ЦЕНТАР ЗА ПРАВНИ
ИСТРАЖУВАЊА И АНАЛИЗИ
CENTER FOR LEGAL RESEARCH AND ANALYSIS

# UNIFYING THE COURT PRACTICE IN MACEDONIA

*possibilities vs. challenges*

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# CONTENT

# INTRODUCTION

In the last 10 years the judicial system in the Republic of Macedonia is undergoing sweeping reforms that will affect the structure and routines of the courts. The latest novelties of the reform process, arising from the societal and reform developments starting from 2010 are mainly focused on introducing substantial elements of the common law system to the Macedonian judicial system[1] which gradually transforms the legal system into a mix one, deviating from the pure civil law system[2].

In the process of reforming the judiciary many important segments of the previous federal socialistic judicial system, were underestimated and neglected, including among other things, the specialized courts, specialized court jurisdictions as well as the unification of the court practice. One of the most unattended topics in the Macedonian judicial system is the status and significance of the court practice.

Back in the 90s, as well as today, there has been a low degree of attention paid to adjudicated cases or *res judicata*, and the unified court practice as a binding consideration in the legal sphere (opinion juris) has been considerably neglected. With other words, it can be said that the court practice is a neglected source of court law in the Republic of Macedonia[3]. This conduct of the judiciary produced many issues in the court practice, especially because "The law that judges create with their rulings (*res judicata*) has better quality and is more natural than the one created by the Parliament. The competence and ethics of judges have more meaning when it comes to law, than to the legitimacy of political power[4].

[1]Criminal Procedure Code, "Official Gazette of the Republic of Macedonia" No. 150/10, No. 51/11 and No. 100/12.
[2]Amendments of the Law on Civil Procedure "Official Gazette of the Republic of Macedonia" No. 124/15
[3]Shkarik, Svetomir, Jurisprudence of the European Court of Justice, Model for Reform of the Judiciary and the Constitutional Court of the Republic of Macedonia – Reform of the Institutions and Its Significance for the development of the Republic of Macedonia – Macedonian Academy for Sciences and Arts – Collection of Scientific Discussion – December 18, 2008, page 95
[4]Reform of the Judicial System in the Republic of Macedonia, The Legal Framework of the Judicial Reform in Macedonia, Svetomir Shkarik, Journal of Faculty of Law "Iustinianus Primus", Skopje 2006, page 95.

Therefore, as it was noted in the last 2014 European Union Progress Report for Macedonia: "...certain systemic improvements to the quality of justice are needed, especially in the sense of greater and more consistent use of superior court and ECtHR case-law, in order to improve even more the level of predictability and legal certainty for individuals and businesses using the courts".

The principles of legal certainty, open justice and independence of the judiciary are crucial to public trust in the judiciary. The conception of Macedonia as a society founded on the rule of law, and the EU accession are one of the strongest aspirations of Macedonia, and the standards applied in the Union (such as the Court of Justice of the EU) in the area of the judicirary should be considered in the pre-accession period as imperative in modern societies. The same applies to the application and respect of the ECtHR principles in the work of the Courts, as they are a major indicator of their nature as paramount protectors of the human rights.

Therefore the Center for Legal Research and Analysis supported by the British Embassy – Skopje initiated and implements the Project "Supporting the establishment of unified court practice in the Macedonian legal system", aiming to provide support to the judiciary regarding the establishment and development of unified court practice, in accordance with the best practices and standards of the EU and its members states.

This effort encompasses three main aspects:

- Comprehensive assessment of the current situation including legal framework review, drawing findings and conclusions, and providing recommendation for creating and development of unified court practice system within Macedonian judiciary;

- Creating network of skilled and educated advocates for change through tailor made training using EU expertise and know-how by providing substantial training modules and programs in the system of continuing legal education; and

- Proposing specifications and solutions for IT requirements in support to the jurisprudence conformity.

The Project will support activities that will increase public trust in the judiciary through increased transparency of court judgments. The new practice, applying adequate IT solutions, such as automatic publication of all court decisions, would further complement the work of developing sustainable and uniformed court practice.

# SCOPE OF ASSESSMENT

This assessment report, developed with great contribution and support from eminent experts from UK and Denmark as well as national legal professionals, provides an insight in the current state of play of the court practice in the Macedonian legal system.

The main focus of the assessment was to look at the legal framework and the practice of the courts in regards to the courts jurisprudence. The comprehensive analysis, produced as a result of the assessment mission reports from the experts, identifies the discrepancies and locates the obstacles which interfere with the proper development of court practice and its unification, offering initial and constructive recommendations in order to achieve more consolidated and enhanced court practice ensuring higher degree of legal certainty and predictability. Special focus is put on the current education and training on court practice, as one of the most effective tools in order to contribute to the raising of awareness as regards the importance of the role of court practice, as well as to further development of the court practice and its unification.

The structure of this report reflects the purpose of the report, as well as the scope of assessment identified above. The Report consists of six sections:

1.The ***first section*** provides a review of the legislative background in regard to court practice in the Macedonian legal system.

2.The ***second section*** is concerned with elaboration of the admissible sources of law and the acceptable forms of judicial argumentation. Within this section, a comparative analysis is also provided, embracing the legal solutions foreseen in relevant international documents, as well as the practice adopted by various relevant international courts and EU countries. Also, an effort is made towards resolving certain problematic issues, mainly of interpretative nature, of the court practice treatment within the Macedonian legal system.

3.A subject of elaboration of the ***third section*** is analysis of the current practice of publication of judicial decisions in the Republic of Macedonia, as well as analysis of the database designed for maintaining information regarding court cases. A comparative analysis concerning the practices of relevant international courts and EU countries is also made available within this section.

4.The ***fourth section*** elaborates various obstacles that the courts are facing, in their efforts to develop the court practice and to reach a greater level of its unification.

5.Having in mind the importance of the Academy for Judges and Prosecutors, as the key institution that provides both initial training for future judges and prosecutors, and continuous training for serving judges and prosecutors, the ***fifth section*** mainly elaborates the treatment of the court practice in the curricula of the Academy.

6.The ***sixth section*** consists of a number of conclusions and recommendations. The conclusions were drawn up in the process of analysis and assessment of the current state of affairs of the court practice in the Macedonian legal system and recommendations providing suggestions for possible solutions for improvement and development of the harmonization and unification of the court practice.

It should be noted that the recommendations made within this report will be reviewed and discussed with the all the stakeholders/beneficiaries, in order to ensure that the best solutions are identified as to the further development and unification of court practice in the Republic of Macedonia.

# METHODOLOGY

The dominant method used in the preparation of the report is the method of analysis and synthesis. This approach is imposed having in mind the scope of assessment, i.e. comprehensive analysis of the current state of affairs regarding the discrepancies of the Macedonian court practice, including all stakeholders/ beneficiaries in the process. Namely, in order to gain knowledge about the identified subject of assessment, the focus is placed on analysis of the treatment of the court practice in the Republic of Macedonia by all the relevant stakeholders.

In this context, numerous meetings were held with key representatives of various judicial and state institutions, as well as other legal professionals across the country, with the purpose to assess the real treatment, the level of usage and the manner of usage of court practice, as well as to identify their own needs in achieving greater uniformity of the jurisprudence.

Meetings were held with key representatives of the Supreme Court, the Appellate Court Skopje, the Appellate Court Stip, the Appellate Court Gostivar, the Basic Court Skopje 1 Skopje, the Basic Court Skopje 2 Skopje, the Basic Court Stip, the Basic Court Gostivar, the Academy for Judges and Prosecutors, the Macedonian Bar Association, the Ministry of Justice, the Administrative Court, the Higher Administrative Court, the Notary Association, the Macedonian Young Lawyers Association and with university law professors.

Apart from the conducted meetings and discussions with relevant stakeholders, relevant legal documents, court cases and literature was analyzed and considered to gain a clearer picture about the treatment of the court practice in the Macedonian legal system, both in terms of the legal framework as well as of the institutional framework.

The comparative method was greatly used in order to gain knowledge about the treatment and usage of court practice by the European Court of Human Rights and the Court of Justice of the European Union, particularly having in mind the solid strategic determination of the Republic of Macedonia to become a member of the European Union family.

Furthermore, in order to determine the historical background, especially within the context of the current status of the court practice in the Macedonian legal system, the historical method is used as well.

# ASSESSMENT TEAM

Assessment was conducted in two consecutive missions, each focused on specific aspects of the problem. The first mission was conducted from July 9 - July 14, 2015 by Lord Sir Robin Auld, from the UK Slynn Foundation and Aleksandar Godzo, practicing lawyer in Macedonia. The second mission was conducted from August 29 to September 4, 2015 by Peter Gjørtler, former high court judge, practicing lawyer in Denmark and Lecturer at Riga Graduate School of Law, Aleksandar Godzo and Atanas Georgiev, practicing lawyers in Macedonia with the support of CLRA staff, Jelena Ristik, Project Manager and Liljana Jonoski, Project Assistant.

# 01 LEGISLATIVE BACKGROUND

The main elements of legislation concerning the status, as well as various issues that emerge in connection with the court practice in the Macedonian legal system, are placed within the Constitution of the Republic of Macedonia[5], the Law on Courts[6] and the Law on Case Flow Management in the Courts[7].
The Law on Civil Procedure[8] includes some relevant provisions, which regulate aspects of the courts' practice. Most of these elements were also discussed during the meetings with courts and other judicial institutions.

