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DELAYED JUSTICE - MACEDONIAN EXPERIENCE WITH GUILTY PLEA AND SENTENCE BARGAINING

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ABSTRACT

Bearing on mind the idea of the proverb "*Justice Delayed is Justice Denied*" Macedonian Legislator within the new Code of Criminal Procedure (CPC) has introduced several legal mechanisms for accelerating the criminal procedure. The most important instruments among them, by all means, are the Guilty Plea and Sentence Bargaining.

In this article, the author elaborates the practical implementation of these CPC's provisions and performs analysis of its implementation by the Basic Court Skopje 1 in Skopje, as the biggest and most caseload-burdened court in Macedonia, and by the Public Prosecution Office in Skopje.

The analysis discovered several weak points, which should be properly addressed, both through theoretical scrutiny and through introduction of amendments to the CPC or through production of a general opinion by the Supreme Court. Only through these amendments to the legal provisions of the CPC can be expected to have improved court practice in a manner which would accentuate the real/just benefits of these instruments for accelerating of the criminal procedure.

Several conclusions and suggestions for improvement or specific issues, which were determined as problematic were developed, such as: tackling the impact of a guilty plea by one of the codefendants to the other codefendants who did not plead guilty; treatment of the altered statement by one of the codefendants during the plea agreement and its use against the other codefendant; and the burden of proof and amount of evidence which is necessary to support the sentence bargaining process.

1. INTRODUCTION

With the enactment of the new Criminal Procedure Code in 2010, Macedonian legislator has created modern criminal justice system mainly inspired by the Anglo-American adversarial system. The main reasons for the vast reform of the criminal justice system in Macedonia were to increase the efficiency and to reduce the time of the criminal procedures (Matovski, Buzarovska & Kalajdziev, 2011). These problematical aspects of the previous system, predominantly based upon the European inquisitorial or mixed system, were mainly located in the slow and overburdened investigative procedure with passive role of the prosecutor and dominant role of the investigative judge during this stage of the criminal procedure, together with the strong paternalism of the court and passive role of the prosecutors during the main hearing of the criminal procedure (Kalajdziev & Buzarovska, 2011). The solution to this

situation which led to strong role of the court in finding and providing the evidence and to adjudicate upon these evidence, while having predominantly passive parties in the trials have led to introduction of several new instruments which were traditionally established in the adversarial criminal justice system. One of the most important novelties of the CPC of 2010 was the introduction of the guilty plea and sentence bargaining (Buzarovska & Misoski, 2009). Besides these novelties, the new CPC introduced important changes such as: the new active role of the prosecutor during the investigative phase and restructuring of the main hearing trough passivizing the role of the judge where he/she would be an arbiter to determine the guilt of the defendants upon the adversarial direct and cross examination of the evidences provided by the parties (Buzarovska, 2012; Kalajdziev, Raicevic-Vuckova, Dimitrovski, Vitanov, & Trajanovska, 2008).

These instruments tend to increase the courts efficiency and to increase the trust and confidence to the court decisions.

Although the introduction of these new instruments or legal transplants was seen as a smooth process, in a system with no precedent background, after several years of implementation (since December, 2013) has shown several uncertainties which should be taken into consideration. These doubts to the rightfulness of these legal provisions were mainly located into the lack of legal provisions or court practice for determining every possible situation which might appear or stand in front of the Macedonian courts.

Particularly problematic issues have risen with the implementation of the guilty plea and with the implementation of the sentence bargaining.

These issues were raised when there was a guilty plea by several codefendants and in the cases where it was up to the court to determine the proper amount of evidence in order to accept the sentence bargaining. The influence to the court of the guilty plea by one of the codefendants to the other codefendants who did not plead guilty is also questionable. Position of the court regarding the treatment of the altered statement by one of the codefendants during the plea agreement and its use against the other codefendant remains unregulated according to the provisions of the CPC. And finally, the burden of proof and amount of evidence which is necessary to be presented to the court as a factual support the sentence bargaining process, and courts role in this procedure.

