procedure of that crime, or it is subject to forcible seizure according to the law, the court, upon an elaborated request by the public prosecutor, may issue a decision ordering the bank or other financial institutions to supply all documentation and data on the bank accounts and other financial transactions and dealings of that person, as well as for persons for which there is a grounded suspicion that they are involved in those financial transactions or dealings of the suspect, if such information may be used as evidence during the criminal procedure.

(2) The request of the public prosecutor shall refer to information on natural or legal persons, and to all crime proceeds that he or she receives, holds, transfers or otherwise manages.

(3) If the person as referred to in Article 1 holds in a bank safe-deposit box or otherwise manages crime proceeds, and if the crime proceeds are important for the investigative procedure of that crime or is subject to forcible seizure according to the law, the court, upon an elaborated request by the public prosecutor, may issue a decision instructing the bank to enable access to the public prosecutor to the safe-deposit box.

(4) The decisions referred to in paragraphs 1 and 3 of this Article shall also contain the deadline within which the bank or another financial institution must act upon them.

(5) Before the beginning and in the course of the investigative procedure, the ruling on the request by the public prosecutor as referred to in paragraphs 1 and 3 of this Article, shall be rendered by the judge of the preliminary procedure, and after the indictment has been raised, by the court which shall hold the hearing. The preliminary procedure judge shall decide upon the request by the public prosecutor immediately, and no later than within 12 hours from the receipt of the request. If the preliminary procedure judge overrules the request by the public prosecutor, without any delay, he or she shall ask for a decision to be brought by the Trial Chamber referred to in Article 25, paragraph 5 of this Law. The Trial Chamber shall render a decision within 24 from the receipt of the request.

(6) If circumstances as referred to in paragraph 1 of this Article exist, the preliminary procedure judge, upon an elaborated proposal by the public prosecutor, may instruct the bank or another financial institution with a decision, to monitor the payment operations and the transactions in the accounts of a certain person and regularly inform the public prosecutor during the time period defined in the decision.

(7) Upon an elaborated proposal by the public prosecutor, with a decision, the court may instruct a financial institution or a legal person to temporarily stop the performance of a certain financial transaction or dealing, whilst temporarily seizing the property.

(8) In emergencies, the public prosecutor may impose the measures as referred to in paragraphs 1, 3, 6 and 7 of this Article without a court order. The public prosecutor shall immediately inform the preliminary procedure judge about the undertaken measures, who shall be obliged to issue the order within 72 hours. If

the preliminary procedure judge does not issue an order, the public prosecutor shall return the data without previously opening them.

The former Yugoslav Republic of Macedonia noted that the above mentioned law was the new Law on criminal procedure which has been adopted in 2010 but entered into force in December 2013.

Regarding the non-applicability of bank secrecy when the court issues an order for financial records to be made available or seized, it was also present in the old Law on criminal procedure (Official Gazette of the Republic of Macedonia No. 15/97, 44/2002, 74/2004, 83/2008 и 67/2009, 150/10):

Law on criminal procedure - Article 220

(Official Gazette of the Republic of Macedonia No. 15/97, 44/2002, 74/2004, 83/2008 и 67/2009, 150/10)

(8) No one can call upon the bank secrecy in order to escape the execution of the court decision for temporary freezing, confiscation or holding of the means which are deposited in the bank.

The new Law on criminal procedure reaffirms this principle.

Authorities met during the country visit confirmed that the cited domestic provision also allows government authorities to require the production of commercial records, in addition to financial and bank records. Reference was also made to the following provisions:

Criminal Code

Article 122 Meaning of terms

(11) A document shall refer to any object that is suitable or designated to serve as proof of a fact that is of value for the legal relations. A public document shall be a document issued by a competent body, organization, or a person performing works of public interest based on a law or another regulation based on a law.

Law on Criminal Procedure

Article 21 - Meaning of legal terms and other provisions

(14) Grounds for suspicion shall mean information that can be evaluated as proof that a certain crime has been committed on the basis of prior criminal knowledge and experience.

(15) Grounded suspicion shall mean a higher degree of suspicion based on the evidence collected, which points to the conclusion that a certain person has committed a criminal offense.

Article 46

Duties of the Judicial Police

(1) The Judicial Police, ex-officio or upon order by the public prosecutor shall take measures and activities in order to detect and criminally investigate crimes, prevent any further consequences of the crimes, apprehend and report the perpetrators, secure the evidence and other measures and activities that might be useful for an unobstructed criminal procedure.

(2) The Judicial Police shall conduct investigations and activities as ordered or asked by the court and the public prosecution office.

(3) The duties referred to in paragraphs 1 and 2 of this Article shall be performed by the chiefs and officers from the Judicial Police.

Article 47

Authority of the Financial Police and the Customs Administration

(1) The authorization that has been provided to the Judicial Police with this Law, shall also belong to the Financial Police in the event of detection and investigation of the following crimes: laundering of money and other crime proceeds from Article 273, illegal trade from Article 277, smuggling from Article 278 and tax evasion from Article 279, all of those from the Criminal Code, as well as other criminal offenses that involve crime proceeds of significant value.

(2) The authorization that has been provided to the Judicial Police with this Law, shall also belong to the Customs Administration in the event of detection and investigation of the following crimes: production and sale of harmful medicaments from Article 212, production and sale of harmful food and other produce from Article 213, unauthorized production and sale of narcotic drugs, psychotropic substances and precursors from Article 215, unauthorized collection and disposal of nuclear materials from Article 231, import of hazardous materials in the country from Article 232, export of goods under temporary protection or cultural heritage or natural rarities from Article 266, laundering of money and other crime proceeds from Article 273, smuggling from Article 278, customs fraud from Article 278-a, hiding smuggled goods and customs fraud from Article 278-b, tax evasion from Article 279, illegal possession of weapons and explosives from Article 396, human trafficking from Article 481-a, all of those from the Criminal Code, criminal offenses from the Excise Tax Law and other crimes related to imports, exports and transit of goods across border lines.

Article 48

Composition of the Judicial Police

- (1) The duties of the Judicial Police as referred to in this Law shall be performed by:
- 1) the police officers in the organizational units at the Ministry of Interior, the Financial Police and the Customs Administration, which, according to their scope of work as defined by law, shall undertake measures and activities for detection of crimes, apprehension and reporting of the perpetrators, securing evidence for the crimes and other measures that provide for an unobstructed criminal procedure;
 - 2) the members of the Judicial Police at the investigation centres of the Public Prosecution Office; and
 - 3) the officials assigned to the public prosecutor pursuant to Article 50 of this Law.

Authorities also confirmed that the above cited article 200 of the Law on criminal procedure, in its paragraph 1, refers to in addition to “bank accounts and other financial transactions” but also to “dealings”, which includes “commercial documentation and data”.

(b) Observations on the implementation of the article

Pursuant to a request by the public prosecutor, the court may order the production and seizure of banking and commercial records.

The provision under review is adequately covered in the former Yugoslav Republic of Macedonia’s legislation.

Article 31 Freezing, seizure and confiscation

Paragraph 8

8. States Parties may consider the possibility of requiring that an offender demonstrate the lawful origin of such alleged proceeds of crime or other property liable to confiscation, to the extent that such a requirement is consistent with the fundamental principles of their domestic law and with the nature of judicial and other proceedings.

(a) Summary of information relevant to reviewing the implementation of the article

Reference was made to Article 533 of the Law on criminal procedure (Official Gazette of the Republic of Macedonia No. 150/2010).

Law on criminal procedure Article 533 - Extended forfeiture

- (1) The court shall provide for an extended forfeiture under the terms prescribed in the Criminal Code, if the defendant cannot prove that he has lawfully acquired the assets or property within one year as of the day of the commencement of the main hearing.
- (2) If the court reaches a judgment in the first instance regarding the criminal offense within a term shorter than the one stipulated in paragraph 1 of this Article, when the legal conditions for the measure of extended forfeiture are met, the court shall provide for such a measure with a supplementary judgment that may be appealed in accordance with the provisions of this Law.

The former Yugoslav Republic of Macedonia provided the below table on statistical data on confiscation from April 2014:

STATISTICAL DATA ON CONFISCATION				
	Cases with final judgments	Type of the confiscated property	Amount of the confiscated property (total amount)	Current status
1.	<u>“Miodgrad Markovich” case</u>	<p>A villa on Vodno with a total area of 236 m2, A house in Ohrid with a total area of 270 m2, A business space with a total area of 106m2.</p> <ul style="list-style-type: none"> - 3.120 stocks in the AD “IK Banka” currently Halk Bank, - 13.544 stocks in the AD “Jugoprema” amounting 43,64% of the capital - 8.662 stocks in the AD “Stater Banka” newly Central Cooperative bank amounting 1 % of the capital for which procedure for selling is commenced. - 12.778 stocks in the AD “KIK Kumanovo” – amounting 33% of the capital - 921 stocks in the AD “Kozjak Kumanovo” – amounting 2, 73% of the capital -564 stocks In agriculture combinat Skackovce Kumanovo – amounting 28% of the capital. -23.970 stocks in Trgotekstil – amounting 4,04% of the capital - 132.948 stocks in TD EMO Ohrid – amounting 36,15% of the capital, whereby the transfer conducted by “Ararat” was annulled. 	Total amount 544.207.000 denars	
2.	<u>“Zivko Eftimovski” case</u>	<p>½ of family house in the cadastre municipality of Jankovec with a total area of 511%, of which 171m2 under the object.</p> <p>½ villa in Pretor under the cadastre municipality of Pretor in his possession, given to a third party, with a total amount of 234 m2.</p>	Total amount 58.652.000 denars.	
3.	<u>“Daravelski and Docevski” case</u>	<ul style="list-style-type: none"> - from the convicted Daravelski confiscated are an apartment in Skopje with a total area of 119 m2 and a business space with a total area of 202 m2 and a building space of 540 m2. from cadastre municipality of Kumanovo; - from the convicted Kiro Docevski confiscated is an 	With the judgment confiscated are property gains in total amount of <u>103.575.167 denars.</u>	Realization by selling of immovable property in amount of <u>11.031.155 denars</u> , that are paid in favor of the Budget of Republic of Macedonia.

		apartment in Kumanovo with a total area of 74 m2.		
4.	<u>“Borko Markovich” case</u>	In the given legal period the decision was not enforced, whereof the property in amount of 10.901.514 denars was confiscated and the amount was paid in favor of the Budget of the Republic of Macedonia.	With the judgment confiscated are property gains in total amount of <u>10.901.514 denars</u>	<u>10.901.514</u> denars are confiscated and paid in favor of the Budget of the Republic of Macedonia.
5.	<u>“Slavija” case</u>	The share in Slavija 1 DOOEL import export Skopje (registered on Kiril Kocevski) amounting 218.667 euro in SLAVIJA DOO import –export Skopje The share of Kiril Kochevski, as a physical person in Slavija DOO import export Skopje amounting 1028 euro. With the transformation of another judgment of SLAVIJA DOO import export Skopje became AD SLAVIJA where the Agency has confiscated 4.285 shares in the value of one share of 1.700 EUR.	With the judgment confiscated are property gains in total amount of <u>97.612.997 denars in favor of Republic of Macedonia.</u>	The total amount of the shares upon the estimation done by the Bureau for Forensic Expertise is <u>7.284. 500 EUR.</u>
6.	<u>Bachilo” case</u>	- From Nikola Stojmenovik – sentenced with 14 years of imprisonment – an amount of 4.942.249 denars was confiscated. - From Krste Ilovski – a total amount of 38.981.351 denars was confiscated - From Grozdana Manasievska – a total amount of 12.505.321 and 6.602 denari was confiscated. - From the Isnafaris Dzemaili – sentenced with 4 years and 6 months of imprisonment, an amount of 152.249.50 denari was confiscated. Confiscation of immovable property: - From Grozdana Manasievska - real estate in KO Centar 1 with a total area of 1035 m2, - From Tomislav Trajkovski – real estate in m.v. park in KO Karposh with a total area of 708 m2, - From Svetlana Simonovska – a real estate and building space in KO Centar 1 with a total area of 179 m2. In favor of the Republic of Macedonia under the verdict of the defendants seized more cadastral parcels and co-real estate land in total area of 178,218 m².	Bacilo case and the full execution of the sentence continues. Brought to the court are proceedings for annulment of mortgage for a given property of the convicted Isnifaris Dzhemaili in order to prevent execution of the verdict in the amount of 33,410,023 denars, and for execution of sentence of person convicted in Nikola Stojmenovic amount of 31,305,908.50 denars and other inmates in this case.	<u>56.587.872</u> denars are confiscated and paid in favor of the Budget of Republic of Macedonia.
7.	<u>case “PepeI” (Ashes)</u>	In order to enforce the confiscation imposed by the	for 23 individuals the measure of confiscation of	of the shares that convicted persons

		final sentencing judgement, the Agency approaches to blocking the bank accounts of the convicted persons, where they found an insignificant portion of the funds to be confiscated, after which began confiscation of the shares that convicted persons possess in the Tobacco Factory Boro Petrusevski where the Agency is the dominant shareholder with about 56% of the total number of issued shares.	proceeds of crime was pronounced, concerning funds in the total amount of 404.289.187 denars (which is the value of unpaid excise duties for the tobacco goods – cigarettes), and also confiscation of proceeds of a legal person from Kosovo was pronounced, concerning funds in the amount of 1.050.000 USD and 5.180.000 EUR.	possess in the Tobacco Factory Boro Petrusevski where the Agency is the dominant shareholder with about 56% of the total number of issued shares.
8.	Case “Tobacco Factory” Prilep	Acceded to block the accounts of convicted persons and collected is the amount of 400,000 EUR, which amount has been transferred to the budget of the Republic of Macedonia and the existing blocks of the account remain to the full recovery of the amount to be confiscated.	In the case of the Tobacco factory Prilep in KOK no.69/08 from 15.07.2010 imposed was confiscation of the property gains obtained by the crime in total amount of 455,793,746 denars.	Collected are 400,000 EUR or 2,456,000 denars, which amount has been transferred to the budget of the Republic of Macedonia and the existing blocks of the account remain to the full recovery of the amount to be confiscated.
9.	Case Pajazina	With the final sentencing judgement VI KOK. N. 23/11 and VI KOK. No. 38/11 from 14.03.2012, 20 natural persons and 12 legal persons are convicted for the criminal acts: tax evasion, money laundering and Criminal association, where confiscation of the proceeds of crimes was imposed in total amount of 286.731.676.50 denars and 8.469.523 denars. In order to enforce the confiscation imposed by the final sentencing judgement confiscated are the following monetary assets: - From Velija Ramovski confiscated are assets in amount of 22.448 denars; - from Hedi Ramkovski confiscated are assets in amount of 125.042 denars; - from A1 Television station confiscated are assets in amount of 10.465.483 denars; - from Printing office Misirkov LLC Skopje confiscated are assets in amount of 2.170.852 denars; - from Hedis LLC –Skopje confiscated are assets in amount of 165.619 denars; - from A2 TV station Skopje confiscated are assets in amount of 5.156.708 denars; - from Uni Prokom Vemaks LLC Skopje confiscated assets	Acceded to block the accounts of convicted persons and collected is the amount of 18.440.393 denars , which amount has been transferred to the budget of the Republic of Macedonia and the existing blocks of the account remain to the full recovery of the amount to be confiscated.	Acceded to block the accounts of convicted persons and collected is the amount of 18.440.393 denars, which amount has been transferred to the budget of the Republic of Macedonia and the existing blocks of the account remain to the full recovery of the amount to be confiscated.

		in amount of 328.421 denars; - from Stratus LLC Skopje confiscated assets in amount of 3,00 denars; - from Vreme LLC confiscated assets in amount of 5.817 denars.		
10.	Case Frankfurt mafija	With the final sentencing judgment of the Basic court Skopje 1 Skopje IV KOK.6p.37/11 from 05.03.2013 several persons are convicted for the criminal acts: unauthorized production, money laundering and circulation of narcotic drugs and psychotropic substances. In order to enforce the judgment confiscation of following immovable property is conducted: - apartment in КП.2509 - within the Property sheet No. 27236 cadastre municipality of Veles, inserted is transformation of property where the right of property from the previous owner Viktor Angelov is given to Republic of Macedonia – Agency for Management of Seized property; - transformation of property status of immovable property within Property sheet No 26015 for СО Велес од досегашниот носител Зоран Манасков is given to Republic of Macedonia – Agency for Management of Seized property.		
	Total	742.550.841 denars (12.073.997 EUR)	1.673.031.611 denars (27.203.766 EUR)	80.876541 denars (1.315.065 EUR)

(b) Observations on the implementation of the article

The provision under review is adequately covered in the former Yugoslav Republic of Macedonia's legislation, both in law and in practice.

Article 31 Freezing, seizure and confiscation

Paragraph 9

9. The provisions of this article shall not be so construed as to prejudice the rights of bona fide third parties.

(a) Summary of information relevant to reviewing the implementation of the article

The old Law on criminal procedure (Official Gazette of the Republic of Macedonia No. 15/97, 44/2002, 74/2004, 83/2008 и 67/2009, 150/10) implements this provision in the article 489:

Law on criminal procedure - Article 489

(2) The measures referred to in paragraph (1) of this Article can be determined by the court against third parties, being suspected to have the property and property benefit obtained from the crime transferred to, without proper compensation.

(3) An appeal can be filed against the decision wherefore the court stipulates temporary security measures, in a period of eight days.

The new Law on criminal procedure (Official Gazette of The Republic of Macedonia No. 150/2010) reaffirms this provision in the article 534:

Law on criminal procedure - Article 534

Issuing a measure of extended forfeiture against a third party

(1) The court shall also order the measure of extended forfeiture against a third party by means of a decision under the terms prescribed in the Criminal Code, if within two years as of the day of commencement of the specific forfeiture procedure, the person cannot prove that he or she has indemnified the asset or property according to their value.

(2) The procedure for the measure of extended forfeiture shall be conducted upon a motion by the public prosecutor.

(3) The person shall have a right to file an appeal against the decision referred to in paragraph 1 of this Article within eight days, with the immediate superior court.

(b) Observations on the implementation of the article

The provision under review is adequately covered in the former Yugoslav Republic of Macedonia's legislation.

Article 32 Protection of witnesses, experts and victims

Paragraph 1

1. Each State Party shall take appropriate measures in accordance with its domestic legal system and within its means to provide effective protection from potential retaliation or intimidation for witnesses and experts who give testimony concerning offences established in accordance with this Convention and, as appropriate, for their relatives and other persons close to them.

(a) Summary of information relevant to reviewing the implementation of the article

The former Yugoslav Republic of Macedonia referred to the following provisions:

1. The Law on Prevention of Corruption ("Official Gazette of the Republic of Macedonia" Numbers: 28/2002, 46/2004, 126/2006, 10/2008, 161/2008 and 145/2010) sets forth the following:

Relevant principles:

Article 4 - Principle of equality

(1) Any person has the right to an equal approach in the performance of the matters of public interest and to an equal treatment on the part of persons carrying out public functions, public duties and position. (2) Any

person has the right to a free appearance on the market and to free competition, without fearing that he may be the victim of monopolistic or discriminatory behaviour.

(3) Any person has the right to prevent or report any treatment representing misuse of the carrying out of public and other offices and duties, in order to effectuate personal advantage or cause damage to another, without suffering any detrimental consequences because of that.

Article 5-a - Principle of liability

(1) Any person harmed by an act of corruption have the right to claim damages, real damages and lost profits, according to the principles of joint liability of the perpetrator of corruption and the legal entity in which the perpetrator served a function or duty in the time of committing the crime.

(2) The right from paragraph (1) of this Article, may be realized when the act of corruption is established in a standing court decision.

Relevant provisions:

Article 19 - Protection of associates of justice and witnesses

(1) Against a person who revealed data indicating the existence of corruption, may not be initiated penal prosecution and he may not be called upon any responsibility.

(2) A person who has given a statement or witnessed in a procedure for corruption offence shall be protected. The person has the right to a compensation for damage which he or a member of his family may suffer owing to the statement given or appearance as a witness.

(3) The request for compensation of Paragraph 2 of this Article shall be submitted to a competent authority.

(4) The compensation of Paragraph 2 of this Article shall be paid with funds from the Budget of the Republic of Macedonia.

Article 20 - Protection of persons involved in eradication of corruption

(1) Persons working in the bodies for detection and eradication of corruption shall be provided with full protection and independence, with a view to efficient execution of their authority and duty and no pressure whatsoever may be exerted on them in their work or in their undertaking of concrete actions.

(2) For influencing the work or the undertaking of concrete activities, the persons from paragraph (1) of this Article shall inform the State Commission.

(3) The State Commission informs the Parliament of the Republic of Macedonia on the influencing of the work or the undertaking of concrete activities on the members of the State Commission.

Article 56 - Protection of the media

(1) Any force, prevention or influence in another way over the media to announce or not to announce information on cases of corruption is forbidden.

(2) The journalist has the right to an unobstructed access to all sources of information in accordance to law. No one may exclude the public from the hearing for corruption before a competent body or legal entity, except from preliminary procedure proclaimed as secret.

(3) No one may ask from a journalist who has announced information on a corruption act to reveal the source of information, except in a procedure before a court.

2. The Criminal Code ("Official Gazette of the Republic of Macedonia" Numbers: 80/99, 4/02, 43/03, 19/04, 81/05, 60/06, 73/06, 7 /08, 139/08, 114/09, 51/11, 135/11, 185/2011, 142/2012, 166/2012, 55/2013) sets forth the following relevant provisions:

Article 142 - Torture and other cruel, inhuman or humiliating activities and punishments

1) A person who while performing his duty, as well as a person instructed by an official person or based on an agreement of the official person, shall apply force, threat or some other illicit instrument or an illicit manner with the intention to force a confession or some other statement from a defendant, a witness, an expert witness or from some other person, or will inflict on another person severe bodily or mental suffering in order to punish the other person for a crime which the other person has committed or for which the other person or some other person is under suspicion, or to intimidate him/her or to force him/her to forfeit some of his\her rights, or shall cause such suffering due to any kind of discrimination, shall be punished with imprisonment for three to eight years.

(2) If, due to the activities stipulated in paragraph 1, the damaged party has come to severe bodily harm or other especially severe consequences, the perpetrator shall be punished with imprisonment for at least four years.

Article 368-a - Illegal influence on witnesses

(1) One who will influence on some person to appear or not to appear as a witness in a procedure in front of a court or in administrative procedure or is called as a witness to give or not to give statement in certain sense, using threat on the life or the body or on the property in greater scope, offering bribe, disruption or in any other way, shall be sentenced with imprisonment of one to three years.

(2) The sentence stipulated in paragraph 1 shall be also imposed to one that, for revenge for the statement given by the person called as a witness, will revoke some right, mistreat or cause physical injury to the person called as a witness or a person close to him/her.

(3) If especially severe consequences occurred on the defendant in criminal procedure or the witness or a person close to him/her suffered severe physical injury, shall be sentenced with imprisonment of one to ten years.

Article 143 - Mistreatment in performing a duty

A person who while performing his duty mistreats another, frightens him, insults him, or in general, behaves towards him in a manner in which the human dignity or the human personality is humiliated, shall be punished with imprisonment for one to five years.

3. The Law on Criminal Procedure (“Official Gazette of the Republic of Macedonia” Number: 150/2010) sets forth the following relevant provisions: article 44 (Waiving of criminal prosecution), articles 53-67 (Chapter V “Victim, injured party and private plaintiff”), article 146 (Types of precautionary measures), article 226 (Witness protection), article 227 (Protection of an endangered witness during the preliminary procedure), article 228 (Protection of an endangered witness at the main hearing), article 229 (Examination under a pseudonym) and article 230 (Examination assisted with technical devices for transfer of picture and sound);

4. Law on Witness Protection (“Official Gazette of the Republic of Macedonia” Numbers 38/2005 and 58/2005);

Article 2 - Meaning of terms

Terms used in this law have the following meaning:

1. “Witness” is any person who according to Law on Criminal Procedure, has the role of witness, and possesses information for the committing of the crime, the perpetrator, and other relevant circumstances, i.e. data and information relevant for the criminal procedure which are necessary and crucial for proving the criminal act, by which revealing the life, health, freedom, physical integrity or property of bigger amount of the witness are exposed to danger.

5. The Law on Labor Relations (“Official Gazette of the Republic of Macedonia” Numbers

62/2005, 106/2008, 161/2008, 114/2009, 130/2009, 50/10, 52/10, 124/10, 47/11, 11/12, 39/12, 13/13 and 25/13) sets forth the following relevant provisions:

Article 9 - Harassment and sexual harassment

- (1) Harassment and sexual harassment is forbidden.
- (2) The harassment and sexual harassment represent discrimination in terms of article 6 of this Law.
- (3) Harassment, in terms of this Law, is any unwanted behaviour caused by any of the cases referred to in Article 6 of this Law which has the purpose or represents a violation of the dignity of a job applicant or employee, and that causes fear or creates a hostile, humiliating or offensive behaviour.
- (4) Sexual harassment, in terms of this Law, represents any verbal, non-verbal or physical conduct of a sexual nature which has the purpose or an represents a violation of the dignity of a job applicant or employee, and that causes fear or creates a hostile, humiliating or offensive behaviour.

Article 9-a - Mobbing

- (1) Any kind of psychological harassment at the workplace (mobbing) is prohibited.
- (2) Psychological harassment in the workplace (mobbing) represents discrimination in terms of Article 6 of this Law.
- (3) Psychological harassment at the workplace (mobbing), in terms of this Law, is any negative behaviour by an individual or group that is often repeated (at least for six months), and which represents a violation of dignity, integrity, reputation and honor to the employees and which causes fear or creates a hostile, humiliating or offensive behaviour, which ultimate goal may be termination of employment or leaving workplace. (4) A perpetrator of psychological harassment at the workplace (mobbing) can be one or more individuals with negative behaviour in terms of paragraph (3) of this article, regardless of their position (as an individual employer responsible person or employee).

Article 10 - Compensation in cases of discrimination

In cases of discrimination of article 6 of this Law, the employment applicant or employee have the right to request compensation in compliance with Law on Obligatory Relations.

Article 11 - Burden of proof

- (1) If a job applicant or employee in the event of a dispute brought facts that the employer acted contrary to Articles 6 and 9 of this Law, the burden of proof rests upon the employer to prove that there was not any discrimination, that he acted in accordance with Articles 6 and 9 of this Act, unless the employer proves that different treatment is made for exceptions in Article 8 of this Law.
- (2) In case of dispute, when acted contrary to Article 9 of this law, the burden of proof falls upon the individual or group against whom a lawsuit for performing psychological harassment (mobbing) at work, unless he proves that the different treatment was made because of the exceptions in Article 8 of this Law.
- (3) For initiating proceedings for legal protection from psychological harassment at the workplace (mobbing), as well as for testimony during the proceedings, the employee cannot be subjected to directly or indirectly worsen working conditions, and may not be placed at a disadvantaged position, especially by reducing earnings, transfer to another job or preventing advancement or professional development.

6. The Law on Protection from Harassment at Workplace (“Official Gazette of the Republic of Macedonia” Number 79/2013) regulates the rights, duties and responsibilities of employers and employees regarding the prevention of psychological and sexual harassment at workplace and place of work measures and procedures to protect against harassment in the workplace, as well as other issues relating to the prevention and protection against harassment at workplace. Sanctions are also stipulated for harassment at workplace, failure to undertake necessary preventive and

other measures for protection of an employee from harassment at workplace, acts contrary to the provisions of the Law for protection of the participants in procedure for protection from harassment at workplace, failure to temporarily transfer employee physically to another office or working environment in cases in compliance with this Law, failure to inform employees about the harassment at workplace prohibition, the obligations and responsibilities related to harassment at workplace and manner and possibilities for protection, failure of employer with more than 50 or more employees to appoint mediator in cases of harassment and failure to act in accordance to the recommendations given by the mediator.

7. The Law on Civil Servants (“Official Gazette of the Republic of Macedonia” Numbers 59/2000, 112/2000, 34/2001, 103/2001, 43/2002, 98/2002, 17/2003, 40/2003, 85/2003, 17/2004, 69/2004, 81/2005, 61/2006, 36/2007, 161/2008, 6/2009, 114/2009, 35/10, 167/10, 36/11, 6/12, 24/12, 15/13, 82/13 and 106/13) sets forth the following relevant provisions:

Article 19

(1) The civil servant is obliged to perform orders of the official who manages the body of article 3 paragraph (2) of this Law or of the immediate superior and to act upon the orders in compliance with the Constitution, law or other regulation.

(2) If the civil servant finds that the order of paragraph (1) of this Article is contrary to the Constitution, law or other regulation, he is obliged to indicate this to the person which issued the order.

(3) The civil servant will act upon repeated order, in terms of paragraph (2) of this article give in written form, unless he finds that the execution of the order represents a crime and in such case he shall immediately inform in written form the immediate superior of the official who issued the order and the State Commission for Prevention of Corruption thereof.

(4) If the civil servant fails to warn the immediate superior that the order is unconstitutional or illegal and executes this order, he will be held responsible for its execution as well as the immediate superior.

(5) The civil servant may not be held responsible for the given warning of paragraph (3) of this article.

Article 25

(1) The civil servant has the right to protection from threat, attack and similar acts related to performing official duties.

(2) The body in which the civil servant works is obliged to provide protection for the civil servant in cases of paragraph (1) of this article.

8. The Law on Public Servants (“Official Gazette of the Republic of Macedonia” Numbers 52/10, 36/11, 6/12, 24/12, 15/13, 82/13 and 106/13) sets forth the following relevant provisions:

Article 29

(1) The public servant and the members of his immediate family have the right to protection from indirect threat, attack and similar acts related to performing official duties.

(2) The institution where the public servants works is obliged to provide protection to the public servant in cases of paragraph (1) of this article.

9. The Law on Police (“Official Gazette of the Republic of Macedonia” Numbers 114/2006, 6/2009 and 145/2012) sets forth the following relevant provisions:

Article 36

- (1) The police authorisations are exercised by the police officer with official duty, upon orders from superior police officer, upon decision of competent court or order of competent public prosecutor, in accordance to law.
- (2) The police officer is obliged to enforce the decisions and orders of paragraph 1 of this articles, unless their enforcement visibly represent criminal offence.

The former Yugoslav Republic of Macedonia confirmed that there is a witness protection program and further explained that the Unit for protection of witnesses of the Ministry of Interior, in the frames of its competences, acting upon the relevant legal and by-legal acts, has applied measures for protection of witnesses for persons who agreed to testify against organized criminal groups, for the criminal acts: “Criminal association” (of the article 394 of the Criminal Code), Misuse of official duty and authorization” (of the article 353 of the Criminal Code) and “Receiving of bribe” (of the article 357 of the Criminal Code). Considering the fact that there was great probability that by giving statements and testifying, the witnesses would expose themselves on serious danger for their life and physical integrity, relevant measures for protection of witnesses have been applied, according to the Law on criminal procedure. Namely, acting upon a Decision of Investigative judge and on Proposal of Public Prosecutor for prosecuting organized crime and corruption, special way of testifying has been approved in these cases, consisted of Disguise of identity of the witnesses, use of pseudonym during the procedure and testimony by use of special technical devices for transmission of pictures and sounds.

Until now, there was one such case of application of special investigative measures in cases of corruption. Namely, considering the fact that there was objective threat for the life of the witness, this person was examined under pseudonymous and with application of special investigative techniques.

(b) Observations on the implementation of the article

the former Yugoslav Republic of Macedonia has a comprehensive legal framework and a specialised Unit within the Ministry of Interior for witness protection.

A wide range of protections can be provided for persons who give a statement or witness in a procedure for corruption offence including relocation and change of identity of witnesses and their family.

The person has the right to a compensation for damage which he or a member of his family may suffer owing to the statement given or appearance as a witness. Such compensation shall be paid with funds from the Budget of the Republic of Macedonia.

Although one implementation example was provided, the review team is satisfied based on the information provided that adequate measures to implement the provision under review are in place.

(c) Successes and good practices

The fact that a person who has given a statement or witnessed in a procedure for corruption has the right to a compensation for damage paid with funds from the budget of the former Yugoslav Republic of Macedonia was positively noted by review team as encouraging witnessing and giving testimony concerning corruption offences.

Article 32 Protection of witnesses, experts and victims

Paragraph 2

2. The measures envisaged in paragraph 1 of this article may include, *inter alia*, without prejudice to the rights of the defendant, including the right to due process:

(a) *Establishing procedures for the physical protection of such persons, such as, to the extent necessary and feasible, relocating them and permitting, where appropriate, non-disclosure or limitations on the disclosure of information concerning the identity and whereabouts of such persons;*

(b) *Providing evidentiary rules to permit witnesses and experts to give testimony in a manner that ensures the safety of such persons, such as permitting testimony to be given through the use of communications technology such as video or other adequate means.*

(a) Summary of information relevant to reviewing the implementation of the article

The former Yugoslav Republic of Macedonia referred to the following laws:

1. The Law on Witness Protection (“Official Gazette of the Republic of Macedonia” Numbers 38/2005 and 58/2005) is applied if the proving of the criminal act would have been accompanied with extreme difficulties or could not be conducted without a statement of a person, which, due to the possible danger of being exposed of intimidation, threatening with revenge or danger over life, health, freedom, physical integrity or property of bigger amount, does not agree in the capacity of witness, to provide statement in the crimes: against the State, against the humanity and the international law, organized crime and for which the Criminal Code stipulates sentence of at least 4 years’ imprisonment.

Types of measures for protection are set forth in chapter VI. “Measures for protection”. The measures for protection are: 1) keeping the secrecy of the identity, 2) providing personal protection, 3) change of the place of living or residing and 4) change of the identity (Article 26). The measures for protection determined in article 26 of this law are enforced by the Department for witness protection. If the Department considers that it is necessary to apply the “change of identity” measure, it submits a request to the Council for witness protection for application of this measure.

The Council decides upon the request stated in paragraph 2 of this article, submitted by the Department within 15 days of its submitting (Article 27).

Article 28 - Keeping the confidentiality of the identity

- (1) The measure keeping the confidentiality of the identity encompasses processing and use of personal documents with temporarily altered personal data of the protected person, as well as processing and use of documents for ownership of certain estate of the protected person.
- (2) The enforcement of the measure from paragraph 1 of this article does not mean actual change of personal and property data of the protected person in the regular records of the authorized bodies.
- (3) The protected person can use the documents from paragraph 1 of this Article for making certain agreements and other legal matters with third persons only with previous consent from the Department. If the Department does not give this consent, the protected person can, upon the approval from the Department, determine his proxy who shall then use the person’s real name and data and on his/her behalf and account conclude the agreement or the other legal matters.

Article 29 - Providing personal protection

The measure for protection “providing personal protection” is consisted of operative, physical and technical protection of the protected person with aim to prevent the threatening of his/her life, health, freedom, physical integrity or property of bigger amount.

Article 30 - Change of the place of living or residing

(1) The measure for protection “change of the place of living, i.e. residing” of the protected person is realized through a temporary or permanent change of his/her place of living, i.e. residing with another place of living, i.e. residing, determined by the Department.

(2) The measure for protection of paragraph 1 of this article can be applied on the territory of the Republic of Macedonia or outside of its territory, in accordance with the ratified international agreements.

(3) Collaborator of justice serving the sentence of imprisonment in Republic of Macedonia and to whom the measure for protection “change of the place of living, i.e. residing” is determined, can be displaced in another country for serving the sentence of imprisonment, in accordance with a ratified international agreement.

Article 31 - Change of identity

The measure for protection “change of the identity” is consisted of partial or complete change of the personal data of the protected person. The personal data entered into the new documents cannot be the same with the data of some other person.

Receiving new identity does not have influence on the status and other rights and obligations of the protected person.

After the expiry of the measure for protection “change of the identity”, the protected person can declare himself about keeping the new identity.

The protected person cannot restore his authentic identity if the change of the identity has significantly influenced on the status of a third person (marriage, paternity, maternity etc.)

Upon written permission of the Department, and in accordance with the guidelines for keeping the confidentiality and providing the complete security of the protected person, he/she can participate with his authentic personal data in an official procedure where the use of the personal authentic data is inevitable.

The original documents for the identity of the protected person are kept in the Department.

In implementing the measure for protection “change of identity”, activities for change of the physical characteristics of the protected person can be undertaken.

Article 32

(1) If a decision for appliance of the measure “change of identity” is made, the Department will ask the person suggested for involvement in the Program, before signing the agreement, to fulfil his due obligations towards third parties.

(2) If the person suggested for involvement in the Program does not fulfil the obligations from paragraph 1 of this article, the measure for protection “change of identity” will not be applied until the due obligations towards the third parties are not fulfilled.

(3) In case when after signing the agreement, the Department receives information for an obligation that occurred when the protected person had had the authentic identity, the Department will ask the protected person to fulfil the obligation, with the mediation of the Department. If the person is not able or is not willing to fulfil the obligation, the Department will inform the Council in a written form. The Council within three days from the day of receipt will decide for termination of the measure for protection “change of identity” and for cessation of the Program.

Article 33

If the protected person committed a criminal act before the change of identity, upon a request of the court, the Department secures his/her presence and usage of the authentic identity, and the Court can determine special manner for hearing, in accordance with the Law on criminal procedure.

Article 40 - International cooperation

(1) The international cooperation in the field of protection of witnesses, collaborators of justice, victims which appear in capacity of witnesses and their close persons is accomplished on the base of international agreements, ratified in accordance with the Constitution of Republic of Macedonia, or based on a mutual reciprocity.

(2) Under conditions from paragraph 1 of this article, the Department:

- directs an application to other country for accepting the protected person and implementation of the measures for protection stipulated in this law and
- deals with the applications from other countries for accepting protected persons and application of measures for protection in Republic of Macedonia

Sanctions for the criminal act of Unauthorized release of information and data about the witnesses, collaborators of justice, victims that appear in a role of witnesses and their close persons are stipulated in Chapter IX. "SENTENCE PROVISION -CRIMINAL ACT" of this Law.

Article 42

(1) The person who contrary to this law will reveal the real identity, the home, the residence of the persons from article 2 paragraph 1 lines 1, 2, 3 and 4 of this law, as well as other information that can lead to their identification that could jeopardize the life, health, freedom, physical integrity or the property of bigger amount to the persons from article 2 paragraph 1 lines 1, 2, 3 and 4 of this law shall be punished with imprisonment sentence of minimum four years.

(2) If the act from paragraph 1 leads to causing serious body injuries to the persons from article 2 paragraph 1 lines 1, 2, 3 and 4 of this law the perpetrator shall be punished with imprisonment sentence of minimum eight years.

(3) If the act from paragraph 1 leads to death or suicide of the persons from article 2 paragraph 1 lines 1, 2, 3 and 4 of this law the perpetrator shall be punished with imprisonment sentence of minimum 15 years or with life imprisonment.

Article 2

Terms used in this law have the following meaning:

1. "Witness" is any person who according to Law on Criminal Procedure, has the role of witness, and possesses information for the committing of the crime, the perpetrator, and other relevant circumstances, i.e. data and information relevant for the criminal procedure which are necessary and crucial for proving the criminal act, by which revealing the life, health, freedom, physical integrity or property of bigger amount of the witness are exposed to danger.

2. "Collaborator to justice" is a person against whom an indictment is filled, is convicted, or member of criminal group, gang or other association, or has participated in committing a crime in the area of organized crime, but has agreed to cooperate with the bodies authorized to identify, prosecute and trial the criminal acts, particularly to give a statement in capacity of witness in the criminal procedure, related to the criminal group, band or other association or to any other criminal act connected with organized crime.

3. "Victim who appears in capacity of a witness" is any person whose personal or property right is damaged or endangered by the committed criminal act, who possesses information relevant to the criminal procedure, which if released, his/her life, health, freedom, physical integrity or property of bigger amount would be exposed to danger, but has agreed to cooperate with the justice system, by giving a statement appearing in capacity of witness in the criminal procedure.

4. "Close person" is:

- spouse and non-marital partner of the witness, collaborator to justice and the victim which appears in the capacity of witness,
- relatives of the witness, collaborator to justice and the victim which appears in the capacity of witness by blood filiations in straight line, the relatives in side line till the third level, as well as the in-laws relatives till second level;
- foster child and foster parent of the witness, collaborators to justice and the victim which appears in the capacity of witness and

- other person that the witness, collaborator to justice and the victim which appears in capacity of witness considers as close person and for whom he/she asks to be involved in the program for protection.

2. The Law on Criminal Procedure (“Official Gazette of the Republic of Macedonia” Number: 150/2010):

Article 226 - Witness protection

(1) If it is likely that by giving a statement or by responding to a certain question, the witness, collaborator of justice or the victim, i.e. the injured party, or a person close to him or her would be exposed to a serious threat to his or her life, health or physical integrity, the endangered witness may refrain from giving a statement or presenting information as referred to in Article 219, paragraph 3 of this Law, until the necessary conditions for his or her protection have been provided for.

(2) The protection of the endangered witness shall mean a special way of examination and participation in the procedure as prescribed in this Law and implementation of protective measures beyond the procedure, as prescribed in a separate law.

(3) If the public prosecutor believes that the fear of danger as referred to in paragraph 1 is grounded, he or she shall stop the examination and undertake urgent actions pursuant to the provisions on protection of witnesses, collaborators of justice and victims, as prescribed in this Law.

(4) If, during the procedure, the endangered witness states that he or she does not require a special manner of participation and examination, the witness shall be examined in accordance with the general rules for examination of witnesses. The previous statement, provided under the rules for a special examination of an endangered witness, may be used during the examination, and afterwards it shall be singled out from the case file and handed over to the preliminary procedure judge for safekeeping in a sealed envelope.

(5) If the public prosecutor believes that the request referred to in paragraph 1 of this Article is ungrounded, he or she shall proceed according to Article 219 of this Law.

(6) The summoning of an endangered witness in the preliminary procedure or at the main hearing shall be done through the Witness Protection Unit at the Ministry of Interior.

Article 227- Protection of an endangered witness during the preliminary procedure

(1) As soon as he or she learns about the probability of existence of the circumstances referred to in Article 226 of this Law, the public prosecutor shall undertake measures for protection of the endangered witness. The public prosecutor shall inform the endangered witness thereof.

(2) With a decision, the public prosecutor shall determine the pseudonym of the endangered witness, as well as the special manner of participation in the procedure and examination. The defendant and his or her defence counsel and the injured party and his or her attorney shall not be present during the examination of the endangered witness in the preliminary procedure.

(3) The public prosecutor shall seal the information on the endangered witness in a separate envelope and note that in the case file accordingly, using the pseudonym of the endangered witness. Only the second instance court, when ruling on an appeal, may ask for and open the sealed envelope containing the information on the endangered witness. In such an event, the opening shall be annotated on the envelope and the names of the members of the chamber who are going to be introduced to its contents shall be specified. After the members of the Chamber have been familiarized with its contents, the envelope shall be sealed again and returned to the public prosecutor.

(4) The endangered witness shall not be asked any questions, which, directly or indirectly, may discover his or her identity, place of residence, employment or family members.

(5) Any person who learns of the information on the endangered witness in any capacity shall be obliged to keep it as classified information.

Article 228- Protection of an endangered witness at the main hearing

- (1) The public prosecutor shall deliver the motion for a special manner of examination of the endangered witness elaborated in writing and sealed in an envelope to the judge, i.e. to the Chamber for review of the indictment along with the submission of the indictment.
- (2) 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.
- (3) If the court approves of the public prosecutor's motion, it shall establish the pseudonym of the endangered witness with a decision, if it was not established by then, as well as the special manner of participation in the procedure and examination. An appeal against this decision of the court shall not be allowed.
- (4) The special manner of examination may include hiding the identity of the witness, and in certain cases, hiding the appearance of the endangered witness (Article 229 and Article 230 of this Law).

Article 229 - Examination under a pseudonym

- (1) If the special manner of examination of the witness refers only to hiding personal data, the examination shall be conducted under a pseudonym, without specifying other data referred to in Article 219, paragraph 3 of this Law. As far as the rest of the examination is concerned, it shall be conducted according to the general provisions for examining witnesses.
- (2) After the examination has been completed, the endangered witness shall sign the record with his or her pseudonym.
- (3) Any person who learns of the information on the endangered witness in any capacity shall be obliged to keep them as classified information.

Article 230 – Examination assisted with technical devices for transfer of picture and sound

- (1) If the special manner of participation in the procedure and examination of the endangered witness refers to the hiding of data as referred to in Article 219, paragraph 3 of this Law, but also to the hiding of the appearance of the endangered witness, the examination shall be conducted with the assistance of technical devices for transfer of picture and sound, whilst distorting the face and the voice of the endangered witness.
- (2) During the examination, the endangered witness may be located in another room, which is physically separated from the room that houses the judge and the other participants in the proceeding.

Article 354 - Exclusion of the public

At any moment, from the beginning of the session until the end of the main hearing, ex-officio, or upon a motion by the parties or the injured party, the Trial Chamber may exclude the public from a part of the main hearing or during the entire main hearing, if that is necessary in order to protect a State, military, official or an important business secret, preserve public order, protect the privacy of the defendant, witness or injured party, protect the safety of the witness or the victim and/or to protect the interests of a juvenile person.

3. The Criminal Code (“Official Gazette of the Republic of Macedonia” Numbers: 80/99, 4/02, 43/03, 19/04, 81/05, 60/06, 73/06, 7 /08, 139/08, 114/09, 51/11, 135/11, 185/2011, 142/2012, 166/2012, 55/2013)

Article 369- Violation of the confidentiality of the procedure

A person who without authorization discloses what he found out during a court procedure, or in an administrative, petty offense or disciplinary procedure, when this has been declared a secret by law or by

decision of the court or the authority that carries out the disciplinary procedure, shall be punished with a fine, or with imprisonment of up to one year.

Budget for protection of witnesses:

The finances necessary for implementation of the measures for protection of witnesses are regulated by the Law on protection of witnesses (article 41) and within the by-law act for the way of use of the finances. They are provided by the Budget of the former Yugoslav Republic of Macedonia as well as by other international sources intended for the needs for protection of witnesses. The finances for the international location are provided by the requesting country (accommodation, food and other services) and the finances for the measures for protection are provided by the country accepting the witness. The protected witnesses receive financial and social assistance all until they become independent. The financial assistance given is not bigger than the amount necessary to cover the life expenses for integration of the protected person in the new environment.

(b) Observations on the implementation of the article

The provision under review is covered in the former Yugoslav Republic of Macedonia's legislation.

The Law on Witness Protection also foresees, among others, measures for relocation and change of identity of witnesses and their family.

Article 230 of the Law on Criminal Procedure provides for an examination conducted with the assistance of technical devices for transfer of picture and sound (distorting the face and voice) for endangered witnesses.

Article 32 Protection of witnesses, experts and victims

Paragraph 3

3. States Parties shall consider entering into agreements or arrangements with other States for the relocation of persons referred to in paragraph 1 of this article.

(a) Summary of information relevant to reviewing the implementation of the article

Reference was made to the Law on Witness Protection ("Official Gazette of the Republic of Macedonia" Numbers 38/2005 and 58/2005).

Article 40 - International cooperation

(1) The international cooperation in the field of protection of witnesses, collaborators of justice, victims which appear in capacity of witnesses and their close persons is accomplished on the base of international agreements, ratified in accordance with the Constitution of Republic of Macedonia, or based on a mutual reciprocity.

(2) Under conditions from paragraph 1 of this article, the Department:

- directs an application to other country for accepting the protected person and implementation of the measures for protection stipulated in this law and
- deals with the applications from other countries for accepting protected persons and application of measures for protection in Republic of Macedonia

The cooperation with foreign units for protection of witnesses is conducted based on ratified international agreements and the principle of reciprocity.

The international cooperation implies reallocation of protected persons to other counties in coordination with relevant units for protection of witnesses. For the purpose of implementation of the aforementioned international cooperation, to ensure providing protection of witnesses, besides international multilateral agreements, bilateral agreements are also concluded with adequate authorities from countries of South-Eastern Europe and other European countries.

List of agreements:

- Agreement between the Government of the Republic of Macedonia and the Government of the Slovak Republic on police cooperation in combating crime (Bratislava, 5 October 2009, ratified by the Assembly of the Republic of Macedonia on 16th June 2010, entered into force on 29th July 2010)
- Agreement between the Government of the Republic of Macedonia and the Government of the Czech Republic on cooperation in combating crime (Prague, 9th February 2010, ratified by the Assembly of the Republic of Macedonia on 9th September 2010, entered into force on 1st March 2011)
- Agreement between the Ministry of Interior of the Republic of Macedonia and the Ministry of Interior of Austria on police cooperation (Brdo, Kranj, 25th January 2008, entered into force on 1st January 2009)
- Agreement between the Government of the Republic of Macedonia and the Government of the Republic of Kosovo on police cooperation (Pristina, 3rd December 2009, ratified by State party – Republic of Kosovo on 8th February 2010)

(b) Observations on the implementation of the article

The provision under review is adequately implemented, both in law and in practice..

Article 32 Protection of witnesses, experts and victims

Paragraph 4

4. The provisions of this article shall also apply to victims insofar as they are witnesses.

(a) Summary of information relevant to reviewing the implementation of the article

Reference was made to the following provisions:

The Law on Witness Protection (“Official Gazette of the Republic of Macedonia” Numbers 38/2005 and 58/2005)

Article 1- Basic Provision

This law regulates the procedure and conditions for providing witness protection and assistance to the witnesses, defines the measures for protection and establishes Council for witness protection and Department for witness protection. The provisions of this law are also applied to collaborators to justice, victims who appear in capacity of witnesses, as well as to close persons of the witnesses, collaborators to justice and victims who appear in capacity of witnesses.

Article 2

Terms used in this law have the following meaning: (...)

3. “Victim who appears in capacity of a witness” is any person whose personal or property right is damaged or endangered by the committed criminal act, who possesses information relevant to the criminal procedure, which if released, his/her life, health, freedom, physical integrity or property of bigger amount would be exposed to danger, but has agreed to cooperate with the justice system, by giving a statement appearing in capacity of witness in the criminal procedure.

The Law on Criminal Procedure (“Official Gazette of the Republic of Macedonia” Number: 150/2010):

Article 226 - Witness protection

- (1) If it is likely that by giving a statement or by responding to a certain question, the witness, collaborator of justice or the victim, i.e. the injured party, or a person close to him or her would be exposed to a serious threat to his or her life, health or physical integrity, the endangered witness may refrain from giving a statement or presenting information as referred to in Article 219, paragraph 3 of this Law, until the necessary conditions for his or her protection have been provided for.
- (2) The protection of the endangered witness shall mean a special way of examination and participation in the procedure as prescribed in this Law and implementation of protective measures beyond the procedure, as prescribed in a separate law.
- (3) If the public prosecutor believes that the fear of danger as referred to in paragraph 1 is grounded, he or she shall stop the examination and undertake urgent actions pursuant to the provisions on protection of witnesses, collaborators of justice and victims, as prescribed in this Law.
- (4) If, during the procedure, the endangered witness states that he or she does not require a special manner of participation and examination, the witness shall be examined in accordance with the general rules for examination of witnesses. The previous statement, provided under the rules for a special examination of an endangered witness, may be used during the examination, and afterwards it shall be singled out from the case file and handed over to the preliminary procedure judge for safekeeping in a sealed envelope.
- (5) If the public prosecutor believes that the request referred to in paragraph 1 of this Article is ungrounded, he or she shall proceed according to Article 219 of this Law.
- (6) The summoning of an endangered witness in the preliminary procedure or at the main hearing shall be done through the Witness Protection Unit at the Ministry of Interior.

The former Yugoslav Republic of Macedonia noted that until present, the measures for protection of witnesses have only been applied in one case of corruption (above mentioned).

(b) Observations on the implementation of the article

The provision under review is legislatively implemented.

Article 32 Protection of witnesses, experts and victims

Paragraph 5

5. Each State Party shall, subject to its domestic law, enable the views and concerns of victims to be presented and considered at appropriate stages of criminal proceedings against offenders in a manner not prejudicial to the rights of the defence.

(a) Summary of information relevant to reviewing the implementation of the article

Reference was made to the Law on Criminal Procedure (“Official Gazette of the Republic of Macedonia” Number: 150/2010):

Article 350 - Examination of witnesses outside the court

- (1) If it is learned that some witness, who has been summoned to the main hearing, but not examined yet, will not be able to attend the main hearing because of prolonged illness or immovability, the witness may be examined at his or her current location.

(2) The Presiding Judge of the Trial Chamber or a judge - member of the Trial Chamber shall examine the witness i.e. the expert witness and take his or her oath as necessary, or the examination of the witness shall be conducted through the judge of the preliminary procedure of the court which has jurisdiction over the witness.

(3) The parties and the defence counsel shall be informed about the time and location of the examination, and the injured party shall be informed if possible, considering the urgency of the proceedings. If the defendant is held in detention, the Presiding Judge of the Trial Chamber shall decide on the need for his or her presence at the hearing. When the parties and the injured party are present at the hearing, they shall have the rights as referred to in Article 219, paragraph 7 of this Law.

Article 378 - Establishing the identity of the defendant and giving instructions

(1) After the identity of the defendant has been established, the Presiding Judge of the Trial Chamber shall direct the witnesses to the position provided for them, where they shall wait until called for examination. Any expert witnesses may stay in the courtroom and they can follow the course of the main hearing.

(2) All defendants shall remain in the courtroom for the entire duration of the main hearing.

(3) If the private plaintiff has to be examined as a witness, he or she shall not be removed from the courtroom.

(4) The Presiding Judge of the Trial Chamber may undertake any necessary measures in order to prevent any consultations and arrangements amongst the witnesses, expert witnesses and the parties.

Article 383 - Examination methods

(1) In hearing a case, examination in direct, cross-examination and re-direct examination shall be allowed.

(2) The party that has called the witness i.e. expert witness or the technical advisor in support of its case shall conduct the direct examination.

(3) The opposing party shall conduct the cross-examination.

(4) The party that has called the witness i.e. expert witness shall conduct the re-direct examination and the questions asked during this examination shall be limited to the questions that have been asked during the examination by the opposing party.

(5) After the completion of the examination by the parties, the Presiding Judge of the Trial Chamber may ask questions of the witness i.e. the expert witness.

Article 384 - Direct, cross and re-direct examination of witnesses

(1) The witness shall be examined by the party that has called the witness pursuant to article 383 paragraph 2 of this article. The questions for the witness by the other party shall be limited and refer only to the questions that have been asked earlier during the examination of the same witness by the party that called him or her. The questions of the re-direct examination of the witness by the party that has called him or her shall be limited and refer only to the questions asked by the other party during the examination of the witness.

(2) Leading questions shall not be allowed during the direct examination, except in cases when it is necessary to clarify some statements by the witness. As of a rule, leading questions shall be allowed only during the cross-examination.

Article 389- Proceeding with examined witnesses and expert witnesses

(1) The examined witnesses and expert witnesses shall remain in the courtroom, unless the Presiding Judge of the Trial Chamber decides to let them go or remove them temporarily from the courtroom.

(2) Upon a motion by the parties or ex-officio, the court may order the examined witnesses and expert witnesses to be removed from the courtroom and called back later on and examined again in the presence or absence of other witnesses or expert witnesses.

Article 390- Examination of a witness who cannot appear before the court

(1) If, during the main hearing, it is ascertained that the witness cannot appear before the court or his or her appearance would be significantly difficult, if it believes that his or her testimony is important, the Trial Chamber may order for the witness to be examined through a video-conference link pursuant to Articles 82 and 83 of this Law, or for the witness to be examined outside the main hearing, by the presiding judge or another member of the Trial Chamber.

(2) The presiding judge or another judge member of the Trial Chamber shall conduct any crime scene inspection or reconstruction that might be necessary to be conducted outside of the main hearing.

(3) The parties and the injured party shall always be informed about the time and the place of examination of the witness, i.e. the time and place of any crime scene inspection or reconstruction, with an obligatory presence of the parties during such actions.

Article 400 - Evidence on which the verdict may not be based upon

(1) A verdict shall not be based solely on a statement of an endangered witness, obtained through the use of the provisions on hiding of his or her identity or appearance, for the purpose of his or her protection or protection of persons that are close to him or her.

(...).

According to the Law on Protection of Witness and to articles 226 – 232 of the Law on Criminal Procedure, appropriate measures for protection of witnesses are applied depending on the phase of the criminal procedure. Until present, there are no such measures applied for cases of corruption.

Article 226

Witness protection

(1) If it is likely that by giving a statement or by responding to a certain question, the witness, collaborator of justice or the victim, i.e. the injured party, or a person close to him or her would be exposed to a serious threat to his or her life, health or physical integrity, the endangered witness may refrain from giving a statement or presenting information as referred to in Article 219, paragraph 3 of this Law, until the necessary conditions for his or her protection have been provided for.

(2) The protection of the endangered witness shall mean a special way of examination and participation in the procedure as prescribed in this Law and implementation of protective measures beyond the procedure, as prescribed in a separate law.

(3) If the public prosecutor believes that the fear of danger as referred to in paragraph 1 is grounded, he or she shall stop the examination and undertake urgent actions pursuant to the provisions on protection of witnesses, collaborators of justice and victims, as prescribed in this Law.

(4) If, during the procedure, the endangered witness states that he or she does not require a special manner of participation and examination, the witness shall be examined in accordance with the general rules for examination of witnesses. The previous statement, provided under the rules for a special examination of an endangered witness, may be used during the examination, and afterwards it shall be singled out from the case file and handed over to the preliminary procedure judge for safekeeping in a sealed envelope.