Article 98 para 2 of the Constitution, and consequently, the Law on courts provide that the principle standings and legal opinions of the Supreme Court are binding for the Supreme court councils. This means that all decisions made by the highest court are bound by a previously determined principle, and that all disputed judgments by lower courts when adjudicated by the SC, shall follow this principle. This further means that, the eventual final decision will follow this principle, regardless whether lower courts judge differently, except it will take much longer. In other words, by not following these principles, the lower courts slow down justice and increase costs to the courts and to citizens, which does not serve any public interest. It is not clear why the absence of an explicit provision in the Law on courts that such standings and principles are binding for the lower courts, is interpreted otherwise.

[5]Constitution of the Republic of Macedonia, "Official Gazette of the Republic of Macedonia" No. 52/91, 1/92, 31/98, 91/01, 84/03, 107/05, 3/09
[6]Law on Courts, "Official Gazette of the Republic of Macedonia" No. 56/06, 35/08, 150/10
[7]Law on Case Flow Management in the Courts, "Official Gazette of the Republic of Macedonia" No. 171/10
[8]Law on Civil Procedure, "Official Gazette of the Republic of Macedonia" No. 110/08, 116/10, 124/15

# 1.1 CONSTITUTION OF THE REPUBLIC OF MACEDONIA

Article 98 of the Constitution of the Republic of Macedonia, (as replaced by Paragraph 1 of Amendment XXV)[9]:

-Judicial power is exercised by courts.
-Courts are autonomous and independent. Courts judge on the basis of the Constitution and laws and international agreements ratified in accordance with the Constitution.
-Emergency courts are prohibited.
-The types of courts, their spheres of competence, their establishment, abrogation, organization and composition, as well as the procedure they follow are regulated by a law adopted by a of two-thirds majority vote of the total number of Representatives.

Article 98, concretely Article 98 (2), presents an issue that would require institutional interpretation. Namely, at several meetings it was pointed out that Article 98 (2) precluded that reference could be made in the text of judgments to decisions made in preceding jurisprudence, while in other meetings, this point of view was refuted. The wording of the Article 98 of the Constitution and transferred in Article 2 of the Law on Courts is the basis and the initial point of any debate as regards the status and the treatment of the court practice. It also raises one other point. That is to say, if the courts adjudicate in accordance with the Constitution, the Laws and International agreements, as foreseen in Article 98 of the Constitution, it must be taken into consideration that they do so by enacting judicial decisions, which actually represents a way of interpretation of legal norms, as well as subsumption of such laws on a set of facts. This situation clearly shows a need for unified interpretation of Article 98 (2).

# 1.2 LAW ON COURTS

The Law on Courts from 2006 provides the basis for establishment of the Department for Court Practice within the Supreme Court. The Department for Court Practice is responsible for a Judicial Database System for all judicial systems.

[9]Constitution of the Republic of Macedonia, "Official Gazette of the Republic of Macedonia" No. 107/05

The Law on Courts also provides that one of the powers of the Supreme Court is defining principle standings and legal opinions[10]. However, furthermore it provides that these principle standings and legal opinions are binding for the councils of the Supreme Court[11]. There is no reference for the lower courts. However, although there is no reference for the lower courts, it should be taken into consideration that if a higher court is bound by the opinions and standings it has produced *argumentum a maiore ad minus*, so should the lower ones be. Otherwise, it would not be in conformity with the clearly established principle of hierarchy, which is foreseen by the Law. Yet, the principle standings and legal opinions are not viewed as binding for the lower courts, neither by the Supreme Court judges nor by the lower court judges. On the other hand, in reality, a judge would rarely go outside of the doctrine established by a particular legal standing.

The fact that one of the principle powers of the Supreme Court is to provide for unified application of laws, implies that the Supreme Court is responsible for following, summarizing and ultimately publishing its most leading cases, as well as issuing legal opinions and principal legal standings. Furthermore, having in mind the task of the Supreme Court to take care of the uniformity of its principle standings to its own chambers, it has appointed a court practice judge in order to manage this particular task. However, it should be noted that in the past the publication of the judgments and legal opinions was done more frequently, while in the last couple of years this is not the case. It should also be noted that the publication of the various decisions, principle standings and legal opinions of the Supreme Court is usually done with a financial help from various donors, i.e. mostly international donors. This will be overcome with the launch of the new software system due to be complete by the end of 2015, to which we refer to below.

The numerous meetings held with key representatives of various judicial and state institutions across the country lead to the conclusion that the current understanding within the Macedonian legal community is that the Constitution, the Laws and the international agreements ratified by the Republic of Macedonia in accordance with the Constitution are the only sources of law[12].

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[10](1) The Supreme Court of the Republic of Macedonia, at a general session, shall: - define principle standings and legal opinions about issues of significance for provision of uniform application of the laws by the courts upon their own initiative or upon the initiative of the session of judges or the session of the court divisions in the courts and shall publish them on the web site of the Supreme Court of the Republic of Macedonia, .....- review issues concerning the work of the courts, the application of laws and the court practice

[11]Law on Courts, article 37 (2) The general views and legal opinions determined by the Supreme Court of the Republic of Macedonia at a general session shall be binding for all of the councils of the Supreme Court of the Republic of Macedonia.

[12]The Constitution in article 98 provides that the Courts exercise their authority in such a way that they adjudicate matters in accordance with the Constitution, laws and internationally ratified agreements in accordance with the Constitution

This understanding is based on a legal norm foreseen within the Constitution, as well as within the Law on Courts, following the principle of hierarchy of legal acts[13].

Having in mind the understanding of the Macedonian legal community as it was generally presented during the meetings, it should also be taken in consideration that Article 13 of the Law on Courts represents a good basis for initial directions towards starting a debate on the effect of a court decision *vis a vis* an existing law. In this sense, the relevant part of this provision provides the following:

- a judicial decision possesses an inviolable legal effect,
- it can only be changed or altered by a competent court in accordance with the procedure prescribed by law, it is mandatory for all natural and legal persons and possesses a greater power over decisions of any other body[14].

## 1.3 LAW ON CIVIL PROCEDURE

Article 386 of the Law on Civil Procedure should also be taken in consideration when discussing about the biding nature of the higher courts decisions to the lower courts decisions. Namely, this article foresees that lower courts are bound by the "legal understanding" of the higher courts[15]. This article provides basis for the decision of the Supreme Court, in cases when it decides to abolish previous judgments from the lower courts and order a re-trial. Article 386 of the Law on Civil Procedure introduces a new legal institute so called "legal understanding", which is quite broad and needs additional elaboration and interpretation. This additional interpretation will clarify and define the meaning of this legal institute. Such an explanation is needed to clear up whether it pertains to the interpretation of the substantive law, the procedural law, or both, or it simply refers to the essence of the Supreme Court's reasoning, in case it did not enter into detailed interpretation of either procedural or substantive legal norms.

The importance of the role of the Ministry of Justice in connection with the court

[13]According to article 2 of the Law on Courts, they ( the Courts) adjudicate based on the Constitution, laws and international agreements ratified in accordance with the Constitution
[14]Macedonian Law on Courts, Article 13
[15]Article 386 of the Law on Civil Procedure.- The court to which the subject was returned to re-trial is bound in relation to that subject with the legal understanding forming the basis on which the decision of the revisionary court by which the impugned second instance decisions abolished, i.e. by which the second instance and first instance verdicts are being abolished

practice in the Macedonian legal system should also be emphasized. In this regard, Article 99 of the Law on Courts provides the following:

- All courts have information database services as separate units, which are managed by the President of the Court or a designated Judge.

- The Ministry of Justice provides the installation, maintenance and operation of IT systems on single methodological and technological basis.

- The Minister of Justice issues further regulations on the functioning of the system in the courts.

## 1.4 LAW ON CASE FLOW MANAGEMENT IN THE COURTS

The Law on Case Flow Management in the Courts is also relevant to the unification of the court practice. Namely, Article 10 of this Law foresees the following:

-Publishing Court Decisions on the Court's Web-site

(1) The authorized court employee shall be obliged to publish on the court's web-site the legally effective court decision, within two days from the day when s/he received it, with names and surnames of the parties i.e. name of the legal entity, by making anonymous only the dwelling place address, i.e. the residence or the seat of the party, their unique registration numbers and personal data of the witnesses in the court procedure.

(2) The authorized court employee shall be obliged to publish on the court's web-site the court decision which is not yet legally effective, within two days from the day when s/he received it, by making the personal data of the participants in the court procedure completely anonymous, except for the name and surname of the judges, public prosecutors, state attorneys and legal representatives of the parties.

(3) In cases where the public was excluded in accordance to the Constitution of the Republic of Macedonia, laws and international agreements, the court decisions shall not be published on the court's web-site.

(4) The criminal court decisions published on the court's web-site shall be erased after the expiration of the time-limit for erasing the conviction, in

accordance to the provisions from the Criminal Code, and the other court decisions shall be erased after expiration of five years from the day of their publication.

(5) The software application of publishing court decisions on the web has an option for their printing without possibility for changing, copying and tailoring of the text of published document.

(6) The manner of publishing and search of court decisions on the court's web-site shall be regulated with act of Minister of Justice.

In practice, as determined through the numerous meetings held with key representatives of various judicial and state institutions, i.e. various beneficiaries lead to the conclusion that there are a couple of areas that, according to the beneficiaries, need immediate attention. The areas that were pointed out are the following:

- Even petty cases, such as payment orders or misdemeanors, get published and it results in overloading of the system,

- The system itself is already overloaded and slow,

- The search tools are not appropriate and effective enough. There is no option to perform an in depth search by appropriate keywords, which will contribute to narrowing down further potential results,

- Although each court has its own website where the judicial documents are published, the search, mainly due to the reasons mentioned before, is often very slow and provides too many results, which are not useful.