2. GUILTY PLEA AND SENTENCE BARGAINING UNDER THE CPC

Immediately after the enactment of the new CPC in 2010, the criminal justice professionals were, somehow, divided upon answering the questions whether sentence bargaining and guilty plea is the real answer to clean-up the court dockets and speeding up the criminal trials and whether this institute is it fair and just model which can generate just judgments having into consideration Macedonian legal mentality. These dilemmas were even more emphasized, bearing on mind the fact that this criminal justice instrument is still considered, at least, as a controversial one, since even in the US legal system which is its founder, or at least in its modern perspective, there are many discussions and debates regarding its fairness and open questions remain regarding its proper implementation (Baldwin & McConville, 1977; McConville, 1998; Boari & Fiorentini, 2001; Fisher, 2003; Herzog, 2004). For these reasons the above mentioned dilemmas by the Macedonian legal practitioners were more than substantiated, and proper implementation of the sentence bargaining and guilty plea was reasonably questioned.

2.1. LEGAL PROVISIONS.

Macedonian CPC has regulated sentence bargaining and guilty plea in several articles. In order to have more specific information, in the further text these criminal procedure instruments will be discussed separately.

2.1.1. SENTENCE BARGAINING.

The new concept of sentence bargaining is regulated with the provisions of the Chapter 29 of the CPC. In this chapter, the procedure for enacting a verdict during the early stages of the criminal procedure, the investigative phase, reached upon a request of the parties expressed by settlement, is introduced. This settlement takes part between the public prosecutor and the defendant. Presence of the defense lawyer during the whole phase of the sentence bargaining, as a measure for further protection of the defendant's rights is requested by the CPC. The defendant is entitled to express his defense freely and he/she can't be forced to accept the settlement for his/hers client (Art. 483-490 CPC, 2010). Under the provisions the parties can only bargain over the type of the criminal sanction and not over the composition of the indictment. The defendant is also released from the obligation to provide any facts that will harm him/her or his/hers close relatives and has a privilege of non-self-incrimination. Also, he has a right to state all of the relevant facts that may benefit his/hers position. In virtue of this solution, an addition to the Draft - settlement could only be the request for reparation of the damages submitted by the victim of the crime (Buzarovska & Misoski, 2010).

According to the Macedonian CPC it is possible to initiate a sentence bargaining procedure during the first appearance of the defendant in the court. This procedure takes place in the phase of introduction of the defendant to his/her rights. At the same time, the court will instruct the defendant of his/hers right to bargain over the sentence with the prosecutor.

Considering the provisions of the Macedonian CPC, sentence bargaining can be essentially divided to two formal stages.

First stage regulates the formal conditions for submitting of the settlement as a result to sentence bargaining between the prosecutor and the defendant. At this stage the defendant's guilty plea is not preconditioned in order to commence the sentence bargaining procedure. Sentence bargaining procedure is finalized trough the submitted Draft – settlement to the court which bears consent of both parties of the bargaining process. During this stage the presence of the defendant's defense attorney is mandatory, while the CPC strictly excludes the participation of the judge within this process. By virtue of his authority, the Public prosecutor considers the rights of the damaged person, but the damaged is not an active participant of the sentence bargaining process. Constituent part of this Draft – settlement is the proposed sanction of a certain type and severity, which can be mitigated to the legal minimum for the particular criminal act determined in the Criminal Code (Art. 484-487 CPC, 2010).

By these provisions, we can notice that Macedonian sentence bargaining process has, in a way, differed from its original US concept, due to the fact that it requests the mandatory presence of the defense lawyer (Art. 74 CPC, 2010) during the whole sentence bargaining process. With this solution the Macedonian CPC has taken into consideration the legal culture and the Macedonian mentality, and stated that in order to reach standards such as an equality of arms, protection of the privilege against self-incrimination and protection of indigent defendants stated that assistance from a defense attorney is mandatory during this procedure. Furthermore, the presence of the defense attorney is particularly important for protection of the rights of the indigent defendants, as in most cases they will be not aware of the legal consequences of entering into the sentence bargaining procedure.