(5) If the public prosecutor believes that the request referred to in paragraph 1 of this Article is ungrounded, he or she shall proceed according to Article 219 of this Law.

(6) The summoning of an endangered witness in the preliminary procedure or at the main hearing shall be done through the Witness Protection Unit at the Ministry of Interior.

Article 227

Protection of an endangered witness during the preliminary procedure

(1) As soon as he or she learns about the probability of existence of the circumstances referred to in Article 226 of this Law, the public prosecutor shall undertake measures for protection of the endangered witness. The public prosecutor shall inform the endangered witness thereof.

(2) With a decision, the public prosecutor shall determine the pseudonym of the endangered witness, as well as the special manner of participation in the procedure and examination. The defendant and his or her defense counsel and the injured party and his or her attorney shall not be present during the examination of the endangered witness in the preliminary procedure.

(3) The public prosecutor shall seal the information on the endangered witness in a separate envelope and note that in the case file accordingly, using the pseudonym of the endangered witness. Only the second instance court, when ruling on an appeal, may ask for and open the sealed envelope containing the information on the endangered witness. In such an event, the opening shall be annotated on the envelope and the names of the members of the chamber who are going to be introduced to its contents shall be specified. After the members of the Chamber have been familiarized with its contents, the envelope shall be sealed again and returned to the public prosecutor.

(4) The endangered witness shall not be asked any questions, which, directly or indirectly, may discover his or her identity, place of residence, employment or family members.

(5) Any person who learns of the information on the endangered witness in any capacity shall be obliged to keep it as classified information.

Article 228

Protection of an endangered witness at the main hearing

(1) The public prosecutor shall deliver the motion for a special manner of examination of the endangered witness elaborated in writing and sealed in an envelope to the judge, i.e. to the Chamber for review of the indictment along with the submission of the indictment.

(2) 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.

(3) If the court approves of the public prosecutor's motion, it shall establish the pseudonym of the endangered witness with a decision, if it was not established by then, as well as the special manner of participation in the procedure and examination. An appeal against this decision of the court shall not be allowed.

(4) The special manner of examination may include hiding the identity of the witness, and in certain cases, hiding the appearance of the endangered witness (Article 229 and Article 230 of this Law).

Article 229

Examination under a pseudonym

(1) If the special manner of examination of the witness refers only to hiding personal data, the examination shall be conducted under a pseudonym, without specifying other data referred to in Article 219, paragraph 3 of this Law. As far as the rest of the examination is concerned, it shall be conducted according to the general provisions for examining witnesses.

(2) After the examination has been completed, the endangered witness shall sign the record with his or her pseudonym.

(3) Any person who learns of the information on the endangered witness in any capacity shall be obliged to keep them as classified information.

Article 230

Examination assisted with technical devices for transfer of picture and sound

(1) If the special manner of participation in the procedure and examination of the endangered witness refers to the hiding of data as referred to in Article 219, paragraph 3 of this Law, but also to the hiding of the appearance of the endangered witness, the examination shall be conducted with the assistance of technical devices for transfer of picture and sound, whilst distorting the face and the voice of the endangered witness.

(2) During the examination, the endangered witness may be located in another room, which is physically separated from the room that houses the judge and the other participants in the proceeding.

Article 231

Rights of the defense during the examination of endangered witnesses at the main hearing

(1) During the examination of endangered witnesses at the main hearing, special attention shall be paid to the right of the defendant and his defense counsel to be provided with an adequate and sufficient opportunity to challenge and verify their statements.

(2) It shall not be possible for the verdict to be based only on the statement of the endangered witness provided for through the use of the provisions for hiding his or her identity and appearance for the purpose of his or her protection, or the protection of persons that are close to him or her.

Article 232

Examination of extremely vulnerable victims and witnesses

(1) If the entity conducting the procedure establishes that the injured party or the witness, having in mind his or her age, healthcare condition, the nature and the consequences of the criminal offense, i.e. due to other circumstances of that case, are extremely vulnerable, such as juvenile persons that are victims of human trafficking, violence or sexual abuse, and that the examination at the facilities of the entity conducting the procedure would have harmful consequences for their mental or physical health, they shall be examined in a manner as prescribed in this Article.

(2) If the entity conducting the procedure believes it necessary for the purpose of helping the injured party or the witness as referred to in paragraph 1 of this Article, it shall assign a legal representative to him or her.

(3) Any questions to the injured party and the witness referred to in paragraph 1 of this Article may be asked only through the entity conducting the procedure, which shall treat such a person with special care in order to avoid any harmful consequences of the criminal procedure on his or her personality, mental and physical health.

(4) The examination of the injured party and the witness referred to in paragraph 1 of this Article may be conducted with the assistance of a psychologist, social worker or another competent person, and the entity that conducts the procedure may decide for the person to be examined with the use of technical devices for transfer of picture and sound, without the presence of the parties and other participants in the procedure in the same room together with the injured party or the witness, whereas the parties, defense counsel and other persons that have the right, shall ask questions through the entity conducting the procedure, a psychologist, pedagogue, social worker or another competent person.

(5) The court may exclude the public during the examination of the injured party or the witness referred to in paragraph 1 of this Article.

(6) The injured party or the witness referred to in paragraph 1 of this Article shall not be confronted with the defendant, and they may be confronted with other witnesses only upon their own request.

(b) Observations on the implementation of the article

The provision under review is covered in the former Yugoslav Republic of Macedonia's legislation.

Article 33 Protection of reporting persons

Each State Party shall consider incorporating into its domestic legal system appropriate measures to provide protection against any unjustified treatment for any person who reports in good faith and on reasonable grounds to the competent authorities any facts concerning offences established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

Relevant legal framework established and in effect:

1. The Law on Prevention of Corruption ("Official Gazette of the Republic of Macedonia" Numbers: 28/2002, 46/2004, 126/2006, 10/2008, 161/2008 and 145/2010) sets forth the following:

- relevant principles

Article 4 - Principle of equality

(1) Any person has the right to an equal approach in the performance of the matters of public interest and to an equal treatment on the part of persons carrying out public functions, public duties and position.

(2) Any person has the right to a free appearance on the market and to free competition, without fearing that he may be the victim of monopolistic or discriminatory behaviour.

(3) Any person has the right to prevent or report any treatment representing misuse of the carrying out of public and other offices and duties, in order to effectuate personal advantage or cause damage to another, without suffering any detrimental consequences because of that.

Article 5 - Principle of publicity

(1) The exercise of power, public functions and duties and performing in public positions, as matters of public interest, are public and subject to public control.

(2) No one can call upon to an application of a law or other regulation with which he will limit or exclude the public in order to cover a misuse of office or duty for the purpose of gaining benefit, interest or advantage for himself or for another.

Article 5-a - Principle of liability

(1) Any person harmed by an act of corruption have the right to claim damages, real damages and lost profits, according to the principles of joint liability of the perpetrator of corruption and the legal entity in which the perpetrator served a function or duty in the time of committing the crime.

(2) The right from paragraph (1) of this Article, may be realized when the act of corruption is established in a standing court decision.

- relevant provisions:

Article 16 - Influence over election, appointment and discharge to leading positions

(1) A political party or person acting on behalf of a political party may not exert pressure at election or appointment to, or discharge of a person from official, leading, or other socially important office or duty, except for the cases in which by law is determined that the President of the Republic, the Assembly and the Government of the Republic of Macedonia, or the bodies of local self-government units are competent to elect, to appoint, or to give opinion or agreement.

(2) A person discharged against the law under the pressure of a political party, as well as a candidate for election or appointment damaged by election or appointment carried out under such pressure, may with a lawsuit before a competent court demand annulment of the election, appointment, that is, discharge act.

(3) The lawsuit of Paragraph 2 of this Article is made within thirty days from the passing of the act for election, appointment, or discharge, that is, from the moment of finding out that it has been done under the pressure of a political party, against the law, but no later than a year from the date of passing such an act. The proceeding is urgent and is conducted under the provisions of the Law on Civil Procedure.

Article 18 - Exemption from keeping classified information

A person who is obliged to keep classified information may, upon the State Commission's request, be relieved from that obligation owing to the conduct of a penal or other procedure for a corruption offence in compliance with law.

Article 19 - Protection of associates of justice and witnesses

(1) Against a person who revealed data indicating the existence of corruption, may not be initiated penal prosecution and he may not be called upon any responsibility.

(2) A person who has given a statement or witnessed in a procedure for corruption offence shall be protected. The person has the right to a compensation for damage which he or a member of his family may suffer owing to the statement given or appearance as a witness.

(3) The request for compensation of Paragraph 2 of this Article shall be submitted to a competent authority.

(4) The compensation of Paragraph 2 of this Article shall be paid with funds from the Budget of the Republic of Macedonia.

Article 20 - Protection of persons involved in eradication of corruption

(1) Persons working in the bodies for detection and eradication of corruption shall be provided with full protection and independence, with a view to efficient execution of their authority and duty and no pressure whatsoever may be exerted on them in their work or in their undertaking of concrete actions.

(2) For influencing the work or the undertaking of concrete activities, the persons from paragraph (1) of this Article shall inform the State Commission.

(3) The State Commission informs the Parliament of the Republic of Macedonia on the influencing of the work or the undertaking of concrete activities on the members of the State Commission.

Article 62

The person not observing the prohibitions of Articles 20, 21, 22 and 27 of this Law shall be fined for a misdemeanour with a fine in the amount of the MKD equivalent of 500 to 1,000 EUR.

Article 40 - Unlawful requests by a superior

(1) An official person that is requested by his superior, or elected, or appointed official, in the performing of his work to act in contrary to the Constitution, a law or another regulation, is obliged to indicate this to the person issuing them the order.

(2) If, even after the oral indication, the immediate superior repeats the order from paragraph (1) of this Article, the official person shall immediately, in writing, inform the immediate superior of the person issuing the order and the State Commission. After the written notice the official person is exempt from the liability of committing an illegal official activity and cannot be held liable for it.

Article 41 - Failure to report penalty liable act

An elected or appointed official, as well as other official and responsible person in a public enterprise, a public institution or another legal entity disposing with State capital is obliged to report every punishable act related to corruption, as well as all infringements of the provisions from this law, that they have come into knowledge of in the performing of their duties.

Article 42 - Ban on exercising influence on others

(1) An elected or appointed person, other official person or responsible person in a public enterprise, a public institution or another legal entity disposing with State capital may not use their position to influence another person in a State body, a public enterprise, a public institution or another legal entity, in making or not making a certain decision, in doing something, in omitting or putting up with something, for realizing gain, benefit or advantage for themselves or another.

(2) The person of Paragraph 1 of this Article may not participate as a mediator or representative in commercial or other deals between juridical persons or individuals.

(3) Any person is obliged to inform the State Commission of a violation of the provisions under Paragraphs 1 and 2 of this Article.

Article 43 - Carrying out discretionary powers

(1) In the performance of discretionary powers every elected or appointed civil servant or official is obliged to make his decisions conscientiously, taking into account all facts and circumstances in the concrete case and the principle of legality and equity.

(2) A person or juridical person dissatisfied by the decision made on the basis of discretionary power, and judging that it has been made due to corruption, may submit a petition with the National Commission.

(3) The State Commission is obliged to consider the petition and to inform the person or juridical person for its dealing with the petition within thirty days of receiving the same.

Article 56 - Protection of the media

(1) Any force, prevention or influence in another way over the media to announce or not to announce information on cases of corruption is forbidden.

(2) The journalist has the right to an unobstructed access to all sources of information in accordance to law. No one may exclude the public from the hearing for corruption before a competent body or legal entity, except from preliminary procedure proclaimed as secret.

(3) No one may ask from a journalist who has announced information on a corruption act to reveal the source of information, except in a procedure before a court.

Article 65

The person who forces, or in any way precludes the disclosure or failure to disclose information about a case of corruption, unless the elements of a crime have been fulfilled, as well as a person that obstructs the access to the sources of information contrary to article 56 of this law, shall be fined for a misdemeanour with a fine in the amount of the MKD equivalent of 500 to 1,000 EUR.

2. The Criminal Code (“Official Gazette of the Republic of Macedonia” Numbers: 80/99, 4/02, 43/03, 19/04, 81/05, 60/06, 73/06, 7 /08, 139/08, 114/09, 51/11, 135/11, 185/2011, 142/2012, 166/2012, 55/2013) sets forth the following relevant provisions:

Article 142 - Torture and other cruel, inhuman or humiliating activities and punishments

(1) A person who while performing his duty, as well as a person instructed by an official person or based on an agreement of the official person, shall apply force, threat or some other illicit instrument or an illicit manner with the intention to force a confession or some other statement from a defendant, a witness, an expert witness or from some other person, or will inflict on another person severe bodily or mental suffering in order to punish the other person for a crime which the other person has committed or for which the other person or some other person is under suspicion, or to intimidate him/her or to force him/her to forfeit some of his\her rights, or shall cause such suffering due to any kind of discrimination, shall be punished with imprisonment for three to eight years.

(2) If, due to the activities stipulated in paragraph 1, the damaged party has come to severe bodily harm or other especially severe consequences, the perpetrator shall be punished with imprisonment for at least four years.

Article 368-a - Illegal influence on witnesses

(1) One who will influence on some person to appear or not to appear as a witness in a procedure in front of a court or in administrative procedure or is called as a witness to give or not to give statement in certain sense, using threat on the life or the body or on the property in greater scope, offering bribe, disruption or in any other way, shall be sentenced with imprisonment of one to three years.

(2) The sentence stipulated in paragraph 1 shall be also imposed to one that, for revenge for the statement given by the person called as a witness, will revoke some right, mistreat or cause physical injury to the person called as a witness or a person close to him/her.

(3) If especially severe consequences occurred on the defendant in criminal procedure or the witness or a person close to him/her suffered severe physical injury, shall be sentenced with imprisonment of one to ten years.

Article 143 - Mistreatment in performing a duty

A person who while performing his duty mistreats another, frightens him, insults him, or in general, behaves towards him in a manner in which the human dignity or the human personality is humiliated, shall be punished with imprisonment for one to five years.

3. The Law on Criminal Procedure (“Official Gazette of the Republic of Macedonia” Number: 150/2010) sets forth the following relevant provisions: article 44 (Waiving of criminal prosecution), articles 53-67 (Chapter V “Victim, injured party and private plaintiff”), article 146 (Types of precautionary measures), article 226 (Witness protection), article 227 (Protection of an

endangered witness during the preliminary procedure), article 228 (Protection of an endangered witness at the main hearing), article 229 (Examination under a pseudonym), article 230 (Examination assisted with technical devices for transfer of picture and sound), article 231 (Rights of the defence during the examination of endangered witnesses at the main hearing), article 232 (Examination of extremely vulnerable victims and witnesses);

4. Law on Witness Protection (“Official Gazette of the Republic of Macedonia” Numbers 38/2005 and 58/2005);

Sanctions for the criminal act of Unauthorized release of information and data about the witnesses, collaborators of justice, victims that appear in a role of witnesses and their close persons are stipulated in Chapter IX. “SENTENCE PROVISION -CRIMINAL ACT” of this Law:

Article 42

(1) The person who contrary to this law will reveal the real identity, the home, the residence of the persons from article 2 paragraph 1 lines 1, 2, 3 and 4 of this law, as well as other information that can lead to their identification that could jeopardize the life, health, freedom, physical integrity or the property of bigger amount to the persons from article 2 paragraph 1 lines 1, 2, 3 and 4 of this law shall be punished with imprisonment sentence of minimum four years.

(2) If the act from paragraph 1 leads to causing serious body injuries to the persons from article 2 paragraph 1 lines 1, 2, 3 and 4 of this law the perpetrator shall be punished with imprisonment sentence of minimum eight years.

(3) If the act from paragraph 1 leads to death or suicide of the persons from article 2 paragraph 1 lines 1, 2, 3 and 4 of this law the perpetrator shall be punished with imprisonment sentence of minimum 15 years or with life imprisonment.

5. The Law on Labor Relations (“Official Gazette of the Republic of Macedonia” Numbers 62/2005, 106/2008, 161/2008, 114/2009, 130/2009, 50/10, 52/10, 124/10, 47/11, 11/12, 39/12, 13/13 and 25/13) sets forth the following relevant provisions:

Article 9 - Harassment and sexual harassment

(1) Harassment and sexual harassment is forbidden.

(2) The harassment and sexual harassment represent discrimination in terms of article 6 of this Law.

(3) Harassment, in terms of this Act, is any unwanted behaviour caused by any of the cases referred to in Article 6 of this Law which has the purpose or represents a violation of the dignity of a job applicant or employee, and that causes fear or creates a hostile, humiliating or offensive behaviour.

(4) Sexual harassment, in terms of this Law, represents any verbal, non-verbal or physical conduct of a sexual nature which has the purpose or an represents a violation of the dignity of a job applicant or employee, and that causes fear or creates a hostile, humiliating or offensive behaviour.

Article 9-a - Mobbing

(1) Any kind of psychological harassment at the workplace (mobbing) is prohibited.

(2) Psychological harassment in the workplace (mobbing) represents discrimination in terms of Article 6 of this Law.

(3) Psychological harassment at the workplace (mobbing), in terms of this Law, is any negative behaviour by an individual or group that is often repeated (at least for six months), and which represents a violation of dignity, integrity, reputation and honor to the employees and which causes fear or creates a hostile, humiliating or offensive behaviour, which ultimate goal may be termination of employment or leaving workplace. (4) A perpetrator of psychological harassment at the workplace (mobbing) can be one or more

individuals with negative behaviour in terms of paragraph (3) of this Article, regardless of their position (as an individual employer responsible person or employee).

Article 10 - Compensation in cases of discrimination

In cases of discrimination of article 6 of this Law, the employment applicant or employee have the right to request compensation in compliance with Law on Obligatory Relations.

Article 11 - Burden of proof

(1) If a job applicant or employee in the event of a dispute brought facts that the employer acted contrary to Articles 6 and 9 of this Law, the burden of proof rests upon the employer to prove that there was not any discrimination, that he acted in accordance with Articles 6 and 9 of this Act, unless the employer proves that different treatment is made for exceptions in Article 8 of this Law.

(2) In case of dispute, when acted contrary to Article 9 of this law, the burden of proof falls upon the individual or group against whom a lawsuit for performing psychological harassment (mobbing) at work, unless he proves that the different treatment was made because of the exceptions in Article 8 of this Law.

(3) For initiating proceedings for legal protection from psychological harassment at the workplace (mobbing), as well as for testimony during the proceedings, the employee cannot be subjected to directly or indirectly worsen working conditions, and may not be placed at a disadvantaged position, especially by reducing earnings, transfer to another job or preventing advancement or professional development.

6. The Law on Protection from Harassment at Workplace (“Official Gazette of the Republic of Macedonia” Number 79/2013) regulates the rights, duties and responsibilities of employers and employees regarding the prevention of psychological and sexual harassment at workplace and place of work measures and procedures to protect against harassment in the workplace, as well as other issues relating to the prevention and protection against harassment at workplace. Sanctions are also stipulated for harassment at workplace, failure to undertake necessary preventive and other measures for protection of an employee from harassment at workplace, acts contrary to the provisions of the Law for protection of the participants in procedure for protection from harassment at workplace, failure to temporary transfer employee physically to another office or working environment in cases in compliance with this Law, failure to inform employees about the harassment at workplace prohibition, the obligations and responsibilities related to harassment at workplace and manner and possibilities for protection, failure of employer with more than 50 or more employees to appoint mediator in cases of harassment and failure to act in accordance to the recommendations given by the mediator.

Article 28 - Preventing harassment at workplace till completion of procedure

If an employee believes that he or she is exposed to harassment at workplace, according to an opinion of an authorized medical institution that performs in the area of labor has impaired health status caused by harassment at the workplace, the employer is obliged until completion of the procedure for protection from harassment at the workplace to temporarily move the employee to another working room, or working environment.

Article 29 - Measures to establish liability of the employee

(1) The employer to the employee who commits harassment at workplace or misuse of protection from harassment may impose one of the measures for disrespect of working order and discipline or misconduct of working obligations in accordance to law.

(2) If the employee against whom the measure of paragraph (1) of this article is imposed, within the period of 6 months repeat committing harassment, the employer may cancel the agreement of employment or impose a measure for termination of the employment in accordance to law.

Article 30 - Protection of the participants in the procedure

Initiating procedure for protection from harassment at workplace, as well as participation in the procedure as a witness, may not be grounds for placing employee in disadvantaged position regarding exercising rights and obligations from employment, initiating procedure to establish disciplinary, material or other liability of the employee, cancelling agreement for employment or termination of employment caused by business reasons, within the period of two years from the date when the procedure for protection from harassment was initiated or from the date of participation as witness in procedure for protection from harassment at workplace.

Chapter V. Court Protection

Article 31 - Complaint

(1) The employee who believes that he or she is exposed to harassment at workplace, and who is not satisfied with the result of the procedure for protection from harassment at workplace before the employee, may submit a complaint to the competent court.

(2) Disputes initiated in compliance with this Law have the character of labor disputes.

(3) The provisions of the Law on Civil Procedure are implemented in the procedure for the disputes of paragraph (2) of this Article.

Article 32 - Types of complaint

With the complaint of article 31 paragraph (1) of this Law, the employee who believes that is exposed to harassment at workplace may demand:

- determining that he or she suffered harassment at workplace,
- prohibition of performing behaviours that constitute harassment at workplace, or prohibiting the repetition of harassment at workplace,
- taking action to eliminate consequences of harassment at workplace and
- compensation for pecuniary and non-pecuniary damage caused by harassment at workplace.

Article 33 - Burden of proof

If in the course of the procedure the claimant presented probable the existence of the harassment at workplace of article 3 of this Law, the burden of proof that there was no specific conduct constituting harassment at workplace rests upon the accused.

Article 34 - Provisional measures

(1) Before starting off in course of procedure, the court upon a party proposal may determine provisional measures for preventing violent behaviour or for eliminating an irrecoverable damage.

(2) Provisional measures of paragraph (1) of this Article are the following:

- restraining order prohibiting a person from approaching the workplace of the employee
- prohibiting phone calls and communication (verbal or electronic).

(3) Appeal against the decision of paragraph (1) of this Article does not suspend the execution of the decision.

VII. Misdemeanour provisions

Article 36

(1) The employer - legal entity shall be fined for a misdemeanour with a fine in the amount of 5.000 to 6.000 EUR in MKD equivalent if.

- 1) harasses at workplace and abuses the right to protection from harassment at workplace (article 4);
- 2) fails to undertake necessary preventive or other measures for protection of employer from harassment at workplace (article 10);
- 3) fails to inform the employee before starting with working activities and the employees already in labor relation about the prohibition of harassment at workplace, obligations and responsibilities related to harassment at workplace, manner and possibilities for protection (Article 11);
- 4) fails to appoint mediator for protection from harassment if the employer has 50 or more employees (article 12 paragraph (3));

- 5) fails to implement the recommendations of the mediator (article 25 paragraph (4));
- 6) acts contrary to the provisions of this law regarding the protection of participants in the procedure for protection from harassment at workplace (article 30) and
- 7) fails to make temporary transfer of the employee to another working room or working environment (article 28).

(2) The director or other responsible person of the employer shall be fined for the misdemeanour of paragraph (1) of this article with a fine in the amount of 3.000 to 4.000 EUR in MKD equivalent.

(3) The employer - individual person shall be fined for the misdemeanour of paragraph (1) of this article with a fine in the amount of 1.000 to 2.000 EUR in MKD equivalent.

Article 37

The misdemeanour procedure regarding article 36 of this Law will be conducted and the sanctions will be imposed by competent court.

7. The Law on Civil Servants (“Official Gazette of the Republic of Macedonia” Numbers 59/2000, 112/2000, 34/2001, 103/2001, 43/2002, 98/2002, 17/2003, 40/2003, 85/2003, 17/2004, 69/2004, 81/2005, 61/2006, 36/2007, 161/2008, 6/2009, 114/2009, 35/10, 167/10, 36/11, 6/12, 24/12, 15/13, 82/13 and 106/13) sets forth the following relevant provisions:

Article 19

(1) The civil servant is obliged to perform orders of the official who manages the body of article 3 paragraph (2) of this Law or of the immediate superior and to act upon the orders in compliance with the Constitution, law or other regulation.

(2) If the civil servant finds that the order of paragraph (1) of this Article is contrary to the Constitution, law or other regulation, he is obliged to indicate this to the person which issued the order.

(3) The civil servant will act upon repeated order, in terms of paragraph (2) of this article give in written form, unless he finds that the execution of the order represents a crime and in such case he shall immediately inform in written form the immediate superior of the official who issued the order and the State Commission for Prevention of Corruption thereof.

(4) If the civil servant fails to warn the immediate superior that the order is unconstitutional or illegal and executes this order, he will be held responsible for its execution as well as the immediate superior.

(5) The civil servant may not be held responsible for the given warning of paragraph (3) of this article.

Article 25

(1) The civil servant has the right to protection from threat, attack and similar acts related to performing official duties.

(2) The body in which the civil servant works is obliged to provide protection for the civil servant in cases of paragraph (1) of this article.

8. The Law on Public Servants (“Official Gazette of the Republic of Macedonia” Numbers 52/10, 36/11, 6/12, 24/12, 15/13, 82/13 and 106/13) sets forth the following relevant provisions:

Article 29

(1) The public servant and the members of his immediate family have the right to protection from indirect threat, attack and similar acts related to performing official duties.

(2) The institution where the public servants works is obliged to provide protection to the public servant in cases of paragraph (1) of this article.

9. The Law on Public Internal Financial Control (“Official Gazette of the Republic of Macedonia” Number 90/2009) sets forth the following relevant provisions:

Chapter VII. UNDERTAKING MEASURES AGAINST IRREGULARITIES AND FRAUDS

Article 50

(1) The head of the public sector entity shall be obliged to both prevent the risk of irregularities and frauds and to undertake activities against irregularities and frauds.

(2) The head of the public sector entity shall appoint a person reporting on irregularities and suspicions for frauds or corruption and shall independently undertake activities referred to in paragraph (5) of this Article.

(3) All employees, including the internal auditors shall inform the head of the public sector entity or the person in charge of irregularities or suspicions of frauds or corruption.

(4) If the Internal Auditor has suspicion of fraud or corruption during the performance of the audit, he shall inform the Head of Internal Audit Unit, being obliged to submit written information to the head of the public sector entity and the person in charge of irregularities thereon.

(5) After the received report on existence of irregularities or suspicions of frauds or corruption, the person in charge of irregularities shall undertake the necessary measures and shall inform the Public Prosecutor’s Office of the Republic of Macedonia and the Ministry of Finance - Financial Police Office and Financial Inspection of the Public Sector thereon,, and within 15 days he/she shall inform in writing the person pointing out to the irregularities or frauds on the undertaken measures, except in case of an anonymous report.

(6) If the persons referred to in paragraph (3) of this Article are not informed on the appropriately undertaken measures, they shall inform the bodies referred to in paragraph (5) of this Article. The Central Harmonisation Unit shall not be body in charge of irregularities and frauds.

(7) Employees including the internal auditors reporting irregularities or suspicions of frauds shall be provided with protection on the identity and the acquired employment -related rights pursuant to law.

(8) The Government of the Republic of Macedonia, upon proposal by the Minister of Finance, shall prescribe the procedure for preventing irregularities, the manner of mutual cooperation, the form and, the contents, the deadlines and the manner of informing on the irregularities.

10. The Law on Police (“Official Gazette of the Republic of Macedonia” Numbers 114/2006, 6/2009 and 145/2012) sets forth the following relevant provisions:

Article 36

(1) The police authorisations are exercised by the police officer with official duty, upon orders from superior police officer, upon decision of competent court or order of competent public prosecutor, in accordance to law.

(2) The police officer is obliged to enforce the decisions and orders of paragraph 1 of this articles, unless their enforcement visibly represent criminal offence.

11. Amendments and addenda to the Law on Prevention and Corruption are drafted to introduce the concept of integrity system and to establish systematic protection of whistle-blowers (which, inter alia, prescribe internal and external whistleblowing channels and further promote protection and protection providers) in compliance with CoE and OECD recommendations.

Authorities met during the country visit noted that amendments to the Law on prevention of the corruption are being prepared and are in initial adoption procedure at the moment. The aim of these amendments is to introduce a whistle-blower protection system and provide systematic and institutional protection of the whistle-blowers. Also one of the important goals of this amendment is to establish overall protection of the whistle-blowers in the public and in the private sector, with clear but not restrictive definitions, which will cover as many as possible categories and as wide as possible explanation of the illegal and inadmissible behavior. The definition of the term whistle-blower (ukazuvac) will apply overall and wider “European” approach, which is in accordance with the recommendations of relevant international institutions. It will be defined not only as a person who reports suspicion or knowledge for committed act of corruption or an act of corruption which is in process of commission or is planned to be committed as a criminal act against the official duty but also a person who reports other illegal or impermissible behavior which threatens the public interest, security and defense. The act foresees clear channels of reporting and introduction of a system of integrity.

(b) Observations on the implementation of the article

The national authorities reported on different provisions of the domestic legislation on the protection of reporting persons (Law on Prevention of Corruption; Criminal Code; Law on Labor Relations; Law on Protection from Harassment on Workplace). However, the reviewing experts noted the fact that these provisions were fragmented, as well as the absence of ad hoc whistleblower protection legislation. The former Yugoslav Republic of Macedonia indicated that amendments to the Law on Prevention of Corruption are currently being prepared in order to introduce a whistle-blower protection system and provide systematic and institutional protection of the whistle-blowers.

The review team encourages the former Yugoslav Republic of Macedonia to continue efforts to enact specific legislation on the protection of reporting persons.

Article 34 Consequences of acts of corruption

With due regard to the rights of third parties acquired in good faith, each State Party shall take measures, in accordance with the fundamental principles of its domestic law, to address consequences of corruption. In this context, States Parties may consider corruption a relevant factor in legal proceedings to annul or rescind a contract, withdraw a concession or other similar instrument or take any other remedial action.

(a) Summary of information relevant to reviewing the implementation of the article

The former Yugoslav Republic of Macedonia referred to the following provisions:

1. The Law on Prevention of Corruption (“Official Gazette of the Republic of Macedonia” Numbers: 28/2002, 46/2004, 126/2006, 10/2008, 161/2008 and 145/2010) sets forth the following relevant provisions:

Article 46 - Annulment of legal acts and damage compensation

(1) Legal acts resulting from corruption are null and void. Anyone who has a legal interest may demand annulment of such acts, by submitting as evidence an effective court decision establishing the existence of corruption.

(2) Any person damaged by a corruption act has a right to request damage compensation (actual damage and lost profit) from the offender, qualified as a corruption act by an effective court decision, as well as from the body or public enterprise and other legal entity managing State capital, in which that person carried out his office or duty at the time of committing the act, according to the principles of joint and several liability.

2. The Law on Criminal Procedure (“Official Gazette of the Republic of Macedonia” Number: 150/2010) sets forth the following relevant provisions:

Article 53- Victim’s rights

(1) The victim of a crime shall have the following rights:

1) to participate in the criminal procedure as an injured party by joining the criminal prosecution or for the purpose of a legal-property claim for damages;

2) to get special care and attention by the bodies and entities that participate in the criminal procedure; and
3) to get an effective psychological and other professional assistance and support by bodies, institutions and organizations that provide for help to crime victims.

(2) The police, the public prosecutor and the court shall act with special care towards the victims of criminal offenses, advising them of their rights as referred to in paragraph 1 of this Article and Articles 54 and 55 of this Law and they shall take care of their interests when making decisions for criminal prosecution of the accused, i.e. when undertaking actions during the criminal procedure when the victim has to be present in person, when they have to draft an official note or record.

(3) In accordance with the special regulations, any victim of a crime, which entails a prison sentence of at least four years, shall have the right to:

1) get a councillor paid by the State budget before giving a statement, i.e. declaration or filing the legal-property claim, if the victim has serious psycho-physical impairment or if there are serious consequences as a result of the crime; and

2) be compensated for material and non-material damages from a State fund, under conditions and in a manner as prescribed in a separate law, if the damage caused cannot be compensated from the convicted person.

Article 57- Rights of the injured party

The injured party shall have the following rights in the criminal procedure:

1) to be advised of his or her rights;

2) to use his or her language and alphabet and the right to be assisted by an interpreter, i.e. a translator if he or she does not understand the language used during the procedure;

3) to put forward a motion for a legal or property claim;

4) to have a legal representative;

5) to indicate facts and propose evidence;

6) to be present at the evidentiary hearing;

7) to be present at the main hearing and to participate in the evidentiary procedure, as well as to comment on the legal or property claim and the legal and criminal event;

8) after the investigation has been completed, to review the files and items that are going to be used as exhibits and evidence;

9) to file an appeal under the conditions prescribed in this Law; 10) to file a motion for prosecution and personal legal action in accordance with the provisions of the Criminal Code;

11) to be informed about any lack of action or waiver of criminal prosecution rights by the public prosecutor;

12) to appeal to the higher Public Prosecutor against the decision of the Public Prosecutor to waive his or her prosecution rights, under the conditions prescribed in this Law;

13) to ask for the return of the previous state of affairs; 14) to ask for an observance of his or her right to privacy;

15) to participate in the mediation process, in a manner and under conditions as prescribed in this Law.

Article 111- Authorized persons who can file legal and property claims

(1) A legal and property claim in a criminal procedure may be filed by a person who is authorized for litigation for such a dispute.

(2) When the claim as referred to in paragraph 1 of this Article is filed by the victim of the crime, the victim shall indicate in the application if any compensation was already awarded or if the claim is filed in accordance with Article 53, paragraph 1 of this Law.

Article 114 - Ruling on legal and property claims

(1) The court shall rule on any legal and property claims.

(2) In the verdict in which the court convicts the accused, the court shall rule on the legal and property claim partially or in full, and it shall advise the injured party to claim the remainder of the legal and property claim through litigation. If the evidence in the criminal procedure does not provide sufficient ground for full or partial ruling on the legal and property claim, and if their additional collection might mean unjustified delay of the criminal procedure, the court shall refer the injured party to litigation with regards to the legal and property claim.

(3) When the court reaches a verdict whereby the charges against the defendant are dropped or the indictment is overruled, or when it terminates the criminal procedure with a decision, it shall refer the injured party to litigation with regards to the legal and property claim. If the court declares itself incompetent for the criminal procedure, it shall advise the injured party to apply for the legal and property claim in the criminal procedure that is going to be initiated or continued before the competent court.

Article 116 - Nullifying a legal affair

If the legal and property claim refers to the nullification of a certain legal affair, and the court establishes that the application is grounded, in its judgment, it shall declare a full or partial nullification of the legal affair, along with the consequences arising from it, without any interference in the rights of third parties.

Article 118 - Provisional measures for safeguarding legal and property claims

(1) During the criminal procedure, according to the provisions valid for the enforcement procedure, upon proposal by the public prosecutor and other authorized persons, provisional measures may be imposed in order to safeguard the legal and property claim that resulted from the criminal offence.

(2) The judge of the preliminary procedure, during the investigation, shall enact the decision as referred to in paragraph 1 of this Article. If an indictment has already been raised, the decision shall be enacted by the Presiding Judge of the Trial Chamber outside of the main hearing, and by the Trial Chamber during the main hearing.

(3) Any appeal against the decision on provisional measures shall not prevent the enforcement of the decision.

Article 120 - Provisional safeguarding against a third person

(1) If the injured party has a claim against a third person, because the person has the objects that have been obtained by the criminal offence in his or her possession, or because the person gained from the crime proceeds, the court conducting the criminal procedure, upon proposal by the authorized persons as referred to in Article 111, paragraph 1 of this Law, pursuant to the provisions valid for the enforcement procedure, may also impose provisional safeguarding measures against that third person. The provisions from Article 118, paragraphs 2 and 3 of this Law shall also be valid in this case.

(2) With the judgment whereby the defendant is found guilty, the court shall either recall the measures referred to in paragraph 1 of this Article, if they have not been recalled earlier, or it shall refer the injured party to litigation, thus recalling these measures, if the litigation is not initiated within the deadline established by the court.

(b) Observations on the implementation of the article

The provision under review is legislatively implemented, although no examples of implementation were provided.

Article 35 Compensation for damage

Each State Party shall take such measures as may be necessary, in accordance with principles of its domestic law, to ensure that entities or persons who have suffered damage as a result of an act of corruption have the right to initiate legal proceedings against those responsible for that damage in order to obtain compensation.

(a) Summary of information relevant to reviewing the implementation of the article

The former Yugoslav Republic of Macedonia referred to the following provisions:

1. The Law on Prevention of Corruption (“Official Gazette of the Republic of Macedonia” Numbers: 28/2002, 46/2004, 126/2006, 10/2008, 161/2008 and 145/2010) sets forth the following relevant provisions:

Article 5-a - Principle of liability

(1) Any person harmed by an act of corruption have the right to claim damages, real damages and lost profits, according to the principles of joint liability of the perpetrator of corruption and the legal entity in which the perpetrator served a function or duty in the time of committing the crime.

(2) The right from paragraph (1) of this Article, may be realized when the act of corruption is established in a standing court decision.

Article 46- Annulment of legal acts and damage compensation

(1) Legal acts resulting from corruption are null and void. Anyone who has a legal interest may demand annulment of such acts, by submitting as evidence an effective court decision establishing the existence of corruption.

(2) Any person damaged by a corruption act has a right to request damage compensation (actual damage and lost profit) from the offender, qualified as a corruption act by an effective court decision, as well as from the body or public enterprise and other legal entity managing State capital, in which that person carried out his office or duty at the time of committing the act, according to the principles of joint and several liability.

2. The Law on Criminal Procedure (“Official Gazette of the Republic of Macedonia” Number: 150/2010) sets forth the following relevant provisions:

Article 53 - Victim’s right

(1) The victim of a crime shall have the following rights:

- 1) to participate in the criminal procedure as an injured party by joining the criminal prosecution or for the purpose of a legal-property claim for damages;
- 2) to get special care and attention by the bodies and entities that participate in the criminal procedure; and
- 3) to get an effective psychological and other professional assistance and support by bodies, institutions and organizations that provide for help to crime victims.

(2) The police, the public prosecutor and the court shall act with special care towards the victims of criminal offenses, advising them of their rights as referred to in paragraph 1 of this Article and Articles 54 and 55 of this Law and they shall take care of their interests when making decisions for criminal prosecution of the accused, i.e. when undertaking actions during the criminal procedure when the victim has to be present in person, when they have to draft an official note or record.

(3) In accordance with the special regulations, any victim of a crime, which entails a prison sentence of at least four years, shall have the right to:

- 1) get a councillor paid by the State budget before giving a statement, i.e. declaration or filing the legal-property claim, if the victim has serious psycho-physical impairment or if there are serious consequences as a result of the crime; and
- 2) be compensated for material and non-material damages from a State fund, under conditions and in a manner as prescribed in a separate law, if the damage caused cannot be compensated from the convicted person.

Article 57 - Rights of the injured party

The injured party shall have the following rights in the criminal procedure:

- 1) to be advised of his or her rights;
- 2) to use his or her language and alphabet and the right to be assisted by an interpreter, i.e. a translator if he or she does not understand the language used during the procedure;
- 3) to put forward a motion for a legal or property claim;
- 4) to have a legal representative;
- 5) to indicate facts and propose evidence;
- 6) to be present at the evidentiary hearing;
- 7) to be present at the main hearing and to participate in the evidentiary procedure, as well as to comment on the legal or property claim and the legal and criminal event;
- 8) after the investigation has been completed, to review the files and items that are going to be used as exhibits and evidence;
- 9) to file an appeal under the conditions prescribed in this Law; 10) to file a motion for prosecution and personal legal action in accordance with the provisions of the Criminal Code;
- 11) to be informed about any lack of action or waiver of criminal prosecution rights by the public prosecutor;
- 12) to appeal to the higher Public Prosecutor against the decision of the Public Prosecutor to waive his or her prosecution rights, under the conditions prescribed in this Law;
- 13) to ask for the return of the previous state of affairs; 14) to ask for an observance of his or her right to privacy;
- 15) to participate in the mediation process, in a manner and under conditions as prescribed in this Law.

Article 111 - Authorized persons who can file legal and property claims

- (1) A legal and property claim in a criminal procedure may be filed by a person who is authorized for litigation for such a dispute.
- (2) When the claim as referred to in paragraph 1 of this Article is filed by the victim of the crime, the victim shall indicate in the application if any compensation was already awarded or if the claim is filed in accordance with Article 53, paragraph 1 of this Law.

Article 114 - Ruling on legal and property claims

- (1) The court shall rule on any legal and property claims.
- (2) In the verdict in which the court convicts the accused, the court shall rule on the legal and property claim partially or in full, and it shall advise the injured party to claim the remainder of the legal and property claim through litigation. If the evidence in the criminal procedure does not provide sufficient ground for full or partial ruling on the legal and property claim, and if their additional collection might mean unjustified delay of the criminal procedure, the court shall refer the injured party to litigation with regards to the legal and property claim.
- (3) When the court reaches a verdict whereby the charges against the defendant are dropped or the indictment is overruled, or when it terminates the criminal procedure with a decision, it shall refer the injured party to litigation with regards to the legal and property claim. If the court declares itself incompetent for the criminal procedure, it shall advise the injured party to apply for the legal and property claim in the criminal procedure that is going to be initiated or continued before the competent court.

Article 116 - Nullifying a legal affair

If the legal and property claim refers to the nullification of a certain legal affair, and the court establishes that the application is grounded, in its judgment, it shall declare a full or partial nullification of the legal affair, along with the consequences arising from it, without any interference in the rights of third parties.

Article 118- Provisional measures for safeguarding legal and property claims

(1) During the criminal procedure, according to the provisions valid for the enforcement procedure, upon proposal by the public prosecutor and other authorized persons, provisional measures may be imposed in order to safeguard the legal and property claim that resulted from the criminal offence.

(2) The judge of the preliminary procedure, during the investigation, shall enact the decision as referred to in paragraph 1 of this Article. If an indictment has already been raised, the decision shall be enacted by the Presiding Judge of the Trial Chamber outside of the main hearing, and by the Trial Chamber during the main hearing.

(3) Any appeal against the decision on provisional measures shall not prevent the enforcement of the decision.

Article 120 - Provisional safeguarding against a third person

(1) If the injured party has a claim against a third person, because the person has the objects that have been obtained by the criminal offence in his or her possession, or because the person gained from the crime proceeds, the court conducting the criminal procedure, upon proposal by the authorized persons as referred to in Article 111, paragraph 1 of this Law, pursuant to the provisions valid for the enforcement procedure, may also impose provisional safeguarding measures against that third person. The provisions from Article 118, paragraphs 2 and 3 of this Law shall also be valid in this case.

(2) With the judgment whereby the defendant is found guilty, the court shall either recall the measures referred to in paragraph 1 of this Article, if they have not been recalled earlier, or it shall refer the injured party to litigation, thus recalling these measures, if the litigation is not initiated within the deadline established by the court.

The former Yugoslav Republic of Macedonia provided the following case examples:

BACILO Case:

Criminal charges were filed against 24 people suspected of committing Money laundering and other criminal proceeds, Fraud, Abuse of official position and authority, and Illicit Mediation. Committing these offences it was suspected that the accused persons damaged the Budget of the Republic of Macedonia in the amount of 44,462,585 MKD in form of cash flow on the savings account of Isnifaris Xhemaili on the grounds of a final judgment P. number 2904/01. Part of these funds was continuously used in the performance of other crimes related to denationalization of State assets, by which actions the funds of five citizens were damaged in the amount of 25,057,500 MKD.

Criminal acts: Abuse of official position and authorization, Fraud and Money laundering and other proceeds of crime (Art 353, Art 247, Art 273 of the Criminal Code)

Preliminary investigation in second half of 2005

Date of indictment 09.02.2007

Use of SIMs: NO

First Instance Judgment

Court of First Instance Skopje I Skopje, 12.04.2007

21 persons convicted

Imposed sentences:

For 13 persons- imprisonment

N. Stoimenovik – 14 years

I. Dzhemaili – 4 years and 6 months

7 persons – 3 years (each)

3 persons – 2 years (each)

1 person – 2 years and 6 months

For 8 persons - conditional sentence - up to 1 year.

In addition to the pronounced penalties, the non-built construction land of an area of 187 194 00 m² and funds in the total amount of 56,564,476 MKD (919,748 Euros) were confiscated to the benefit of the national budget

Second Instance Judgment Appellate Court Skopje, 25 - 26.02.2008

Partially modified the judgment of first instance– sentences are lessened.

N. Stoimenovik – 13 years

I. Dzhemali – 3 years and 6 months

3 persons – 3 years (each – not modified)

5 persons – 2 years (each)

2 persons – 1 year and 6 months (each)

1 person – 2 years and 6 months

- for 8 persons - suspended sentence – not modified

Request for extraordinary mitigation of sanction submitted to Supreme Court on 22.09.2010 for one convicted person is rejected and for one convicted person the sanction is reduced to 1 year imprisonment.

CLOSED (convictions)

Case started 2005

Case completed on 26.02.2008

Seizure and confiscation enforced:

Amounts of money were confiscated: From Nikola Stojmenovik – sentenced with 13 years of imprisonment – an amount of 4.942.249 MKD was confiscated; from Krste Ilovski – a total amount of 38.981.351 MKD was confiscated; from Grozdana Manasievska – a total amount of 12.505.321 and 6.602 MKD was confiscated; from Isnafaris Dzemaili – sentenced with 3 years and 6 months of imprisonment, an amount of 152.249 MKD was confiscated.

Confiscation of property:

From Grozdana Manasievska - real estate in KO Centar 1 with a total area of 1035 m²; From Tomislav Trajkovski – real estate in m.v. park in KO Karposh with a total area of 708 m²; From Svetlana Simonovska – a real estate and building space in KO Centar 1 with a total area of 179 m².

- In favor of the Republic of Macedonia under the verdict of the defendants seized more cadastral parcels and co-real estate land in total area of 178,218 m².

The total amount of the confiscated securities and the property, in all the above mentioned cases, is around 20.000.000 Eur.

Bacilo case and the full execution of the sentence continue.

Brought to court proceedings for annulment of mortgage for a given property of the convicted Isnifaris Dzemaili in order to prevent execution of the verdict in the amount of 33,410,023 MKD, and for execution of sentence of person convicted in Nikola Stojmenovic amount of 31,305,908 MKD and others

Case "PEPEL" (1)

With application of specialised investigative measures – following the communication and secret following, observation and audio-visual recording of persons and objects with technical tools was uncovered the terrorist organisation "Pepel" whose main activity was in producing and

distribution of cigarettes. In the process of uncovering the organisation were included several institutions such as: the Sector for organised crime under the Ministry of Internal Affairs, the Financial Police, The Authority for prevention of money laundering and financing terrorism and the Public Revenue Office which have worked under the direction of the Public Prosecutor.

In initiating the criminal procedure, at the proposal of the Public Prosecutor a measure for freezing of immobile and mobile property of the indicted persons was also pronounced, their bank accounts were also blocked along with the stocks that they own, and measure confiscation of property and forfeiture of unlawfully acquired property gain were pronounced.

Art 394
Criminal association

Art 285 (1) Unlawful use of brand

Art 353 Abuse of official position and authorisation

Art 60 of Law on Excises

Preliminary investigation started by CCOSC July 2008
(KU number 74/2008)

Referred to BPPOCC
on 20.10.2008
(KO number 119/08)

Date of indictment 16.01.2009

Use of SIMs: YES
First Instance Judgment
Court of First Instance Skopje I Skopje
(KOK number 3/09)
25.03.2010

31 persons convicted
1 person acquitted
1 person tried separately

Imposed sentence:
for 1 person - 5 years imprisonment and a fine in the amount of 1.552.320MKD,
for 2 persons - 4 years and 6 months imprisonment and fines in the amount of 1.009.008 MKD and 1.108.800 MKD,
for 1 person - 3 years and 6 months imprisonment and a fine in the amount of 310.464 MKD,
for 1 person - 3 years imprisonment and a fine in the amount of 554.400MKD,
for 8 persons - 2 years and 6 months imprisonment and fines for 6 persons in the amount 154.000 MKD per person, for one person in the amount of 123.000 MKD, and for one person in the amount of 310.464MKD,
for 3 persons - 2 years imprisonment and fines in the amount of 154.000 MKD per person,
for 1 person - 2 years and 8 months imprisonment and a fine in the amount of 154.000 MKD,
for 4 persons - 1 year and 3 months imprisonment and fines in the amount of 31.600 MKD per person,

for 1 person -1 year and 6 months imprisonment and a fine in the amount of 123.000 MKD,
for 1 person - 3 years imprisonment and a fine in the amount of 369.600 MKD,
for 4 persons - 1 year and 3 months imprisonment,
for 2 persons - 10 months imprisonment,
for 1 person -1 year imprisonment,
for 1 person 2 years and 6 months imprisonment.

Imposed measures:

Confiscation of property benefit and criminal proceeds in the amount of 404.299.187 MKD, and
Confiscation of property benefit acquired by a legal entity from Kosovo in the amount of 1.050
USD and 5.180.000 EUR.

The judgement established that if confiscation is not possible, other movable or immovable
property of value should be confiscated from the accused and also any other property, assets,
material or non-material rights and other property corresponding to the value of proceeds of said
crimes.

Second Instance Judgment
Appellate Court Skopje
(KZ 1575/10)
31.01.2011

Judgment of First Instance confirmed

Requests for extraordinary legal remedies on 04.09.2012

Third Instance Judgment
Supreme Court decisions on 01.10.2012 and 15.10.2012

The requests are rejected as unfounded.

CLOSED (convictions)
Case started July 2008
Case completed on 15.10.2012

DETENTION SERVED:

21 persons (total number)

- 14 specifically served detention

Terms: 21.10.2008-15.01.2010 for 13 persons, 30.10.2008-11.02.2009 for 1 person

INHOUSE DETENTION SERVED:

11 persons (total number)

- 5 persons specifically served detention

Terms: 22.10.2008-15.01.2010 for 4 persons, 07.11.2008-15.01.2010 for 1 person

DETENTION AND INHOUSE DETENTION SERVED:

7 persons (these terms are presented separately above)

Terms:

- Detention 21.10.2008-10.12.2009, followed by in-house detention 11.12.2009-15.01.2010 for 3
persons

- Detention 21.10.2008-20.10.2009, followed by in-house detention 21.10.2009-15.01.2010 for 2 persons,
- Detention 22.10.2008-15.12.2009, followed by in-house detention 16.12.2009-15.01.2010 for 1 person
- Detention 21.10.2008-20.10.2009, followed by in-house detention 11.12.2009-15.01.2010 for 1 person

IMPRISONMENT SERVED:

28 persons

In continuation of detention till final service – terms from detention are calculated within service of imprisonment for all convicted persons

IMPRISONMENT SERVE:

2 persons

since 08.03.2013 – (one person)

since 13.06.2013 – (one person)

SEIZURE AND CONFISCATION:

Confiscation of criminally obtained property is imposed against 23 persons - the property consists of cash totalling 404,289,187 MKD (unpaid excise duty on tobacco products - cigarettes), Confiscation of proceeds of crime is imposed against a legal person from Kosovo - Cash in the amount of 1.05 million USD and 5.18 million EUR.

Enforced (REALISED) Confiscation:

Shares of companies (Tobacco Factory Boro Petrusovski Papuchar): now the Agency for management of seized and confiscated property and proceeds of crime is the dominant shareholder with about 56% of the total number of issued shares.

(b) Observations on the implementation of the article

The provision under review is implemented in the former Yugoslav Republic of Macedonia, both in law and in practice.

Article 36 Specialized authorities

Each State Party shall, in accordance with the fundamental principles of its legal system, ensure the existence of a body or bodies or persons specialized in combating corruption through law enforcement. Such body or bodies or persons shall be granted the necessary independence, in accordance with the fundamental principles of the legal system of the State Party, to be able to carry out their functions effectively and without any undue influence. Such persons or staff of such body or bodies should have the appropriate training and resources to carry out their tasks.

(a) Summary of information relevant to reviewing the implementation of the article

Reference was made to the following authorities:

1. The State Commission for Prevention of Corruption was established in 2002 by the Law on Prevention of Corruption. It is composed of 7 members, appointed by the Parliament, with 4 years

term of office, with a right to be reappointed. The members of State Commission perform their function professionally. Its Secretariat, as a professional department, is responsible for performing the professional, administrative and technical tasks of the Commission. The Commission has the capacity of a legal entity with separate budget.

- The Law on Prevention of Corruption (“Official Gazette of the Republic of Macedonia” Numbers: 28/2002, 46/2004, 126/2006, 10/2008, 161/2008 and 145/2010) sets forth the following relevant provisions:

Article 1

(1) The Law shall regulate measures and activities for prevention of corruption in exercising of power, public authorizations, official duty and policy, measures and activities for prevention of conflict of interests, measures and activities for prevention of corruption in performing matters of public interests by legal entities related to exercising public authorizations, as well as measures and activities for prevention of corruption in commercial companies.

(2) For the implementation of the measures and activities under Paragraph 1 of this Article, a State Commission for the Prevention of Corruption shall be established (hereinafter: State Commission).

Article 47- Position and composition

(1) The State Commission is an autonomous and independent in the performance of its work defined by Law and has the status of a legal entity.

(2) The State Commission shall be composed of seven members.

Article 48 - Appointment of members of the State Commission

(1) The State Commission members shall be appointed by the Parliament of the Republic of Macedonia with a term of office of four years, with a right to be reappointed.

(2) From the members appointed in accordance with Paragraph 1 of this Article, the State Commission shall elect president with a term of office of one year, with a right to be reappointed.

Article 48-a

A Person that meets the following conditions can be appointed as a State Commission member:

- must have citizenship of Macedonia and must have permanent residency in Macedonia, and
- must have university degree either in law or financial matters or anticorruption, he/she has to be reputable in his/her profession and must have a minimum of 8 years of working experience.

Article 48-b

(1) The Parliament of the Republic of Macedonia announces the competition for appointment of State Commission members in the “Official Gazette of the Republic of Macedonia” as well as in at least two daily newspapers, one of which shall be a newspaper printed in Macedonian language and the other shall be a newspaper printed in the language spoken by at least 20% of the citizens that speak an official language different than the Macedonian language.

(2) The competition stipulated in Paragraph 1 of this Article shall be open for 15 days from the day when it was published in the “Official Gazette of the Republic of Macedonia”.

(3) The principle of equitable and fair representation must be adhered to when electing the State Commission members.

(4) The Commission for Election and Appointment in the Parliament of Macedonia shall draft a proposal list of candidates that have applied and shall submit it this list to the Parliament of Republic Macedonia.

(5) If a member of the State Commission is also employed elsewhere this employment shall be suspended during the period from the appointment to the State Commission until the expiration of his/her term of office in the State Commission.

Article 48-c

(1) The State Commission president can be dismissed from his/her position on his/her request, before the end of the term of office as president of the State Commission.

(2) If the president has been dismissed in accordance with Paragraph 1 of this Article, the State Commission elects president for the rest of the term of office of the dismissed president.

Article 48-d

(1) The State Commission members have a status of appointed persons.

(2) The State Commission members shall perform their function professionally.

(3) The salaries and other allowances of the members of the State Commission shall be determined in accordance with the law regulating the salaries of elected and appointed officials.

Article 48-e

(1) The Parliament of the Republic Macedonia dismisses the State Commission member before the end of his/her term of office following a proposal by the Commission for Election and Appointments, if:

- that has been requested by the member;
- he/she has been convicted for a criminal act for which a sanction of imprisonment of more than six months;
- permanently loses the ability to perform that function.

(2) The existence of conditions for dismissal stipulated in Paragraph 1 of this Article are established by the State Commission with a majority vote from the total number of members and submits initiative for dismissal of a State Commission member to the Parliament of the Republic of Macedonia.

Article 48-f

When a State Commission member is dismissed in accordance with the provisions from Article 48-e of this Law, the Parliament of Republic Macedonia announces competition for appointment of a State Commission member and his/her term of office will be until the end of the term of office of the dismissed member.

Article 48-g

The funds for performing the activities of the State Commission are provided from the Budget of the Republic of Macedonia.

Article 48-h

(1) For performing the expert, administrative and technical activities of the State Commission a Secretariat shall be established as an administrative office of the State Commission.

(2) The Secretariat is managed by a Secretary General appointed and dismissed by the State Commission.

(3) The Secretary General and the employees of the Secretariat have the status of civil servants.

Article 49 - Competences

(1) The State Commission shall have the following competence:

- adopts a State Programme for Prevention and Repression of Corruption and an action plans for implementation of the Program;
- adopts annual programmes and plans for work of the State Commission;
- provides opinion and proposal laws important for the prevention of corruption;
- raises initiatives before the competent authorities for the control of the financial and material operations of the political parties, trade union and associations of citizens and foundations;

- instigates initiatives to conduct a proceeding before the competent authorities to dismiss, assignment, replace or application of other disciplinary measures to elected or appointed public officials, officers or responsible persons in public enterprises and other legal entities managing state capital;
- instigates an initiative for criminal prosecution of elected or appointed officials, officers or responsible persons in public enterprises, public institutions and other legal entities managing state capital.
- acts upon cases of conflict between public and personal interests, determined by this Law;
- tracks and follows the assets and changes of assets of elected and appointed public officials, officers and responsible persons in public enterprises and other legal entities managing state capital, in a manner defined by this Law;
- adopts a Rules of Procedures for work;
- prepares annual reports about its work and the undertaken measures and activities and submits it to the Parliament, and also submits it to the President of the Republic of Macedonia, the Government of the Republic of Macedonia and the media;
- cooperates with other state authorities in the prevention of corruption;
- cooperates with corresponding national bodies of other states, and with international organizations in the field of prevention of corruption;
- undertakes activities in the area of education of the authorities competent to detect and prosecute corruption and other forms of crime; and
- enacts acts on the internal organization and job descriptions in the secretariat and performs other tasks defined by Law.