The potential solutions for these problems will be referred to later on.

The provision foreseen within Article 10 of the Law on Case Flow Management in the Courts raises several issues.

Firstly, the time limit of 2 days to publish the court decision on the court's web-site is often not enough to complete the task, particularly having in mind the extensive volume of work concerning the anonymization. This issue was also pointed out at several meetings. It was emphasized that it is not possible to comply with this deadline with the current resources at disposal.

Secondly, the provision which foresees exclusion of decisions, i.e. exclusion of their publishing on the court's web site, in cases where the procedure was

held without access for the public, contributes to an incomplete publication of court practice. Having in mind this consequence on the availability and quality of the court practice, it might be worth to consider whether anonymization and redaction of this type of decisions would be considered enough, in order to provide sufficient safeguard in such cases. However, this issue was not raised during the meetings.

The same remarks pertain to the requirement to remove criminal law court practice, in accordance with the statute of limitations for the criminal records of an individual. As in the case with exclusion of the public in certain cases, this provision also contributes to incomplete record of court practice, and it might also be considered whether anonymization would be enough to provide sufficient safeguard. However, this issue was not raised during the meetings, as well.

Both provisions, i.e. not publishing decisions where the public is excluded and removing criminal law court practice in accordance with the statute of limitations for the criminal records of an individual, lead to incomplete publication of court practice, which will eventually create an obstacle towards the achieving of unified court practice. A possible solution to this issue would be to create a special database for non-published and removed court practice, which will be available for use only to the courts.

Yet, this solution might be inappropriate due to the fact that only the judges will have access to this database. Such a solution would prevent lawyers from having access to this court practice and does prevent them to base their argumentation on this court practice. This situation would make it necessary also to grant access to lawyers in this database, which, on the other hand, raises another issue – whether the citizens should also be entitled to be aware of the complete court practice, in the first place, to be aware of and to understand their rights and obligations.

Finally, one last introductory remark, as regards the provision in paragraph 5 of Article 10 of the Law on Case Flow Management in the Courts, which foresees that the chosen software provides for printing, but precludes changing, copying and tailoring of the text of published document. Namely, as experience would also point out, there isn't a document, whether on paper or in an electronic form, that cannot be amended.

It should be noted that regarding the area of search engine, that was pointed out as a matter that needs attention during the meetings held with key representatives of judicial and state institutions, the EU trough the Instrument of Pre-Accession Assistance (IPA) financed a Project "Supply of equipment

for the judiciary institutions and the Directorate for Execution of Sanctions" implemented by SAGA MK, which was design to support the judiciary institutions, i.e. the Judicial Council, Council of Public Prosecutors, Academy for Judges and Public Prosecutors Office and Courts to further strengthen the independence, accountability, professionalism and efficiency of the judiciary.
This Project will introduce among other segments, the Web Content Management System (WCMS) which will provide a web presentation to the Courts through a single portal, Automatic publication of judicial decisions, Automatic anonymisation of published personal data judicial decisions, Indexing of judicial decisions for easier searching, Reviews for searches of Court decisions on various criteria, Collaboration module, Integration with existing ACCMIS System. The WCMS will be introduced at the end of 2015, so we are expecting to see the result of this projects outcome in the near future.

EU also financed a Project "Further support to independent, accountable, professional and efficient judiciary and promotion of probation service and alternative sanctioning" IPA 2010 which introduced a segment of developing research and analysis capacities of Supreme Court and other tools for greater uniformity of practice" segment that aims to provide increasing of user-orientation and usability of Supreme Court and other courts' websites, electronic courts case-law databases and search engines trough giving recommendations for improvements to the courts websites and IS for the purpose of greater accessibility and search tools of case-law.

# 02 SOURCES OF LAW AND JUDICIAL ARGUMENTATION

As previously mentioned in this report, the meetings held with the various key representatives of the courts and other judicial institutions in Macedonia, lead to the conclusion that there is a difference in opinion as to whether Article 98 of the Constitution should be interpreted in a manner which will allow reliance only upon legislative instruments, including international agreements. Furthermore, there is a difference in opinion and whether, as a consequence, it would not be in accordance with the Constitution, if a judicial decision contains explicit references to previous case practice.

Since the issue mentioned above actually contains two separate questions, i.e. issues concerning the admissible sources of law and issues concerning acceptable forms of judicial argumentation, these two questions will be elaborated separately in the text that follows below.

## 2.1 SOURCES OF LAW

Article 38 of the Statute of the International Court of Justice (ICJ)[16] of the United Nations foresees the following:

1. The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply:

    a. International conventions, whether general or particular, establishing rules expressly recognized by the contesting states.

[16] Statue of the International Court of Justice, United Nations 1946

b. International custom, as evidence of a general practice accepted as law.
c. The general principles of law recognized by civilized nations.
d. Subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.

2. This provision shall not prejudice the power of the Court to decide a case *ex aequo et bono*, if the parties agree there to.

Article 59, as referred to, provides the following:

- The decision of the Court has no binding force except between the parties and in respect of that particular case.

This creates a highly specified catalogue of legal sources, with stratification in 3 layers:

- Legislation, custom and general principles of law may always be relied on,
- Jurisprudence and judicial literature may only be used as a subsidiary tool of argumentation, while court practice explicitly does not have any binding effect outside the respective case,
- General principles of reasonability may be applied only if the parties agree.

Having in consideration the previous elaboration, it is clear that court practice cannot be considered as a source of law. The latter is particularly due to the fact that Article 59 explicitly precludes any *erga omnes* effect of court practice. However, on the other hand, the previous elaboration also makes it very clear that court practice may be used as a subsidiary tool for the interpretation of law, despite the fact that it cannot be considered as a source of law.

If court practice is used as a subsidiary tool for interpretation of law, then the question that would be inevitably further raised is whether reliance on court practice is possible and appropriate without explicit reference to the respective court practice. As it would be further elaborated below, such a practice, without explicit indication of the court practice concerned, may represent a violation of the most important principles of law, such as transparency and legal certainty.

Comparatively, the Treaty on the European Union[17] has a broader approach towards this issue. Article 19 provides the following:

[17]Treaty on the European Union, Maastricht 1992

- The Court of Justice of the European Union shall include the Court of Justice, the General Court and specialised courts. It shall ensure that in the interpretation and application of the Treaties the law is observed.

The elaboration of the second sentence of the text above shows that there are two separate elements within it. The first element or the first part of the sentence establishes the jurisdiction of the Court, i.e. the interpretation and application of the Treaties. The interpretation of this formulation is that it refers not only to EU treaties, but also to all legal acts which are adopted under the EU treaties, such as regulations and directives. The EU treaties, together with the regulations and the directives adopted under EU treaties are collectively referred to as EU law.

This provision, which establishes the jurisdiction of the Court, also refers to the division of competence between the Court of Justice of the European Union (CJEU) and the national courts. The latter interpretation was established and confirmed by Case 314/85, Foto-Frost. The division of competence is the following: CJEU has exclusive jurisdiction over the validity of EU law, while national courts have exclusive jurisdiction over the validity of national law.

The second element or the second part of the second sentence represents a parallel to Article 38 of the ICJ Statute, which foresees the sources of law that may by applied by the Court, as explained earlier in this report. Similarly, the second part of the second sentence of Article 19 of the Treaty on the EU, foresees the sources of law that may be applied by the CJEU. However, unlike the provision foreseen in Article 38 of the ICJ Statute, this provision is much more broader, as, according to this provision, the CJEU is merely obliged to make sure that the law is observed.

In the EU treaties there is no parallel to Article 59 of the ICJ Statute. However, in the beginning of the EU, there were some ambiguities and uncertainty as to whether the jurisprudence of the CJEU should have an *erga omnes* effect. This issue was resolved in a manner that is quite different from the solution of the ICJ. Namely, unlike the ICJ jurisprudence, which is limited by Article 59 of the ICJ Statute, the CJEU jurisprudence has a general binding effect.

The reasoning behind this interpretation may be found in the fact that, in a situation where there is no such a restriction as the one foreseen in Article 59 of the ICJ Statute and there is no provision which places the jurisprudence within the secondary sources of law, as the one foreseen in Article 38 of the ICJ Statute, the CJEU jurisprudence may be regarded as one of the general principles of law, which belong to the primary sources of law, as foreseen by Article 38 of the ICJ Statute.

A less radical reasoning behind this interpretation would be to view the *erga omnes* effect of the CJEU jurisprudence as an issue which refers only to the obligations of national courts to respect that jurisprudence. This, on the other hand, may be viewed as approaching the stare decisis principle, which is respected in common law jurisdictions. Yet, having in mind that national courts are not subsidiary to the CJEU, this issue may be better explained as a practical consequence of the principle established in the Foto-Frost case.

Having in consideration this less radical interpretation, there is no need for the CJEU jurisprudence to be regarded as a formal source of law for the CJEU. Instead, it may be regarded as a subsidiary tool for argumentation when the law is applied. Yet, it is important to emphasize that although CJEU jurisprudence may not by classified as a primary source of law, but as a subsidiary tool, in practice, the reference to CJEU jurisprudence has evolved into primary tool for argumentation before the CJEU.