The second characteristic is the mandatory absence of the judge during the sentence bargaining process (Art. 487 CPC, 2010). This means that the judge should be introduced with the outcome of the sentence

bargaining procedure only at the end, when the Draft – settlement is submitted to the court. Through this solution the judge would keep his non biased position and he would not be affected by the statements given by the parties during the sentence bargaining procedure. This solution is in essence very close to the original and required role of the court during the bargaining process (Alschuler, 1976).

Finally, the New Law on Criminal Procedure provides additional protection of the rights of the damaged person by allowing this person's claim to be implemented into the Draft – settlement. If damaged person does not submit his damage request, than he/she is entitled to receive a copy from the verdict delivered upon written settlement for sentence bargaining from the court. Then, the damaged person can exercise his/her rights in a civil procedure (Art. 483-484 CPC, 2010).

The second stage contains the provisions regulating the deliberation of the court. This stage is initiated when the parties submit the Draft – settlement (Art. 485 CPC, 2010) to the court - judge of the pretrial phase and it regulates the position of the judge while examining the submitted Draft-settlement. During this stage the judge of the pretrial phase has an active role and if he/she is satisfied with the submitted Draft-settlement the verdict during the investigation phase of the criminal procedure can be delivered. The judge of the pretrial phase evaluates the legality and voluntary of the Draft - settlement on a special hearing, and it is particularly examined whether the Draft – settlement is voluntarily submitted and whether the defendant is aware of, and understands the legal consequences of the court's acceptance of the Draft – settlement, as well, as the consequences related to the request of the damaged person for restitution of the damages if they are included in the Draft – settlement and court fees. During this phase the parties can withdrew from the submitted Draft-settlement, but if they do not, and if the court accept it, than the court delivers verdict which is final, and which cannot be objected by the parties with the regular legal remedies (Art. 488 CPC, 2010). In this fashion, the Macedonian legislator tried to implement all procedural guarantees for the defendant in order to secure voluntary and conscious participation of the defendant during the sentence bargaining process, as regulated within its origin in the US Federal Rules of Criminal procedure in its article 11 (Federal Rules of Criminal Procedure, 2014).

Macedonian legislator have introduced two possibilities for the parties to depart from already submitted Draft – settlement (Art. 489 CPC, 2010). The first possibility to withdraw from the submitted Draft – settlement is in the phase where the court is examining this Draft-settlement when parties can express its grounds and reasons for non-acceptance. The second possibility that the parties withdraw from the submitted Draft – settlement is the situation if one of the parties break the promises that they have given during the sanction bargaining process by suggesting different sanction or compensation to the damaged person that one which was determined within the submitted Draft-settlement.

If none of the parties has withdrawn from the Draft – settlement, than the court can deliberate two types of decisions. The first type of decision is delivered when the sentence bargaining process concludes with formal **Decision for Rejecting the Draft – settlement by the court.** This decision is delivered in cases when any of the parties have withdrawn from the conditions determined in the Draft – settlement. This type of **Decision for Rejecting the Draft – settlement** is also enacted by the court in case the parties have proposed to the court to deliver a sanction that does not adequately reflect the conditions and factual basis determined by the submitted evidence enclosed to the Draft – settlement.

Basically, by adopting these standards, the Macedonian legislator has accepted the solution that the Draft – settlement must be grounded with sufficient evidence in order for the court to accept it. This means that in essence the court, besides evaluating the voluntary nature of the settlement, must examine whether there is enough evidence which will support court's verdict (Art. 489 CPC, 2010)

This first type of decision by the court basically means that by rejecting the submitted Draft – settlement the court has declared that the sentence bargaining procedure was unsuccessful and all the case files received as part of the Draft-settlement cannot be used in any other phase of the criminal procedure.