(2) The State Commission shall inform the public of the measures and activities taken and of their results.

Article 50- Duties, rights and responsibilities

(1) The member of the State Commission shall have the capacity of an appointed person.

(2) The members of the State Commission for their work shall be accountable to the Parliament of the Republic of Macedonia.

Article 50-a

(1) A member of the State Commission shall submit the asset declaration about changes in his/her assets to the Commission for Election and Appointment of the Parliament of the Republic of Macedonia as well as to the Public Revenues Office.

(2) The provisions from this Law relating to deadlines for submission of asset declaration form, the statement and the declaration for changes of assets, shall also apply to the State Commission member.

(3) The request to investigate the assets of a State Commission member, pursuant to Article 36 of this Law, can be submitted to the Public Revenues Office by the Commission for Election and Appointment at the Parliament of the Republic of Macedonia.

Article 50-b

In a case of reasonable doubt of conflict of interests for a State Committee member, an opinion shall be sought from the Commission for Election and Appointment at the Parliament of the Republic of Macedonia.

2. The Public Prosecutor's Office (PPO) for Fight against Organized Crime and Corruption set up as a basic autonomous Public Prosecutor's Office since 2008 (previously a Department within the General PPO), with jurisdiction over the entire territory of the country.

- The Law on Public Prosecutors' Offices ("Official Gazette of the Republic of Macedonia" Numbers: 150/2007 and 111/2008) sets forth the following relevant provisions:

Article 5

(1) The public prosecutor carries out the office lawfully, fairly and objectively, respecting and protecting the human rights and freedoms and the rights of other legal entities within jurisdictions, on behalf of society caring about efficiency of the criminal law system.

(2) The public prosecutor in his work provides equality of citizens before the law, regardless of sex, race, colour, national or social origin, political and religious beliefs, property and social status.

(3) No one may affect the independence and impartiality of the prosecutor in his work.

Article 31

The Public Prosecutor's Office for Organized Crime and Corruption is competent to act upon:

- crimes committed by a structured group of three or more persons, existing for a period of time and acting in order to perform one or more criminal offenses for which a sentence of at least four years is imposed, with the intention to directly or indirectly to acquire or financial other benefits,
- crimes committed by a structured group or criminal organization on the territory of the Republic of Macedonia and other countries, or when the offense is prepared or planned in the country or in another country,
- crimes of abuse of official position and authority under Article 353 paragraph 5, receiving a bribe of considerable value under Article 357 and unlawful mediation under Article 359 all of the Criminal Code, committed by elected or appointed official, officer or responsible person of legal person and
- crimes of unauthorized production and distribution of narcotic drugs, psychotropic substances and precursors under Article 215 paragraph 5, money laundering and other proceeds of crime of considerable value under article 273, terrorist threat to the constitutional system and security under Article 313, giving a bribe of significant value under Article 358, illegal influence over witnesses under Article 368 paragraph (3), criminal association under Article 394, a terrorist organization under Article 394-a, terrorism under Article 394-b, human trafficking under Article 418-a, smuggling of migrants under Article 418-b, minor persons trafficking under Article 418-d and other crimes against humanity and international law prescribed in the Criminal Code, regardless of the number of offenders.

3. The First Instance Court Skopje 1 - Specialized department for proceeding cases of organized crime and corruption, established in 2008 by the Law on Courts, with jurisdiction over the entire territory of the country.

- The Law on Courts ("Official Gazette of the Republic of Macedonia" Numbers: 58/2006, 35/2008 and 150/2010) sets forth the following relevant provisions:

Article 32

(1) The Specialized department for proceeding cases of organized crime and corruption is established within the First Instance court Skopje I -Skopje with jurisdiction over the entire territory of the country competent to proceed.

- crimes committed by a structured group of three or more persons, existing for a period of time and acting in order to perform one or more criminal offenses for which a sentence of at least four years is imposed, with the intention to directly or indirectly to acquire or financial other benefits,
- crimes committed by a structured group or criminal organization on the territory of the Republic of Macedonia and other countries, or when the offense is prepared or planned in the country or in another country,
- crimes of abuse of official position and authority under Article 353 paragraph 5, receiving a bribe of considerable value under Article 357 and unlawful mediation under Article 359 all of the Criminal Code, committed by elected or appointed official, officer or responsible person of legal person and
- crimes of unauthorized production and distribution of narcotic drugs, psychotropic substances and precursors under Article 215 paragraph 5, money laundering and other proceeds of crime of considerable value under article 273, terrorist threat to the constitutional system and security under Article 313, giving a bribe of significant value under Article 358, illegal influence over witnesses under Article 368 paragraph (3), criminal association under Article 394, a terrorist organization under Article 394-a, terrorism under Article 394-b, human trafficking under Article 418-a, smuggling of migrants under Article 418-b, minor persons trafficking under Article 418-d and other crimes against humanity and international law prescribed in the Criminal Code, regardless of the number of offenders.

4. Ministry of Interior - Anticorruption Unit - Within the Ministry of Interior, according to the current organization of the Central Police Forces within the Centre for combating organized and serious crime - Financial Crimes Department, established and functional is the Anti-corruption Unit. The Internal control is exercised by a separate organizational unit of the Ministry. According to the organizational structure since 2011, within the Internal Control Department five units are established. The Internal Control Department of the Ministry of Interior prepares the Anticorruption program of the Ministry of Interior.

5. The Financial Police Administration, established by the Law on Financial Police, within the Ministry of Finance is a body with specific authorizations pursuant to the Law on Criminal Procedure, in charge of consistent application of the regulations, in particular in the field of financial, tax and customs operations. The Law precisely regulates the competences and the authorizations of the Financial Police Administration when detecting and pursuing complex forms of organized financial crime in the Republic of Macedonia.

The Administration performs the following competences:

- carries out financial control, monitors the application of tax, customs and other regulations in the field of finance, collects and analyses data on cash transactions, undertakes preliminary investigative and other measures when there are reasonable doubts for committed criminal deeds in the field of organized financial crime, carries out preliminary investigative procedure for criminal deeds in the field of organized financial crime when pursued ex officio and follows the money trail under criminal deeds stipulated by law that include significant and large-volume amounts;
- detects and documents criminal deeds, above all in the field of organized financial crime and criminal deeds pursued ex officio, such as tax evasion, money laundering and other proceeds from crime, tax, banking, insurance, stock exchange, customs and other frauds with significant and large-volume amounts, grave forms of corruption, such as abuse of official duty and powers in terms of acquiring significant amounts or acquiring amounts at the detriment of the Budget of the Republic of Macedonia, receiving and giving bribe, as well as causing false bankruptcy, counterfeiting and destroying of business books, counterfeiting documents, financing terrorism, not paying custom duties, excises or other public fees stipulated by law, which include larger, significant and large-volume amounts;
- carries out procedure for examining property and property status on the basis of public data and registries kept pursuant to law;
- implements preliminary investigative measures so as to detect and provide trails of the criminal deed and the objects that can serve as evidence, to find the perpetrator, to prevent the perpetrator or the accomplice from hiding or fleeing, as well as to gather all information that could be of use for successful conducting of the criminal procedures;
- brings criminal charges to the competent public prosecutor for criminal deeds under its competence, which are pursued ex officio, for which it is being informed or will learn in any other manner;
- initiates and conducts misdemeanour procedure, as well as submits initiative for initiating offence procedure to the competent bodies, if, when performing its competences, it determines misdemeanour responsibility stipulated by law;

- submits initiative for initiating procedure for determining and collecting public fees before the competent body;
- carries out expert computer analysis of confiscated objects, computer information or data from other electronic and mechanical devices containing information, which can serve as evidence in the course of conducting preliminary investigative and offence procedure within its competence;
- organizes and carries out trainings, knowledge examination of the financial police officers and manages human resources;
- upon request by other government bodies and institutions, prepares and provides expert findings and opinions within its competence;
- cooperates with peer bodies from other countries in line with the bilateral agreements and ratified international agreements and
- perform other activities stipulated by this and other laws.

6. The Public Revenue Office - Anti-corruption Department performs the actual examination of the assets declared by officials.

7. The Customs administration - Integrity Department takes preventive measures to combat corruption in the overall functioning of the Customs Administration. Sustainable systems have been established that allow the control of corrupt and deviant and their timely prevention.

8. The Law on Prevention of Corruption (“Official Gazette of the Republic of Macedonia” Numbers: 28/2002, 46/2004, 126/2006, 10/2008, 161/2008 and 145/2010) sets forth the following relevant provisions:

Article 20 - Protection of persons involved in eradication of corruption

(1) Persons working in the bodies for detection and eradication of corruption shall be provided with full protection and independence, with a view to efficient execution of their authority and duty and no pressure whatsoever may be exerted on them in their work or in their undertaking of concrete actions.

(2) For influencing the work or the undertaking of concrete activities, the persons from paragraph (1) of this Article shall inform the State Commission.

(3) The State Commission informs the Parliament of the Republic of Macedonia on the influencing of the work or the undertaking of concrete activities on the members of the State Commission.

The independence of the specialised bodies is ensured by law.

The State Commission for Prevention of Corruption (SCPC) has the status of an autonomous and independent institution when performing the duties prescribed and stipulated by the law for the purpose of exercising preventive-repressive activities for fighting corruption and conflict of interests. SCPC has also competences to perform supervision over the implementation of the Law on Lobbying.

The competences of the SCPC are set in Article 49 of the Law on Prevention of Corruption and Article 21 of the Law on Prevention of Conflict of Interests. The following contains a brief overview of the SCPC actions during 2013 in accordance with its competences:

- The State Programme for Prevention and Repression of Corruption and the State Programme for Prevention and Reduction of Conflict of Interests with Action Plan

Exercising one of its first legal competences, the State Commission for Prevention of Corruption adopted the State Programme for Prevention and Repression of Corruption and State Programme for Prevention and Reduction of Conflict of Interests, including an Action Plan 2011-2015 (hereinafter: State Programme 2011-2015) in December 2011.

Through this strategic document, the SCPC creates and directs the societal action as a clearly defined uninterrupted process resting on the enhancement and strengthening of the legislative and institutional capacities, creation of public, collective, and individual awareness on the harmfulness of corruption, the necessity to recognise and detect it, as well as the affirmation of all forms of preventive actions complemented by efficient sanctioning. In essence, it means concurrently strengthening the responsibility among all holders of public functions and authorisations, strengthening the penal policy, and permanently enhancing the extent of the rule of law.

The State Programme 2011-2015 is a strategic document focusing the process for fighting corruption and conflict of interests, by marking eleven sectors in the society which the experience proved to be risk areas with regard to these negative societal occurrences. Hence, the State Programme distinguishes the following sectors: SECTOR I - Political, SECTOR II - Judiciary, SECTOR III - Public Administration, SECTOR IV - Law Enforcement Authorities, SECTOR V - Customs, SECTOR VI - Local Self-Government, SECTOR VII - Public Sector, SECTOR VIII - Health, Labour and Social Policy, SECTOR IX - Education and Sport, SECTOR X - Private Sectors, SECTOR XI - Media and Civil Society.

Also, it defines the activities and measures for overcoming the problems and risks, the indicators for monitoring the completion of activities, the bodies and institutions in charge of specific activities, time priorities, and indicators for measuring the effects of undertaken activities. Accordingly, the Action Plan of the State Programme establishes 51 problems/risk factors, 156 activities for overcoming problems and risks, 221 indicators for monitoring the completion of activities, and 156 effectiveness indicators, as a particularly important aspect, and, where possible, measuring the efficiency in practice.

The SCPC, within its legal competence for adopting the State Programme and its role as main coordinative body for realising the programme activities, is continuously monitoring the realisation of the anticorruption policies and activities severally and jointly through a system for monitoring and analysing the effectuation of activities and measures set in the State Programme.

Hence, the SCPC collects the information and data on the activity realisation status, activity indicators, and effectiveness indicators, from the institutions involved in the realisation of the programme activities via the web application for electronic data submission.

To this end, and in accordance with the planned activities and established methodology for monitoring the implementation set in the State program at annual basis, the SCPC, in December 2013, collected data through the web application, followed by processing and analysis of the obtained data and preparation of reports on the progress and status of the implementation.

Work by cases:

While carrying out its statutory competences in the area of prevention of corruption in politics, exercising public authorisations and performing the duties of public interest, SCPC continuously took action on specific cases, such as:

In the period January - December 2013, SCPC received a total of 2843 cases and complaints, of which 201 were charges for occurrence of corruption submitted by citizens, legal persons and others, 2615 were cases related to the 2013 Local Elections, and 27 cases were opened upon the

SCPC's own initiative. During the same period, SCPC took action in a total of 3119 cases in the area of prevention of corruption, of which 2615 were cases related to 2013 Local Elections. Of these, a total of 2815 cases were resolved.

The following table shows the count of cases related to corruption by specific areas of interest:

AREA	RESOLVED CASES
PREVENTION OF CORRUPTION IN PERFORMING PUBLIC DUTIES	68
PREVENTION OF CORRUPTION IN PERFORMING WORK OF PUBLIC INTEREST	84
JUDICIARY	35
PREVENTION OF CORRUPTION IN POLITICS	2615
OTHER CASES	13
TOTAL	2815

Regarding the 2013 Local Elections, SCPC prepared a total of 2615 cases for which opinions with guidelines, suggestions and recommendations were provided to public authorities and other institutions with regard to actions that may or may not be undertaken during elections, in accordance with Law on Prevention of Corruption, the Election Code and the Law on Financing of Political Parties. As per the feedback received, SCPC ascertained that its suggestions and recommendations were obeyed by the respective institutions, thus achieving its preventive role in the prevention of corruption in politics.

Since cases opened due to reports from citizens, legal and other persons, on its own initiative, as well as following the final reports of the State Audit Office, SCPC assessed that in 7 cases there are elements requiring an action of a public prosecutor's office. Accordingly, acting within its competences, SCPC instigated before the Public Prosecutor's Office of Republic of Macedonia 7 initiatives for criminal prosecution proceedings against elected or appointed functionaries, public officials or authorised persons in public enterprises, public institutions, and other legal persons with state-owned capital.

Asset declarations:

In 2013, a significant increase in the submission of asset declarations of elected and appointed persons was recorded as a result of the local elections held in March 2013. Namely, as per Article 33 of the Law on Prevention of Corruption, in 2013 SCPC received a total of 1438 asset declarations of elected or appointed functionaries, 429 asset declarations for termination of office, 10 notifications for change of office, and 76 notification for re-election. During the same period, 217 reports for changes in assets were received, in accordance with Article 34 of the law prescribing the obligation to report any increase in assets, whose value exceed 20 average net salaries that have been paid in the previous three-month period, during the execution of office.

SUBMITTED ASSET DECLARATIONS IN 2013	
Asset declarations upon election/appointment in office	1438
Asset declarations upon termination of office	429
Change of office	10
Asset declaration/Notification for re-election	76
Notifications for change in property status	217
TOTAL	2170

The public disclosure of the data in asset declarations on the SCPC's website contributed to increasing the awareness with respect to the legal obligation to submit an asset declaration and report the changes in the property status, thereby reducing the count of persons who have not submitted an asset declaration.

In 2013, SCPC, in accordance with its legal competences, submitted 36 applications for instigating misdemeanour proceedings to the competent court against elected and appointed functionaries for not submitting their asset declarations, that is to say, for not reporting the changes in their property status. In this period and following the submitted applications, the courts rendered 23 decisions.

During 2013, SCPC submitted a total of 35 requests to the Public Revenues Office for instigating procedures to investigate the property and assets of elected and appointed persons.

In 2013, as per the reports from the PRO, 13 proceedings for inspecting the property and assets, initiated by the SCPC in the previous period, were completed. Of these, 12 proceedings were stopped by way of a conclusion, since it was established that the persons against whom proceedings had been initiated did not acquire, nor own property exceeding the taxable, that is to say, the property they own had originated from income that had been subject to taxation and had been legally acquired property, and in one case a decision was adopted charging a person to pay personal income tax on undeclared and untaxed income in the amount of 1 176 306 denars.

SCPC is continuously processing the new asset declarations and is updating the changes in the data on property status, and in 2013 released the data from all 3800 asset declarations of current officials on its website www.dsk.org.mk, in accordance with Article 35 of the Law, and all of the asset declarations submitted between 2003 and 2013 are entered in the database.

Work on cases in the area of conflict of interests:

In the period 01.01.2013-31.12.2013, the SCPC opened a total of 273 cases in the area of conflict of interests and closed a total of 196 cases. The cases were opened upon reports submitted by officials, their superiors, that is to say, functionaries managing state bodies, anonymous reports and reports submitted by other concerned persons, as well as cases initiated by the SCPC.

Taking into account all actions undertaken throughout 2013, in 132 cases SCPC ascertained conflict of interests.

According to Article 25, paragraph 1, indent 1, and related to Article 23, paragraph 3 of the Law on Prevention of Conflict of Interests, SCPC pronounced a total of 15 public reprimands against officials that were in conflict of interest due to accumulation of offices, failing to act as ordered and maintaining to execute simultaneously said accumulated offices.

In two cases, where the SCPC exhausted its actions as per the Law on Prevention of Conflict of Interests, and the officials remained in a state of conflict of interest, SCPC ascertained misuse of official position and authorisation, that is to say, dishonest conduct in an official capacity, and submitted initiatives for criminal prosecution.

It is characteristic that in 2013, most of the cases in the area of conflict of interest were opened upon SCPC's own initiative. Namely, it was established from the statements of interest collected by SCPC and verified in terms of their content that the officials are most often in conflict of interest due to accumulation of offices, contrary to the provisions of the Law.

Statements of Interest:

The total count of statements of interest submitted to the SCPC, as of the date when the obligation to submit them was established, and in accordance with the amendments to the Law on Prevention of Conflict of Interests in 2009, by the end of 2013 was 5820.

2013		SUBMITTED STATEMENTS OF INTEREST
LOCAL GOVERNMENT	SELF-	1220
JUDICIARY		112
STATE AUTHORITIES		127
TOTAL		1.459

Work on projects:

SCPC devotes a significant part of its work on creating anti-corruption policies and projects following the global practices and experiences in prevention of corruption around the world by opening new topics and content those are reflected in strengthening the overall capacity for combating corruption in the Republic of Macedonia.

Therefore, SCPC established cooperation and specific project activities with international organizations in the Republic of Macedonia, and with related institutions in other countries.

2014 is significant for the operations of the State Commission for Prevention of Corruption due to the onset of the implementation of the IPA 2010 Twinning project "Support for effective prevention and fight against corruption".

More specifically, the Project started on the 1st of July 2014 and contains several components, such as:

- verification of property status and interests of the officials (assessment of existing databases and their interconnection for the purpose of electronic data exchange);
- software solution for the developed Methodology for relevant statistical monitoring of corruption cases and implementation of anti-corruption policies;
- establishment of registry of officials who have a legal obligation to submit asset declarations and statements of interest;
- raising awareness about preventing corruption;
- management of confiscated property;
- practical introduction of the integrity system in the private and public sectors;
- more tools for practical operations of all competent institutions in the area of prevention of corruption and conflict of interests.

In 2013, SCPC continued its already established partnership with the OSCE Mission and implemented the project "Promotion of good governance principles in the implementation of the anticorruption policy".

The Project covered the following components:

1) Drafting of three reports on qualitative analysis and evaluation of the three sectors in the State Programme 2011-2015 based on the methodology of the National Integrity System,

- 2) Implementing three topical research on the citizens' perception of the corruption problem in three sectors of the State Programme, and
- 3) Capacity building of the SCPC and promoting the transparency and international cooperation.

The results of the three components will be used to raise public awareness and public debates. The thematic reports on the qualitative analysis and the research reports will contain recommendations addressed to the public institutions responsible for undertaking measures aimed at prevent of corruption.

During 2013, SCPC continued its cooperation with the UNDP. As a continuation of this project initiated in 2012, incorporating an authentic approach for the integrity concept, and implemented in nine pilot municipalities, in 2013 new activities commenced in another 15 municipalities. With the support of UNDP, SCPC developed and published the "Handbook for integrity and conflict of interest", which was disseminated in the local self-government units and is used as a tool for the trainings conducted by the SCPC.

Cooperation with institutions with competences in the prevention of corruption and conflict of interests - signatories of the Cooperation Protocol:

SCPC, starting from its established role by law in the fight against corruption and conflict of interests, in cooperation and coordination with 10 other institutions with specific competences in dealing with corruption and conflict of interests, signed the Protocol on cooperation in prevention and repression of corruption and conflict of interests (hereinafter: Cooperation Protocol) on the 25.12.2007. As of 2013, the Cooperation Protocol was additionally signed by another 7 institutions, bringing the total count of institutions - signatories to 18 institutions.

In accordance with the Cooperation Protocol, following the 2013 Local Elections, SCPC initiated a meeting with the top officials of the State Election Commission and the State Audit Office. The State Commission drafted and signed, along with these two institutions, a Memorandum of Cooperation for implementing the provisions on campaign financing and exchange of information with respect to irregularities related to the submitted financial reports, an obligation stipulated in the Election Code of the Republic of Macedonia.

In 2013, SCPC continued its cooperation with the institutions - signatories of the Cooperation Protocol in the area of conducting training on topics of corruption and conflict of interests.

Cooperation with Civil Society Organisations

In 2010, the SCPC signed a Memorandum for Mutual Support in the prevention of corruption and conflict of interests with the NGO sector, specifically with 17 civil society organizations that were joined by another 4 associations, thereby comprising 21 civil entities cooperating with the SCPC within this network. During 2013, number of activities, aimed at continuation and intensification of the cooperation through specific forms of mutual information, participation in joint activities, trainings and projects for the purpose of achieving higher activism among the citizens, and their associations in recognising and preventing corruption and conflict of interests, were realised. Representatives of foundations and citizens' associations took part in several events - conferences, workshops and roundtables organized by the SCPC. Accordingly, result of this effective cooperation is the involvement of the Centre for Civil Communications in the Project realised by the State Commission for Prevention of Corruption realized in collaboration with the Ministry of Education and Science, and the Bureau for Development of Education, started in 2012, and within this Project numerous activities aimed at including anti-corruption content in the educational system of the Republic of Macedonia were realised in previous year.

Trainings and resources:

In 2013, number of trainings on topics in the area of fighting corruption and conflict of interests and integrity were conducted for employees in state institutions, judges and public prosecutors, as well as and judicial officers and officers in the public prosecutor's offices.

I) According to the 2013 Annual Programme on generic training of civil servants in the Republic of Macedonia, as of November, three generic trainings for civil servants on "anti-corruption measures in the public service" were conducted by trainers from the State Commission for Prevention of Corruption and the Public Administration Agency, attended by 67 civil servants.

Purpose of the training: To improve and enhance the knowledge of the civil servants in the area of ethics and prevention and dealing with corruption in the civil service. The training will cover matters in the area of implementation of the Law on Prevention of Corruption, the Law on Prevention of Conflict of Interests, and the strategic documents and action plans for prevention of corruption and conflict of interests; implementation of international anti-corruption conventions and ethics in the civil service.

Target group: civil servants whose work is closely related to this issue.

II) In 2013, the Academy for Judges and Prosecutors, in cooperation with SCPC, organized and conducted 11 training sessions for judges, prosecutors and officials in the courts and public prosecutor's offices (6 trainings for judges and public prosecutors and 5 training for judicial officials and officials in the public prosecutor's offices) on topics related to ethics, ethical behaviour, prevention of conflict of interests and anti-corruption measures.

III) Also, upon requests from specific institutions, in 2013, the State Commission for Prevention of Corruption conducted training on the topics prevention of corruption and conflict of interest and integrity for the employees of the Ministry of Defence, the Public Revenue Office, and the Ministry of Labour and Social Policy.

IV) Pursuant to the analysis of the data of attended trainings, the following may be ascertained:

- ▶ The count of junior associates who attended the generic training on "anti-corruption measures in the public service" has increased. This training also included the regular officers. This trend is welcomed and it is recommended said trainings to be attended by all civil servants, particularly those at the beginning of their career in public service.
- ▶ There is an increased awareness for the necessity of the trainings in the area of anti-corruption, specifically tailored to the competences and functioning of each of the institutions and authorities.
- ▶ The anti-corruption trainings are organised within the capabilities of the respective institutions and authorities, and are mostly organized in collaboration or partnership with domestic institutions (SCPC) or foreign organizations.
- ▶ The activities and commitments of the Ministry of Finance, the Customs Administration, the Public Revenues Office (Tax Academy), the Ministry of Defence, and the Ministry of Labour and Social Policy with respect to the implementation of anti-corruption trainings for their employees, realized mainly by the SCPC, must be emphasized.
- ▶ The count of conducted trainings has a positive effect on the level of integrity within the institutions and the authorities.
- ▶ The positive approach and interest of all institutions and authorities covered with the screening that have submitted data on the conducted trainings and the need for anti-corruption training should also be commended.
- ▶ The same applies to the interest of all institutions and authorities covered with the screening to conduct and attend more specialised anti-corruption trainings.

V) The implementation of trainings for the purpose of educating and raising awareness on the prevention, repression of corruption and conflict of interest, as well as integrity is an important segment of the anti-corruption policy.

In the introduction of State Programmes 2011-2015, the State Commission for Prevention of Corruption states that it will continue to initiate and implement activities for training and

education in order to "strengthen the awareness of citizens and overcome the perception of the individual and institutional powerlessness with respect to corruption"¹.

Accordingly, the 2011-2015 Action Plan, in addition to the activities related to legislation, envisages implementation of trainings for the relevant sectors, such as the political sector, the judiciary, the public administration, the private sector, the customs sector, the local self-government, the public sector, the health, labour and social policy sector, and the education and sports sector.

VI) It is important to note that one of the recommendations made in the GRECO Report on the Third Round Evaluation pertaining on the topic: Incrimination and transparency of the financing of political parties², the practitioners should be made clearly informed that the active and passive bribery of domestic and foreign arbiters is covered by the concept of an official within the meaning of Article 122 of the Criminal Code.

The Compliance Assessment Report ascertains the following in its recommendations:

The authorities of the Republic of Macedonia reported numerous anti-corruption trainings organized by the Academy for Judges and Public Prosecutors, emphasizing that during the trainings, special attention is given to the essential elements of the crime of bribery, the notion of an official and the various categories of persons who fall under that definition, including arbiters, and that the themes on giving and receiving bribes are part of the general programme for continuous training of judges and prosecutors. Simultaneously, the same Report notes that a large number of trainings were held upon the entry into force of the recent amendments and supplementations to the Criminal Code.

Said GRECO Report commends the anti-corruption trainings and the attention paid therein on the concept of an official, and the categories of people it entails, including domestic and foreign arbiters, and encourages the national authorities to continue their efforts for eliminating any doubts among the legal practitioners in relation to the relevant laws.

VII) According to the data provided by the State Commission for Prevention of Corruption, the implementation of the two-year IPA 2010 Twinning Project "Support to efficient prevention and fight against corruption" commenced on the 1st of July 2014, where one of the components refers to raising public awareness on anti-corruption and for realization thereof around EUR 160 000 have been approved.

(b) Observations on the implementation of the article

The former Yugoslav Republic of Macedonia has several authorities specialised in combating corruption through law enforcement. The State Commission for Prevention of Corruption is, established in 2002, among other tasks, instigates an initiative for criminal prosecution of elected or appointed officials, trains staff specialized in the fight against corruption, adopts a State programme for prevention and repression of corruption and an action plans for implementation of the Program, and tracks and follows the assets and changes of assets of public officials.

The Public Prosecutor's Office for Organized Crime and Corruption is competent to prosecute a series of crimes including abuse of official position and authority, receiving a bribe of considerable value and unlawful mediation, when committed by elected or appointed official, officer or responsible person of legal person. Those crimes are brought in front of the Specialized department for proceeding cases of organized crime and corruption of the First Instance Court Skopje 1.

The anti-corruption institutional framework in the former Yugoslav Republic of Macedonia comprises also the Anti-corruption Unit of the Ministry of Interior, the Financial Police

¹ <http://www.dsk.org.mk/images/stories/pdf/drzavna%20programa/dprograma%2026.12.11.pdf>

² Adopted by GRECO on its 46th Plenary Session held between the 22nd and 26th of March 2010.

Administration of the Ministry of Finance, the Anti-corruption Department of the Public Revenue Office, and the Integrity Department of the Customs administration.

The independence of the specialised bodies is ensured by law. Their staff are provided with adequate trainings and resources.

Based on the information provided, the review team is of the view that the article under review is adequately implemented.

Article 37 Cooperation with law enforcement authorities

1. Each State Party shall take appropriate measures to encourage persons who participate or who have participated in the commission of an offence established in accordance with this Convention to supply information useful to competent authorities for investigative and evidentiary purposes and to provide factual, specific help to competent authorities that may contribute to depriving offenders of the proceeds of crime and to recovering such proceeds.

2. Each State Party shall consider providing for the possibility, in appropriate cases, of mitigating punishment of an accused person who provides substantial cooperation in the investigation or prosecution of an offence established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

The former Yugoslav Republic of Macedonia referred to the following provisions:

Law on criminal procedure

Article 488

Acting upon the draft plea agreement

- (1) The judge of the preliminary procedure shall schedule a hearing for assessment of the draft plea agreement within three days from the receipt of the draft plea agreement.
- (2) The judge shall summon at the hearing the persons who filed the draft plea agreement and is obliged to examine if it has been submitted voluntarily, whether the suspect is aware of the legal consequences from its acceptance, any consequences related to any legal or property claims and the costs for the criminal procedure.
- (3) Throughout the hearing, the public prosecutor, the suspect and his or her defense counsel must not put forward a motion for a criminal sanction that is different to the criminal sanction contained in the draft plea agreement. If the public prosecutor or the suspect and his or her counsel put such a motion, they shall be considered to have desisted from the draft plea agreement and the judge of the preliminary procedure shall issue a ruling as referred to in paragraph 1 of Article 489 of this Law.
- (4) The preliminary procedure judge shall advise the public prosecutor and the suspect and his or her defense counsel of their right to withdraw from the draft plea agreement before the ruling is made.
- (5) The preliminary procedure judge shall advise the public prosecutor and the suspect and his or her defense counsel that the acceptance of the draft plea agreement shall be considered as waiving the right of appeal against any judgment reached on the basis of the draft plea agreement.

Article 489

Rejecting the draft plea agreement

- (1) If the preliminary procedure judge finds that the collected evidence regarding the facts relevant for selecting and determining the criminal sanction do not justify the pronouncing of the proposed criminal sanction, i.e. that the public prosecutor, the suspect and his or her defense counsel filed a motion during the hearing for a criminal sanction that is different than the one contained in the draft plea agreement, he or she shall enact a decision rejecting the draft plea agreement and submit the case files to the public prosecutor.
- (2) In the event of reaching a decision as referred to in paragraph 1 of this Article, the records from the held hearing and the draft plea agreement may not be used in the further course of the procedure, and they shall be treated as provided for in Article 336, paragraph 4 of this Law.
- (3) An appeal against the decision reached as referred to in paragraph 1 of this Article shall not be allowed.

Article 490

Judgment on the basis of a draft plea agreement

- (1) If the preliminary procedure judge accepts the draft plea agreement, he or she shall pronounce a judgment where he or she must not pronounce a criminal sanction different to the criminal sanction contained in the draft plea agreement.
- (2) The judgment shall contain the elements of a judgment of conviction pursuant to Article 404 of this Law.
- (3) The judgment shall be announced immediately and prepared in writing within three days of its announcement. The judgment shall be delivered to the public prosecutor, the suspect and his or her defense counsel without any delay.
- (4) The injured party shall also receive a copy of the judgment without any delay. If the injured party is dissatisfied with the type and amount of the legal or property indemnification claim awarded with the judgment, he or she may effectuate such right through dispute litigation.

1. The Law on Prevention of Corruption (“Official Gazette of the Republic of Macedonia” Numbers: 28/2002, 46/2004, 126/2006, 10/2008, 161/2008 and 145/2010) sets forth the following:

Article 19 - Protection of associates of justice and witnesses

- (1) Against a person who revealed data indicating the existence of corruption, may not be initiated penal prosecution and he may not be called upon any responsibility.
- (2) A person who has given a statement or witnessed in a procedure for corruption offence shall be protected. The person has the right to a compensation for damage which he or a member of his family may suffer owing to the statement given or appearance as a witness.
- (3) The request for compensation of Paragraph 2 of this Article shall be submitted to a competent authority.
- (4) The compensation of Paragraph 2 of this Article shall be paid with funds from the Budget of the Republic of Macedonia.

2. The Law on Witness Protection (“Official Gazette of the Republic of Macedonia” Numbers 38/2005 and 58/2005) is applied if the proving of the criminal act would have been accompanied with extreme difficulties or could not be conducted without a statement of a person, which, due to the possible danger of being exposed of intimidation, threatening with revenge or danger over life, health, freedom, physical integrity or property of bigger amount, does not agree in the capacity of witness, to provide statement in the crimes: against the state, against the humanity and the international law, organized crime and for which the Criminal Code stipulates sentence of at least 4 years’ imprisonment.

Types of measures for protection are set forth in chapter VI. “Measures for protection”.

The measures for protection are:

- 1) keeping the secrecy of the identity,
- 2) providing personal protection,
- 3) change of the place of living or residing and
- 4) change of the identity (Article 26).

The measures for protection determined in article 26 of this law are enforced by the Department for witness protection. If the Department considers that it is necessary to apply the “change of identity” measure, it submits a request to the Council for witness protection for application of this measure. The Council decides upon the request stated in paragraph 2 of this article, submitted by the Department within 15 days of its submitting (Article 27).

Article 28 - Keeping the confidentiality of the identity

- (1) The measure keeping the confidentiality of the identity encompasses processing and use of personal documents with temporarily altered personal data of the protected person, as well as processing and use of documents for ownership of certain estate of the protected person.
- (2) The enforcement of the measure from paragraph 1 of this article does not mean actual change of personal and property data of the protected person in the regular records of the authorized bodies.
- (3) The protected person can use the documents from paragraph 1 of this Article for making certain agreements and other legal matters with third persons only with previous consent from the Department. If the Department does not give this consent, the protected person can, upon the approval from the Department, determine his proxy who shall then use the person's real name and data and on his/her behalf and account conclude the agreement or the other legal matters.

Article 29 - Providing personal protection

The measure for protection "providing personal protection" is consisted of operative, physical and technical protection of the protected person with aim to prevent the threatening of his/her life, health, freedom, physical integrity or property of bigger amount.

Article 30 - Change of the place of living or residing

- (1) The measure for protection "change of the place of living, i.e. residing" of the protected person is realized through a temporary or permanent change of his/her place of living, i.e. residing with another place of living, i.e. residing, determined by the Department.
- (2) The measure for protection of paragraph 1 of this article can be applied on the territory of the Republic of Macedonia or outside of its territory, in accordance with the ratified international agreements.
- (3) Collaborator of justice serving the sentence of imprisonment in Republic of Macedonia and to whom the measure for protection "change of the place of living, i.e. residing" is determined, can be displaced in another country for serving the sentence of imprisonment, in accordance with a ratified international agreement.

Article 31 - Change of identity

The measure for protection "change of the identity" is consisted of partial or complete change of the personal data of the protected person. The personal data entered into the new documents cannot be the same with the data of some other person.

Receiving new identity does not have influence on the status and other rights and obligations of the protected person.

After the expiry of the measure for protection "change of the identity", the protected person can declare himself about keeping the new identity.

The protected person cannot restore his authentic identity if the change of the identity has significantly influenced on the status of a third person (marriage, paternity, maternity etc.)

Upon written permission of the Department, and in accordance with the guidelines for keeping the confidentiality and providing the complete security of the protected person, he/she can participate with his authentic personal data in an official procedure where the use of the personal authentic data is inevitable.

The original documents for the identity of the protected person are kept in the Department.

In implementing the measure for protection "change of identity", activities for change of the physical characteristics of the protected person can be undertaken.

Article 32

- (1) If a decision for appliance of the measure "change of identity" is made, the Department will ask the person suggested for involvement in the Program, before signing the agreement, to fulfil his due obligations towards third parties.
- (2) If the person suggested for involvement in the Program does not fulfil the obligations from paragraph 1 of this article, the measure for protection "change of identity" will not be applied until the due obligations towards the third parties are not fulfilled.
- (3) In case when after signing the agreement, the Department receives information for an obligation that occurred when the protected person had had the authentic identity, the Department will ask the protected person to fulfil the obligation, with the mediation of the Department. If the person is not able or is not willing

to fulfil the obligation, the Department will inform the Council in a written form. The Council within three days from the day of receipt will decide for termination of the measure for protection “change of identity” and for cessation of the Program.

Article 33

If the protected person committed a criminal act before the change of identity, upon a request of the court, the Department secures his/her presence and usage of the authentic identity, and the Court can determine special manner for hearing, in accordance with the Law on criminal procedure.

Article 40 - International cooperation

(1) The international cooperation in the field of protection of witnesses, collaborators of justice, victims which appear in capacity of witnesses and their close persons is accomplished on the base of international agreements, ratified in accordance with the Constitution of Republic of Macedonia, or based on a mutual reciprocity.

(2) Under conditions from paragraph 1 of this article, the Department:

- directs an application to other country for accepting the protected person and implementation of the measures for protection stipulated in this law and
- deals with the applications from other countries for accepting protected persons and application of measures for protection in Republic of Macedonia

Sanctions for the criminal act of unauthorized release of information and data about the witnesses, collaborators of justice, victims that appear in a role of witnesses and their close persons are stipulated in Chapter IX. “SENTENCE PROVISION -CRIMINAL ACT” of this Law:

Article 42

(1) The person who contrary to this law will reveal the real identity, the home, the residence of the persons from article 2 paragraph 1 lines 1, 2, 3 and 4 of this law, as well as other information that can lead to their identification that could jeopardize the life, health, freedom, physical integrity or the property of bigger amount to the persons from article 2 paragraph 1 lines 1, 2, 3 and 4 of this law shall be punished with imprisonment sentence of minimum four years.

(2) If the act from paragraph 1 leads to causing serious body injuries to the persons from article 2 paragraph 1 lines 1, 2, 3 and 4 of this law the perpetrator shall be punished with imprisonment sentence of minimum eight years.

(3) If the act from paragraph 1 leads to death or suicide of the persons from article 2 paragraph 1 lines 1, 2, 3 and 4 of this law the perpetrator shall be punished with imprisonment sentence of minimum 15 years or with life imprisonment.

Article 2

Terms used in this law have the following meaning:

1. “Witness” is any person who according to Law on Criminal Procedure, has the role of witness, and possesses information for the committing of the crime, the perpetrator, and other relevant circumstances, i.e. data and information relevant for the criminal procedure which are necessary and crucial for proving the criminal act, by which revealing the life, health, freedom, physical integrity or property of bigger amount of the witness are exposed to danger.

2. “Collaborator to justice” is a person against whom an indictment is filled, is convicted, or member of criminal group, gang or other association, or has participated in committing a crime in the area of organized crime, but has agreed to cooperate with the bodies authorized to identify, prosecute and trial the criminal acts, particularly to give a statement in capacity of witness in the criminal procedure, related to the criminal group, band or other association or to any other criminal act connected with organized crime.

3. “Victim who appears in capacity of a witness” is any person whose personal or property right is damaged or endangered by the committed criminal act, who possesses information relevant to the criminal procedure,

which if released, his/her life, health, freedom, physical integrity or property of bigger amount would be exposed to danger, but has agreed to cooperate with the justice system, by giving a statement appearing in capacity of witness in the criminal procedure.

4. "Close person" is:

- spouse and non-marital partner of the witness, collaborator to justice and the victim which appears in the capacity of witness,
- relatives of the witness, collaborator to justice and the victim which appears in the capacity of witness by blood filiations in straight line, the relatives in side line till the third level, as well as the in-laws relatives till second level;
- foster child and foster parent of the witness, collaborators to justice and the victim which appears in the capacity of witness and
- other person that the witness, collaborator to justice and the victim which appears in capacity of witness considers as close person and for whom he/she asks to be involved in the program for protection.

3. The Law on Criminal Procedure ("Official Gazette of the Republic of Macedonia" Number: 150/2010):

Article 44 - Waiving of criminal prosecution

The public prosecutor shall not be obliged to prosecute, i.e. may wave his or her rights of criminal prosecution if:

- 1) The Criminal Code states that the court may relieve the perpetrator of the crime from punishment and if the public prosecutor, bearing in mind the specific circumstances of the case, establishes that a verdict on its own, without a criminal sanction is not required;
- 2) For the criminal offense the Criminal Code prescribes a fine or a prison sentence of up to three years, and if the suspect has shown great remorse and has prevented any harmful consequences or has provided full compensation for any damages caused, and if the public prosecutor, bearing in mind the concrete circumstances of the case, establishes that there are no grounds for criminal sanctions;
- 3) The suspect, as a member of an organized group, gang or another criminal enterprise, voluntarily collaborates before or after the detection or during the criminal procedure and if such cooperation and statement given by that person is of essential importance for the criminal procedure.

Article 226- Witness protection

(1) If it is likely that by giving a statement or by responding to a certain question, the witness, collaborator of justice or the victim, i.e. the injured party, or a person close to him or her would be exposed to a serious threat to his or her life, health or physical integrity, the endangered witness may refrain from giving a statement or presenting information as referred to in Article 219, paragraph 3 of this Law, until the necessary conditions for his or her protection have been provided for.

(2) The protection of the endangered witness shall mean a special way of examination and participation in the procedure as prescribed in this Law and implementation of protective measures beyond the procedure, as prescribed in a separate law.

(3) If the public prosecutor believes that the fear of danger as referred to in paragraph 1 is grounded, he or she shall stop the examination and undertake urgent actions pursuant to the provisions on protection of witnesses, collaborators of justice and victims, as prescribed in this Law.

(4) If, during the procedure, the endangered witness states that he or she does not require a special manner of participation and examination, the witness shall be examined in accordance with the general rules for examination of witnesses. The previous statement, provided under the rules for a special examination of an endangered witness, may be used during the examination, and afterwards it shall be singled out from the case file and handed over to the preliminary procedure judge for safekeeping in a sealed envelope.

(5) If the public prosecutor believes that the request referred to in paragraph 1 of this Article is ungrounded, he or she shall proceed according to Article 219 of this Law.

(6) The summoning of an endangered witness in the preliminary procedure or at the main hearing shall be done through the Witness Protection Unit at the Ministry of Interior.

Article 227 - Protection of an endangered witness during the preliminary procedure

(1) As soon as he or she learns about the probability of existence of the circumstances referred to in Article 226 of this Law, the public prosecutor shall undertake measures for protection of the endangered witness. The public prosecutor shall inform the endangered witness thereof.

(2) With a decision, the public prosecutor shall determine the pseudonym of the endangered witness, as well as the special manner of participation in the procedure and examination. The defendant and his or her defence counsel and the injured party and his or her attorney shall not be present during the examination of the endangered witness in the preliminary procedure.

(3) The public prosecutor shall seal the information on the endangered witness in a separate envelope and note that in the case file accordingly, using the pseudonym of the endangered witness. Only the second instance court, when ruling on an appeal, may ask for and open the sealed envelope containing the information on the endangered witness. In such an event, the opening shall be annotated on the envelope and the names of the members of the chamber who are going to be introduced to its contents shall be specified. After the members of the Chamber have been familiarized with its contents, the envelope shall be sealed again and returned to the public prosecutor.

(4) The endangered witness shall not be asked any questions, which, directly or indirectly, may discover his or her identity, place of residence, employment or family members.

(5) Any person who learns of the information on the endangered witness in any capacity shall be obliged to keep it as classified information.

Article 228 - Protection of an endangered witness at the main hearing

(1) The public prosecutor shall deliver the motion for a special manner of examination of the endangered witness elaborated in writing and sealed in an envelope to the judge, i.e. to the Chamber for review of the indictment along with the submission of the indictment.

(2) 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.

(3) If the court approves of the public prosecutor's motion, it shall establish the pseudonym of the endangered witness with a decision, if it was not established by then, as well as the special manner of participation in the procedure and examination. An appeal against this decision of the court shall not be allowed.

(4) The special manner of examination may include hiding the identity of the witness, and in certain cases, hiding the appearance of the endangered witness (Article 229 and Article 230 of this Law).

Article 229- Examination under a pseudonym

(1) If the special manner of examination of the witness refers only to hiding personal data, the examination shall be conducted under a pseudonym, without specifying other data referred to in Article 219, paragraph 3 of this Law. As far as the rest of the examination is concerned, it shall be conducted according to the general provisions for examining witnesses.

(2) After the examination has been completed, the endangered witness shall sign the record with his or her pseudonym.

(3) Any person who learns of the information on the endangered witness in any capacity shall be obliged to keep them as classified information.

Article 230- Examination assisted with technical devices for transfer of picture and sound

(1) If the special manner of participation in the procedure and examination of the endangered witness refers to the hiding of data as referred to in Article 219, paragraph 3 of this Law, but also to the hiding of the

appearance of the endangered witness, the examination shall be conducted with the assistance of technical devices for transfer of picture and sound, whilst distorting the face and the voice of the endangered witness.

(2) During the examination, the endangered witness may be located in another room, which is physically separated from the room that houses the judge and the other participants in the proceeding.

4. Amendments and addenda to the Law on Prevention and Corruption are drafted to introduce the concept of integrity system and to establish systematic protection of whistle-blowers (which, inter alia, prescribe internal and external whistleblowing channels and further promote protection and protection providers) in compliance with CoE and OECD recommendations.

The authorities of the Republic of Macedonia have undertaken many activities for motivation of the public to cooperate with the police, in the fight against the crime and especially in providing information and evidence by the persons who are witnesses or victims of crime.

The former Yugoslav Republic of Macedonia referred to the following examples:

The accused, organized a group, in order to accrue significant profits. Most of the accused used to work at the pay toll booths, and charged the cars with only half of the amount due, but did not issue fiscal bills. Through these actions, they caused significant damage to the Fund for national and regional roads.

In the police action to detect this crime, special investigative measures were used, and the case was documented through video recordings.

The criminal investigation was conducted in the period of 2010 and 2011, with use of special investigation techniques which led to identification of this criminal group. 5 (Five) persons – members of this criminal group cooperated with police and public prosecution during the investigation. They provided the investigative bodies with falsified fiscal bills, which were used in the payment in the pay toll booths in the North-East part of the Republic of Macedonia. They also participated in the proving of the corruptive methods which were used by this criminal group.

The former Yugoslav Republic of Macedonia noted that in accordance with article 1 of the Law on Witness protection, all measures for protection stipulated in the law cover all the categories cited below.

LAW ON WITNESS PROTECTION

I. GENERAL PROVISION

Basic Provision

Article 1

This law regulates the procedure and conditions for providing witness protection and assistance to the witnesses, defines the measures for protection and establishes Council for witness protection and Department for witness protection.

The provisions of this law are also applied to collaborators to justice, victims who appear in capacity of witnesses, as well as to close persons of the witnesses, collaborators to justice and victims who appear in capacity of witnesses.

Meaning of terms

Article 2

Terms used in this law have the following meaning:

1. "Witness" is any person who according to Law on Criminal Procedure, has the role of witness, and possesses information for the committing of the crime, the perpetrator, and other relevant circumstances, i.e. data and information relevant for the criminal procedure which are necessary and crucial for proving the criminal act, by which revealing the life, health, freedom, physical integrity or property of bigger amount of the witness are exposed to danger.

2. "Collaborator to justice" is a person against whom an indictment is filled, is convicted, or member of criminal group, gang or other association, or has participated in committing a crime in the area of organized crime, but has agreed to cooperate with the bodies authorized to identify, prosecute and trial the criminal acts, particularly to give a

statement in capacity of witness in the criminal procedure, related to the criminal group, band or other association or to any other criminal act connected with organized crime.

3. "Victim who appears in capacity of a witness" is any person whose personal or property right is damaged or endangered by the committed criminal act, who possesses information relevant to the criminal procedure, which if released, his/her life, health, freedom, physical integrity or property of bigger amount would be exposed to danger, but has agreed to cooperate with the justice system, by giving a statement appearing in capacity of witness in the criminal procedure.

4. "Close person" is:

- spouse and non-marital partner of the witness, collaborator to justice and the victim which appears in the capacity of witness, - relatives of the witness, collaborator to justice and the victim which appears in the capacity of witness by blood filiations in straight line, the relatives in side line till the third level, as well as the in-laws relatives till second level;

- foster child and foster parent of the witness, collaborators to justice and the victim which appears in the capacity of witness and

- other person that the witness, collaborator to justice and the victim which appears in capacity of witness considers as close person and for whom he/she asks to be involved in the program for protection.

5. "Protected person" is witness, collaborator of justice, victim in capacity of witness, and their close persons, who with a decision of the Council for witness protection is involved in the Protection Program and with whom the Department for witness protection has contracted Agreement for protection.

6. "Witness Protection Program" (hereinafter "Program") is system of measures and activities stipulated in this law, that the Department for witness protection is undertaking for protection of the life, health, freedom, physical integrity or property of bigger amount of the persons involved in it.

7. "Council for witness protection" (hereinafter "Council") is body that makes the Decision for inclusion of certain person in the Program, for cessation of the program and determines the measure "change of identity".

8. "Department for witness protection" (hereinafter "Department") is internal organization unit within the Ministry of Interior in charge of implementation of the Program.

9. "Agreement for witness protection" (hereinafter "Agreement") is an act made in written form between the Department and the witness, collaborator to justice, victim which appears in capacity of witness, and their close persons, and encompasses rights and obligations of the Department and the witness, collaborator to justice, victim which appears in the capacity of witness, and their close persons, as well as the terms for providing and termination of the protection.

10. "Measures for protection" are activities stipulated in this law, undertaken by the Department for protection of the witness, collaborator to justice, victim which appears in capacity of witness, and their close persons, of any kind of threatening to their life, health, freedom, physical integrity or property of bigger amount and

11. "Intimidation" means any kind of direct or indirect threatening to the witness, collaborator to justice, victim which appears in capacity of witness, and their close persons, which can affect the will of the person to give statement in the capacity of witness in the criminal procedure.

1. The Criminal Code ("Official Gazette of the Republic of Macedonia" Numbers: 80/99, 4/02, 43/03, 19/04, 81/05, 60/06, 73/06, 7 /08, 139/08, 114/09, 51/11, 135/11, 185/2011, 142/2012, 166/2012, 55/2013) sets forth the following relevant provisions:

Article 39 - General rules to mete out punishment

(1) The court shall mete out a punishment to the offender within the limits prescribed by law for that crime, having in mind the criminal responsibility of the offender, the weight of the crime and the aims of the punishment.

(2) Hereby, the court shall have in mind all the circumstances that have influence upon decreasing or increasing the punishment (extenuating or aggravating circumstances), and especially: the level of criminal responsibility, the motives for the perpetrated crime, the extent of endangerment or damage to the protected goods, the circumstances under which the crime was committed, the contribution of the victim in the perpetration of the crime, the previous life of the offender, his personal circumstances and his behaviour after the perpetrated crime, as well as other circumstances that concern the personality of the offender.

(3) When the court meets the punishment it shall especially have in mind the total effect of the punishment to the offender, its consequences to the personality and needs of re-socialization of the offender.

(4) When the court metes out the punishment to the offender for the committed crime, perpetrated in repetition, it shall especially have in mind whether the previous crime is of the same kind as the new crime, whether the crimes were committed with the same motives and how much time passed since the previous sentence, respectively since the punishment was served or was pardoned.

(5) While meting out the sentence, the court shall particularly take into consideration if the crime was committed against a person or group of persons or property, directly or indirectly, due to his or their national and social background, political and religious belief, wealth and social position, gender, race or colour of skin.

(6) When it metes out a fine, the court shall have in mind also the state of wealth of the offender, herewith considering his other incomes, his property and his family obligations.

Article 40- Mitigation of the punishment

(1) The court may mete out a punishment for the offender under the limit prescribed by law or apply a more lenient form of punishment when:

- 1) the law foresees that the offender may be punished more leniently;
- 2) it concludes that especially extenuating circumstances exist which point out that the aim of the punishment shall be achieved also through a more lenient punishment.

(2) The Court may impose more lenient punishment within the limits of mitigation of the punishment under article 41 of this Code when, in compliance with legally stipulated procedure for bargaining between the public prosecutor and the suspect, an agreement for application of a more lenient sanction than the sanction prescribed by the Code for the crime is achieved.

2. The Law on Criminal Procedure (“Official Gazette of the Republic of Macedonia” Number: 150/2010):

Article 44- Waiving of criminal prosecution

The public prosecutor shall not be obliged to prosecute, i.e. may wave his or her rights of criminal prosecution if:

- 1) The Criminal Code states that the court may relieve the perpetrator of the crime from punishment and if the public prosecutor, bearing in mind the specific circumstances of the case, establishes that a verdict on its own, without a criminal sanction is not required;
- 2) For the criminal offense the Criminal Code prescribes a fine or a prison sentence of up to three years, and if the suspect has shown great remorse and has prevented any harmful consequences or has provided full compensation for any damages caused, and if the public prosecutor, bearing in mind the concrete circumstances of the case, establishes that there are no grounds for criminal sanctions;
- 3) The suspect, as a member of an organized group, gang or another criminal enterprise, voluntarily collaborates before or after the detection or during the criminal procedure and if such cooperation and statement given by that person is of essential importance for the criminal procedure.

(b) Observations on the implementation of the article

National legislation provides for the possibility of Plea bargaining in addition to different protection measures for collaborators to justice. The prosecutor may also waive prosecution where a member of an organized group collaborates before and after the detection or during the criminal procedure and if this statement is of essential importance.

The provision under review is legislatively implemented in the former Yugoslav Republic of Macedonia.

Article 37 Cooperation with law enforcement authorities

Paragraph 3

3. Each State Party shall consider providing for the possibility, in accordance with fundamental principles of its domestic law, of granting immunity from prosecution to a person who provides substantial cooperation in the investigation or prosecution of an offence established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

The Law on Criminal Procedure (“Official Gazette of the Republic of Macedonia” Number: 150/2010):

Article 44 - Waiving of criminal prosecution

The public prosecutor shall not be obliged to prosecute, i.e. may wave his or her rights of criminal prosecution if:

- 1) The Criminal Code states that the court may relieve the perpetrator of the crime from punishment and if the public prosecutor, bearing in mind the specific circumstances of the case, establishes that a verdict on its own, without a criminal sanction is not required;
- 2) For the criminal offense the Criminal Code prescribes a fine or a prison sentence of up to three years, and if the suspect has shown great remorse and has prevented any harmful consequences or has provided full compensation for any damages caused, and if the public prosecutor, bearing in mind the concrete circumstances of the case, establishes that there are no grounds for criminal sanctions;
- 3) The suspect, as a member of an organized group, gang or another criminal enterprise, voluntarily collaborates before or after the detection or during the criminal procedure and if such cooperation and statement given by that person is of essential importance for the criminal procedure.

(b) Observations on the implementation of the article

The provision under review is legislatively implemented in the former Yugoslav Republic of Macedonia.

Article 37 Cooperation with law enforcement authorities

Paragraph 4

4. Protection of such persons shall be, mutatis mutandis, as provided for in article 32 of this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

1. The Law on Prevention of Corruption (“Official Gazette of the Republic of Macedonia” Numbers: 28/2002, 46/2004, 126/2006, 10/2008, 161/2008 and 145/2010) sets forth the following:

Article 19 - Protection of associates of justice and witnesses

(1) Against a person who revealed data indicating the existence of corruption, may not be initiated penal prosecution and he may not be called upon any responsibility.

(2) A person who has given a statement or witnessed in a procedure for corruption offence shall be protected. The person has the right to a compensation for damage which he or a member of his family may suffer owing to the statement given or appearance as a witness.

(3) The request for compensation of Paragraph 2 of this Article shall be submitted to a competent authority.

(4) The compensation of Paragraph 2 of this Article shall be paid with funds from the Budget of the Republic of Macedonia.

2. The Law on Criminal Procedure (“Official Gazette of the Republic of Macedonia” Number: 150/2010):

Article 44- Waiving of criminal prosecution

The public prosecutor shall not be obliged to prosecute, i.e. may wave his or her rights of criminal prosecution if:

1) The Criminal Code states that the court may relieve the perpetrator of the crime from punishment and if the public prosecutor, bearing in mind the specific circumstances of the case, establishes that a verdict on its own, without a criminal sanction is not required;

2) For the criminal offense the Criminal Code prescribes a fine or a prison sentence of up to three years, and if the suspect has shown great remorse and has prevented any harmful consequences or has provided full compensation for any damages caused, and if the public prosecutor, bearing in mind the concrete circumstances of the case, establishes that there are no grounds for criminal sanctions;

3) The suspect, as a member of an organized group, gang or another criminal enterprise, voluntarily collaborates before or after the detection or during the criminal procedure and if such cooperation and statement given by that person is of essential importance for the criminal procedure.