In comparison, the European Convention on Human Rights[18] does not contain a provision that refers to sources of law, which may be applied by the ECtHR when deciding a case. Namely, Article 32 of the Convention, which regulates the jurisdiction of the Court, provides the following:

1. The jurisdiction of the Court shall extend to all matters concerning the interpretation and application of the Convention and the protocols thereto which are referred to it as provided in Articles 33, 34 and 47.
2. In the event of dispute as to whether the Court has jurisdiction, the Court shall decide.

Article 32 of the Convention is amended by Protocol 14, which amends the Convention's control system. It inserts a reference to the amended version of Article 46, which provides in Article 46.1-2:

1. The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties.
2. The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution

This amended provision grants binding force to the decisions of the ECtHR in an explicit manner. However, this provision again does not give any indication of the sources of law. In this sense, it is worth to mention that Paragraph 12 of the Explanatory Memorandum on Protocol 14 provides some explanation in this regard: "The principle of subsidiary underlies all the measures taken to

[18]European Convention on Human Rights, Council of Europe, Rome, 1950

increase the effectiveness of the Convention's control system. Under Article 1 of the Convention, it is with the High Contracting Parties that the obligation lies "to secure to everyone within their jurisdiction the rights and freedoms" guaranteed by the Convention, whereas the role of the Court, under Article 19, is "to ensure the observance of the engagements undertaken by the High Contracting Parties in the Convention". In other words, securing rights and freedoms is primarily the responsibility of the Parties; the Court's role is subsidiary".

It seems that this explanation should be interpreted in a manner that the role of the Court should be restrained, as well as that the understanding of the Convention should not be expanded. On the other hand, the opponents of this interpretation may argue that the ECtHR has chosen to apply an expansive interpretation of the Convention, as it is the practice of the CJEU. For example, the ECtHR has already applied an extensive interpretation of the Convention as regards the question of persons entitled to take a case to the Court. The Court held that legal persons as well are to a certain extent entitled to claim rights before the Court.

Furthermore, Article 46.3 of the Convention, as revised by Protocol 14, provides the following:

> -If the Committee of Ministers considers that the supervision of the execution of a final judgment is hindered by a problem of interpretation of the judgment, it may refer the matter to the Court for a ruling on the question of interpretation. A referral decision shall require a majority vote of two thirds of the representatives entitled to sit on the Committee.

It should be mentioned that the Explanatory Memorandum on Protocol 14 provides some insight as regards this issue as well: "The aim of the new paragraph 3 is to enable the Court to give an interpretation of a judgment, not to pronounce on the measures taken by a High Contracting Party to comply with that judgment. No time-limit has been set for making requests for interpretation, since a question of interpretation may arise at any time during the Committee of Ministers' examination of the execution of a judgment. The Court is free to decide on the manner and form in which it wishes to reply to the request. Normally, it would be for the formation of the Court which delivered the original judgment to rule on the question of interpretation. More detailed rules governing this new procedure may be included in the Rules of Court".

Article 43 of the Statute of the CJEU provides basis for a similar power of the Court. Namely, according to this provision, the CJEU is entitled to provide a formal explanation of its own judgments. Even more, every national court is entitled to submit additional questions to the CJEU, if it considers that the answers given

to the previous questions are not sufficient, or clear enough. Besides that, the CJEU issues weekly summaries of its jurisprudence, where it emphasizes the most important issues that were addressed by the Court in its decisions. Later, it also publishes press releases, which contain its most significant decisions. The ECtHR has this practice as well.

The use of jurisprudence by the ECtHR is very similar to the one of the CJEU. Namely, the jurisprudence of the ECtHR seems to be the most significant reference used by the Court when deciding cases, whereby the references to earlier decisions of the Court are used in a very frequent and explicit manner. Yet, as in the case of the CJEU, court practice is not considered as a formal source of law. It is viewed as a subsidiary tool for argumentation as regards the application of the law, although, in fact, it could be easily argued that it has reached a status of an actual source of law, due to the extensive use of references to earlier judicial decisions.

In this sense, a reference may also be given to the Constitution of Denmark, as an EU member country, whose legal system is similar to the Macedonian legal system. The Danish Constitution does not contain provisions that regulate the sources of law, which should be used by the Danish courts, nor is the stare decisis principle, applied in common law countries, respected within Danish law. Consequently, Danish courts, in general, have competence to decide on the legality of Danish laws, as well as to perform a constitutional review. Yet, in practice, lower courts restrain from performing these tasks. These tasks are transferred to the higher courts and the Supreme Court.

In a similar manner, the lower courts respect the court practice of the higher courts, despite the fact that the court practice of the higher courts it is not formally binding for them. Furthermore, having in consideration the importance of respecting the principle of legal certainty, there is also an informal respect of the court practice of same level courts. However, it is very important to be noted that this respect depends on the level of practical access to court practice.

The previous elaboration leads to a conclusion that the jurisprudence, including the preparatory works that is submitted to Parliament as regards the adoption of certain legislation, represents one of the primary tools of argumentation before the Danish courts. However, all this does not mean that jurisprudence constitutes a formal source of law in Denmark.

During the meetings held with numerous key representatives of various judicial and state institutions across Macedonia, the most common view expressed in the context of whether court practice is considered as a source of law, was that it does not constitute a source of law. This view was based on Article 98 of the

Constitution. It was interpreted in the sense that it precludes the court practice to constitute a source of law, which seems to be an appropriate interpretation of this constitutional provision.

At the same time, although with some reticence, the national courts started to call upon and use the jurisprudence of the ECtHR in the judgments of higher courts such as the Supreme and the Constitutional one[19].

Yet, during several meetings, a view was expressed that the court practice collected and published by the newly established Departments for Court Practice, particularly the court practice published the Supreme Court Department for Court Practice, should be considered as binding on lower courts. On the other hand, at some meetings this view was negated as being incorrect and it was explained that it is a relic of the Yugoslav system, i.e. that the reason for this incorrect view is the result of incorrect continuation of a practice established in the Yugoslav system. Namely, in the Yugoslav system, the Supreme Court was obliged to formulate special opinions, referred to as sentences, which were part of the jurisprudence and binding for the lower courts.

Furthermore, it appears that there is an ongoing debate and uncertainty about the legal effect of the principal standings, on one side, and legal opinions, on the other, which are issued by the Supreme Court[20]. Taking in consideration that the principal standings are not connected to a particular case, but rather to a general problem or issue that has arisen or may arise in the future, those are considered to be "more binding". As regards the legal opinions however, since they are connected to an individual case, are considered to be "less binding" and more persuasive. In any case, a conclusion could be drawn that there is no clear legislative norm on the actual legal effect of the principal standings and legal opinions. In order to establish the effect of the principal standings and legal opinions, a simple test should be undertaken. The test will consist of the following question: if a lower court does not follow a principal standing or legal opinion issued by the Supreme Court, would such conduct and the decisions brought in that sense be considered as contrary to law? And moreover, could such failure by the lower court be considered as a ground for appeal, regardless of its nature?

In any case, it should also be noted that the general understanding of the legal community, particularly the lower courts, is that the previous decisions of the Supreme Court are of a persuasive nature, rather than a binding one.

[19]Significance of the Court Practice of the European Court of Human Rights to the Rule of Law in the Republic of Macedonia, Mirjana Lazarova Trajkovska, Judge of the European Court for Human Rights, Page 20

[20]One must take a note on the academic dilemma, which stems from this approach. If the lower courts are considered binded by those legal standings, would a disregard of such a principal standing constitute a breach of law, i.e. would the lower court then be making an error of procedure or law?

In connection with the issue of formulating special opinions by the Supreme Court, referred to as sentences, as part of the jurisprudence, i.e. selecting only certain elements of the decisions of the Supreme Court to be binding on the lower courts, overall, it does not appear to be a recommendable system. This would be the case regardless of the fact whether there is a basis in the Constitution for such selected elements of the Supreme Courts court practice to become binding on lower courts. A reference will be made to the Danish practice in this regard. Namely, in Denmark, all cases of the Supreme Court are published, while the court practice is considered to be only an important tool of argumentation.

## a TOOL OF ARGUMENTATION

The jurisprudence of the ICJ, the CJEU and the Danish courts, as explained above, is not a formal source of law, but it is recognized as a significant tool of argumentation. Moreover, as regards the jurisprudence of the CJEU, it may be argued that is represents a formal source of law.

The focus of this section will be placed on answering two questions. The first question is whether the interpretation of the current Macedonian law, including the Constitution, particularly its Article 98, excludes the use of jurisprudence as a tool of argumentation. The second question is whether, the interpretation of the aforementioned law, provides for including a reference to the specific jurisprudence relied on for the argumentation.

It may be argued that most of the judges, when deciding cases, will retain or have access to a law library, and will use the literature provided by this law library in order to resolve various issues of uncertainty, in connection with a particular case. Yet, as explained above, only the ICJ statute, within its Article 38, explicitly permits the use of literature as a tool of argumentation. However, it needs to be emphasized that the ICJ statute permits only the use of "the most highly qualified publicists of the various nations". This further qualification of the literature that may be used as a tool of argumentation could be reasonably explained only by the explanation that it refers to the literature that may be explicitly referred to as part of the argumentation.

The CJEU has adopted a different practice regarding this issue. The practice of the CJEU is based on the division of tasks between the Court and its Advocate General, who is a member of the Court, but is not entitled to participate in

deciding the case. The role of the Advocate General is to present to the Court a proposal on the manner of deciding the case, based on the argumentation given by the parties. The proposal of the Advocate General is not binding for the Court, but the Court may decide to base its decision upon it.