The second type of decision by the court is the **Decision for Acceptance of the Draft – settlement**. This means that, after conducting the hearing, the judge of the pretrial phase will reach a formal Decision for Acceptance of the Draft–settlement and he will enact a verdict with the same sanction as proposed in the submitted Draft – settlement. The verdict is declared immediately after the closing of the hearing. Damaged person also receives a copy of the verdict and if he/she is not satisfied how the claim was resolved he/she has the right to readdress the damage claims in a civil procedure.

Delivering this type of verdict means that one criminal case has been fully resolved and the verdict is final.

2.1.2. GUILTY PLEA.

The Macedonian CPC proscribes three possibilities for the defendant to plead guilty during the criminal procedure. The first possibility is to plead guilty upon receiving the indictment (Art. 329, 330, CPC, 2010). Second possibility is while the legality of the indictment is examined (Art. 333 to 336, CPC, 2010) and the third possibility is at the defendant's first hearing during the main hearing (Art. 380, 381, CPC, 2010). The defendant can plead guilty for one, several or every account of the indictment. In this case, the judge or the judicial council, depending on the severity of the crime, must schedule a hearing to determine whether the defendant's guilty plea was voluntarily and whether the defendant is aware of the legal consequences of the guilty plea. The court also must evaluate whether there is enough evidence supporting the defendant's guilty plea.

Even when a guilty plea is submitted, the judge or the council for evaluation of the indictment is authorized to reject the guilty plea, and this court decision is noted into the court's records. In order to prevent any misuse of the defendant's guilty plea in further court proceedings, the CPC proscribes that the court cannot use a guilty plea in cases where such plea is rejected by the court. In such cases the records that contain the defendants guilty plea are put aside of the case file and they cannot be used as evidence in any further court proceedings.

Whether the guilty plea is submitted before the main hearing (during the submitting of the indictment or at the phase of its evaluation) or at the first hearing on the main hearing, there are two different possibilities for speedy termination of the criminal trial. This means that if the guilty plea was submitted before the main hearing, than if judge or a judicial council for evaluation of the indictment accepts defendant's guilty plea the sentence bargaining procedure is commenced. Which means that the parties can perform sentence bargaining and submit Draft – settlement to the court, so that the court can enact a verdict upon the sentence bargaining. In these cases the guilty plea is initiation for the implementation of the sentence bargaining procedure.

If the defendant pleads guilty at the first hearing of the main hearing, than the procedure is slightly different, in a way where the parties will not commence the sentence bargaining procedure, but the court will only shorten the main hearing and examine only the evidence which are important for deliberating the type of sanction upon the crimes for which the defendant has pleaded guilty. Guilty plea can be submitted to the court immediately after the opening statements from the parties, and before the procedure for presentation of the evidence of the parties. The guilty plea at the main hearing is only acceptable when the presiding judge of the court council can ask the defendant to plead upon the counts from the indictment, or the defendant can voluntary plead guilty in front of the court upon one, several or every count from the indictment. In this situation the court is also obliged to evaluate whether the defendant's guilty plea is intelligent and voluntary.

It has to be mentioned that in this situation the court does not allow to the parties to bargain over the sentence. It means that in this case, the court may mitigate the sanction upon the defendant's guilty plea, but this is not mandatory, since this guilty plea is considered only as a shortening of the main hearing and due to this the court must provide elaborate explanation for this mitigation within the

verdict's rationale. This solution also prevents the judge or the council to interfere with the defendant's free will and determination to plead guilty. In this case the opportunities of the prosecutor to become vindictive toward a defendant for not pleading guilty at an early stage of the criminal procedure are limited or impossible (Alschuler, 1968).

It is not necessary that the defendant pleads guilty for every account of the indictment. In such cases, the court will perform the procedure for enactment a verdict upon a Draft – settlement as a part of sentence bargaining procedure in the earlier stages, if the court finds the Draft – settlement acceptable and submitted for the accounts of the indictment. For the rest of the accounts the court will perform evaluation of the indictment and continue with the regular criminal procedure, or have regular main hearing without any restriction within the examination of the evidences.