Article 226 - Witness protection

(1) If it is likely that by giving a statement or by responding to a certain question, the witness, collaborator of justice or the victim, i.e. the injured party, or a person close to him or her would be exposed to a serious threat to his or her life, health or physical integrity, the endangered witness may refrain from giving a statement or presenting information as referred to in Article 219, paragraph 3 of this Law, until the necessary conditions for his or her protection have been provided for.

(2) The protection of the endangered witness shall mean a special way of examination and participation in the procedure as prescribed in this Law and implementation of protective measures beyond the procedure, as prescribed in a separate law.

(3) If the public prosecutor believes that the fear of danger as referred to in paragraph 1 is grounded, he or she shall stop the examination and undertake urgent actions pursuant to the provisions on protection of witnesses, collaborators of justice and victims, as prescribed in this Law.

(4) If, during the procedure, the endangered witness states that he or she does not require a special manner of participation and examination, the witness shall be examined in accordance with the general rules for examination of witnesses. The previous statement, provided under the rules for a special examination of an endangered witness, may be used during the examination, and afterwards it shall be singled out from the case file and handed over to the preliminary procedure judge for safekeeping in a sealed envelope.

(5) If the public prosecutor believes that the request referred to in paragraph 1 of this Article is ungrounded, he or she shall proceed according to Article 219 of this Law.

(6) The summoning of an endangered witness in the preliminary procedure or at the main hearing shall be done through the Witness Protection Unit at the Ministry of Interior.

3. The Law on Witness Protection (“Official Gazette of the Republic of Macedonia” Numbers 38/2005 and 58/2005) is applied if the proving of the criminal act would have been accompanied with extreme difficulties or could not be conducted without a statement of a person, which, due to the possible danger of being exposed of intimidation, threatening with revenge or danger over life,

health, freedom, physical integrity or property of bigger amount, does not agree in the capacity of witness, to provide statement in the crimes: against the state, against the humanity and the international law, organized crime and for which the Criminal Code stipulates sentence of at least 4 years' imprisonment.

Types of measures for protection are set forth in chapter VI. "Measures for protection". The measures for protection are: 1) keeping the secrecy of the identity, 2) providing personal protection, 3) change of the place of living or residing and 4) change of the identity (Article 26).

The measures for protection determined in article 26 of this law are enforced by the Department for witness protection. If the Department considers that it is necessary to apply the "change of identity" measure, it submits a request to the Council for witness protection for application of this measure. The Council decides upon the request stated in paragraph 2 of this article, submitted by the Department within 15 days of its submitting (Article 27).

(b) Observations on the implementation of the article

The provision is implemented, although no case examples were provided where relevant protections were afforded to cooperating offenders.

Article 37 Cooperation with law enforcement authorities

Paragraph 5

5. Where a person referred to in paragraph 1 of this article located in one State Party can provide substantial cooperation to the competent authorities of another State Party, the States Parties concerned may consider entering into agreements or arrangements, in accordance with their domestic law, concerning the potential provision by the other State Party of the treatment set forth in paragraphs 2 and 3 of this article.

(a) Summary of information relevant to reviewing the implementation of the article

Authorities met during the country visit confirmed that there are no legal provisions which prevent conclusion of agreements covered in the provision under review.

The former Yugoslav Republic of Macedonia also referred to the following provision:

The Law on Witness Protection ("Official Gazette of the Republic of Macedonia" Numbers 38/2005 and 58/2005)

Article 40 - International cooperation

(1) The international cooperation in the field of protection of witnesses, collaborators of justice, victims which appear in capacity of witnesses and their close persons is accomplished on the base of international agreements, ratified in accordance with the Constitution of Republic of Macedonia, or based on a mutual reciprocity.

(2) Under conditions from paragraph 1 of this article, the Department:

- directs an application to other country for accepting the protected person and implementation of the measures for protection stipulated in this law and
- deals with the applications from other countries for accepting protected persons and application of measures for protection in Republic of Macedonia

(b) Observations on the implementation of the article

The provision is implemented, although no examples of implementation were provided.

Article 38 Cooperation between national authorities

Each State Party shall take such measures as may be necessary to encourage, in accordance with its domestic law, cooperation between, on the one hand, its public authorities, as well as its public officials, and, on the other hand, its authorities responsible for investigating and prosecuting criminal offences. Such cooperation may include:

(a) Informing the latter authorities, on their own initiative, where there are reasonable grounds to believe that any of the offences established in accordance with articles 15, 21 and 23 of this Convention has been committed; or

(b) Providing, upon request, to the latter authorities all necessary information.

(a) Summary of information relevant to reviewing the implementation of the article

1. The Law on Criminal Procedure (“Official Gazette of the Republic of Macedonia” Number: 150/2010) sets forth the following provisions:

Chapter VII Inter-institutional cooperation and legal assistance

Article 81 - Duty to provide assistance

(1) For the purpose of the criminal procedure, the judicial police, the public prosecutor and the court may ask for assistance from the courts, the public prosecution office, State administration bodies and other State entities and institutions with public authority and from the bodies of the units of local self-government. These entities shall be obliged to respond to such a request as soon as possible, and eliminate all possible impediments without any delay. Whenever necessary, they shall also receive a copy of the criminal case file.

(2) State administration bodies and other State institutions may refuse to act upon the request referred to in paragraph 1 of this Article, with an elaborated decision and in accordance with their legal authorities, if it means violation of their duty to preserve classified information, as long as the competent body does not recall this obligation.

Article 45 - Investigative centres of the Public Prosecution Office

(1) For the benefit of the criminal procedure, for the region covered by one or more public prosecution offices, investigation centres of the public prosecution shall be established.

(2) The investigation centres referred to in paragraph 1 of this Article shall be established with a decision by the Chief Public Prosecutor of the Republic of Macedonia.

(3) The total number of members of the judicial police in the investigative centres of the public prosecution will be determined with a decision by the Chief Public Prosecutor of the Republic of Macedonia, after an opinion has been provided by the Minister of Interior, Minister for Justice and the Minister of Finance.

(4) The tasks at the investigation centre shall be performed by the employees of the organizational units referred to in Article 48, paragraph 1, item 2 of this Law, who shall be selected to work for a fixed time period, through an internal job competition, as well as persons employed in the Public Prosecution Office in accordance with the Law on the Public Prosecution Office.

(5) Any individuals referred to in paragraph (4) of this Article may participate in the investigative actions, that is, in their preparation, taking statements and proposals, and they can independently conduct certain

actions assigned to them by the public prosecutor. The reports on such actions taken shall be approved by the public prosecutor within 48 hours from the moment when the action was taken.

(6) The employees that have been selected to work in the investigation centre shall be at the disposal of the public prosecutor, and they shall work under his or hers control and supervision, they shall respect and carry out the public prosecutor's orders, work according to his or her instructions and guidance and shall be responsible for their work before the public prosecutor.

(7) During the period when they have been selected to work at the investigation centre, those employees may not be assigned to another post at the state bodies where they have come from or be removed and prevented from working on the current case, without an explicit approval by the public prosecutor.

Article 46 - Duties of the Judicial Police

(1) The Judicial Police, ex-officio or upon order by the public prosecutor shall take measures and activities in order to detect and criminally investigate crimes, prevent any further consequences of the crimes, apprehend and report the perpetrators, secure the evidence and other measures and activities that might be useful for an unobstructed criminal procedure.

(2) The Judicial Police shall conduct investigations and activities as ordered or asked by the court and the public prosecution office.

(3) The duties referred to in paragraphs 1 and 2 of this Article shall be performed by the chiefs and officers from the Judicial Police.

Article 48 - Composition of the Judicial Police

(1) The duties of the Judicial Police as referred to in this Law shall be performed by:

1) the police officers in the organizational units at the Ministry of Interior, the Financial Police and the Customs Administration, which, according to their scope of work as defined by law, shall undertake measures and activities for detection of crimes, apprehension and reporting of the perpetrators, securing evidence for the crimes and other measures that provide for an unobstructed criminal procedure;

2) the members of the Judicial Police at the investigation centres of the Public Prosecution Office; and

3) the officials assigned to the public prosecutor pursuant to Article 50 of this Law.

2. The Law on Prevention of Corruption ("Official Gazette of the Republic of Macedonia" Numbers: 28/2002, 46/2004, 126/2006, 10/2008, 161/2008 and 145/2010) sets forth the following:

- relevant principles

Article 4 - Principle of equality

(1) Any person has the right to an equal approach in the performance of the matters of public interest and to an equal treatment on the part of persons carrying out public functions, public duties and position.

(2) Any person has the right to a free appearance on the market and to free competition, without fearing that he may be the victim of monopolistic or discriminatory behaviour.

(3) Any person has the right to prevent or report any treatment representing misuse of the carrying out of public and other offices and duties, in order to effectuate personal advantage or cause damage to another, without suffering any detrimental consequences because of that.

- relevant provisions:

Article 16 - Influence over election, appointment and discharge to leading positions

(1) A political party or person acting on behalf of a political party may not exert pressure at election or appointment to, or discharge of a person from official, leading, or other socially important office or duty, except for the cases in which by law is determined that the President of the Republic, the Assembly and the

Government of the Republic of Macedonia, or the bodies of local self-government units are competent to elect, to appoint, or to give opinion or agreement.

(2) A person discharged against the law under the pressure of a political party, as well as a candidate for election or appointment damaged by election or appointment carried out under such pressure, may with a lawsuit before a competent court demand annulment of the election, appointment, that is, discharge act.

(3) The lawsuit of Paragraph 2 of this Article is made within thirty days from the passing of the act for election, appointment, or discharge, that is, from the moment of finding out that it has been done under the pressure of a political party, against the law, but no later than a year from the date of passing such an act. The proceeding is urgent and is conducted under the provisions of the Law on Civil Procedure.

Article 18 - Exemption from keeping classified information

A person who is obliged to keep classified information may, upon the State Commission's request, be relieved from that obligation owing to the conduct of a penal or other procedure for a corruption offence in compliance with law.

Article 19 - Protection of associates of justice and witnesses

(1) Against a person who revealed data indicating the existence of corruption, may not be initiated penal prosecution and he may not be called upon any responsibility.

(2) A person who has given a statement or witnessed in a procedure for corruption offence shall be protected. The person has the right to a compensation for damage which he or a member of his family may suffer owing to the statement given or appearance as a witness.

(3) The request for compensation of Paragraph 2 of this Article shall be submitted to a competent authority.

(4) The compensation of Paragraph 2 of this Article shall be paid with funds from the Budget of the Republic of Macedonia.

Article 20 - Protection of persons involved in eradication of corruption

(1) Persons working in the bodies for detection and eradication of corruption shall be provided with full protection and independence, with a view to efficient execution of their authority and duty and no pressure whatsoever may be exerted on them in their work or in their undertaking of concrete actions.

(2) For influencing the work or the undertaking of concrete activities, the persons from paragraph (1) of this Article shall inform the State Commission.

(3) The State Commission informs the Parliament of the Republic of Macedonia on the influencing of the work or the undertaking of concrete activities on the members of the State Commission.

Article 40 - Unlawful requests by a superior

(1) An official person that is requested by his superior, or elected, or appointed official, in the performing of his work to act in contrary to the Constitution, a law or another regulation, is obliged to indicate this to the person issuing them the order.

(2) If, even after the oral indication, the immediate superior repeats the order from paragraph (1) of this Article, the official person shall immediately, in writing, inform the immediate superior of the person issuing the order and the State Commission. After the written notice the official person is exempt from the liability of committing an illegal official activity and cannot be held liable for it.

Article 41 - Failure to report penalty liable act

An elected or appointed official, as well as other official and responsible person in a public enterprise, a public institution or another legal entity disposing with state capital is obliged to report every punishable act related to corruption, as well as all infringements of the provisions from this law, that they have come into knowledge of in the performing of their duties.

Article 42 - Ban on exercising influence on others

(1) An elected or appointed person, other official person or responsible person in a public enterprise, a public institution or another legal entity disposing with state capital may not use their position to influence another person in a state body, a public enterprise, a public institution or another legal entity, in making or not making a certain decision, in doing something, in omitting or putting up with something, for realizing gain, benefit or advantage for themselves or another.

(2) The person of Paragraph 1 of this Article may not participate as a mediator or representative in commercial or other deals between juridical persons or individuals.

(3) Any person is obliged to inform the State Commission of a violation of the provisions under Paragraphs 1 and 2 of this Article.

Article 43 - Carrying out discretionary powers

(1) In the performance of discretionary powers every elected or appointed civil servant or official is obliged to make his decisions conscientiously, taking into account all facts and circumstances in the concrete case and the principle of legality and equity.

(2) Any person or juridical person dissatisfied by the decision made on the basis of discretionary power, and judging that it has been made due to corruption, may submit a petition with the State Commission.

(3) The State Commission is obliged to consider the petition and to inform the person or juridical person for its dealing with the petition within thirty days of receiving the same.

Article 44 - Bribe offer

An elected or appointed public official, as well as other authorized officers, or a responsible person in a public enterprise, a public institution or another legal entity managing state capital, that has been offered a bribe shall be obliged to undertake measures for identification of the briber and to report that person to the competent body.

Article 45 - Procedure in case of allegations of corruption

A person charged with acts of corruption shall immediately inform the body that elected or appointed it, that is his/her superior and the State Commission.

Article 53 - Request for information

(1) The State Commission may request from an elected or appointed public official, officer responsible person in a public enterprise or in other legal entity managing state capital, data and notifications about his/her assets or the assets of members of his/her family, about the changes of the assets, about the activity carried out by him or by a member of his/her family, the income realised, or other data relevant for the application of the provisions of this Law.

(2) The State Commission can also ask for the data and notifications stipulated in Paragraph 1 of this Article from a relevant authority or legal entity

(3) If the State Commission requests information stipulated in Paragraph 1 of this Article from a relevant authority or legal entity, the authority or the legal entity shall be obligated, without any delay, to provide the requested information within 15 days. If the information is classified, then the procedure applied shall be in accordance with the Law

Article 58 - Malfeasance in financial operations

(1) All employees in banks, savings banks, exchange offices, insurance companies, stock exchanges or other financial organizations shall be obliged to immediately report suspicious transactions related to corruption. The report shall be submitted to the responsible person in that legal entity and to the authorities prescribed by law and to the State Commission.

(2) The organiser of a stock exchange shall be required to keep evidence and registry of all transactions at the stock exchange.

3. Law on Witness Protection (“Official Gazette of the Republic of Macedonia” Numbers 38/2005 and 58/2005);

Article 14- Cooperation and giving assistance to the Department by state and other organs and institutions

State and other organs and institutions are bound to give assistance to the Department for witness protection while performing tasks of its scope of work.

4. The Law on Public Internal Financial Control (“Official Gazette of the Republic of Macedonia” Number 90/2009) sets forth the following relevant provisions:

Chapter VII. UNDERTAKING MEASURES AGAINST IRREGULARITIES AND FRAUDS

Article 50

(1) The head of the public sector entity shall be obliged to both prevent the risk of irregularities and frauds and to undertake activities against irregularities and frauds.

(2) The head of the public sector entity shall appoint a person reporting on irregularities and suspicions for frauds or corruption and shall independently undertake activities referred to in paragraph (5) of this Article.

(3) All employees, including the internal auditors shall inform the head of the public sector entity or the person in charge of irregularities or suspicions of frauds or corruption.

(4) If the Internal Auditor has suspicion of fraud or corruption during the performance of the audit, he shall inform the Head of Internal Audit Unit, being obliged to submit written information to the head of the public sector entity and the person in charge of irregularities thereon.

(5) After the received report on existence of irregularities or suspicions of frauds or corruption, the person in charge of irregularities shall undertake the necessary measures and shall inform the Public Prosecutor’s Office of the Republic of Macedonia and the Ministry of Finance - Financial Police Office and Financial Inspection of the Public Sector thereon,, and within 15 days he/she shall inform in writing the person pointing out to the irregularities or frauds on the undertaken measures, except in case of an anonymous report.

(6) If the persons referred to in paragraph (3) of this Article are not informed on the appropriately undertaken measures, they shall inform the bodies referred to in paragraph (5) of this Article. The Central Harmonization Unit shall not be body in charge of irregularities and frauds.

(7) Employees including the internal auditors reporting irregularities or suspicions of frauds shall be provided with protection on the identity and the acquired employment -related rights pursuant to law.

(8) The Government of the Republic of Macedonia, upon proposal by the Minister of Finance, shall prescribe the procedure for preventing irregularities, the manner of mutual cooperation, the form and, the contents, the deadlines and the manner of informing on the irregularities.

5. To consolidate statistical data into a relevant statistical system for monitoring of the anti-corruption policy, the working group comprised of members of the Inter-ministerial body for coordination of activities against corruption and representatives of the Court of First Instance Skopje I, the State Statistical Office and the Ministry of Information Society and Administration, drafted the first version of the Methodology for relevant statistical system for monitoring of the anti-corruption policy, adopted by the Government on 29.06.2013. The working group is headed

by the Public Prosecutor of the Republic of Macedonia. The Methodology represents required data-tables and indicators for track-record (from first report to final outcome - enforcement of final judgments) of corruption related cases in criminal, misdemeanour and disciplinary procedure, procedure for establishing other forms of responsibility and other legal measures; monitoring implementation of the activities envisaged in the State programmes for prevention and repression of corruption and for prevention and reduction of conflicts of interest, monitoring of implementation of activities envisaged in separate anti-corruption strategic and programme documents monitoring of conducting corruption risk assessment and implementation of audit recommendations, as well as screening of training needs and conducted trainings for strengthening staff capacity for detection and prevention of corruption and conflicts of interest. The adoption and implementation of the Methodology increased the level of cooperation between anti-corruption bodies in order to provide consistent track-record of corruption related cases.

6. Amendments and addenda to the Law on Prevention and Corruption are drafted to introduce the concept of integrity system and to establish systematic protection of whistle-blowers (which, inter alia, prescribe internal and external whistleblowing channels and further promote protection and protection providers) in compliance with CoE and OECD recommendations.

7. The State Programme for Prevention and Repression of Corruption State and for Prevention and Reduction of Conflict of Interests with Action Plans for the period 2011 - 2015, adopted by the State Commission for Prevention of Corruption in December 2011, identifies 11 sectors (Sector I - Political System, Sector II -Judiciary, Sector III - Public Administration, Sector IV - Law enforcement authorities, Sector V - Customs, Sector VI - Local Self-Government, Sector VII - Public Sector, Sector VIII - Health, labor and social policy, Sector IX - Education and Sports, Sector X - Private Sector, Sector XI - Media and civil society) seen to pose highest risks related to corruption and conflict of interests. All interventions, therefore, i.e. the normative, institutional, procedural, educational, preventive and repressive measures and activities are focused on those sectors where the institutional and individual integrity needs to be established and strengthened.

8. The Protocol on Cooperation for Prevention and Repression of Corruption and Conflict of Interest, of 25.12.2007, is signed between the State Commission for Prevention of Corruption and 18 institutions.

9. The Memorandum on Mutual Cooperation in Preventing Corruption and Conflict of Interest, of 28.12.2010, is signed between the State Commission for Prevention of Corruption and 21 non-governmental organizations.

10. The Memorandum on Mutual Cooperation in Preventing Corruption and Conflict of Interest in the Private Sector, of 09.12.2011, is signed by 9 business associations, and in 2012, on the grounds of this Memorandum, specific activities were realized, especially in cooperation with the Business Confederation of Macedonia. As a result of this cooperation the Business Code of Ethics was drafted.

11. The State Commission for Prevention of Corruption in cooperation with OSCE Mission in Skopje implements a Project titled as „Promoting principles of good governance and implementation of anti-corruption policy” This project is a second phase of support, after the 2012 project intervention in selected sectors of the State Programme for Prevention of Corruption 2011-2015 (the State Programme). It is part of an OSCE multi-annual plan to support the State Commission for Prevention of Corruption (SCPC) in implementation of the State Programme. The project will involve three interrelated components, 1) the conduct of three thematic surveys on citizens’ perceptions of the problem of corruption in three sectors of the State Programme, 2) production of three reports based on the National Integrity System (NIS) methodology for

qualitative evaluation of three sectors of the State Programme; and 3) capacity building for the SCPC, promoting transparency and inter-institutional cooperation.

12. The Project “Support to Strengthening the National and Local Integrity Systems in the Republic of Macedonia”, financially supported by the Government of Norway and the Implementing partner UNDP CO Republic of Macedonia, of January -December 2012, and with no cost extension of the Project in 2013/2014, supports the State Commission for Prevention of Corruption in working with the other national and local institutions to introduce and sustain effective solutions to addressing integrity/corruption risks, with particular focus on fostering meaningful civic engagement and partnerships across different parts of society.

13. The Twinning Project “Support to efficient prevention and fight against corruption” which will start with implementation in 2014, covers all anti-corruption institutions and bodies with the objective to improve the implementation of the national legal framework for fight against corruption, to strengthen the national mechanisms for prevention and fight against corruption, to further promote the cooperation between the State Commission for Prevention of Corruption, the judiciary, law enforcement agencies and other relevant institutions in the prevention, detection, prosecution, and sanctioning of the criminal acts of corruption.

In combating corruption, numerous cases of cooperation between the Macedonian police and the state authorities, administration and public institutions are registered. One exceptional case is worth mentioning in this occasion:

In the period of 2008-2009 the Unit for Organized and Serious Crime (within the Ministry of Interior) identified a criminal group involved in preparation and issuing confirming documents for awarding disability pensions to persons who did not fulfill the criteria for acquiring such rights. In this case special investigative measures were undertaken to prove the involvement of a large number of medical persons – members of comities for awarding disability pensions. The documentation to serve as evidence was provided in cooperation with the administration and the public institutions through the Ministry of Labor and Social Policy and the Pension and Disability Insurance Fund. In cooperation with the Ministry of Health relevant medical documentation was provided for investigation.

(b) Observations on the implementation of the article

The provision under review is adequately implemented.

The national legislation adopted provisions encouraging cooperation between its public authorities and its authorities responsible for investigating and prosecuting criminal offences (article 81 of the Law on Criminal Procedure). According to article 41 of the Law on Prevention of Corruption, public officials are legally required to report every punishable act related to corruption. According to article 50 of the Law on Public Internal Financial Control, all employees, including the internal auditors shall inform the head of the public sector entity or the person in charge of irregularities or suspicions of frauds or corruption.

According to The (“Official Gazette of the Republic of Macedonia” Number: 150/2010) sets forth the following provisions:

Chapter VII of the Law on Criminal Procedure is dedicated to Inter-institutional cooperation and legal assistance. According to its article 81, for the purpose of the criminal procedure, the judicial police, the public prosecutor and the court may ask for assistance from the courts, the public prosecution office, State administration bodies and other State entities and institutions with public authority and from the bodies of the units of local self-government. These entities shall be obliged to respond to such a request as soon as possible.

Article 39 Cooperation between national authorities and the private sector

Paragraph 1

1. Each State Party shall take such measures as may be necessary to encourage, in accordance with its domestic law, cooperation between national investigating and prosecuting authorities and entities of the private sector, in particular financial institutions, relating to matters involving the commission of offences established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

1. The Law on Criminal Procedure (“Official Gazette of the Republic of Macedonia ”Number: 150/2010) sets forth the following provisions: Chapter VII Inter-institutional cooperation and legal assistance

Article 81- Duty to provide assistance

(1) For the purpose of the criminal procedure, the judicial police, the public prosecutor and the court may ask for assistance from the courts, the public prosecution office, state administration bodies and other state entities and institutions with public authority and from the bodies of the units of local self-government. These entities shall be obliged to respond to such a request as soon as possible, and eliminate all possible impediments without any delay. Whenever necessary, they shall also receive a copy of the criminal case file.

(2) State administration bodies and other state institutions may refuse to act upon the request referred to in paragraph 1 of this Article, with an elaborated decision and in accordance with their legal authorities, if it means violation of their duty to preserve classified information, as long as the competent body does not recall this obligation.

2. The Law on Prevention of Corruption (“Official Gazette of the Republic of Macedonia” Numbers: 28/2002, 46/2004, 126/2006, 10/2008, 161/2008 and 145/2010) sets forth the following:

- relevant principles

Article 4 - Principle of equality

(1) Any person has the right to an equal approach in the performance of the matters of public interest and to an equal treatment on the part of persons carrying out public functions, public duties and position.

(2) Any person has the right to a free appearance on the market and to free competition, without fearing that he may be the victim of monopolistic or discriminatory behaviour.

(3) Any person has the right to prevent or report any treatment representing misuse of the carrying out of public and other offices and duties, in order to effectuate personal advantage or cause damage to another, without suffering any detrimental consequences because of that.

- relevant provisions:

Article 19 - Protection of associates of justice and witnesses

(1) Against a person who revealed data indicating the existence of corruption, may not be initiated penal prosecution and he may not be called upon any responsibility.

(2) A person who has given a statement or witnessed in a procedure for corruption offence shall be protected. The person has the right to a compensation for damage which he or a member of his family may suffer owing to the statement given or appearance as a witness.

(3) The request for compensation of Paragraph 2 of this Article shall be submitted to a competent authority.

(4) The compensation of Paragraph 2 of this Article shall be paid with funds from the Budget of the Republic of Macedonia.

Article 43 - Carrying out discretionary powers

(1) In the performance of discretionary powers every elected or appointed civil servant or official is obliged to make his decisions conscientiously, taking into account all facts and circumstances in the concrete case and the principle of legality and equity.

(2) A person or juridical person dissatisfied by the decision made on the basis of discretionary power, and judging that it has been made due to corruption, may submit a petition with the State Commission.

(3) The State Commission is obliged to consider the petition and to inform the person or juridical person for its dealing with the petition within thirty days of receiving the same.

Article 58 - Malfeasance in financial operations

(1) All employees in banks, savings banks, exchange offices, insurance companies, stock exchanges or other financial organizations shall be obliged to immediately report suspicious transactions related to corruption. The report shall be submitted to the responsible person in that legal entity and to the authorities prescribed by law and to the State Commission.

(2) The organiser of a stock exchange shall be required to keep evidence and registry of all transactions at the stock exchange.

3. The Law on Banks (“Official Gazette of the Republic of Macedonia” Numbers: 67/2007, 90/2009, 67/10 and 26/13) sets forth the following relevant provisions: Chapter XI. Bank Secret

Article 111

Documents, data and information acquired with performance of banking and other financial activities for individuals and transactions with individuals, as well as deposits of individuals represent bank secret which banks are obliged to protect and keep.

Article 112

(1) Persons with special rights and responsibilities, shareholders and employees of bank who have access to documents, data and information prescribed in article 111 of this Law, as well as persons who by giving banking services have access to documents, data and information prescribed in article 111 of this Law and in compliance with this Law are obliged to keep the documents, data and information prescribed in article 111, may use the prescribed documents, data and information specifically for the purposes of which are acquired and are not allowed to be disclosed to third persons.

(2) The obligation of paragraph (1) of this article does not apply to the following cases, if:

- 1) publication of the data and information is prescribed by law and
- 2) the person gave written consent for disclosure of data.

(3) The obligation of paragraph (1) of this article does not apply to persons with special rights and responsibilities and bank employees in the following cases:

- 1) submitted written request from public prosecution offices or competent court for conducting procedures within their competences;
- 2) for the needs of the National Bank or other supervisory body authorized by law;
- 3) written request from the Public Revenue Office for conducting procedures within its competences;
- 4) if data are communicated to the Financial Intelligence Administration, in compliance with law;
- 5) if data are communicated to the Financial Police Administration, in compliance with law;
- 6) written request from the State Foreign Exchange Inspectorate for control over foreign exchange operations;
- 7) written request from the Deposit Insurance Fund, in compliance with law;

- 8) if data are communicated for the needs of functioning of the Credit Registry of the National Bank and to a credit bureau, in compliance with law;
- 9) if data are communicated for the needs of credit risk management of other members of a bank group or of a bank group whose parent entity is based outside the borders of the Republic of Macedonia, and
- 10) written request from persons authorized for enforcement in compliance with law.

(4) Persons who in accordance to paragraph (3) of this article find the documents, data and information prescribed in article 111 of this Law are obliged to keep the prescribed the documents, data and information and use them specifically for the purposes of which they are acquired and they are not allowed to disclose such documents, data and information to third persons, except in cases and procedures established by this or other law.

(5) The obligation of paragraph (1) and (4) of this article continues even after termination of employment or termination of grounds and status based on which the access to the data considered as bank secret is realized.

4. Amendments and addenda to the Law on Prevention and Corruption are drafted to introduce the concept of integrity system and to establish systematic protection of whistle-blowers (which, inter alia, prescribe internal and external whistleblowing channels and further promote protection and protection providers in public and private sector) in compliance with CoE and OECD recommendations.

5. The State Programme for Prevention and Repression of Corruption State and for Prevention and Reduction of Conflict of Interests with Action Plans for the period 2011 - 2015, adopted by the State Commission for Prevention of Corruption in December 2011, identifies 11 sectors (Sector I - Political System, Sector II -Judiciary, Sector III - Public Administration, Sector IV - Law enforcement authorities, Sector V - Customs, Sector VI - Local Self-Government, Sector VII - Public Sector, Sector VIII - Health, labor and social policy, Sector IX - Education and Sports, Sector X - Private Sector, Sector XI - Media and civil society) seen to pose highest risks related to corruption and conflict of interests. All interventions, therefore, i.e. the normative, institutional, procedural, educational, preventive and repressive measures and activities are focused on those sectors where the institutional and individual integrity needs to be established and strengthened.

6. The Memorandum on Mutual Cooperation in Preventing Corruption and Conflict of Interest, of 28.12.2010, is signed between the State Commission for Prevention of Corruption and 21 non-governmental organizations.

7. The Memorandum on Mutual Cooperation in Preventing Corruption and Conflict of Interest in the Private Sector, of 09.12.2011, is signed by 9 business associations, and in 2012, on the grounds of this Memorandum, specific activities were realized, especially in cooperation with the Business Confederation of Macedonia. As a result of this cooperation the Business Code of Ethics was drafted.

8. The State Commission for Prevention of Corruption in cooperation with OSCE Mission in Skopje implements a Project titled as „Promoting principles of good governance and implementation of anti-corruption policy” This project is a second phase of support, after the 2012 project intervention in selected sectors of the State Programme for Prevention of Corruption 2011-2015 (the State Programme). It is part of an OSCE multi-annual plan to support the State Commission for Prevention of Corruption (SCPC) in implementation of the State Programme. The project will involve three interrelated components, 1) the conduct of three thematic surveys on citizens’ perceptions of the problem of corruption in three sectors of the State Programme, 2) production of three reports based on the National Integrity System (NIS) methodology for qualitative evaluation of three sectors of the State Programme; and 3) capacity building for the SCPC, promoting transparency and inter-institutional cooperation.

The Project “Support to Strengthening the National and Local Integrity Systems in the Republic of Macedonia”, financially supported by the Government of Norway and the Implementing partner UNDP CO Republic of Macedonia, of January - December 2012, and with no cost extension of the Project in 2013/2014, supports the State Commission for Prevention of Corruption in working with the other national and local institutions to introduce and sustain effective solutions to addressing integrity/corruption risks, with particular focus on fostering meaningful civic engagement and partnerships across different parts of society.

The former Yugoslav Republic of Macedonia also referred to the provisions of the Law on prevention of money laundering and financing of terrorism (Official Gazette of RM No 130/2014), which determine the subjects in charged for undertaking measures and actions for prevention of money laundering and financing of terrorism and stipulate the obligation of the subjects for submission of reports:

Entities shall be the persons obliged to undertake the measures and activities for prevention of money laundering and financing terrorism provided by this law (hereinafter: entities), such as:

1. Financial institutions and subsidiaries, affiliates and business units of foreign institutions which pursuant to law perform an activity in Republic of Macedonia;
2. Legal entities and natural persons who perform the following services:
 - a) real estate trading,
 - b) audit and accounting services,
 - c) notarial, lawyer’s and other legal services which refer to: sale and purchase of movable objects, real estate, equity shares, money and securities trade and management, opening and disposing with bank accounts, safes and other financial products, establishing or participating in legal entities’ management and operation, representation of clients in financial transactions etc.
 - d) providing advice in the field of taxes;
 - e) providing consulting services, and
 - f) providing services of investment advisor.
3. Organizers of games of chance in gaming house (casino);
4. Internet casinos;
5. Service providers for legal entities;
6. Central securities depository, and
7. Legal entities who receive movable objects and real estate as pledge.

Article 30

The entities shall be obliged to submit the collected data, information and documents to the Office in the following cases:

- a) when they have suspicions and grounds to suspect that:
 - it has been or was performed money laundering and/or financing terrorism or there was or there is an attempt for money laundering or financing terrorism, regardless the amount of the transaction;
 - the property is a proceed of crime;
 - the property is related to financing terrorist act, terrorist organization or terrorist;
- b) in case of cash transaction in the amount of EUR 15,000 or more, in denar counter value, and
- c) in case of related cash transactions in the amount of EUR 15,000 or more in denar counter value.

The former Yugoslav Republic of Macedonia provided the following case examples:
SCPC \$ private sector

In 2011, at the initiative of the SCPC, a Memorandum for Cooperation in the prevention of corruption and conflict of interests with the private sector was drafted. The Memorandum was signed by 9 business associations. As a result of this collaboration, in 2012 the Business Ethics Code - Guideline for Macedonian business community was drafted. In 2013-2014, the SCPC and the business associations collaborated within the topical study on business integrity of the OECD Anti-Corruption Network for Eastern Europe and Central Asia. The thematic study is supposed to be issued by OECD in 2014. The SCPC, within the Memorandum of Cooperation, also participated

in events organised by the business associations on the subject of corruption prevention, as well as in specific trainings for employees in the private sector.

In 2009, the Unit for Organized and Serious Crime (within the Ministry of Interior) worked on a case of corruptive behavior of two police officers and one intermediary who in order to obtain illicit benefit for themselves, knowing that a legal persons evaded paying taxes, asked the legal person to pay a bribe to avoid criminal charges for tax evasion.

The legal person from the private sector reported the incident to the Police and cooperated in implementation of investigative measures – simulated giving bribe.

The former Yugoslav Republic of Macedonia also provided the following statistical information for the activities realized in the period 2010-2013 by the Financial Intelligence Unit:

Year	Received STRs	Disseminated Reports for ML/ FT	Disseminated Notifications
2010	245	30	140
2011	170	25	107
2012	238	36	121
2013	169	25	157

(b) Observations on the implementation of the article

The reviewing experts noted that a number of legislative provisions in the former Yugoslav Republic of Macedonia mandate cooperation between the private sector, particularly financial institutions, and the State prosecution services.

Article 58 of the Law on Prevention of Corruption requires the proactive reporting, by all employees in financial institutions, of suspicious transactions related to corruption. Article 112 on the Law on banks provides that requests for documentation from State Prosecutors cannot be denied by financial institutions on the ground of confidentiality. Article 30 of the Law on prevention of money laundering and financing of terrorism establishes an obligation on financial institutions and other designated entities to report suspicious transactions to the FIU.

Article 39 Cooperation between national authorities and the private sector

Paragraph 2

2. Each State Party shall consider encouraging its nationals and other persons with a habitual residence in its territory to report to the national investigating and prosecuting authorities the commission of an offence established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

1. The Law on Prevention of Corruption (“Official Gazette of the Republic of Macedonia” Numbers: 28/2002, 46/2004, 126/2006, 10/2008, 161/2008 and 145/2010) sets forth the following:

- relevant principles

Article 4 - Principle of equality

(1) Any person has the right to an equal approach in the performance of the matters of public interest and to an equal treatment on the part of persons carrying out public functions, public duties and position.

(2) Any person has the right to a free appearance on the market and to free competition, without fearing that he may be the victim of monopolistic or discriminatory behaviour.

(3) Any person has the right to prevent or report any treatment representing misuse of the carrying out of public and other offices and duties, in order to effectuate personal advantage or cause damage to another, without suffering any detrimental consequences because of that.

Article 5-a - Principle of liability

(1) Any person harmed by an act of corruption have the right to claim damages, real damages and lost profits, according to the principles of joint liability of the perpetrator of corruption and the legal entity in which the perpetrator served a function or duty in the time of committing the crime.

(2) The right from paragraph (1) of this Article, may be realized when the act of corruption is established in a standing court decision.

- relevant provisions:

Article 19 - Protection of associates of justice and witnesses

(1) Against a person who revealed data indicating the existence of corruption, may not be initiated penal prosecution and he may not be called upon any responsibility.

(2) A person who has given a statement or witnessed in a procedure for corruption offence shall be protected. The person has the right to a compensation for damage which he or a member of his family may suffer owing to the statement given or appearance as a witness.

(3) The request for compensation of Paragraph 2 of this Article shall be submitted to a competent authority.

(4) The compensation of Paragraph 2 of this Article shall be paid with funds from the Budget of the Republic of Macedonia.

Article 20 - Protection of persons involved in eradication of corruption

(1) Persons working in the bodies for detection and eradication of corruption shall be provided with full protection and independence, with a view to efficient execution of their authority and duty and no pressure whatsoever may be exerted on them in their work or in their undertaking of concrete actions.

(2) For influencing the work or the undertaking of concrete activities, the persons from paragraph (1) of this Article shall inform the State Commission.

(3) The State Commission informs the Parliament of the Republic of Macedonia on the influencing of the work or the undertaking of concrete activities on the members of the State Commission.

Article 56 - Protection of the media

(1) Any force, prevention or influence in another way over the media to announce or not to announce information on cases of corruption is forbidden.

(2) The journalist has the right to an unobstructed access to all sources of information in accordance to law. No one may exclude the public from the hearing for corruption before a competent body or legal entity, except from preliminary procedure proclaimed as secret.

(3) No one may ask from a journalist who has announced information on a corruption act to reveal the source of information, except in a procedure before a court.

2. The Criminal Code (“Official Gazette of the Republic of Macedonia” Numbers: 80/99, 4/02, 43/03, 19/04, 81/05, 60/06, 73/06, 7 /08, 139/08, 114/09, 51/11, 135/11, 185/2011, 142/2012, 166/2012, 55/2013) sets forth the following relevant provisions:

Article 142 - Torture and other cruel, inhuman or humiliating activities and punishments

(1) A person who while performing his duty, as well as a person instructed by an official person or based on an agreement of the official person, shall apply force, threat or some other illicit instrument or an illicit manner with the intention to force a confession or some other statement from a defendant, a witness, an expert witness or from some other person, or will inflict on another person severe bodily or mental suffering in order to punish the other person for a crime which the other person has committed or for which the other person or some other person is under suspicion, or to intimidate him/her or to force him/her to forfeit some of his\her rights, or shall cause such suffering due to any kind of discrimination, shall be punished with imprisonment for three to eight years.

(2) If, due to the activities stipulated in paragraph 1, the damaged party has come to severe bodily harm or other especially severe consequences, the perpetrator shall be punished with imprisonment for at least four years.

Article 368-a - Illegal influence on witnesses

(1) One who will influence on some person to appear or not to appear as a witness in a procedure in front of a court or in administrative procedure or is called as a witness to give or not to give statement in certain sense, using threat on the life or the body or on the property in greater scope, offering bribe, disruption or in any other way, shall be sentenced with imprisonment of one to three years.

(2) The sentence stipulated in paragraph 1 shall be also imposed to one that, for revenge for the statement given by the person called as a witness, will revoke some right, mistreat or cause physical injury to the person called as a witness or a person close to him/her.

(3) If especially severe consequences occurred on the defendant in criminal procedure or the witness or a person close to him/her suffered severe physical injury, shall be sentenced with imprisonment of one to ten years.

Article 143 - Mistreatment in performing a duty

A person who while performing his duty mistreats another, frightens him, insults him, or in general, behaves towards him in a manner in which the human dignity or the human personality is humiliated, shall be punished with imprisonment for one to five years.

3. The Law on Criminal Procedure (“Official Gazette of the Republic of Macedonia” Number: 150/2010) sets forth the following relevant provisions: article 44 (Waiving of criminal prosecution), articles 53-67 (Chapter V “Victim, injured party and private plaintiff”), article 146 (Types of precautionary measures), article 226 (Witness protection), article 227 (Protection of an endangered witness during the preliminary procedure), article 228 (Protection of an endangered witness at the main hearing), article 229 (Examination under a pseudonym) and article 230 (Examination assisted with technical devices for transfer of picture and sound);

Article 273

Reporting crimes

(1) All state entities, public enterprises and institutions shall be obliged to report crimes that are being prosecuted ex-officio, about which they have been informed or found out about them otherwise.

(2) When filing charges, the applicants as referred to in paragraph 1 of this Article shall also specify any evidence known to them and take necessary measures to preserve any traces of the criminal offence, items that have been used while it was committed or resulted from the commission of the criminal offense and other evidence.

(3) Anyone may report a crime that is being prosecuted ex-officio.

4. Law on Witness Protection (“Official Gazette of the Republic of Macedonia” Numbers 38/2005 and 58/2005);

5. The Law on Labor Relations (“Official Gazette of the Republic of Macedonia” Numbers 62/2005, 106/2008, 161/2008, 114/2009, 130/2009, 50/10, 52/10, 124/10, 47/11, 11/12, 39/12, 13/13 and 25/13) sets forth the following relevant provisions:

Article 9 - Harassment and sexual harassment

(1) Harassment and sexual harassment is forbidden.

(2) The harassment and sexual harassment represent discrimination in terms of article 6 of this Law.

(3) Harassment, in terms of this Law, is any unwanted behaviour caused by any of the cases referred to in Article 6 of this Law which has the purpose or represents a violation of the dignity of a job applicant or employee, and that causes fear or creates a hostile, humiliating or offensive behaviour.

(4) Sexual harassment, in terms of this Law, represents any verbal, non-verbal or physical conduct of a sexual nature which has the purpose or represents a violation of the dignity of a job applicant or employee, and that causes fear or creates a hostile, humiliating or offensive behaviour.

Article 9-a - Mobbing

(1) Any kind of psychological harassment at the workplace (mobbing) is prohibited.

(2) Psychological harassment in the workplace (mobbing) represents discrimination in terms of Article 6 of this Law.

(3) Psychological harassment at the workplace (mobbing), in terms of this Law, is any negative behaviour by an individual or group that is often repeated (at least for six months), and which represents a violation of dignity, integrity, reputation and honor to the employees and which causes fear or creates a hostile, humiliating or offensive behaviour, which ultimate goal may be termination of employment or leaving workplace. (4) A perpetrator of psychological harassment at the workplace (mobbing) can be one or more individuals with negative behaviour in terms of paragraph (3) of this article, regardless of their position (as an individual employer responsible person or employee).

Article 10 - Compensation in cases of discrimination

In cases of discrimination of article 6 of this Law, the employment applicant or employee have the right to request compensation in compliance with Law on Obligatory Relations.

Article 11 - Burden of proof

(1) If a job applicant or employee in the event of a dispute brought facts that the employer acted contrary to Articles 6 and 9 of this Law, the burden of proof rests upon the employer to prove that there was not any discrimination, that he acted in accordance with Articles 6 and 9 of this Act, unless the employer proves that different treatment is made for exceptions in Article 8 of this Law.

(2) In case of dispute, when acted contrary to Article 9 of this law, the burden of proof falls upon the individual or group against whom a lawsuit for performing psychological harassment (mobbing) at work, unless he proves that the different treatment was made because of the exceptions in Article 8 of this Law.

(3) For initiating proceedings for legal protection from psychological harassment at the workplace (mobbing), as well as for testimony during the proceedings, the employee cannot be subjected to directly or indirectly worsen working conditions, and may not be placed at a disadvantaged position, especially by reducing earnings, transfer to another job or preventing advancement or professional development.

6. The Law on Protection from Harassment at Workplace (“Official Gazette of the Republic of Macedonia” Number 79/2013) regulates the rights, duties and responsibilities of employers and employees regarding the prevention of psychological and sexual harassment at workplace and place of work measures and procedures to protect against harassment in the workplace, as well as other issues relating to the prevention and protection against harassment at workplace. Sanctions are also stipulated for harassment at workplace, failure to undertake necessary preventive and other measures for protection of an employee from harassment at workplace, acts contrary to the provisions of the Law for protection of the participants in procedure for protection from harassment at workplace, failure to temporary transfer employee physically to another office or working environment in cases in compliance with this Law, failure to inform employees about the harassment at workplace prohibition, the obligations and responsibilities related to harassment at workplace and manner and possibilities for protection, failure of employer with more than 50 or more employees to appoint mediator in cases of harassment and failure to act in accordance to the recommendations given by the mediator.

7. The Law on Civil Servants (“Official Gazette of the Republic of Macedonia” Numbers 59/2000, 112/2000, 34/2001, 103/2001, 43/2002, 98/2002, 17/2003, 40/2003, 85/2003, 17/2004, 69/2004, 81/2005, 61/2006, 36/2007, 161/2008, 6/2009, 114/2009, 35/10, 167/10, 36/11, 6/12, 24/12, 15/13, 82/13 and 106/13) sets forth the following relevant provisions:

Article 19

(1) The civil servant is obliged to perform orders of the official who manages the body of article 3 paragraph (2) of this Law or of the immediate superior and to act upon the orders in compliance with the Constitution, law or other regulation.

(2) If the civil servant finds that the order of paragraph (1) of this Article is contrary to the Constitution, law or other regulation, he is obliged to indicate this to the person which issued the order.

(3) The civil servant will act upon repeated order, in terms of paragraph (2) of this article give in written form, unless he finds that the execution of the order represents a crime and in such case he shall immediately inform in written form the immediate superior of the official who issued the order and the State Commission for Prevention of Corruption thereof.

(4) If the civil servant fails to warn the immediate superior that the order is unconstitutional or illegal and executes this order, he will be held responsible for its execution as well as the immediate superior.

(5) The civil servant may not be held responsible for the given warning of paragraph (3) of this article.

Article 25

(1) The civil servant has the right to protection from threat, attack and similar acts related to performing official duties.

(2) The body in which the civil servant works is obliged to provide protection for the civil servant in cases of paragraph (1) of this article.

8. The Law on Public Servants (“Official Gazette of the Republic of Macedonia” Numbers 52/10, 36/11, 6/12, 24/12, 15/13, 82/13 and 106/13) sets forth the following relevant provisions:

Article 29

(1) The public servant and the members of his immediate family have the right to protection from indirect threat, attack and similar acts related to performing official duties.

(2) The institution where the public servants works is obliged to provide protection to the public servant in cases of paragraph (1) of this article.

9. Amendments and addenda to the Law on Prevention and Corruption are drafted to introduce the concept of integrity system and to establish systematic protection of whistle-blowers (which, inter alia, prescribe internal and external whistleblowing channels and further promote protection and protection providers in public and private sector) in compliance with CoE and OECD recommendations.

Amendments to the Law on Prevention of Corruption are underway, aimed at protecting the persons reporting corruption and other illegal and unacceptable behaviour (whistle-blowing protection). On its web-site, the SCPC continuously post videos and other content with anti-corruption messages.

Suspicious of corruption or conflict of interests may be reported to the SCPC by any natural or legal persons, either by disclosing of their identity or anonymously, in written or in oral form. In order to encourage the persons making said reports, SCPC guarantee their anonymity, discretion and non-selectivity when taking actions.

The hot lines for reporting corruption have been opened:

General telephone hotline for reporting irregularities and corruption.

Special phone lines for reporting corruption have been set up in 4 major municipalities.

Special phone lines for reporting irregularities have been opened in the following institutions/authorities:

Institution / Authority	Functional separate phone line	Records of telephone calls
Ministry of Interior	Yes	- All calls - Electronic records Duty Situation Centre
Ministry of Defence and the Army of Republic of Macedonia	Yes	- All calls - Specially authorised persons
Ministry of Justice Department for Execution of Sanctions	Yes	- All calls - Specially authorised persons
Ministry of Justice Department for Keeping Registries	Yes	- All calls - Specially authorised persons

Institution / Authority	Functional separate line phone	Records of telephone calls
Ministry of Labour and Social Policy	Yes	- All calls - E-records - Specially authorised persons
Ministry of Finance - Customs Administration	Yes	- All calls - E-records - Specially authorised persons
Ministry of Finance - Public Revenue Office	Yes	- All calls - E-records - Specially authorised persons
Food and Veterinary Agency	Yes	- All calls - E-records - Specially authorised persons

(b) Observations on the implementation of the article

The provision is adequately implemented.

(c) Successes and good practices

The review team positively noted the different initiatives taken by national authorities to encourage the cooperation with the private sector as well as with the public.

Article 40 Bank secrecy

Each State Party shall ensure that, in the case of domestic criminal investigations of offences established in accordance with this Convention, there are appropriate mechanisms available within its domestic legal system to overcome obstacles that may arise out of the application of bank secrecy laws.

(a) Summary of information relevant to reviewing the implementation of the article

1. The Law on Banks (“Official Gazette of the Republic of Macedonia” Numbers: 67/2007, 90/2009, 67/10 and 26/13) sets forth the following relevant provisions: Chapter XI. Bank Secret

Article 111

Documents, data and information acquired with performance of banking and other financial activities for individuals and transactions with individuals, as well as deposits of individuals represent bank secret which banks are obliged to protect and keep.

Article 112

(1) Persons with special rights and responsibilities, shareholders and employees of bank who have access to documents, data and information prescribed in article 111 of this Law, as well as persons who by giving banking services have access to documents, data and information prescribed in article 111 of this Law and in compliance with this Law are obliged to keep the documents, data and information prescribed in article 111, may use the prescribed documents, data and information specifically for the purposes of which are acquired and are not allowed to be disclosed to third persons.

(2) The obligation of paragraph (1) of this article does not apply to the following cases, if:

1) publication of the data and information is prescribed by law and 2) the person gave written consent for disclosure of data.

(3) The obligation of paragraph (1) of this article does not apply to persons with special rights and responsibilities and bank employees in the following cases:

- 1) submitted written request from public prosecution offices or competent court for conducting procedures within their competences;
- 2) for the needs of the National Bank or other supervisory body authorized by law;
- 3) written request from the Public Revenue Office for conducting procedures within its competences;
- 4) if data are communicated to the Financial Intelligence Administration, in compliance with law;
- 5) if data are communicated to the Financial Police Administration, in compliance with law;
- 6) written request from the State Foreign Exchange Inspectorate for control over foreign exchange operations;
- 7) written request from the Deposit Insurance Fund, in compliance with law;
- 8) if data are communicated for the needs of functioning of the Credit Registry of the National Bank and to a credit bureau, in compliance with law;
- 9) if data are communicated for the needs of credit risk management of other members of a bank group or of a bank group whose parent entity is based outside the borders of the Republic of Macedonia, and
- 10) written request from persons authorized for enforcement in compliance with law.

(4) Persons who in accordance to paragraph (3) of this article find the documents, data and information prescribed in article 111 of this Law are obliged to keep the prescribed the documents, data and information and use them specifically for the purposes of which they are acquired and they are not allowed to disclose such documents, data and information to third persons, except in cases and procedures established by this or other law.

(5) The obligation of paragraph (1) and (4) of this article continues even after termination of employment or termination of grounds and status based on which the access to the data considered as bank secret is realized.

2. The Law on Prevention of Corruption (“Official Gazette of the Republic of Macedonia” Numbers: 28/2002, 46/2004, 126/2006, 10/2008, 161/2008 and 145/2010) sets forth the following relevant provisions:

Article 13 - Prohibition to use resources from illegal and anonymous sources of financing

(1) A political party or an election candidate may not collect and use funds from illegal sources and anonymous sources of financing.

(2) In case of a suspicion that the political party or an election candidate utilized funds from illegal sources and anonymous sources of financing, the State Commission shall request from the competent bodies to perform inspection of the inflow and utilization of the funds.

(3) The inspection of the inflow of funds or other bank payments, at the request of the State commission shall not be considered a violation of banking confidentiality.

Article 58 - Malfeasance in financial operations

(1) All employees in banks, savings banks, exchange offices, insurance companies, stock exchanges or other financial organizations shall be obliged to immediately report suspicious transactions related to corruption. The report shall be submitted to the responsible person in that legal entity and to the authorities prescribed by law and to the State Commission.

(2) The organiser of a stock exchange shall be required to keep evidence and registry of all transactions at the stock exchange.

Article 59- Prevention of corruption in companies

(1) A responsible person in a company or another legal entity may not use his/her position to receive a reward or any other material gain or promise, for themselves or other parties, for the purposes of:

- creating a monopoly position on the market;
- discrimination of other companies or other legal entities; - creating disorder on the market, and
- creating damage to another natural person or legal entity, that is not a result of fair market competition.

(2) A company or another legal entity shall not establish relations of business cooperation with a company or another legal entity in cases of conflict of interests.

(3) The contracts and other legal acts that are result of corruption of the responsible person, as well as contracts that are a result of corruption or illicit enrichment of the legal entity shall be null and void.

(4) The occurrence of the consequences stipulated in the paragraph (1), (2) and (3) of this Article shall represent a basis for filing a complaint for compensation of damages (actual damages and loss of profit).

(5) If there is reasonable doubt in the correctness of the annual financial statement submitted by the legal entity or the other accounting records and financial documents, the Public Revenue Office at a request by the State Commission shall perform an inspection of the material and financial operations.

(6) If there is a reasonable doubt in the correctness of the information regarding the material and financial operations of the company or another legal entity, at a request by the State Commission, the competent state authorities shall perform control of the material and financial operations of that legal entity.

(7) If irregularities are determined after the control stipulated in paragraph (6) of this Article, the Public Revenue Office shall initiate a procedure for assessment of the assets against the responsible person in the company and the other legal entity that is the members of the management authority of the legal entity. The procedure shall be conducted according to the provisions of Article 36 and 36-a of this law.

Article 36- Procedure for asset investigation

(1) Against an elected or appointed public official, as well as other officer or a responsible person in a public enterprise, a public institution or another legal entity with state capital, a procedure may be initiated for inspection of property and assets, if the person failed to submit asset declaration or if, in the asset declaration stipulated in Article 33 of this law:

- failed to submit information;
- provided false or incomplete information;
- or if the person has not reported an asset change, or in the form from Article 34 of this law he/she has provided false or incomplete information.

(2) A procedure shall be initiated against the person stipulated paragraph (1) of this Article also if it is determined that his/her assets or the assets of a member of his/her family, in the duration of the office or during the term or office or the duration of the employment, has received a disproportional increase compared to his/her regular income in the form of salary, dividend and other revenue from performing activities or from assets.

(3) The procedure stipulated in paragraph (1) of this Article shall be initiated by the Public Revenue Office.

(4) A request for initiating a procedure can also be submitted by the State Commission.

(5) With the initiation of the procedure, the Public Revenue Office shall also submit a proposal to the competent basic court for an interim measure for suspending the disposal of assets.

(6) In the procedure stipulated in paragraph (1) of this Article, the person shall be obliged to present to the Public Revenue Office the evidence about the sources of the assets with which the property has been acquired as well as the assets that the person and the members of his/her family have at their disposal.

(7) At the request of the Public Revenue Office and within the period determined by the Public Revenue Office the state authorities, the local self-government units, the payment transaction operators and other natural persons and legal entities shall be obliged to give all the information necessary for determining the factual condition which are important for assessment of the property and assets.

Article 36-a

(1) Unless the procedure for assessment of the assets proves that the property has been acquired and enlarged as a result of reported and taxed incomes, the Public Revenue Office shall enact a decision to levy personal income tax on such assets. The base for calculating the tax shall be the difference between the value of the property at the time when it was acquired and the proved amount of the assets for the acquiring of that property. The tax on unreported incomes shall be calculated using a tax rate of 70%.

(2) An interest shall be calculated and charged against the amount of the calculated (but unpaid) tax pursuant to the Law on Tax Procedure, calculated from the day of the enactment of the decision on taxation.

(3) A legal remedy can be lodged against the decision pursuant to the Law on Tax Procedure and the legal remedy shall not delay the collection of the tax.

(4) The tax collection in accordance with the decision of the paragraph (1) of this Article shall be performed pursuant to the provisions of the Law on Tax Procedure

(5) If it is determined that the property has been increased to a large extent, the Public Revenue Office shall file criminal charges against that person to the competent Public Prosecutors Office.

(6) For actions undertaken pursuant to paragraphs (1) and (5) of this Article the Public Revenue Office shall inform the State Commission.

Article 66

The person, who fails to report a suspicious transaction contrary to Article 58 of this Law, shall be fined for a misdemeanour with a fine in the amount of the MKD equivalent of 500 to 1,000 EUR.

Article 67

(1) A responsible person within a legal entity that fails to report bank accounts abroad, or payments abroad contrary to Article 59, paragraph 4 of this Law, unless elements of a criminal offence have been fulfilled, shall be fined for a misdemeanour with a fine in the amount of the MKD equivalent of 1,000 to 2,000 EUR.

(2) The legal entity shall be fined for a misdemeanour with a fine in the amount of the MKD equivalent of 4,000 to 5,000 EUR.

3. The Law on Criminal Procedure (“Official Gazette of the Republic of Macedonia” Number: 150/2010) sets forth the following relevant provisions:

Article 200 - Handling information constituting a bank secret, property in a bank safe-deposit box, monitoring of payment operations and accounts transactions and temporary suspension of the performance of certain financial transactions

(1) If there is a grounded suspicion that a certain person receives, holds, transfers or otherwise manages crime proceeds on his or her bank account, and if the proceeds are important for the investigative procedure of that crime, or it is subject to forcible seizure according to the law, the court, upon an elaborated request by the public prosecutor, may issue a decision ordering the bank or other financial institutions to supply all documentation and data on the bank accounts and other financial transactions and dealings of that person, as well as for persons for which there is a grounded suspicion that they are involved in those financial

transactions or dealings of the suspect, if such information may be used as evidence during the criminal procedure.