Furthermore, according to the practice adopted by the CJEU, the Advocate General, when providing argumentation as regards a particular case, will extensively use both the jurisprudence and the literature as a source for the argumentation. Moreover, the Advocate General will also use explicit footnotes referring to different legal literature, without having the obligation to claim that only the works of the most highly qualified publicists was used as reference.

However, it also needs to be noted that the Court itself will never refer to literature. Instead, it will only refer to its own jurisprudence, in a very explicit and frequent manner. The jurisprudence built by the CJEU is very solid and very rarely changed, as in the famous case C-267/91, Keck and Mithouard. In this manner, the CJEU maintains a high degree of consistency as regards its jurisprudence, which, accordingly, also provides for a high degree for legal certainty in the CJEU jurisprudence. There are some commentators who claim that this is not a real picture of the situation, namely, that in practice the Court changes its jurisprudence more often, but they do not provide sufficient argumentation in order to substantiate this claim.

In any case, it could be easily concluded that the most important and, at the same time, the most effective tool of argumentation for a practicing lawyer submitting a case to the CJEU, is the explicit reference to the jurisprudence of the Court. The same practice is applied when a practicing lawyer submits a case to the Danish courts. Even moreover, when submitting a case to the Danish court, the practicing lawyer could also make references to preparatory works, which are almost equally effective tool of argumentation.

The practice of using references to preparatory work as a tool of argumentation, is not well established at the CJEU. The most reasonable explanation behind this situation is probably the originally not very transparent character of the legislative procedure of the EU. However, those procedures are modified today, especially in the sense of increasing the extent of their transparency, which has also allowed for more frequent use of explicit references to preparatory works within the jurisprudence of the CJEU.

As far as the ECtHR is concerned, using references to preparatory works is limited. This is in accordance with Article 32 of the Vienna Convention on Treaties[21], which is explained by the ECtHR Commission in the case Golder vs. United Kingdom[22], as

[21]Vienna Convention on Law on Treaties, Vienna, May 1969
[22]Golder v the United Kingdom, (application no. 4451/70) judgment on 21.II.1975

it follows: "According to Article 32 of the Vienna Convention, preparatory works are only supplementary means to which recourse may be had (a) to confirm the meaning resulting from the application of the 'general rule', (b) to determine the meaning when this rule leaves it ambiguous or obscure, or (c) to correct a manifestly absurd or unreasonable result but, in the Commission's reading of Article 32, not to depart from the result of the application of the general rule in other cases".

The Danish courts have developed a practice, much like the CJEU, according to which no reference is made to literature within the text of jurisprudence. However, when the jurisprudence is being published, the editors conducting the publication add the appropriate references to literature in the form of footnotes. Yet, as in the case with the CJEU, this practice only reflects certain established practice. Namely, the previously explained does not mean that the CJEU or the Danish courts are precluded from using explicit references to legal literature in their jurisprudence.

Going back to the discussion as regards the question whether the interpretation of the Constitution of the Republic of Macedonia, i.e. its Article 98, would be that explicit reference to tools of argumentation, such as jurisprudence, should be excluded, it needs to be emphasized that such an interpretation of the particular constitutional clause is difficult to be established. It could be argued that Article 98 of the Constitution of the Republic of Macedonia, which foresees the sources of law, cannot be interpreted in a manner that it precludes the use of possible tools of argumentation.

Having in mind the previous assertion, it could be further argued that using a reference to jurisprudence does not mean that it is used as an argument to establish a specific state of law. It is rather used as an argument that the respective interpretation of the sources of law, given by the respective court, is supported strongly as being correct, having in consideration that other courts have conducted a similar interpretation in previous similar cases.

This manner of treatment of jurisprudence, which does not award it a status of being a source of law, cannot be claimed to constitute a violation of the constitutional provision of Article 98. This answers the question whether the interpretation of the current Macedonian law, including the Constitution, excludes the use of jurisprudence as a tool of argumentation and leaves the question of whether the interpretation of Article 98 of the Constitution precludes explicit reference to jurisprudence.

In this sense, when elaborating and answering the issue in question, it is very

important to underline that, although Article 98 of the Constitution only foresees the sources of law that can be used in order to decide the case, the text itself cannot be read in a narrow manner, as requiring that a judicial decision can contain only explicit reference to those particular sources of law.

Such a narrow and limited interpretation would not make any sense at all, especially having in consideration that a judicial decision refers to many other elements, such as facts and evaluations undertaken by various experts, which contribute to the manner of interpretation and application of the sources of law as regards the concrete case. Consequently, this leads us to drawing a conclusion that making explicit reference to jurisprudence is also possible.

The previous elaboration inevitably raises another question. The question is whether it makes any sense at all to draft judicial decision without taking in consideration and making explicit reference to jurisprudence. Not only that the absence of consideration of jurisprudence can be seen to represent irrational judicial behavior, but it also constitutes an obstacle towards achieving a greater degree of unification of court practice, as well as increasing predictability and legal certainty. In this sense, it should also be noted that the necessity for increasing the degree of uniformity of court practice in the Macedonian legal system was an issue that was explicitly emphasized at all the meetings with the judicial and state institutions across the country.

Having in mind the previously said, it is obvious that achieving a higher degree of unification of court practice would not be possible without an explicit reference to jurisprudence, which has been consulted and used as a tool of argumentation, within the judicial decisions. In this manner, an environment for unification of court practice will be created, which will provide for higher predictability and legal certainty.

Some might argue that identifying the lines of development as regards creating an environment for unification of court practice is not a task of the judges, but a task of academics. However, it should be taken into consideration that the unification of court practice is very important task and it cannot be left entirely to be tackled only by the academics.

Also, others may argue that the identification of the lines of development as regards creating an environment for unification of court practice should be a task of the newly established Departments for Court Practice within the courts in Macedonia. Yet, it would not make any sense not to require from judges to identify the jurisprudence which was used as a tool of argumentation in a particular case, while subsequently requiring from the Departments for Court Practice to identify the jurisprudence and the lines of development as regards creating an environment for unification of court practice.

Having in consideration all the reasons stated above, it is strongly recommended that the courts in the Republic of Macedonia should develop the practice of making explicit reference to court practice, which was used as a tool of argumentation. If this practice is not developed, it is very likely that the resources invested in publishing the jurisprudence on the web sites of the courts will be nothing more than a waste of funds. Without making reference to the court practice used in the argumentation of a certain judicial decision, the publication of the jurisprudence will greatly lose its significance, especially in the context of increasing legal certainty and creating an appropriate environment for achieving any unification of court practice.

Also, it needs to be noted that at several meetings it was pointed out that, within the court practice of the Macedonian courts, explicit reference is made to the jurisprudence of the ECtHR. At the same time, at some meetings it was pointed out that making references to the Macedonian court practice is possible, but it is considered neither very usual, nor desirable in practice.

Within the previous context, it is worth mentioning that in the last couple of years, there is a growing trend of integrating the European Convention on Human rights and the jurisprudence of the ECtHR in the text of the Macedonian laws. For example, the Law on Civil Responsibility for Defamation and Insult[23], adopted in 2012, provides basis to apply the stances of the ECHR, expressed in its decisions. In this regard, the Department of Civil Cases at the Supreme Court of the Republic of Macedonia, adopted a conclusion that Article 400 of the Law on Civil Procedure from 2005 provides that a case can be reopened if the European Court of Human Rights rendered a final judgment finding a violation of the Convention. The Supreme Court of the Republic of Macedonia in accordance with the practice of the European Court of Human Rights in Strasbourg, points out that the tolerance of the individual standings is an important component of the democratic political system. In general, the views for a judge are always important for the public and they must not stay outside of the public debate. The courts and the judges as public officials do not operate in a vacuum, so the public discussion concerning them and the criticism of the judicial outcome cannot be banned. The opinions on value have the right of free expression and they cannot be labeled as a crime offence under Article 173 of the Criminal Code[24].

Furthermore, within this context, it should also be mentioned that the Academy for Judges and Prosecutors, with the support of various donors and project

[23]Law on Civil Responsibility for Defamation and Insult, "Official Gazette of the Republic of Macedonia" No. 143/12

[22]Significance of the Court Practice of the European Court of Human Rights to the Rule of Law in the Republic of Macedonia, Mirjana Lazarova Trajkovska, Judge of the European Court for Human Rights, European Law, Page 20

partners, has managed to publish a significant number of collections of different landmark cases of the ECtHR and the CJEU. A certain number of these collections in hard copy are distributed among the courts, while their electronic versions are available on the Academy web site.

The level of the significance and the effect of the ECtHR decisions could be easily seen in the provisions of the following procedural laws:

-The Criminal Procedure Code[25], which provides for a ground to initiate a repetition of a criminal proceedings, based on a final judgment of the ECtHR, which establishes a violation of the human rights and liberties guaranteed by the Convention, during the procedure before the domestic courts;

-The Law on Civil Procedure, which provides for a ground to initiate a repetition of the proceedings upon a final judgment of the ECtHR. This provision goes even further and foresees that during the repeated proceedings, the courts are bound to respect the legal stances expressed by the ECtHR in its final judgment, where violation of the rights and liberties protected by the Convention has been found.

Furthermore, the Supreme Court in Macedonia has been vested with the mandate to adjudicate in matters concerning the right to a trial within reasonable time, as guaranteed by Article 6 of the European Convention on Human Rights, at the request of the parties. The latter is done in a procedure prescribed by law before the courts in the Republic of Macedonia. However, this mandate has not been awarded only as a form, as the framework and guidance on the manner of using and applying the substantive law is provided. As regards these cases, the Supreme Court is obliged to decide in accordance with the rules and principles set by the European Convention on Human Rights and the jurisprudence of the ECtHR.