After reaching a verdict upon the accepted guilty plea, the parties are not allowed to submit legal remedies for wrong or undetermined factual state.

In cases when court does not accept the defendant's guilty plea, the main hearing will proceed with regular dynamics and the previously given guilty plea will not be considered as evidence presented in front of the court.

2.2. PRACTICAL IMPLEMENTATION OF THE SENTENCE BARGAINING AND GUILTY PLEA.

Analyzing the official data received from the largest court in Macedonia – Basic Court Skopje 1, for the implementation of these legal instruments, since the entering into force of the Macedonian CPC in December 2013, we can conclude that guilty plea and sentence bargaining are present in the Macedonian criminal justice system. This statement is based upon the Basic Court's Skopje 1 Annual Report for 2014 where it is stated that by using sentence bargaining 87 verdicts were enacted. Taking into consideration the total number of resolved cases of 4561 out of total 6921 cases (Netpress, 2015) we cannot say that these instruments for accelerating the criminal procedure are as popular as in USA (Senna & Siegel, 1978; Saltzburg & Capra, 2000; Fisher, 2003) but they are still present into Macedonian criminal justice system. From the data that we have received from the Public Prosecution office in Skopje, which is covering the jurisdiction of the Basic Court Skopje 1 in Skopje we have learned that by sentence bargaining during the investigation phase of the criminal procedure 71 defendants were sentenced, and 4 defendants were sentenced upon guilty plea at a main hearing. While the maximum sentence was 7 years of imprisonment. All these data are only supporting the conclusion that these instruments are certainly accepted by the Macedonian courts, but their implementation, naturally is not very high since there are still several open issues which should be addressed for further increased implementation of these procedures for accelerating the criminal process.

2.2.1. PROBLEMATIC ISSUES.

The application of these instruments has raised several questions in regard to their proper and just implementation in practice. These issues were tackled within the court practice while implementing these legal provisions.

Initially, immediate problems which were observed in the practice were the lack of evidence submitted or even investigated by the prosecutor at the moment of initiation of the sentence bargaining. Furthermore, practice was observed where the prosecutors use defendant's guilty plea as a source for establishing the evidence. Additional problematic issue is when detention is used as a bargaining toll to receive guilty plea by the defendant. Another situation which the practice has discovered as unregulated within the provisions of the CPC was when there were several codefendants and all of them or some of them have pleaded guilty and agreed to give testimonies against the other codefendants. Problematic

issue here lays in the possibility of having different statements by the codefendants once given as a plea, and once given as a testimony. Problematic area might be partially recognized also in the situations when there is guilty plea by only one of the codefendants and whether this plea might have influence to court with regards to the other codefendants who did not plead guilty. And finally, one of the most problematic issues from the court practice is the amount of evidence which is necessary to be presented to the court as a factual support the sentence bargaining process, and courts role in this procedure.

2.2.2. POSSIBLE SOLUTIONS.

Taking into consideration the above mentioned dilemmas, the solution for improvement could be found into the basis of the original solution – the criminal justice system in the USA, adapted to Macedonian legal culture.