(2) The request of the public prosecutor shall refer to information on natural or legal persons, and to all crime proceeds that he or she receives, holds, transfers or otherwise manages.

(3) If the person as referred to in paragraph 1 holds in a bank safe-deposit box or otherwise manages crime proceeds, and if the crime proceeds are important for the investigative procedure of that crime or is subject to forcible seizure according to the law, the court, upon an elaborated request by the public prosecutor, may issue a decision instructing the bank to enable access to the public prosecutor to the safe-deposit box.

(4) The decisions referred to in paragraphs 1 and 3 of this Article shall also contain the deadline within which the bank or another financial institution must act upon them.

(5) Before the beginning and in the course of the investigative procedure, the ruling on the request by the public prosecutor as referred to in paragraphs 1 and 3 of this Article, shall be rendered by the judge of the preliminary procedure, and after the indictment has been raised, by the court which shall hold the hearing. The preliminary procedure judge shall decide upon the request by the public prosecutor immediately, and no later than within 12 hours from the receipt of the request. If the preliminary procedure judge overrules the request by the public prosecutor, without any delay, he or she shall ask for a decision to be brought by the Trial Chamber referred to in Article 25, paragraph 5 of this Law. The Trial Chamber shall render a decision within 24 from the receipt of the request.

(6) If circumstances as referred to in paragraph 1 of this Article exist, the preliminary procedure judge, upon an elaborated proposal by the public prosecutor, may instruct the bank or another financial institution with a decision, to monitor the payment operations and the transactions in the accounts of a certain person and regularly inform the public prosecutor during the time period defined in the decision.

(7) Upon an elaborated proposal by the public prosecutor, with a decision, the court may instruct a financial institution or a legal person to temporarily stop the performance of a certain financial transaction or dealing, whilst temporarily seizing the property.

(8) In emergencies, the public prosecutor may impose the measures as referred to in paragraphs 1, 3, 6 and 7 of this Article without a court order. The public prosecutor shall immediately inform the preliminary procedure judge about the undertaken measures, who shall be obliged to issue the order within 72 hours. If the preliminary procedure judge does not issue an order, the public prosecutor shall return the data without previously opening them.

Article 287- Duty to deliver the requested information to the public prosecutor)

(1) Upon request by the public prosecutor, state entities, units of the local self-government, organizations, natural and legal persons with public authority and other legal entities shall be obliged to deliver the information that he or she requested. The public prosecutor may ask these entities to control the work of a legal or natural person and temporary seizure of money, securities, objects and documents that may be used as evidence, until the enactment of a final and enforceable judgment, to perform tax revisions and ask for data that may serve as evidence of a committed criminal offense or property acquired through the commission of a criminal offense, perform inspection and ask for reports on information related to unusual and suspicious financial transactions.

(2) Any entities referred to in paragraph 1 of this Article shall be obliged to deliver to the public prosecutor any data, notifications, documents, objects, bank account information and files that he or she might need during the procedure. The public prosecutor shall have the right to ask for data and information, documents, files, objects and bank accounts information also from other legal persons and individuals, for whom he or she reasonably believes that they dispose of such data and information.

(3) Any entities referred to in paragraph 1 of this Article shall be obliged to undertake the necessary measures immediately and in a period not longer than 30 days, deliver to the public prosecutor all requested data, information, documents, objects, bank accounts information or files.

(4) If the entities referred to in paragraph 1 of this Article fail to act in accordance with paragraph 3 of this article, the public prosecutor may suggest to the court to issue a fine in the amount of 2,500 to 5000 Euro payable in Macedonian Debars for the responsible person i.e. official representative person of the entities referred to in paragraph 1 of this Article.

(5) The public prosecutor on his or her own, may secure and examine the requested data, notifications, documents, objects, bank accounts or files, and if they are not provided or delivered he should inform the responsible person, i.e. the official representative person of the entity that he contacted, and the prosecutor may propose for an appropriate measures to be taken as prescribed by the law.

(6) If, in accordance with paragraph 5 of this Article, the public prosecutor proposed for an appropriate measures to be taken, the responsible person i.e. the official representative person of the entity or the person, whom he or she contacted, within a period of 30 days, shall be obliged to inform him or her about any measures that have been taken.

(7) Any access to bank accounts pursuant to paragraphs 1, 2 and 3 of this Article shall not constitute a banking secret violation.

(8) Upon request from the public prosecutor the operators of public communications networks and providers of public communication services shall be obligated to submit data on any established contacts in the communication traffic.

Regarding the examples of implementation of this article, the former Yugoslav Republic of Macedonia noted that the data for this kind of cases are confidential. However, regarding the Article 112 of the Law on banks, the Public Revenue Office, in 2012, made requests (to the banks and saving-banks) for data for bank accounts of 34 elected and appointed public officials and members of their families and in 2013 it made 35 such requests.

(b) Observations on the implementation of the article

The Law on Banks, the Law on Prevention of Corruption and the Law on Criminal Procedure provide measures to overcome obstacles related to the application of bank secrecy laws. Pursuant to a request by the public prosecutor the court may order the production and seizure of banking and commercial records. The preliminary procedure judge shall decide upon the request by the public prosecutor immediately, and no later than 12 hours from the receipt of the request. In emergency cases, the public prosecutor may impose the mentioned measures without a Court order.

The provision under review appears to be adequately implemented, although no examples of implementation were provided.

Article 41 Criminal record

Each State Party may adopt such legislative or other measures as may be necessary to take into consideration, under such terms as and for the purpose that it deems appropriate, any previous conviction in another State of an alleged offender for the purpose of using such information in criminal proceedings relating to an offence established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

1. The Criminal Code (“Official Gazette of the Republic of Macedonia” Numbers: 80/99, 4/02, 43/03, 19/04, 81/05, 60/06, 73/06, 7 /08, 139/08, 114/09, 51/11, 135/11, 185/2011, 142/2012, 166/2012, 55/2013) sets forth the following relevant provisions:

Article 39 - General rules to mete out punishment

(1) The court shall mete out a punishment to the offender within the limits prescribed by law for that crime, having in mind the criminal responsibility of the offender, the weight of the crime and the aims of the punishment.

(2) Hereby, the court shall have in mind all the circumstances that have influence upon decreasing or increasing the punishment (extenuating or aggravating circumstances), and especially: the level of criminal responsibility, the motives for the perpetrated crime, the extent of endangerment or damage to the protected goods, the circumstances under which the crime was committed, the contribution of the victim in the perpetration of the crime, the previous life of the offender, his personal circumstances and his behaviour after the perpetrated crime, as well as other circumstances that concern the personality of the offender.

(3) When the court meets the punishment it shall especially have in mind the total effect of the punishment to the offender, its consequences to the personality and needs of re-socialization of the offender.

(4) When the court metes out the punishment to the offender for the committed crime, perpetrated in repetition, it shall especially have in mind whether the previous crime is of the same kind as the new crime, whether the crimes were committed with the same motives and how much time passed since the previous sentence, respectively since the punishment was served or was pardoned.

(5) While meting out the sentence, the court shall particularly take into consideration if the crime was committed against a person or group of persons or property, directly or indirectly, due to his or their national and social background, political and religious belief, wealth and social position, gender, race or colour of skin.

(6) When it metes out a fine, the court shall have in mind also the state of wealth of the offender, herewith considering his other incomes, his property and his family obligations.

Authorities met during the country visit confirmed that Article 39 paragraph 4 was not limited to cases of prior convictions determined with domestic judgments. The court shall determine the punishment for the repeat criminal offender, especially considering whether the newly committed act was of the same type as the previously committed criminal act he was convicted for (regardless whether he/she was convicted with prior foreign or domestic judgment), the motives of the criminal acts he committed were the same and the time passed from the date of prior conviction or punishment served or pardoned.

2. The Law on Criminal Procedure (“Official Gazette of the Republic of Macedonia” Number: 150/2010) sets forth the following relevant provisions:

Article 141- Providing personal data to users

(1) Any personal data collected for the purposes of the criminal procedure may be used by State entities and other legal entities and persons, only if that is permitted by the law.

(2) The personal data referred to in paragraph 1 of this Article may be used in accordance with the law, in other criminal procedures, in a procedure of international cooperation in criminal matters and international police cooperation, and it may be used in other judicial proceedings, only if the case of the other judicial proceeding is directly related with the case of the specific criminal procedure.

(3) Any personal data collected exclusively on the basis of established identity, physical examination or molecular and genetic analysis, may be used after the completion of the criminal procedure, in accordance with the law, but only for the purpose of detection or prevention of crime.

3. The Law on International Cooperation in Criminal Matters (“Official Gazette of the Republic of Macedonia” Number: 124/2010) sets forth the following relevant provisions:

Article 31- Delivery of Excerpts from the Criminal Records

(1) The Ministry of Justice shall inform the foreign competent authority about all standing penal judgments which are rendered to the citizens of the state of the requesting authority who are found in the criminal records.

(2) Upon request of competent authority the Ministry shall deliver:

- 1) copy of judgment;
- 2) excerpts and other data from the criminal records and
- 3) data on persons citizens of the requested State Party, who are under investigation or against who a criminal procedure is initiated in the Republic of Macedonia.

(3) For the offenses of forging and putting forged money into circulation, illegal production, sale of narcotic drugs, psychotropic substances and precursors, human trafficking, showing pornographic material to a child and for other criminal offenses in respect of which international agreements envision centralization of data.

(4) The national competent authority before which a criminal procedure is conducted is obliged, without delay, to deliver to the Ministry of Interior data on criminal offence, offender and standing judgment.

The International Legal Assistance Department of the Ministry of justice, which is competent for processing the international legal assistance requests, receives many requests of the authorities of other states for delivery of criminal record of persons, from the courts of the Republic of Macedonia (which keep criminal registries). These requests are on daily basis and sometimes one request requires criminal record for more than one person, even for many persons. Of course, the International Legal Assistance Department of the Ministry of justice processes these requests and delivers the criminal registry and we have many practical cases and examples of implementation of this provision.

Up until now, the processing of the criminal record is done on basis of bilateral agreements (because all of the bilateral agreements between the Republic of Macedonia and other states for mutual legal assistance in criminal matters include such provisions) or on basis of the European Convention for Mutual Legal Assistance in Criminal Matters of the Council of Europe but not on bases of the United Nations Convention against Corruption. But if a concrete case shows up, when requesting party is a State which is not State party to the European Convention for Mutual Legal Assistance in Criminal Matters of the CoE and neither there is bilateral agreement with the Republic of Macedonia or if such a State is a requested party and if this State is a State party to the UNCAC, than definitely UNCAC will be used as a base for processing a criminal record. Therefore we have not state practical example for implementation of this provision.

(b) Observations on the implementation of the article

Pursuant to Article 39 of the Criminal Code, previous convictions can be taken into consideration when deciding on the severity of a sentence. The national authorities confirmed that this provision was not limited to cases of prior domestic convictions but extend also to foreign convictions. The provision under review appears to be adequately implemented, although no examples of implementation were provided.

Article 42 Jurisdiction

1. Each State Party shall adopt such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when:

(a) The offence is committed in the territory of that State Party; or

(b) The offence is committed on board a vessel that is flying the flag of that State Party or an aircraft that is registered under the laws of that State Party at the time that the offence is committed.

2. Subject to article 4 of this Convention, a State Party may also establish its jurisdiction over any such offence when:

(a) The offence is committed against a national of that State Party; or

(b) The offence is committed by a national of that State Party or a stateless person who has his or her habitual residence in its territory; or

(c) The offence is one of those established in accordance with article 23, paragraph 1 (b) (ii), of this Convention and is committed outside its territory with a view to the commission of an offence established in accordance with article 23, paragraph 1 (a) (i) or (ii) or (b) (i), of this Convention within its territory; or

(d) The offence is committed against the State Party.

3. For the purposes of article 44 of this Convention, each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when the alleged offender is present in its territory and it does not extradite such person solely on the ground that he or she is one of its nationals.

4. Each State Party may also take such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when the alleged offender is present in its territory and it does not extradite him or her.

(a) Summary of information relevant to reviewing the implementation of the article

The Criminal Code (“Official Gazette of the Republic of Macedonia” Numbers: 80/99, 4/02, 43/03, 19/04, 81/05, 60/06, 73/06, 7/08, 139/08, 114/09, 51/11, 135/11, 185/2011, 142/2012, 166/2012, 55/2013) sets forth the following relevant provisions:

Chapter 12. APPLICATION OF THE CRIMINAL LEGISLATURE ACCORDING TO THE PLACE OF PERPETRATION OF THE CRIME

Article 116- Application of the criminal legislature to everyone who commits a crime on the territory of the Republic of Macedonia

(1) The criminal legislature is applicable to everyone who commits a crime on the territory of the Republic of Macedonia.

(2) The criminal legislature is also applicable to everyone who commits a crime on a domestic ship, regardless where the ship is at the time the crime is committed.

(3) The criminal legislature is also applicable to everyone who commits a crime in a domestic civil aircraft during flight, or on a domestic military aircraft, regardless where the aircraft is at the time the crime is committed.

Article 117- Application of the criminal legislature to certain crimes committed abroad

The criminal legislature is applicable to everyone who commits a crime from article 268 (Forging Money) abroad, if the forgery concerns domestic currency, and from articles 305 to 326 (Crimes against the State), from 357 to 359-a (Receiving a Bribe, Giving a Bribe, Giving award for illicit mediation, Receiving award for illicit mediation and Illicit enrichment and concealment of property) and from 403 to 422 (Crimes against Humanity and International Law) of this Code.

Authorities met during the country visit further explained that “everyone” referred to in article 117 covers not only nationals but also foreigners.

Article 118

The criminal legislature is also applicable to a citizen of the Republic of Macedonia when he commits a crime abroad, except for the crimes listed in article 117, if he finds himself on the territory of the Republic of Macedonia or is extradited.

Article 119

(1) The criminal legislature is applicable also to a foreigner who commits a crime outside the territory of the Republic of Macedonia but directed against her or against her citizen, also when this does not concern crimes listed in article 117, if he finds himself on the territory of the Republic of Macedonia or is extradited.

(2) The criminal legislature is also applicable to a foreigner who commits a crime abroad, against a foreign country or a foreigner, who according to that legislature may be sentenced to five years of imprisonment or to a more severe

punishment, when he finds himself on the territory of the Republic of Macedonia, and when he is not extradited to the foreign country. If not otherwise determined by this Code, in such a case the court may not pronounce a punishment more severe than the punishment that is prescribed by law of the country in which the crime was committed.

The former Yugoslav Republic of Macedonia confirmed that the provisions cited above cover stateless person whose habitual residence is in the State Party.

Also, relevant provision regarding this matter is the Article 84 of the Law on international cooperation in criminal matters:

Law on international legal cooperation in criminal matters:

Article 84 - Subject matter and territorial jurisdiction

- (1) A subject-matter jurisdiction court is a court determined by law.
- (2) Territorial jurisdiction of a court is determined by the last place of residence of the sentenced person in the Republic of Macedonia, or by place of birth, in case the sentenced person does not have a place of residence in the Republic of Macedonia.
- (3) If the sentenced person does not have a place of residence nor was born in Macedonia, the Supreme Court of the Republic of Macedonia shall appoint a subject-matter jurisdiction court for the trial.

2. The Law on prevention of money laundering and proceeds of crime and financing terrorism ("Official Gazette of the Republic of Macedonia" Numbers: 4/2008, 57/2010, 35/2011 and 44/2012) sets forth the following relevant provisions:

Article 2 - Terms

Certain terms used in this law shall have the following meanings:

1. "Money Laundering and Proceeds of Crime" (hereinafter money laundering), are acts prescribed in the Criminal Code as crimes of laundering money and other criminal proceeds;
2. "Financing of terrorism" represent activities prescribed in the Criminal Code as a crime of financing terrorism;
3. "Proceeds of crime" represent any property or benefit acquired directly or indirectly from committing a criminal offense. Proceeds of crime include proceeds from offence committed abroad, provided that at the time of committing of the offence, according to laws of the state where it is committed and the laws of the Republic Macedonia that offence was stipulated as a criminal offence (crime); - this term is in compliance with article 122 paragraph (16) of the Criminal Code.
4. "Property" represents money or other payment instruments, securities, deposits, other assets of any kind, material or intangible, movable or immovable, rights over other objects, claims, as well as public documents and legal documents of property assets in written or electronic form, or instruments that prove the right of ownership or interest in such property; (...)

Article 118

The criminal legislature is also applicable to a citizen of the Republic of Macedonia when he commits some crime abroad, except for the crimes listed in article 117, if he finds himself on the territory of the Republic of Macedonia or is extradited.

The International Legal Assistance Department of the Ministry of justice, which is competent body for administration of extraditions, has not any example of practical case of application of this provision of UNCAC. Actually it has not any practical case of extradition carried out on basis of UNCAC.

According to the International Legal Cooperation Department of the Ministry of Justice of the Republic of Macedonia, so far, there are not cases of application of UNCAC as a base for extradition.

(b) Observations on the implementation of the article

The provision under review appears to be adequately implemented, although no examples of implementation were provided (article 116: territorial jurisdiction; article 118: active personality jurisdiction; article 119: passive personality jurisdiction).

Article 42 Jurisdiction

Paragraph 5

5. If a State Party exercising its jurisdiction under paragraph 1 or 2 of this article has been notified, or has otherwise learned, that any other States Parties are conducting an investigation, prosecution or judicial proceeding in respect of the same conduct, the competent authorities of those States Parties shall, as appropriate, consult one another with a view to coordinating their actions.

(a) Summary of information relevant to reviewing the implementation of the article

1. The Law on International Cooperation in Criminal Matters (“Official Gazette of the Republic of Macedonia” Number: 124/2010) sets forth the following relevant provisions:

Article 25 - Delivery of spontaneous information

(1) The domestic judicial authority has the right, under the principle of mutuality and without receiving previous letter rogatory, to deliver to the foreign competent authority information for crimes, which have been collected during its own investigations, if it considers that the delivery of such information might help to initiate or conduct an investigation or court proceeding or it might lead to sending letter rogatory for international legal assistance.

(2) The domestic judicial authority shall ask the foreign competent authority, to which the information from paragraph (1) of this article has been delivered, to submit a report on all activities that have been undertaken on the basis of this information, as well as to deliver transcript of all decisions that have been reached.

(3) According to the regulations for protection of personal data, the domestic judicial authority that delivered the information from paragraph (1) of this article has the right to set certain conditions for the usage of the information in the foreign state where it has been delivered.

Article 38 - Joint investigation teams

(1) The domestic competent authorities for detection and prosecution of organised crime and corruption can be part of the joint investigation teams with the foreign competent authorities, formed for a particular purpose and with limited duration and possibility for its extension if both states that formed the team agree to the extension.

(2) The States that formed the team from paragraph (1) of this article shall determine the composition of the team by mutual consent and the team shall be formed in the territory of one of the states.

(3) The joint investigation team may be formed when within the investigative procedure complex investigative actions for mobilisation of significant resources have to be implemented, as well as when a coordinated action of the interested parties is necessary because of the complexity of the case.

(4) The joint investigation team shall implement its operations in accordance with the legislation of the State in whose territory the operations are implemented. The responsible person of the team shall be the representative of a competent authority which participates in the criminal investigation of the state in whose territory the team implements its operations.

The required organisational conditions for the implementation of the operations of the team shall be provided by the state in whose territory the team operates.

(5) If the joint investigation team needs assistance from a state which didn't participate in the forming of the team, the request for legal assistance may be sent to that state.

The law on international cooperation in criminal matters is applicable since 31 December 2013. This law is relatively new, so there are not examples of practical cases so far.

Authorities met during the country visit confirmed that there was no legal impediment that prevents the former Yugoslav Republic of Macedonia from consulting with other States parties. Indeed, such consultation may lead to the formation of a joint investigative team.

(b) Observations on the implementation of the article

The provision under review appears to be legislatively implemented, although no examples of implementation were provided.

Article 42 Jurisdiction

Paragraph 6

6. Without prejudice to norms of general international law, this Convention shall not exclude the exercise of any criminal jurisdiction established by a State Party in accordance with its domestic law.

(a) Summary of information relevant to reviewing the implementation of the article

1. The Criminal Code ("Official Gazette of the Republic of Macedonia" Numbers: 80/99, 4/02, 43/03, 19/04, 81/05, 60/06, 73/06, 7 /08, 139/08, 114/09, 51/11, 135/11, 185/2011, 142/2012, 166/2012, 55/2013) sets forth the following relevant provisions:

Article 116 - Application of the criminal legislature to everyone who commits a crime on the territory of the Republic of Macedonia

(1) The criminal legislature is applicable to everyone who commits a crime on the territory of the Republic of Macedonia.

(2) The criminal legislature is also applicable to everyone who commits a crime on a domestic ship, regardless where the ship is at the time the crime is committed.

(3) The criminal legislature is also applicable to everyone who commits a crime in a domestic civil aircraft during flight, or on a domestic military aircraft, regardless where the aircraft is at the time the crime is committed.

Article 117- Application of the criminal legislature to certain crimes committed abroad

The criminal legislature is applicable to everyone who commits a crime from article 268 (Forging Money) abroad, if the forgery concerns domestic currency, and from articles 305 to 326(Crimes against the State), from 357 to 359-a (Receiving a Bribe, Giving a Bribe, Giving award for illicit mediation, Receiving award for illicit mediation and Illicit enrichment and concealment of property) and from 403 to 422 (Crimes against Humanity and International Law) of this Code.

Article 118

The criminal legislature is also applicable to a citizen of the Republic of Macedonia when he commits some crime abroad, except for the crimes listed in article 117, if he finds himself on the territory of the Republic of Macedonia or is extradited.

Article 119

(1) The criminal legislature is applicable also to a foreigner who commits a crime outside the territory of the Republic of Macedonia but directed against her or against her citizen, also when this does not concern crimes listed in article 117, if he finds himself on the territory of the Republic of Macedonia or is extradited.

(2) The criminal legislature is also applicable to a foreigner who commits a crime abroad, against a foreign country or a foreigner, who according to that legislature may be sentenced to five years of imprisonment or to a more severe punishment, when he finds himself on the territory of the Republic of Macedonia, and when he is not extradited to the foreign country. If not otherwise determined by this Code, in such a case the court may not pronounce a punishment more severe than the punishment that is prescribed by law of the country in which the crime was committed.

Article 120- Special conditions on prosecution

(1) If in cases referred to in Article 116 the criminal procedure is initiated or completed in a foreign country, the persecution in the Republic of Macedonia will be initiated only upon approval of the General Public Prosecutor of the Republic of Macedonia.

(2) In the cases referred to in Articles 118 and 119 prosecution shall not be undertaken if:

- 1) the offender has served the sentence that was pronounced abroad
- 2) against the offender abroad has been applied a security measure, which consists of deprivation of liberty,
- 3) the offender is acquitted with final standing judgment abroad or the punishment is outdated or pardoned and
- 4) the crime under foreign law is prosecuted upon the request of Injured party and no such claim is made.

(3) In the cases referred to in Articles 118 and 119 prosecutions shall be undertaken only when the offense is punishable under the law of the country where the offence was committed. When in cases under Article 118 and 119 paragraph 1, under the law of the country where the offence was committed for that offence is not punishable, the prosecution will be undertaken only upon approval given by the General Public Prosecutor of the Republic of Macedonia.

(4) Only upon the approval given by the General Public Prosecutor of the Republic of Macedonia prosecution shall be undertaken in cases under Article 119 paragraph 2 irrespective of the law of the country in which the crime was committed, if when the offence was committed it was considered as a crime under general legal principles recognized by the international community.

(5) In the cases referred to in Article 116, prosecution of a foreigner, provided the reciprocity, may be ceded to a foreign country.

(b) Observations on the implementation of the article

The former Yugoslav Republic of Macedonia has adopted grounds of criminal jurisdiction other than those described in the aforementioned article (Article 117: universal jurisdiction).

IV. International cooperation

International cooperation in criminal matters is regulated in the former Yugoslav Republic of Macedonia by the Law on international cooperation in criminal matters (Official Gazette of the RM No. 124/2010 of 20/09/2010), entered into force on 1/12/2013, together with the new Law on criminal procedure (Official Gazette of the RM No. 150/2010 of 18.11.2010). Before that, the international cooperation in criminal matters was governed by the previous Law on criminal procedure.

The reviewing experts positively noted the fact that the former Yugoslav Republic of Macedonia has a comprehensive special law on international cooperation in criminal matters. However, it was difficult to assess in detail the former Yugoslav Republic of Macedonia's practice of providing international legal assistance in corruption cases, due to the absence of relevant data.

Article 44 Extradition

Paragraph 1

1. This article shall apply to the offences established in accordance with this Convention where the person who is the subject of the request for extradition is present in the territory of the requested State Party, provided that the offence for which extradition is sought is punishable under the domestic law of both the requesting State Party and the requested State Party.

(a) Summary of information relevant to reviewing the implementation of the article

Article 52 paragraph 4 - Law on international cooperation in criminal matters

The preconditions for authorising extradition shall be the following: 4) the offence for which extradition has been requested shall be a criminal offence both according to the domestic legislation and according to the legislation of the State where it was committed and which requested the extradition;

(b) Observations on the implementation of the article

There is a basic requirement of dual criminality for extradition in the former Yugoslav Republic of Macedonia. Article 52 of the Law on international cooperation in criminal matters is in line with the provision under review.

Article 44 Extradition

Paragraph 2

2. Notwithstanding the provisions of paragraph 1 of this article, a State Party whose law so permits may grant the extradition of a person for any of the offences covered by this Convention that are not punishable under its own domestic law.

(a) Summary of information relevant to reviewing the implementation of the article

Because the Law on international legal assistance in criminal matters stipulates dual criminality - the criminal offence has to be incriminated in our domestic legislation.

Law on international cooperation in criminal matters

Article 50 - Offences for which an extradition is permitted

(3) The extradition in the cases from paragraph (1) and (2) of this article shall be permitted if the offence for which an extradition is requested is punishable under the Criminal Code of the Republic of Macedonia.

Article 52 - Preconditions for extradition

4) the offence for which extradition has been requested shall be a criminal offence both according to the domestic legislation and according to the legislation of the State where it was committed and which requested the extradition;

(b) Observations on the implementation of the article

Extradition in the absence of dual criminality is at present not possible.

Article 44 Extradition

Paragraph 3

3. If the request for extradition includes several separate offences, at least one of which is extraditable under this article and some of which are not extraditable by reason of their period of imprisonment but are related to offences established in accordance with this Convention, the requested State Party may apply this article also in respect of those offences.

(a) Summary of information relevant to reviewing the implementation of the article

The former Yugoslav Republic of Macedonia invoked the direct applicability of the Convention and confirmed that the provision under review could be applied provided that the prison sentence cannot be of longer period than of the one that is prescribed by the law of the requested State party.

Constitution of Republic of Macedonia

Article 118

The international agreements ratified in accordance with the Constitution are part of the internal legal order and cannot be changed by law.

Law on international cooperation in criminal matters

Article 50 - Offences for which an extradition is permitted

(1) Extradition of a person based on issued international arrest warrant shall be permitted for criminal offences for which according to the domestic legislation a prison sentence of minimum one year is stipulated.

(2) The extradition shall be permitted for the reason of enforcement of the effective prison sentence, if the wanted person has to serve a sentence minimum of four months.

(3) The extradition in the cases from paragraph (1) and (2) of this article shall be permitted if the offence for which an extradition is requested is punishable under the Criminal Code of the Republic of Macedonia.

Article 52 - The preconditions for authorizing extradition shall be the following:

- 1) the person whose extradition is requested shall not be citizen of the Republic of Macedonia;
- 2) the identity of the person whose extradition is requested shall be determined;
- 3) the offence for which extradition has been requested shall not be committed in the territory of the Republic of Macedonia against it or against one of its citizens;
- 4) the offence for which extradition has been requested shall be a criminal offence both according to the domestic legislation and according to the legislation of the State where it was committed and which requested the extradition;
- 5) the criminal prosecution or the enforcement of the sentence shall not become time-barred;
- 6) the person whose extradition is requested shall not be sentenced for the same criminal offence by a domestic court or effectively released by a domestic court for the same criminal offence or the criminal proceeding against him or

her shall not be effectively stopped or the accusation shall not be effectively rejected or no proceedings shall be initiated for the same criminal offence in the Republic of Macedonia or against it or against a citizen of the Republic of Macedonia, unless a guarantee has been provided for the exercise of the right to legal claim on property of the injured party;

7) there shall be sufficient evidence for the reasonable doubt that the person whose extradition is requested committed a certain criminal offence, or that there exists another final judgment;

8) the person whose extradition is requested shall have committed the criminal offence after the age of 14; and

9) the person whose extradition is requested was tried in absentia, and the requesting foreign State shall provide a guarantee that the person will be tried in his presence.

Regarding the statistical data – there is no any statistical data because so far there are still no any extradition cases carried out on bases of this Convention.

(b) Observations on the implementation of the article

Although no reference was made to a direct national provision, the reviewing experts noted that the direct applicability of UNCAC based on Article 118 of the Constitution is sufficient for the former Yugoslav Republic of Macedonia to be in line with the provision under review.

Article 44 Extradition

Paragraph 4

4. Each of the offences to which this article applies shall be deemed to be included as an extraditable offence in any extradition treaty existing between States Parties. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them. A State Party whose law so permits, in case it uses this Convention as the basis for extradition, shall not consider any of the offences established in accordance with this Convention to be a political offence.

(a) Summary of information relevant to reviewing the implementation of the article

The new bilateral treaties for mutual legal assistance in criminal matters concluded with Serbia, Croatia, Monte Negro and Bosnia and Hercegovina include concrete criminal acts for mutual legal assistance and also for extradition, among which are the criminal acts for organized crime and corruption. The criminal offences of this Convention are incorporated into the former Yugoslav Republic of Macedonia relevant legislation, which means that they are also included in these bilateral treaties.

The other bilateral agreements include general provisions for extradition and do not stipulate concrete offences.

The extraditions already executed were governed either by the European Convention for Extradition of the Council of Europe or by bilateral treaties. So far, there was no concrete need to use UNCAC as a base for extradition.

1. Agreement between Republic of Macedonia and Bosnia and Hercegovina for extradition -2006,
2. Agreement between Republic of Macedonia and Monte Negro for extradition - 2012,
3. Agreement between Republic of Macedonia and Croatia for extradition - 2012,
4. Agreement between Republic of Macedonia and Serbia for extradition - 2012.

The former Yugoslav Republic of Macedonia also reported that none of the UNCAC offences is considered to be a political offence in case of extradition and that UNCAC could be directly applicable in the absence of any bilateral treaty in place.

(b) Observations on the implementation of the article

Based on the information provided, the reviewing experts consider the former Yugoslav Republic of Macedonia to be in line with the provision under review.

Article 44 Extradition

Paragraph 5

5. If a State Party that makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider this Convention the legal basis for extradition in respect of any offence to which this article applies.

Although the former Yugoslav Republic of Macedonia does not make extradition conditional on the existence of a treaty, it considers however UNCAC as a legal base for extradition with the other States parties of UNCAC.

Pursuant to Article 12 of the Law on international legal assistance in criminal matters, an extradition request could be accepted in the absence of an extradition treaty, based on the principle of reciprocity.

Law on international legal assistance in criminal matters

Article 2

The international cooperation shall be provided in accordance with the provisions of this Law unless otherwise specified by an international agreement ratified in accordance with the Constitution of the Republic of Macedonia (herein after referred to as: international agreement) or other legal act which governs the criminal proceedings of an international court whose jurisdiction is accepted by the Republic of Macedonia.

Article 12 - Mutuality

(1) The domestic competent authority shall act upon a request by a foreign competent authority that the Republic of Macedonia has not concluded an agreement for international cooperation with, only if the foreign competent authority provides a guarantee in writing that it shall also act upon such request by the domestic competent authority.

(2) The guarantee in writing from paragraph (1) of this article shall be immediately delivered by the foreign competent authority to the domestic competent authority.

(3) The guarantee in writing from paragraph (1) of this article shall not be requested for enforcement of delivery of court decisions, petitions and other documents.

Until now, UNCAC has not been used as a legal base for extradition, because of the fact that all the practical cases of extradition were covered with existing bilateral treaties or the European convention for Extradition of the Council of Europe.

(b) Observations on the implementation of the article

Based on the information provided, the reviewing experts considers the former Yugoslav Republic of Macedonia to be in line with the provision under review.

Article 44 Extradition

Paragraph 6

6. A State Party that makes extradition conditional on the existence of a treaty shall:

(a) At the time of deposit of its instrument of ratification, acceptance or approval of or accession to this Convention, inform the Secretary-General of the United Nations whether it will take this Convention as the legal basis for cooperation on extradition with other States Parties to this Convention; and

(b) If it does not take this Convention as the legal basis for cooperation on extradition, seek, where appropriate, to conclude treaties on extradition with other States Parties to this Convention in order to implement this article.

(a) Summary of information relevant to reviewing the implementation of the article

The Ministry of Justice of the Republic of Macedonia through the Ministry of foreign affairs of the Republic of Macedonia, with the act No. 14-1767/1 of 19.03.2008, has informed the Secretary General of the United Nations that it considers UNCAC as a legal base for extradition with the other State parties of this convention.

Authorities met during the country visit further explained that the former Yugoslav Republic of Macedonia does not make extradition conditional on a treaty.

(b) Observations on the implementation of the article

Based on the information provided, the reviewing experts consider the former Yugoslav Republic of Macedonia to be in line with the provision under review.

Article 44 Extradition

Paragraph 7

7. States Parties that do not make extradition conditional on the existence of a treaty shall recognize offences to which this article applies as extraditable offences between themselves.

(a) Summary of information relevant to reviewing the implementation of the article

Reference was made to the previous answer and to the following provisions:

Constitution of the Republic of Macedonia

Article 118

The international agreements ratified in accordance with the Constitution are part of the internal legal order and cannot be changed by law.

Article 119

International agreements are concluded in the name of the Republic of Macedonia by the President of the Republic of Macedonia. International agreements may also be concluded by the Government of the Republic of Macedonia, when it is so determined by law.

Law on international cooperation in criminal matters (Official Gazette No 124/2010)

Offences for which an extradition is permitted

Article 50

(1) Extradition of a person based on issued international arrest warrant shall be permitted for criminal offences for which according to the domestic legislation a prison sentence of minimum one year is stipulated.

(2) The extradition shall be permitted for the reason of enforcement of the effective prison sentence, if the wanted person has to serve a sentence minimum of four months.

(3) The extradition in the cases from paragraph (1) and (2) of this article shall be permitted if the offence for which an extradition is requested is punishable under the Criminal Code of the Republic of Macedonia.

(b) Observations on the implementation of the article

UNCAC offences can be the basis for extradition if the conditions related to dual criminality and the minimum period of imprisonment are satisfied. Accordingly, most UNCAC offences, which are punishable by at least one year in the former Yugoslav Republic of Macedonia, are thus extraditable.

For the other UNCAC offences which do not satisfy the one year imprisonment condition and although no reference was made to a direct national provision, the reviewing experts noted that the direct applicability of UNCAC based on Article 118 of the Constitution could be sufficient for the former Yugoslav Republic of Macedonia to be in line with the provision under review.

Article 44 Extradition

Paragraph 8

8. Extradition shall be subject to the conditions provided for by the domestic law of the requested State Party or by applicable extradition treaties, including, inter alia, conditions in relation to the minimum penalty requirement for extradition and the grounds upon which the requested State Party may refuse extradition.

(a) Summary of information relevant to reviewing the implementation of the article

Law on international cooperation in criminal matters

Article 50 - Offences for which an extradition is permitted

(1) Extradition of a person based on issued international arrest warrant shall be permitted for criminal offences for which according to the domestic legislation a prison sentence of minimum one year is stipulated.

Article 53 - Political offences

(1) The extradition shall not be permitted for political offences or offences related to those criminal offences.

(2) The assassination of a head of State or of a member of his family, terrorism and international crime shall not be considered as political offences.

Article 54 - Military offence

The provisions of this Law shall not apply for extradition because of violation of military duties.

The Republic of Macedonia has refused extradition on the following two grounds:

- statute of limitation: the crime offence was obsolete, and
- double jeopardy: the person was already convicted for the same criminal offence.

(b) Observations on the implementation of the article

Based on the information provided, the reviewing experts consider the former Yugoslav Republic of Macedonia to be in line with the provision under review.

Article 44 Extradition

Paragraph 9

9. States Parties shall, subject to their domestic law, endeavour to expedite extradition procedures and to simplify evidentiary requirements relating thereto in respect of any offence to which this article applies.

(a) Summary of information relevant to reviewing the implementation of the article

Article 72 - Law on international cooperation in criminal matters

(1) The person whose extradition is requested may give his or her approval to be extradited to the foreign State using a shorten procedure for extradition, or may decide to abandon the rule of specialty, whereupon the Judicial Council shall allow the extradition in accordance with the provisions of the Law on Criminal Proceedings, after having received the public prosecutor's opinion.

(2) Consents and waivers of rights under paragraph (1) of this Article shall be entered in the minutes of the Judicial Council under paragraph (1) of this Article and are irrevocable.

(3) The competent court shall without delay notify the Ministry regarding the consent for shorten procedure for extradition, whereupon the Ministry shall pass on this information to the foreign State within ten days from the day the person whose extradition is requested was taken into custody.

(4) In the case of paragraph (3) of this Article, the foreign State is not obliged to submit a formal request for extradition.

(5) If the person whose extradition is requested gives consent under paragraph (1) of this Article within the deadline in paragraph (3) of this Article, the court shall conduct a shorten procedure for extradition if the request for extradition is not yet received.

(6) If the person whose extradition is requested gives consent under paragraph (1) of this Article after the deadline in paragraph (3) of this Article, with a request for extradition received in the meantime, the competent court may conduct a summary procedure for extradition.

Article 73 - Decision for a shorten extradition procedure

(1) If the person whose extradition is requested agrees to be extradited using a shorten procedure, the judge conducting the preliminary proceedings shall submit the records without delay to the Judicial Council, which shall have 48 hours to reach a decision regarding the extradition.

(2) The shorten extradition procedure will be allowed with a decision that shall include:

- name and surname, date, place of birth and nationality of the person whose extradition is requested,
- the requesting State that will receive the person whose extradition is requested,
- the criminal act for which the person is extradited,
- a statement declaring that the person whose extradition is requested has consented the summary extradition procedure,
- a statement declaring that the person whose extradition is requested has abandoned the rule of specialty and
- a decision that the person whose extradition is requested must not be surrendered to a third State for a crime committed before his handover.

(3) The decision under paragraph (2) of this Article shall be delivered to the person whose extradition is requested, to his counsel and to the competent public prosecutor.

(4) The person whose extradition is requested and the counsel may appeal the Judicial Council decision through the Court of First Instance to the Appeal Court in accordance with the Law on Criminal Proceedings within 24 hours from the moment the decision was delivered. The Appeal Court shall reach a decision within 48 hours from the day detention started.

Authorities met during the country visit further explained that an option exists to apply shortened procedure for extradition and that such option is generally applied to most extradition requests (about 80%).

Case example of shortened procedure for extradition

Case L.A.

(The case is still ongoing. There are also finished cases of shortened extradition but they are archived)

On 21.09.2013 the Basic public prosecution Struga submitted request for detention for extradition for the person L.A. on bases of international arrest warrant and a file for location and arresting for causes of extradition submitted by INTERPOL - France for committed criminal act "Serious theft" in Republic of France, which in the Criminal Code of the Republic of Macedonia is stipulated as criminal act "Burglary" (Article 237 paragraph 4 related to paragraph 1 of the CC of the RM).

On bases of this arrest warrant and file and the request for extradition detention of the Basic court Struga and according to article 72 paragraph 3 of the Law on international cooperation in criminal matters, on 20.09.2014, the Ministry of Interior– unit Struga, on the Macedonian – Albanian border arrested the above mentioned person L.A., citizen of the Republic of Albania.

The person is broth before a pre-trial procedure judge, who performed Decision for detention until completing the extradition procedure. The Decision is brought according to article 51, 60 and 62 of the Law on international cooperation in criminal matters, related to article 165 paragraph 1 and paragraph 2 of the Law on criminal procedure.

The person L.A. accepted shortened procedure for extradition, according to the article 72 paragraph 1 of the LICCM. The person also quitted the right of specialty.

The Ministry of justice of the Republic of Macedonia informed the Embassy of the Republic of France in the RM, through the Ministry of foreign affairs of the RM.

In the same time, the MoJ informed the MoI of the RM for the Decision of the Basic court Struga for extradition of the person L.A. from the RM into Republic of France and requested the MoI to undertake appropriate measures to execute the above mentioned Decision, meaning: to make an agreement for the place, the time and the manner of delivery of the person L.A. The place, the time and the manner of delivery of the person will be agreed and determined by INTERPOL – Macedonia and INTERPOL – France.

Following this, the MoJ of the RM will submit written information to the prison in Struga, where the person L.A. is located in extradition detention, for the date, time and place of extradition, in order that the person is appropriately prepared for the extradition.

In the same time, the MoJ will also inform the court in Struga for the day of extradition.

At the date, time and place previously determined, the person will be taken over by the authorized officials of the INTERPOL – France.

(b) Observations on the implementation of the article

Based on the information provided, a shortened extradition procedure may be applied in the former Yugoslav Republic of Macedonia but only when the person whose extradition is requested gives his or her approval.

No other information or statistics were provided to reflect the average timeframe for an extradition procedure related to UNCAC offences. However, the reviewers noted that the former Yugoslav Republic of Macedonia has ratified the Third Additional Protocol to the European Convention on Extradition, entered into force in 2012, which deals with “expeditious extradition proceedings”.

Article 44 Extradition

Paragraph 10

10. Subject to the provisions of its domestic law and its extradition treaties, the requested State Party may, upon being satisfied that the circumstances so warrant and are urgent and at the request of the requesting State Party, take a person whose extradition is sought and who is present in its territory into custody or take other appropriate measures to ensure his or her presence at extradition proceedings.

(a) Summary of information relevant to reviewing the implementation of the article

Law on international cooperation in criminal matters

Article 60 - Basis for detention because of extradition

(1) On the basis of an issued international arrest warrant or of request for extradition, and if the conditions for imposing detention according to the provisions of the Law on Criminal Proceedings are fulfilled, the competent public prosecutor shall submit a proposal for detention to the judge appointed to conduct the preliminary proceedings.

(2) The judge appointed to conduct the preliminary proceedings of the competent court shall without delay decide on the proposal by the competent public prosecutor. The person whose extradition is requested, his or her defence counsel and the competent public prosecutor shall be entitled to lodge an appeal against the decision of the judge appointed to conduct the preliminary proceedings addressed to the criminal council of the court in a period of 24 hours after the delivery of the decision.

(3) On the basis of the previously issued international arrest warrant, the authorised officials of the Ministry of Interior have the right to detain the person whose extradition is requested in accordance with the provisions of the Law on Criminal Proceedings without previously issued decision on detention if a danger exists that the person might escape or hide.

(4) The foreign competent authority shall deliver the request for extradition to the Ministry as a domestic competent authority or through a diplomatic channel.

(5) If the request for extradition includes all necessary documents according to Article 58 of this Law, the judge appointed to conduct the preliminary proceedings upon proposal by the competent public prosecutor shall reach a decision for imposing detention on the foreigner if there are reasons for imposing detention according to the provisions of the Law on Criminal Proceedings unless it is obvious from the request that there is no basis for extradition.

(6) The period for detention of the person whose extradition is requested shall not be longer than 180 days from the day of his or her detention.

(7) If justified by special reasons, the competent judge appointed to conduct the preliminary proceedings may instead of detention impose another measure according to the law for securing the presence of the person whose extradition is requested.

This is new provision stipulated in the new Law on international cooperation in criminal matters which will enter into force along with the new Law on criminal procedure - 31 December 2013. It will be possible to implement it as of 31 December 2013.

(b) Observations on the implementation of the article

The competent judge, pursuant to a proposal of the competent public prosecutor, may detain the person whose extradition is sought for a maximum period of 180 days. If justified by special reasons, the competent judge may instead of detention impose another measure according to the law for securing the presence of the person whose extradition is requested. The person whose extradition is requested, his or her defence counsel and the competent public prosecutor shall be entitled to lodge an appeal against the decision of the judge appointed to conduct the preliminary proceedings addressed to the criminal council of the court in a period of 24 hours after the delivery of the decision.

The former Yugoslav Republic of Macedonia is in line with the provision under review.

Article 44 Extradition

Paragraph 11

11. A State Party in whose territory an alleged offender is found, if it does not extradite such person in respect of an offence to which this article applies solely on the ground that he or she is one of its nationals, shall, at the request of the State Party seeking extradition, be obliged to submit the case without undue delay to its competent authorities for the purpose of prosecution. Those authorities shall take their decision and conduct their proceedings in the same manner as in the case of any other offence of a grave nature under the domestic law of that State Party. The States Parties concerned shall cooperate with each other, in particular on procedural and evidentiary aspects, to ensure the efficiency of such prosecution.

(a) Summary of information relevant to reviewing the implementation of the article

The former Yugoslav Republic of Macedonia will take over a criminal prosecution only if the requested State party requires so. It cannot be taken over automatically.

The relevant provisions are the following:

Law on international legal cooperation in criminal matters

I. Taking over of criminal prosecution

Article 42 - Taking over of the criminal prosecution in the Republic of Macedonia

(1) The request of the foreign competent authority to take over criminal prosecution in the Republic of Macedonia against a citizen of the Republic of Macedonia or against a person with residence or domicile in the Republic of Macedonia for criminal offence committed in a foreign State shall be submitted together with the criminal records to the competent public prosecutor in the region where the person has his or her residence or domicile.

(2) If a legal claim on property has been filed in the foreign competent authority, the domestic judicial authority shall act upon it as if it was filed in a proceeding before the domestic judicial authority.

(3) The domestic competent authority shall notify the foreign competent authority which submitted the request about the rejection to take over criminal prosecution, as well as about the effective decision that was reached within the criminal proceedings.

Taking over of criminal proceedings

- (2) If the criminal proceeding has been taken over, it shall be conducted according to the domestic legislation.
- (3) The law of the foreign country in relation to the type and amount of the criminal sanction shall be applied if it is milder for the accused in the criminal proceedings.
- (4) The criminal proceedings shall not be conducted in absence of the accused.

Equalisation of the investigative actions

Article 43

- (1) The criminal proceeding shall be taken over only when the criminal offence about which a prosecution is requested is a criminal offence according to the domestic legislation.
- (2) If the criminal proceeding has been taken over, it shall be conducted according to the domestic legislation.
- (3) The law of the foreign country in relation to the type and amount of the criminal sanction shall be applied if it is milder for the accused in the criminal proceedings.
- (4) The criminal proceedings shall not be conducted in absence of the accused.

Article 44

Any investigative action conducted by the foreign competent authority shall be equalised with the appropriate investigative action within the criminal proceedings in accordance with the domestic legislation.

Authorities met during the country visit further explained that in cases where a criminal procedure hasn't been already initiated in another State, the criminal prosecution can be initiated in the former Yugoslav Republic of Macedonia if there was certain evidence against the alleged offender.

Criminal Code (Official Gazette No.37/1996; 80/1999; 4/2002; 43/2003; 19/2004; 81/2005; 60/2006; 73/2006; 7/2008; 139/2008, 114/2009 and 51/2011)

Application of the criminal legislature to certain crimes committed abroad

Article 117

The criminal legislature is applicable to whosoever commits a crime referred to in Article 268 of this Code abroad, if the forgery concerns domestic currency and as referred to in Articles 305 through 326, 357 through 359-a and 403 through 422 of this Code.

Application of the criminal legislature to a citizen of the Republic of Macedonia who commits a crime abroad

Article 118

The criminal legislature shall also be applicable to a citizen of the Republic of Macedonia when he commits a crime abroad, except for the crimes listed in Article 117, if he finds himself on the territory of the Republic of Macedonia or is extradited.

There was no practical experience with application of this provision.

(b) Observations on the implementation of the article

According to Article 52 of the Law on international cooperation in criminal matters, the former Yugoslav Republic of Macedonia does not extradite its citizens. The possibility of submitting the case without undue delay to its competent authorities for the purpose of prosecution is introduced in the country's legislation, but the principle '*aut dedere aut judicare*' is not regulated by statutory law and has never been applied. Thus, it is hard to assess the effectiveness of the measure.

In the interest of greater legal certainty in the absence of applicable extradition treaties, the former Yugoslav Republic of Macedonia should take measures to more specifically address the *aut dedere aut judicare* principle in its domestic legislation.

Article 44 Extradition

Paragraph 12

12. Whenever a State Party is permitted under its domestic law to extradite or otherwise surrender one of its nationals only upon the condition that the person will be returned to that State Party to serve the sentence imposed as a result of the trial or proceedings for which the extradition or surrender of the person was sought and that State Party and the State Party seeking the extradition of the person agree with this option and other terms that they may deem appropriate, such conditional extradition or surrender shall be sufficient to discharge the obligation set forth in paragraph 11 of this article.

(a) Summary of information relevant to reviewing the implementation of the article

Law on international cooperation in criminal matters

Article 69 - Postponed and temporary handover

(2) The Minister may decide to deliver the person whose handover was postponed to the foreign State in order to implement urgent procedural actions, if it does not result in harmful consequences to the criminal proceedings being conducted before the national judicial authorities, and if the foreign State guarantees that it will keep the person in custody during his or her stay in the foreign State, and that it will return the person in Macedonia within the deadline determined by the Ministry.

(b) Observations on the implementation of the article

The reviewing experts noted that according to Article 52 of the Law on international cooperation in criminal matters, the former Yugoslav Republic of Macedonia does not extradite its nationals. Exceptions to that principle might be found in bilateral extradition treaties; however it was not clear whether such treaties provide for the conditional extradition of nationals as described in the provision under review.

Article 44 Extradition

Paragraph 13

13. If extradition, sought for purposes of enforcing a sentence, is refused because the person sought is a national of the requested State Party, the requested State Party shall, if its domestic law so permits and in conformity with the requirements of such law, upon application of the requesting State Party, consider the enforcement of the sentence imposed under the domestic law of the requesting State Party or the remainder thereof.

(a) Summary of information relevant to reviewing the implementation of the article

The former Yugoslav Republic of Macedonia noted that if the extradition of one of its nationals was refused, the law of the requesting State party may be applied regarding the type and amount of the criminal sentence if it is milder for the accused person.

Reference was made to the following provisions:

Law on international cooperation in criminal matters

Article 43 - Taking over of criminal proceedings

(3) The law of the foreign country in relation to the type and amount of the criminal sanction shall be applied if it is milder for the accused in the criminal proceedings.

Law on international cooperation in criminal matters

ENFORCEMENT OF CRIMINAL JUDGEMENTS

Subject of enforcement

Article 82

At the request of a foreign competent authority, the domestic competent authority shall enforce a final criminal judgement regarding the sanction imposed by a foreign or international court, with a verdict which shall impose a sanction under the Criminal Code of the Republic of Macedonia and an appropriate sanction imposed by the foreign court, but it may not aggravate the one imposed by the foreign court.

Rendering a judgement

Article 83

(1) In the disposition of the judgement from Article 82 of this Law, the domestic competent court shall include the complete disposition from the foreign judgement and the court's name. In the explanation of the judgement the domestic competent court shall list all the reasons considered for the imposition of the sanction.

(2) The domestic competent court shall render a judgement in the Judicial Council in accordance with the provisions of the Law on Criminal Proceedings. The competent public prosecutor and the counsel shall be duly notified about the council meeting.

(3) If the type and weight of the sanction imposed by the foreign court are not in accordance with the national legislation provisions, the domestic competent court shall impose a sanction in accordance with domestic law, already proposed for the same criminal offense for which the judgement was rendered.

(4) Time spent in detention and time spent serving the sanction in the foreign State shall be calculated in the sanction imposed by the domestic competent court.

(5) The competent public prosecutor, the sentenced person or the counsel may appeal the judgement under paragraph (1) in accordance with the provisions of the Law on Criminal Proceedings.

Subject-matter and territorial jurisdiction

Article 84

(1) A subject-matter jurisdiction court is a court determined by law.

(2) Territorial jurisdiction of a court is determined by the last place of residence of the sentenced person in the Republic of Macedonia, or by place of birth, in case the sentenced person does not have a place of residence in the Republic of Macedonia.

(3) If the sentenced person does not have a place of residence nor was born in Macedonia, the Supreme Court of the Republic of Macedonia shall appoint a subject-matter jurisdiction court for the trial.

Enforcement of a foreign criminal judgement

Article 85

(1) A sanction imposed by a final judgment of the foreign competent authority shall be enforced in accordance with the national legislation for enforcement of sanctions.

(2) Enforcement of foreign criminal judgment shall be suspended if the sanction imposed by the foreign State was rendered obsolete or the enforcement was suspended.

(3) The decision made in a foreign State to pardon or give amnesty to the person for which the sanction is being enforced shall be applied in the territory of the Republic of Macedonia as well.

(4) The decision to repeat the criminal proceedings may be made by the foreign competent authority.

(5) If only the decision on costs is being enforced, the foreign competent authority shall receive the remaining amount after deduction of costs incurred, under the condition of mutuality.

(6) The decision on costs made by the foreign competent authority shall be accepted and enforced if the costs are to be paid in the foreign State.

Conditions of enforcement

Article 86

The foreign criminal judgement shall be enforced if:

- 1) it is final and enforceable;
- 2) the criminal offence is designated as a criminal offence and is compliant with national legislation;
- 3) it is rendered in the presence of the sentenced person and
- 4) the enforcement of the sanction has not been rendered obsolete in accordance with national legislation.

Supporting documents to the request for enforcement of a criminal judgment to a foreign competent authority in the Republic of Macedonia

Article 87

Regarding the request for enforcement of a criminal judgment to a foreign competent authority in the Republic of Macedonia, the following documents must be furnished:

- 1) a master copy or a certified copy of the judgment including a clause specifying the finality and enforceability;
- 2) personal data of the sentenced person, citizenship and residence;
- 3) the statutory provisions on which the judgment was based;
- 4) a record of the time the person has spent in detention or serving the sentence.

Enforcement of a criminal judgement

Article 88

Regarding the request for enforcement of a criminal judgement to a domestic court in a foreign State, the following documents must be furnished:

- 1) a master copy or a certified copy of the judgement including a clause specifying the finality and enforceability;
- 2) personal data of the sentenced person, citizenship and residence;
- 3) the statutory provisions on which the judgement was based;
- 4) a record of the time the person spent in detention or serving the sentence and
- 5) a master copy or a certified copy of the records, if requested by the sentencing State.

Request for transfer of enforcement of a final criminal judgement

Article 89

The request for transfer of enforcement of a final criminal judgment to a domestic court in a foreign State shall be submitted by the Ministry, on the basis of a previously submitted request of the domestic court which rendered the judgement.

Suspension of enforcement of a final criminal judgment rendered by a domestic court

Article 90

- (1) If a foreign competent authority is in the process of enforcing a final criminal judgement rendered by a domestic court, the domestic court shall suspend the enforcement as soon as the administering State starts the procedure for enforcement.
- (2) The criminal judgement of the domestic court cannot be enforced if it was already completely enforced according to the provisions of the administering State.
- (3) The sentenced person may be detained if there is reasonable doubt that the person may avoid enforcement of the criminal judgement.

Notification for amendments and waivers of enforcement

Article 91

- (1) If the enforcement of a criminal judgement becomes amended or waived after it has been transferred, the administering State must be duly notified.
- (2) If the enforcement of a sanction imposed by a final judgement is transferred to a foreign State, it may be continued in the Republic of Macedonia if the sentenced person manages to avoid the enforcement of the

sanction in the foreign State.

(b) Observations on the implementation of the article

Based on the information provided, the reviewing experts consider the former Yugoslav Republic of Macedonia to be in line with the provision under review.

A foreign sentence can be enforced in the former Yugoslav Republic of Macedonia pursuant to the relevant provisions of the Law on international cooperation in criminal matters. For that, in addition to the dual criminality condition, the foreign criminal judgement should be final, enforceable and rendered *in presentia*.

Article 44 Extradition

Paragraph 14

14. Any person regarding whom proceedings are being carried out in connection with any of the offences to which this article applies shall be guaranteed fair treatment at all stages of the proceedings, including enjoyment of all the rights and guarantees provided by the domestic law of the State Party in the territory of which that person is present.

(a) Summary of information relevant to reviewing the implementation of the article

The Law on international cooperation in criminal matters addresses the Law on criminal procedure for the procedural provisions not regulated in this law.

Law on international cooperation in criminal matters

Article 104

For procedural provisions not regulated by this Law, provisions from the Law on Criminal Proceeding, the Law on Misdemeanours, the Law on Courts, the Law on Public Prosecution and the Law on Prevention of Corruption shall apply.

Law on criminal procedure

Article 5 - The right to a fair trial

Any person charged with a criminal offence shall have the right to a fair and public trial before an independent and impartial tribunal, in an adversarial procedure, with a possibility to challenge the accusations and tender and present evidence in his or her defence.