For example, on the judgment in the case of Stoimenov[26], seeing that the amendments to the Law on criminal procedure are associated with long procedures, the Department of Criminal Offenses at the Supreme Court took a legal standing "for every freedom and right set out in the Convention and whose protection is provided before the ECtHR, the courts in the Republic of Macedonia will directly apply judgments of the Court in accordance with the criminal procedure and the explanation of their decisions will invoke the judicial practice of the ECtHR". This was a clear message to all courts that they, just like the Supreme Court in criminal procedures, will have to directly implement the jurisprudence of the Court in Strasbourg[27].

[25]Criminal Procedure Code, "Official Gazette of the Republic of Macedonia" No. 150/10
[26]Stojmenov v the Republic of Macedonia (application no. 17995/02) judgment on 05.IV.2007
[27]Significance of the Court Practice of the European Court of Human Rights to the Rule of Law in the Republic of Macedonia, Mirjana Lazarova Trajkovska, Judge of the European Court for Human Rights, European Law, Page 19

Having in mind this background, it seems very likely that any acceptance of the use of jurisprudence as a tool of argumentation would also require work on an attitude change, although in some meetings it was pointed out that the active use of jurisprudence as a tool of argumentation was already vastly promoted by the Academy for Judges and Public Prosecutors, which is certainly a good step ahead towards achieving a higher degree of unification of court practice.

# 03 PUBLICATION AND DATABASES

As it was previously explained above, the provision of Article 10 of the Law on Case Flow Management in the Courts foresees the manner and requirements that need to be respected regarding the anonymization and publication of judgments. However, during most of the meetings, it was clearly underlined that the courts are facing problems concerning the anonymization and publication of judgments, due to the volume and level of anonymization, which also very often constitutes an obstacle in order to meet the 2 day deadline for publication of a judgment.

During a couple of meetings, it was also pointed out that all the judicial decisions, when published on the websites of the respective courts, are at the same time transferred to a central database, which is administered by the Department for Court Practice at the Supreme Court. The legal basis for this type of parallel transfer was not identified. Furthermore, during several meetings, it was stated that this database is not much useful in practice, although a quite large volume of searchable information is entered into the case management system ACMIS. This is mainly due to lack of appropriate search tools, as well as due to the fact that this information is not completely transferred, together with the judicial decisions, into the current court practice database.

As regards the technical aspects of the database, the most common view expressed at the meetings was that although the database was originally designed to satisfy the needs of the courts, it was showed in practice that it has several flows, which require immediate attention in the near future:

- There is a system overflow due to the fact that too many decisions are being published.

- There is no adequate search engine, with appropriate keywords and filters, i.e. there is absence of advanced search tools as part of the web sites of the courts, which will allow searching by key words.
- Even the previous judgments, which have been abolished or send back for retrial by the higher courts, show up in the searches as false positives.
- The courts do not have the capacity to have editorial boards.

This particular section will place its focus on the main consequences and possible solutions that might take place as regards these issues.

## a PUBLICATION

The jurisprudence of both the ECtHR and the CJEU is published on their respective web site, which is, at the same time, an easily searchable database of various decisions of the respective courts. This common practice of both the ECtHR and the CJEU differs only regarding the level of the available search facilities. The ECtHR has a database, whose search facilities continue to be limited to some extent, while the database of the CJEU represents a well-developed database, with advanced search mechanisms.

Furthermore, both the ECtHR and the CJEU follow the same procedure rules regarding the time limit of rendering of a judgment. They have a procedure according to which the judgment is not rendered immediately after the judicial hearing is completed. Also, there are no deadlines foreseen as regards the time limit for rendering of a judgment. It could be said that the only exception in connection with this rule is the principle established by the ECtHR, which impose an obligation for the courts to render justice within a reasonable period of time.

Consequently, after the completion of the judicial hearing, certain period of time is spent on the deliberation and drafting of the judicial decision, as well on the preparation of the decision for publication.
The practice developed by the CJEU in this regard is to publish in its data base all judicial decision on the day they are rendered. However, certain technical issues, such as the translation, may impose some delays from time to time.
As regards the question of anonymization of the judgments, both the ECtHR and the CJEU have similar rules.

The judgments of the ECtHR are, as a general rule, not anonymised. However, the

applicant has a right to request anonymization, under the conditions provided by Rule 47.4:

> -Applicants who do not wish their identity to be disclosed to the public shall so indicate and shall submit a statement of the reasons justifying such a departure from the normal rule of public access to information in proceedings before the Court. The Court may authorise anonymity or grant it of its own motion.

At the CJEU, there is also a general rule that the judgments are published without previous anonymization. However, as in the case with the ECtHR, the Rules of Procedure of the General Court, in its Article 48, provide for an exception of this rule, given that certain conditions are fulfilled:

> -On a reasoned application by a party, made by a separate document, or of its own motion, the General Court may omit the name of a party to the dispute or of other persons mentioned in connection with the proceedings, or certain information, from those documents relating to a case to which the public has access if there are legitimate reasons for keeping the identity of a person or the information confidential.

It could be easily concluded that the general practice of both courts is to publish the judicial decisions without any editorial interventions. Anonymization of the judicial decisions represents an exception and it can be provided only upon a reasoned request submitted by a party. It should also be pointed out that anonymization is generally limited to replacing full names with letter indications.

Comparatively, in Denmark, as far as civil and administrative cases are concerned, a certain period of time is allowed to pass between the judicial hearing and the rendering of the judicial decision. On the other hand, as regards criminal cases, the result is announced at the end of the judicial hearing. However, the drafting of the full decision is allowed to take place after the judicial hearing is completed. In general, in Denmark there are no deadlines foreseen for drafting of the judicial decision. Yet, the principle to render justice within a reasonable period of time, established by the ECtHR, is applied here as well.

The judicial decisions rendered within the Macedonian legal system, as explained during the meetings, must be finalized within 3 days of rendering the judgments in court. In criminal cases the result must be announced at the end of the judicial hearing. As it was explained during the meetings, these strict time limits were imposed as a measure against the eventual backroom dealings.

However, there was no explanation provided as to how the 3 day time limit foreseen for rendering the judgments combines with the 2 day time limit foreseen for publishing the judgments on the web site of the respective court.

In Denmark, there is no obligation for automatic publication of judicial decisions. However, based on the right to access to documents, any person that can prove to have a relevant interest in the particular case, including academics, may file a request in order to acquire a transcript of the concrete judicial decision. On the other hand, the right to access has a limited practical value, due to the fact that there is no searchable access to jurisprudence, which will provide for identification of relevant decisions.

This shortage as regards the absence of searchable access to jurisprudence is compensated by a publication of selected jurisprudence. The publication is conducted by a private company, which publicize a selection of cases, undertaken by a committee comprised of judges. The structure of the selection usually consists of all the Supreme Court cases, around 10% of the High Court cases and around 1% of the Municipal Courts cases. These selected cases are generally published without anonymization. The only exceptions of this rule are regarding certain criminal and family law cases, where full names of persons are replaced with letter indications.

The cases selected by the committee of judges are published in a fully searchable database, with appropriate search tools. However, the access to this database is granted only based on subscription, whose price is rather high, which, to some extent, limits the access to the database. On the other hand, it could be said that selection of relevant cases made by the committee of judges is considered relevant and appropriate by the public, due to the generally high level of trust in the judicial institutions in Denmark. Yet, there have been some doubts in this system, caused by not selecting certain sensitive cases for publication.

However, for some time there has been a discussion going on in Denmark, as regards the question whether the private company authorized to publicize selected relevant cases should continue with this activity in a time when the speedy development of IT technology provides enough possibilities in order for the state to undertake this activity. For now, the authorization for publication of selected cases stays with the private company, as the main argument of the state against taking away this activity from the respective company and transferring it to the public authorities, is that a general database would be too large and with no practical value for searches.

On the other hand, the counter argument seems to have more validity. If a general database of the jurisprudence was made available, various private and public sector initiatives could provide different search tools in order to acquire the necessary information from the general database. For example, there are various tools similar to Google, which could easily provide search for specific terms.

The best practices explained above should be taken into consideration when determining the manner in which the Republic of Macedonia could best resolve the issue of publication of court practice. The Danish practice does not seem very recommendable to rely on, as it is criticized even in that country. Namely, having in mind that the Republic of Macedonia is still a relatively new democracy, it would not be the best solution to introduce such a system, where a committee of judges makes the selection of relevant cases to be published.

In this sense, a subject of discussion during some of the meetings was whether such selection of relevant cases to be published was not the main role of the newly established Departments for Court Practice. On the other hand, it was emphasized that there is a problem as regards the infrequent publications form these Departments and the focus on unusual cases.

It could also be added that the selections of cases, although very useful, could be also a source of legal uncertainty for the practitioners. Namely, they will not have a full access to the court practice and they will be deprived from the possibility to make their own selection of cases, which will be used as a tool of argumentation.

All the previously mentioned leads to the conclusion that it would be recommendable to maintain the current practice of publishing all judicial decision on the web sites of the courts and integrate them into a single database, administered by the Department for Court Practice at the Supreme Court. Also, having in mind that various edited selected cases could be very useful additional tool of argumentation, the work of the various Departments for Court Practice should be supported.