At the beginning we should start with tackling the solution for the **first of the above mentioned dilemmas** or legal lacunas. First of all is it legally acceptable for the public prosecutor to enter into a plea agreement if he/she has not determined the exact factual basis of the crime? The answer to this question of course is negative. This means that the prosecutors should enter into plea agreements with the defendants only if they have enough factual evidence which would support the court decision (Alschuler, 1968; Yue, 2002). Prosecutors should not enter into plea agreements with the defendants unless they know full factual basis due to one simple reason: they must be factually convinced that the defendant who is willing to take the blame upon a crime is the actual perpetrator of the crime. Otherwise it would only mean that the prosecutors are masking their efficiency with sentencing randomly chosen defendants while the real criminals are free (Haddad, Meyer, Zagel, Starkman & Bauer, 1998). It is needless to mention that this attitude is abuse of their official position and by all means can be treated as obstruction justice. And these logical constructions can be plausible for those cases where the prosecutors do not have any factual basis when entering into the plea agreement. But, what about those cases when the prosecutors have some evidence, but not enough which would assure him beyond reasonable doubt that the defendant has committed the crime. In those cases, it is absolutely unacceptable for the prosecutors to enter into a bargaining with the defendant into this stage of the procedure. This means that they should continue with the investigation and should enter into plea agreements only in those cases when they have enough evidence with which they could stand a trial and may expect that with their factual basis can assure the judge in to their case theory. This solution is practically the original solution from the US legal system, where it is stated that the prosecutors should accept plea agreements only for the cases where they are certain that they could win at open court (Saltzburg & Capra, 2000).

For these reasons prosecutors should use the defendant's guilty plea only as a tool for reassuring their case scenario and not in any case as a source for evidences. Defendant's plea might be used for providing evidence and use defendant's as a collaborator to the justice but only for other cases, and for this activity to provide mitigation to the defendant in his own trial through the sentence bargaining process, but, not in any case to base its probability of evidence upon his/hers plea.

For these reasons, we deem that Macedonian public prosecutors should apply this rule into their conduct while entering into sentence bargaining or using the guilty plea.

Second dilemma which has been observed from the implementation of the sentence bargaining process was the unfair bargaining tools. Here we think primarily on the detention, which in some situations has been used by the prosecutors to exert guilty plea by the defendants (Kalajdziev, Ilic & Misoski, 2015; Buzarovska, Andreevska & Tumanovski, 2015). This was seen in the situations when the prosecutors had approached to the detained defendant with the words "plead guilty and you will not be in detention any more" (Kalajdziev, Misoski, Ilic & Bozinovski, 2014). Having into consideration the purpose of the detention, as a measure for providing the presence of the defendants, and its use only in strictly proscribed circumstances (Misoski, 2013), bargaining with this measure is at least unethical for the

prosecutors and might be seen as an influence to the court. For these reasons the prosecutors should not bargain with the detention during the sentence bargaining and process, since this type of bargaining is considered as bogus and it is not serving the justice, it just ads additional pressure to the defendant to plead guilty for the crime for which he might never confess in normal circumstances and is considered as an attack to the defendant's free will. For these reasons this Draft-settlements submitted to the court as result to commenced sentence bargaining procedure should not be accepted by the court and should be considered as involuntary confessions by the defendants (McConville, 1998).

The third problematic area in fact covers two situations. The first one is observed with the cases when several codefendants are indicted in the same indictment and all of them or some of them have pleaded guilty and agreed to give testimonies against the other codefendants. While the second one covers the cases where one of the codefendants has agreed to plead guilty, while the other one/s did not plead guilty. Problematic area in this second case is the treatment of the guilty plea from the first codefendant in regard to the other codefendants and what are the consequences if the first codefendant alters his/hers guilty plea statement.

Solution to this dilemma partially can be found in the origin of these CPC institutes, while some of the solutions might request amendments to the law. In accordance to the Federal Rules of Criminal Procedure (Federal Rules of Criminal Procedure, 2014), defendant who has pleaded guilty can be a witness against or in favor the other codefendants, but his previous verdict and his guilty plea cannot be considered as evidence. This means that the guilty plea cannot be simply read from the other verdict, the previous defendant and now witness has to stand in open court and to deliver his/hers testimony and this testimony has to be scrutinized trough the cross examination. However in this situation the witness should not alter his statement, because if this is done that it is considered that the guilty plea is false and can be revoked, by an appeal of the prosecutor. Additional help to this situation in the US is the oath, where in both times once as a defendant and once as a witness the same person gives an oath and is warned that giving false statements is considered as crime – contempt of the court (Rule 10 and 11 of Federal Rules of Criminal Procedure, 2014).