Article 6 - The right to trial within a reasonable time

(1) Any person that is subject of the procedure shall have the right to be taken before a court within a reasonable time and tried without any unjustified delays.

(2) The court shall be obliged to conduct the proceedings without any delay and to preclude any abuse of the rights that belong to the persons that participate in the proceedings.

(3) Each natural person will be sanctioned with a fine from 700 to 1000 Euros payable in Macedonian Denars and each legal entity will be sanctioned with a fine from 2500 to 5000 Euros payable in Macedonian Denars according to the current exchange rate, for misusing the rights to which he is entitled during the procedure.

(4) The duration of detention and other limitations of personal freedom must be limited to the shortest necessary time.

Article 8 - Official language and alphabet

- (1) The official language in the criminal procedure shall be the Macedonian language and its Cyrillic alphabet.
- (2) Another official language spoken by more than 20% of the citizens and its alphabet shall be used in the procedure in accordance with the law.

Article 9 - The right to an interpreter or translator

- (1) The defendant, the injured party, the private plaintiff, the witnesses and all other participants in the procedure who speak an official language other than Macedonian, shall have the right to use their own language and alphabet during the proceedings.
- (2) Other parties, witnesses and participants in the procedure before the court shall have the right to a free assistance of an interpreter, i.e. translator, if they do not understand or speak the language used during the proceedings.
- (3) The entity that conducts the procedure shall ensure verbal interpretation of anything said and presented by the parties, as well as of any documents and other written exhibits and evidence. The entity that conducts the procedure shall ensure a written translation of all written submissions that are important for the procedure or defence of the accused.
- (4) The person shall be advised of his or her right to an interpreter or translator. The record shall indicate that the person was advised and it shall note the person's response in this regard.
- (5) The interpretation shall be performed by a court approved interpreter, i.e. translator.

Authorities met during the country visit further explained that the decision for extradition in regular procedure is brought by the Minister of justice and the decision for extradition in shortened procedure is brought by the court.

In the regular procedure, when the decision is brought by the Minister of justice, if the court refuses extradition the Minister cannot allow it and if the court allow extradition, the Minister can approve it or refuse it.

The Procedure for extradition is described in the Law on international cooperation in criminal matters (articles 50-81)

Law on international cooperation in criminal matters

Offences for which an extradition is permitted

Article 50

- (1) Extradition of a person based on issued international arrest warrant shall be permitted for criminal offences for which according to the domestic legislation a prison sentence minimum of one year is stipulated.
- (2) The extradition shall be permitted because of enforcement of the effective prison sentence if the wanted person has to serve a sentence minimum of four months.
- (3) The extradition in the cases from paragraph (1) and (2) of this article shall be permitted if the offence an extradition is requested for is punishable under the Criminal Code of the Republic of Macedonia.

Principle of speciality

Article 51

The extradited person cannot be prosecuted, brought into court or subject to a sentence or any other measure of deprivation of freedom or extradited to another State for any criminal offence committed prior to the extradition, and which is not subject of the extradition, unless:

- 1) the competent authority gives authorization for the extradition and delivers documents in accordance with Article 58 of this Law together with a statement for the minutes by the extradited person or
- 2) the extradited person did not leave the territory of the State to which he or she was extradited despite having the possibility to do so in a period of 45 days after the day of his release, or if the persons returns in the territory after leaving it first.

PART TWO

PROCEDURE WHEN THE EXTRADITION IS REQUESTED FROM THE REPUBLIC OF MACEDONIA

Preconditions for extradition

Article 52

The preconditions for authorising extradition shall be the following:

- 1) the person whose extradition is requested shall not be citizen of the Republic of Macedonia;
- 2) the identity of the person whose extradition is requested shall be determined;
- 3) the offence for which extradition has been requested shall not be committed in the territory of the Republic of Macedonia against it or against one of its citizens;
- 4) the offence for which extradition has been requested shall be a criminal offence both according to the domestic legislation and according to the legislation of the State where it was committed and which requested the extradition;
- 5) the criminal prosecution or the enforcement of the sentence shall not become time-barred;
- 6) the person whose extradition is requested shall not be sentenced for the same criminal offence by a domestic court or effectively released by a domestic court for the same criminal offence or the criminal proceeding against him or her shall not be effectively stopped or the accusation shall not be effectively rejected or no proceedings shall be initiated for the same criminal offence in the Republic of Macedonia or against it or against a citizen of the Republic of Macedonia, unless a guarantee has been provided for the exercise of the right to legal claim on property of the injured party;
- 7) there shall be sufficient evidence for the reasonable doubt that the person whose extradition is requested committed a certain criminal offence, or that there exists another final judgment;
- 8) the person whose extradition is requested shall have committed the criminal offence after the age of 14; and
- 9) the person whose extradition is requested was tried *in absentia*, and the requesting foreign State shall provide a guarantee that the person will be tried in his presence.

Political offences

Article 53

- (1) The extradition shall not be permitted for political offences or offences related to those criminal offences.
- (2) The assassination of a head of State or of a member of his family, terrorism and international crime shall not be considered as political offences.

Military offence

Article 54

The provisions of this Law shall not apply for extradition because of violation of military duties.

Death sentence

Article 55

If in the foreign State a death sentence is prescribed for the criminal offence for which extradition is requested, the extradition may be granted if the foreign State provides sufficient guarantee that the death sentence won't be imposed.

Criminal offences related to breach of the regulations on taxes, fees, duties and foreign exchange operations

Article 56

- (1) The Republic of Macedonia shall permit extradition for criminal offences related to breach of the regulations on taxes, fees, duties and foreign exchange operations if according to the domestic legislation the criminal offence is in line with the criminal offence of same kind in the State which requested extradition.
- (2) The extradition cannot be rejected if according to the domestic legislation that kind of tax or fee is not mandatory or if there are no regulations on taxes, fees, duties or foreign exchange operations of the same kind as in the foreign State.

Re-extradition of a person to a third State

Article 57

- (1) The Minister of Justice (herein after referred to as: the Minister) at the request of a foreign State may permit the re-extradition of an extradited person to a third State for criminal offences committed prior to the extradition, except of the instances where the principle of speciality applies.
- (2) The Minister may request the third State to deliver the records enclosed to the request for extradition.

Documentation enclosed to the request for extradition

Article 58

- (1) The request for extradition shall include the data from Article 16 of this Law, and the following documents shall be enclosed to the request:
 - 1) data for determination of the identity of the person whose extradition is requested (description, picture, fingerprints etc.);
 - 2) certificate or other data for the citizenship;
 - 3) accusation, sentence or decision on detention or some other document with the same legal action in original or as certified copy indicating the name and surname of the person whose extradition is requested;
 - 4) description of the offence, legal denomination of the criminal offence and evidence for reasonable doubt; and
 - 5) transcript of the provisions of the Criminal Code of the Republic of Macedonia that shall be applied or has been applied to the person whose extradition is requested, and if the offence was committed in the territory of a third State, a transcript of the provisions of the Criminal Code of that State is required.

(2) The Ministry shall submit the request for extradition to the competent domestic judicial authority translated into Macedonian language and its Cyrillic script.

Additional information

Article 59

If the records delivered by the foreign State are not sufficient for reaching a decision whether to permit or deny the extradition of the person whose extradition is requested, the competent judicial authority may request the Minister for additional information and may set a time period within such information shall be delivered.

Basis for detention because of extradition

Article 60

(1) On the basis of an issued international arrest warrant or of request for extradition, and if the conditions for imposing detention according to the provisions of the Law on Criminal Proceedings are fulfilled, the competent public prosecutor shall submit a proposal for detention to the judge appointed to conduct the preliminary proceedings.

(2) The judge appointed to conduct the preliminary proceedings of the competent court shall without delay decide on the proposal by the competent public prosecutor. The person whose extradition is requested, his or her defence counsel and the competent public prosecutor shall be entitled to lodge an appeal against the decision of the judge appointed to conduct the preliminary proceedings addressed to the criminal council of the court in a period of 24 hours after the delivery of the decision.

(3) On the basis of the previously issued international arrest warrant, the authorised officials of the Ministry of Interior have the right to detain the person whose extradition is requested in accordance with the provisions of the Law on Criminal Proceedings without previously issued decision on detention if a danger exists that the person might escape or hide.

(4) The foreign competent authority shall deliver the request for extradition to the Ministry as a domestic competent authority or through a diplomatic channel.

(5) If the request for extradition includes all necessary documents according to Article 58 of this Law, the judge appointed to conduct the preliminary proceedings upon proposal by the competent public prosecutor shall reach a decision for imposing detention on the foreigner if there are reasons for imposing detention according to the provisions of the Law on Criminal Proceedings unless it is obvious from the request that there is no basis for extradition.

(6) The period for extradition of the person whose extradition is requested shall not be longer than 180 days from the day of his or her detention.

(7) If justified by special reasons, the competent judge appointed to conduct the preliminary proceedings may instead of detention impose another measure according to the law for securing the presence of the person whose extradition is requested.

Deprivation of freedom and advice on rights

Article 61

(1) If the person whose extradition is requested has been restrained, in accordance with Article 60 of this Law, police officers from the Ministry of Interior shall promptly advise the person that he or she is not obliged to declare anything and has the right to counsel, and they shall without delay notify the competent public prosecutor who shall file a request for an arrest for extradition.

(2) Police officers from the Ministry of Interior shall bring the detained person to court within 24 hours for preliminary proceedings.

(3) The domestic competent authority shall without delay notify the diplomatic and consular representative of the State whose citizen is the person deprived of freedom at its request.

Treatment of person whose extradition is requested

Article 62

(1) The judge appointed to conduct the preliminary proceedings shall determine the identity of the person whose extradition is requested, and then notify the person about the international warrant for his or her extradition.

(2) The judge appointed to conduct the preliminary proceedings shall inform the person that he or she can choose a defence counsel, and if the person opts not to, the court shall appoint a defence counsel ex officio.

(3) The judge appointed to conduct the preliminary proceedings shall inform the person that he or she can give consent for extradition in a foreign State as a summary procedure for extradition, and that by giving the consent the person will opt out of the application of the principle of specialty. The consent for extradition under the summary procedure cannot be revoked.

Deadline for submission of the request for extradition

Article 63

(1) The request for extradition and the necessary documents shall be submitted within a period not longer than 40 days from the date of judgment regarding detention for extradition.

(2) If the person whose extradition is requested is released from custody because of the expiration of deadline under paragraph (1) of this Article, and the foreign State resubmits the request for custody due to extradition or a request for extradition, the person whose extradition is requested may receive another detention order for extradition.

Investigative measures

Article 64

(1) The judge appointed to conduct the preliminary proceedings shall conduct investigative measures and shall submit the documents to the competent public prosecutor who shall issue a written opinion regarding the fulfilment of the legal prerequisites for extradition.

(2) The judge shall submit the notes and opinions from the public prosecutor to the Judicial Council in accordance with the provisions of the Law on Criminal Proceedings, and then the council shall determine whether the legal prerequisites for extradition are met or not.

(3) The decision under paragraph (2) of this Article may be appealed within three days of receipt by the person whose extradition is requested, his or her defence counsel, and the public prosecutor to the Criminal Chamber of the superior court.

(4) If the person whose extradition is requested has another criminal proceedings pending before the competent domestic court, the Judicial Council will note that in the records of the actions taken in accordance with the Law on Criminal Proceedings.

Existence and non-existence of legal prerequisites for extradition

Article 65

(1) If the Judicial Council determines that the legal prerequisites for extradition of a foreigner are met in accordance with the Law on Criminal Proceedings, it shall ratify it with a judgment.

(2) The decision under paragraph (1) of this Article may be appealed within three days of receipt by the person whose extradition is requested, his or her defence counsel, and the public prosecutor.

(3) The final decision that establishes the existence of the legal prerequisites for extradition shall be submitted to the Ministry together with all the orders for detention.

(4) If, after the submission of the documents to the Judicial Council in accordance with the provisions of the Law on Criminal Proceedings in article 64 paragraph (2) of this Law, the Judicial Council determines that the legal prerequisites for extradition are not met, it shall put forward judgement to confirm that the legal prerequisites are not met.

(5) The domestic competent court shall submit the adjudication from paragraph (4) ex officio to the Supreme Court of the Republic of Macedonia, which shall consult with the competent public prosecutor and shall confirm, cancel or alter the adjudication.

(6) If the person whose extradition is requested is in custody, the Judicial Council may decide in accordance with the provisions of the Law on Criminal Proceedings that the person remain in custody until the adjudication from paragraph (4) of this Article becomes final.

Decision for extradition

Article 66

(1) The Minister shall give a decision for extradition allowing or denying extradition.

(2) The Minister shall not allow extradition if the person whose extradition is requested was tried *in absentia*, and the requesting State does not provide sufficient guarantees that the person will be allowed a retrial in his presence during which the rights of the defence are respected.

(3) The Minister shall not allow extradition of the person, whose extradition is requested if there are serious reasons to doubt that he or she might be subjected to torture and other cruel, inhuman or degrading actions, including the death penalty.

(4) The Government of the Republic of Macedonia may accept the Minister's proposal not to allow extradition if the decision provides the State with special justified interests.

Decision to allow extradition

Article 67

In the decision to allow extradition, the Minister shall adduce that:

1) the extradited person shall not be prosecuted for another criminal offense committed prior to the extradition, except for the criminal offense for which extradition was allowed;

2) the extradited person shall not be sentenced for another criminal offence committed prior to the extradition;

3) the extradited person shall not be given a sentence more severe than the one rendered in court, including the death penalty;

4) the extradited person shall not be extradited to a third State for prosecution for an offence committed before the extradition was allowed;

5) the criminal proceedings against the extradited person shall be repeated if sentenced *in absentia*, and

6) length of detention during the extradition proceedings will be calculated into the sentence.

Enforcement of decision and extradition of the person whose extradition is requested

Article 68

- (1) The foreign competent authority shall be notified about the decision to allow extradition through the national competent authority, or through diplomatic channels.
- (2) The decision to allow extradition shall be submitted to the Ministry of Interior, which shall settle the terms regarding location, time and manner of delivery of the person whose extradition is requested with the foreign competent authorities.
- (3) The transfer of the person whose extradition is allowed shall be made within 180 days from the day the person was taken into custody.
- (4) In case of force majeure halting the handover, the foreign State may request a new date for extradition in accordance with paragraph (2) of this Article.

Postponed and temporary handover

Article 69

- (1) The Minister may decide to postpone the extradition if the person whose extradition is requested has criminal proceedings pending in a domestic judicial authority for another criminal act, or if the person whose extradition is requested is serving a prison sentence in Macedonia.
- (2) The Minister may decide to deliver the person whose handover was postponed to the foreign State in order to implement urgent procedural actions, if it does not result in harmful consequences to the criminal proceedings being conducted before the national judicial authorities, and if the foreign State guarantees that it will keep the person in custody during his or her stay in the foreign State, and that it will return the person in Macedonia within the deadline determined by the Ministry.

Re-extradition

Article 70

- (1) If the extradited person manages to avoid criminal prosecution or enforcement of the sentence in the foreign State and returns to the Republic of Macedonia, the person may be re-extradited after a newly submitted request.
- (2) In the case of paragraph (1) of this Article, the foreign State is not obliged to submit the documentation of Article 58 of this Law in addition to the request.

Deciding on extradition in case of requests submitted from several countries

Article 71

- (1) If several countries request extradition for the same or different criminal acts, the Minister shall decide where the person will be extradited, after the court reaches a decision regarding the fulfilment of each of the submitted requests.
- (2) If several countries request extradition for the same person simultaneously, the Minister shall decide where the person will be extradited, taking into account the weight of the offence, location of the offence, the territory in which the majority of the incriminating acts were committed in case of prolonged criminal activity, the nationality of the person and the location of the person's residence in case of criminal offence of organised crime, the dates of the individual requests for extradition and whether they were submitted for the criminal proceedings or for the enforcement of the sentence.

Summary procedure for extradition

Article 72

- (1) The person whose extradition is requested may give his or her approval to be extradited to the foreign State using a summary procedure for extradition, or may decide to abandon the rule of specialty, whereupon the Judicial Council shall allow the extradition in accordance with the provisions of the Law on Criminal Proceedings, after having received the public prosecutor's opinion.
- (2) Consents and waivers of rights under paragraph (1) of this Article shall be entered in the minutes of the Judicial Council under paragraph (1) of this Article and are irrevocable.
- (3) The competent court shall without delay notify the Ministry regarding the consent for summary procedure for extradition, whereupon the Ministry shall pass on this information to the foreign State within ten days from the day the person whose extradition is requested was taken into custody.
- (4) In the case of paragraph (3) of this Article, the foreign State is not obliged to submit a formal request for extradition.
- (5) If the person whose extradition is requested gives consent under paragraph (1) of this Article within the deadline in paragraph (3) of this Article, the court shall conduct a summary procedure for extradition if the request for extradition is not yet received.
- (6) If the person whose extradition is requested gives consent under paragraph (1) of this Article after the deadline in paragraph (3) of this Article, with a request for extradition received in the meantime, the competent court may conduct a summary procedure for extradition.

Decision for a summary extradition procedure

Article 73

(1) If the person whose extradition is requested agrees to be extradited using a summary procedure, the judge conducting the preliminary proceedings shall submit the records without delay to the Judicial Council, which shall have 48 hours to reach a decision regarding the extradition.

(2) The summary extradition procedure will be allowed with a decision that shall include:

- name and surname, date, place of birth and nationality of the person whose extradition is requested,
- the requesting State that will receive the person whose extradition is requested,
- the criminal act for which the person is extradited,
- a statement declaring that the person whose extradition is requested has consented the summary extradition procedure,
- a statement declaring that the person whose extradition is requested has abandoned the rule of specialty and
- a decision that the person whose extradition is requested must not be surrendered to a third State for a crime committed before his handover.

(3) The decision under paragraph (2) of this Article shall be delivered to the person whose extradition is requested, to his counsel and to the competent public prosecutor.

(4) The person whose extradition is requested and the counsel may appeal the Judicial Council decision through the Court of First Instance to the Appeal Court in accordance with the Law on Criminal Proceedings within 24 hours from the moment the decision was delivered. The Appeal Court shall reach a decision within 48 hours from the day detention started.

PART THREE

PROCEDURE WHEN EXTRADITION IS REQUESTED BY THE REPUBLIC OF MACEDONIA

Extradition request for a person located in a foreign State

Article 74

(1) If a criminal investigation is underway in the Republic of Macedonia against an individual located in a foreign State or sentenced by a domestic court, the Minister shall submit an extradition request.

(2) The request under paragraph (1) of this Article shall be submitted to the foreign competent authority, in addition to the documents under Article 58 of this Law.

Request for temporary detention

Article 75

(1) Wherever there is danger that the person whose extradition is requested might escape or hide, the Minister may request legal action and temporary detention against the individual.

(2) The application for temporary detention shall specifically designate the identity of the person whose extradition is requested, the type and name of the crime, the number of the decision, the date, location and name of the authority that ordered the detention, and any information regarding the effectiveness of the sentence.

Procedure before a domestic judicial authority

Article 76

(1) The domestic judicial authority which has issued a call for an international arrest warrant shall deliver to the Ministry the overall records in original or certified copies together with the extradition request.

(2) If there is a criminal investigation in progress before a domestic judicial authority against a person whose extradition is requested, the domestic judicial authority shall furnish:

- 1) an official extradition request;
- 2) an order for a judicial investigation;
- 3) a prosecution motion or indictment;
- 4) a detention sentence;
- 5) an order to issue an international arrest warrant and
- 6) an extract from the Criminal Code of the Republic of Macedonia.

(3) If the person whose extradition is requested has been effectively sentenced, the competent court or penal/correctional institution shall submit to the Ministry:

- 1) an extradition request;
- 2) a final court judgement;
- 3) an order for a referral to serve the prison sentence or a referral act;
- 4) an order to issue an international arrest warrant and
- 5) an extract from the Criminal Code of the Republic of Macedonia.

Limitations of criminal prosecution and sentencing

Article 77

(1) If the person whose extradition is requested is extradited, he or she may be criminally prosecuted and sentenced only for the criminal act for which the extradition was granted.

- (2) If the extradition was granted under the terms of the type or weight of the sentence and the terms were accepted, the competent court shall follow strictly the aforementioned terms during the sentencing, and if a sentence is being enforced, the court that ruled in the last degree shall alter the sentence and shall adapt it to the extradition terms.
- (3) If the extradited person was detained in a foreign State for the criminal offense for which he or she was extradited, time spent in detention shall be calculated into the sentence.
- (4) If the extradited person in the foreign State was sentenced in absentia, the criminal proceedings will be repeated in any event.

Additional extradition request

Article 78

If it is later discovered that there are other criminal proceedings in progress against the extradited person before a domestic court, or that the person has been effectively sentenced by a domestic court for criminal offences before the extradition was granted, the domestic court or the penal/correctional institution may further submit an extradition request in accordance with Article 58 of this Law, together with an statement for the minutes from the extradited person.

Transporting the person across the territory of the Republic of Macedonia

Article 79

- (1) If a foreign State issues a request for extradition to another foreign State, and the person whose extradition is requested has to be transported across the territory of the Republic of Macedonia, the transport shall be granted by the Minister through a decree, only if the person is not a citizen of the Republic of Macedonia and the extradition is not done for a political or a military criminal offence.
- (2) The request for transport of the person across the territory of the Republic of Macedonia shall include all the data referred to in Article 58 of this Law, together with the decision to grant extradition.
- (3) The Ministry will pass on its decision to the foreign competent authority that requested the transport and the Ministry of Interior which shall monitor the transit of the person across the territory of Macedonia.
- (4) In accordance with the condition of mutuality, the cost of the transport across the territory of the Republic of Macedonia shall be borne by the budget of the Republic of Macedonia.

Language

Article 80

- (1) If the extradition request is issued by the Republic of Macedonia, the domestic judicial authority shall deliver the extradition request and the documents listed in Article 58 of this Law to the Ministry written in Macedonian and its Cyrillic alphabet and translated to the language of the State which the extradition request has been issued to, or one of the official languages of the Council of Europe.
- (2) If a foreign State issues an extradition request to the Republic of Macedonia, the Ministry shall deliver the documents mentioned in paragraph (1) in this Article to the competent court written in the language of the foreign State together with certified translated copies in Macedonian and its Cyrillic alphabet.

Costs

Article 81

- (1) The cost to collect the person whose extradition has been granted to the Republic of Macedonia from a mutually agreed location shall be borne by the budget of the Republic of Macedonia.
- (2) If a person is set to be extradited from the Republic of Macedonia, the cost for custody and transport to the mutually agreed location of the person whose extradition has been granted shall be borne by the budget of the Republic of Macedonia.

(b) Observations on the implementation of the article

The Law on international cooperation in criminal matters refers to the Law on criminal procedure for the procedural provisions not regulated in the aforementioned law, including the right to a fair trial.

The former Yugoslav Republic of Macedonia has two extradition procedures in place, a regular procedure whereby the final decision is taken by the Minister of justice and a shortened procedure, whereby the final decision is taken by the Judicial Council.

Requests for extradition received from a foreign State should be forwarded through diplomatic channels or directly to the Ministry of Justice who will then submit it to the competent judicial authority. The judge appointed to conduct the preliminary proceedings will inform the person that

he or she can choose a defence counsel, and if the person opts not to, the court shall appoint a defence counsel *ex officio*.

The judge will also inform the person that he or she can give consent for extradition as a summary procedure for extradition, and that by giving the consent the person will opt out of the application of the principle of specialty.

If the person agrees to be extradited (shortened procedure), the judge will submit the records without delay to the Judicial Council, which shall have 48 hours to reach a decision regarding the extradition. The concerned person may appeal the Judicial Council decision through the Court of First Instance to the Appeal Court within 24 hours from the moment the decision was delivered. The Appeal Court shall reach a decision within 48 hours.

If the person doesn't agree to be extradited (regular procedure), the judge, after conducting the necessary investigation, shall submit the documents to the competent public prosecutor who shall issue a written opinion regarding the fulfilment of the legal prerequisites for extradition.

The judge will then submit the notes and opinions from the public prosecutor to the Judicial Council who shall determine whether the legal prerequisites for extradition are met or not. This decision may be appealed within three days of receipt by the concerned person or by the public prosecutor to the Criminal Chamber of the Superior Court.

The final decision that establishes the existence of the legal prerequisites for extradition shall be submitted to the Ministry of Justice together with all the orders for detention.

If the Judicial Council has found that the criteria for extradition are fulfilled, the Minister of Justice will give a decision allowing or denying extradition. If the Judicial Council decides otherwise, the Minister of Justice will deny the request.

Article 44 Extradition

Paragraph 15

15. Nothing in this Convention shall be interpreted as imposing an obligation to extradite if the requested State Party has substantial grounds for believing that the request has been made for the purpose of prosecuting or punishing a person on account of that person's sex, race, religion, nationality, ethnic origin or political opinions or that compliance with the request would cause prejudice to that person's position for any one of these reasons.

(a) Summary of information relevant to reviewing the implementation of the article

Law on international cooperation in criminal matters

Article 10- Rejection of international cooperation

4) it can be reasonably assumed that the person whose extradition is requested was criminally prosecuted or sentenced because of its racial, ethnical and social affiliation or because of his or her political or religious beliefs in the time of extradition, respectively that his or her position would become more difficult because of one of those reasons.

Please provide examples of implementation

(b) Observations on the implementation of the article

The provision under review is legislatively implemented, although no case examples or statistics were provided where the relevant measures were invoked.

Article 44 Extradition

Paragraph 16

16. States Parties may not refuse a request for extradition on the sole ground that the offence is also considered to involve fiscal matters.

(a) Summary of information relevant to reviewing the implementation of the article

Criminal offences related to breach of the regulations on taxes, fees, duties and foreign exchange operations.

Article 56

(1) The Republic of Macedonia shall permit extradition for criminal offences related to breach of the regulations on taxes, fees, duties and foreign exchange operations if according to the domestic legislation the criminal offence is in line with the criminal offence of same kind in the State which requested extradition.

(2) The extradition cannot be rejected if according to the domestic legislation that kind of tax or fee is not mandatory or if there are no regulations on taxes, fees, duties or foreign exchange operations of the same kind as in the foreign State.

(b) Observations on the implementation of the article

The provision under review is legislatively implemented, although no case examples or statistics were provided where the relevant measures were invoked.

Article 44 Extradition

Paragraph 17

17. Before refusing extradition, the requested State Party shall, where appropriate, consult with the requesting State Party to provide it with ample opportunity to present its opinions and to provide information relevant to its allegation.

(a) Summary of information relevant to reviewing the implementation of the article

Reference was made to the following provision:

Law on international cooperation in criminal matters

Article 59

Additional information

If the records delivered by the foreign State are not sufficient for performing decision whether to permit or deny extradition of the person whose extradition is requested, the competent judicial authority may request the Minister for additional information and may set a time limit within which such information should be delivered.

(b) Observations on the implementation of the article

There are no general guidelines on extradition that spell out a duty to consult before refusing a request, however the provision referred to regarding the possibility of requesting additional information before deciding whether to accept or not the extradition request seems to cover the provision under review.

Article 44 Extradition

Paragraph 18

18. States Parties shall seek to conclude bilateral and multilateral agreements or arrangements to carry out or to enhance the effectiveness of extradition.

(a) Summary of information relevant to reviewing the implementation of the article

The former Yugoslav Republic of Macedonia is a party to the European Convention on Extradition and three of its Additional protocols. Regarding the non-European countries, the former Yugoslav Republic of Macedonia applies the provisions of the bilateral treaties between the former SFR Yugoslavia and the States which are not parties to the European Convention on Extradition, undertaken according to the Article 5 of the Constitutional Law for application of the Constitution of the Republic of Macedonia.

In the spirit of strengthening of the regional cooperation and the development of the good neighboring relations, the Republic of Macedonia and the States in the region, in the newly concluded bilateral agreements, stipulate the possibility for extradition of their own nationals for criminal acts of organized crime, corruption and money laundering. This prevents the perpetrators of these crimes to flee the country and thus evade the criminal liability for the reason that they are citizens of the one or the other county. These kinds of provisions are included in the bilateral agreements with Serbia, Croatia, Monte Negro and Bosnia and Herzegovina (cited in this document – answers to the Article 48).

List of bilateral agreements for international-legal assistance with non-european countries

1. Agreement for legal assistance in the civil and criminal cases between SFRY and DPR **Algers** from 31.03.1982 (Official gazette of the (Social Federalist Republic of Yugoslavia) SFRY – International treaties No 2/83), entered into force on 20.12.1984;
2. Agreement between SFRY and PR **Mongolia** for mutual legal assistance in civil, family and criminal affairs from 19.04.1966 (Official Gazette of the SFRY – International agreements No 7/82), entered into force on 27.03.1983;
3. Agreement between the SFRY and **Union of Soviet Socialist Republics (USSR)** for legal assistance in civil, family and criminal affairs from 24.02.1962 (Official Gazette of the SFRY – Addition No 5/63), entered into force on 26.05.1963;
4. Convention for surrendering of guilty persons between the Kingdom of Serbia and the **United States of America** from 12/25/10.1901 (Serbian Gazette No 33/1902), entered into force on 12.06.1902;
5. Agreement for mutual legal cooperation in civil and criminal matters between Republic of Macedonia and Republic of **Turkey**, from 24 February 1997 (Official Gazette of the RM No 23/1997, entered into force on 28.07.2000.

(b) Observations on the implementation of the article

The provision under review is implemented,

(c) Challenges, where applicable

The former Yugoslav Republic of Macedonia has identified the following challenges and issues in fully implementing the provision under review:

1. Limited resources for implementation

(d) Technical assistance needs

The former Yugoslav Republic of Macedonia has indicated that the following forms of technical assistance, if available, would assist it in better implementing the article under review:

1. Summary of good practices/lessons learned;
2. Legal advice
3. On-site assistance by a relevant expert
4. The need for a relevant software for collecting, keeping and processing statistical data for cases of extradition and other types of mutual legal assistance.
5. The need for general training in application of this Convention in the area of extradition and other types of mutual legal assistance.

Article 45 Transfer of sentenced persons

States Parties may consider entering into bilateral or multilateral agreements or arrangements on the transfer to their territory of persons sentenced to imprisonment or other forms of deprivation of liberty for offences established in accordance with this Convention in order that they may complete their sentences there.

(a) Summary of information relevant to reviewing the implementation of the article

The transfer of sentenced persons is one of the types of international cooperation (art. 4 of the LICCM) and the international cooperation is carried out according to the LICCM and the international agreements.

Types of international cooperation

Article 4

The international cooperation in criminal matters includes:

- 1) International legal assistance;
- 2) Taking over and reassignment of criminal prosecution;
- 3) Extradition and
- 4) Enforcement of criminal sentences and transfer of sentenced persons.

Article 2

The international cooperation shall be provided in accordance with the provisions of this Law unless otherwise specified by an international agreement ratified in accordance with the Constitution of the Republic of Macedonia (herein after referred to as: international agreement) or other legal act which governs the criminal proceedings of an international court whose jurisdiction is accepted by the Republic of Macedonia.

PART TWO - TRANSFER OF SENTENCED PERSONS

I. TRANSFER OF A FOREIGN CITIZEN

Article 92 - Request for transfer

- (1) A sentenced person who is not a citizen of the Republic of Macedonia and serving a prison sentence in the Republic of Macedonia given by a domestic first instance court may request to serve out the prison term in the country of his or her citizenship.

(2) The sentenced person may file the request under paragraph (1) of this Article to the administration of the penal/correctional institution in which the person is serving the prison term, to the domestic first-instance court or to the Ministry.

(3) The domestic first-instance court which rendered the judgment in first instance or the administration of the penal/correctional institution in which the sentenced person is serving the prison sentence are required to inform the person about the possibility of serving out the term in the country of his or her citizenship.

(4) The request under paragraph (1) of this Article may also be filed by the sentenced person's country of citizenship.

(5) The request under paragraph (1) of this Article will be considered only if the sentenced person gives his or her consent to be transferred to the country of citizenship.

Article 93 - Supporting documents to the request for transfer

Regarding the request for transfer, the following documents must be furnished:

- 1) a certified transcript of the final judgment rendered against the sentenced person;
- 2) legal provisions that were applied;
- 3) any information regarding the duration of the prison term that has already been served and information regarding detention or any other information regarding the serving of the prison sentence and
- 4) statement by the sentenced person consenting to the transfer.

Article 94 - Means of communication

(1) The request for transfer and the documents listed in Articles 92 and 93 from this Law must be submitted to the Ministry, which shall then notify the country of citizenship in order to continue the prison term and shall carry out the transfer of the sentenced person on the basis of an international agreement or on the basis of mutuality.

(2) At the request of a domestic competent authority the foreign State shall provide all additional information and vice versa.

Article 95 - Transfer procedure

(1) After the judgement of the domestic court is recognised by the foreign competent authority, the country of citizenship shall deliver the judgement to the sentenced person through the Ministry.

(2) After the judgment of the foreign competent authority that recognises the domestic court judgment becomes final, the Ministry may give its approval for the transfer.

(3) The Ministry shall notify the State in which the sentence will be enforced regarding its decision to accept or deny the request for transfer.

Article 96 - Conditions for transfer

The transfer may be carried out only if:

- 1) the sentenced person is a citizen of the State in which the person will serve out his or her prison term;
- 2) the judgement is final;
- 3) at the time of receipt of the request for transfer, the sentenced person has to serve out a minimum of six months of the prison term duration, and the person has given his or her consent;
- 4) the sentenced person, the person's legal representative, or the person's guardian gives consent to transfer due to the person's age or psychophysical condition;
- 5) the acts for which the person was sentenced are specified as criminal offense in the State in which the sentence will be enforced;
- 6) Republic of Macedonia and the foreign State reach agreement on terms for the transfer.

II. TRANSFER OF A CITIZEN OF THE REPUBLIC OF MACEDONIA

Article 97 - Request and supporting documents for transfer

(1) Any sentenced person who is a citizen of the Republic of Macedonia and is serving a prison sentence in a foreign State may be transferred to Macedonia in order to serve out the remainder of the sentence.

(2) The request for transfer of a citizen of the Republic of Macedonia together with the documents listed in Article 93 of this Law, shall be submitted through the Ministry to the subject-matter jurisdiction court for recognition.

(3) During the procedure for the recognition of the foreign criminal judgment, the subject-matter jurisdiction court is bound to the type and weight of the sentence which may be the identical or appropriate, but it must not aggravate the sanction stated in the foreign judgement, nor may it exceed the maximum prescribed by the Criminal Code regarding these types of offences.

(4) In case of a conversion of sentence, the subject-matter jurisdiction court:

- is bound by the established facts contained in the judgment
- may not convert a sanction involving deprivation of freedom into a pecuniary sanction
- shall fully deduct the time spent in prison by the sentenced person

(5) After the subject-matter jurisdiction court recognises the foreign criminal judgement with its own judgement, it shall deliver it through the Ministry to the sentenced citizen of the Republic of Macedonia.

(6) After the judgement which the subject-matter jurisdiction court had rendered in order to recognise the foreign criminal judgement becomes final, the transfer of the sentenced person due to the completion of the prison term may be carried out in accordance with the foreign State which passed the sentence and the Ministry.

Article 98 - Effects of transfer

(1) Enforcement in the foreign State in which the person was sentenced is suspended at the moment when the authorities of the Republic of Macedonia take the sentenced person into charge.

(2) The domestic legislation shall apply for the remainder of the enforcement in terms of pardoning, amnesty, or commutation of sentence in accordance with the Constitution or with an international agreement.

Article 99 - Review of judgement and termination of enforcement

(1) Only the foreign State which has rendered the criminal judgement may decide on any request for repetition of the procedure.

(2) The domestic subject-matter jurisdiction court shall stop the enforcement of the sentence as soon as the foreign competent authority notifies it about the decision or the resolution to terminate the enforcement.

Article 100 - Information on enforcement

The domestic subject-matter jurisdiction court shall inform the foreign competent authority on the State of the enforcement if:

- 1) it considers enforcement of the sentence to have been completed;
- 2) the sentenced person has escaped from custody before enforcement of the sentence has been completed
- 3) the foreign competent authority so requests.

Article 101- Costs

Costs incurred due to enforcement of foreign criminal judgements are borne by the Republic of Macedonia, except for the costs incurred exclusively in the foreign State.

Article 102 - Delivery of a sentenced person

Delivery of a sentenced person supposed to serve out his or her sentence shall be carried out by Ministry of Interior of the Republic of Macedonia - International Criminal Police Organisation - Interpol.

Article 103 - Transit

(1) If a foreign State files a request to another foreign State for transfer of a sentenced person in order to serve out his or her sentence and the delivery has to be carried out in the territory of the Republic of Macedonia, the transit may be granted by the Ministry at the request of the State concerned, in accordance with conditions laid down in this Law on delivery of sentenced persons due to enforcement.

(2) If during the handover of a sentenced person who is a citizen of the Republic of Macedonia by the foreign sentencing State there is no direct flight, the Ministry will ask the Ministry of Justice of a third State for permission to use its territory for flyover or transit.

The former Yugoslav Republic of Macedonia referred to the following bilateral or multilateral agreements or arrangements:

1. Agreement between the Government of Republic of Macedonia and the Government of Republic of Albania for mutual execution of judicial decisions in criminal cases (Official Gazette of the Republic of Macedonia No. 16/98) entered into force on 02.10.1998;
2. Agreement between Republic of Macedonia and Bosnia and Herzegovina for reciprocal execution of judicial decisions in criminal matters (Official Gazette of the Republic of Macedonia No.59/06). On 12.03.2013, the Minister of justice of Republic of Macedonia and the Minister of justice of Bosnia and Herzegovina signed Agreement for changes and addenda to the Agreement for reciprocal execution of judicial decisions in criminal matters reciprocal execution of judicial decisions in criminal matters (Official Gazette of the Republic of Macedonia No.135/2013) – still not entered into force;
3. Agreement between Republic of Macedonia and Serbia and Monte Negro for mutual legal assistance in civil and criminal matters (Official Gazette of the Republic of Macedonia No. 77/04). On 20.12.2013, at the international conference held in Budva, Monte Negro, the Ministers of justice of Republic of Macedonia and Monte Negro signed Agreement between Republic of Macedonia and Monte Negro for mutual execution of judicial decisions in criminal matters;
4. Agreement between Republic of Macedonia and Republic of Croatia for mutual execution of judicial decisions in criminal matters (Official Gazette of the Republic of Macedonia No.17/95) – entered into force on 26.05.1995;
5. Agreement between Republic of Macedonia and Republic of Slovenia for mutual execution of judicial decisions in criminal matters (Official Gazette of the Republic of Macedonia No. 24/96) – entered into force on 05.09.1997;
6. Agreement between Republic of Macedonia and Republic of Serbia for mutual execution of judicial decisions in criminal matters (Official Gazette of the Republic of Macedonia No. 24/13) – entered into force on 23.02.2013;
7. Agreement for mutual legal cooperation in civil and criminal matters between Republic of Macedonia and Republic of Turkey (Official Gazette of the Republic of Macedonia No. 23/97) – entered into force on 28.07.2000

(b) Observations on the implementation of the article

The Law on international cooperation in criminal matters provides for the transfer of sentenced persons. the former Yugoslav Republic of Macedonia is also a party to the Council of Europe Convention on the Transfer of Sentenced Persons and its Additional Protocol and has signed multiple bilateral agreements on the Transfer of Sentenced Persons.

The article under review is legislatively implemented, although no case examples or statistics were provided.

(c) Challenges, where applicable

The former Yugoslav Republic of Macedonia has identified the following challenges and issues in fully implementing the provision under review:

1. Limited resources for implementation

(d) Technical assistance needs

The former Yugoslav Republic of Macedonia has indicated that the following forms of technical assistance, if available, would assist it in better implementing the article under review:

1. Summary of good practices/lessons learned;
2. Legal advice
3. On-site assistance by a relevant expert
4. The need for a relevant software for collecting, keeping and processing statistical data for cases of extradition and other types of mutual legal assistance.
5. The need for general training in application of this Convention in the area of extradition and other types of mutual legal assistance.

Article 46 Mutual legal assistance

The former Yugoslav Republic of Macedonia noted that there were no statistics regarding the international legal instruments.

Article 46 Mutual legal assistance

Paragraph 1

1. States Parties shall afford one another the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to the offences covered by this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

Reference was made to the following provisions:

Law on international cooperation in criminal matters

CHAPTER II - INTERNATIONAL LEGAL ASSISTANCE

Article 15- Concept

The international legal assistance shall include:

- enforcement of procedural actions such as delivery of documents, written evidence and acts related to the criminal proceedings in the sending State;
- delivery of spontaneous information;
- exchange of certain information and notifications;
- temporary transfer of persons deprived of freedom;
- cross-border observation;
- controlled delivery;
- using persons with hidden identity;
- joint investigation teams;
- monitoring communications;
- interrogation through video conference;
- interrogation through telephone conference;
- searching of premises and persons;
- temporary security of items, property or means related to the criminal offence;
- temporary freezing, confiscation and retention of assets, bank accounts and financial transactions or incomes from a criminal offence;

- confiscation of property and property benefits;
- deprivation of items;
- protection of personal data;
- criminal and civil liability of officials, and
- delivery of extracts from criminal records.

Rejection of international cooperation

Article 10

(1) The domestic competent authority shall reject the letter rogatory if:

- 1) acting upon it is contrary to the Constitution of the Republic of Macedonia or it violates the sovereignty, the security and the safety of the Republic of Macedonia;
- 2) it refers to an act that is considered as a political criminal offence or an act that is related to a political criminal offence;
- 3) it refers to a criminal offence that is related to violation of the military duty, and
- 4) it can be reasonably assumed that the person whose extradition is requested was criminally prosecuted or sentenced because of its racial, ethnical and social affiliation or because of his or her political or religious beliefs in the time of extradition, respectively that his or her position would become more difficult because of one of those reasons.

(2) The domestic competent authority shall reject the request if:

- 1) the proceedings in the Republic of Macedonia against the accused for the same criminal offence has been stopped as a result of material legal reasons or the person has been acquitted or has been released from a sentence or the sanction has been enforced or it cannot be enforced according to the legislation of the State where the verdict has been reached;
- 2) a criminal proceedings has been initiated in the Republic of Macedonia against the accused for the same criminal offence, and
- 3) the criminal prosecution, the enforcement of the sanction, the safety and the protection measures are excluded because of absolute prescription according to the legislation of the Republic of Macedonia.

(3) The provisions from paragraph (2), number 1 and 3 of this article shall not be applied in cases when there is a repetition of the criminal proceedings in the Republic of Macedonia.

(4) The decision for rejection of the letter rogatory or of the request shall be elaborated unless otherwise specified by an international agreement.

(b) Observations on the implementation of the article

The Law on international cooperation in criminal matters provides for a wide range of mutual legal assistance measures.

The provision under review is legislatively implemented, although no case examples or statistics were provided.

Article 46 Mutual legal assistance

Paragraph 2

2. Mutual legal assistance shall be afforded to the fullest extent possible under relevant laws, treaties, agreements and arrangements of the requested State Party with respect to investigations, prosecutions and judicial proceedings in relation to the offences for which a legal person may be held liable in accordance with article 26 of this Convention in the requesting State Party.

(a) Summary of information relevant to reviewing the implementation of the article

The mutual legal assistance can be provided for all the criminal offences stipulated in the Criminal Code of the Republic of Macedonia, among which is Criminal liability for legal person, which is already cited above in the preceding provisions.

Reference was made to the following provisions:

Criminal Code

Criminal accountability of a legal entity

Conditions for criminal accountability of a legal entity

Article 28-a

In cases as prescribed by law, the legal entity is liable for the criminal act committed by the responsible person of the legal entity, on behalf, on the account or for the benefit of the legal entity.

(2) The legal entity is also liable for a criminal act which is committed by its employee or representative of the legal entity that resulted in significant benefit in assets or resulted in damages for someone else, if:

- 1) the execution of a conclusion, order or any other decision or approval by administrative body, management body or supervisory body, means perpetration of a criminal act; or
- 2) the crime was committed due to omission of obligatory supervision by the administrative body, management body or supervisory body; or
- 3) the administrative body, management body or supervisory body failed to prevent the criminal act or concealed it or failed to report the crime before the initiation of criminal proceeding against the perpetrator.

(1) Under the terms specified in paragraphs (1) and (2) of this article, all legal entities are liable, with the exception of the State.

(2) The Self-Government units are liable only for acts committed outside their public competences.

(4) Under the conditions specified in paragraphs (1) and (2) of this article, a foreign legal entity is criminally liable, if the act has been committed within the territory of the Republic of Macedonia, regardless whether there is a representative office or subsidiary of the legal entity that operates within the territory of the country.

The former Yugoslav Republic of Macedonia noted that in all national laws, the word “person” when mentioned without specification (legal/natural/public...), refers to all kinds of persons including legal entities.

So far there are no cases of application of UNCAC as base for international legal assistance.

(b) Observations on the implementation of the article

Although mutual legal assistance in relation to the offences for which a legal person may be held liable is not specifically prescribed in LICCM, the national experts made relation to the corresponding provision from the Criminal Code, thus making this provision implemented in the national legislation.

Article 46 Mutual legal assistance

Subparagraphs 3 (a) to (i)

3. Mutual legal assistance to be afforded in accordance with this article may be requested for any of the following purposes:

- (a) Taking evidence or statements from persons;*
- (b) Effecting service of judicial documents;*
- (c) Executing searches and seizures, and freezing;*
- (d) Examining objects and sites;*
- (e) Providing information, evidentiary items and expert evaluations;*
- (f) Providing originals or certified copies of relevant documents and records, including government, bank, financial, corporate or business records;*
- (g) Identifying or tracing proceeds of crime, property, instrumentalities or other things for evidentiary purposes;*
- (h) Facilitating the voluntary appearance of persons in the requesting State Party;*
- (i) Any other type of assistance that is not contrary to the domestic law of the requested State Party;*

(a) Summary of information relevant to reviewing the implementation of the article

The former Yugoslav Republic of Macedonia noted that the provision of the Article 15 of the Law on international cooperation in criminal matters is intentionally made to be general and vague, with aim to include as many as possible measures. This article covers all the type of MLA referred to in Subparagraphs 3 (a) to (i).

Subparagraph 3 (g) is also incorporated in the article 200 of the Criminal procedure code

Article 200

Handling information constituting a bank secret, property in a bank safe-deposit box, monitoring of payment operations and accounts transactions and temporary suspension of the performance of certain financial transactions

(1) If there is a grounded suspicion that a certain person receives, holds, transfers or otherwise manages crime proceeds on his or her bank account, and if the proceeds are important for the investigative procedure of that crime, or it is subject to forcible seizure according to the law, the court, upon an elaborated request by the public prosecutor, may issue a decision ordering the bank or other financial institutions to supply all documentation and data on the bank accounts and other financial transactions and dealings of that person, as well as for persons for which there is a grounded suspicion that they are involved in those financial transactions or dealings of the suspect, if such information may be used as evidence during the criminal procedure.

(2) The request of the public prosecutor shall refer to information on natural or legal persons, and to all crime proceeds that he or she receives, holds, transfers or otherwise manages.

(3) If the person as referred to in Article 1 holds in a bank safe-deposit box or otherwise manages crime proceeds, and if the crime proceeds are important for the investigative procedure of that crime or is subject to forcible seizure according to the law, the court, upon an elaborated request by the public prosecutor, may issue a decision instructing the bank to enable access to the public prosecutor to the safe-deposit box.

(4) The decisions referred to in paragraphs 1 and 3 of this Article shall also contain the deadline within which the bank or another financial institution must act upon them.

(5) Before the beginning and in the course of the investigative procedure, the ruling on the request by the public prosecutor as referred to in paragraphs 1 and 3 of this Article, shall be rendered by the judge of the preliminary procedure, and after the indictment has been raised, by the court which shall hold the hearing. The preliminary procedure judge shall decide upon the request by the public prosecutor immediately, and no later than within 12 hours from the receipt of the request. If the preliminary procedure judge overrules the request by the public prosecutor, without any delay, he or she shall ask for a decision to be brought by the Trial Chamber referred to in Article 25, paragraph 5 of this Law. The Trial Chamber shall render a decision within 24 from the receipt of the request.

(6) If circumstances as referred to in paragraph 1 of this Article exist, the preliminary procedure judge, upon an elaborated proposal by the public prosecutor, may instruct the bank or another financial institution with a decision, to monitor the payment operations and the transactions in the accounts of a certain person and regularly inform the public prosecutor during the time period defined in the decision.

(7) Upon an elaborated proposal by the public prosecutor, with a decision, the court may instruct a financial institution or a legal person to temporarily stop the performance of a certain financial transaction or dealing, whilst temporarily seizing the property.

(8) In emergencies, the public prosecutor may impose the measures as referred to in paragraphs 1, 3, 6 and 7 of this Article without a court order. The public prosecutor shall immediately inform the preliminary procedure judge about the undertaken measures, who shall be obliged to issue the order within 72 hours.

If the preliminary procedure judge does not issue an order, the public prosecutor shall return the data without previously opening them.

The former Yugoslav Republic of Macedonia noted that article 15 of the Law on international cooperation in criminal matters has been applied in many practical cases to facilitate the voluntary appearance of persons in the requesting State Party. Such cases were not related to corruption offences but to other criminal acts such as trafficking in persons, paedophilia cases and similar. In one case, a foreign State requested that a Macedonian citizen testifies before one of its courts. Through the International Legal Assistance Department of the Ministry of Justice, and then through the court, an invitation was submitted to this person. The person agreed to testify. The ILAD of the MJ informed the foreign country. The person appeared before the court of this country who covered the expenses of the assistance provided.

(b) Observations on the implementation of the article

Article 15 of the Law on international cooperation in criminal matters provides for the forms of mutual assistance listed in the provisions under review.

Subparagraphs 3 (a) to (i)

3. Mutual legal assistance to be afforded in accordance with this article may be requested for any of the following purposes:

...

(j) Identifying, freezing and tracing proceeds of crime in accordance with the provisions of chapter V of this Convention;

(k) The recovery of assets, in accordance with the provisions of chapter V of this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

Reference was made to the following provisions:

Law on international cooperation in criminal matters

Article 15, item 14

- temporary freezing, confiscation and retention of assets, bank accounts and financial transactions or incomes from a criminal offence;

Article 26

Transfer of temporary seized objects, documents and property benefits

(1) The objects, documents and property benefits that were temporary seized, as well as the records and the decisions for temporary seizure, shall be transferred to the foreign competent authority at its request after the termination of the proceeding for international legal assistance in the Republic of Macedonia.

(2) The objects, documents and property benefits from paragraph (1) of this article shall be transferred to the foreign competent authority if:

- the foreign competent authority guarantees their return without reimbursement after the termination of the procedure of taking evidence;

- the third person proves that he or she was not notified and couldn't know that the object, the document or the property benefits have been acquired with a criminal offence; and

- the injured party with residence or domicile in the Republic of Macedonia or the State authority emphasizes its right to the submitted items, documents and property benefits.

(3) In case of criminal proceedings in progress before a domestic judicial authority the transfer shall be adjourned until the effective termination of the proceedings.

Confiscation of property and property benefits

Article 27

(2) The money obtained from the enforcement of the property confiscation order shall be at the disposal of the Republic of Macedonia as follows:

1) if the amount obtained from the enforcement of the confiscation order is lower than 10,000 EUR or equal to that amount, the amount shall flow into the Budget of the Republic of Macedonia, and

2) in all other cases the Republic of Macedonia shall transfer 50% of the amount obtained from the enforcement of the confiscation order to the foreign State.

Transfer of seized objects and property benefits

Article 28

(1) The objects and the property benefits seized in order to protect them can be transferred to the foreign competent authority at its request.

(2) The objects and the property benefits from paragraph (1) shall include the following:

1) objects the criminal offence was committed with;

2) objects that resulted from the committed criminal offence or their equivalent value, the incomes from the criminal offence or their equivalent value, and

3) the presents given in order to stimulate the committing of criminal offence, as well as the rewards for the criminal offence or their equivalent value.

(3) The transfer of the objects and the property benefits from paragraph (1) of this article can be realised

on the basis of an effective and enforceable decision by the foreign competent authority.

(4) The objects and the property benefits from paragraph (1) of this article shall be permanently kept in the Republic of Macedonia if:

- 1) those represent goods under temporary protection or cultural inheritance or if they are natural rarities of the Republic of Macedonia;
- 2) the injured party is has its residence or domicile in the Republic of Macedonia and they shall be returned to him/her;
- 3) the domestic competent authority emphasises the right of the Republic of Macedonia to them;
- 4) the person has his or her residence or domicile in the Republic of Macedonia and did not participate in committing the criminal offence, or proves that it didn't know and couldn't know that the object or the property benefits have been acquired through committing a criminal offence in the Republic of Macedonia or abroad;
- 5) they are required for the implementation of a criminal proceeding that is in progress in the Republic of Macedonia;
- 6) they are required for introduction of the measure for confiscation of property and property benefits and seizure of the objects, and
- 7) those represent objects that must be seizure according to the Criminal Code.

Temporary measures

Article 29

(1) At the request of the foreign competent authority the domestic judicial authority shall introduce temporary measures for collecting evidence material and for security of the collected evidence or for protection of the endangered legal interests.

(2) The domestic judicial authority can act partially upon the request from paragraph (1) of this article or it may temporary limit the implementation of the letter rogatory.

(b) Observations on the implementation of the article

The Law on international cooperation in criminal matters provides for the forms of mutual assistance listed in the provisions under review.

Article 46 Mutual legal assistance

Paragraphs 4 and 5

4. Without prejudice to domestic law, the competent authorities of a State Party may, without prior request, transmit information relating to criminal matters to a competent authority in another State Party where they believe that such information could assist the authority in undertaking or successfully concluding inquiries and criminal proceedings or could result in a request formulated by the latter State Party pursuant to this Convention.

5. The transmission of information pursuant to paragraph 4 of this article shall be without prejudice to inquiries and criminal proceedings in the State of the competent authorities providing the information. The competent authorities receiving the information shall comply with a request that said information remain confidential, even temporarily, or with restrictions on its use. However, this shall not prevent the receiving State Party from disclosing in its proceedings information that is exculpatory to an accused person. In such a case, the receiving State Party shall notify the transmitting State Party prior to the disclosure and, if so requested, consult with the transmitting State Party. If, in an exceptional case, advance notice is not possible, the receiving State Party shall inform the transmitting State Party of the disclosure without delay.

(a) Summary of information relevant to reviewing the implementation of the article

Reference was made to the following provisions:

Law on international cooperation in criminal matters

Article 25 - Delivery of spontaneous information

(1) The domestic judicial authority has the right, under the principle of mutuality and without receiving previous letter rogatory, to deliver to the foreign competent authority information for crimes, which have been collected during its own investigations, if it considers that the delivery of such information might help to initiate or conduct an investigation or court proceeding or it might lead to sending letter rogatory for international legal assistance.

(2) The domestic judicial authority shall ask the foreign competent authority, to which the information from paragraph (1) of this article has been delivered, to submit a report on all activities that have been undertaken on the basis of this information, as well as to deliver transcript of all decisions that have been reached.

(3) According to the regulations for protection of personal data, the domestic judicial authority that delivered the information from paragraph (1) of this article has the right to set certain conditions for the usage of the information in the foreign State where it has been delivered.

Article 41 - Protection of personal data

(1) The personal data transferred from the Republic of Macedonia to a foreign State as a result of implementation of a letter rogatory on the basis of this Law may be used by the foreign State only for:

- a) the needs of the proceedings;
- b) the needs of other court or administrative proceedings directly related to the proceedings; and
- c) prevention of direct and serious danger to public safety.

(2) As an exception of paragraph (1) of this article the transferred personal data from the Republic of Macedonia to a foreign State may be used for other purposes only upon previous consent of the person whose data are subject to transfer or if they are from the Republic of Macedonia.

(3) The Republic of Macedonia may refuse a transfer of personal data if:

- a) the personal data are protected according to the domestic legislation; and b) the foreign State hasn't ratified the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data of the Council of Europe from 28 January 1981 and the Additional Protocol to the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data regarding supervisory authorities and transborder data flow.

(4) When the Republic of Macedonia transfers data received from a foreign State because of an execution of a certain request delivered on the basis of this Law, it can request the foreign State to which the data have been transferred to deliver information about their application.

(5) The personal data subject to transfer to a foreign State shall be deleted or destroyed immediately if it has been determined that they are not correct, or if the reasons, respectively the conditions for their transfer terminated.

(6) The person whose data are or will be subject to transfer may request to be notified about the transferred personal data and about the purpose of their processing if that is in accordance with the domestic legislation.

Confidentiality

Article 30

(1) The foreign competent authority can ask the Ministry and the domestic judicial authority that the letter rogatory remains confidential unless it is required for its implementation.

(2) If it is not possible to implement the letter rogatory from paragraph (1) of this article, the foreign competent authority shall be notified immediately.

If the data are confidential in a foreign State, than they will also be confidential in the Republic of Macedonia.

Law on classified information (Official Gazette of RM No 9/2004, 113/2007, 145/10 и 80/12 and 41/2014)

Article 5

3. "Classified information" is information which is protected against unauthorized access or use and is marked with level of classification.

Classified information of foreign countries and international organizations

Article 21

Classified information from foreign countries or international organizations which have concluded international agreements with the Republic of Macedonia, or the Republic of Macedonia has joined, keep the marking of the level of classification that is used in that country or international organization.