However, it is very important to make the publishing of the decision on the web sites of the courts more practical and easier to operate with. The practice of the ECtHR and the CJEU could be taken into consideration in this regard, in the sense that only at the request of the party, filed at the beginning of the procedure and given there is an appropriate justification, the court could grant anonymity. The level of the justification needed in order for the request for anonymity to be granted by the court, would depend on the field of law where the particular case falls in.

Furthermore, it seems that the Law on Case Flow Management in the Court foresees a different level of anonymity for different judicial decisions, i.e. the level of anonymity would depend on whether the judicial decision is legally effective or not. Namely, for the legally effective decision a limited anonymization is applied, while the decisions that are still not legally effective and can be further appealed are subjected to a more complete anonymization, which even affects the decision into a conceptual sense.

As it was pointed out during the meetings, the obligation to conduct a conceptual anonymization, as regards the decisions that are still not legally binding, is almost impossible to comply with in a proper and timely manner, especially given the limited resources at disposal of the judiciary. Although at some of the meetings it was stated that the obligation to anonymize all cases was a misinterpretation, it appears that this view is not correct and that this obligation sits comfortably within the law.

In a comparison, the ECtHR does not have an appeal procedure, but it publishes its initial decisions, although they are still not confirmed by the Court, which also may include some possible changes. As regards anonymization, the Court does not make a distinction between the initial and the final publication. In a similar manner, both the CJEU and the Danish courts make no difference in connection with anonymization between decisions that can be further subjected to appeal and those that are final, although they both have appeal procedures foreseen.

One of the main concerns expressed at the meetings regarding the issues of anonymization was the one that in case a judicial decision is not final and, accordingly, could be subjected to an appeal, it should be ensured that the parties will receive a higher degree of protection from public insight into the judicial decisions, mainly due to the fact that it could be changed upon an appeal. Presuming that this assertion is correct, it would seem appropriate to change the law in the sense to foresee that a judicial decision can be published only after the expiry of the period for appeal, or after it has become final.

As regards the issue of anonymization of judicial decisions, it should also be noted the both the CJEU and the Danish courts do not consider publishing of appealable decision without any anonymization as a problematic issue. However, in Denmark, as explained before, this kind of publishing is also based on the selection of relevant decisions by the committee of judges.

# b DATABASE

This section places its focus on the issue of search options that the databases contain. As understood during the meetings, the courts use the ACMIS system in order to register the cases. At the same time, much relevant information about a particular case is entered into the ACMIS system. This system is a unified system, designed for the flow of cases through the court, starting from their reception in the court and until the publication of the respective decision rendered as regards the respective case. Also, the purpose of designing of the ACMIS system is to dispense with the publication of judicial decision and provide the public with and access to the entire court practice of all the courts in the country, including civil, criminal and administrative judicial decisions.

It also needs to be noted that the database at the Department for Court Practice at the Supreme Court has very limited data fields, due to which it also has very limited search tools. The search possibilities mainly include the type and the year of a concrete decision, without having a possibility for access to full text free text search. At most of the meetings it was stated that the lack of appropriate search tools significantly diminishes the practical value of the database.

As regards this more technical element of the Project, the Supreme Court pointed out that there are two main factors, which appear to be relevant in this context and, at the same time, to be interconnected. Those two factors are the access to information as well as the information management.

In regard to the access to information, it appears that the legal obligation that obliges the courts to publish all judicial decision on the web site of the respective court satisfies the requirement for access to information. As mentioned earlier, the database which contains all judicial decisions from all the court on the territory of the Republic of Macedonia is based with the Supreme Court.

Regarding the information management, the Supreme Court pointed out several issues, which require attention:

- The existing database of published decisions faces various practical and technical issues and problems, which are mainly connected with the searching capabilities of the database:

  - Absence of system for selecting of decisions of the lower courts, which creates additional confusion.

- Lack of court staff, which is a continuous problem, who will be responsible for the task of monitoring, extracting and creating legal opinions and legal standings, under the supervision of the judge assigned to be responsible of court practice.

Taking into account all the previously mentioned as regards the database issues that courts are facing with, it appears that, regardless of the format in which ACMIS data is held, it would not be very complicated to develop a software component that would extract the information in separate containers. Moreover, various elements of information would be added in the appropriate container, namely, where the corresponding judicial decision is held within the database.

This will probably mean that some changes need to be made regarding the database. It seems difficult to imagine that the concrete database could not be modified, but even if that is the case, there are still other options to make the appropriate changes in order to improve its practical value. Today there are all kinds of database products available on the market. There is also a possibility of building standalone applications from facilities available open source elements. Furthermore, it also appears to be not very difficult to add a free text full text search facility to the database.

It should be noted that the remarks regarding the database stated above are of a general nature. However, it seems that a conclusion could be made that much of the information necessary to improve the database is already available within the ACMIS system and that it would just need a transfer.

Another issue that could be very essential regarding the improvement of the practical value of the database is to add further editorial work to the extent possible, having in mind the limited resources. Namely, the creation of a brief summary for each case would be very useful. It would provide a basic insight into the crucial elements of the case, in order to allow the reader to come up with a decision more quickly, as to whether further research of the case would be relevant. The task of creating a short summary of the case could be undertaken by the court staff. Yet, it should be taken into account that during the meetings it was pointed out that the current limited resources available to courts would mean that there will be no sufficient court staff in order to undertake such a task.

Furthermore, it could be very useful if taxonomy is created, in order to complement the ACMIS taxonomy where it is not sufficient. This means that relevant and consistent keywords could be attached to each case. It will provide for improvement of the search functions and it will allow for an entry level evaluation of the relevance of the case, even prior to reading the summary.

It could also be very useful, but at the same time also very ambitious, to introduce the practice of the CJEU concerning the cross referencing. Each paragraph of a judicial decision of the CJEU is numbered, and for each paragraph a list is drawn up of the legislation and the jurisprudence referred to in that particular paragraph. This practice of cross referencing is extremely useful due to the fact that if allows a very detailed and precise search as regards where a given article of legislation is interpreted, or where a given case is relied on.

It should also be added that the CJEU provides a list of commentary from legal journals at the end of each judgment, which is published in the database. That list of commentary is also constantly updated, as more literature appears. Yet, one should have in mind that these tasks, i.e. both the cross referencing and the literature references require a vast amount of resources at disposal. The CJEU has formed special departments that are focused only on these particular tasks.

It is also worth to mention that, at several meetings, certain local solutions were pointed out as regards the improvement of the database. These solutions were undertaken at the initiative of a local court or individual judge. It is recommendable to take these local initiatives in consideration in an inclusive manner when discussing and taking steps towards the development of the central database.

Overall seen, it could be said that any improvement of the database would represent a significant step towards promoting the importance of the unification of court practice in the Macedonian legal system, as well as towards achieving higher degree of unification of court practice.

Apart from the support provided in order to improve the database, it would be also recommendable is support could be provided as regards the varying practice amongst courts for regular meetings in order to discuss various issues in connection with the court practice. An appropriate technical support could be provided, which will allow expanding the meetings, in the sense to take to take place also between representatives of different courts, through use of web platforms such as Skype. This practice would provide both for dissemination of both the discussions and conclusions adopted at those local meetings, as well as for inspiration from the local meetings of other courts. With the use of web platforms, the time taken up by such regular meetings would be limited.

# 04 MISCELLANEOUS OBSTACLES TO DEVELOPMENT OF COURT PRACTICE

It needs be noted, as well, that during several meetings, it was also stated that the current state of affairs concerning the court practice in the Macedonian legal system is affected by the fact that only few available mechanisms are not sufficient, in order to achieve a higher degree of unification of court practice. These statements were in connection with the recent abolition of certain legal remedies. As a result of the implemented changes and amendments as regards the civil procedure, aiming to shorten the duration of the procedure and increase its effectiveness, certain legal remedies were abolished, while revision, as irregular legal remedy, was limited to cases worth over 20.000 Euros. The latter means that only a very small percentage of cases can reach the Supreme Court and be reviewed by it, i.e. the Supreme Court's jurisdiction to decide upon a wide array of cases is significantly limited, which affects negatively the unification of court practice.

The lack of human resources and staff was also brought up at most of the meetings, as a serious obstacle for the development of court practice and its unification. Furthermore, the absence of internal network and, consequently, lack of communication between the courts was pointed out as well as a problem in connection with the development of court practice and its unification. The establishment of such a network will significantly contribute towards the harmonization and unification of the court practice among the Supreme Court, the four appellate courts and the 26 basic courts.

The basic courts, as being the first in line to hear the cases, are probably in the best position to look at the court practice and develop it properly. Yet, in addition to the issues that were already underlined by the court, they have identified the following areas as critical for the unification of court practice:

- Access to information and lack of efficient information management system

- Lack of available legal remedies in order to address certain important legal issues to the Supreme Court.
- Lack of communication with the other courts of the same level, in order to exchange information regarding the court practice.
- Inability to assign a judge to be fully in charge of court practice due to her/his obligation to reach the same workload of cases as other judges.

The inability of the judge, assigned as responsible for the development of court practice, to fully focus on this task, due to the existing obligation to complete a certain number of cases on a monthly level as the other judges, was pointed out as an obstacle towards to development of court practice by the higher courts, as well. Moreover, at several meetings it was underlined that changes in the relevant laws need to be made in order to allow the court practice judge to fully focus on the task.

# 05 ACADEMY FOR JUDGES AND PROSECUTORS

As regards the treatment of court practice as part of the curricula of the Academy for Judges and Prosecutors, it was established that there are no separate trainings focused only on court practice, but court practice, at the moment, is integrated as part of other existing trainings within the Academy. However, it was explicitly underlined at the meetings, including the meetings with the Academy for Judges and Prosecutors, that there is certainly a necessity for specialized trainings on court practice to be included within the curricula of the Academy, aimed both for the initial and the continuous training program.