In addition, if a codefendant delivers guilty plea in which the defendant accuses the other codefendants, than the jury is instructed not to consider this plea as influence while examining the evidences provided against the other codefendants during the trial. While this defendant has to be cross examined. Furthermore, if this defendant delivers different statement than the guilty plea, than during the sentence hearing his agreed sentence as a result to guilty plea can be aggravated. This means that the codefendants share the same destiny during the criminal trial, and guilty plea does not affect the factual situation to the other codefendants.

Macedonian situation is similar to this, but without having the possibility of appeal to the verdict deliver upon the guilty plea, without the request for oath for the defendants, without sentence hearing and with the possibility of delivering an early verdict to one of the codefendants who has pleaded guilty. In Macedonian legal system it is considered that the defendants do not have to provide oaths and that they can even lie as part of their defense (or do not say anything), since their position is protected by the presumption of innocence. Criminal liability stands only for the giving false testimony as a witness, but since the false guilty plea is not consider as a crime, there would be no criminal act by the witness, since, logically, the court should treat the second statement as a truth, while the first as part of the defense's case scenario.

This situation only leads to the obstruction of the justice and "playing of the system" by the defendant, where he/she will plead guilty for a lesser crime, while the real crime will be placed on shoulders of the other codefendant. It is also possible the other situation where the first codefendant who will plead guilty might plead guilty for the more serious crime in order to save his other codefendants. However in both ways the justice is not served properly to the real perpetrators.

Bearing on mind the above mentioned, the similar arguments can be served regarding the second factual situation mentioned above, where the codefendant's verdict cannot be used as evidence in other criminal procedures to the other codefendants, but only the guilty plea defendant can provide testimony and be treated as witness within the other procedure. By these solutions it is clear that previous verdicts can have only limited use in other criminal procedure, where they can serve only as limited evidence regarding the fact of the defendant's previous criminal history (Kamisar, LaFave, Israel & King, 1999; Cook & Marcus, 2001).

In order to reduce these possible lacunae, it is necessary to provide amendments to the CPC which would cover these cases with the possibility of the prosecutor to submit a legal remedy due to the false guilty plea, and not only to have the possibility for submitting extraordinary legal remedies in front of the Supreme Court. For these reasons, Macedonian CPC should incorporate the sentence hearing as part of the main hearing where one logical sentence would be enacted for all codefendants based upon the evidences provided during the main hearing.

In addition, there should be a provision within the CPC which would regulate the situation when one of the codefendants will plead guilty and with his plea will incriminate the other codefendants. The provisions should state that in these situations the verdict for the defendant who has pleaded guilty cannot be treated differently and apart from the criminal case against the other codefendants, and this verdict should be delivered together with the verdict against the other codefendants, upon the sentence hearing.

Furthermore, Macedonian Criminal Code should be also amended to include the crime of "false testimony" in the above mentioned situation, similar to the US crime – contempt of the court. By having these instruments the prosecutor will be empowered to properly administrate the justice and with these arms on his side the prosecutor will also be able to support the court decisions where the real perpetrators will receive just and proper punishment.

Regarding the **fourth dilemma** the court practice has provided the conclusion that the burden of proof of the submitted sentence bargaining proposal is not equal at every court. According to the Macedonian CPC the judge must evaluate the submitted proposal after the sentence bargaining procedure has been undertook between the prosecutor and the defendant with his/hers defense attorney. However, Macedonian legislator mentioned only that the judge must evaluate whether the submitted proposal is made intelligent and voluntary by the defendant. This opens the dilemma whether there should be some factual basis upon which the submitted sentence bargaining agreement is determined. With this dilemma, the problematic issue can be also connected with the above discussions regarding the truthfulness of the guilty plea.