(b) Observations on the implementation of the article

The former Yugoslav Republic of Macedonia would comply with a request for confidentiality, if that was not possible, it will notify the foreign requesting authorities immediately.

The former Yugoslav Republic of Macedonia legislation is in line with the provisions under review.

Article 46 Mutual legal assistance

Paragraph 8

8. States Parties shall not decline to render mutual legal assistance pursuant to this article on the ground of bank secrecy.

(a) Summary of information relevant to reviewing the implementation of the article

Reference was made to the following provisions:

Law on criminal procedure (Official Gazette of the Republic of Macedonia No. 150/2010):

Article 200

Handling information constituting a bank secret, property in a bank safe-deposit box, monitoring of payment operations and accounts transactions and temporary suspension of the performance of certain financial transactions

- (1) If there is a grounded suspicion that a certain person receives, holds, transfers or otherwise manages crime proceeds on his or her bank account, and if the proceeds are important for the investigative procedure of that crime, or it is subject to forcible seizure according to the law, the court, upon an elaborated request by the public prosecutor, may issue a decision ordering the bank or other financial institutions to supply all documentation and data on the bank accounts and other financial transactions and dealings of that person, as well as for persons for which there is a grounded suspicion that they are involved in those financial transactions or dealings of the suspect, if such information may be used as evidence during the criminal procedure.
- (2) The request of the public prosecutor shall refer to information on natural or legal persons, and to all crime proceeds that he or she receives, holds, transfers or otherwise manages.
- (3) If the person as referred to in Article 1 holds in a bank safe-deposit box or otherwise manages crime proceeds, and if the crime proceeds are important for the investigative procedure of that crime or is subject to forcible seizure according to the law, the court, upon an elaborated request by the public prosecutor, may issue a decision instructing the bank to enable access to the public prosecutor to the safe-deposit box.
- (4) The decisions referred to in paragraphs 1 and 3 of this Article shall also contain the deadline within which the bank or another financial institution must act upon them.
- (5) Before the beginning and in the course of the investigative procedure, the ruling on the request by the public prosecutor as referred to in paragraphs 1 and 3 of this Article, shall be rendered by the judge of the preliminary procedure, and after the indictment has been raised, by the court which shall hold the hearing. The preliminary procedure judge shall decide upon the request by the public prosecutor immediately, and no later than within 12 hours from the receipt of the request. If the preliminary procedure judge overrules the request by the public prosecutor, without any delay, he or she shall ask for a decision to be brought by the Trial Chamber referred to in Article 25, paragraph 5 of this Law. The Trial Chamber shall render a decision within 24 from the receipt of the request.
- (6) If circumstances as referred to in paragraph 1 of this Article exist, the preliminary procedure judge, upon an elaborated proposal by the public prosecutor, may instruct the bank or another financial institution with a decision, to monitor the payment operations and the transactions in the accounts of a certain person and regularly inform the public prosecutor during the time period defined in the decision.

- (7) Upon an elaborated proposal by the public prosecutor, with a decision, the court may instruct a financial institution or a legal person to temporarily stop the performance of a certain financial transaction or dealing, whilst temporarily seizing the property.
- (8) In emergencies, the public prosecutor may impose the measures as referred to in paragraphs 1, 3, 6 and 7 of this Article without a court order. The public prosecutor shall immediately inform the preliminary procedure judge about the undertaken measures, who shall be obliged to issue the order within 72 hours. If the preliminary procedure judge does not issue an order, the public prosecutor shall return the data without previously opening them.

Article 287

Duty to deliver the requested information to the public prosecutor

- (1) Upon request by the public prosecutor, State entities, units of the local self-government, organizations, natural and legal persons with public authority and other legal entities shall be obliged to deliver the information that he or she requested. The public prosecutor may ask these entities to control the work of a legal or natural person and temporary seizure of money, securities, objects and documents that may be used as evidence, until the enactment of a final and enforceable judgment, to perform tax revisions and ask for data that may serve as evidence of a committed criminal offense or property acquired through the commission of a criminal offense, perform inspection and ask for reports on information related to unusual and suspicious financial transactions.
- (2) Any entities referred to in paragraph 1 of this Article shall be obliged to deliver to the public prosecutor any data, notifications, documents, objects, bank account information and files that he or she might need during the procedure. The public prosecutor shall have the right to ask for data and information, documents, files, objects and bank accounts information also from other legal persons and citizens, for whom he or she reasonably believes that they dispose of such data and information.
- (3) Any entities referred to in paragraph 1 of this Article shall be obliged to undertake the necessary measures immediately and in a period not longer than 30 days, deliver to the public prosecutor all requested data, information, documents, objects, bank accounts information or files.
- (4) If the entities referred to in paragraph 1 of this Article fail to act in accordance with paragraph 3 of this article, the public prosecutor may suggest to the court to issue a fine in the amount of 2,500 to 5000 Euro payable in Macedonian Debars for the responsible person i.e. official representative person of the entities referred to in paragraph 1 of this Article.
- (5) The public prosecutor on his or her own, may secure and examine the requested data, notifications, documents, objects, bank accounts or files, and if they are not provided or delivered he should inform the responsible person, i.e. the official representative person of the entity that he contacted, and the prosecutor may propose for an appropriate measures to be taken as prescribed by the law.
- (6) If, in accordance with paragraph 5 of this Article, the public prosecutor proposed for an appropriate measures to be taken, the responsible person i.e. the official representative person of the entity or the person, whom he or she contacted, within a period of 30 days, shall be obliged to inform him or her about any measures that have been taken.
- (7) Any access to bank accounts pursuant to paragraphs 1, 2 and 3 of this Article shall not constitute a banking secret violation.
- (8) Upon request from the public prosecutor the operators of public communications networks and providers of public communication services shall be obligated to submit data on any established contacts in the communication traffic.

(b) Observations on the implementation of the article

The former Yugoslav Republic of Macedonia seems to be in line with the provision under review as bank secrecy is not one of the grounds to decline mutual legal assistance requests, enumerated in Article 10 of the Law on international cooperation in criminal matters.

Article 46 Mutual legal assistance

Paragraph 9

(a) A requested State Party, in responding to a request for assistance pursuant to this article in the absence of dual criminality, shall take into account the purposes of this Convention, as set forth in article 1;

(b) States Parties may decline to render assistance pursuant to this article on the ground of absence of dual criminality. However, a requested State Party shall, where consistent with the basic concepts of its legal system, render assistance that does not involve coercive action. Such assistance may be refused when requests involve matters of a de minimis nature or matters for which the cooperation or assistance sought is available under other provisions of this Convention;

(c) Each State Party may consider adopting such measures as may be necessary to enable it to provide a wider scope of assistance pursuant to this article in the absence of dual criminality.

(a) Summary of information relevant to reviewing the implementation of the article

Dual criminality is required, according to Law on international cooperation in criminal matters, for the extradition and for the transfer of criminal prosecution:

Assumption of criminal proceedings

Article 43

- (1) The criminal proceeding shall be assumed only when the criminal offence about which a prosecution is requested is a criminal offence according to the domestic legislation.
- (2) If the criminal proceeding has been assumed, it shall be conducted according to the domestic legislation.
- (3) The law of the foreign country in relation to the type and amount of the criminal sanction shall be applied if it is milder for the accused in the criminal proceedings.
- (4) The criminal proceedings shall not be conducted in absence of the accused.

Preconditions for extradition

Article 52

The preconditions for authorising extradition shall be the following:

- 4) the offence for which extradition has been requested shall be a criminal offence both according to the domestic legislation and according to the legislation of the State where it was committed and which requested the extradition;

Dual criminality is also required, according to the Criminal code, in other cases:

Criminal Code

Article 120

- (3) In the cases referred to in Articles 118 and 119, prosecution shall be initiated only when the crime is punishable according to the law of the country in which the crime was committed. When in the cases referred to in Article 118 and Article 119, paragraph 1, there is no sentence for the committed crime according to the law in the country of commission, prosecution may be initiated only after approval from the Public Prosecutor of the Republic of Macedonia.
- (4) Only after approval from the Public Prosecutor of the Republic of Macedonia may prosecution be initiated in the Republic of Macedonia in the cases referred to in Article 119, paragraph 2, regardless of the law of the country where the crime was committed, if this concerns a crime which, at the time it was committed, was considered to be a crime according to the general legal principles, recognized by the international community.

Application of the criminal legislature to a citizen of the Republic of Macedonia who commits a crime abroad

Article 118

The criminal legislature shall also be applicable to a citizen of the Republic of Macedonia when he commits a crime abroad, except for the crimes listed in Article 117, if he finds himself on the territory of the Republic of Macedonia or is extradited.

Application of the criminal legislature to a foreigner who commits a crime abroad

Article 119

- (1) The criminal legislature shall also be applicable to a foreigner who commits a crime outside the territory of the Republic of Macedonia but directed against her or against her citizen, also when this does not concern the crimes listed in Article 117, if he finds himself on the territory of the Republic of Macedonia or is extradited.

(2) The criminal legislature shall also be applicable to a foreigner who commits a crime abroad, against a foreign country or a foreigner, who according to that legislature may be sentenced to five years of imprisonment or to a more severe punishment, in case he finds himself on the territory of the Republic of Macedonia, and is not extradited to the foreign country. Unless otherwise determined by this Code, in such a case the court may not pronounce a more severe punishment than the one prescribed by law of the country of commission of the crime.

However, dual criminality is not a general precondition to render mutual legal assistance nor it is one of the grounds to decline mutual legal assistance requests, enumerated in Article 10 of the Law on international cooperation in criminal matters.

(b) Observations on the implementation of the article

Dual criminality is not precondition to render mutual legal assistance according to the Law on international cooperation in criminal matters, which also does not foresee refusing such requests solely on the ground that it involves matters of *de minimis* nature.

The provision under review is legislatively implemented, although no case examples were available.

The reviewing experts positively noted the fact that mutual legal assistance is not subject to the dual criminality requirement.

Article 46 Mutual legal assistance

Paragraph 10

10. A person who is being detained or is serving a sentence in the territory of one State Party whose presence in another State Party is requested for purposes of identification, testimony or otherwise providing assistance in obtaining evidence for investigations, prosecutions or judicial proceedings in relation to offences covered by this Convention may be transferred if the following conditions are met:

(a) The person freely gives his or her informed consent;

(b) The competent authorities of both States Parties agree, subject to such conditions as those States Parties may deem appropriate.

(a) Summary of information relevant to reviewing the implementation of the article

Reference was made to the following provisions:

Law on international cooperation in criminal matters

Postponed and temporary handover

Article 69

(1) The Minister may decide to postpone the extradition if the person whose extradition is requested has criminal proceedings pending in a domestic judicial authority for another criminal act, or if the person whose extradition is requested is serving a prison sentence in Macedonia.

(2) The Minister may decide to deliver the person whose handover was postponed to the foreign State in order to implement urgent procedural actions, if it does not result in harmful consequences to the criminal proceedings being conducted before the national judicial authorities, and if the foreign State guarantees that it will keep the person in custody during his or her stay in the foreign State, and that it will return the person in Macedonia within the deadline determined by the Ministry

Temporary extradition and transit of person deprived of freedom

Article 23

(1) If for the needs of an investigation or criminal proceedings which is in progress in a foreign State the foreign competent authority delivers a summons for a detained person or a person who is serving a prison sentence in the

Republic of Macedonia to be interrogated in capacity of a witness or because of confrontation, the Republic of Macedonia may temporarily extradite this person to the foreign country.

(2) The decision for temporary extradition of the requested person shall be made by the criminal council of the competent court after receiving a previous opinion of the State prosecutor.

(3) The person from paragraph (1) of this article shall be temporarily extradited to the foreign competent authority if it provides a guarantee in respect of his or her protection and under the condition the person to be returned in a period specified by the Republic of Macedonia.

(4) The domestic judicial authority can reject the temporary extradition if:

- the person deprived of freedom does not give a consent to the minutes for his or her temporary extradition;
- the temporary extradition of the person deprived of freedom leads to a prolongation of his or her deprivation of freedom, and
- there are other reasons that are contrary to the temporary extradition.

(5) The temporary extradition can be adjourned if the presence of the person deprived of freedom is necessary in a criminal proceedings conducted before the domestic judicial authorities.

(6) In the case of paragraph (1) from this article, the temporarily extradited person remains in custody in the foreign State for the needs of a proceeding before the foreign competent authority until his or her return to the Republic of Macedonia.

(7) When a third State shall extradite a detained person or a person serving a prison sentence to another State through the territory of the Republic of Macedonia and if that person is not a citizen of the Republic of Macedonia, the transit of the person shall be approved by the Minister of Justice of the Republic of Macedonia.

Article 92 - Request for transfer

(5) The request under paragraph (1) of this Article will be considered only if the sentenced person gives his or her consent to be transferred to the country of citizenship.

Article 96 - Conditions for transfer

6) Republic of Macedonia and the foreign State reach agreement on terms for the transfer.

(b) Observations on the implementation of the article

The provision under review is legislatively implemented, although no case examples were available.

Article 46 Mutual legal assistance

Paragraph 11

11. For the purposes of paragraph 10 of this article:

(a) The State Party to which the person is transferred shall have the authority and obligation to keep the person transferred in custody, unless otherwise requested or authorized by the State Party from which the person was transferred;

(b) The State Party to which the person is transferred shall without delay implement its obligation to return the person to the custody of the State Party from which the person was transferred as agreed beforehand, or as otherwise agreed, by the competent authorities of both States Parties;

(c) The State Party to which the person is transferred shall not require the State Party from which the person was transferred to initiate extradition proceedings for the return of the person;

(d) The person transferred shall receive credit for service of the sentence being served in the State from which he or she was transferred for time spent in the custody of the State Party to which he or she was transferred.

(a) Summary of information relevant to reviewing the implementation of the article

Reference was made to the previous answer.

(b) Observations on the implementation of the article

The provision under review is legislatively implemented, although no case examples were available.

Article 46 Mutual legal assistance

Paragraph 12

12. Unless the State Party from which a person is to be transferred in accordance with paragraphs 10 and 11 of this article so agrees, that person, whatever his or her nationality, shall not be prosecuted, detained, punished or subjected to any other restriction of his or her personal liberty in the territory of the State to which that person is transferred in respect of acts, omissions or convictions prior to his or her departure from the territory of the State from which he or she was transferred.

(a) Summary of information relevant to reviewing the implementation of the article

Reference was made to the following provisions:

Law on international cooperation in criminal matters

Principle of speciality

Article 51

The extradited person cannot be prosecuted, brought into court or subject to a sentence or any other measure of deprivation of freedom or extradited to another State for any criminal offence committed prior to the extradition, and which is not subject of the extradition, unless:

- 1) the competent authority gives authorization for the extradition and delivers documents in accordance with Article 58 of this Law together with a statement for the minutes by the extradited person or
- 2) the extradited person did not leave the territory of the State to which he or she was extradited despite having the possibility to do so in a period of 45 days after the day of his release, or if the persons returns in the territory after leaving it first.

(b) Observations on the implementation of the article

The provision under review is legislatively implemented, although no case examples were available.

Article 46 Mutual legal assistance

Paragraph 13

13. Each State Party shall designate a central authority that shall have the responsibility and power to receive requests for mutual legal assistance and either to execute them or to transmit them to the competent authorities for execution. Where a State Party has a special region or territory with a separate system of mutual legal assistance, it may designate a distinct central authority that shall have the same function for that region or territory. Central authorities shall ensure the speedy and proper execution or transmission of the requests received. Where the central authority transmits the request to a competent Authority for execution, it shall encourage the speedy and proper execution of the request by the competent authority. The Secretary-General of the United Nations shall be notified of the central authority designated for this purpose at the time each State Party deposits its instrument of ratification, acceptance or approval of or accession to this Convention. Requests for mutual legal assistance and any communication related thereto shall be transmitted to the central authorities designated by the States Parties. This requirement shall be without prejudice to the right of a State Party to require that such requests and communications be addressed to it through diplomatic channels and, in urgent circumstances, where the States Parties agree, through the International Criminal Police Organization, if possible.

(a) Summary of information relevant to reviewing the implementation of the article

The Ministry of justice of the Republic of Macedonia, through the Ministry of foreign affairs of the Republic of Macedonia, with the act No. 14-1767/1 of 19.03.2008, has designated the Ministry of justice - Department for international legal assistance - as a central authority which has responsibility and power to receive requests for mutual legal assistance, to execute and to transmit them.

The Ministry of foreign affairs has notified for this the Secretary General of the UN.

Regarding the other elements of this provision:

Article 6 - Ways of communication

(2) The letter rogatory or the request by the foreign competent authority shall be sent in written, through the Ministry of Justice (herein after referred to as: the Ministry).

(5) If an international agreement does not exist or if under the international agreement a diplomatic way of communication is not provided, the Ministry shall send the letter rogatory or the request using the diplomatic way through the Ministry of Interior.

(b) Observations on the implementation of the article

The former Yugoslav Republic of Macedonia has established a central authority in accordance with the provision under review. It has also made the following requisite declaration to the United Nations on 16 April 2008:

“In accordance with Article 46, paragraph 13 of the Convention, the central authority responsible and authorized to receive requests for mutual legal assistance and either to execute them or to transmit them to the competent authorities for execution is the Ministry of Justice – Department for international legal assistance. Pursuant to Article 46, paragraph 14 of the Convention, the language acceptable to the Republic of Macedonia is Macedonian.”

The provision under review is implemented.

Article 46 Mutual legal assistance

Paragraph 14

14. Requests shall be made in writing or, where possible, by any means capable of producing a written record, in a language acceptable to the requested State Party, under conditions allowing that State Party to establish authenticity. The Secretary-General of the United Nations shall be notified of the language or languages acceptable to each State Party at the time it deposits its instrument of ratification, acceptance or approval of or accession to this Convention. In urgent circumstances and where agreed by the States Parties, requests may be made orally but shall be confirmed in writing forthwith.

(a) Summary of information relevant to reviewing the implementation of the article

Article 6 - Ways of communication

(2) The letter rogatory or the request by the foreign competent authority shall be sent in written, through the Ministry of Justice (herein after referred to as: the Ministry).

(6) The letter rogatory or the request can be received electronically or through another way of telecommunication for which a record shall be kept, and the original shall be sent through a regular mail.

Also, regarding the other elements of this provision referring to the languages used in requests for mutual legal assistance acceptable for the requested State parties, The Ministry of justice of the Republic of Macedonia, through the Ministry of foreign affairs of the Republic of Macedonia, with the act No. 14-1767/1 of 19.03.2008, has informed that for the Republic of Macedonia it is the Macedonian language.

(b) Observations on the implementation of the article

The provision under review is implemented.

Article 46 Mutual legal assistance

Paragraphs 15 and 16

15. A request for mutual legal assistance shall contain:

- (a) The identity of the authority making the request;*
- (b) The subject matter and nature of the investigation, prosecution or judicial proceeding to which the request relates and the name and functions of the authority conducting the investigation, prosecution or judicial proceeding;*
- (c) A summary of the relevant facts, except in relation to requests for the purpose of service of judicial documents;*
- (d) A description of the assistance sought and details of any particular procedure that the requesting State Party wishes to be followed;*
- (e) Where possible, the identity, location and nationality of any person concerned; and*
- (f) The purpose for which the evidence, information or action is sought.*

16. The requested State Party may request additional information when it appears necessary for the execution of the request in accordance with its domestic law or when it can facilitate such execution.

(a) Summary of information relevant to reviewing the implementation of the article

Reference was made to the following provision:

Law on international cooperation in criminal matters

Article 16 - Form and content of the letter rogatory

- (1) The letter rogatory shall be submitted in writing.
- (2) The letter rogatory shall include:
 - 1) Name of the authority that sent the letter rogatory and name of the authority that it has been sent to;
 - 2) Legal basis for providing international legal assistance;
 - 3) Description of the actions and the reason for submitting letter rogatory;
 - 4) Legal denomination of the criminal offence and short description of the actual situation;
 - 5) Personal data and citizenship of the person an international legal assistance is requested for;
 - 6) Capacity of the person in the proceedings and
 - 7) Name of the document being delivered and name and address of the receiver in case of delivery of judicial and other records.
- (3) The letter rogatory and the records must be signed and certified with a stamp of the judicial or other competent authority that delivers them.
- (4) If the data included in the letter rogatory and the submitted records are not sufficient, the sending authority may be requested to submit additional data and records in a reasonable time limit from the day of the receipt of the letter rogatory.

(b) Observations on the implementation of the article

The provisions under review are implemented.

Article 46 Mutual legal assistance

Paragraph 17

17. A request shall be executed in accordance with the domestic law of the requested State Party and, to the extent not contrary to the domestic law of the requested State Party and where possible, in accordance with the procedures specified in the request.

(a) Summary of information relevant to reviewing the implementation of the article

Reference was made to the following provision:

Law on international cooperation in criminal matters

Article 17 - Way of acting

(1) The domestic competent authority shall act upon the letter rogatory in a way that is specified in the letter rogatory.

(4) If it is not possible completely or partially to act upon the letter rogatory by the foreign competent authority, the domestic competent authority shall immediately notify the foreign competent authority stating the way it can be acted upon and the reasons for not being able to act completely upon the letter rogatory.

(b) Observations on the implementation of the article

The provision under review is implemented.

Article 46 Mutual legal assistance

Paragraph 18

18. Wherever possible and consistent with fundamental principles of domestic law, when an individual is in the territory of a State Party and has to be heard as a witness or expert by the judicial authorities of another State Party, the first State Party may, at the request of the other, permit the hearing to take place by video conference if it is not possible or desirable for the individual in question to appear in person in the territory of the requesting State Party. States Parties may agree that the hearing shall be conducted by a judicial authority of the requesting State Party and attended by a judicial authority of the requested State Party.

(a) Summary of information relevant to reviewing the implementation of the article

Reference was made to the following provisions:

Law on international cooperation in criminal matters

Article 33 - Interrogation through video conference

(1) If the person who has to be interrogated in his or her capacity as witness or expert is on a territory of another State, the domestic judicial authority can request the interrogation of the person to be performed through a video conference.

(2) The foreign competent authority shall give its consent to interrogation through a video conference if that is in accordance with the legislation of the foreign State and if the foreign State has technical equipment for conducting such interrogation.

If the foreign State has no such equipment at disposal, the Republic of Macedonia can place its own equipment at disposal if the foreign State agrees to that.

(3) If a foreign judicial authority is requesting an interrogation through a video conference of a person in his or her capacity of witness or expert who resides in the Republic of Macedonia, the competent Public Prosecutor shall decide on the request.

(4) The interrogation through a video conference can be conducted if the following rules apply:

- the interrogation through a video conference shall be conducted before a domestic judicial authority according to the domestic legislation, and if required, an interpreter shall be present;
- the domestic judicial authority before which the interrogation is conducted shall determine the identity of the person being interrogated;
- the domestic judicial authority before which the interrogation is conducted shall provide measures for protection of the person being interrogated; and
- the interrogated person can invoke his or her right not to give a statement in a capacity of witness or expert.

(5) For the video conference a minute shall be prepared which includes the date and place of interrogation, the identity of the persons being interrogated, the identity and the positions of all other persons who participated in the interrogation, all made oaths and the technical conditions under which the interrogation was conducted.

Article 34 - Interrogation through telephone conference

(1) If the person who has to be interrogated in a capacity of a witness or expert is in a territory of another State, the domestic judicial authority is entitled to request the person to be interrogated through a telephone conference.

(2) If the foreign competent authority is requesting an interrogation through a telephone conference of a person in a capacity of witness or expert who is in the territory of the Republic of Macedonia, the competent Public Prosecutor shall decide on the request.

(3) The interrogation through a telephone conference can be conducted if:

- the person agrees to the interrogation and
- the telephone conference is in accordance with the domestic legislation.

(4) The request to conduct a telephone conference shall include data about the date and place of the interrogation and an indication of the given consent by the person who should be interrogated.

(5) The domestic judicial authority that conducts the telephone conference shall undertake the following actions:

- inform the person about the date and place of interrogation; - determine the identity of the person; and
- confirm that the person agrees to be interrogated through a telephone conference.

Authorities met during the country visit confirmed that video-conferences are very frequently used by the national authorities including two with the U.S. They also noted that the former Yugoslav Republic of Macedonia was the first State in the region to use video-conference technology.

(b) Observations on the implementation of the article

The former Yugoslav Republic of Macedonia has had experience with the use of videoconference. Articles 33 and 34 of the LICCM adequately provide for full compliance with the provisions under review.

Article 46 Mutual legal assistance

Paragraph 19

19. The requesting State Party shall not transmit or use information or evidence furnished by the requested State Party for investigations, prosecutions or judicial proceedings other than those stated in the request without the prior consent of the requested State Party. Nothing in this paragraph shall prevent the requesting State Party from disclosing in its proceedings information or evidence that is exculpatory to an accused person. In the latter case, the requesting State Party shall notify the requested State Party prior to the disclosure and, if so requested, consult with the requested State Party. If, in an exceptional case, advance notice is not possible, the requesting State Party shall inform the requested State Party of the disclosure without delay.

(a) Summary of information relevant to reviewing the implementation of the article

Reference was made to the following provisions:

Law on international cooperation in criminal matters

Article 41 - Protection of personal data

(1) The personal data transferred from the Republic of Macedonia to a foreign State as a result of implementation of a letter rogatory on the basis of this Law may be used by the foreign State only for:

- a) the needs of the proceedings;
- b) the needs of other court or administrative proceedings directly related to the proceedings; and
- c) prevention of direct and serious danger to public safety.

(2) As an exception of paragraph (1) of this article the transferred personal data from the Republic of Macedonia to a foreign State may be used for other purposes only upon previous consent of the person whose data are subject to transfer or if they are from the Republic of Macedonia.

(3) The Republic of Macedonia may refuse a transfer of personal data if:

- a) the personal data are protected according to the domestic legislation; and b) the foreign State hasn't ratified the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data of the Council of Europe from 28 January 1981 and the Additional Protocol to the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data regarding supervisory authorities and transborder data flow.

(4) When the Republic of Macedonia transfers data received from a foreign State because of an execution of a certain request delivered on the basis of this Law, it can request the foreign State to which the data have been transferred to deliver information about their application.

(5) The personal data subject to transfer to a foreign State shall be deleted or destroyed immediately if it has been determined that they are not correct, or if the reasons, respectively the conditions for their transfer terminated.

(6) The person whose data are or will be subject to transfer may request to be notified about the transferred personal data and about the purpose of their processing if that is in accordance with the domestic legislation.

Authorities met during the country visit further explained that UNCAC is directly applicable and that it can be applied in the cases where there are no other regulations.

(b) Observations on the implementation of the article

Article 41 of the LICCM prescribes a broader use of information or evidence than those stipulated in article 46, par.19 of the UNCAC (the needs of other court or administrative proceedings directly related to the proceedings; and prevention of direct and serious danger to public safety). Also the possibility of disclosing its proceedings information or evidence that is exculpatory to an accused person does not seem to be stipulated in the LICCM.

However, the reviewing experts noted that the direct applicability of UNCAC based on Article 118 of the Constitution is sufficient for the former Yugoslav Republic of Macedonia to be in line with the provision under review.

Article 46 Mutual legal assistance

Paragraph 20

20. The requesting State Party may require that the requested State Party keep confidential the fact and substance of the request, except to the extent necessary to execute the request. If the requested State Party cannot comply with the requirement of confidentiality, it shall promptly inform the requesting State Party.

(a) Summary of information relevant to reviewing the implementation of the article

Reference was made to the following provisions:

Law on international cooperation in criminal matters

Confidentiality

Article 30

(1) The foreign competent authority can ask the Ministry and the domestic judicial authority that the letter rogatory remains confidential unless it is required for its implementation.

(2) If it is not possible to implement the letter rogatory from paragraph (1) of this article, the foreign competent authority shall be notified immediately.

If the data are confidential in a foreign State, than they will also be confidential in the Republic of Macedonia.

Law on classified information (Official Gazette of the Republic of Macedonia No. 9/2004, 113/2007, 145/2010, 80/2012, 41/2014):

Article 3

This law shall also apply for protection of classified information received from foreign countries and international organizations or created as a result of mutual cooperation, unless otherwise determined by ratified international agreements which the Republic of Macedonia has accepted.

Terms used in this law

Article 5

Certain terms used in this law have the following meaning:

2. "Information of interest to the Republic of Macedonia" shall be any information or material created by the State organs, organ of the unit of the local government, public enterprise, public institution and service, legal and private entities, as well as foreign State organs, foreign legal and private entities, which regard to the county's security and defense, its territorial integrity and sovereignty, constitutional order, public interest, human and citizen freedom and rights.

Classified information of foreign countries and international organizations

Article 21

Classified information from foreign countries or international organizations which have concluded international agreements with the Republic of Macedonia, or the Republic of Macedonia has joined, keep the marking of the level of classification that is used in that country or international organization.

Article 22

Classified information are arranged according to the principle "necessary to be known".

During the arranging of the classified information the authorized person does the receipt, processing, stating of the users and the forwarding of the classified information to them.

The authorized person does the transfer of the classified information to the determined users.

The activities during transfer of the classified information which refer to processing, determining of the users and the delivery of information are provided with an ordinance by the Government.

Exchange of classified information with foreign countries and international organizations

Article 31

Classified information of a foreign country or international organization shall be information or material that has been given to the Republic of Macedonia by the competent organ of a foreign country or international organization, with an obligation for its protection.

Classified information received from foreign countries or international organizations is dealt in a manner provided by international agreements.

If the international agreement quoted in paragraph 2 of this article does not contain provisions for the manner of treating classified information, then the provisions of this Law shall be in force.

Article 32

In an extremely unfavorable political, economic and defense-security conditions for the Republic of Macedonia, upon the request of the competent organs in accordance with the Constitution and regulations, the Directorate can exchange classified information with foreign countries and international organizations with which no international agreements have been previously concluded, if it is of interest to the Republic of Macedonia.

Article 33

In accordance with the assumed responsibilities from ratified international agreements, the Directorate allows supervision by empowered representatives from foreign countries and international organizations of the manners of use and protection of classified information which have been given to the Republic of Macedonia by them.

The control of the manner of use and protection of the submitted classified information from the Republic of Macedonia to other foreign countries and international organizations is done by the Directorate according to this Law and international agreements.

The Government determines the classified information of the Republic of Macedonia that can be subject of international exchange with an ordinance.

(b) Observations on the implementation of the article

The provision under review is implemented.

Article 46 Mutual legal assistance

Paragraph 21

21. Mutual legal assistance may be refused:

(a) If the request is not made in conformity with the provisions of this article;

(b) If the requested State Party considers that execution of the request is likely to prejudice its sovereignty, security, ordre public or other essential interests;

(c) If the authorities of the requested State Party would be prohibited by its domestic law from carrying out the action requested with regard to any similar offence, had it been subject to investigation, prosecution or judicial proceedings under their own jurisdiction;

(d) If it would be contrary to the legal system of the requested State Party relating to mutual legal assistance for the request to be granted.

(a) Summary of information relevant to reviewing the implementation of the article

Reference was made to the following provision:

Law on international cooperation in criminal matters

Article 10 - Rejection of international cooperation

(1) The domestic competent authority shall reject the letter rogatory if:

1) acting upon it is contrary to the Constitution of the Republic of Macedonia or it violates the sovereignty, the security and the safety of the Republic of Macedonia;

- 2) it refers to an act that is considered as a political criminal offence or an act that is related to a political criminal offence;
- 3) it refers to a criminal offence that is related to violation of the military duty, and
- 4) it can be reasonably assumed that the person whose extradition is requested was criminally prosecuted or sentenced because of its racial, ethnical and social affiliation or because of his or her political or religious beliefs in the time of extradition, respectively that his or her position would become more difficult because of one of those reasons.

(2) The domestic competent authority shall reject the request if:

- 1) the proceedings in the Republic of Macedonia against the accused for the same criminal offence has been stopped as a result of material legal reasons or the person has been acquitted or has been released from a sentence or the sanction has been enforced or it cannot be enforced according to the legislation of the State where the verdict has been reached;
- 2) a criminal proceedings has been initiated in the Republic of Macedonia against the accused for the same criminal offence, and
- 3) the criminal prosecution, the enforcement of the sanction, the safety and the protection measures are excluded because of absolute prescription according to the legislation of the Republic of Macedonia.

(3) The provisions from paragraph (2), number 1 and 3 of this article shall not be applied in cases when there is a repetition of the criminal proceedings in the Republic of Macedonia.

(4) The decision for rejection of the letter rogatory or of the request shall be elaborated unless otherwise specified by an international agreement.

(b) Observations on the implementation of the article

Article 10 of the Law on international cooperation in criminal matters adequately reflects the requirements of the provision under review. The former Yugoslav Republic of Macedonia recognizes grounds for refusal as provided in this provision.

Article 46 Mutual legal assistance

Paragraph 22

22. States Parties may not refuse a request for mutual legal assistance on the sole ground that the offence is also considered to involve fiscal matters.

(a) Summary of information relevant to reviewing the implementation of the article

Article 10 of the Law on international legal cooperation in criminal matters, enumerates the grounds on which the request for mutual legal assistance will be refused, without referring to the case stipulated in the provision under review. The request for mutual legal assistance (the letter rogatory) cannot be hence refused on the sole ground that the offence is also considered to involve fiscal matters.

(b) Observations on the implementation of the article

There is no rule under national law that a mutual legal assistance request must be refused if the offence is considered to involve fiscal matters, as such grounds for refusal are not recognized under the the Law on international legal cooperation in criminal matters.

The provision under review is legislatively implemented, although no case examples were available.

Article 46 Mutual legal assistance

Paragraph 23

23. Reasons shall be given for any refusal of mutual legal assistance.

(a) Summary of information relevant to reviewing the implementation of the article

Reference was made to the following provision:

Law on international cooperation in criminal matters

Article 10 - Rejection of international cooperation

(4) The decision for rejection of the letter rogatory or of the request shall be elaborated unless otherwise specified by an international agreement.

(b) Observations on the implementation of the article

The provision under review is legislatively implemented, although no case examples were available.

Article 46 Mutual legal assistance

Paragraph 24

24. The requested State Party shall execute the request for mutual legal assistance as soon as possible and shall take as full account as possible of any deadlines suggested by the requesting State Party and for which reasons are given, preferably in the request. The requesting State Party may make reasonable requests for information on the status and progress of measures taken by the requested State Party to satisfy its request. The requested State Party shall respond to reasonable requests by the requesting State Party on the status, and progress in its handling, of the request. The requesting State Party shall promptly inform the requested State Party when the assistance sought is no longer required.

(a) Summary of information relevant to reviewing the implementation of the article

Reference was made to the following provision:

Law on international cooperation in criminal matters

Article 17 - Way of acting

(1) The domestic competent authority shall act upon the letter rogatory in a way that is specified in the letter rogatory.

(2) The domestic competent authority shall immediately decide upon the letter rogatory by the foreign competent authority.

(3) If the domestic competent authority decides that it is not in a position to act upon the letter rogatory in the frame of the time limit specified therein, and having regard to the explanation in paragraph (2) of this article that each adjournment leads to a significant disorder of the proceedings before the foreign competent authorities, the domestic competent authority shall immediately notify the foreign competent authority about the time needed for acting upon the letter rogatory.

(4) If it is not possible completely or partially to act upon the letter rogatory by the foreign competent authority, the domestic competent authority shall immediately notify the foreign competent authority stating the way it can be acted upon and the reasons for not being able to act completely upon the letter rogatory.

The time length for responding to a request for mutual legal assistance depends on the case. If the request is short and urgent it can be answered in one day and on the other side, for complicated cases which require translation the time period for answering is longer.

(b) Observations on the implementation of the article

The former Yugoslav Republic of Macedonia reported that there are no official statistics available on MLA requests, and it is not therefore possible to state the average time it takes to execute a request for MLA, which depends on the complexity of the request.

While Article 17 of the LICCM stipulates the urgency of acting upon receiving the letter rogatory by the foreign competent authority, the reviewing experts recommend the former Yugoslav Republic of Macedonia to put in place and render fully operational an information system compiling in a systematic manner statistical data and information on extradition and mutual legal assistance cases; with a view to facilitating the monitoring and tracking of such cases and assessing the effectiveness of implementation with regard to, among others, the duration of MLA and extradition proceedings, and encourages the national authorities to continue their efforts in this regard.

Article 46 Mutual legal assistance

Paragraph 25

25. Mutual legal assistance may be postponed by the requested State Party on the ground that it interferes with an ongoing investigation, prosecution or judicial proceeding.

(a) Summary of information relevant to reviewing the implementation of the article

Reference was made to the following provision:

Law on international cooperation in criminal matters

Article 11 - Postponement of international cooperation

The domestic competent authority may postpone the international cooperation if that affects the criminal prosecution, the course of the investigation or the proceedings in progress before the domestic competent authority, and which is related to the letter rogatory or the request and it shall notify the foreign competent authority that sent the letter rogatory or the request about that.

(b) Observations on the implementation of the article

The provision under review is legislatively implemented, although no case examples were available.

Article 46 Mutual legal assistance

Paragraph 26

26. Before refusing a request pursuant to paragraph 21 of this article or postponing its execution pursuant to paragraph 25 of this article, the requested State Party shall consult with the requesting State Party to consider whether assistance may be granted subject to such terms and conditions as it

deems necessary. If the requesting State Party accepts assistance subject to those conditions, it shall comply with the conditions.

(a) Summary of information relevant to reviewing the implementation of the article

Reference was made to the following provision:

Article 17 - Way of acting

(4) If it is not possible completely or partially to act upon the letter rogatory by the foreign competent authority, the domestic competent authority shall immediately notify the foreign competent authority stating the way it can be acted upon and the reasons for not being able to act completely upon the letter rogatory.

(b) Observations on the implementation of the article

The provision under review is legislatively implemented, although no case examples were available.

Article 46 Mutual legal assistance

Paragraph 27

27. Without prejudice to the application of paragraph 12 of this article, a witness, expert or other person who, at the request of the requesting State Party, consents to give evidence in a proceeding or to assist in an investigation, prosecution or judicial proceeding in the territory of the requesting State Party shall not be prosecuted, detained, punished or subjected to any other restriction of his or her personal liberty in that territory in respect of acts, omissions or convictions prior to his or her departure from the territory of the requested State Party. Such safe conduct shall cease when the witness, expert or other person having had, for a period of fifteen consecutive days or for any period agreed upon by the States Parties from the date on which he or she has been officially informed that his or her presence is no longer required by the judicial authorities, an opportunity of leaving, has nevertheless remained voluntarily in the territory of the requesting State Party or, having left it, has returned of his or her own free will.

(a) Summary of information relevant to reviewing the implementation of the article

Reference was made to the following provision:

Law on international cooperation in criminal matters

Article 21 - Interrogation of a person with place of residence in a foreign country

(1) A person resident in a foreign country who has been summoned by a domestic judicial authority to come to Republic of Macedonia as a witness or expert in a criminal proceedings cannot be prosecuted, taken into custody or subjected to any kind of limitation of his or her personal freedom for offences or verdicts that are not stated in the summons, and which originate before its arrival.

(2) The protection of the person from paragraph (1) of this article shall not be applied if the persons after leaving the territory of the Republic of Macedonia returns or does not leave the territory of the Republic of Macedonia in a period of eight days after the interrogation.

(b) Observations on the implementation of the article

Article 21 of the Law on international cooperation in criminal matters reflects to almost full extent the requirements of the provisions under review. The timeline for the so-called *safe conduct*, though, is shorter than the one stipulated in the UNCAC article (8 days instead of 15 days).

Article 46 Mutual legal assistance

Paragraph 28

28. The ordinary costs of executing a request shall be borne by the requested State Party, unless otherwise agreed by the States Parties concerned. If expenses of a substantial or extraordinary nature are or will be required to fulfil the request, the States Parties shall consult to determine the terms and conditions under which the request will be executed, as well as the manner in which the costs shall be borne.

(a) Summary of information relevant to reviewing the implementation of the article

Reference was made to the following provision:

Law on international cooperation in criminal matters

Article 13 - Costs

The costs incurred during the actions upon the letter rogatory or the request shall be borne by the Republic of Macedonia if those costs were incurred on its territory unless otherwise stipulated by an international agreement or by this law.

(b) Observations on the implementation of the article

Article 13 of the Law on international cooperation in criminal matters adequately reflects the requirements of the provisions under review.

Article 46 Mutual legal assistance

Paragraph 29

29. The requested State Party:

(a) Shall provide to the requesting State Party copies of government records, documents or information in its possession that under its domestic law are available to the general public;

(b) May, at its discretion, provide to the requesting State Party in whole, in part or subject to such conditions as it deems appropriate, copies of any government records, documents or information in its possession that under its domestic law are not available to the general public.

(a) Summary of information relevant to reviewing the implementation of the article

Reference was made to the following provisions:

Law on international cooperation in criminal matters

Article 25 - Delivery of spontaneous information

(1) The domestic judicial authority has the right, under the principle of mutuality and without receiving previous letter rogatory, to deliver to the foreign competent authority information for crimes, which have been collected during its own investigations, if it considers that the delivery of such information might help to initiate or conduct an investigation or court proceeding or it might lead to sending letter rogatory for international legal assistance.

(2) The domestic judicial authority shall ask the foreign competent authority, to which the information from paragraph (1) of this article has been delivered, to submit a report on all activities that have been undertaken on the basis of this information, as well as to deliver transcript of all decisions that have been reached.

(3) According to the regulations for protection of personal data, the domestic judicial authority that delivered the information from paragraph (1) of this article has the right to set certain conditions for the usage of the information in the foreign State where it has been delivered.

Notification about regulations

Article 32

(1) At the request of the domestic judicial authorities the Ministry shall acquire provisions of the legal regulations from the foreign competent authorities that are valid in other countries and notifications about certain legal issues.

(2) The Ministry shall also act in the way from paragraph (1) of this article when the foreign competent authority requires that.

Law on classified information (Official Gazette of RM No 9/2004, 113/2007, 145/10 n 80/12 and 41/2014)

Classification of information

Article 6

The classification of information determines the protection level of information that has to be according to the level of damage for the Republic of Macedonia by unauthorized access or unauthorized use of information.

Information that is subject to classification relate to: public security; defense; foreign affairs; security, intelligence and counter- intelligence activities of the organs of the State government of the Republic of Macedonia; systems, appliances, projects and plans of importance to the public security, defense foreign affairs; scientific, research and technological, economic and financial affairs of importance to the Republic of Macedonia.

Article 7

Information is classified according to its content.

The authorized person referred to in art. 9 of this law assign the level of classification of information.

Information is designated with one of the following levels of classification:

- State secret;
- highly confidential
- confidential and
- internal.

Article 8

Information classified with level "STATE SECRET" shall be information whose unauthorized disclosure would jeopardize and cause irreparable damage to the vital interests of the Republic of Macedonia.

Information classified with level "HIGHLY CONFIDENTIAL" shall be information created by the State organs, organs of the units of the local government, and other institutions which is of importance to the public security, defense, internal affairs and security and intelligence activities of the organs of the State government of the Republic of Macedonia whose unauthorized disclosure would cause extremely serious damage to the vital interests of the Republic of Macedonia.

Information classified with level "CONFIDENTIAL" shall be information created by the State organs, organs of the units of the local government, and other institutions which is of importance to the public security, defense, internal affairs and security and intelligence activities of the organs of the State government of the Republic of Macedonia whose unauthorized disclosure would cause serious damage to the important interests of the Republic of Macedonia.

Information classified with level "INTERNAL" shall be information whose unauthorized disclosure would cause damage to activities of the State organs, organs of the units of the local government, and other institutions which are of importance to the public security, defense, internal affairs and security and intelligence activities of the organs of the State government of the Republic of Macedonia

Article 10

Information which is not for public use, and whose disclosure would reduce the efficiency of the activities of the State organs shall be assigned "FOR LIMITED USE ONLY".

Law on protection of personal data (Official Gazette of RM No 7/2005, 103/2008, 124/10 n 135/11, 43/2014)

Article 6

The personal data processing may be performed out upon previously obtained written consent by the personal data subject.

The personal data processing may be also performed without the consent referred to Paragraph 1 of this Article, when the processing is necessary for:

- realization of a contract in which the personal data subject is a Contracting Party or upon a request by the personal data subject prior to his/her accession to the contract;
- necessary fulfilment of the legal obligation of the Controller,
- protection of the life or the physical and moral integrity of the personal data subject.
- realization of issues of public interest or of official authorization of the Controller or of a third party to which the data are disclosed or
- fulfilment of legal rights and obligations of the controller, of a third party or persons to whom the data have been disclosed, unless the freedom and the rights of the personal data subject would be violated in that way.

Article 7

Personal data processing that refer to criminal acts, pronounced sentences and security measures for committed criminal acts may be performed by the competent State bodies according to the law.

(b) Observations on the implementation of the article

The article 25 of the Law on international cooperation in criminal matters covers the delivery of spontaneous information which has been collected during its own investigations.

Authorities met during the country visit confirmed that copies of any government records, documents or information in their possession that under the former Yugoslav Republic of Macedonia domestic law are not available to the general public are also subject to this kind of information exchange.

Although no case examples were available, the reviewing experts considers, based on the information provided, the former Yugoslav Republic of Macedonia to be in line with the provision under review.

Article 46 Mutual legal assistance

Paragraph 30

30. States Parties shall consider, as may be necessary, the possibility of concluding bilateral or multilateral agreements or arrangements that would serve the purposes of, give practical effect to or enhance the provisions of this article.

(a) Summary of information relevant to reviewing the implementation of the article

The former Yugoslav Republic of Macedonia referred to the following agreements:

1. Agreement between the Government of Republic of Macedonia and the Government of Republic of Albania for legal assistance in civil and criminal cases (Official Gazette of the Republic of Macedonia No. 16/98) entered into force on 02.10.1998;
2. Agreement between Republic of Macedonia and Bosnia and Herzegovina for legal assistance in civil and criminal matters (Official Gazette of the Republic of Macedonia No.10/06) entered into force on 06.01.2006;
3. Agreement between Republic of Macedonia and Serbia and Monte Negro for mutual legal assistance in civil and criminal matters (Official Gazette of the Republic of Macedonia No. 77/04).
4. Agreement between Republic of Macedonia and Republic of Croatia for legal assistance in civil and criminal cases (Official Gazette of the Republic of Macedonia No.19/95) – entered into force on 26.05.1995;
5. Agreement between Republic of Macedonia and Republic of Slovenia for mutual legal assistance in civil, and criminal matters (Official Gazette of the Republic of Macedonia No. 24/96) – entered into force on 05.09.1997;

6. Agreement between Republic of Macedonia and Republic of Serbia for mutual legal assistance in civil and criminal cases (Official Gazette of the Republic of Macedonia No. 15/13) – entered into force on 05.02.2013;
7. Agreement for legal cooperation in civil and criminal cases between Republic of Macedonia and Republic of Turkey (Official Gazette of the Republic of Macedonia No. 23/97) – entered into force on 28.07.2000

The former Yugoslav Republic of Macedonia also noted that initiatives exist for concluding new bilateral agreements with the U.S., Canada, Austria, Kazakhstan, Qatar and Egypt. Moreover, a procedure is ongoing for the conclusion of a bilateral agreement with Italy.

(b) Observations on the implementation of the article

The former Yugoslav Republic of Macedonia has entered into relevant treaties as described in the provision under review.

(c) Challenges, where applicable

The former Yugoslav Republic of Macedonia has identified the following challenges and issues in fully implementing the provision under review:

1. Limited resources for implementation

(d) Technical assistance needs

The former Yugoslav Republic of Macedonia has indicated that the following forms of technical assistance, if available, would assist it in better implementing the article under review:

1. Summary of good practices/lessons learned;
2. Legal advice
3. On-site assistance by a relevant expert
4. The need for a relevant software for collecting, keeping and processing statistical data for cases of extradition and other types of mutual legal assistance.
5. The need for general training in application of this Convention in the area of extradition and other types of mutual legal assistance.

Article 47 Transfer of criminal proceedings

States Parties shall consider the possibility of transferring to one another proceedings for the prosecution of an offence established in accordance with this Convention in cases where such transfer is considered to be in the interests of the proper administration of justice, in particular in cases where several jurisdictions are involved, with a view to concentrating the prosecution.

(a) Summary of information relevant to reviewing the implementation of the article

Reference was made to the following provisions:

Law on international cooperation in criminal matters

CHAPTER III - TAKING OVER AND REREASSIGNMENT OF CRIMINAL PROSECUTION

I. Taking over of criminal prosecution

Article 42 -Taking over of the criminal prosecution in the Republic of Macedonia

(1) The request of the foreign competent authority to take over criminal prosecution in the Republic of Macedonia against a citizen of the Republic of Macedonia or against a person with residence or domicile in the Republic of Macedonia for criminal offence committed in a foreign State shall be submitted together with the criminal records to the competent public prosecutor in the region where the person has his or her residence or domicile.

(2) If a legal claim on property has been filed in the foreign competent authority, the domestic judicial authority shall act upon it as if it was filed in a proceeding before the domestic judicial authority.

(3) The domestic competent authority shall notify the foreign competent authority which submitted the request about the rejection to take over criminal prosecution, as well as about the effective decision that was reached within the criminal proceedings.

Article 43 - Taking over of criminal proceedings

(1) The criminal proceeding shall be taken over only when the criminal offence about which a prosecution is requested is a criminal offence according to the domestic legislation.

(2) If the criminal proceeding has been taken over, it shall be conducted according to the domestic legislation.

(3) The law of the foreign country in relation to the type and amount of the criminal sanction shall be applied if it is milder for the accused in the criminal proceedings.

(4) The criminal proceedings shall not be conducted in absence of the accused.

Article 44 - Equalisation of the investigative actions

Any investigative action conducted by the foreign competent authority shall be equalised with the appropriate investigative action within the criminal proceedings in accordance with the domestic legislation.

Article 45 - Decision on undertaking criminal prosecution

(1) The competent public prosecutor shall consider the submitted request without delay and decide immediately upon it.

(2) The competent public prosecutor through the Ministry shall immediately notify the foreign competent authority about the decision from paragraph (1) and shall deliver a certified copy of the decision.

II. Reassignment of the criminal prosecution to a foreign State

Article 46

(1) If a foreigner with residence in a foreign State commits a criminal offence in the territory of the Republic of Macedonia, regardless of the conditions stipulated in article 50 of this Law, the criminal records and the evidence may be assigned to the foreign State for further criminal prosecution and court proceedings if the foreign State does not oppose that.

(2) The originals and the certified copies of the criminal records shall be enclosed to the request for reassignment of criminal prosecution.

(3) If the accused person is in prison, the foreign competent authority shall be requested to deliver a notification about the taking over of the prosecution within 30 days from the day of the submission of the request.

Article 47 - Decision on reassignment of criminal prosecution

(1) Before the indictment enters into legal force, the competent public prosecutor shall decide on the reassignment of the criminal prosecution.

(2) After entering into legal force of the indictment, and until the beginning of the main hearing, the judicial council shall adopt the decision from paragraph (1) of this article upon proposal of the competent public prosecutor in accordance with the provisions of the Law on Criminal Proceedings. After the beginning of the main hearing the competent council of the court shall decide upon proposal of the competent public prosecutor in accordance with the provisions of the Law on Criminal Proceedings.

(3) The reassignment may be granted for criminal offences for which a prison sentence up to ten years is foreseen, as well as for criminal offences endangering public traffic.

(4) If the injured party is a citizen of the Republic of Macedonia, the reassignment of the criminal prosecution shall not be allowed if the person opposes that, unless a security for the exercise of his or her legal claim on property has been provided.

Article 48 - Additional information

The competent public prosecutor may require additional information, records and evidence from the foreign competent authority if it deems that those are necessary for the further implementation of the criminal proceedings and shall determine a deadline for their delivery.

Article 49 - Notification about costs

(1) The costs for the criminal proceeding determined by the foreign competent authority shall be added to the costs incurred within the criminal proceedings conducted before the domestic competent authority. The costs of the foreign competent authority shall not be reimbursed.

(2) In case of reassignment of criminal prosecution to a foreign State, the domestic judicial authority shall notify the foreign competent authority about the costs incurred within the criminal proceeding before the domestic judicial authorities which shall not request a reimbursement of those costs.

(b) Observations on the implementation of the article

The former Yugoslav Republic of Macedonia has not just considered the possibility of transferring criminal proceedings, the Law on international cooperation in criminal matters actually provides for most of the measures covered by the provision under review. The LICCM (Chapter III) provides for possibility of taking over of criminal proceedings by the former Yugoslav Republic of Macedonia in case of dual criminality (article 43, paragraph 1). The same Law also provides for possibility of transferring to a foreign State criminal proceedings for criminal offences for which a prison sentence up to ten years is foreseen, as well as for criminal offences endangering public traffic (article 47, paragraph 3 of the Law).

The reviewing experts recommend the former Yugoslav Republic of Macedonia to consider removing the limitation contained in article 47 paragraph 3 of the Law on international cooperation in criminal matters.

The former Yugoslav Republic of Macedonia has adopted measures to implement this article, though no examples of implementation were given.

(c) Challenges, where applicable

The former Yugoslav Republic of Macedonia has identified the following challenges and issues in fully implementing the provision under review:

1. Limited resources for implementation

(d) Technical assistance needs

the former Yugoslav Republic of Macedonia has indicated that the following forms of technical assistance, if available, would assist it in better implementing the article under review:

1. Summary of good practices/lessons learned;
2. Legal advice
3. On-site assistance by a relevant expert
4. The need for a relevant software for collecting, keeping and processing statistical data for cases of extradition and other types of mutual legal assistance.
5. The need for general training in application of this Convention in the area of extradition and other types of mutual legal assistance.

Article 48 Law enforcement cooperation

Paragraph 1

1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention. States Parties shall, in particular, take effective measures:

(a) To enhance and, where necessary, to establish channels of communication between their competent authorities, agencies and services in order to facilitate the secure and rapid exchange of information concerning all aspects of the offences covered by this Convention, including, if the States Parties concerned deem it appropriate, links with other criminal activities;

(b) To cooperate with other States Parties in conducting inquiries with respect to offences covered by this Convention concerning:

(i) The identity, whereabouts and activities of persons suspected of involvement in such offences or the location of other persons concerned;

(ii) The movement of proceeds of crime or property derived from the commission of such offences;

(iii) The movement of property, equipment or other instrumentalities used or intended for use in the commission of such offences;

(c) To provide, where appropriate, necessary items or quantities of substances for analytical or investigative purposes;

(d) To exchange, where appropriate, information with other States Parties concerning specific means and methods used to commit offences covered by this Convention, including the use of false identities, forged, altered or false documents and other means of concealing activities;

(e) To facilitate effective coordination between their competent authorities, agencies and services and to promote the exchange of personnel and other experts, including, subject to bilateral agreements or arrangements between the States Parties concerned, the posting of liaison officers;

(f) To exchange information and coordinate administrative and other measures taken as appropriate for the purpose of early identification of the offences covered by this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

Reference was made to the following provisions:

1. The Law on Criminal Procedure (“Official Gazette of the Republic of Macedonia” Number: 150/2010) sets forth the following provisions:

Article 81 - Duty to provide assistance

(1) For the purpose of the criminal procedure, the judicial police, the public prosecutor and the court may ask for assistance from the courts, the public prosecution office, State administration bodies and other State entities and institutions with public authority and from the bodies of the units of local self-government. These entities shall be obliged to respond to such a request as soon as possible, and eliminate all possible impediments without any delay. Whenever necessary, they shall also receive a copy of the criminal case file.

(2) State administration bodies and other State institutions may refuse to act upon the request referred to in paragraph 1 of this Article, with an elaborated decision and in accordance with their legal authorities, if it means violation of their duty to preserve classified information, as long as the competent body does not recall this obligation.

Article 45- Investigative centres of the Public Prosecution Office

(1) For the benefit of the criminal procedure, for the region covered by one or more public prosecution offices, investigation centres of the public prosecution shall be established.

(2) The investigation centres referred to in paragraph 1 of this Article shall be established with a decision by the Chief Public Prosecutor of the Republic of Macedonia.

(3) The total number of members of the judicial police in the investigative centres of the public prosecution will be determined with a decision by the Chief Public Prosecutor of the Republic of Macedonia, after an opinion has been provided by the Minister of Interior, Minister for Justice and the Minister of Finance.

(4) The tasks at the investigation centre shall be performed by the employees of the organizational units referred to in Article 48, paragraph 1, item 2 of this Law, who shall be selected to work for a fixed time period, through an internal job competition, as well as persons employed in the Public Prosecution Office in accordance with the Law on the Public Prosecution Office.

(5) Any individuals referred to in paragraph (4) of this Article may participate in the investigative actions, that is, in their preparation, taking statements and proposals, and they can independently conduct certain actions assigned to them by the public prosecutor. The reports on such actions taken shall be approved by the public prosecutor within 48 hours from the moment when the action was taken.

(6) The employees that have been selected to work in the investigation centre shall be at the disposal of the public prosecutor, and they shall work under his or hers control and supervision, they shall respect and carry out the public prosecutor's orders, work according to his or her instructions and guidance and shall be responsible for their work before the public prosecutor.

(7) During the period when they have been selected to work at the investigation centre, those employees may not be assigned to another post at the State bodies where they have come from or be removed and prevented from working on the current case, without an explicit approval by the public prosecutor.