In this sense, it is also worth to mention that the Academy, until this year, has provided support for meetings of all four appellate court on the territory of the Republic of Macedonia, in order to work on the harmonization and unification of court practice. The support the Academy provided was mainly consisting of organization of various events, collecting inconsistent decisions, defining disputable and sensitive issues that need resolution, as well as preparation of reports regarding the discussion and the conclusions adopted during those meetings.

It was also pointed out that there is a significant need for trainings in the areas of court practice management, as well as trainings on how to use both domestic and ECtHR court practice, and court practice of other international legal fora, recognized by the Republic of Macedonia.

Also, it was emphasized that there is a need to organize trainings and seminars on the importance of court practice. Moreover, it was also emphasized that the need for trainings and seminars on how to select parts of judgments, how to index them, how to create taxonomy, as well as how to produce summaries would be highly appreciated and desirable. A significant part of the trainings would also be training on information technology, in order to follow up and keep up with the current trends in this area.

The education of the judges, prosecutors and other actors in the legal system of Macedonia, the exchange of experience and the jurisprudence of the Court in Strasbourg represent a particularly important part of the commitment to the rule of law and building a democratic society. For those reasons it is important for the judges, in accordance with the time and conditions they have regarding their obligations in the Court, to strive to follow the jurisprudence of the ECtHR. It is especially important the member states to include in the curriculum of the faculties of law and journalism a program related to the jurisprudence of the European Court of Human Rights[28].

Taking into consideration that sharing best practical experiences is one of the most effective means for enriching legal education, it is also important for the Academy for Training of Judges and Prosecutors, to invite and to visit peers from countries that have long tradition in unification of court practice that will work together with Macedonian judicial officials in producing useful tools which already provided effective positive impact in their countries.

[28]Significance of the Court Practice of the European Court of Human Rights to the Rule of Law in the Republic of Macedonia, Mirjana Lazarova Trajkovska, Judge of the European Court for Human Rights, European Law, page 21

# 06 CONCLUSIONS AND RECOMMENDATIONS

As it was previously mentioned, the conclusions in this Report are mainly given in a form of recommendations. Assessment team experts had two different approaches regarding recommendations for further shaping and development of the unified court practice in the Republic of Macedonia. In this regards, the first approach introduces the nature of unified practice as binding as a source of law, and the second approach presents its nature as non-binding in a form of a tool of argumentation. There was not a clear division by Assessment Team experts regarding the approach, having in mind that the experts had diversity in their views and opinions which are reflected in the following conclusions and recommendations:

## CONCLUSIONS (Binding nature)

1.The Supreme Court's jurisprudence is presently incapable of "unification" in the sense of consistency in application. Even if it were able to change its mind:

a) it is common ground that all the lower courts, in the main, do not regard themselves as bound by Supreme Court judgments;

b) the Supreme Court's judgments are frequently so short or lacking in reasoning as to be of little use as a potential guide in other cases; and

c) the system, such as it is, of law reporting in Macedonia is so poor and slow that lower courts and potential or existing litigants are

often unlikely to become aware of potentially relevant Supreme Court judgments when needed.

2.In the result, without legislative reform, there is no possibility at present of achieving consistency or "unification" of jurisprudence that might serve as "law" throughout the Macedonian Court System.

3.If any, contribution the Supreme Court makes - and should make –by way of guidance to and supervision of the courts below and to all seeking justice before them–so as to secure consistency, clarity and certainty of the law throughout the whole of court system.

## **RECOMMENDATIONS** (Binding nature)

1.A consolidated position should be taken on the interpretation of the law, including the constitution, as to whether case law may be regarded as either a source of law or a tool of argumentation. Without knowledge of the precise procedures of the Judicial Council, it would seem recommendable if the Council could establish a working group with representation of the courts, the legal profession and academia that could be charged with preparing a proposal for a position to be adopted by the Council. It is presumed that such a position could not be binding upon the courts or individual judges, but as an official recommendation of the Judicial Council, the adoption of the consolidated position could be expected to have the required impact.

2.If the common position should be negative, to the extent that current legislation prohibits the use of case law both as a source of law or and as a tool of argumentation, it is recommended that a proposal for change of law, including if necessary the constitution, be considered by the Ministry of Justice.

3.This debate should gain even more attention with an aim to resolve any discrepancies may still exist in the perception of judicial decisions as a source of law, as well as the effect of the court decisions, legal opinions and legal standings and their usage (invoking) in other decisions. The resolution should be done by legislative intervention to avoid any doubt in regard to its interpretation. The question on the effect of the court practice there for should be fairly addressed in a sense on whether it is binding on the lower courts, and to what extent, primarily to the relation of the legal opinions and more importantly the principal legal standings by the Supreme Court to avoid any doubt in interpretation. The main role in harmonization, unification and

implementation of the national jurisprudence, according to the legal existing framework should play the Supreme Court as highest judicial authority.

4.Some changes should be contemplated within the existing laws, namely change in the Law on Courts (and the relevant laws thereafter) should take place to allow for a judge to be appointed in charge of court practice, which shall be relieved partially or fully of its work load – to be able to perform the duty more effectively. This judge in charge of court practice would be relieved both in quality and quantity terms as other judges adhere to, so it can devote itself to research the court practice as well as be in charge of overall notion of court practice within a particular court and also as a liaison with other courts.

5.Moreover, mechanisms should be introduced within the current procedural laws – legal remedies - (or to restate the mechanisms abolished) so that more cases could reach the Supreme court of Macedonia, being the highest court, to be tested.

## **CONCLUSIONS** (Non-Binding nature)

1.Having in mind the previously said, it is obvious that achieving a higher degree of unification of court practice would not be possible without an explicit reference to jurisprudence, which has been consulted and used as a tool of argumentation, within the judicial decisions.

The judges from different courts from a same level of jurisdiction seem to heavily rely on each other's court practice for the sake of uniformity of their decisions.

## **RECOMMENDATIONS** (Non-Binding nature)

1. A readily accessible and otherwise efficient Courts web-site and internet connections as a means of providing essential information, including that necessary for programming procedural steps, hearing dates etc., and for timely communication of directions, and for prompt publication of judgments and orders.

2. If the common position should be positive, to the extent that use of case law either as a source of law or as a tool of argumentation is possible, it is proposed that practical guidance should be developed by the Judicial Council or the Ministry of Justice as to how references to case law may best be included in the drafting of judicial decisions. It would seem that only in case of a positive common position would it be possible to maintain that the case law of courts, especially superior courts, could be regarded as binding on other courts. In such case, a common position on the binding effect would also seem recommendable.

3. A mechanism should be implemented for the judges from the same jurisdictional level to communicate to each other faster and more efficiently.

4. If immediate legislative interventions are not envisaged, at least trainings should be provided to all beneficiaries, to supplement the existing legal framework with an aim to properly gather, publish, group and usage of court practice be ensured, within the current legal context and understanding of its placement and role.

5. The Academy for Training of Judges and Prosecutors should provide training to judges and court clerks. The trainings should be aimed at presenting how it actually works in different countries, when it comes to extracting court decisions, their summaries, legal sentences and creating guidelines and opinions. Particular attention should be drawn to trainings in extracting and creating case summaries, with keywords (taxonomy) to further facilitate and ease the search throughout the database of existing judicial decisions.

6. An awareness should be raised that the relevant case law of this ECtHR can be applied and implement in the explanations of our domestic court decisions. The main promoters should be Supreme Court, Appellate Courts and the Academy for Judges and Public Prosecutors.

7. As to the more technical side, concerning the current database, it is recommended that an examination is undertaken as to the possibility for amending the features and functionalities of the database. The ACMIS system should be upgraded at least in regard to providing more effective research of the decisions which current features are slow and rudimentary and should be upgraded to serve its purpose of a transparent judiciary. There seems to be an agreement that a new software should be implemented, or perhaps upgrade the existing one to reflect the latest developments in this area, with developing relevant taxonomy of terms, keywords etc., to facilitate the search engine and to make it more user friendly. As a more ambitious project, it might be considered to expand the database so as to include also

technical cross-reference fields, which could include links to legislation and case law referred to in the decision, and well as annotation with references to academic literature, which should be revised as subsequent commentaries are published.

8. Positive actions should be undertaken by the Court authorities to establish special departments for jurisprudence in every basic court with extended jurisdiction, every appellate court and administrative courts as well. The already established practice since last year, to conduct meetings on the Appellate Court level for unification and harmonization of the jurisprudence among appellate districts, should be restarted with at least four meetings per year (two for civil and two for criminal law department);

9. Work on the clearness of the judicial decisions, in a sense of imposing practice directions to members of the legal profession which communicate to the court (motions, letters, briefs, appeals, submissions) much like the ECtHR practice directives, where each submission should be numbered in paragraphs, how quoting should be done, etc. This will eventually reflect on the clearness on judicial decisions, to follow on the same approach, with an ultimate goal to ease the extraction of legal opinions, summaries sentences, which shall facilitate quotation of legal opinions/standings extracted from other court decisions.

ЦЕНТАР ЗА ПРАВНИ
ИСТРАЖУВАЊА И АНАЛИЗИ
CENTER FOR LEGAL RESEARCH AND ANALYSIS

# UNIFYING THE COURT PRACTICE IN MACEDONIA

*possibilities vs. challenges*