Furthermore Macedonian CPC does not proscribe the judges' need to evaluate the factual basis, or the judges' authorization for determining the facts upon which the submitted sentence agreement has been submitted. The answer to this dilemma can be found in the US Sentencing Guidelines (Wood, 2002) where the court has right and is empowered to scrutinize the submitted settlement or guilty plea trough the submitted evidence. This means that the Draft-settlement as a result of sentence bargaining and guilty plea must be tested over the judges' discretion regarding the truthfulness of the facts upon which these procedures were commenced. This means that the judge should have the liberty, besides to test whether the guilty plea is voluntary and intelligent and whether the participation by the defendant in the sentence bargaining procedure is voluntary and intelligent, also to test whether there are enough facts or factual basis to support the plea or sentence bargaining.

By having these provisions, we would avoid the practice stating that the judge is simply a "rubber stamp" to the submitted Draft-settlement. This means that the judge is the most accountable and most responsible for the decisions which he/she deliberates. For these reasons we should rearrange the main hearing within the CPC and to introduce the sentence hearing at the end of the main hearing. The provisions which are in the CPC are not quite clear what are the evidences connected to the

determination of the sanction and what are the evidences related to the establishment of the defendant's guilt. Furthermore, in many cases the same evidence can serve both as fact for determining the defendant's criminal liability and as fact for determination of the type and severity of the sanction.

The legal request of truthfulness of the guilty plea, regulated as a precondition in the CPC for acceptance of the guilty plea by the court, might serve as additional help to this dilemma. However, on the other hand, this dilemma should be primarily prosecutor's burden, since the prosecutor has to associate the accepted guilty plea with the already discovered evidence.

CONCLUSION

With the implementation of the new Criminal Procedure Code Macedonian criminal justice system has enacted several modern solutions for accelerating the criminal trials and to enhance its just and fairness. With the implementation of the new models such as sentence bargaining and guilty plea, within such short period of time, we cannot conclude that Macedonian criminal justice system has dramatically increased its efficiency. However since these institutes are already accepted by the participants in the criminal justice, we can conclude that they will serve its purpose. However, at the same time, the experiences of the implementation of these models have also pointed out several weak points that need to be addressed. The attention should be given, both trough the amendments to the CPC and Criminal Code and trough the creative position of the Supreme Court by providing general opinions for these institutes.

To be totally honest, these issues might have also been addressed into the Prosecutors sentence bargaining manual which is issued as an internal and highly confidential document within the Macedonian prosecution office. Having these attributes it is unavailable for reading to anyone outside the prosecution office, including the independent researchers.

We deem that this Manual should be open to public in order to make sentence bargaining procedure more open and publicly scrutinized in order to increase the public trust in this process. Otherwise this process will remain to be observed as a unjust, mystical and unfair, since the general public is not informed about the real position of the prosecutors, and to be assured that the prosecutors are protecting the public interest and do not go beyond their official duty while performing the sentence bargaining process and that they do not bargain over the justice with the defendants.

However, the observed practice of the implementation of the sentence bargaining and guilty plea particularly the bargaining process itself, guilty plea in the cases of multiple defendants and the treatment of these pleas by the court and by the prosecutors, together with the burden of proof supporting the sentence bargaining gives us the right to conclude that these questions were not at all or not properly addressed into this Manual.

In addition, it is obvious that the criminal justice process lacks legal provisions for regulating the sentence hearing as part of the main hearing, and the burden of proof during the guilty pleas and sentence bargaining. Together with the solutions which would completely regulate the position of the prosecutors in a way to establish clear criteria when to accept the guilty plea and what should be the amount of evidence which should be at disposal of prosecutors in order to enter into plea negotiations or sentence bargaining.

For these reasons in this article we have tackled these observed serious flows of these modern solutions for acceleration of the criminal trials and have provided theoretical and practical solutions and suggestions to these lacunae in order to improve the implementation of the sentence bargaining and guilty plea by the Macedonian courts.

It would be also beneficial to courts to have these lacunae already tackled and resolved since avoiding their existence will increase the public trust of the courts and while implementing these improved procedures the courts would be observed as just and professional protectors of the justice and human rights.

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