Article 46 - Duties of the Judicial Police

(1) The Judicial Police, ex-officio or upon order by the public prosecutor shall take measures and activities in order to detect and criminally investigate crimes, prevent any further consequences of the crimes, apprehend and report the perpetrators, secure the evidence and other measures and activities that might be useful for an unobstructed criminal procedure.

(2) The Judicial Police shall conduct investigations and activities as ordered or asked by the court and the public prosecution office.

(3) The duties referred to in paragraphs 1 and 2 of this Article shall be performed by the chiefs and officers from the Judicial Police.

Article 48 - Composition of the Judicial Police

(1) The duties of the Judicial Police as referred to in this Law shall be performed by:

- 1) the police officers in the organizational units at the Ministry of Interior, the Financial Police and the Customs Administration, which, according to their scope of work as defined by law, shall undertake measures and activities for detection of crimes, apprehension and reporting of the perpetrators, securing evidence for the crimes and other measures that provide for an unobstructed criminal procedure;
- 2) the members of the Judicial Police at the investigation centres of the Public Prosecution Office; and
- 3) the officials assigned to the public prosecutor pursuant to Article 50 of this Law.

Article 141 - Providing personal data to users

(1) Any personal data collected for the purposes of the criminal procedure may be used by State entities and other legal entities and persons, only if that is permitted by the law.

(2) The personal data referred to in paragraph 1 of this Article may be used in accordance with the law, in other criminal procedures, in a procedure of international cooperation in criminal matters and international police cooperation, and it may be used in other judicial proceedings, only if the case of the other judicial proceeding is directly related with the case of the specific criminal procedure.

(3) Any personal data collected exclusively on the basis of established identity, physical examination or molecular and genetic analysis, may be used after the completion of the criminal procedure, in accordance with the law, but only for the purpose of detection or prevention of crime.

2. The Law on Prevention of Corruption (“Official Gazette of the Republic of Macedonia” Numbers: 28/2002, 46/2004, 126/2006, 10/2008, 161/2008 and 145/2010) sets forth the following:

- relevant principles

Article 4 - Principle of equality

(1) Any person has the right to an equal approach in the performance of the matters of public interest and to an equal treatment on the part of persons carrying out public functions, public duties and position.

(2) Any person has the right to a free appearance on the market and to free competition, without fearing that he may be the victim of monopolistic or discriminatory behaviour.

(3) Any person has the right to prevent or report any treatment representing misuse of the carrying out of public and other offices and duties, in order to effectuate personal advantage or cause damage to another, without suffering any detrimental consequences because of that.

- relevant provisions:

Article 16 - Influence over election, appointment and discharge to leading positions

(1) A political party or person acting on behalf of a political party may not exert pressure at election or appointment to, or discharge of a person from official, leading, or other socially important office or duty, except for the cases in which by law is determined that the President of the Republic, the Assembly and the Government of the Republic of Macedonia, or the bodies of local self-government units are competent to elect, to appoint, or to give opinion or agreement.

(2) A person discharged against the law under the pressure of a political party, as well as a candidate for election or appointment damaged by election or appointment carried out under such pressure, may with a lawsuit before a competent court demand annulment of the election, appointment, that is, discharge act.

(3) The lawsuit of Paragraph 2 of this Article is made within thirty days from the passing of the act for election, appointment, or discharge, that is, from the moment of finding out that it has been done under the pressure of a political party, against the law, but no later than a year from the date of passing such an act. The proceeding is urgent and is conducted under the provisions of the Law on Civil Procedure.

Article 18 - Exemption from keeping classified information

A person who is obliged to keep classified information may, upon the State Commission's request, be relieved from that obligation owing to the conduct of a penal or other procedure for a corruption offence in compliance with law.

Article 19 - Protection of associates of justice and witnesses

(1) Against a person who revealed data indicating the existence of corruption, may not be initiated penal prosecution and he may not be called upon any responsibility.

(2) A person who has given a statement or witnessed in a procedure for corruption offence shall be protected. The person has the right to a compensation for damage which he or a member of his family may suffer owing to the statement given or appearance as a witness.

(3) The request for compensation of Paragraph 2 of this Article shall be submitted to a competent authority.

(4) The compensation of Paragraph 2 of this Article shall be paid with funds from the Budget of the Republic of Macedonia.

Article 20 - Protection of persons involved in eradication of corruption

(1) Persons working in the bodies for detection and eradication of corruption shall be provided with full protection and independence, with a view to efficient execution of their authority and duty and no pressure whatsoever may be exerted on them in their work or in their undertaking of concrete actions.

(2) For influencing the work or the undertaking of concrete activities, the persons from paragraph (1) of this Article shall inform the State Commission.

(3) The State Commission informs the Parliament of the Republic of Macedonia on the influencing of the work or the undertaking of concrete activities on the members of the State Commission.

Article 40 - Unlawful requests by a superior

(1) An official person that is requested by his superior, or elected, or appointed official, in the performing of his work to act in contrary to the Constitution, a law or another regulation, is obliged to indicate this to the person issuing them the order.

(2) If, even after the oral indication, the immediate superior repeats the order from paragraph (1) of this Article, the official person shall immediately, in writing, inform the immediate superior of the person issuing the order and the State Commission. After the written notice the official person is exempt from the liability of committing an illegal official activity and cannot be held liable for it.

Article 41 - Failure to report penalty liable act

An elected or appointed official, as well as other official and responsible person in a public enterprise, a public institution or another legal entity disposing with State capital is obliged to report every punishable act related to corruption, as well as all infringements of the provisions from this law, that they have come into knowledge of in the performing of their duties.

Article 42 - Ban on exercising influence on others

(1) An elected or appointed person, other official person or responsible person in a public enterprise, a public institution or another legal entity disposing with State capital may not use their position to influence another person in a State body, a public enterprise, a public institution or another legal entity, in making or not making a certain decision, in doing something, in omitting or putting up with something, for realizing gain, benefit or advantage for themselves or another.

(2) The person of Paragraph 1 of this Article may not participate as a mediator or representative in commercial or other deals between juridical persons or individuals.

(3) Any person is obliged to inform the State Commission of a violation of the provisions under Paragraphs 1 and 2 of this Article.

Article 43 - Carrying out discretionary powers

(1) In the performance of discretionary powers every elected or appointed civil servant or official is obliged to make his decisions conscientiously, taking into account all facts and circumstances in the concrete case and the principle of legality and equity.

(2) Any person or juridical person dissatisfied by the decision made on the basis of discretionary power, and judging that it has been made due to corruption, may submit a petition with the State Commission.

(3) The State Commission is obliged to consider the petition and to inform the person or juridical person for its dealing with the petition within thirty days of receiving the same.

Article 44 - Bribe offer

An elected or appointed public official, as well as other authorized officers, or a responsible person in a public enterprise, a public institution or another legal entity managing State capital, that has been offered a bribe shall be obliged to undertake measures for identification of the briber and to report that person to the competent body.

Article 45 - Procedure in case of allegations of corruption

A person charged with acts of corruption shall immediately inform the body that elected or appointed it, that is his/her superior and the State Commission.

Article 53 - Request for information

(1) The State Commission may request from an elected or appointed public official, officer responsible person in a public enterprise or in other legal entity managing State capital, data and notifications about his/her assets or the assets of members of his/her family, about the changes of the assets, about the activity carried out by him or by a member of his/her family, the income realised, or other data relevant for the application of the provisions of this Law.

(2) The State Commission can also ask for the data and notifications stipulated in Paragraph 1 of this Article from a relevant authority or legal entity

(3) If the State Commission requests information stipulated in Paragraph 1 of this Article from a relevant authority or legal entity, the authority or the legal entity shall be obligated, without any delay, to provide the requested information within 15 days. If the information is classified, then the procedure applied shall be in accordance with the Law

Article 58 - Malfeasance in financial operations

(1) All employees in banks, savings banks, exchange offices, insurance companies, stock exchanges or other financial organizations shall be obliged to immediately report suspicious transactions related to corruption. The report shall be submitted to the responsible person in that legal entity and to the authorities prescribed by law and to the State Commission.

(2) The organiser of a stock exchange shall be required to keep evidence and registry of all transactions at the stock exchange.

3. Law on Witness Protection (“Official Gazette of the Republic of Macedonia” Numbers 38/2005 and 58/2005);

Article 14 - Cooperation and giving assistance to the Department by State and other organs and institutions

State and other organs and institutions are bound to give assistance to the Department for witness protection while performing tasks of its scope of work.

4. The Law on Public Internal Financial Control (“Official Gazette of the Republic of Macedonia” Number 90/2009) sets forth the following relevant provisions:

Article 50

- (1) The head of the public sector entity shall be obliged to both prevent the risk of irregularities and frauds and to undertake activities against irregularities and frauds.
- (2) The head of the public sector entity shall appoint a person reporting on irregularities and suspicions for frauds or corruption and shall independently undertake activities referred to in paragraph (5) of this Article.
- (3) All employees, including the internal auditors shall inform the head of the public sector entity or the person in charge of irregularities or suspicions of frauds or corruption.
- (4) If the Internal Auditor has suspicion of fraud or corruption during the performance of the audit, he shall inform the Head of Internal Audit Unit, being obliged to submit written information to the head of the public sector entity and the person in charge of irregularities thereon.
- (5) After the received report on existence of irregularities or suspicions of frauds or corruption, the person in charge of irregularities shall undertake the necessary measures and shall inform the Public Prosecutor's Office of the Republic of Macedonia and the Ministry of Finance - Financial Police Office and Financial Inspection of the Public Sector thereon,, and within 15 days he/she shall inform in writing the person pointing out to the irregularities or frauds on the undertaken measures, except in case of an anonymous report.
- (6) If the persons referred to in paragraph (3) of this Article are not informed on the appropriately undertaken measures, they shall inform the bodies referred to in paragraph (5) of this Article. The Central Harmonization Unit shall not be body in charge of irregularities and frauds.
- (7) Employees including the internal auditors reporting irregularities or suspicions of frauds shall be provided with protection on the identity and the acquired employment -related rights pursuant to law.
- (8) The Government of the Republic of Macedonia, upon proposal by the Minister of Finance, shall prescribe the procedure for preventing irregularities, the manner of mutual cooperation, the form and, the contents, the deadlines and the manner of informing on the irregularities.

5. The Law on International Cooperation in Criminal Matters ("Official Gazette of the Republic of Macedonia" Number: 124/2010) sets forth the following relevant provisions:

Article 6 - Ways of communication

- (1) The domestic competent authority shall send a letter rogatory for international legal assistance (herein after referred to as: letter rogatory) or a request for international cooperation in criminal matters (herein after referred to as: request) to the foreign competent authorities according to the provisions of this Law.
- (2) The letter rogatory or the request by the foreign competent authority shall be sent in written, through the Ministry of Justice (herein after referred to as: the Ministry).
- (3) The domestic competent authority shall send the letter rogatory or the request directly to the foreign competent authority in terms of mutuality or if provided for by an international agreement, and a copy of the letter rogatory or the request shall be sent to the Ministry as well.
- (4) Referring to paragraph 3 of this article, in case of emergency the letter rogatory or the request shall be sent through the channels of the international police cooperation, and a copy of the letter rogatory or the request shall be sent to the Ministry.
- (5) If an international agreement does not exist or if under the international agreement a diplomatic way of communication is not provided, the Ministry shall send the letter rogatory or the request using the diplomatic way through the Ministry of Interior.
- (6) The letter rogatory or the request can be received electronically or through another way of telecommunication for which a record shall be kept, and the original shall be sent through a regular mail.

Article 7 - Urgency in handling

The Ministry shall immediately deliver the letter rogatory or the request to the domestic competent authority, unless the letter rogatory or the request has to be rejected.

Article 15 - Concept

The international legal assistance shall include:

- enforcement of procedural actions such as delivery of documents, written evidence and acts related to the criminal proceedings in the sending State;
- delivery of spontaneous information;
- exchange of certain information and notifications;
- temporary transfer of persons deprived of freedom;
- cross-border observation;
- controlled delivery;
- using persons with hidden identity;
- joint investigation teams;
- monitoring communications;
- interrogation through video conference;
- interrogation through telephone conference;
- searching of premises and persons;
- temporary security of items, property or means related to the criminal offence;
- temporary freezing, confiscation and retention of assets, bank accounts and financial transactions or incomes from a criminal offence;
- confiscation of property and property benefits;
- deprivation of items;
- protection of personal data;
- criminal and civil liability of officials, and
- delivery of extracts from criminal records.

Article 25 - Delivery of spontaneous information

(1) The domestic judicial authority has the right, under the principle of mutuality and without receiving previous letter rogatory, to deliver to the foreign competent authority information for crimes, which have been collected during its own investigations, if it considers that the delivery of such information might help to initiate or conduct an investigation or court proceeding or it might lead to sending letter rogatory for international legal assistance.

(2) The domestic judicial authority shall ask the foreign competent authority, to which the information from paragraph (1) of this article has been delivered, to submit a report on all activities that have been undertaken on the basis of this information, as well as to deliver transcript of all decisions that have been reached.

(3) According to the regulations for protection of personal data, the domestic judicial authority that delivered the information from paragraph (1) of this article has the right to set certain conditions for the usage of the information in the foreign State where it has been delivered.

Article 38 - Joint investigation teams

(1) The domestic competent authorities for detection and prosecution of organised crime and corruption can be part of the joint investigation teams with the foreign competent authorities, formed for a particular purpose and with limited duration and possibility for its extension if both States that formed the team agree to the extension.

(2) The States that formed the team from paragraph (1) of this article shall determine the composition of the team by mutual consent and the team shall be formed in the territory of one of the States.

(3) The joint investigation team may be formed when within the investigative procedure complex investigative actions for mobilisation of significant resources have to be implemented, as well as when a coordinated action of the interested parties is necessary because of the complexity of the case.

(4) The joint investigation team shall implement its operations in accordance with the legislation of the State in whose territory the operations are implemented. The responsible person of the team shall be the representative of a competent authority which participates in the criminal investigation of the State in whose territory the team implements its operations.

The required organisational conditions for the implementation of the operations of the team shall be provided by the State in whose territory the team operates.

(5) If the joint investigation team needs assistance from a State which didn't participate in the forming of the team, the request for legal assistance may be sent to that State.

6. Law on police (Official Gazette of RM No 114/2006, 6/2009 и 145/12 and 41/2014)

Provisions for international police cooperation

Article 4

For aim of creating appropriate conditions for work of the police, in the Ministry:

7) the international police cooperation is developed and improved:

Article 15

The police affairs in the Ministry are carried out by the Bureau for public security (in the following text: Bureau) as a body in the frames of the Ministry.

The competences of the Bureau are the following:

1) Implementation of the ratified international agreements for police cooperation and other international acts in competence of the Police;

Article 115

A police officer can be directed to work abroad, on bases of the agreements for international police cooperation ratified according to the Constitution.

The police officers can be directed to participate in international civil operations and peace keeping missions, on bases on a Decision of the Government of the Republic of Macedonia, according to the ratified international agreements.

5. To consolidate statistical data into a relevant statistical system for monitoring of the anti-corruption policy, the working group comprised of members of the Inter-ministerial body for coordination of activities against corruption and representatives of the Court of First Instance Skopje I, the State Statistical Office and the Ministry of Information Society and Administration, drafted the first version of the Methodology for relevant statistical system for monitoring of the anti-corruption policy, adopted by the Government on 29.06.2013. The working group is headed by the Public Prosecutor of the Republic of Macedonia. The Methodology represents required data-tables and indicators for track-record (from first report to final outcome - enforcement of final judgments) of corruption related cases in criminal, misdemeanour and disciplinary procedure, procedure for establishing other forms of responsibility and other legal measures; monitoring implementation of the activities envisaged in the State programmes for prevention and repression of corruption and for prevention and reduction of conflicts of interest, monitoring of implementation of activities envisaged in separate anti-corruption strategic and programme documents monitoring of conducting corruption risk assessment and implementation of audit recommendations, as well as screening of training needs and conducted trainings for strengthening staff capacity for detection and prevention of corruption and conflicts of interest. The adoption and implementation of the Methodology increased the level of cooperation between anti-corruption bodies in order to provide consistent track-record of corruption related cases.

6. Amendments and addenda to the Law on Prevention and Corruption are drafted to introduce the concept of integrity system and to establish systematic protection of whistle-blowers (which, inter alia, prescribe internal and external whistleblowing channels and further promote protection and protection providers) in compliance with CoE and OECD recommendations.

7. The State Programme for Prevention and Repression of Corruption State and for Prevention and Reduction of Conflict of Interests with Action Plans for the period 2011 - 2015, adopted by the

State Commission for Prevention of Corruption in December 2011, identifies 11 sectors (Sector I - Political System, Sector II - Judiciary, Sector III - Public Administration, Sector IV - Law enforcement authorities, Sector V - Customs, Sector VI - Local Self-Government, Sector VII - Public Sector, Sector VIII - Health, labor and social policy, Sector IX - Education and Sports, Sector X - Private Sector, Sector XI - Media and civil society) seen to pose highest risks related to corruption and conflict of interests. All interventions, therefore, i.e. the normative, institutional, procedural, educational, preventive and repressive measures and activities are focused on those sectors where the institutional and individual integrity needs to be established and strengthened.

8. The Protocol on Cooperation for Prevention and Repression of Corruption and Conflict of Interest, of 25.12.2007, is signed between the State Commission for Prevention of Corruption and 18 institutions.

9. The Memorandum on Mutual Cooperation in Preventing Corruption and Conflict of Interest, of 28.12.2010, is signed between the State Commission for Prevention of Corruption and 21 non-governmental organizations.

10. The Memorandum on Mutual Cooperation in Preventing Corruption and Conflict of Interest in the Private Sector, of 09.12.2011, is signed by 9 business associations, and in 2012, on the grounds of this Memorandum, specific activities were realized, especially in cooperation with the Business Confederation of Macedonia. As a result of this cooperation the Business Code of Ethics was drafted.

11. The State Commission for Prevention of Corruption in cooperation with OSCE Mission in Skopje implements a Project titled as “Promoting principles of good governance and implementation of anti-corruption policy” This project is a second phase of support, after the 2012 project intervention in selected sectors of the State Programme for Prevention of Corruption 2011-2015 (the State Programme). It is part of an OSCE multi-annual plan to support the State Commission for Prevention of Corruption (SCPC) in implementation of the State Programme. The project will involve three interrelated components, 1) the conduct of three thematic surveys on citizens’ perceptions of the problem of corruption in three sectors of the State Programme, 2) production of three reports based on the National Integrity System (NIS) methodology for qualitative evaluation of three sectors of the State Programme; and 3) capacity building for the SCPC, promoting transparency and inter-institutional cooperation.

12. The Project “Support to Strengthening the National and Local Integrity Systems in the Republic of Macedonia”, financially supported by the Government of Norway and the Implementing partner UNDP CO Republic of Macedonia, of January -December 2012, and with no cost extension of the Project in 2013/2014, supports the State Commission for Prevention of Corruption in working with the other national and local institutions to introduce and sustain effective solutions to addressing integrity/corruption risks, with particular focus on fostering meaningful civic engagement and partnerships across different parts of society.

13. The Twinning Project “Support to efficient prevention and fight against corruption” which will start with implementation in 2014, covers all anti-corruption institutions and bodies with the objective to improve the implementation of the national legal framework for fight against corruption, to strengthen the national mechanisms for prevention and fight against corruption, to further promote the cooperation between the State Commission for Prevention of Corruption, the judiciary, law enforcement agencies and other relevant institutions in the prevention, detection, prosecution, and sanctioning of the criminal acts of corruption.

An Agreement for cooperation between EUROJUST and the former Yugoslav Republic of Macedonia is ratified on 15.04.2009 and entered into force in October 2010. Its application started since 23.06.2010. This agreement enables direct cooperation between the judicial authorities of the Republic of Macedonia and the judicial authorities of the member countries of EU regarding the judicial cooperation in criminal matters, extradition and transfer as well as organized crime and terrorism.

The former Yugoslav Republic of Macedonia has signed an agreement for operative and strategic cooperation with EUROPOL, which entered into force on 28.12.2011. By entering into force of this agreement the operative activities between the former Yugoslav Republic of Macedonia and Europol were intensified as well as the strategic activities for enhancing the participation of the former Yugoslav Republic of Macedonia in the activities with Europol, with aim of use of the services of Europol by the competent authorities. In the same time, there is an increase of the number of request and registered cases for exchange of strategical and operative information between the former Yugoslav Republic of Macedonia and Europol, containing personal data. Signing of this operative agreement also enabled more efficient operative cooperation and direct participation of the former Yugoslav Republic of Macedonia in the Analytical work files of Europol (AWF- Analysis Work File).

Regarding the liaison officer of the Republic of Macedonia in Europol, there are activities which are ongoing: the procedure for appointing the liaison officer has been started and should be finished.

The former Yugoslav Republic of Macedonia is a member of INTERPOL since 1993 and a contact-point is designated in the National Central Bureau of the Ministry of Interior. Since 2003 the protected telecommunication network is connected to the information system I-24/7, modern software system for exchange of information with other national central bureaus and direct access to criminal data-bases of Interpol and electronic call of international warrants. The Reports for the work of INTERPOL – Macedonia are regularly published at the web site of the Ministry of interior.

Also, the former Yugoslav Republic of Macedonia is member of EGMONT Group of financial intelligence units.

According to the Article 89 of the Law on prevention of money laundering and financing of terrorism (Official Gazette of RM No 130/2014), the Financial Intelligence Unit has right to enter into agreements for cooperation with authorised bodies of other States as well as with international organizations included in the fight against terrorism and money laundering.

The FIU has signed 53 such agreements:

- 5 agreements for cooperation in 2010, with: San Marino, Norway, Argentina, Canada and Estonia,
- 5 agreements for cooperation in 2011, with: Armenia, British Virgin Islands, Malawi, Hungary and Israel,
- 6 agreements for cooperation in 2012, with: Australia, Finland, Netherlands, Andorra, Bermuda, Bahamas,
- 2 agreements for cooperation in 2013, with: Latvia and Panama.

The Republic of Macedonia is also member of CARIN (Camden Assets Recovery Interagency Network) - an informal network in the field of asset tracing, freezing and confiscation. It holds membership status of an observer to CARIN since July 2014. National contact-points are

appointed from the Ministry of Interior, the Ministry of Justice and the Agency for management of seized property.

The former Yugoslav Republic of Macedonia also referred to an ACCMIS database - Automatic Court Case Management System - a database through which information can be shared between the courts, Judicial Council and the Ministry of justice;. Also there is another database between the Ministry of interior and the Public Prosecution. Internal databases exist also between the national authorities.

List of relevant multilateral agreements (in the area of criminal law)

1. European Convention on Extradition (ETS 024) – signed by the Republic of Macedonia on 28.07.1999, (Official Gazette of RM No 32/1999), ratified on 28.07.1999, entered into force on 26.10.1999;
2. European Convention on Transfer of Sentenced Persons (ETS 112) – signed by the Republic of Macedonia on 28.07.1999, (Official Gazette of RM No 32/1999), ratified on 28.07.1999, entered into force on 01.11.1999;
3. Criminal Law Convention on Corruption (ETS 173) – signed by the Republic of Macedonia on 28.07.1999, (Official Gazette of RM No 32/1999), ratified on 28.07.1999, entered into force on 01.07.2002;
4. European Convention on Mutual Assistance in Criminal Matters (ETS 030) - – signed by the Republic of Macedonia on 28.07.1999, (Official Gazette of RM No 32/1999), ratified on 28.07.1999, entered into force on 26.10.1999;
5. Civil Law Convention on Corruption (ETS 174) – signed by the Republic of Macedonia on 08.06.2000, (Official Gazette of RM No 13/2002), ratified on 29.11.2002, entered into force on 01.11.2003;
6. Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters (ETS 182) – signed by the Republic of Macedonia on 08.11.2001, (Official Gazette of RM No 44/2003), ratified on 24.06.2003, entered into force on 31.12.1999;
7. Convention on Cyber Crime (ETS 185) – signed by the Republic of Macedonia on 23.11.2001, (Official Gazette of RM No 41/2004), ratified on 15.09.2004, entered into force on 01.01.2005;
8. European Convention on the Transfer of Proceedings in Criminal Matters (ETC 073) – signed by the Republic of Macedonia on 08.11.2001, (Official Gazette of RM No 49/2004), ratified on 29.11.2004, entered into force on 01.03.2005;
9. Additional Protocol to the Criminal Law Convention on Corruption (ETS 191) – signed by the Republic of Macedonia on 15.05.2003, (Official Gazette of RM No 83/2005), ratified on 14.11.2005, entered into force on 01.03.2006;
10. Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (ETC 198) – signed by the Republic of Macedonia on 17.11.2005, (Official Gazette of RM No 49/2009), ratified on 27.05.2005, entered into force on 01.09.2009;
11. Second Additional Protocol to the European Convention on Transfer of Sentenced Persons (ETS 167) – signed by the Republic of Macedonia on 28.07.1999, (Official Gazette of RM No 32/1999), ratified on 28.07.1999, entered into force on 01.06.2000;
12. Second Additional Protocol to the European Convention on Extradition (ETS 098) – signed by the Republic of Macedonia on 28.07.1999, (Official Gazette of RM No 32/1999), ratified on 28.07.1999, entered into force on 26.10.2009;
13. Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters (ETC 099) – signed by the Republic of Macedonia on 28.07.1999, (Official Gazette of RM No 32/1999), ratified on 28.07.1999, entered into force on 26.10.1999;

14. Additional Protocol to the European Convention on Extradition (ETS 086) – signed by the Republic of Macedonia on 28.07.1999, (Official Gazette of RM No 32/1999), ratified on 28.07.1999, entered into force on 26.10.1999;
15. Council of Europe Convention on Laundering of Money, Search, Seizure and Confiscation of the Proceeds from Crime (ETC 141) – signed by the Republic of Macedonia on 04.11.1999, (Official Gazette of RM No 58/1999), ratified on 19.05.2000, entered into force on 01.10.2000;
16. European Convention on the Supervision of Conditionally Sentenced or Conditionally Released Offenders (ETS 051) - succession - (Official Gazette of RM No 04/1991);
17. Third Additional Protocol to the European Convention on Extradition (ETS 209) – signed by the Republic of Macedonia on 10.11.2010 (Official Gazette of RM No 135/2013), ratified on 01.10.2013;
18. United Nations Convention against Corruption — (Official Gazette of RM No 37/2007), ratified on 19.03.2007, entered into force on 03.04.2007;
19. United Nations Convention against Organized Crime (WITH PROTOCOLS) – (Official Gazette of RM No 70/2004), ratified on 28.09.2004, entered into force on 16.10.2004.

List of relevant bilateral agreements (in the area of criminal law)

- with ALBANIA:

- 1- Agreement between the Macedonian government and Albanian government for mutual legal assistance in civil and criminal cases (Official gazette of the RM No 16/98), entered into force on 02.10.1998;
- 2- Agreement between the Macedonian government and Albanian government for extradition (Official gazette of the RM No 16/98), entered into force on 02.10.1998;
- 3- Agreement between the Macedonian government and Albanian government for mutual enforcement of judicial decisions in criminal cases (Official gazette of the RM No 16/98), entered into force on 02.10.1998.

- with BOSNIA AND HERZEGOVINA:

1. Agreement between Republic of Macedonia and Bosnia and Herzegovina for mutual legal assistance in civil and criminal cases (Official gazette of the RM No 10/2006), entered into force on 06.01.2006;
2. Agreement between Republic of Macedonia and Bosnia and Herzegovina for extradition (Official gazette of the RM No 59/06);
3. Agreement between Republic of Macedonia and Bosnia and Herzegovina for reciprocal enforcement of judicial decisions in criminal cases (Official gazette of the RM No 59/2006).

On 12.03.2013 the Minister of justice of the Republic of Macedonia and the Minister of justice of Bosnia and Herzegovina signed three agreements for amendments of the existing agreements:

- Agreement between Republic of Macedonia and Bosnia and Herzegovina for changes and addenda to the Agreement between Republic of Macedonia and Bosnia and Herzegovina for mutual legal assistance in civil and criminal cases (it is in procedure for ratification);
- Agreement between Republic of Macedonia and Bosnia and Herzegovina for changes and addenda to the Agreement for extradition (Official gazette of the RM No 135/2013), entered into force on 30.07.2014 and
- Agreement between Republic of Macedonia and Bosnia and Herzegovina for changes and addenda to the Agreement for reciprocal enforcement of judicial decisions in criminal cases (Official gazette of the RM No 135/2013), entered into force on 30.07.2014.

- with MONTE NEGRO:

1. Agreement between Republic of Macedonia and Serbia and Monte Negro for mutual legal assistance in civil and criminal cases (Official gazette of the RM No 77/2004);
2. Agreement between Republic of Macedonia and for extradition (Official gazette of the RM No 40/2012), entered into force on 17.07.2012;

On 20.12.2013, the ministries of justice of Republic of Macedonia and Monte Negro on regional conference signed:

- Agreement between Republic of Macedonia and Monte Negro for mutual legal assistance in civil and criminal cases,
- Agreement between Republic of Macedonia and Monte Negro for mutual enforcement of judicial decisions in criminal cases.

(The agreements are in process of ratification)

- with CROATIA:

1. Agreement between Republic of Macedonia and Republic of Croatia for mutual enforcement of judicial decisions in criminal cases (Official gazette of the RM No 17/1995), entered into force on 26.05.1995,
2. Agreement between Republic of Macedonia and Republic of Croatia for mutual legal assistance in civil and criminal cases (Official gazette of the RM No 19/1995), entered into force on 26.05.1995,
3. Agreement between Republic of Macedonia and Republic of Croatia for extradition (Official gazette of the RM No 57/2012), entered into force on 22.11.2012,

- with Kosovo:

1. Agreement between the Government of Republic of Macedonia and the Government of Republic of Kosovo for mutual legal assistance in criminal cases (Official gazette of the RM No 178/2011), entered into force on 24.06.2012;
2. Agreement between the Government of Republic of Macedonia and the Government of Republic of Kosovo for extradition (Official gazette of the RM No 178/2011), entered into force on 24.06.2012;
3. Agreement between the Government of Republic of Macedonia and the Government of Republic of Kosovo for transfer of convicted person (Official gazette of the RM No 178/2011), entered into force on 24.06.2012.

- with Slovenia:

1. Agreement between Republic of Macedonia and Republic of Slovenia for mutual legal assistance in civil and criminal cases (Official gazette of the RM No 24/1996), entered into force on 05.09.1997;
2. Agreement between Republic of Macedonia and Republic of Slovenia for mutual enforcement of judicial decisions in criminal cases (Official gazette of the RM No 24/1996), entered into force on 05.09.1997;
3. Agreement between Republic of Macedonia and Republic of Slovenia for extradition (Official gazette of the RM No 24/1996), entered into force on 05.09.1997.

- with SERBIA:

1. Agreement between Republic of Macedonia and Republic of Serbia for extradition (Official gazette of the RM No 57/2012), entered into force on 06.12.2012;
2. Agreement between Republic of Macedonia and Republic of Serbia for civil and criminal cases (Official gazette of the RM No 15/2013), entered into force on 05.02.2013;
3. Agreement between Republic of Macedonia and Republic of Serbia for mutual enforcement of judicial decisions in criminal cases (Official gazette of the RM No 24/2013), entered into force on 23.02.2013;

- with TURKEY:

1. Agreement for mutual legal assistance in civil and criminal cases between Republic of Macedonia and Republic of Turkey (Official gazette of the RM No 23/1997), entered into force on 28.07.2000;

- with ITALY – in process

In the period from 14 to 16 January 2014, in Skopje, the authorities of Republic of Macedonia and Republic of Italy held negotiations for:

- Conclusion of Additional bilateral treaty between the Republic of Macedonia and Republic of Italy toward the European Convention for Mutual Legal Assistance in Criminal Matters of 20 April 1959 with aim of facilitation of its application;
- Conclusion of Additional bilateral treaty between the Republic of Macedonia and Republic of Italy toward the European Convention for extradition of 13 December 1957 for facilitation of its application.

The second phase of the negotiations for these agreements will soon be scheduled.

The former Yugoslav Republic of Macedonia also referred to the following agreements:

1. Cooperation Agreement with EUROJUST, ratified on 15.04.2009, in force since October 2010 година, in effect since 23.06.2010 година - direct judicial cooperation in criminal matters, extradition, transfer and combating organized crime and terrorism, between Macedonian judicial authorities and the judicial authorities of the EU member-States.
2. The former Yugoslav Republic of Macedonia is a member-State of the European Partnership against Corruption (EPAC), since 2009 - contact-point designated.
3. Strategic agreement with EUROPOL, ratified on 29.01.2008,
4. Agreement for operative and strategic cooperation with EUROPOL, ratified and entered into force in December 2011 - contact-point designated. Unit for cooperation with EUROPOL formed and operational within the International cooperation Department of the Ministry of Interior. The Rules of conduct of the Unit for cooperation with EUROPOL, adopted by the Ministry in February 2009, prescribes the performing of competences of the Unit in the activities and tasks of the scope of its competence in the area of cooperation with Europol, acting upon requests from Europol, cooperation of the national authorities with Europol, areas of cooperation, international relations, access to national databases, responsibility for coordination, security rules and network connection.

(b) Observations on the implementation of the article

In order to strengthen international cooperation, the former Yugoslav Republic of Macedonia has regulatory texts that provide for the international exchange of information for purposes of law enforcement. It has also signed many bilateral agreements that provide for the exchange of information in connection with an investigation and procedures to appoint a liaison officer to EUROPOL have been launched.

National law enforcement authorities have channels of communication through inter alia INTERPOL and EUROPOL. Furthermore, the national FIU is a member of the Egmont Group and has so far signed 53 MOUs with foreign counter parts on the exchange of information. National law enforcement authorities have not however been engaged in personnel exchanges.

The former Yugoslav Republic of Macedonia is an observer in CARIN since July 2014. National contact-points are appointed from the Ministry of Interior, the Ministry of Justice and the Agency for management of seized property. The former Yugoslav Republic of Macedonia is also a member-State of the European Partnership against Corruption (EPAC) since 2009 and has designated a contact-point.

The reviewing experts recommend the former Yugoslav Republic of Macedonia to take effective measures to promote the exchange of personnel and other experts, including the posting of liaison officers.

Article 48 Law enforcement cooperation

Paragraph 2

2. With a view to giving effect to this Convention, States Parties shall consider entering into bilateral or multilateral agreements or arrangements on direct cooperation between their law enforcement agencies and, where such agreements or arrangements already exist, amending them. In the absence of such agreements or arrangements between the States Parties concerned, the States Parties may consider this Convention to be the basis for mutual law enforcement cooperation in respect of the offences covered by this Convention. Whenever appropriate, States Parties shall make full use of agreements or arrangements, including international or regional organizations, to enhance the cooperation between their law enforcement agencies.

(a) Summary of information relevant to reviewing the implementation of the article

1. The Constitution of the Republic of Macedonia

Article 118

The international agreements ratified in accordance with the Constitution are part of the internal legal order and cannot be changed by law.

Reference was made to the list of bilateral and multilateral agreements mentioned above.

(b) Observations on the implementation of the article

The national legislation adequately reflects the requirements of the provisions under review.

Article 48 Law enforcement cooperation

Paragraph 3

3. States Parties shall endeavour to cooperate within their means to respond to offences covered by this Convention committed through the use of modern technology.

(a) Summary of information relevant to reviewing the implementation of the article

Reference was made to the following provisions:

Law on criminal procedure

Chapter XIX - SPECIAL INVESTIGATIVE MEASURES

Article 252 - Purpose and types of special investigative measures

(1) If likely to obtain data and evidence necessary for successful criminal procedure, which cannot be obtained by other means, the following special investigative measures may be ordered:

- 1) Monitoring and recording of the telephone and other electronic communications under a procedure as stipulated with a separate law;
- 2) Surveillance and recording in homes, closed up or fenced space that belongs to the home or office space designated as private or in a vehicle and the entrance of such facilities in order to create the required conditions for monitoring of communications;
- 3) Secret monitoring and recording of conversations with technical devices outside the residence or the office space designated as private;
- 4) Secret access and search of computer systems;
- 5) Automatic or in other way searching and comparing personal data of citizens;
- 6) Inspection of telephone or other electronic communications;
- 7) Simulated purchase of items;
- 8) Simulated offering and receiving bribes;
- 9) Controlled delivery and transport of persons and objects;
- 10) Use of undercover agents for surveillance and gathering information or data;
- 11) Opening a simulated bank account; and
- 12) Simulated incorporation of legal persons or using existing legal persons for the purpose of collecting data.

(2) In case when no information is available on the identity of the perpetrator of the criminal offence, the special investigative measures as referred to in paragraph 1 of this Article may be ordered also in respect of the object of the criminal offense.

Also, see answers to the previous questions related to article 48 paragraph 2 and 3.

The former Yugoslav Republic of Macedonia noted that a specialized Unit for investigations of cybercrimes has been established in the Department for cybercrime and digital forensics at the Public Security Bureau of the Ministry of Interior.

(b) Observations on the implementation of the article

The national legislation adequately reflects the requirements of the provisions under review.

(c) Challenges, where applicable

The former Yugoslav Republic of Macedonia has identified the following challenges and issues in fully implementing the provision under review:

1. Limited resources for implementation

(d) Technical assistance needs

The former Yugoslav Republic of Macedonia has indicated that the following forms of technical assistance, if available, would assist it in better implementing the article under review:

1. Summary of good practices/lessons learned;
2. Technological assistance (e.g. set-up and management of databases/information-sharing systems)
3. On-site assistance by a relevant expert
4. The need for a relevant software for collecting, keeping and processing statistical data for cases of extradition and other types of mutual legal assistance.
5. The need for general training in application of this Convention in the area of extradition and other types of mutual legal assistance.

Article 49 Joint investigations

States Parties shall consider concluding bilateral or multilateral agreements or arrangements whereby, in relation to matters that are the subject of investigations, prosecutions or judicial proceedings in one or more States, the competent authorities concerned may establish joint investigative bodies. In the absence of such agreements or arrangements, joint investigations may be undertaken by agreement on a case-by-case basis. The States Parties involved shall ensure that the sovereignty of the State Party in whose territory such investigation is to take place is fully respected.

(a) Summary of information relevant to reviewing the implementation of the article

Reference was made to the following provision:

Law on international cooperation in criminal matters

Article 38 - Joint investigation teams

- (1) The domestic competent authorities for detection and prosecution of organised crime and corruption can be part of the joint investigation teams with the foreign competent authorities, formed for a particular purpose and with limited duration and possibility for its extension if both States that formed the team agree to the extension.
- (2) The States that formed the team from paragraph (1) of this article shall determine the composition of the team by mutual consent and the team shall be formed in the territory of one of the States.
- (3) The joint investigation team may be formed when within the investigative procedure complex investigative actions for mobilisation of significant resources have to be implemented, as well as when a coordinated action of the interested parties is necessary because of the complexity of the case.
- (4) The joint investigation team shall implement its operations in accordance with the legislation of the State in whose territory the operations are implemented. The responsible person of the team shall be the representative of a competent authority which participates in the criminal investigation of the State in whose territory the team implements its operations.
The required organisational conditions for the implementation of the operations of the team shall be provided by the State in whose territory the team operates.
- (5) If the joint investigation team needs assistance from a State which didn't participate in the forming of the team, the request for legal assistance may be sent to that State.

Authorities met during the country visit further noted that the former Yugoslav Republic of Macedonia has concluded two agreements for joint investigation teams related to cases of illegal trafficking of narcotic drugs. One is in 2010 – with Republic of Bulgaria and the other one is in 2012 – with more west European countries: Austria, Germany and Netherlands. Both investigations have been successfully completed.

(b) Observations on the implementation of the article

The former Yugoslav Republic of Macedonia can conduct joint investigations and has done that in non corruption-related offences at the international level.

The former Yugoslav Republic of Macedonia is in line with the provision under review.

(c) Challenges, where applicable

The former Yugoslav Republic of Macedonia has identified the following challenges and issues in fully implementing the provision under review:

1. Limited resources for implementation

(d) Technical assistance needs

The former Yugoslav Republic of Macedonia has indicated that the following forms of technical assistance, if available, would assist it in better implementing the article under review:

1. Summary of good practices/lessons learned;
2. On-site assistance by a relevant expert
3. The need for a relevant software for collecting, keeping and processing statistical data for cases of extradition and other types of mutual legal assistance.
4. The need for general training in application of this Convention in the area of extradition and other types of mutual legal assistance.

Article 50 Special investigative techniques

1. In order to combat corruption effectively, each State Party shall, to the extent permitted by the basic principles of its domestic legal system and in accordance with the conditions prescribed by its domestic law, take such measures as may be necessary, within its means, to allow for the appropriate use by its competent authorities of controlled delivery and, where it deems appropriate, other special investigative techniques, such as electronic or other forms of surveillance and undercover operations, within its territory, and to allow for the admissibility in court of evidence derived therefrom.

2. For the purpose of investigating the offences covered by this Convention, States Parties are encouraged to conclude, when necessary, appropriate bilateral or multilateral agreements or arrangements for using such special investigative techniques in the context of cooperation at the international level. Such agreements or arrangements shall be concluded and implemented in full compliance with the principle of sovereign equality of States and shall be carried out strictly in accordance with the terms of those agreements or arrangements.

3. In the absence of an agreement or arrangement as set forth in paragraph 2 of this article, decisions to use such special investigative techniques at the international level shall be made on a case-by-case basis and may, when necessary, take into consideration financial arrangements and understandings with respect to the exercise of jurisdiction by the States Parties concerned.

4. Decisions to use controlled delivery at the international level may, with the consent of the States Parties concerned, include methods such as intercepting and allowing the goods or funds to continue intact or be removed or replaced in whole or in part.

(a) Summary of information relevant to reviewing the implementation of the article

Reference was made to the following provisions:

1. The Law on Criminal Procedure (“Official Gazette of the Republic of Macedonia” Number: 150/2010) sets forth the following provisions: Chapter XIX - SPECIAL INVESTIGATIVE MEASURES

2. The Law on International Cooperation in Criminal Matters (“Official Gazette of the Republic of Macedonia” Number: 124/2010) sets forth the following relevant provisions:

- Article 35 (cited above)
- Article 38 (cited above)

Article 36 - Controlled delivery

(1) At the request of the Public Prosecutor of the Republic of Macedonia or of the competent authorised public prosecutor the competent the judge appointed to conduct the preliminary proceedings may upon order allow commencement of controlled delivery of persons and objects from a foreign State to the Republic of Macedonia in the frame of the criminal investigation for criminal offences for which special investigative measures can be applied according to the provisions of the Law on Criminal Proceedings.

(2) The competent public prosecutor of the Republic of Macedonia shall make an order for commencement of controlled delivery for each case separately according to the domestic legislation.

(3) The judicial police and other officials authorised by the competent public prosecutor of the Republic of Macedonia or by the competent the judge appointed to conduct the preliminary proceedings shall be competent for the operation, management and control of the activities for the controlled delivery.

(4) During the controlled delivery, technical recourses can be used in accordance with the domestic legislation for keeping records of the criminal offences for which special investigative measures can be applied according to the Law on Criminal Proceedings.

(5) The competent public prosecutor of the Republic of Macedonia may file a request to the foreign competent authorities for organisation of controlled delivery of persons and objects in its territory.

Article 37 - Using persons with hidden identity

(1) The competent public prosecutor of the Republic of Macedonia may seek assistance from a foreign State and provide assistance to a foreign State within the implementation of criminal investigations of persons with hidden identity.

(2) For each separate case the competent public prosecutor of the Republic of Macedonia or the judge appointed to conduct the preliminary proceedings shall issue an order in accordance with the domestic legislation whereby both parties shall agree on the time period for using persons with hidden identity, on the conditions and the legal status of the respective persons with hidden identity.

(3) Using persons with hidden identity shall be implemented according to the domestic legislation and the legislation of the State in whose territory is conducted the criminal investigation, and the Republic of Macedonia and the foreign State shall cooperate in order to provide preparations and observation, as well as to introduce safety measures for the person with hidden identity.

The former Yugoslav Republic of Macedonia noted that a Department for undercover operations was established within the Division for organized or serious crime. Several units are established within this department: Unit for under-covered police officers, unit for interception of communications, unit for surveillance, monitoring and documentation and Unit for protection of witnesses. The work of the Department for under-covered operations is regulated by laws, by-law acts and intern regulations.

The Department for under-covered operations was established in 2005 and since then, the employees in this department have gained significant working experience and knowledge in the

implementation of special investigative measures, which is evident from the results of the work of this department.

As it has been previously mentioned, according to the Law on criminal procedure, the following special investigative measures are used:

- 1) Monitoring and recording of the telephone and other electronic communications under a procedure as stipulated with a separate law;
- 2) Surveillance and recording in homes, closed up or fenced space that belongs to the home or office space designated as private or in a vehicle and the entrance of such facilities in order to create the required conditions for monitoring of communications;
- 3) Secret monitoring and recording of conversations with technical devices outside the residence or the office space designated as private;
- 4) Secret access and search of computer systems;
- 5) Automatic or in other way searching and comparing personal data of citizens;
- 6) Inspection of telephone or other electronic communications;
- 7) Simulated purchase of items;
- 8) Simulated offering and receiving bribes;
- 9) Controlled delivery and transport of persons and objects;
- 10) Use of undercover agents for surveillance and gathering information or data;
- 11) Opening a simulated bank account; and
- 12) Simulated incorporation of legal persons or using existing legal persons for the purpose of collecting data.

The Department for combating organized and serious crime, and in the framework of the international cooperation and implementation of special investigative measures against transnational organized crimes, has cooperated with the police services of Turkey, Austria, Germany, Serbia, Bulgaria, Netherlands, Switzerland, and other countries. The most evident cooperation in the recent years in the field of controlled delivery was implemented with Republic of Turkey.

Agreements

In the area of International cooperation in combating organized crime, the former Yugoslav Republic of Macedonia concluded numerous international and bilateral agreements:

1. Agreement with the Swiss Confederation on police cooperation in combating crime (Skopje, 20.09.2005, ratified on 10.02.2005, entered into force on 19.01.2009)
2. Memorandum with the Republic of Serbia on cooperation against terrorism, organized crime, psychotropic substances and other crimes (Ohrid, 25.07.2003)
3. Memorandum with the Republic of Serbia and the Republic of Bulgaria on cooperation in combating terrorism, organized crime, drug trafficking, psychotropic substances, illegal migration and other crimes (December, 2003)
4. Agreement with the Republic of Bulgaria on cooperation in combating terrorism, organized crime, drug trafficking, illegal migration, psychotropic substances and other crimes (Skopje, 26.02.2003, entered into force on 26.02.2003)
5. Agreement with the Government of Montenegro on cooperation in combating terrorism, organized crime, drug trafficking, psychotropic substances and other crimes (Skopje, 10.06.2003, ratified on 22.07.2003)
6. Agreement with the Government of Romania on cooperation in combating terrorism, organized crime, drug trafficking, psychotropic substances and illegal activities (Bucharest, 12.11.2003, ratified on 16.06.2004, entered into force 10.10.2006)
7. Agreement with the Council of Ministers of the Republic of Albania on cooperation in combating terrorism, organized crime, drug trafficking, psychotropic substances and

- precursors, illegal migration and other illegal activities (Skopje, 17.06.2004, ratified on 21.04.2005, entered into force 20.05.2005), Additional Protocol (on intensifying cooperation in the fight against human trafficking) supplementing the Agreement (Ohrid, 14.09.2007, entered into force 14.10.2007)
8. Agreement with the Council of Ministers of the Bosnia and Herzegovina on cooperation in combating terrorism, organized crime, drug trafficking, psychotropic substances and precursors, illegal migration and other crimes (Skopje, 17.06.2004, ratified on 21.04.2005, entered into force 20.05.2005), Additional Protocol (on intensifying cooperation in the fight against human trafficking) supplementing the Agreement (Ohrid, 21.03.2008, ratified in 2009)
 9. Agreement with the Government of Republic of Poland on cooperation in combating organized crime and other forms of crime (Warsaw, 16.06.2008, entered into force 21.02.2009)
 10. Agreement with the Swiss Confederation on police cooperation in combating crime (Skopje, 20.09.2005, ratified on 10.02.2005, entered into force on 19.01.2009)
 11. Memorandum with the Republic of Serbia on cooperation against terrorism, organized crime, psychotropic substances and other crimes (Ohrid, 25.07.2003)
 12. Memorandum with the Republic of Serbia and the Republic of Bulgaria on cooperation in combating terrorism, organized crime, drug trafficking, psychotropic substances, illegal migration and other crimes (December, 2003)
 13. Agreement with the Republic of Bulgaria on cooperation in combating terrorism, organized crime, drug trafficking, illegal migration, psychotropic substances and other crimes (Skopje, 26.02.2003, entered into force on 26.02.2003)
 14. Agreement with the Government of Montenegro on cooperation in combating terrorism, organized crime, drug trafficking, psychotropic substances and other crimes (Skopje, 10.06.2003, ratified on 22.07.2003)
 15. Agreement with the Government of Romania on cooperation in combating terrorism, organized crime, drug trafficking, psychotropic substances and illegal activities (Bucharest, 12.11.2003, ratified on 16.06.2004, entered into force 10.10.2006)
 16. Agreement with the Council of Ministers of the Republic of Albania on cooperation in combating terrorism, organized crime, drug trafficking, psychotropic substances and precursors, illegal migration and other illegal activities (Skopje, 17.06.2004, ratified on 21.04.2005, entered into force 20.05.2005), Additional Protocol (on intensifying cooperation in the fight against human trafficking) supplementing the Agreement (Ohrid, 14.09.2007, entered into force 14.10.2007)
 17. Agreement with the Council of Ministers of the Bosnia and Herzegovina on cooperation in combating terrorism, organized crime, drug trafficking, psychotropic substances and precursors, illegal migration and other crimes (Skopje, 17.06.2004, ratified on 21.04.2005, entered into force 20.05.2005), Additional Protocol (on intensifying cooperation in the fight against human trafficking) supplementing the Agreement (Ohrid, 21.03.2008, ratified in 2009)
 18. Agreement with the Government of Republic of Poland on cooperation in combating organized crime and other forms of crime (Warsaw, 16.06.2008, entered into force 21.02.2009);
 19. Memorandum of understanding between the Macedonian Ministry of Internal Affairs, Federal Ministry of internal affairs of Austria, Ministry of internal affairs of Romania, Ministry of internal affairs of Republic of Slovenia, Ministry of internal affairs of Republic of Albania, Ministry of security of Bosnia and Herzegovina, Ministry of internal affairs of the Republic of Croatia, Ministry of internal affairs of Monte Negro and Ministry of internal affairs of Serbia for establishment of units for international coordination of the bodies competent for law enforcement – (ILECU's) (Brdo, Kranj, Republic of Slovenia, 9 September 2009);

20. Agreement with the Republic of Slovakia for police cooperation in the fight against the crime (Bratislava, 5 October 2009, ratified by the Parliament of the Republic of Macedonia on 16-th of June 2010, Official Gazette 77/2010, entered into force on 29 July 2010);
21. Agreement with the Government of the Czech Republic for fight against the crime (Prague, 9 of February 2010, ratified by the Parliament of the Republic of Macedonia on 9 September 2010, Official gazette 116/2010, entered into force on 1 March 2011);
22. Agreement with the Government of the Republic of Serbia for police cooperation (Belgrade, 30 November 2011, Official Gazette No. 25/2012, entered into force on 4 January 2014),
23. Joint Declaration for police cooperation between the Macedonian Ministry for internal affairs and the Bavarian Ministry for Internal Affairs – (Skopje, 11 April 2012);
24. Agreement with Government of Republic of Croatia, Skopje, 28 May 2012, entered into force on 19 August 2013);
25. Memorandum for cooperation between the Macedonian Ministry of internal affairs and the Austrian Federal police for fight against transnational crime and development of police cooperation (Rim, Italy, 05.11.2012);
26. Agreement between the Macedonian Government and the Government of Republic of Moldova for police cooperation (signed in Bucharest, on 18.10.2013);
27. Agreement for police cooperation between the Macedonian Government and the Belgian Government (signed on 21 November 2013 in Brussels).

The former Yugoslav Republic of Macedonia is also signatory to the Police Cooperation Convention for South-East Europe. The Parliament ratified this Convention on 1 June 2007. The convention includes special investigative measures, in the articles 14 (Cross-border surveillance), article 15 (Controlled delivery), article 16 (Undercover investigations to investigate crimes) and Article 17 (Undercover investigations to prevent criminal offences).

The former Yugoslav Republic of Macedonia noted that all signed bilateral agreements on mutual cooperation in criminal matters include provisions on cooperation related to special investigative measures.

The former Yugoslav Republic of Macedonia provided the following statistical data:

- In 2013 there were 35 orders for application of special investigative measures in cases of corruption – for 39 persons – in 6 cases,
- In 2014 (until September) there were 47 orders for application of special investigative measures – for 18 persons – in 3 cases.

The former Yugoslav Republic of Macedonia provided the following case example:

Case “Kaldrma”

In 2010, the Department for organized and serious crime within the Ministry of interior of Republic of Macedonia began with realization of the case named “Kaldrma”, on bases of previously received information for irregularities in the work of the officials in the public enterprise “Macedonia Road”. Namely, larger group of employees in this public enterprise, working on the pay-tools, were charging different sums, depending whether the vehicles are cargo or passengers vehicles and whether they are property of Macedonian or foreign citizens. They charged the foreign citizens from 3 to 5 Euros per vehicle – although the real price of the ticket is 20 – 60 denars (20 cents to 1 Euro) and they charged the cargo vehicles 10-20 Euros although the real price of the ticket is 160 – 240 denars (2,6 to 4 Euros). In many cases the passengers paid but did not receive any ticket or received a false ticket. The falsified tickets were made by a person who was previous employee in this public enterprise and they were distributed for gaining financial benefit in return.

In whole this situation, also the heads of pay-tools were involved and they charged per 1000 – 3000 Euros per month to the pay-tool officials for placing them to work on the so called “attractive” pay-tools without controls.

In this case, more types of special investigative measures were applied:

1. Monitoring and recording of the telephone and other electronic communications,
2. Secret monitoring and recording of conversations with technical devices,
3. Secret access and search of computer systems,
4. Simulated offering and receiving bribes and
5. Use of undercover agents for surveillance and gathering information or data.

In total 91 persons were taken into custody, under suspicion for the criminal act “Misuse of official duty and authorizations”, “Criminal association” and “Counterfeiting marks of value”. With these criminal acts, the suspects have 120.016.510 denars (close to 2 million Euros).

All the accused persons are convicted with effective judicial verdicts and sanctioned with prison sentences and order to compensate the damage made to the State budget.

An exception of this were 6 accused person, who were collaborators of justice and for that reason the public prosecutor cancelled the criminal prosecution for them.

The former Yugoslav Republic of Macedonia noted that controlled delivery is applied in the frames of the international cooperation but generally for cases of organized crime and provided the following case example of cooperation with Turkey. As result of this cooperation and application of the controlled delivery, several organized criminal groups were combated. One of these groups was an organized criminal group smuggling narcotic drugs – heroin, generally from Turkey through Bulgaria or Greece to the former Yugoslav Republic of Macedonia. During the case of discovering and combating of this group, both countries, the former Yugoslav Republic of Macedonia and Turkey, applied special investigative measures and, as result of their mutual cooperation, members of this organized criminal group were arrested and more than 80 kilos of heroin were seized.

(b) Observations on the implementation of the article

The LICCM and the Law on Criminal Procedure together with a large number of bilateral agreements on mutual cooperation in criminal matters to which the former Yugoslav Republic of Macedonia is party authorize and organize the use of special investigative techniques in matters of organized crime and corruption.

Chapter XIX of the Law on criminal procedure provides for the special investigative measures which could be used in corruption cases including monitoring and recording of the telephone and other electronic communications, surveillance and recording in homes, secret monitoring and recording of conversations with technical devices outside the residence or the office space designated as private, secret access and search of computer systems, Simulated offering and receiving bribes, controlled delivery and transport of persons and objects and the use of undercover agents for surveillance and gathering information or data. The LICCM also provides for a number of special investigative techniques including controlled delivery and the use of under-covered agents

The former Yugoslav Republic of Macedonia established a Department for undercover operations in 2005 within the Division for organized or serious crime. This department includes a unit for under-covered police officers, a unit for interception of communications, a unit for surveillance, monitoring and documentation and a unit for protection of witnesses.

The Department for combating organized and serious crime, and in the framework of the international cooperation and implementation of special investigative measures against transnational organized crimes, has cooperated with the police services of several countries. There appear to be no challenges to the admissibility of evidence derived from special investigative techniques.

Based on the information provided, the reviewing experts are satisfied that the former Yugoslav Republic of Macedonia has mechanisms in place for the use of special investigation techniques within its legislation.

(c) Challenges, where applicable

The former Yugoslav Republic of Macedonia has identified the following challenges and issues in fully implementing the provision under review:

1. Limited resources for implementation

(d) Technical assistance needs

The former Yugoslav Republic of Macedonia has indicated that the following forms of technical assistance, if available, would assist it in better implementing the article under review:

1. Summary of good practices/lessons learned;
2. Legal advice
3. On-site assistance by a relevant expert
4. The need for a relevant software for collecting, keeping and processing statistical data for cases of extradition and other types of mutual legal assistance.
5. The need for general training in application of this Convention in the area of extradition and other types of mutual legal assistance.